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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 06.03.2023

Judgment Pronounced on : **11.04.2023**

CORAM :

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A.Nos.174, 173, 175, 178, 179, 180, 183, 176, 177 and 181 of 2023
and
C.M.P.Nos.1685, 1683, 1684, 1688, 1692, 1695, 1687, 1680, 1682 and 1686 of 2023

In W.A.No.174 of 2023 :

Albert Emmanual ... Appellant

Versus

1. The Union of India
   Rep. by its Secretary,
   Ministry of Shipping Road Transport &
   Highways, New Delhi.

2. The Competent Authority and
   Special District Revenue Officer,
   National Highways,
   O/o. The Villupuram District Collectorate,
   Villupuram, Tamil Nadu.

3. The Project Director,
   National Highways Authority of India,
   No.10, Govindasamy Nagar,
   Vazhudhareddy Post,
   Villupuram - 605 401. ... Respondents

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Prayer in W.A.No.174 of 2023 : Writ Appeal filed under Clause 15 of the Letters Patent against the order, dated 25.11.2022 in W.P.No.15155 of 2010.

For Appellant (in all the Writ Appeals) : Mr.N.Subramaniyan

For Respondents (in all the Writ Appeals) : Mr.A.R.L.Sundaresan, Additional Solicitor General
Asst. by Mr.B.Rabu Manoharan, (for R1)

: Mr.P.Muthukumar, State Government Pleader (for R2)

: Mrs.S.R.Sumathy, (for R3)

COMMON JUDGMENT

D.BHARATHA CHAKRAVARTHY, J.

A. The Appeals:

These writ appeals are directed against the common order passed the Learned Single Judge in W.P.Nos.15155 of 2010, and batch of cases, dated 25.11.2022 in and by which the Learned Single Judge dismissed the Writ Petitions praying this Court to issue a writ of declaration, declaring the provisions under Section 3D(2) and 3(F) of the National Highways Act, 1956, as null and void and further to issue a certiorarified mandamus, calling for the entire records available on the file of the first respondent

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pertaining to the notifications under Section 3A(1) and 3-D(1&2) of the National Highways Act, 1956, published in the Gazette of India, Part-II, Section 3, Sub-Section(ii) dated 16.01.2009 and 27.07.2009 respectively, and that from the 2nd respondent pertaining to his proceedings in Na.Ka.A/Tha.Ma.A/NH.66/841/2007 dated 19.05.2009 proceedings in Na.Ka.No.A/PuVaSa/66-12/07 dated 31.03.2010 and the notice seeking possession of lands under Section 3E(1) of the National Highways Act, 1956, dated 18.05.2010, quash the same and consequently direct the respondents to receive back the amount paid to the respondent as compensation to the petitioners. It could be seen that the petitioners have not pressed their case in respect of the constitutional challenge to the provisions but persisted with the challenge to the acquisition of their lands alone, which is accordingly dealt with by the Learned Single Judge.

B. The Brief Facts Leading to the Writ Petitions:

2. The factual matrix in which the writ petitions arise is that a notification u/s 3-A (1) of the National Highways Act, 1956, was published vide the Government of India notification in S.O.No.174(E), dated 16.01.2009 in the Gazatte and substance of the same was also published in

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two local newspapers. As per the publication, the aggrieved land owners can submit their objections within a period of 21 days. The appellants/writ petitioners have also submitted their objections to the competent authority on 27.02.2009 and 02.03.2009. After considering the remarks of the third respondent, namely, the Project Director, dated 31.03.2009 and after affording a personal hearing on 09.04.2009, the second respondent passed an order under Section 3(C)(2) of the Act, on 09.05.2009 rejecting the objections raised by the petitioners. The said order was also communicated to all the petitioners. Thereafter, a proposal was sent to the Central Government and after careful scrutiny, Section 3(D) declaration was made on 27.07.2009, thereby vesting the properties of the appellants with the Central Government. The declarations were also published in two leading newspapers including in the Tamil language. Thereafter, all the appellants participated in the award enquiry, and after scrutinizing the records, compensation was fixed, and an award was passed on 31.03.2010. According to the award, the compensation amount was also disbursed to all the petitioners during the month of May/June 2010, and they received the same. Thereafter, the above writ petitions were filed by the petitioners on 07.07.2010, challenging the entire land acquisition proceedings.

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C. The case of the petitioners:

3. The specific case of the petitioners is that, the project was to form four lane National Highway between Puducherry and Tindivanam i.e., starting from the Indira Gandhi statute in Puducherry 0/000 kms upto 37/920 kms in Tindivanam. Of the same, as there was already four lane from 0/000 kms upto 3/600 kms. Therefore, a notification was issued only to acquired lands falling within the chainage of 3/600 kms to 37/920 kms. The petitioners even though made objections on other grounds, genuinely thought that their lands also fall within the chainage as mentioned in the notification, and therefore, participated in the award enquiry and received the compensation and did not challenge the land acquisition notification as they thought that the land is required for the purpose of formation/widening of the National Highways and that the Authorities under the eminent domain are entitled to acquire the same and the objections of the petitioners would only be futile. But, however, when the respondent authorities cleared the debris, bushes on the berms of the road and marked the actual chainages on the road, the appellants realized that their lands actually did not fall within the stretch of the land from 3/600 kms to 37/920 kms, wherein only there is

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scope for the public purpose where the lands were required for the purpose of widening/four laning the road. Therefore, the petitioners made a representation to the authorities on 28.06.2010, and the respondents were about to proceed further with the possession notices, they filed the present Writ Petition on 07.07.2010 and an interim order of Status Quo was also granted on 19.07.2010.

3.1 In the meanwhile by an order dated 05.07.2010, the third respondent also rejected the appellants representation 28.06.2010. The specific case of the writ petitioners is that, when already there exists four lanes upto KM 3/600, the petitioners' lands were not at all necessary for any purpose; it was only a mistake which was committed by the Land Acquisitioning Authorities and the Project Director. Once the same is brought to their notice, without fairly correcting the mistake, they are perpetrating the same and therefore they requested this Court to quash the proceedings and also permit them to repay the entire award amount received by them.

