



W.A.No.2520 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 04.09.2023

DELIVERED ON: 01.11.2023

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HON'BLE MR.JUSTICE P.B.BALAJI

W.A.No.2520 of 2018
and CMP.No. 20381 of 2018

1.M/s. Titanium Equipment & Anode
Manufacturing Company Ltd.,
rep. By its Director S.Jayakumar

2.Padma Krishnamurthi Rao,
W/o. Late Dr.C.H.Krishnamurthi Rao
Vs

..Appellants

1.State of Tamilnadu
rep. By the Principal Secretary to Government,
Highways & Minor Ports (HF2) Department,
Fort St.George, Chennai.

2.The District Revenue Officer (Land Acquisition)
Chennai Outer Ring Road Scheme,
Chennai Metropolitan Development Authority,
Koyambedu, Chennai – 600092.

3.Tamil Nadu Road Transport Development Company,
rep. By its Project Director,
Greenways Road, R.A,Puram, Chennai – 600028.



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4.The Special Tahsildar (Land Acquisition)
Chennai Outer Ring Road Scheme,
Tambaram East, Poonamalle.

..Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent
against the order dated 22.06.2018 in W.P.No.27438 of 2014.

For Appellants : Mr.T.P.Manoharan, Senior Counsel
For Mr. T.M. Naveen.

For Respondents : Mr. UM.Ravichandran, Spl.GP-
R1,R2 & R4
Mr.P.Kumaresan, AAG
Assisted by Mr.M.Sivarathanan - R3

JUDGMENT

D.KRISHNAKUMAR, J.

Aggrieved by the order passed by the writ court in
W.P.No.27438 of 2014 dated 22.06.2018, the present writ appeal
has been filed.

2. Brief facts of the Case:

The appellants claim absolute ownership of industrial lands
in Vandalur Village, Kancheepuram District, spanning 5.09 acres,
where they have operated an industry since 1972, producing



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cutting-edge technology and equipment, including for the Ministry of Defence. Over time, the government has acquired substantial portions of their land, causing inconvenience. The current dispute arises from a notice issued by the 2nd Respondent for the acquisition of prime portions of the appellants' land for a multilane interchange flyover, which, according to the appellants, could be better located elsewhere. Despite their objections, the acquisition proceedings have continued, hence the appellants have filed a Writ Petition in W.P.No.27438 of 2014 seeking directions to quash the notices issued by the respondents. The writ court, by order dated 22.06.2018 dismissed the said writ petition. Challenging the same the present writ appeal is filed.

3. The learned senior counsel for the appellants submitted that the series of notices issued by the 2nd Respondent under Section 15(2) of the TN Highways Act 2001, dated 4th November 2013 indicated that an extensive piece of land measuring 50,582.76 sq.ft. (equivalent to 1.16 acres) was required for the 3rd Respondent's construction of additional facilities for the Multi lane



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Interchange flyover at the junction of the Outer Ring Road and NH-45 GST Road, a considerable distance from the Appellant's industry. However, the subsequent notices from the 2nd Respondent presented a contradictory narrative stating that the same land was needed for a Bus Bay on NH-45 GST Road, referring to it as an additional facility for the Multilane Interchange Flyover.

4. The learned senior counsel for the appellants would further submit that the 3rd Respondent has completed the construction of the Multilane Interchange Flyover, with the Up-ramp starting far away from the northern boundary of the Appellant's industry, on the western side. Subsequently, the 3rd Respondent/ National Highways Authority of India (NHAI), altered the project plan and constructed a Flyover on the GST Road at the Kelambakkam Junction. However, the available space under the Flyover is limited and insufficient for vehicle movement. This limitation renders it impossible to provide a Roundabout (Roundabout) under the Flyover at the Kelambakkam junction.



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5. The learned senior counsel for the appellants would further submit that as per Plan-3, no roundabout is necessary, and pursuant to Section 13(2) of the Act 2001, the respondents can only acquire the land that is genuinely required, leaving the rest untouched. In such a scenario, only the Administrative Block of the appellant's Industry might need to be demolished, while the Industrial Buildings can be preserved, allowing the appellant to continue its industrial operations. Without considering the above aspects, the writ court had dismissed the writ petition which requires interference by this Court.

