



W.P(MD)No.848 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 10.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.848 of 2010

and

W.M.P.(MD).No.2985 of 2017 and MP(MD) No.2 of 2010

A.Fathimanathan

...Petitioner

Vs.

**1.The National Highways Authority of India,
G 5 & 6, Sector – 10, Dwarka,
New Delhi – 110075.**

**2.The Authorized Officer and
District Revenue Officer,
Land Acquisition – Highways,
Door No.34, Sait Colony,
Gandhi Nagar/Ponnagar,
Trichy – 1.**

**3.The Special Tahsildar,
(LA) Unit II, N.H.67,
Sengipatti Camp,
Thanjavur Court Road,
Thanjavur.**

...Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus or any other appropriate writ or direction in the nature of a Writ calling for the records of the second respondent in R.C.No. 120/2007/Unit II/Thanjavur, dated 13.02.2008 culminating to the Land Acquisition Notification issued under Section 3A(1) of the National Highways Act 1956 as published in Government of India Gazette Special 83 dated 21.01.2008 in part II Sec. II S.O.No.115 pages 1 to 18 pertaining to the items No.162 and 163 belonging to the petitioner and to quash insofar as the petitioner's land alone with a direction, directing the second respondent to award the additional compensation amount to the petitioner with interest at the rate of 18% p.a till the date of payment by taking into account the date as may be fixed by this Court for the purpose of fixing the market value of the land.

For Petitioner	: Mr.T.Sakthikumaran for Mr.Thirumoorthy For M/s.Ajmal Associates
For R1	: No appearance
For R2 & R3	: Mr.K.A.Thirumalaiappan

ORDER

The petitioner's lands in Survey No.153/3C to an extent of 0.54.5 Hectares and the lands in Survey No.153/4 to an extent of



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0.15.0 Hectares situated at Sengipatti Village of Sengipatti Panchayat, Thanjavur Taluk, Thanjavur District were acquired by the National Highways for the purpose of widening the National Highways 67, vide notification dated 13.02.2008. Challenging the said notification of the second respondent in RC 120/2007/Unit II/ Thanjavur, dated 13.02.2008, the petitioner has filed this writ petition to quash the same and for a consequential direction, directing the second respondent to award an additional compensation amount with interest at the rate of 18% per annum, till the date of payment.

2.The learned counsel appearing for the petitioner submits that the second respondent with a proposal to expand National Highways 67 has issued a notification in 'Dhina Thanthi', under Section 3A(1) of the National Highways Act, 1956, (hereinafter referred to as 'the Act' for the sake of brevity) on 19.02.2008, in which, the petitioner's lands were also included in Serial Nos.162 & 163 and the land owners were called upon to



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submit their objections within 21 days from the date of publication of the notification.

2.1.The petitioner claims that he is a practising Advocate and by his profession, he was in Chennai. During the relevant point of time, the petitioner was in abroad and on knowing about the publication of the Notification, he returned to India and submitted his objections to the second respondent on 10.03.2008 through courier and the same was also received and acknowledged by the second respondent on 11.03.2008, wherein, he stated that the road has already been formed in his land even before the notification under Section 3A(1) of the Act. Hence, the petitioner has requested for personal hearing for restoring his land. Though the second respondent received the petitioner's objection well within 21 days, as per the notification dated 19.02.2008, they have not conducted any enquiry as contemplated under Section 3(C)(2) of the Act. The second respondent proceeded to issue a declaration under Section 3(D)(1) and 3(G)(3) of the Act in the daily newspapers on



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25.10.2008. As per this notification, the interested persons were called upon to appear before the second respondent between 11.11.2008 to 14.11.2008 from 10.00 a.m to 5.45 p.m, at the Tourist Bungalow, Sengipatti and to produce their title deeds and other necessary documents to prove their ownership. Though the petitioner could not appear in person, he submitted a petition along with Patta Pass Book and title deeds proving the ownership of his lands by courier, on 10.11.2008 and also submitted those documents through his brother on 12.11.2008 in person. Since the documents were submitted through his brother, they refused to receive the same and the award was passed by the respondent without considering the submissions of the petitioner dated 10.11.2008. The petitioner made his representation on 07.08.2009 and thereafter only the second respondent by his letter dated 11.09.2009, furnished the copy of the award dated 15.05.2009 passed in respect of the petitioner's land. The award dated 15.05.2009 is not in accordance with the statutory requirements as contemplated under Section 7(b) and (c) of 3(G) of the Act. Hence, this petition.