D. The case of the respondents:

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4. In the reply sent on 05.07.2010 to the representation of the appellants/petitioners, the following stand is taken by the respondents. It is useful to extract the relevant portion hereunder:-

> *"Regarding the acquisition of petitioner's land which are alleged to be within the chainage of 3/600, it is informed that the existing four lane road in Pattanur village, in the limits of Tamil Nadu is only a transition from four lane road to two lane road and not a four lane road. It is to be linked with the proposed four lane road being formed by NHAI. Hence, the existing four lane road in Pattanur village is to be upgraded to NHAI standard by providing median, Service Road and shifting of utilities etc. for which, land in Pattanur village including the petitioners' lands have been acquired. All these works have been included in the Project work of four laning the stretch from Pondicherry (Km.0/0) to Tindivanam (Km.37/920) of NH-66"*

4.1 However, in July 2010, a counter affidavit was filed by the third respondent, and it is essential to extract paragraph No.4 of the counter affidavit, which reads as follows:

> *"4 I submit that the contention of the petitioners that Pattanur village is continues of the Puducherry village is not correct. The fact remains that it in Vanur Taluk, Villupuram District in the state of Tamil Nadu. The National Highways Authority of India planned to acquire an extent of 75,134 sq.mt of land in the said village. In the said area there already exists a two lane road therefore NHAI planned to convert the same into a four lane road from Puducherry to Tindivanam Section*

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(Km 3/600 to Km 37/920) of National Highways No 66."

(empahsis supplied)

4.2 Thereafter, a re-joinder was filed by the appellants and after filing of the rejoinder, in August, 2010, a Common Additional Counter affidavit was also filed by the third respondent, it is essential to extract paragraph No.5 of the common additional counter affidavit, which reads thus:-

> *"5. It is respectfully submitted that the Petitioner is in a false impression that Km.0/000 to Km.3/600 is not a National Highway. Such stand of the Petitioner cannot be countenanced in law. The stretch of National Highway 00/000 starts from Pondicherry Late Mrs Indira Gandhi Statue wherein there is already an existing 4 laning up to km 3/600. Therefore there was no necessity for further acquisition as 4 laning is available up to Km.3/600. Hence, there is no question of any discrimination in acquisition beiween Km.0/000 to Km.3/600 on one hand and from Km 3/600 to 37/920 on the other hand. The existing road is only 2 way lane which is found not sufficient to cater the needs of the road traffic and therefore NHAI decided to widen the existing two way lane in to a four way lane by going for an acquisition of lands. While developing 4 way lane, NHAI should fulfil the standards of IRC specifications....."*

(emphasis supplied)

4.3 As a matter of fact, in view of the factual dispute before the

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learned Single Judge, two Advocate Commissioners were appointed for inspecting and filing of a report, even while directing the third respondent/ the Project Director to measure and to file a report. The report of the Advocate Commissioners clearly indicates that the land of the appellants/petitioners are situated between 3/520 kms to 3/600 kms not beyond kms 3/600, wherein already four lane exists. In the report of the Project Director, the following stand is taken and it is essential to extract paragraph No.4 of the said report hereunder:-

> *"I submit that as stated above, the location of petitioner's land lies in transition of 4 lane to 2 lane section which is a subject matter of notification and award. The land of the petitioners is very much required for forming of 4 lane road with Service Road on either side. The entire acquisition of the petitioner's land lies in Pattanur village in Vanur Taluk, Viluppuram District which is required for the formation of 4 lane between Pondicherry & Tindivanam. Without acquiring the petitioner's land, the work of the 4 laning project including formation of Service lane cannot be completed. Therefore, the land of petitioner's is very much required for the present formation of 4 lane with Service Road The presence of Pondicherry Check Post and Tamil Nadu Commercial Tax Check Post on either side of the petitioner's property also stresses the requirement of Service Road and developing the road in proper 4 land with Service Road at the above location."*

(emphasis supplied)

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4.4 Before, this Court, in the oral as well as in the written submissions, now the respondents admit that, the appellants lands are situate before the chainage starting from 3/600 kms. It is also admitted that there is a four lane which exists in the said stretch. But, it is now stated that, the said four lane formed by the local authorities is not upto the National Highways standards and therefore, it may require widening of Meridian etc., and these lands which are situated immediately before the chainage, will also be required for the allied purposes such as storage of materials, forming of service roads, etc.

E.The Submissions:

5. *Mr.N.Subramaniyan*, Learned Counsel appearing on behalf of the appellants/petitioners submitted that, the National Highways Authority of India is a professional organization, which conducts on field survey and draws a clear and categorical map in respect of every kilometer of the National Highways and detailed drawings including the state of the existing road, the widening of the road, service road, central meridian, etc., are all meticulously drafted into their plan, and accordingly drawings are made.

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Taking this Court to the detailed drawings, *Mr.N.Subramaniyan*, would demonstrate that even as per their own drawings and the detailed project report, the appellants/petitioners lands are not at all necessary for any purpose whatsoever.

5.1 Learned Counsel further submitted that the lands can be acquired by exercising of powers of eminent domain only for the public purpose of formation/ widening of the National Highways or incidental requirements. It cannot be exercised for the purposes of ratifying a mistake committed by the on field authorities. Therefore, he would submit that, the mistake as to the requirement would go into the root of the matter warranting interference by this Court.

5.2 His second submission is that, the National Highways Authorities are bound by rules and procedures laid down for Acquisition and by from the clarification dated 14.09.2016 issued by the authorities, it would be clear that the notification under Section 3A of the Act, forms the basis of the entire exercise of the land acquisition and in the notification under Section 3A, the stretch of the National Highways should be exactly the same as in

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under Section 3(a) or could be a part of it, however, in no case, it should go beyond the stretch prescribed notification under Section 3A of the Act. He would further submit that the authorization itself is given to the Land Acquisition Officer, namely, the second respondent in this case, only to acquire the lands starting from the stretch of kms 3/600 up to kms 37/920; Therefore, the second respondent had no jurisdiction whatsoever, to issue the notification in respect of the appellants/petitioners lands. Finally, he would submit that the contentions before this Court that the lands of the appellants are required for allied purposes such as proper formation of four lanes up to kms 3/600 including appropriate meridian, service roads, etc., are factually incorrect and/or made only to justify the mistake committed by them.