6. On the other hand, the learned Special Government Pleader appearing for the respondents would submit that under Rule 2 to Rule 4 of the Tamil Nadu Highways Rules 2003, the authorities who are required to hold enquiry are not empowered with the power to decide on such objections. They are merely collecting points for receiving the objections of the landowners and the response of the Departments and then to make it over to the Government for taking



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a decision under Section 15(3) of the Tamil Nadu Highways Act, 2001.

7. The learned Special Government Pleader appearing for the respondents would further submit that there is no case for the petitioners that they were denied an opportunity to place whatever objections they felt necessary to resist the proposed acquisition or to place such evidentiary materials which in their opinion are relevant for substantiating their objections. To this, the Highways Department has only offered its remarks in a tabular form and that essentially is limited to their insistence for acquisition. As required under Rule 5(4) materials provided by the owners of the land which included the petitioners and that of the Highways Department to the Government. This would mean that at no stage prior to the application of mind by the Government under Sec. 15(3) was there a breach of any of the statutory requirements either in letter or in spirit.



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8. The learned Special Government Pleader appearing for the respondents would further submit that the petitioners cannot challenge the design of the road since the same is not justifiable and in the instant case it has been approved by the National Highways Department. That apart, nearly 94.83% of the total project has already been completed and it is highly difficult to change the design when only a negligible critical portion alone remains to be completed. Considerable public funds is invested in the project and in the matters concerned in land acquisition, the public interest involved should outweigh the interest and inconvenience of the private individuals whose lands are acquired. Therefore the order of the learned single judge in dismissing the writ petition filed by the appellants herein challenging the notifications issued under Section 15(2) and 15(1) issued by the respondents is perfectly valid and does not require any interference by this Court.

9. Heard Mr T.P. Manoharan, learned Senior Counsel appearing for the appellant and Mr.UM.Ravichandran, learned Special Government Pleader appearing for the respondents 1,2 & 4



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and Mr.P.Kumaresan, learned Additional Advocate General appearing for the 3rd respondent and perused the materials available on record.

10. The point for consideration in the appeal is whether non compliance of Rule 5 of Tamil Nadu Highways Rules by the respondents would vitiate the entire process of land acquisition in respect of the appellant lands?

11. On facts, on 04.11.2013, the respondent issued notices under Section 15(2) of the Tamil Nadu Highways Act, 2001 to the appellant, for providing additional facilities to the Multilane Interchange Flyover to be constructed by it, at the junction of the Outer Ring Road and GST Road, and required the petitioners to submit their objections if any, to the said proposal.

12. The appellants filed their objections to the said notice dated 30.11.2013, issued under Section 15(2) of the Act stating that their properties are not required for the acquisition purpose and the



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alternative lands are available on the other side of the road within Vandalur Zoo, for the purpose of proposed road alignment.

13. The primordial contention of the appellants is that on receipt of objections from the land owners, the land acquisition officer has to forward the objections to the Highways Department and obtain remarks on the objection. Thereafter the land acquisition officer should conduct an enquiry on the objections of the land owners along with the remarks of Highways Department, after providing an opportunity to the landowners. Therefore, the respondent had conducted the enquiry on 26.11.2013 without following the procedures as contemplated under per Rule 5(2) and 5(3) of the Tamil Nadu Highways Rules, 2003 and hence the entire acquisition proceedings is liable to be quashed.

14. To analyse the aforesaid submissions made by the learned counsel for the appellant, Section 15 of the Act, 2001 and Rule 5 of Rules, 2003 are required to be referred to, which are as under;

Section 15 of the Tamil Nadu Highways Act - . Power to acquire land: (1) If the Government are satisfied that any land



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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 subsection (1), as they may deem fit.”

TAMIL NADU HIGHWAYS RULES, 2003

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 Deputy Collector (Land Acquisition), Tamil Nadu Urban Development Project III, as the case may be shall in addition to calling upon the



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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 newspapers 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 Deputy Collector (Land Acquisition), Tamil Nadu Urban Development Project III, as the 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 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



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enquiry may be adjourned, the Government or the Collector or the Special Deputy Collector (Land Acquisition), Tamil Nadu Urban Development Project III, as the case may be, shall hear the objector or a person authorised by him in this behalf and the representatives, if any, of the Highways Department and record any evidence that may be produced in support of the objection and in support of the need for acquiring the land;

(4) Where the enquiry is conducted by the Collector, on completion of the 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 pass order under sub-section (3) of section 15;”

