



W.P.(MD)No.22708 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.12.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD)No.22708 of 2021
and
W.M.P.(MD).No.19185 of 2021

C.Kayalvizhi

... Petitioner

Vs.

- 1.The Secretary to Government,
Highways and Minor Ports Department,
Fort St. George,
Chennai-600009.
- 2.The District Collector,
O/o. the District Collector,
Madurai District.
- 3.The District Revenue Officer,
O/o. the District Revenue Officer,
Madurai District.
- 4.The Tahsildar,
Madurai East Taluk Office,
Madurai District.
- 5.The Divisional Engineer
Highways (Construction and Maintenance),
Madurai Division,
Madurai District.



W.P.(MD)No.22708 of 2021

6.The Executive Engineer,
Public Works Department (WRO),
Periyar Vaigai Basin Project,
Tallakulam,
Madurai.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned notification issued by the 3rd respondent in his proceedings in Na.Ka.No.35333/2020/B4 dated 17.11.2021 in so far the petitioner's property comprised in S.No.71/2A of an extent of 1100 Sq.Mtr is concerned and quash the same as illegal and unconstitutional and consequently forbearing the respondents herein in any way laying the approach road from Madurai Viraganoor-Ring Road Bridge though her land comprised in Old S.No.231, R.S.No.219/2 having New R.S.No.71/2A of an extent of 1100 Sq. Meter situated at Vandiyur 2nd Pit Village Madurai North Taluk, Madurai District without obtaining proper Feasibility Report and other necessary permissions from the Government and consequently directing the respondents to consider alternative route for laying the said approach road by considering the petitioner's representation dated 22.09.2021.

For Petitioner

: Mr.K.Govindarajan
for Mr.G.Thalaimutharasu

For R-1 to R-6

: Mr.A.K.Manikkam,
Special Government Pleader



W.P.(MD)No.22708 of 2021

WEB COPY

ORDER

This Writ Petition has been filed challenging the impugned notice issued by the third respondent through proceedings dated 17.11.2021 insofar as the property belonging to the petitioner is concerned and to forbear the respondents from in any way laying the approach road through the land belonging to the petitioner without considering the objections made by the petitioner and without following due process of law.

2. Heard the learned counsel on either side.

3. The acquisition proceedings that have been initiated under the Tamil Nadu Highways Act, 2001, (hereinafter referred to as "the Act") has been put to challenge by the petitioner mainly on the ground that the notice dated 17.11.2021 issued to the petitioner is not in compliance with Section 34 of the Act. That apart, the learned counsel appearing for the petitioner has also placed materials before this Court to substantiate that the acquisition proceedings itself is proceeding further without obtaining a proper feasibility report and without properly considering the alternative route that is available for laying the approach road.



W.P.(MD)No.22708 of 2021

WEB COPY

4. The fifth respondent has filed a counter affidavit and has justified the acquisition proceedings initiated. According to the fifth respondent, proper notice was issued as mandated under the Act and the objections were called for from the land owners. The fifth respondent had also given a reply for the objections that were received on the date of enquiry. In view of the same, the fifth respondent has sought for the dismissal of this Writ Petition.

5. It is not necessary for this Court to go into the merits of this case. This is in view of the fact that the very notice that has been issued by the third respondent suffers from illegality.

6. Section 15 of the Act provides for the procedure to be followed while initiating the acquisition proceedings under the Act. Section 15 (1) of the Act provides that the notice must be published in the Tamil Nadu Government Gazette by specifying the description of the land and the purposes for which the land is acquired. Section 15 (2) of the Act also provides that the Government person should call upon the owner or any



W.P.(MD)No.22708 of 2021

other person having interest in the property to show cause within such time may be specified in that notice, as to why the land should not be acquired.

7. Insofar as the service of notice to the owners and the persons interested, Section 34 of the Act provides as follows:

"34. Where any work, which the Highways authority is empowered to undertake, in relation to any highway, by or under the provisions of this Act is undertaken, it shall give notice to the persons known or believed to be the owners of or interested in, the lands benefited by such work, requiring them to appear before him either personally or by an agent, at a time and place therein mentioned (such time not being earlier than fifteen days from the date of receipt of notice) to state their objections, if any, to the imposition and recovery of betterment charges on such lands: Provided that no such notice shall be given, unless the Collector, with the previous sanction of the Government, has declared that the value of such lands is likely to increase or has increased by reason of such work."



W.P.(MD)No.22708 of 2021

8. It is clear from the above that the date of enquiry should not be fixed within fifteen (15) days from the date of receipt of the notice. This mandate has been imposed to ensure that sufficient opportunity is given to the land owner to make their objections

9. In the instant case, the notice is dated 22.11.2021 and whereas, the enquiry was fixed on 02.12.2021, which is less than ten days from the date of the notice. This is clearly in violation of the requirement under Section 34 of the Act. It was further contended that no wide publication was given in this case and as a result, the land owners were not properly put on notice regarding the enquiry.

10. The impugned notice issued by the third respondent clearly suffers from illegality, since it is not in conformity with Section 34 of the Act. On this short ground, the notice is liable to be interfered with by this Court and the same is hereby set aside insofar as the land belonging to the petitioner. There shall be a direction to the third respondent to issue a fresh notice to the petitioner as mandated under Section 34 of the Act. On receipt of the notice, it is left open to the petitioner to raise all the grounds and to



W.P.(MD)No.22708 of 2021

make all the objections before the third respondent. The same will be considered on its own merits and in accordance with law.

11. In the result, the Writ Petition is allowed with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

11.12.2023

NCC:yes/no

Index:yes/no

Internet:yes/no

tsg

To

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W.P.(MD)No.22708 of 2021

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W.P.(MD)No.22708 of 2021

N.ANAND VENKATESH, J

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W.P.(MD)No.22708 of 2021

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