

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2024

CORAM

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.A No.3495 of 2023
and C.M.P.Nos.28533 & 28535 of 2023

St.Judes Church
Represented by Parish Priest
Rev.Father G.J.Jerry Stephen
No.9, Medavakkam Main Road
Vanuvampet, Chennai 600 091.

.. Appellant

-VS-

1.The Secretary to Government of
Tamil Nadu, Highways and Minor
Ports Department, Secretariat,
Fort St.George, Chennai-600 009.

2.Divisional Engineer (Highways)
Chennai Metropolitan Development
Plan (CMDP) Division 1, Chennai 600 032.

3.Special Deputy Collector
(Land Acquisition), Tamil Nadu Urban
Development Project Phase III
MG Nagar Main Road, Poonamallee
Chennai 600 056.

.. Respondents

Prayer: Writ appeal filed under Clause 15 of the Letters Patent against the order of the learned Single Judge dated 23.08.2022 passed in W.P.No.6954 of 2011.

For the Appellant : Mr.K.V.Muthu Visakan
For the Respondents : Mr.A.Edwin Prabakar
State Government Pleader
assisted by Mr.T.K.Saravanan
- for R1 to R3

* * * * *

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

We have heard Mr.K.V.Muthu Visakan, learned counsel for the appellant and Mr.Edwin Prabakar, learned State Government Pleader, for the respondents.

2. The appellant had filed the writ petition challenging G.O.Ms.No.268 dated 13.08.2010 issued under Section 15(1) of the Tamil Nadu Highways Act, 2001.

3. The fulcrum of the challenge is that notice under Section 8(1) for fixation of the boundaries is not issued to the appellant. The learned Single Judge dismissed a batch of writ petitions including the present appellant's writ petition on the ground that the appellant was issued with a notice under Section 15(2) inviting objections as to why the land should not be acquired and thereafter Award came to be passed under Section 15(1).

4. Learned counsel for the appellant submits that issuance of notice under Section 8 is mandatory while fixing the building line / control line. The said notice not having been issued, the award passed stands vitiated. The learned counsel submits that had the notice been given regarding fixation of boundary/building line, the appellant would have raised an objection. Learned counsel submits that opposite to the land of the appellant, the Government land exists. In view of that, it would not have been necessary for the Government to acquire the land of the appellant. Learned counsel submits that the appellant having lost the opportunity to raise the objection, the acquisition proceedings deserves to be set aside.

5. The learned Single Judge, in the impugned order, has decided a batch of twelve writ petitions. About ten appeals were filed against the same judgment and they were withdrawn by the appellants.

6. It is not disputed that the appellant was issued with a notice under Section 15(2). The learned counsel submits that pursuant to the notice under Section 15(2), the appellant had raised an objection with regard to the boundary and the building line, so also the control line. It appears that the appellant was given an opportunity by issuance of a notice under Section 15(2) before proceeding to pass an Award under Section 15(1). The Award was passed in the year 2013 ie., during the pendency of the writ petition. The appellant did not challenge the said Award.

7. The learned Single Judge has considered the judgment of the Apex Court in case of **Sannarangappa -vs- State of Karnataka [2017 (12) SCC 797]** and has observed thus:

" 10. With regard to the submissions relating to opportunity u/s 8 and Section 15(1) of the Act, this Court in *N.R.Marappan -vs- The District Collector, Erode District and Ors* (2019) (7) MLJ 500, following the decision of the Hon'ble Supreme Court in *Sri Sannarangappa -vs- State of Karnataka* (2017 (12) SCC 797) with regard to grant of opportunity u/s 8 and 15(10) held as under:

12.1.....Sec.8(1) provides that the Highways Authority of any division may, by notification, in relation to any highway or any area in that division, where the construction or development of a highway is undertaken or proposed to be undertaken, fix the highway boundary line, building line and control line. The use of the expression 'may, to start with, appears to make the exercise contemplated under Sec.8 director and not mandatory."

11. The Hon'ble Apex Court in *Sannarangappa's case* (*supra*) has discussed the relevance of issuing notice and hearing the objections with relation to acquisition under the State Highways Act and in that regard, held as under:-

6.... From the above narration of the relevant provisions of the Act it clearly transpires that Section 15 of the State Act is a midway provision that the statute contemplates. What is of significance and which impacts the right of the landowners is the notification under Section 7 of the State Act fixing the highway boundaries, the building lines and the control lines. In respect of such an exercise notice under Section 7(2) of the State Act is contemplated whereby opportunity is given to the landowners to file their respective objections upon consideration of which the proposal can be modified or even abandoned. If at the stage of issuing notification under Section 7 such an opportunity is to be given, once the aforesaid stage is over and the map under Section 8 is published, acquisition of land as and when necessary under Section 15 is a consequential effect. At that stage, really a second opportunity to object to the acquisition need not be afforded in view of the opportunity already granted under Section 7(2). We, therefore, cannot find any error in the ultimate conclusion recorded by the High Court though our concurrence with the said

conclusion is on slightly different grounds, as indicated above."

8. In the light of the above, the learned single Judge committed no error while passing the order in the writ petition. The writ appeal as such, is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

9. The appellant shall be at liberty to avail the remedy as may be permissible under law for enhanced compensation.

(S.V.G., CJ.)

(J.S.N.P., J.)

01.04.2024

Index : Yes/No

Neutral Citation : Yes/No

kst

To

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