15. The learned Additional Advocate General appearing on behalf of the 3rd respondent while strongly objecting to the submissions made by the learned counsel for the appellants, has produced a judgment of the Hon’ble Supreme Court in the case of ***M.Mohan Vs.State Government of Tamil Nadu and others in Special Leave to Appeal (C) Nos. 12616-17/2022, dated 02.09.2022, reported in [(2022) SCC Online SC 1141]***. The



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relevant portion is extracted below;

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“16. In the present case public notice under Section 15(2) of the Act, 2001 was issued on 30.11.2010 and paper publication under Section 15(2) notice was issued on 03.12.2010. That the petitioner submitted his objections on 15.12.2010; enquiry was conducted on 24.12.2010; objections were sent to the Highways Department and the remarks were called for on 20.12.2010. The Highways Department forwarded its reply/statement may be after conduct of the enquiry on 24.12.2010 but before the notification under Section 15(1) of the Act, 2001 was issued. It is the case on behalf of the petitioner that at the time when the enquiry was conducted response from the Highways Department was not before the authority and no opportunity was given to the petitioner to put forward his case on the answers to the objections tendered by the Highways Department. However, it is to be noted that Section 15 is a substantive provision which confers powers upon the authority to acquire the land. Subsection (1) of Section 15 provides for issuance of the notification to acquire land 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. Sub-section (2) of Section 15 provides that 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. Sub-section (3) of Section 15 provides that the Government may, after considering the cause [objections raised pursuant to the notice under subsection (2) of Section 15], pass such order under sub-section (1). Rule 5 of the Rules, 2003 can be said to be a procedural provision and it provides for the manner of publication of public notice. Sub-rule (2) of Rule 5 provides that if any objection is received from a person interested in the land within the time prescribed in the public notice issued under subsection 2 of Section 15, the Government or the Collector or the Special Deputy Collector (Land Acquisition), shall fix a date for hearing the objections and give notice thereof to the objector as well as to the Highways Department. It further provides that



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copies of the objection shall also be forwarded to the Highways Department and the Highways Department MAY file on or before the date fixed by the Government or the Collector, as the case may be, a statement by way of answer or response to the objections and may also depute a representative to attend the enquiry. The object and purpose of sub-rule (2) of Rule 5 seems to be to give an opportunity to the Highways Department also to meet with the objections raised by the land owners and so as to give an opportunity to the Highways Department to put forward their case. It further provides that the Highways Department may file a statement by way of answer to the objections. It is not a mandatory requirement. Therefore, the Highways Department may or may not file a statement by way of answer to the objections. There is no further provision to furnish a statement by way of answer to the objections filed by the Highways Department to the original land owners. The object and purpose of said sub-rule (2) of Rule 5 as observed hereinabove is to hear the Highways Department on the objections raised by the original land owners. Therefore, non-filing of a statement by way of answer to the objections by the Highways Department and/or non-furnishing the copy of the same to the original land owners shall not vitiate the entire process of acquisition process and/or the notification issued under sub-section (1) of Section 15 of the Act, 2001. It can be said that the said provision is for the benefit of the Highways Department so that no adverse decision is taken by the State Government without giving an opportunity to the Highways Department.

17. In the present case, before issuance of notification under Section 15(1) of the Act, 2001, fullest opportunity has been given to the original land owner to submit his objections. Thereafter, the enquiry has been conducted as required under sub-section (2) of Section 15 and after considering the objections and having been satisfied that the land is required for the purpose of Highways Department, the notification under Section 15(1) of the Act, 2001 has been issued. It is to be noted that before issuing the notification under Section 15(1) of the Act, 2001, a statement by way of answer to the objections by the Highways Department was before the authority and thereafter



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the notification under Section 15(1) of the Act, 2001 has been issued. Therefore, the learned Single Judge and the Division Bench of the High Court was right in observing that there is a substantial compliance of Section 15 of the Act, 2001 read with Rule 5 of the Rules, 2003 and no interference of the Court is called for.”

16. In the aforesaid decision (***M.Mohan Vs.State Government of Tamil Nadu and others***) relied by the respondents, the Hon’ble Supreme Court observed that non-filing of a statement by way of answer to the objections by the Highways Department or non-furnishing the copy of the same to the original land owners would not vitiate the entire process of acquisition process or the notification issued under sub-section (1) of Section 15 of the Act, 2001.