5.3 He would submit that the said stand was not specifically taken before the Writ Court in the counter affidavits filed by them. On the other hand, it was falsely contended that as if the road in front of the petitioners land were only two lanes and therefore the lands were required for widening as four way lanes. Only after the Writ Court appointed the Advocate Commissioners and after their counter affidavit was proved to be false, then,

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the Project Director is coming up with this imaginary justification for acquisition of the lands. More importantly by relying upon the report submitted to the Government, he would submit that even though the Status Quo was granted by the learned Single Judge, it has been reported to the Government, that the project of the widening the road and the formation of four lanes in National Highways, between Puducherry to Tindivanam as Km 0/000 to Km 37/920 was proclaimed to be completed in all respects and is in commercial operation from December 2011. The very fact that the project is completed without the appellants/petitioners land, would itself adumbrate that the petitioners' lands were not required for the public purpose.

5.4 In support of his contentions, the learned Counsel relied upon the Judgment of the Hon'ble Supreme Court of India, in ***Devinder Singh and Another Vs. State of Punjab & Ors***[1]**,** more specifically relying on paragraph Nos.30, 33, 55 & 56, to contend that when there is a patent illegality, the entire land acquisition proceedings can be quashed. By relying upon the Judgment of the Hon'ble Supreme Court of India, in ***Veeyali Kaval***

1 2008 (1) SCC 728

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House Building Society Vs. Chandrappa[2]**,** more particularly, relying paragraph No.9, he would further submit that on the facts of the said case, the land acquisition proceedings were quashed, even after the payment of compensation and taking of possession that too after 14 years. Learned Counsel would also submit that immediately after receipt of the compensation the appellants realised that their lands were actually not needed, and without wasting any time, when they have immediately approached this Court within few days and therefore they are entitled for the relief prayed for.

5.5 Opposing the above submissions, *Mr.A.R.L.Sundaresan*, learned Additional Solicitor General of India, would submit that the project is the public purpose. The project was to develop a four lane highways from 0/000 kms to 37/920 kms, starting from Indira Gandhi statue in Puducherry town up to Tindivanam, in km 37/920. There is no dispute that the appellants'/petitioners' lands fall along the said stretch. Merely because, the notifications under Section 3(A) and 3(D) of the Act, mentioned the

2 2007 (9) SCC 304

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chainage as kms3/600 up to 37/920, it does not in any manner mean that the lands which are acquired should be located only within the chainage. In any event, the petitioners' survey numbers were clearly and categorically mentioned in the notification. As a matter of fact, the said project report/project map which is heavily relied by the learned Counsel for the appellants/ petitioners, was also kept for public inspection and many of the land owners and including some of the petitioners had actually inspected the same. Therefore, the map as well as the chainage were a fact known to all appellants, even at the time of acquisition. Without raising an objection or challenging the notification, at that stage, the appellants participated in the award enquiry and appropriate market value has been awarded by an award dated 31.03.2010, and the petitioners had accepted the award and received the compensation in the month of May, 2010 itself. Thus, the lands stood vested with the Government by virtue of the publication of the notification under Section 3D of the Act and the petitioners locus in respect of the land extinguished on receipt of the compensation. Therefore, it is now for the National Highways Authority to put the lands into appropriate use. No doubt there exists four lane in between the stretch of Km 3/500 to Km 3/600, in which, the appellants/petitioners lands are all situated, yet, the four

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lane was not developed by the National Highways Authority, but by the Local Authorities. The said four lane has to be upgraded to the IRD standards, thereby, the meridian may require further widening, and there may be a necessity of a service road or widening thereof.

5.6 This apart, for the purpose of carrying out the project from Km 3/600, some pieces of land before Km 3/600 would be required even for purpose such as the carrying out and maintenance and supervision of the project, storage of materials, etc., Therefore, it is not for the appellants to dictate where from the lands should be acquired.

5.7 Placing reliance on another example of in yet another acquisition where also some of the pieces of the lands before the chainage were acquired, Learned Additional Solicitor General of India would submit that it is not by way of mistake the appellants lands were acquired, but were genuinely needed. As a matter of fact at the earliest point of time, by order dated 05.07.2010 the Authorities disposed of the representation of the appellants, they have categorically mentioned the purposes for which the lands were acquired. Learned Additional Solicitor General would submit

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that there is no question of challenging the acquisition proceedings, after participating in the award and after the award is passed and after the receipt of compensation. He would submit that therefore, the learned Single Judge has rightly rejected the prayer in the Writ Petition and has also given them the liberty to work out their remedies if in case they are aggrieved by the quantum of compensation.

F. The Questions :

6. We have considered the rival submissions made on either side and perused the material records of the case. On consideration thereof, the following questions arise for consideration in the instant case:-

(i) Whether or not the appellants can maintain the Writ Petition challenging the acquisition proceedings after the award is passed and after receipt of compensation?

(ii) Whether or not the petitioner's land has been acquired in accordance with law for the public purpose mentioned in the notification?

(iii) To what relief the parties are entitled to?

G. Question No.(i) :

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7. As per the provisions of the National Highways Act, the intention of the acquisition is made clear by a notification under Section 3(A) of the Act and the land vests in the Government under Section 3(D) of the Act. After payment of the compensation, by virtue of Section 3(E) of the Act, possession can be taken by the authorities. Challenge to the land acquisition proceedings normally cannot be entertained after passing of the award. The basic principles are (i) there should not be latches on the part of the writ petitioners that is they have to challenge the proceedings at the earliest and in any event before the passing of the award; (ii) participation in award enquiry which is to determine the market value to be paid as compensation virtually amounts to acquiescence on the part of the land owner in respect of the validity of the proceedings; (iii) when the vesting of the land takes place and thereafter the writ petition should not be entertained. Useful reference in this regard can be made to the decisions of the Hon'ble Supreme Court of India in ***Municipal Corporation of Greater Bombay Vs. Industrial Development Investment Co. Pvt. Ltd. & Ors.,***[3] ***Swaika Properties (P) Ltd. Vs. State of Rajasthan***[4]**,** and ***Market Committee Vs. Krishan Murari***[5]. As far as the acquisition under National Highways Act, 1956, vesting takes

3 (1996) 11 SCC 501
4 (2008) 4 SCC 695
5 (1996) 1 SCC 311

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place under Section 3 (D) even before possession is taken. But, however, the above rule is not absolute and there have been exceptions and circumstances in which the Constitutional Courts interfere with the acquisition proceedings even after passing of award but receipt of compensation. If there is a violation as to the rule of fair hearing and the principle of natural justice is violated, an exception is made to the above rule. Useful reference in this regard can be made to the Judgment of the Hon'ble Supreme Court of India, in ***Lajja Ram & Ors., Vs. Union Territory, Chandigarh & Ors.,***[6]. The Hon'ble Supreme Court of India in ***Veeyali Kaval House Building Society Vs. Chandrappa***, (cited supra) has held that in a matter where the notification is not *bonafide*, then it cannot be said that the acquisition is for a public purpose. Then, it would be an exceptional circumstance for the Court to interfere with the acquisition. It is essential to extract paragraph No.9 of the said judgment which reads as follows:

