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W.P(MD).Nos.14301 of 2013 and 5728, 5825 and 5841 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 26.07.2022

ORDER PRONOUNDED ON : 01.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

**W.P.(MD).Nos.14301 of 2013 and 5728, 5825 and 5841 of 2014
and M.P(MD).Nos.1of 2013, 1 of 2014, 1 of 2014 and 1 of 2014**

- | | |
|-----------------------|---------------------------------------|
| 1. G.Yasotha |Petitioner in WP.No.14301 of 2013 |
| 2. S.Augustin Arulraj | ...Petitioner in W.P.No.5728 of 2014 |
| 3.G.Anthonysamy | ...Petitioner in W.P.No.5825 of 2014 |
| 4.R.Alagan | ...Petitioner in W.P.No.5841 of 2014 |

Vs

1.The District Collector
Trichy District
Trichy

2.The Project Officer
National Highways Authority of India
Pon Nagar, Trichy -1

3.The Special District Revenue Officer
NH-45, Land Acquisition
Old Collectorate Campus
Trichy -1

4.The Special Tahsildar
NH-45, Land Acquisition
Manaparai
Trichy District

....Respondents in all the writ petitions



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COMMON PRAYER: These Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned notification issued by the third respondent under Sec.3D and 3G(3) of National Highways Act, 1956 in Na.Ka.No.C4/22485/07, dated 16.02.2009 in respect of Survey No.198/2 of Kannudayanpatti Village, Manapparai Taluk, Trichy District under Serial No. 34, and the notification in Na.Ka.No.D948/09, dated 24.02.2010 in respect of Survey No.198/2 of Kannudaiyanpatti Village, Manapparai Taluk, Trichy District under Serial No.143, quash the same and consequently direct the respondents to restore the land in Sy.No.198/2, Kannudaiyanpatti Village, Manapparai Taluk, Trichy District to an extent of 3600 sq.m acquired for four way lane project in NH-45 Km 330/0-421/0 from Trichy to Dindigul and kept idle without rendering the project as it is not required.

(The prayer amended vide Court order dated 03.04.2017)

(In all the petitions)

For Petitioners	: Mrs.J.Padmavathi Devi
For R1, R3 & R4	: Mr.S.Shanmugavel Additional Government Pleader
For R2	: Mr.C.Arul Vadivel @ Sekar

COMMON ORDER

The present writ petitions have been filed to quash the notification issued by the third respondent herein under Section Sec.3D and 3G(3) of



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National Highways Act, 1956 on 16.02.2009 and another notification on 24.02.2010 and direct the respondents to restore the land in Survey No.198/2 which were acquired for four way lane project and kept idle without being used for the project as it is not required.

2. According to the learned counsel for the writ petitioners, the lands were acquired in two phases, in the first phase, 3A(1) notification was issued on 04.12.2007 and the paper publication was effected on 30.08.2012. The declaration under Section 3D(1) of National Highways Act 1956 was issued on 02.12.2008 and an award was passed on 27.02.2010. The first phase of acquisition involved 250 sq.m in Survey No.198/2. As far as the second phase is concerned, a notification was issued in 3(A)(1) on 02.04.2009 and a declaration was issued in 3D(1) of N.H.Act 1956 on 15.12.2009. An award was passed on 31.03.2011. This notification was concerned with 3350 sq.m. of land in Survey No.198/2. The main ground on which the petitioners had attacked the notification is that the name of the original owner was not mentioned either in 3A notification and 3D declaration. Though Survey No. 198/2 was mentioned in the said notification, it was not properly mentioned as to what extent is required and which portion of their land is being acquired by the acquisitioning body. Hence, the vendor of the petitioners were not in a position to raise objection to the acquisition proceedings at that point of time.



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3.The learned counsel for the petitioners had further contended that the road has already been laid and thereafter, the land is available beyond the margin which is not required by the respondent authorities. Hence, the authorities ought to be directed to restore the possession of these lands to the petitioners.

4.The learned counsel had further contended that after acquisition, the lands are being kept idle without rendering any work. He had further contended that the petitioner in W.P(MD).No.14301 of 2013 has purchased the property on 30.01.2008. The petitioner in W.P(MD).No.5728 of 2014 has purchased the property on 06.02.2009 and the petitioner in W.P(MD).No. 5825 of 2014 has purchased the property on 11.09.2008. Though the purchases have been made prior to the acquisition proceedings, no notices were issued to the writ petitioners. Hence, she prayed for allowing the writ petition.

