



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **29.08.2023**

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND

THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

W.A.(MD)No.877 of 2015

and

M.P.(MD)No.1 of 2015

and

C.M.P.(MD)No.9169 of 2021

1.N.Satha (died)

2.S.Nagamani

3.S.Subramanian

...Appellants

[Appellants 2 to 3 are impleaded as legal heirs of deceased first appellant, vide Court order dated 27.01.2017]

/Vs./

1.Union of India,

Rep.by its Secretary to Government,

Ministry of Shipping,

Road Transport & Highways,

(Dept. of Road Transport & Highways)

New Delhi.

2.The Competent Authority &

Special District Revenue Officer,

Land Acquisition-National Highways, (L.A.-N.H.),

Tirunelveli.



3.National Highways Authority of India,
Rep.by its Project Director,
Project Implementation Unit,
Plot No.112, Rahamath Nagar,
Palayamkottai,
Tiruenveli-627 002.

...Respondents

PRAYER:- Writ Appeal - filed under Clause 15 of the Letter Patent Act, to set aside the order dated 23.02.2015 made in W.P.(MD)No.139 of 2008 on the file of this Court.

For Appellants	: Mr.M.Suri
For R2	: Mr.S.Shaji Bino Special Government Pleader
For R1	: Mr.S.Jeyasingh
For R3	: Mr.Su.Srinivasan

JUDGMENT

(Judgment of the Court was delivered by **DR.ANITA SUMANTH , J.**)

The writ petitioner is the appellant. The writ petition was filed challenging the notification issued in terms Section 3-A(1) of the National Highways Act, 1956 (in short 'Act').

2.The writ petitioner claims to be the owner of the property admeasuring 60 cents in Survey No.549/5B, Agastheeswaram Village, Kanyakumari District (hereinafter referred to as 'land in question').



WEB COPY

3. There was a initial proposal for acquisition of the land in 2005, which according to the writ petitioner was not pursued. Thereafter, the impugned notification dated 06.02.2007 came to be issued proposing the acquisition of various parcels of land including the land in question.

4. The purpose of acquisition is for widening /four-laning as well as maintenance, management and operation of National Highway No.7 on the stretch of land from Km.203/000 to Km.232/000 (Madurai-Kanyakumari Section) in Kanyakumari District.

5. Even prior to the institution of the writ petition, a notification had come to be issued in terms of Section 3-C(1) of the Act calling for objections from the persons interested in the land in question. To be noted, the notification under Section 3-C(1) is not the subject matter of challenge. The fact that the writ petitioner was well aware of such notification, is clear from the position that the writ petitioner had filed his objection dated 30.03.2007.



WEB COPY

6. Inter alia, he states that the notification under Section 3-A(1) of the Act is itself misconceived as the writ petitioner proposes to utilise the land for constructing a star hotel. The sum and substance of the objection reveals only private interest. Section 3-C(1) states that '*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 3A, object to the use of the land for the purpose or purposes mentioned in that sub-section*'.

7. The purpose mentioned under Section 3-A(1) is specific to 'public purposes'. In the interest of clarity a notification under Section 3-A(1) may be issued only if there is satisfaction by the Central Government that acquisition of the land is for public purposes only. Thus, they would contend that the only objection put forth by the writ petitioner is private interest, which would stand overridden by public interest.

8. The specific stipulation in Section 3-C has not been satisfied by the writ petitioner. We agree on this score since on perusal of the



objections said to have been filed, we do not find any objection put forth by the writ petitioner to the use of the land for public purposes mentioned under Section 3-A(1). On the contrary, the writ petitioner would maintain that the private interest in developing the property for commercial purpose would stand compromised by the proposed acquisition.

9. That apart, the Writ Court has proceeded on the fact that the objection was listed for enquiry in terms of Section 3-C(2). In this case, we had on the previous occasion called for records to satisfy ourselves that notice for enquiry issued by the authority had in fact been served on the petitioner. There is a specific finding of fact in this regard by the writ Court at para 17 of order dated 23.02.2015.

10. The records produced today only establish despatch of notice dated 21.04.2007 and despatch register, which has been produced before the writ court establishes this position. However, we do not find any acknowledgment or proof of service of the notice on the writ petitioner.



WEB COPY

11.Pursuant to the enquiry conducted in terms of Section 3-C(2), an order has been passed in terms of Section 3-C(3) on 04.06.2007 and there is an endorsement of despatch of this order as well. As in the case of the enquiry notice, there is no proof of service available.

12.The learned Special Government Pleader would refer to Office Memorandum issued pursuant to the Contact of Business Rules by the State to say that the relevant Rules only require proof of despatch to be maintained. All communication at the relevant point in time were being sent only by ordinary post.

13.We are not in agreement that this is the proper procedure to be followed. While undoubtedly, public purpose will outweigh private interest in the matter of acquisition, this does not mean and cannot be interpreted to understand that procedure set out in terms of Sections 3-A, 3-B and 3-C can be compromised in any manner.

14.In fact the absolute nature of acquisition under Section 3-D would mean that the procedure set out in the provisions prior thereto



WEB COPY

particularly, Section 3-C, must be observed carefully and in full compliance with the principles of natural justice.

15. Furthermore, Section 3-C(3) states that any order made by the competent authority under Section 3-C(2) shall be 'final'. Though such stipulation would not stand in the way of the intervention by the writ Court, the finality accorded under the statute renders such burden upon the authorities, more forcefully.

16. The aforesaid observations would not, however, stand to benefit the writ petitioner in the present case, since the writ petitioner has admittedly sent his objections and is well aware of the notification under Section 3-C. He is also clearly aware of the order of the acquisition that has been passed under Section 3-A(1). The records produced today reveal that subsequent events including award of compensation in terms of Section 3-C have been duly published in terms of provisions set out in the Act.



WEB COPY

17.Mr.Su.Srinivasan appearing for the third respondent would submit that fixation of compensation was duly communicated to the writ petitioner, who declined to accede to the same. It has thus been deposited in the joint account. The petitioner is thus at liberty to approach the authorities in regard to this aspect of the matter.

18.With the above observations, writ appeal is dismissed. No costs. Consequently, connected miscellaneous appeal is dismissed.

**[A.S.M.J.] & [R.V.J.,]
29.08.2023**

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

ta

To

The Competent Authority &
Special District Revenue Officer,
Land Acquisition-National Highways, (L.A.-N.H.),
Tirunelveli.



WEB COPY



DR.ANITA SUMANTH, J.
AND
R.VIJAYAKUMAR, J.

ta

Order made in
W.A.(MD)No.877 of 2015

Dated:
29.08.2023