> *"9. Learned counsel for the respondents has also invited our attention that same notification was set aside by the High Court and the said order of the High Court was also upheld by this Court by dismissing SLP(C) No.6196 of 1998 on 7-4-1998 and SLPs (C) Nos. ... CCs Nos.495-98 of 1999 on 14-7-1999*

6 (2013) 11 SCC 235

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concerning the very same appellant Society. In this background, when the acquisition has been found to be totally mala fide and not for bona fide purpose, the ground of delay and acquiescence in the present case has no substance. Learned counsel for the appellant tried to persuade us that as the amount in question has been accepted by the respondents, it is not open for them now to wriggle out from that agreement. It may be that the appellant the might have tried to settle out the acquisition but when the whole acquisition emanates from the aforesaid tainted notification any settlement on the basis of that notification cannot be validated. The fact remains that when the basic notification under which the present land is sought to be acquired stood vitiated then whatsoever money that the appellant has paid, is at its own risk. Once the notification goes no benefit could be derived by the appellant. We are satisfied that issue of notification was mala fide and it was not for public purpose, as has been observed by this Court, nothing turns on the question of delay and acquiescence. Learned counsel for the respondents raised other pleas like decree for partition was granted among brothers and they were not made parties, we are not going into those questions when we are satisfied that when acquisition stands vitiated on account of mala fide, nothing remains further."

7.1 Thus, the question is answered that normally, any aggrieved original owner of the land cannot challenge the land acquisition proceedings after the passing of award, receipt of compensation or vesting of the land but only in exceptional cases falling within the parameters of no public purpose / *malafide* acquisition when the notification itself is tainted or when

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the basis tenets of a fair hearing is was not there, a Writ Petition can be belatedly filed.

H. Question No.(ii) :

8. The public purpose in this case is the National Highway from 0/000 km from Indira Gandhi Statue in Puducherry upto 37/920 km in Tindivanam, more specifically, the widening / four laning of the road from the stretch Km 3/600 to Km 37/920. National Highways Authority of India is a professionally and technically well equipped and well managed organisation. Before proceeding to acquire the lands, a very detailed and meticulous project map is prepared by the National Highways Authority of India. In the instant case, the map is available for the entire stretch which contains every minute detail as to work to be done, lands to be acquired, service road or other facilities to be formed etc. A copy of the map in respective of the stretch in which the subject matter lands of the petitioners is situate, that is from 3/500 to 3/600 km is annexed to this Judgment as ***Annexure -I***. It is to be noted that every minute and singular detail is fully encompassed in the said detailed project report map/plan. Only the overlay

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of existing black top surface alone is to be carried out in the relevant stretch 3/500 to 3/600 km.

8.1 A perusal of the project map clearly indicates the existence of a four lane and service road etc. There is no further proposal either to alter the meridian or to form any other new service road or to keep any road margin vacant for the storage of materials etc., of the National Highways Authority for execution of the project.

8.2 Secondly, coming out with truth and clear particulars before the Court is as important as the National Highways. In this case, the authorities filed three counter-affidavits. In none of the counter-affidavits, they came out with the truth or their alleged factual position that even though the chainage is mentioned as 3/600 to 37/920, they require some of the lands prior to the chainage 3/600 also and that even though there exists four lane in this stretch of the lands belonging to the petitioners, their lands are required for a particular purpose. On the other hand, from the relevant portions of the counter-affidavits extracted supra, it can be seen that there is willful suppression of the fact that the petitioners' land were located before the chainage. The counter-affidavits are clearly misleading as if there was a

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two lane road in front of the lands of the petitioners and it was necessary to acquire the appellants' lands to widen the said as four lane.

8.3 It is one thing to contend that once the lands are required for the overall public purpose, thereafter authorities can put those lands into allied uses also as per their convenience/need. But here the National Highways Authority of India has taken a conscious decision that there exists a four lane already between 0/000 kms starting from the Indira Gandhi statue upto 3/600 kms, and therefore no acquisition need be done in the stretch, the acquisition of the petitioners' lands as on the date of the issue of the notification under Section 3(A) of the Act or declaration under Section 3(D) of the act clearly appears to us only as a mistake and not as a requirement. The very evasive and false counter-affidavits filed before the Writ Court only confirms the said facts. As a matter of fact, it is useful to extract the relevant portion of the Advocate Commissioner's report which reads thus:-

> *"4. As per the direction by this Hon'ble High Court, we have been directed to be present in the spot, when the Project Director inspects and make a report with drawings and we can also note down the same and file a report. The petitioner's counsel has submitted two memos separately to us for conducting the inspection. The main issue is the identification of the starting point of the 3/600. The project director has identified the pillars shown in the photograph as*

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the starting point. The same was disputed by the petitioners and the counsel. Petitioner's counsel pointed out a mile stone around 2/800 meters towards Pondicherry from the Pondicherry Arch, which the Project Director has identified as the starting point 3/600. The said milestone was near the Pondicherry Armed Police Entrance. We have taken photograph and the same enclosed herewith.

5. The petitioner's Counsel requested to measure the same from point of 2/800, since the starting point identified by the project director was disputed. But the Project Director as well as their counsel objected to taking the same as the point for measurement. The Project Director would state that the measurement could be taken from the starting point i.e. 0/000 at which point the statue of Indira Gandhi is installed starting point i.e., 0.000. After some time he refused to measure the same even according to his own suggestion. Petitioner and their counsel insisted for taking measurement from the point 0/000 or from the milestone identified by them at 2/800. But the Project Director and his counsel objected for the measurement. The petitioner and their counsel started to measure from that point, i.e., from the mile stone to the Arch. We found JIPMER, hospital on the right side of the road, when proceeded from Pondicherry to Thindivanam. When we proceeded further towards Thindivanam, we found an entrance for Government Hospital for Chest Diseases on the right hand side of the road. When we proceeded further we found the arch, which had been identified by the Project Director as the starting point i.e., 3/600.