5.Per contra, the learned Standing Counsel appearing for the National Highways had contended that the alignment or extent of the land that is required of laying road cannot be decided by the land owner. The National Highways Authority being a statutory body is being guided by several experts



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and they have decided that this extent of land is required for formation of four way lane. Hence, it is not within the domain of the land owners to contend that such an larger extent of land is not required for formation of four way lane.

6.The learned counsel appearing for the National Highways Authorities further contended that the award for the first phase has passed on 27.02.2010 and for the second phase on 31.03.2011. Only two years thereafter, the present writ petitions have been filed challenging 3(1) notification and 3(D) declaration. According to him, the writ petitions filed after passing of the award is not maintainable, in view of the judgment of our High Court reported in **(2007) 7 MLJ 1021 (Shri Andal Alagar Kalyana Mandapam Private Ltd., rep. By its Managing Director Ms. Vs. Union of India, rep.by its Secretary, New Delhi and others).**

7.The learned Standing Counsel had further contended that the request for reconveyance cannot be considered. As far as the acquisition proceedings under the National Highways Act is concerned, there is no provision under the National Highways Act for reconveyance of the properties. He relied upon a Division Bench Judgment of our High Court reported **in W.A(MD).No.581 of 2016 and 678 of 2016 dated 20.02.2018 (A.Rajendran**



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Vs. The Special District Revenue Officer (Land Acquisition), National Highways, Tiruchirappalli 620 001 and another) to contend that in the absence of any provision for reconvey the prayer sought for by the writ petitioner, cannot be granted.

8.The learned counsel had further contended that the entire four way lane has been laid and the last lane meant for truck bay is yet to be completed in view of pendency of the writ proceedings. The land in question are meant for the said truck way and hence, it cannot be contended that the lands are kept idle and not utilised for the purpose for which they were acquired. Hence, he prayed for dismissal of the writ petition.

9.I have considered the submissions made on either side and perused the materials on record.

10.The petitioners are the purchasers from the original land holders whose lands were acquired for forming a four way lane under the National Highways Act 1956.

11.Admittedly, the purchases have been made by the writ petitioners only after issuances on notices under Section 3(A)(1) of National Highways



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Act 1956 both in the first phase as well as in the second phase. The acquisition authority is duty bound to look into the revenue records to identify the owner of the property for whom notice would be issued under the relevant provision. The petitioners being the purchasers, their names were not mutated in the revenue records. Hence, their names were not reflected either in the notice or they were called for an enquiry. The petitioners cannot blame the respondent authorities for issuing a notification and a declaration without issuing notice to the writ petitioners.

12.The award was passed for the lands covered in the first phase of acquisition on 27.02.2010. For the lands covered in the second phase of acquisition, the award was passed on 31.03.2011. The present writ petitions have been filed in the year 2013. Hence, it is clear that after passing of the award, the writ petitions have been filed challenging the acquisition notification. As rightly pointed out by the learned Standing Counsel appearing for the National Highways, the learned Single Judge of this Court in a judgment reported in **(2007) 7 MLJ 1021 (Shri Andal Alagar Kalyana Mandapam Private Ltd., rep. By its Managing Director Ms. Vs. Union of India, rep.by its Secretary, New Delhi and others)** in paragraph Nos. 24 and 25 has held as follows:

“24.As rightly contended by the learned Additional Solicitor-



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*General, the Notification under Section 3-A(1) was issued on 12.08.2005, the Declaration under Section 3-D(1) was issued on 18.11.2005 and the substance of the Declaration under Section 3-D(1) was published in the Newspapers on 20.12.2005. Consequently, the property vested with the Central Government by virtue of Section 3-D(2) and the Award itself was passed on 08.12.2006. The petitioners chose to come to Court only in January 2007, after allowing the Award to be passed. The Supreme Court, in *Municipal Corporation of Greater Bombay v.Industrial Development Investment Co.Pvt.,Ltd., and others* AIR 1997 SC 484: (1996) 11 SCC 501, traced the history of law relating to the maintainability of a challenge to the acquisition proceedings, after the award is passed, from paragraph 23 onwards and held in para 29 that the Court should be loath to quash the notifications, where there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final.*

25.In Municipal Council, Ahmed Nagar Vs.Shah Hyder Beig, AIR 2000 SC 671: (2000) 2 SCC 48, the Supreme Court held in Para-17 as follows:

17.In any event, after the Award is passed, no writ petition can be filed challenging the acquisition notice or against any proceeding thereunder. This has been the consistent view taken by this Court and in one of the recent cases”

13.In view of the judgment of this Court which referred to the judgment of the Hon'ble Supreme Court, this Court is of the considered opinion that the present writ petitions have been filed for quashing the



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acquisition notification after passing of the award are not maintainable.

