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W.P.(MD)NO.16727 OF 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.07.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.16727 of 2021 and
W.M.P.(MD)Nos.13622 & 13625 of 2021

M.S.Noor Mohamed

... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. By its Secretary,
Highways Department,
Fort St. George,
Chennai.
2. The District Collector,
Virudhunagar District,
Virudhunagar.
3. The District Revenue Officer
and Land Acquisition Officer,
Highways Acquisition,
Virudhunagar.
4. The Tahsildar,
Sivakasi Taluk, Sivakasi,
Virudhunagar District.
5. A.M.S.G.Ashokan
(R-5 is impleaded vide Order dated
14.07.2022 in W.M.P.(MD)No.9569 of 2022)

... Respondents

Prayer: Writ petition is filed under Article 226 of the
Constitution of India, to issue a Writ of Certiorari, calling for



the records relating to the impugned notification issued by the third respondent in ROC.D1/5555/2020 dated 01.02.2021 and the consequent impugned proceedings issued by the fourth respondent in Na. Ka. A1 /6287 /2018-10 and Na.Ka.A1/6287/2018-09 dated 28.06.2021 and quash the same as illegal.

For Petitioner : Mr.Ajmalkhan,
Senior counsel,
for M/s.Ajmal Associates.

For R-1 to R-4 : Mr.M.Sarangan,
Additional Government Pleader.

For R-5 : Mr.N.Dilipkumar

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ORDER

Heard the learned Senior counsel appearing for the writ petitioner and the learned Additional Government Pleader appearing for the official respondents and the learned counsel appearing for the impleaded respondents.

2. The petitioner challenges the impugned notification dated 01.02.2021 issued by the District Revenue



Officer / third respondent and the Land Acquisition Officer, Virudhunagar, under Section 15(2) of the Tamil Nadu Highways Act 2001 and the consequential notice issued by the Tahsildar, Sivakasi on 28.06.2021.

3. The learned Senior counsel points out that the notifications originally impugned in the writ petition are not in consonance with the statutory scheme. The relevant provisions are Section 15 of the Tamil Nadu Highways Act 2001 and Rule 5 of the Tamil Nadu Highways Rules 2003. They read as under:-

“ Section 15. Power to acquire land - (1)

If the Government are satisfied that any land is required for the purpose of any highway or for construction of bridges, culverts, causeways or other structures thereon or for any purpose incidental or ancillary thereto, in furtherance of the objects of this Act, they may acquire such land by publishing in the Tamil Nadu Government Gazette a notice specifying



the description of such land and the particular purpose for which such land is required.

(2) Before publishing a notice under sub-section(1), the Government shall call upon the owner and any other person having interest in such land to show cause within such time as may be specified in the notice, why the land should not be acquired. The Government shall also cause a public notice to be given in such manner as may be prescribed.

(3) The Government may, after considering the cause, if any, shown by the owner or other person having interest on such land, pass such an order under sub-section (1), as they may deem fit.

ii) **Rule 5. Manner of publication of the public notice** – Before publishing a notice under sub-section (1) of Section 15, the Government or the Collector or the Special District Collector (Land Acquisition), Tamil Nadu Urban Development Project-III or the Special District Revenue Officer (Land



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Acquisition) as the case may be, shall in addition to calling upon the owner and any other person having interest in the land to show cause as to why the land should not be acquired, shall also cause a public notice to that effect to be published in one English and in one Tamil newspaper having circulation in the locality. The said notice shall also be displayed in the offices of the -

(i) Highways Authority of the division concerned; (ii) Village Administrative Officer of the village concerned; and (iii) Tahsildar of the taluk concerned.

(2) If any objection is received from a person interested in the land within the time prescribed in the public notice issued under sub-section 2 of Section 15, the Government or the Collector or the Special District Collector (Land Acquisition), Tamil Nadu Urban Development Project-III or the Special District Revenue Officer (Land Acquisition) as the



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case may be, shall fix a date for hearing the objections and give notice thereof to the objector as well as to the Highways Department. Copies of the objection shall also be forwarded to the Highways Department. The Highways Department may file on or before the date fixed by the Government or the Collector or the Special District Collector (Land Acquisition), Tamil Nadu Urban Development Project-III or the Special District Revenue Officer (Land Acquisition) as the case may be a statement by way of answer to the objections and may also depute a representative to attend the enquiry;

(3) On the date fixed for enquiry or any other date to which the enquiry may be adjourned, the Government or the Collector or the Special District Collector (Land Acquisition), Tamil Nadu Urban Development Project-III or the Special District Revenue Officer (Land Acquisition) as the case may be, shall hear the objector or a person authorised by him in this behalf and representative, if any, of the Highways Department and record any evidence that



may be produced in support of the objection and in

WEB COPY support of the need for acquiring the land;

(4) Where the enquiry is conducted by the Collector, on completion of enquiry, the Collector shall submit all the details of the enquiry to the Government to pass order under sub-section (3) of Section 15;

(5) Where the enquiry is conducted by the Government, the Government will pass order under sub-section (3) of Section 15. "

4. A bare reading of the aforesaid provisions would clearly show that what is contemplated under Section 15(2) of the Act is issuance of private notice as well as public notice. It has been held in ***W.P.(MD)No.12847 to 12853 of 2018*** dated ***13.12.2018 (The American College V. State of Tamil Nadu and Others)*** that both the notices will have to be issued by the same authority. In this case public notice was issued by the District Revenue Officer, Virudhunagar, while the private notice was issued by the Tahsildar, Sivakasi. Since this defect was pointed out, interim stay was granted.



Realising their mistake, the authorities attempted to undo the same. The District Revenue Officer rightly recalled the order dated 28.06.2021 issued by the Tahsildar, Sivakasi. But he erred in issuing the enquiry notice dated 12.11.2021.

5. A reading of the statutory scheme would show that the District Revenue Officer must issue private notice as well as public notice and invite objections from the aggrieved party. Once the aggrieved land owner offers his objections, he must be called for enquiry under Rule 5 of the Tamil Nadu Highways Rules. In this case, what remains on record is only the public notice was issued by the District Revenue Officer and the enquiry notice was issued by the District Revenue Officer. There is no private notice issued by the Divisional Revenue Officer. Therefore, I sustain the contention of the learned Senior counsel that the approach adopted by the authorities is not in consonance with the statutory scheme.

6. The public notice issued under Section 15(2) of the Act dated 12.11.2021 will alone remain on record. It is for the



third respondent to proceed from that stage. This writ petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

28.07.2022

Index : Yes / No
Internet : Yes/ No

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