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3.The learned Additional Government Pleader appearing for the respondents 2 & 3 submits that the lands were acquired for the purpose of formation of four laning and widening of the road in NH 67, through a notification under sub section 1 of Section 3 (A) of the National Highways Act, published in the daily newspapers and published in Government of India Gazzette, dated 21.01.2008 and also published in 'Daily Thanthi' and 'The Hindu', dated 19.02.2008, inviting objections, if any, under sub section 1 of Section 3(C) of the Act, from the land owners within 21 days from the date of publication of the notification. The objection petition of this petitioner was not received by the second respondent within 21 days of publication and was received only on 11.03.2008 i.e after 21 days. Since the objection was not received within 21 days, an opportunity of personal hearing was not provided to the petitioner, as per Section 3(C) 2 of the Act. Therefore, declaration of acquisition as required under sub section 1 of section 3(D) and sub section 3 of Section 3(G) were published in the daily newspapers on 25.10.2008, requesting the interested persons to appear for an



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enquiry with documentary evidence in person or by an agent or by a legal practitioner before the competent authority, in between 11.11.2008 and 14.11.2008 from 10.00 a.m to 5.45 p.m, at Sengipatti Travellers bungalow.

3.1. According to the respondents, no one on the side of the petitioner attended the enquiry under Section 3(G) (3) of the Act conducted by the competent authority and no documents were produced to prove the title deed on behalf of the petitioner, as stated by the petitioner. As such, the award for payment of compensation was not passed to the petitioner in the absence of any supporting documents. He further submits that the competent authority inspected the lands and fixed the value based on the sales statistics gathered from the Sub Registrar office, Boothanur and based on the guideline value fixed by the Sub Registrar, Boothanur. According to the competent authority, who had inspected the lands, the lands in Sengipatti Village are dry lands and therefore the lands could not be treated as cultivable lands.



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4.This Court paid its anxious consideration to the rival submissions made and also perused the materials placed on record.

5.The writ petitioner has challenged the notification in RC 120/2007/Unit II/ Thanjavur, dated 13.02.2008, issued by the second respondent, under Section 3(A)(1) of the Act. The main grievance of the petitioner is that insofar as his lands pertaining to Item Sl.Nos.162 and 163 are concerned, he was not even provided the statutory opportunity of hearing and the compensation was awarded uniformly to all 177 items of lands covered by the notification, without following the statutory requirements as contemplated under sub section 7 (b) and (c) of Section 3(G) of the Act. Therefore, as an alternate plea, he has sought for an additional compensation amount with interest at the rate of 18% per annum till the date of payment.

6.The contention of the petitioner is that as per the notification dated 19.02.2008, the petitioner is having a right of



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submitting his objection within 21 days. Based on such objection, the competent authority ought to have provided an opportunity of hearing either in person or by a legal practitioner and after providing an opportunity, by considering the objections, the competent authority either allow or disallow the objection. But, in the present case, the opportunity of hearing was not provided to the petitioner, though the petitioner submitted his objections within 21 days i.e on 11.03.2008.

7.In the counter affidavit filed by the second respondent, it is admitted that the objection of the petitioner was received only on 11.03.2008. However, the respondent claims that the objection was received after the period of 21 days from the date of publication of notification. Hence, the opportunity of hearing on the petitioner's objection was not provided to him as per Section 3(C) (2) of the Act.

8.Section 3(A) (1) of the Notification expressing the interest of the respondent for formation of four laning and widening



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of the road was published in the daily newspapers on 19.02.2008, calling upon the objections, if any, as required under sub section 1 of 3 (C) of the Act, within 21 days of publication. The petitioner has sent his objection and the same was also received by the respondent on 11.03.2008, i.e on the 21st day. However, the second respondent took a plea that the objection of this petitioner was received only on 11.03.2008. ie after 21 days and therefore, an opportunity of being heard over the petitioner's objection was not given to him. Hearing of an objection is provided under Section 3(C) of the Act and the same is extracted as under:-

3-C.Hearing of objections:-

- (1) Any person interested in the land may, within twenty one days from the date of publication of the notification under sub section (1) of section 3 A, object to the use of the land for the purpose or purposes mentioned in that sub-section.
- (2) Every objection under sub-section (1) shall be made to the competent authority in writing and shall set out the grounds thereof and the competent authority shall give



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the objector an opportunity of being heard, either in person or by a legal practitioner, and may, after hearing all such objections and after making such further enquiry, if any, as the competent authority thinks necessary, by order, either allow or disallow the objections.

(3) Any order made by the competent authority under sub-section (2) shall be final.

