



Order dated 26.02.2024 in
W.P.No.11231 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.02.2024

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No.11231 of 2023
and
W.M.P.No.11101 of 2023

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A.Rajendran, S/o Appathurai

.. Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Principal Secretary,
Highways & Minor Ports Department,
Secretariat, St.George Fort,
Chennai.
2. The Chief Engineer (Projects),
Highways Department,
Chennai-600 025.
3. The Chief Engineer (Construction & Maintenance),
Highways Department,
Chennai-600 025.
4. The Superintending Engineer (Highways),
Project Division,
No.1, South Street, Ganapaty Nagar,
Medical College Road,
Tanjore-613 001.
5. Special District Revenue Officer (Land Acquisition),
Chennai--Kanyakumari,
Industrial Road Project,
Kumbakonam.
6. The Chief Bridge Engineer,
Southern Railway,
Egmore, Chennai.

.. Respondents



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Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the respondents to divert the proposed alignment line No.2, between the marking EOC CH: 597.608 and BOC CH: 714.363 as shown in the Site Plan at Reach KM: 98/00 to 98/8, dated 15.06.2018, 15 meters away from the line of backyard on the Southern side and 10 meters away from the line of Eastern Side fence of the petitioner's house situated at No.150/3, Mapadugai Main Road, Thiruvizhandhur (Ward No.7), Block No.49, comprised in T.S.No.1517 (Anna Chathiram) at Cauvery Poompattinam--Grand Anaicut Road at Km.98/4 (SH-22).

For petitioner : Mr.R.Sankarasubbu for Mr.J.Ravikumar

For respondents: Mr.T.Arun Kumar, Addl.G.P. for RR-1 to 5

Not ready in notice regarding R-6

ORDER

This Writ Petition is filed praying for issuance of a Writ of Mandamus to direct the respondents to divert the proposed alignment line No.2, between the marking EOC CH: 597.608 and BOC CH: 714.363 as shown in the Site Plan at Reach KM: 98/00 to 98/8, dated 15.06.2018, 15 meters away from the line of backyard on the Southern side and 10 meters away from the line of Eastern Side fence of the petitioner's house, situated at No.150/3, Mapadugai Main Road, Thiruvizhandhur (Ward No.7), Block No.49, comprised in T.S.No.1517 (Anna Chathiram) at Cauvery Poompattinam--Grand Anaicut Road at Km.98/4 (SH-22).

2. Learned counsel for the petitioner submitted that, originally, the property in question belonged to AVC Trust, and the petitioner had purchased



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the property from the said Trust and had put up construction in the property.

For the purpose of acquisition, as per Section 8 of the National Highways Act (Central Act 48 of 1956), persons who are all occupying the land(s), had to be given notice and only after giving notice and hearing them, the authorities had to pass orders.

3. Learned counsel for the petitioner further submitted that in this case, the petitioner had purchased the property, his possession was accepted and the Commissioner of Mayiladuthurai Municipality has also passed order on 25.05.2007 accepting the changes in the property tax and he had also observed that the said order may not be treated as a precedent in any case before any Court, based on which, necessary tax was paid and receipt was also issued on the respective dates. Thus, according to the learned counsel for the petitioner, the possession in respect of the property in question, had been deemed to have been accepted, but however, notice under Section 8(1) of the National Highways Act (as it stood before omission of the same by the Legislature), had not been complied with and that the petitioner was not heard.

4. Learned Additional Government Pleader appearing for the respondents 1 to 5 submitted that the above-said Trust had raised objection on the premise that the petitioner is an 'encroacher' and therefore, the petitioner is not entitled to any notice and hence, Section 8 of the National Highways Act need not be issued to the petitioner.



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5. Heard both sides and perused the materials available on record, including the respective counter affidavits filed by the fourth and fifth respondents and also the re-joinder filed by the petitioner.

6. It is seen that proceedings were initiated earlier for acquisition in respect of the property under dispute. On a perusal of the records, particularly, page 43 of the typed set of papers filed along with the Writ Petition, it is clear that the petitioner is not the owner of the building/property in question, and that, subsequently the petitioner has paid house tax, property tax etc., which is evident from the typed set. Thus, from these payments, it is clear that the petitioner is in possession of the property in question, and therefore, necessarily he has to be heard by issuing notice. Further, the official respondents have already been directed to conduct field inspection and if the authorities finds that necessary taxes that had been paid, are excessive in respect of the property in question, the respondents/authorities are hereby directed to give notice under Section 8(1) of the National Highways Act (as it stood before amendment on 24.01.1997).

7. In the above facts and circumstances, it is made clear that, before proceeding as directed above earlier, the authorities shall give notice to the petitioner / adjacent owners of the four boundaries of the subject land / rival claimants / interested parties / objectors / aggrieved parties, as the case may be, and the enquiry shall be conducted in the manner known to law and appropriate orders be passed in that regard.



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8. With the above observations/directions, the Writ Petition is disposed of. However, the petitioner's request for alignment of the property/land in question, cannot be considered by this Court, since this Court is not expert in respect of the alignment (of Lines) and it is for the expert body/Committee to decide the same.

9. If at all any building is existing and if the petitioner is found to be in possession, the respondents shall not disturb the possession of the petitioner, until the proceedings under Section 8 of the National Highways Act are over. It is further hereby directed that the petitioner shall co-operate for the measurement and identification of the property in question.

10. Till such time if the petitioner is in possession of the building/property, which is lying on the proposed Road, the possession of the land with the petitioner shall not be disturbed.

11. With the above observations/directions, the Writ Petition is disposed of. There shall be no order as to costs. Consequently, W.M.P. is closed.

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