6. The Petitioner and their counsel requested to note the chainage markings at 3/ 520 have been

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pointed in black on & the centre pillar of the Arch. The Petitioner and their counsel stated that on measurement on the said pillar is located at 3/520. Petitioner's counsel has requested under memo to us to take measurement of the distance from the pillar and the distance from the centre meridian to their property. We have rejected the request, since we have been directed to assist the Project Director and make our noting and file a report independently. Since the Project Director has declined to measure the points relevant to the dispute, we have noted the same. The project Director has handed over the merely project plan and requested to treat the same as his sketch which is in annexed in the typed set — Serial No. 2. ...."

8.4 Thus, the attitude of the third respondent / Project Director clearly confirms the mistake and all along the Project Director is only interested in trying to generally mention in one sentence that the petitioners' land is required for the public purpose and that the notification is issued.

8.5 Therefore, even though there was no any personal motive or vengeance as against the appellants, but, the malice is writ large from the fact that in the execution of a project as large as this, when a mistake is committed, just because the vesting of land takes place as per the provision of the National Highways Act even before taking of the possession, the authorities tried to perpetrate the mistake and tried to avoid admitting their mistake. To that extent, the appellants have demonstrated bias as to the

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subject matter and also the fact that their lands are not required for the public purpose which is writ large in this case.

8.6 This apart, the yet another important factor is that the respondents authorities have already notified that the entire project as complete. Any person travelling from Thindivanam to Puducherry can observe that the entire stretch upto Indira Gandhi statue i.e., 0/000 kms is four lane and is well maintained as National Highways and the project is complete and is commercially operational from December, 2011 and this is without touching the appellants' lands. The said fact also fortifies that the petitioners' lands were not necessary for the public purpose.

8.7 From the very beginning till today, the National Highways Authority of India is unable to point on any particular purpose for which these lands are required and they are only trying to beat around the bush by giving different reasons at different point of time, such as service road, widening of meridian, widening or road, other requirements etc.

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8.8 This apart, there is yet another reason that the appellants are entitled for the relief. As a matter of fact, it is not just the procedure or administrative convenience, but, in this case, the National Highways Authority of India actually empowers and vest jurisdiction on the competent authority namely, the second respondent herein who is an officer of the State Government specifically only to the extent mentioned in the chainage as per Section 3(a) of the Act. It is necessary to extract the relevant portion of the notification of the Government of India authorising the second respondent S.O.No.1738(E) which is published in the Gazette, dated 10.10.2006, as hereunder:-

> *"S.O.1738(E).- In exercise of the powers conferred by clause (a) of Section 3 of the National Highways Act, 1956 (48 of 1956), the Central Government hereby authorizes the Special District Revenue Officer (LA-NH), Villupuram, as the competent authority to perform the functions of such authority under the said Act with effect from the date of publication of this notification in the Official Gazette, in respect of the stretch of land from Km. 3/600 to Km. 37/920 of the National Highway No.66 for building (widening/four laning, etc.,), maintenance, management and operation of the existing highway in the State of Tamil Nadu, as specified in the Schedule below."*
>
> (emphasis supplied)

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8.9 Thus, the ground raised by the petitioners also will go into the very jurisdiction and competency of the second respondent to acquire the land. Unless, he is empowered to be the 'competent authority' as per Section 3(a) of the Act, he cannot issue the notification under Section 3(A) of the Act and the declaration under Section 3(D) of the Act cannot travel beyond the remit of S.O.No.1738(E) and thus the entire exercise is also without jurisdiction.

8.10 As a matter of fact, the letter of clarification dated 14.09.2016, issued by the Authorities, serves clear check points for smooth processing of notifications only to avoid these questions as to legal competency and it is necessary to extract entire paragraph No.3 of the said communication which reads as under:-

> *" 3. In order to ensure smooth processing of the notifications to be published in the Official Gazetted under Sections 3(a), 3A and 3D of the NH Act 1956, it is required that the following check points may be strictly adhered to:-*
>
> *(i) The notification under 3(a) forms the basis for the entire exercise of Land Acquisition. It may, therefore, be ensured that the following particulars/contents are spelt put correctly in both English & Hindi Versions. These particulars/contents may be duly checked and verified by a responsible authority;*

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a) Name of the Project with National Highway No. and the stretch
b) Name of the District & State
c) Designation of CALA
d) Jurisdiction of CALA i.e. the District, Taluk, P.S. And the Village(s)

(ii) In the notification under 3A, the stretch of National Highway could either be exactly the same as in 3(a) or could be a part of it. However, in no case, it should go beyond the stretch prescribed in the notification under Section 3(a).

(iii) The designation and jurisdiction of CALA in 3A should be exactly the same indicated in 3(a). In case there is any change, either in the Designation of CALA or CALA as a whole and his jurisdiction, necessary amendment must be made in the notification under 3(a) before publication of 3(A).

(iv) As far as possible, correctness of the Survey Nos. and the quantum /area of land to be acquired in each of this survey nos. should be ensured in notifications in 3A. Also total area of the land proposed to be acquired should invariably be indicated at the end of the table. These may be kept in view while preparing 3D notification also.

(v) In case, only part of particular survey is to be acquired, it should be reflected as a part of that particular survey and not assigned as distinct notional survey no. like 1A, 1B, 1C,-- 1/1, 1/2, 1/3 etc.

(vi) All endeavors should be made to ensure that the quantum of land indicated in 3A is strictly as per DPR and based on genuine requirements.

(vii) The 3D notification is required to be issued within one year from the date of issuance of notification under 3A. It has to be ensured that this deadline is strictly adhered to. However, in cases where due to some unavoidable reasons, it is not

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> *possible to issue the notification well in advance, it may be ensured that the draft notification under 3D is sent to the Ministry at least two weeks prior to the deadline.*
>
> *(viii) With every 3D notification a certificate to the effect that the total area/quantum as well as area/quantum of land survey-wise being acquired is either equal to or less than the area/ quantum of land as indicated in the notification under 3A and also thee is no other deviation in area/quantum/survey nos. etc. in the 3D notification vis-a-a-vis 3A notification.*"
>
> (emphasis supplied)

8.11 Thus, it can be seen that the mentioning of the chainage cannot be brushed aside as procedural formality but one as a mandatory requirement which vests jurisdiction on the second respondent to initiate acquisition proceedings. Therefore, the appellants have also established the lack of jurisdiction on the part of the land acquisition officer.