The above section provides an opportunity to every person interested in the land to raise their objections, if any, within 21 days from the date of publication of the notification. Section 13 C (2) of the Act mandates the competent authority to provide an opportunity of hearing to the objector. The competent authority may either allow or disallow the objection and the order, if any, passed by the competent authority under sub section 2 of Section 3(C) 2 of the Act shall be final as per sub section 3 of Section 3(C) of the Act.

9. In ***R.Nataraj Vs Union of India***, reported in **2010 (6)**

CTC 337, the Honourable Division Bench of this Court has held that an enquiry under Section 3(C) of the Act cannot be conducted in a



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mechanical manner since it involves the right of the owner of the property. However, the Honourable Supreme Court in ***Competent Authority Vs Barangore Jute Factory and others***, reported in ***(2005) 13 SCC 477***, has held as follows:-

“8.The absence of a plan also renders the right to file objections under Section 3-C(1), nugatory. In the absence of a plan, it is impossible to ascertain or know which part of the acquired land was to be used and in what manner. Without this knowledge no objections regarding use of land could be filed. Since the objection regarding use of the land had been given up by the writ petitioners, we need not go any further in this aspect. We would, however, like to add that unlike Section 5-A of the Land Acquisition Act, Section 4 of the said Act, Section 3-A(1) of the National Highways Act gives a very limited right to object. The objection can be only to the use of the land under acquisition for purposes other than those under Section 3-A(1). The Act confers no right to object to acquisition as such. This answers the



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argument advanced by the learned counsel for NHAI that failure to file objections disentitles the writ petitioners to object to the acquisition. The Act confers no general right to object, therefore, failure to object becomes irrelevant. The learned counsel relied on the judgment of this Court in Delhi Admn.v.Gurdip Singh Uban. In our view, this judgment has not application in the facts of the present case where the right to object is a very limited right. The case cited is a case under the Land Acquisition Act, 1894 which confers a general right to object to acquisition of land under Section 5-A. Failure to exercise that right could be said to be acquiescence. The National Highways Act confers no such right. Under this Act, there is no right to object to acquisition of land except on the question of its user. Therefore, the present objection has to be decided independently of the right to file objections. Dehors the right to file objections, the validity of the notification has to be considered.”



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10.Further, in the case of ***Union of India Vs Kushala Shetty and others***, reported in ***(2011) 12 Supreme Court Cases 69***, it was held as follows:-

“23.The only reason assigned by the Division Bench of the High Court for upsetting the well-considered order passed by the learned Single Judge negating the respondents' challenge to the acquisition was that declaration under Section 3-D(1) was published even before communication of the decision taken by the competent authority in terms of Section 3-C(2). The process of reasoning adopted by the Division Bench for recording its conclusion appears to have been influenced by an assumption that the objections field by the landowners had not been decided till the issue of declaration under Section 3-D(1). However, the fact of the matter is that the competent authority had, after giving opportunity of personal hearing to the objectors, passed the order dated 11.10.2005 and rejected the objections. Though, that order was not crafted like a judicial order which is passed by a legally trained mind, the rejection of the



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representations made by the respondents cannot be faulted only on that ground.

24.The competent authority did advert to the substance of objections, the details of which have been incorporated in Annexure P-3 filed before this Court. The officer concerned rejected the same by observing that the land proposed for acquisition is necessary for widening the existing national highways into four lanes. If the consideration made by the competent authority is judged in the backdrop of the fact that a special purpose vehicle was incorporated with the name New Mangalore Port Road Company Ltd, for implementation of the project known as New Mangalore Port Road Connectivity Project from Surathkal to Nantoor and B.C.Road to Padil along with bypass from Nantoor to Padil, it is not possible to castigate the proved reasons recorded by the competent authority for rejecting the objections.

....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



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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, 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.”



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11. In view of the above, the contention of this petitioner that he has not been provided an opportunity under Section 3(C) of the Act cannot be considered as a ground to interfere with the notification dated 19.02.2008. Thus, it is clear that the right of objection conferred under Section 3(C) (2) of the Act is a limited one and the competent authority is empowered to pass any order either allowing or disallowing the objection. The decision taken by the competent authority under sub section 3 of Section 3 (C) of the Act shall be final. It is also well settled that the public interest is paramount as against private interest. The acquisition undoubtedly causes grave hardship to the persons concerned but that cannot be a ground to stall the project of importance.