17. Even though the learned Additional Advocate General appearing for the 3rd respondent has argued that the observations made in the aforesaid judgment are applicable to the facts of the present case, in the said judgment, the Hon’ble Supreme Court in the subsequent paragraph (paragraph No.18) has observed that “***we are of the opinion that Rule 5 cannot be said to be inconsistent***



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with Section 15(2) of the Act”.

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18. A perusal of records reveal that the 2nd respondent/DRO issued notice dated 04.11.2013 under Section 15(2) of the Tamil Nadu Highways Act and called for objections from the landowners and interested persons. The appellants submitted a letter dated 21.11.2013 to the 2nd respondent requesting to extend the time for submitting their objections and the respondents granted permission to submit their objection till 03.12.2013. However, the 2nd respondent had conducted enquiry on 26.11.2013 as scheduled in the 15(2) notification without providing any opportunity to the appellants herein.

19. It is to be noted that Rule 5 (2) of Tamil Nadu Highways Rules 2003 prescribes that on receipt of objections from the interested persons within the time prescribed in the notice, the authority concerned 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



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Highways Department. The Highways Department may file on or before the date fixed by the Government or the Collector as the case may be, a statement by way of answer to the objections and may also depute a representative to attend the enquiry.

20. In the case on hand, the enquiry was conducted on 26.11.2013 and appellants have submitted their objections to the 2nd respondent only on 30.11.2013. The Divisional Engineer, Highways Department by proceedings dated 10.12.2013 offered his remarks to the 2nd respondent and the said report was forwarded to the Government on 19.03.2014. Thereafter, the Government issued orders under Section 15(1) of the Tamil Nadu Highways Act,2001.

21. It is clear from the above, the objections of the appellants were not in the hands of the respondent-department on the date of enquiry. Further, Rule 5(2) of the Rules, 2003 states with “***If any objection is received from a person interested in the land***”, therefore, in order to comply with the said Rule 5(2), the objections



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of the interested persons are to be made available on the date of enquiry. In the present case, on the date of enquiry, appellants did not submit their objections and time for submitting their remarks was granted till 03.12.2013. In the absence of objections and the remarks of the Highways department, the enquiry conducted by the respondent on 26.11.2013 is illegal and the same is contrary to the Rule 5 (2) & 5(3) of Tamil Nadu Highways Rules 2003.

22. In this context, it is useful to rely upon the decision of the Hon'ble Supreme Court in the case of ***D.B. Basnett v. LAO***, **reported in (2020) 4 SCC 572**. The relevant portion is extracted below:

“13. That brings us to the question whether the process of acquisition had been followed in accordance with law. No notification has been shown to us of the intent to acquire land under Section 4, or any other declaration thereafter. In fact what is claimed before us, as also before the courts below, is that no records are available in respect of the acquisition process. This obviously puts the respondent State in a difficult situation, which was sought to be got over by only relying on a consent



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having been obtained for acquisition and the compensation having been paid, as determined. On the aspect of the compensation, only a covering letter is available, and not the actual receipt. We have also observed aforesaid that an unusual process of making payment in cash is claimed to have been adopted, and the amount is not an insignificant amount, if we look at the year of acquisition. We even gave a further opportunity to the authorities to show, as to from which account this compensation was withdrawn by the Collector, but it appears that there is no proof even of the withdrawal of the amount, much less payment of the compensation. The letter dated 20-3-1980 of late Man Bahadur Basnett is no doubt a no-objection to the acquisition of land, but provided compensation was paid subsequently. This letter does not obviate the need to furnish proof of the process for acquisition of land or for the determination of compensation, under the said Act. There cannot be a presumption of acquisition without following the due process as envisaged under Sections 3(1), 4(2), 5(1) and 7(2) of the said Act. The burden was on the State to prove that the process as envisaged under the said Act was followed and the compensation paid. Not an iota of evidence has been laid in support of any of these aspects, except the willingness of late Man Bahadur Basnett to permit the land to be acquired on payment of compensation, the forwarding of the amount by the Land Revenue Department to the District Collector through a cheque, and thereafter a letter from the Collector/Respondent 1 stating that some receipt was being enclosed, acknowledging the payment in cash (without a receipt being found). There is, thus, absence of both primary and secondary evidence.