8.12 The Project Director was also given yet another opportunity before the Learned Single Judge to submit a report and he had also submitted a report which clearly tries to beat around the bush and sweep these questions under the carpet, then malice, as to the subject matter, has to be readily inferred in the present case. Thus, we are of the view that the acquisition proceedings are not *bonafide*, but, is an attempt to perpetrate a mistake and suffers from malice as to the subject matter. Once, it is not

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bonafide, then the acquisition cannot be held to be for a public purpose and the flaw goes to the root of the matter.

8.13 Further practically also, the lands of the petitioners are not needed for the public purpose as the project is complete in all respects and is commercially operational from 2011. There was an interim order of status quo granted pending the writ petitions and the petitioners continue to possess their lands. Even now, pin pointedly it is not pleaded before this court that the lands have to be taken and put to use for a particular purpose. Therefore, when the project is declared to be fully complete and operational, it is clear that the lands are not needed for public purpose. It is also not in the public interest to allow the authorities / officers to cling on to their mistakes and to cause a financial burden to the Government of India and to the National Highways Authority of India itself by unnecessarily taking lands which are not imminently necessary for the public purpose in question. As a matter of fact, even though these questions were specifically raised and considered at the initial/interim order stages by appointment of Advocate Commissioners, directing the Project Officer to file a report etc., while disposing of the writ petition, the Learned Single Judge went only on the maintainability after receipt of the compensation and did not consider

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the peculiar facts and circumstances of this case, which compels us to interfere in the matter.

8.14 Under the said circumstances, we answer the question that the acquisition proceedings in respect of the lands of the appellants are neither in accordance with law nor the lands were needed for the public purpose inasmuch as they were mistakenly notified, hence, the impugned notifications are liable to be set aside as it relates to the petitioners' lands.

I. Question No. iii:

9. One factor in this case is that both the notifications under Sections 3(A), 3(D) of the Act, passing of the award and payment of compensation all have happened swiftly and even the Writ Petition was filed immediately in the month of July, 2010. However, the matter was pending before this Court for quiet long time. The petitioners are holding on to the compensation amount all these years and therefore, they are liable to re-deposit the same with the interest, which we fix at the rate of 9% per annum from the date of receipt of the award amount till the date of deposit.

9.1 We also make it conditional that the above quashing of the proceedings shall be subject to depositing the above award amount with

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interest within a period of eight weeks from the receipt of a copy of the order, failing which the Writ Petitions shall stand dismissed. We also make it clear that if presently or subsequently, the said lands are required for any public purpose even for further expansion of National Highways, this order shall not come in the way of the respondents for acquiring the land in the manner known to law.

J. The Result:

10. In the result,

(I) The Writ Appeals are allowed;

(II) The Common Order of the Learned Single Judge dated 25.11.2022 is set aside and the Writ Petitions filed by the petitioners in W.P.Nos.15155, 15157, 15160, 15162, 15156, 15163, 18917, 15158, 15159, 15161 of 2010 are allowed on the following terms:-

(a) The appellants / writ petitioners shall deposit the compensation amount received by them with interest at the rate of 9% per annum from the respective date of receipt of award amount till the date of deposit with the second respondent namely, the Competent Authority/Special District Revenue Officer, National Highways, Villupuram District Collectorate, Villupuram within 8 weeks from the date of receipt of a copy of the award;

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(b) Upon such deposit, the Writ Petitions filed by the writ petitioners in W.P.Nos.15155, 15157, 15160, 15162, 15156, 15163, 18917, 15158, 15159, 15161 of 2010 shall stand allowed on the following terms:-

(i) The notifications under Section 3A(1) and 3-D(1&2) of the National Highways Act, 1956, published in the Gazette of India, Part-II, Section 3, Sub-Section(ii) dated 16.01.2009 and 27.07.2009 respectively, and proceedings in Na.Ka.A/Tha.Ma.A /NH.66/841/2007 dated 19.05.2009 proceedings in Na.Ka.No.A/PuVaSa/66-12/07 dated 31.03.2010 and the notice seeking possession of lands under Section 3E(1) of the National Highways Act, 1956, dated 18.05.2010, shall stand quashed in as much as they relate to the lands of the petitioners;

(c) There shall be no orders as to costs and consequently all the connected miscellaneous petitions are closed.

(III) However, there will be no orders as to costs. Consequently, the connected miscellaneous petitions are closed.

(T.R., ACJ.) (D.B.C., J.)
11.04.2023

Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no
klt

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To

1. The Secretary,
   Ministry of Shipping Road Transport &
   Highways, New Delhi.

2. The Competent Authority and
   Special District Revenue Officer,
   National Highways,
   O/o. The Villupuram District Collectorate,
   Villupuram, Tamil Nadu.

3. The Project Director,
   National Highways Authority of India,
   No.10, Govindasamy Nagar,
   Vazhudhareddy Post,
   Villupuram - 605 401.

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T.RAJA, ACJ.,
AND
D.BHARATHA CHAKRAVARTHY, J.,

klt

Pre-Deliver Judgment in

W.A.Nos.174, 173, 175, 178, 179,
180, 183, 176, 177 and 181 of 2023
and
C.M.P.Nos.1685, 1683, 1684, 1688, 1692, 1695,
1687, 1680, 1682 and 1686 of 2023

11.04.2023

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Annexure - I

[Containing plans (4 in Number)]