12. The second contention of the petitioner is that though the petitioner has submitted a petition along with patta pass book and title deeds proving his ownership of land on 10.11.2008 by courier, and was also received and acknowledged by the second



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respondent on 11.11.2008, the respondents have not determined the amount payable as compensation in accordance with 3(G) of the Act. Besides the Courier, the petitioner claims that he has also submitted those documents before the third respondent at Tourist Bungalow, Sengipatti on 12.11.2008, through his brother. However, the award is not in accordance with 3(G) of the Act and has been uniformly determined for all 177 items of lands treating the entire lands as one unit. However, the respondents have taken a stand that this petitioner did not appear for an enquiry before the competent authority during the enquiry under Section 3(G) (3) of the Act, conducted in Sengipatti Village from 11.11.2008 to 14.11.2008, which was also specifically stated in the award dated 15.05.2009. The respondents took a specific stand that the second respondent inspected the lands and found that those lands are dry lands and therefore they have not treated them as cultivable lands. In view of the same, there is no error in arriving the quantum of the award. Moreover, the quantum of award arrived by the authority was accepted by all other land owners excepting this petitioner.



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13.As per sub section 1 of section 3(G) of the Act, the competent authority has determined the compensation amount to be paid to the land owners before proceeding to determine the amount under sub section 1. The competent authority shall give a public notice in two local newspapers inviting objections from all the persons interested in the lands to be acquired. The opportunity of personal hearing is also mandated either in person or by an agent or by a legal practitioner before the competent authority at a specific time and place. In this case, the publication was made by the competent authority as required under sub section 3 of Section 3(G) of the Act in two daily newspapers on 25.10.2008, calling upon the interested persons to appear for an enquiry with documentary evidence in person or by an agent or by a legal practitioner, before the competent authority in between 11.11.2008 and 14.11.2008 from 10.00 a.m to 5.45 p.m at Sengipatti Travellers bungalow. The petitioner claims that he has submitted the petition along with Patta pass book and title deeds proving his ownership of the land on



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10.11.2008 by courier and the same was received and acknowledged by the second respondent on 11.11.2008 under Section 3(G) of the Act. The petitioner has not utilized that the opportunity for the enquiry conducted under Section 3(G) of the Act either in person or by a legal practitioner. The petitioner claims that he himself is a practising Advocate. However, he has preferred to send his objections through courier on the last date for receipt of objection. The petitioner has taken a plea that he was in abroad at the relevant point of time and on knowing about the enquiry, he returned to India on 08.03.2008 and prepared his objection on 10.03.2008 and sent it through courier on the same day and the objection was received by the first respondent on 11.03.2008. Only thereafter 3(G) intimation was published on 25.10.2008 fixing the date of hearing between 11.11.2008 to 14.11.2008. The petitioner has not opted to appear for enquiry either in person or by the legal representative. Even this time, he submitted his petition along with the title deeds on 10.11.2008 only through courier. Though the petitioner claims that it was acknowledged by the respondents on 11.11.2008, no proof is



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enclosed along with the petition and therefore, this Court is not inclined to accept this contention also.

14. Moreover, all the 177 items of lands were covered by the notification and the quantum of award was not disputed by any other person other than this petitioner. The respondents have also claimed that the competent authority has visited the place identified that they are only dry lands and could not be treated as cultivable lands and thus arrived at the compensation. Therefore, this Court is not inclined to accept this contention of the petitioner also.

15. This Court in MP No.2 of 2010 in WP 848 of 2010, passed an interim order on 24.02.2010, directing the second respondent to disburse a sum of Rs.2,67,678/- in pursuant to the award dated 15.05.2009 passed by the second respondent, in respect of the petitioner's land in Survey No.153/3C 153/4. In view of the interim order passed by this Court, dated 24.02.2010, the compensation amount of Rs.2,40,910/-, after deducting TDS, as per



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the Income Tax Act, 1961 was sent to the petitioner, vide Cheque No.652824 dated 11.03.2010 by RPAD on 18.03.2010. Also, Form No.16A for the amount deducted on TDS under the Income Tax Act was also sent to the petitioner on 01.04.2010 by RPAD and the same was received and acknowledged by the petitioner on 20.03.2010 and 09.04.2010 respectively.

16.No doubt that the method of determining the compensation cannot be different as the market value of the land and the hardships faced by the petitioner due to deprivation of the property would be the same irrespective of the Act, under which, it is acquired or the purpose, for which, it is acquired. As claimed by the petitioner, the compensation amount, a sum of Rs.2,40,910/- after deduction of TDS, has been settled to him on 11.03.2010 itself. Insofar as the interest portion is concerned, it is to be noted that the petitioner has not produced the relevant documents before the concerned competent authority as required by the Act in time. Therefore, the question of claiming interest for compensation



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amount does not arise.

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17.In view of the foregoing discussions and reasons, this writ petition is dismissed. No costs. Consequently, connected Miscellaneous petitions are closed.

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To
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- 1.The National Highways Authority of India,
G 5 & 6, Sector – 10, Dwarka,
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