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14. We may note that even though rights in land are no more a fundamental right, still it remains a constitutional right under Article 300-A of the Constitution of India, and the provisions of any Act seeking to divest any person from the rights in property have to be strictly followed [*N. Padmamma v. S. Ramakrishna Reddy*, (2008) 15 SCC 517] .

15. It is also settled law that following the procedure of Section 4(1) of the Land Acquisition Act, 1894 [Publication of Preliminary Notification and Powers of Officers thereupon.] [akin to Section 5(1) of the said Act] is mandatory, and unless that notice is given in accordance with the provisions contained therein, the entire acquisition proceeding would be vitiated. An entry into the premises based on such non-compliance would result in the entry being unlawful [*Narinderjit Singh v. State of U.P.*, (1973) 1 SCC 157] . The law being expropriatory in character, the same is required to be strictly followed. The purpose of the notice is to intimate the interested persons about the intent to acquire the land. These provisions, as they read, of the said Act, thus, are also required to be so followed.”

23. In the aforesaid judgment, the Hon’ble Supreme Court emphasizes the importance of adhering to strict legal procedures when acquiring private land, even after the right to property ceased to be a fundamental right in India. The court discusses the transition of property rights from a fundamental constitutional right under



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Article 300-A of the Constitution. It underscores that the state cannot deprive a citizen of their property without due process of law and just and fair compensation, as mandated by Article 300-A of Constitution of India. This judgment further observed that even though property rights are no longer considered a fundamental constitutional right, they are still protected as a human right, and any attempt to divest a person's property must follow the prescribed legal procedures to be lawful.

24. Furthermore, in the aforesaid judgment, the Hon'ble Supreme Court highlighted the mandatory nature of following specific procedures, such as Section 4(1) of the Land Acquisition Act, when acquiring land. It emphasizes that failure to provide proper notice to interested parties can vitiate the entire acquisition process, rendering any subsequent entry onto the premises as unlawful. The court underscores that these procedural safeguards are in place to inform affected individuals about the government's intent to acquire their land, ensuring transparency and fairness in the process to safeguard individuals' property rights and maintain



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the principles of justice and fairness in land acquisition proceedings.

25. As per Section 5(2) of Tamil Nadu Highways Rules 2003, the 2nd respondent/ District Revenue Officer (Land Acquisition), Chennai has to consider the objections of the land owners and independently form an opinion based on the remarks of the requisitioning body (Divisional Engineer Highways Department) and thereafter has to forward the same to the Government for issuance of notification under Section 15(1) of the Tamil Nadu Highways Act. But in the case on hand, no materials has been placed to establish the fact that the 2nd respondent had independently assessed the objections received from the appellant. In the rejection order, the 2nd respondent/DRO without any detailed assessment, has simply mentioned that the lands acquired by the appellant are required for the public purpose and therefore rejected the objections made by the appellant, which is clear a violation of principles of natural justice.



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26. In light of the clear lapse on the part of the respondent department, accepting the contentions put forth by the respondent, would render the entire process a mere superficial formality. This outcome would not only defeat the very essence and objectives of the relevant Act and Rules but also infringe upon the rights vested in the appellants. Consequently, we are compelled to reject the contentions raised by the respondent-department, leading us to set aside the order issued by the writ court.

27. On the facts of this case, as discussed above in detail, the procedure as contemplated under Rules 5 (2) & 5(3) of Tamil Nadu Highways Rules 2003 has not been followed by the respondents in the acquisition proceedings and violates the principles of natural justice, and on this ground alone, we are interfering with the order of the writ court and remanding the matter to the authorities concerned/3rd respondent to consider the objections of the appellant in accordance with the relevant Act and Rules in force. Accordingly, the following directions are issued:



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- i. Appellants are permitted to submit additional particulars, if any to the respondent authority, within a period of two weeks from the date of receipt of a copy of this order.
- ii. On receipt of such particulars, the 2nd respondent/District Revenue Officer (Land Acquisition), Chennai after affording opportunity to the requisition body viz., Divisional Engineer Highways Department, shall independently assess the same along with the objections of the appellants and forward a report to the Government for passing suitable orders thereafter.
- iii. The entire process shall be completed within a period of twelve weeks from the date of receipt of a copy of this order.

28. In the result, the writ appeal stands allowed and the order passed in the writ petition in W.P.No.27438 of 2014, dated 22.06.2018 is set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

[D.K.K., J.] [P.B.B., J.]
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Speaking Order



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