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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **15.12.2022**

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THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P(MD)No.2431 of 2015
and
M.P(MD)Nos.2 & 3 of 2015

1.C.Jambulingam

2.Rajasekaran

3.Manoharan

4.Elangovan ... Petitioners

Vs.

1.The Secretary to Government,
National Highways Authority of India,
Corporate Office, G5 & 6, Sector-10,
Dwaraka, New Delhi-75.

2.The Chief General Manager/Regional Officer,
National Highways Authority of India,
Sri Tower, III Floor,
D.P.34, Industrial Estate,
Chennai-600 034.

3.The Project Director,
National Highways authority of India,
(Ministry of Road Transport and Highways),
Office of the Project Director, P.I.U.,

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New No.6 (Old No.44), First Floor,
III- Main Road, Ponnagar,
Tiruchirappalli-620 001.

4.The District Collector,
Madurai District.

5.The Competent Authority,
Land Acquisition for National Highways &
The District Revenue Officer,
Madurai District, Tamil Nadu.

6.The Special Tahsildar (L.A),
National Highways 45-B,
Unit-I, Office of the District Collector,
Madurai-20.

7.Subramanian ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned order of the 3rd respondent in proceedings NHAI/PD/TRY/NH45B/2014/1233 dated 03.11.2014 and the impugned proceedings of 5th respondent in Roc No.51550/2002/B7 dated 20.08.2004 and quash the same in so far as lands of the petitioners admeasuring 463 sq.meters in SF NO.7/4A1B, Vandiyur I-Bit Village, Madurai North Taluk, Madurai District are concerned and consequently, direct the respondents herein to receive the compensation paid to the petitioners.

For Petitioners : Mr.P.Anbunidhi
For R1 : Mr.G.Rajaraman

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For R2 & R3 : Mr.Arul Vadivel @ Sekar
For R4 - R6 : M/s.D.Farjana Ghoushia
Special Government Pleader
For R7 : Mr.A.R.M.Ramesh

ORDER

The present writ petition has been filed challenging an order passed by the 3rd respondent in rejecting the claim of the petitioners, dated 04.10.2014. A further prayer has also been sought for seeking to quash the proceedings of the 5th respondent, namely the Competent Authority (Land Acquisition for National Highways & District Revenue Officer) Madurai, dated 20.08.2004, which is a notification issued under Section 3 (1) of the National Highways Act and for a consequential prayer to direct the respondents to receive the compensation paid to the petitioners.

2. The case of the petitioners is that the petitioners are the owners of the lands in Survey Nos.7/4A1, 7/4A1B and 7/4B1 in Vandiyur Village, Madurai North Taluk, Madurai District. The learned counsel for the petitioners has further submitted that the National Highways Department had sought to acquire a portion of lands for the purpose of

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widening the national highways. Pursuant to the said proposal, the land acquisition proceedings have been initiated under the National Highways Act and the impugned notification under Section 3 (1) was issued on 20.08.2004. However, thereafter, there was no road widening and the petitioners sent representation to the 5th respondent on 04.10.2014 and requested him to withdraw the acquisition proceedings in respect of the lands to an extent of 463 square meters in Survey No.7/4A1B, enclosing a demand draft for a sum of Rs.95,184/- (Rupees Ninety Five Thousand One Hundred and Eighty Four only). He has further contended that the 3rd respondent herein, by his letter, dated 03.11.2014, had replied stating that the land is required for further development at the junction as there is a proposal by the State Government to construct a grade separator in the location for free flow of traffic. Thereafter, on 19.12.2014, the demand draft sent by the petitioners has also been returned to the petitioners.

3. The learned counsel for the petitioners would vehemently contend that even though the land was acquired as early as 2004, even after the construction of the grade separator, the lands of the petitioners have still not been utilized and the acquisition proceedings itself has put

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the petitioners to serious prejudice. The authorities have not applied their mind in acquiring the required lands and they have acquired lands to their whims and fancies.

4. Countering his submission, the learned counsel appearing for the respondents 2 and 3 would submit that the National Highways Department does a scientific study before initiating any acquisition proceedings. The future increase in traffic and requirement are also been taken into account while initiating a project and on that ground, lands have been acquired and highways are laid taking into consideration the present need. As and when the need requires, the roads will be widened and for that purpose, the land that has been acquired earlier will be utilized for the benefit of the public.

5. The learned counsel appearing for the 1st respondent would reiterate the arguments made by the respondents 2 and 3.

6. The learned counsel for the 7th respondent would submit that the allegation made by the petitioners that it is for the benefit of him that the authorities have initiated land acquisition is false for the reason that the

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land belonging to the 7th respondent has also been acquired.

7. I have considered the rival submissions made on either side.

8. At the outset, the lands have been acquired as early as in the year 2004 and the petitioners had also received the compensation fixed as early as in the year 2007, for which an award has been passed even in the year 2006. The present writ petition is filed seeking to challenge the land acquisition proceedings that had taken place in the year 2004, is sought to be made by making an innocuous application, seeking to return the lands on the ground that it has not been utilized. In my view, it is only to browbeat the issue of latches in challenging the acquisition proceedings. Further, it has been repeatedly held by this Court as well as the Apex Court that once an award has been passed, the acquisition proceedings cannot be put into issue.

9. The learned counsel appearing for the respondents 2 and 3 would draw my attention to a judgment of this Court in ***W.P(MD)No. 14301 of 2013 and batch (G.Yasotha & Others Vs. The District Collector & Others)***, where the learned Judge has dealt in detail with the

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process of acquisition following a judgment of the Apex Court reported in ***2011 (12) SCC 69 (Union of India Vs. Kushala Shetty and others)***. For better appreciation, Paragraph No.28 of the said judgment is extracted hereunder:

> *"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 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,*

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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".

10. Further, the plea raised by the petitioners for dropping the acquisition proceedings will not arise, as there is no power vested with the highways authority to drop the proceedings under the National Highways Act. Therefore, the prayer of the petitioners in their representation, dated 04.10.2014 is not maintainable at all.

11. As stated earlier, 3 (1) notification was issued as early as in the year 2004 and an award was passed in the year 2006 and the petitioners have also received the compensation as early as in the year 2007. It is seen that the petitioners had preferred an application on 07.07.2008 before the appropriate authority for enhancement of compensation. After having participated in various proceedings, it is not open to the petitioners now to challenge the acquisition proceedings of the year 2004 after the award has passed as held by the Hon'ble Apex Court in ***(1996)***

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11 SCC 501 (Municipal Corpn. of Greater Bombay Vs. Industrial Development Investment Co. (P) Ltd). The relevant portion is extracted hereunder:

> "29. .....When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226.....".

12. In a further judgment reported in ***(1996) 6 SCC 445 (State of Rajasthan Vs. D.R.Laxmi)***, it had been held as follows:

> *"9. .....When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third-party rights were created in the case, is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned Single Judge dismissing the writ petition on the ground of laches."*

13. In ***(2000) 2 SCC 48 (Municipal Council, Ahmednagar Vs.Shah Hyder Beig)***, it had been held as follows:

> *"17. In any event, after the award is passed no writ*

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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.....”

14. In view of the aforesaid findings, this Writ Petition deserves to be dismissed and is dismissed accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

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Index : Yes / No
Internet : Yes / No
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K.KUMARESH BABU,J.

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