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14.The petitioners have further contended that a larger extent of land than required has been acquired and they are kept idle even after laying of the road. Hence, they have prayed for restoration of the said lands. In other words, the petitioners have sought for reconveyance of the said property on the ground that the land acquired have remained un-utilised. As rightly contended by the learned Standing Counsel appearing for the National Highways that the Hon'ble Division Bench of our High Court in a judgment referred *in W.A(MD).No.581 of 2016 (A.Rejendran Vs. the Special District Revenue Officer (Land Acquisition) Tiruchirappalli and another) and W.A(MD).No.678 of 2016 (K.Pinnasi Vs. the Special District Revenue Officer (Land Acquisition) Tiruchirappalli and another)* dated 20.02.2018 in Paragraph No.24 has held as follows:

“24.As rightly contended by the learned Standing Counsel appearing for the second respondent, the formalities/procedures prescribed under the NH Act have been scrupulously complied with and the lands in question absolutely vest with the Central Government and in the absence of any provision for reconveyance, the prayer sought for by the appellants/writ petitioners cannot be granted”.

15. As A perusal of the above said Division Bench Judgement will clearly reveal that there is no provision under the National Highways



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Authorities Act 1956 for reconveyance of the property to the erstwhile land owners on the ground that the acquired property is remained un-utilised for the purpose of which it was acquired. When there is no statutory provision for reconveyance of the acquired property, the question of issuance of writ of mandamus does not arise.

16.The learned counsel for the petitioners have further contended that the large extent of land which is more than that is required for laying of the road has been acquired unnecessarily. However, the learned counsel for the respondents had pointed out that the last leg of the truck way is yet to be completed, in view of the pendency of the writ petition. He had further contended that the extent of land required for laying of the road or the alignment of the road shall be left to the experts of the National Highways Department and this Court may not consider the said submission. The learned counsel for the respondents has referred to the judgment of the Hon'ble Apex Court reported *in (2011) 12 SCC 69 (Union of India Vs. Kushala Shetty and others)* in Paragraph No.28 is extracted as follows:

“28.Here, it will be apposite to mention that NHAI is a professionally managed statutory body having expertise in the field of development and maintenance of national highways. The projects involving construction of new highways and widening and development of the existing highways, which are vital for the development of



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infrastructure in the country, are entrusted to experts in the field of highways. It comprises of persons having vast knowledge and expertise in the field of highway development and maintenance. NHAI prepares and implements projects relating to development and maintenance of national highways after thorough study by experts in different fields. Detailed project reports are prepared keeping in view the relative factors including intensity of heavy vehicular traffic and larger public interest. The Courts are not at all equipped to decide upon the viability and feasibility of the particular project and whether the particular alignment would subserve the larger public interest. In such matters, the scope of judicial review is very limited. The Court can nullify the acquisition of land and, in the rarest of rare cases, the particular project, if it is found to be ex facie contrary to the mandate of law or tainted due to mala fides. In the case in hand, neither has any violation of mandate of the 1956 Act been established nor has the charge of malice in fact been proved. Therefore, the order under challenge cannot be sustained".

17. In view of the above said Hon'ble Supreme Court judgment, this Court is in full agreement with the contention of the learned counsel for the respondents that the National Highways Authorities being a professionally managed statutory body, it lies within their domain with regard to the extent of land required for laying of the four way lane or the alignment.



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18. The petitioners being the purchasers from the original land holders after notification for acquisition and they have not made out any case of statutory violation so as to attract the interference of this Court. The writ petitions are devoid of any merits and the same are dismissed. No costs.

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Internet : Yes/No
Index : Yes/No
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R.VIJAYAKUMAR, J.

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Pre-delivery order made in
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and M.P(MD).Nos.1 of 2013,
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