



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 30.06.2023

CORAM

THE HONOURABLE MR.JUSTICE **C.V.KARTHIKEYAN**

W.P.(MD)No.15720 of 2023

Muthukannan

... Petitioner

vs.

1.The District Collector,
Madurai.

2.The Special District Revenue Officer,
Highways Department,
Madurai, Madurai District.

3.The Revenue Divisional Officer,
Thirumangalam, Madurai District.

4.The Special Tahsildar,
Highways Department,
Land Acquisition,
Madurai-20.

5.The Executive Engineer,
Public Works Department,
Madurai District.

6.The Assistant Executive Engineer,
Highways Department,
Thirumangalam, Madurai District.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to direct the respondents 4 to 6 herein to re-survey the property in T.S.No.2, Ward No-E, Block C-7 in Vadakar Nagar Village, Thirumangalam, Madurai District on the basis of the letter, dated 29.06.2022 and 12.12.2022 of the second respondent and the letter, dated 10.03.2023 of the fourth respondent herein and re-fix the compensation to the petitioner's property to be acquired herein.

For Petitioner :Mr.T.Pon Ramkumar
For Respondents :Mr.N.Muthu Vijayan
Special Government Pleader

ORDER

This Writ Petition has been filed in the nature of a Mandamus seeking a direction to the fourth to sixth respondents to re-survey the property in T.S.No.2, Ward No.E Block C-7 in Vadakar Nagar Village, Thirumangalam in Madurai District. The petitioner claims that such re-survey should be done on the basis of letters addressed on 29.06.2022 and 12.12.2022 by the second respondent, Special District Revenue Officer, Highways Department, who had issued the said letters to the fourth respondent, Special Tahsildar, Highways Department, Land Acquisition, Madurai.



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2.Heard Mr.T.Pon Ramkumar, learned Counsel for the petitioner and Mr.N.Muthu Vijayan, learned Special Government Pleader for the respondents.

3.It is stated that compensation for acquisition of the land of the petitioner should be re-worked. The land of the petitioner measuring about 4 feet is sought to be acquired by the respondents for construction of a fly-over between Tirumangalam Municipality Road (L.C-377) and Thirumangalam Kallikudi Railway Station. The grievance of the petitioner is that if that land is acquired, the petitioner will have to demolish the staircase and put up a fresh staircase within his house.

4.The learned Counsel for the petitioner very categorically stated that the petitioner has no grievance or objection against the acquisition of the land.

5.Notices had been issued under Rule 19(5) of the Tamil Nadu Highways Act, 2001 on 17.11.2021 itself. Objections were called for. The petitioner had raised objections. But, the petitioner had also opted



for private negotiation so far as compensation is concerned.

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6.It is very specifically stated on behalf of the respondents that the petitioner did not produce necessary documents and did not appear for the private negotiation. This forced the respondents to workout the compensation by themselves.

7.It is the grievance of the petitioner that such compensation was worked without issuing notice to the petitioner.

8.The notice to the petitioner is for appearance for private negotiation. He had failed to do so. Then, the obligation of the respondents is to workout the compensation. If the petitioner is aggrieved by such compensation, the Act provides that he can proceed before the District Collector seeking re-visitation of the compensation amount. But the entire acquisition process cannot be stopped owing to this particular fact. When necessary applications are filed, it should be taken up in manner known to law and proceeded in manner known law.



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9. When a right is sought by the petitioner, he should also examine whether he had discharged his duty. The duty expected on the petitioner was to appear during private negotiation. Very specific instructions are given that he did not appear during the private negotiation and when he appeared, he did not produce relevant documents. The petitioner will have to suffer the fate of the compensation being worked out and that has now been worked out. The petitioner may agitate in manner known to law and in accordance with law. But a Mandamus certainly cannot be issued for a project, which had commenced in the year 2020-2021 and at the instance of the petitioner herein put to hold.

10. Let the acquisition proceed further. The land of the petitioner can be specifically acquired. So far as compensation is concerned, the petitioner may take it up in manner known to law.

11. In *Dr. Abraham Patani of Mumbai and Another vs State of Maharashtra and Other* [2022 SCC Online SC 1143], the Supreme Court had occasion to examine public interest versus private interest. After examining in detail a string of judgments, the Supreme Court had



held that by no count, a private interest override public interest. That was also an appeal, wherein, the appellant therein had questioned acquisition of land required for construction of a fly over. Their proposals were rejected by the Honourable Supreme Court and finally it was held that public interest should override private interest. The Honourable Supreme Court held as follows:

“91. It is important for us to take stock of the nature of the present dispute. The Appellants are private citizens who have valid title and ownership over the land in question. Without doubt, their personal and private rights are of great importance. In a democratic society governed by the rule of law, the rights of an individual carry immense importance and are the foundational blocks on which our legal, social, and political milieu thrives. Under no circumstances should the rights of individual citizens be trodden upon arbitrarily and any curtailment of them must be scrutinized with utmost care.