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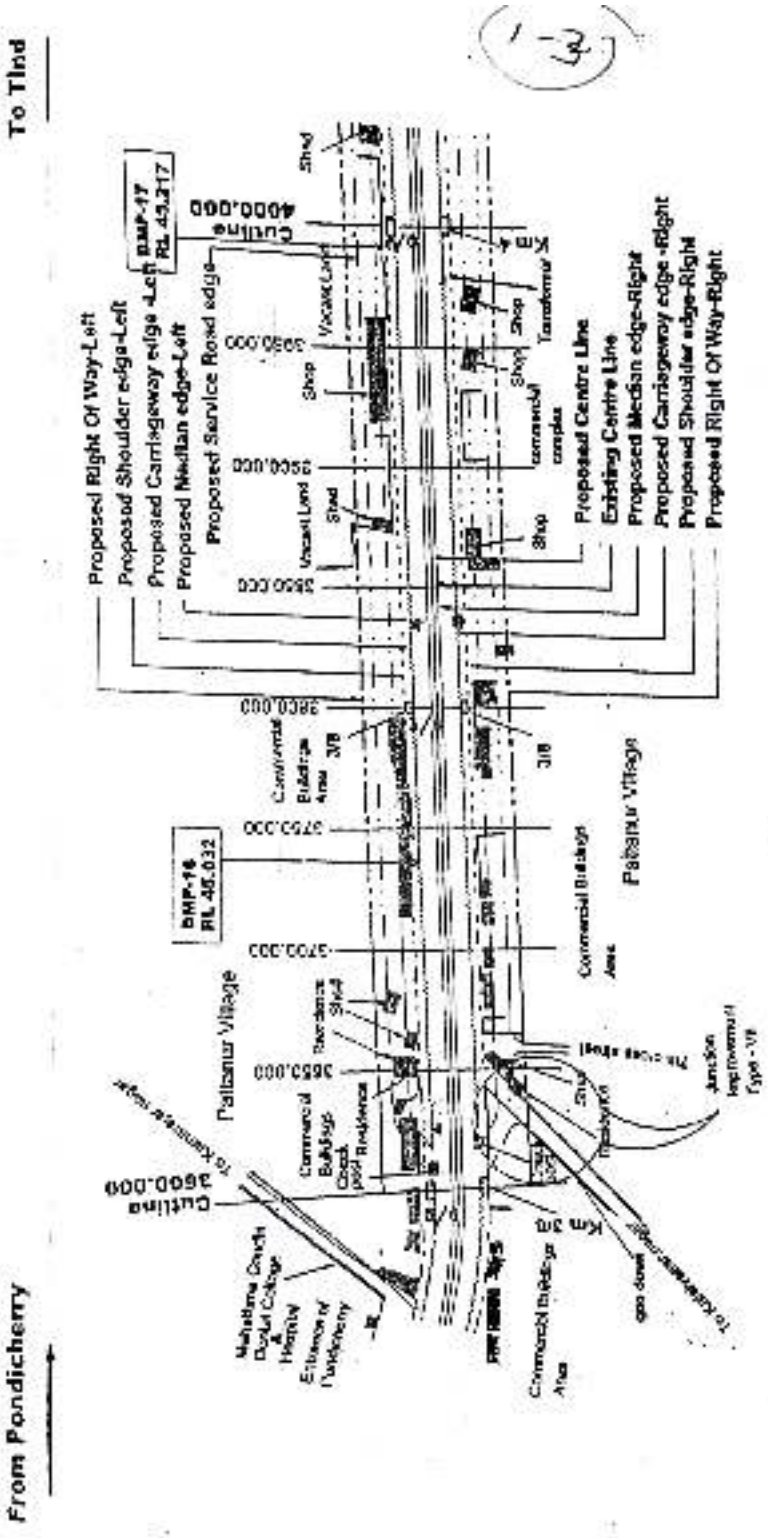

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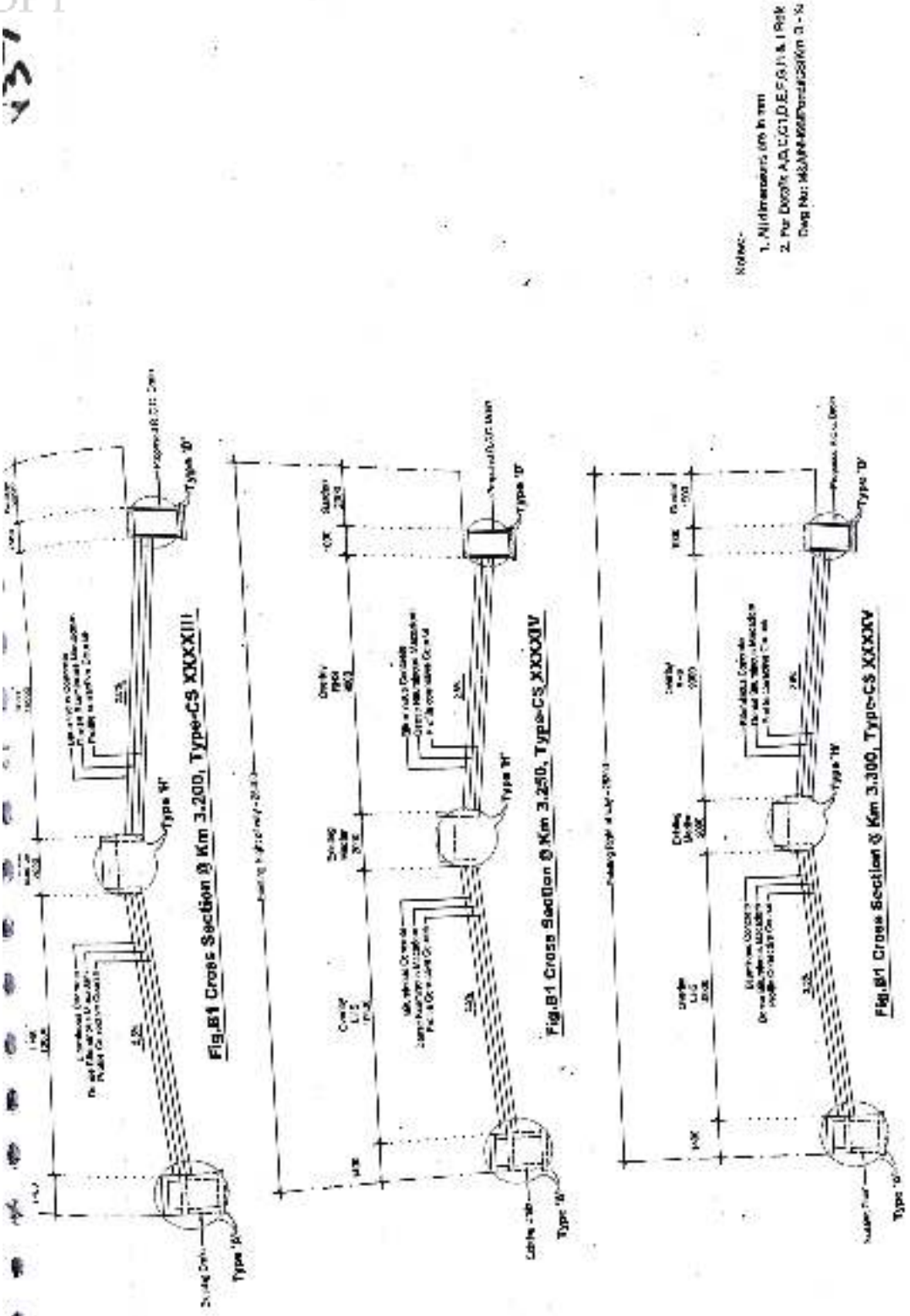

