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W.P.Nos.19155 and 19661 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2023

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.19155 and 19661 of 2020

and

W.M.P.Nos.23733, 24298 and 24303 of 2020

W.P.No.19155 of 2020

M.Chainnaswamy

... Petitioner

Vs.

1.The Government of India,
Rep. by its Secretary,
Ministry of Road Transport & Highways,
Transport Bhavan, No.1, Parliament Street,
New Delhi.

2.The National Highway Authority of India,
G 5 & 6, Sector 10, Dwarka,
New Delhi.

3.The District Collector,
Tiruppur,
Tiruppur District.

4.The Competent Authority,
District Revenue Officer (Acquisition),
Door No.567, APJ Abdul Kalam Street,
Chennavarayakanpatti,
Dindigul – 624 004.

... 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 1st respondent dated 16.03.2018 published in the Gazette of India (Extraordinary) No.1070, S.O.1197 on 17.03.2018 and the impugned order made by the 4th respondent in Na.Ka.No.24/2018/UDL dated 16.05.2018 and the consequential impugned notification issued by the 1st respondent dated 02.08.2018 published in the Gazette of India (Extraordinary) No.3063, S.O.3857(E) on 03.08.2018 and the quash the same.

W.P.No.19661 of 2020

M.Karuppaswamy

... Petitioner

Vs.

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Rep. by its Secretary,
Ministry of Road Transport & Highways,
Transport Bhavan, No.1, Parliament Street,
New Delhi.

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For Petitioners : Mr.T.Calvin Jones (in both W.Ps)

For R1 : Mr.N.K.Nithila Vani,
Central Government Standing Counsel
(in both W.Ps)

For R2 : Mr.Su.Srinivasan (in both W.Ps)

For R3 & R4 : Mr.C.Jayaprakash,
Government Advocate (in both W.Ps)

ORDER

These Writ Petitions are filed against impugned notification issued by the 1st respondent dated 16.03.2018 published in the Gazette of India (Extraordinary) No.1070, S.O.1197 on 17.03.2018 and the impugned order made by the 4th respondent in Na.Ka.No.24/2018/UDL dated 16.05.2018 and the consequential impugned notification issued by the 1st respondent



dated 02.08.2018 published in the Gazette of India (Extraordinary)

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2. The petitioners challenge the acquisition proceedings taken under the National Highways Act, 1956. The grounds of challenge are as follows:

- (a) The notification under Section 3-A of the Act is bereft of appropriate particulars. Sufficient description to identify the property is absent.
- (b) Proper enquiry under Section 3-C of the Act was not held.
- (c) The competent authority was not a judicial officer.
- (d) Agricultural lands are sought to be acquired

3. The learned counsel for the writ petitioners apart from reiterating all the contentions set out in the affidavits filed in support of the writ petitions relied on the decisions of the Hon'ble Supreme Court reported in (2005) 13 SCC 477, **Competent Authority -vs- Barangore Jute Factory** and (2016) 9 SCC 791, **Lalji Bhai -vs- State of Gujarat** and the decision of the Madras High Court reported in (2010) 6 CTC 337, **R.Natarajan and Others – vs- Union of India**. The 2nd respondent has filed counter affidavits in each of the Writ Petition.



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4. The learned Standing Counsel for National Highway Authority of India has filed a tabulated statement setting out the details pertaining to each of the writ petition. The dates on which the notifications under various provisions of the Act were released are being set out. In these writ petitions, awards have been passed and the details have also been set out. Therefore, on that sole ground the petitions will have to be dismissed. The learned Counsel relies on the decision of the Hon'ble First Bench reported in (2005) 3 CTC 691, *S.Harshavardhan -Vs- State of Tamil Nadu*. In the said case, the award was passed on 30.12.2001, while the writ petition was filed on 12.04.2001. Applying the law laid down by the Hon'ble Apex Court in *Tej Kaur -Vs- State of Punjab*, (2003) 4 SCC 485 and *Municipal Council, Ahmednagar -Vs- Shah Hyder Beig* in AIR 2000 SC 671, the Hon'ble Division Bench held against the land owner on the ground that challenge to the land acquisition proceedings cannot be entertained after passing of the award. The very same principle is applicable in the present cases also. From a mere look at the tabulated statement one can see that the awards were passed either in 2019 or in 2020 and these writ petitions were filed in December 2020. Even without going into the merits of the matter, these writ petitions will have to be dismissed.



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5. Even on merits, the petitioners do not have a case. In the notifications issued under Section 3-A (1) of the Act, the details of the District, Taluk, Village, Survey Number, the area proposed to be acquired, the nature and type of the land have been set out. The notification also stated that the land plans and other details of the land to be acquired are available and can be inspected by the interested persons at the office of the competent authority. Dealing with a similar contention, the Hon'ble First Bench of the Madras High Court in the decision reported in (2006) 5 CTC 634 held that the availability of a plan would make all the difference and rejected the contention that there was non compliance of Section 3-A (2) of the Act. The said decision relied on by the learned Standing Counsel for NHAI clearly applies to the cases on hand also.

6. Reliance on Laljibhai also may not advance the petitioners' case. The Hon'ble Supreme Court made a distinction between public servants whose pay allowances and other incidentals of service are met out of the public exchequer and a person who is paid by a private Corporation. In the latter case, bias is bound to be there. The competent authority in the cases



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on hand is in the rank of a District Revenue Officer. It is well known that such an officer discharges quasi judicial functions. Several issues relating to land matters are dealt with by her. She also functions as the revisional authority. Allegations of bias cannot be made in abstract. The learned Standing Counsel also points out that the competent authority is appointed by the State Government and paid out of Government funds. The decision rendered in the context of PMP Act, 1962 cannot be applied to the appointment of District Revenue Officer as competent authority under National Highways Act, 1956.

7. The contention that agricultural lands ought not to be acquired cannot be accepted too. The petitioners' counsel relies on the decision of the Hon'ble Supreme Court reported in (2012) 1 SCC 792, ***Raghubir Singh Sehrawat -Vs- State of Haryana***. The said decision cannot be applied in respect of proceedings under the National Highways Act, 1956. The Hon'ble Supreme Court in ***Union of India -Vs- Dr.Kushala Shetty and Others*** (2011) 12 SCC 69 had held that NHAI is an expert body and that Courts are not at all equipped to decide upon the viability and feasibility of particular projects and whether the particular alignment would sub-serve the larger



public interest. It was emphasized that the scope of judicial review is very limited.

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8. The Hon'ble First Bench in W.A.(Md) No.929 and 930 of 2016 dated 10.06.2016 expressed its anguish over the holding up of vital infrastructural projects on account of court proceedings. Paragraph 14 of the said order reads as follows:

“ 14. The third and the last aspect pleaded by the learned Senior Counsel is that there is lack of proper reasoning. We may notice that there could hardly be any elaborate reasoning to a simple exercise of widening the existing highway. The learned Single Judge, in paragraph 19 of the order, has in fact noticed that the judgment of the Hon'ble Supreme Court in Union of India -Vs- Kushala Shetty (2011) 12 SCC 69, to conclude that development and maintenance of national highways being a priority any private interest must give way to such larger interest.”



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9. For the foregoing reasons, the writ petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed. The right of the writ petitioners to obtain enhanced compensation more than what was determined in the awards will not be affected by the dismissal of these writ petitions.

18.08.2023

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Index : Yes

Speaking order

Neutral Citation : Yes

To

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New Delhi.
- 2.The National Highway Authority of India,
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