92. At the same time, we must not lose sight of the fact that in several situations, the needs of the many must outweigh that of the few. We say so not with any fervour nor as a mantra, but as a solemn acknowledgment of the realities of modern life. The question of what constitutes “public interest” has been contemplated upon multiple times and the history of this Court is full of musings by different benches on the exact contours of this phrase in the context of various situations and statutes.

93. In Manimegalai v. Special Tehsildar²⁷, it was surmised that:

“14. Similarly, public purpose is not capable of precise definition. Each case has to be considered in the light of the purpose for which acquisition is sought for. It is to serve the general interest of the community as opposed to the particular interest of the individual. Public purpose broadly speaking would include the purpose in which the general interest of the society as opposed to the particular interest of the individual is directly and



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vitality concerned. Generally, the executive would be the best judge to determine whether or not the impugned purpose is a public purpose. Yet it is not beyond the purview of judicial scrutiny. The interest of a Section of the society may be public purpose when it is benefitted by the acquisition. The acquisition in question must indicate that it was towards the welfare of the people and not to benefit a private individual or group of individuals joined collectively. Therefore, acquisition for anything which is not for a public purpose cannot be done compulsorily.”

94. In *B.P. Sharma v. Union of India*²⁸ the nebulous nature of phrases such as “public interest” or “in the interest of the general public” was commented upon, with the Court stating:

“15. ...The phrase “in the interest of the general public” has come to be considered in several decisions and it has been held that it would comprise within its ambit interests like public health and morals, economic stability, stability of the country, equitable distribution of essential commodities at fair prices for maintenance of purity in public life, prevention of fraud and similar considerations...”

95. This point was emphasized in *Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi*²⁹ as well, which held that no strict definition for “public interest” existed:

“22. The expression “public interest” has to be understood in its true connotation so as to give complete meaning to the relevant provisions of the Act. The expression “public interest” must be viewed in its strict sense with all its exceptions so as to justify denial of a statutory exemption in terms of the Act. In its common parlance, the expression “public interest”, like “public purpose”, is not capable of any precise definition. It does not have a rigid meaning, is elastic and takes its colour from the statute in which it occurs, the concept varying with time and state of society and its needs. It also means the general welfare of the public that warrants recognition and protection; something in which the public as a whole has a stake.”



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96. It is unnecessary to belabour the point. The proposition is simply that the notion of public interest will necessarily reflect the specificities of the situation at hand. In the present case, the public interest which has been emphasized upon by Respondents is the urgent need for the creation of a connecting road through the Appellants' property. The need stems from the traffic congestion caused on the route from the Mahakali Caves to the Central MIDC. The lack of a direct linkage requires detours to be taken that significantly increase commuting time and cause inconvenience to the general public.

97. When the public interest is so clearly articulated and is an urgent and pressing exigency, private interests must give way to the extent required. This Court has acknowledged this before, such as in *Ramilila Maidan Incident v. Home Secretary, Union of India*³⁰:

“119. The right to freedom in a democracy has to be exercised in terms of Article 19(1)(a) subject to public order. Public order and public tranquillity is a function of the State which duty is discharged by the State in the larger public interest. The private right is to be waived against public interest. The action of the State and the Police was in conformity with law. As a large number of persons were to assemble on the morning of 5th June, 2011 and considering the other attendant circumstances seen in light of the inputs received from the intelligence agencies, the permission was revoked and the persons attending the camp at Ramlila Maidan were dispersed.”

(Emphasis Applied)

98. In *K.T. Plantation Pvt. Ltd. v. State of Karnataka*,³¹ the origins of “Eminent Domain” were traced and the ethos behind acquisition of land by the government for public good was discussed. The Court elaborated on this in the following terms:

“134. Hugo Grotius is credited with the invention of the term “eminent domain” (jus or dominium eminens) which implies that public rights always overlap with private rights to property, and in the case of public utility, public rights take precedence. Grotius sets two conditions on the exercise of the power of eminent domain : the first requisite is public advantage and then compensation from the public funds be made, if possible, to the one



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who has lost his right. Application of the above principle varies from countries to countries. Germany, America and Australian Constitutions bar uncompensated takings. Canada's constitution, however, does not contain the equivalent of the taking clause, and eminent domain is solely a matter of statute law, the same is the situation in United Kingdom which does not have a written constitution as also now in India after the 44th Constitutional Amendment."

(Emphasis Applied)

12.The dictum laid down is binding on this Court. The Writ
Petition is dismissed. No costs.

Index :Yes / No
Internet :Yes
NCC : Yes/No

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C.V.KARTHIKEYAN, J.

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