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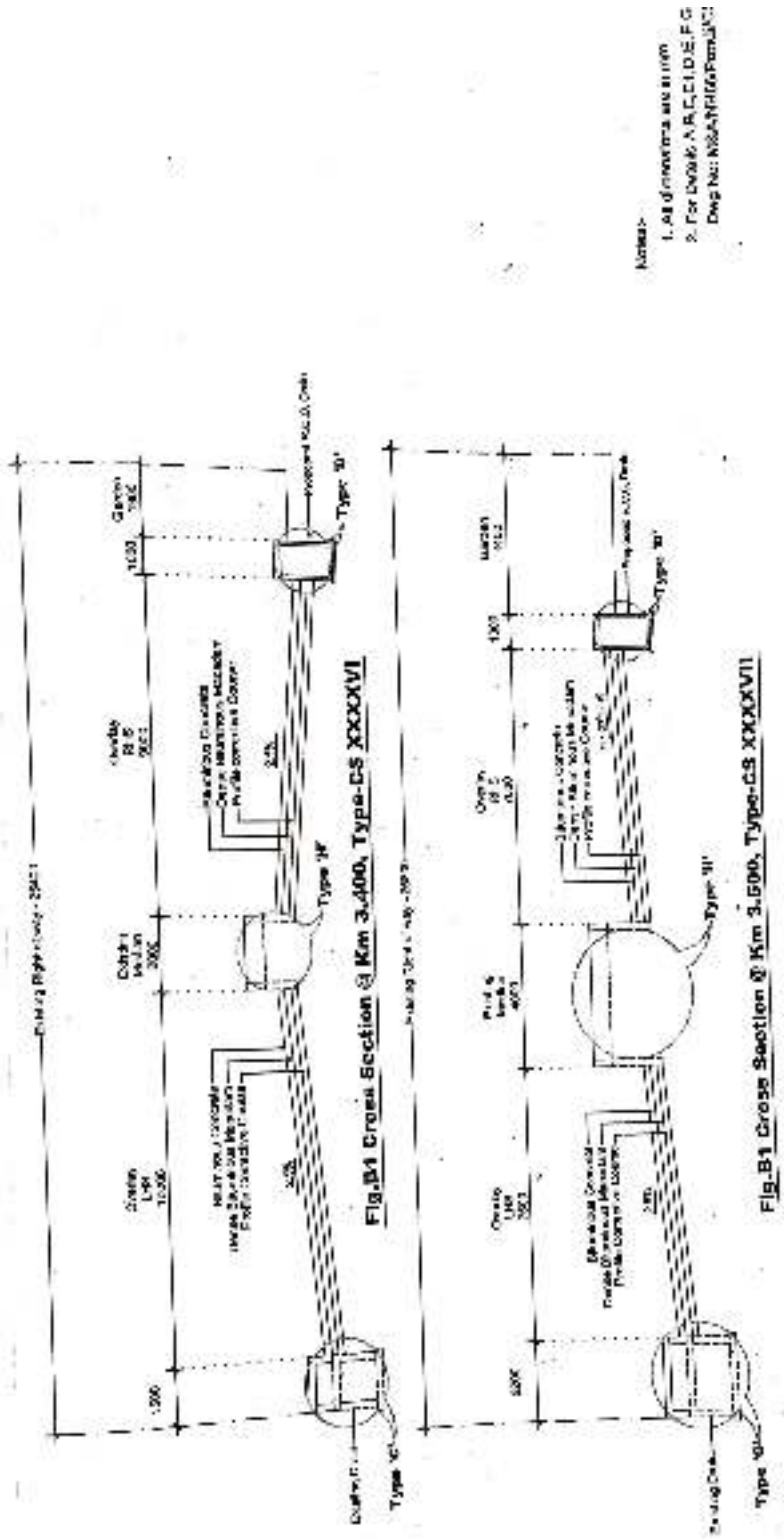

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National Highways Authority of India

Request for Proposal – Old Document
PART – IV: Technical Schedules

S. No.	Design Chainage in km		Proposal				Cross section Type
	From	To	Overlay on existing Black top surface		Widening of existing black top surface		
			LHS	RHS	LHS	RHS	
33.	2/500	2/600	✓	✓	-	✓	Type – CS XXXIII
34.	2/600	2/700	✓	✓	-	✓	Type – CS XXXIV
35.	2/700	2/800	✓	✓	-	✓	Type – CS XXXV
36.	2/800	2/850	✓	✓	-	✓	Type – CS XXXVI
37.	2/850	2/950	✓	✓	-	✓	Type – CS XXXVII
38.	2/950	3/000	✓	✓	-	-	Type – CS XXXVIII
39.	3/000	3/050	✓	✓	-	-	Type – CS XXXIX
40.	3/050	3/100	✓	✓	-	-	Type – CS XL
41.	3/100	3/130	✓	✓	-	-	Type – CS XLI
42.	3/130	3/200	✓	✓	-	-	Type – CS XLII
43.	3/200	3/250	✓	✓	-	-	Type – CS XLIII
44.	3/250	3/300	✓	✓	-	-	Type – CS XLIV
45.	3/300	3/400	✓	✓	-	-	Type – CS XLV
46.	3/400	3/500	✓	✓	-	-	Type – CS XLVI
47.	3/500	3/600	✓	✓	-	-	Type – CS XLVII

Table 6/2: Proposed Cross Section Schedule from km 3/600 to km 37/820 (Tamilnadu)

S. No.	Design Chainage in Km		Length in Km	Widening Option	Cross Section Type
	From	To			
1.	3/600	5/632	2.232	Concentric Widening with service road	Type –IVA
2.	5/632	6/433	0.801	Reconstruction	Type –IV
	Realignment I (km 6/433 to km 12/359)				
3.	0.000*	6100m*	6.100	New Construction	Type – II
4.	6100m*	6227m*	0.127	New Construction with service road on left side	Type –VC
5.	12/359	12/623	0.264	Reconstruction with service road on left side	Type –VD
6.	12/623	13/894	0.271	Reconstruction	Type –IV
7.	13/894	13/466	0.372	Right side Widening using existing road on LHS as service road	Type –VB
8.	13/466	13/594	0.128	Concentric Widening with service road	Type –IVA

*Leading to Realignment II of Palani section
(From km 0.000 to km 37/820 of Palani on NOT back under NHDP Phase IIA)

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