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W.P.No.35934 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.P.No.35934 of 2024

and

W.M.P.No.38820 of 2024

in

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1. Loganathan
S/o.Munusamy
2. Boobalan
S/o.Subramanian
3. Devaraj
S/o.Solaiyappan
4. Dhanam
W/o.Pazhani
5. Jothi
W/o.Muthu
6. Suresh
S/o.Vedhalingam
7. Vanaroja
W/o.Ethiraj

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8. Shanmugakani
W/o.Karthivel

... Petitioners

Vs.

1. The Government of Tamil Nadu
Rep. by its Secretary to Government
Highways and Minor Ports Department
Fort St.George
Chennai-600 009.
2. The District Collector
Office of Collectorate
Thiruvallur
Thiruvallur District.
3. The Land Acquisition Officer
Special District Revenue Officer and Management
(Land Acquisition)
Chennai Peripheral Ring Road
Guindy, Chennai-600 025.
4. The Special Tahsildar (Land Acquisition) Unit I
Chennai Peripheral Ring Road
No.351, Rajaji Street, Thiruvenkatapuram
Ponneri, Tiruvallur - 601 204.
5. The Assistant Engineer (Highways)
Highways Department
Ponneri Division,
Ponneri - 601 204.

... Respondents



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Prayer :

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Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the entire records of the 5th respondent passed in Memo No.Ka.No.466/2022/A1 dated 06.11.2024 (which was served on the petitioners on 09.11.2024 and subsequently) and quash the same as illegal and unsustainable in law and consequently, direct the respondents not to evict the petitioners from the subject property or in the alternative, provide compensation and rehabilitation and resettlement benefits in terms of Central Act 30 of 2013 to the petitioners before evicting the petitioners form the subject property.

For Petitioners : Mr.H.Shabeer Ahmed
For Respondents : Mr.V.Ravi
Special Government Pleader
for R1 to R5

ORDER

[Order of the Court was made by **K.RAJASEKAR, J.,**]

This writ petition has been filed challenging an 'order dated 06.11.2024 bearing reference No.466/2022/A1 passed by the Assistant Divisional Engineer, Ponneri' {hereinafter 'impugned order' for the sake of brevity}.

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2. It is the case of the petitioners that they have received a public notice dated 28.08.2024 calling upon them to remove the constructions / structures put up by encroaching the lands belonging to the Highways Department within seven days. Challenging the aforesaid public notice, petitioners have filed a writ petition in W.P.No.26610 of 2024 before this Court and Honble Division Bench of this Court by an order dated 11.09.2024 directed the Highways Authority to consider the objections submitted by the petitioners and pass orders on merits and in accordance with law. The relevant portion of order dated 11.09.2024 in W.P.No.26610 of 2024 reads as follows:

'4. In the light of the submissions made, more particularly the fact that no individual prior notice was issued to the petitioners before issuing the impugned public notice dated 28.08.2024, we dispose of the writ petition with the following directions:

(i) The impugned public notice dated 28.08.2024 shall be treated as a show cause notice and the petitioners shall submit their objections within two weeks from the date of receipt of a copy of this order, enclosing all the documents on which reliance is sought to be placed;



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(ii) The fifth respondent shall consider the objections submitted by the petitioners, on merits and in accordance with law, and, thereafter take necessary action in accordance with law, if any encroachments are found; and

(iii) The entire exercise shall be concluded within twelve weeks from the date of receipt of a copy of this order.'

3. Based on the above order, writ petitioners herein have submitted a common representation dated 26.10.2024. Thereafter, the impugned order was passed by the Assistant Divisional Engineer, Highways Department, Ponneri. Challenging the said order, the petitioners are before this Court.

4. The learned counsel for writ petitioners submits that no proper enquiry was conducted more particularly, no personal hearing was given to writ petitioners. To buttress this, learned counsel relied on Rule 5 of 'the Tamil Nadu Highways Rules, 2003' {hereinafter 'said Rules' for the sake of convenience, clarity and brevity} and submitted that since no fair opportunity has been given to petitioners, prays to direct the respondents to consider the representation afresh after giving them personal hearing.



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5. Issue notice to respondents.

6. Mr.V.Ravi, learned Special Government Pleader accepts notice for respondents.

7. The learned State Counsel submits that based on the representation submitted by writ petitioners herein, final order has been passed by Assistant Divisional Engineer under Section 28(2)(ii) of 'the Tamil Nadu Highways Act, 2001' {hereinafter 'said Act' for the sake of brevity, convenience and clarity}. The learned State Counsel submits that since final order has been passed after considering the representation of writ petitioners, no further enquiry is contemplated either under the said Act or under said Rules and prays for dismissal of the writ petition.

8. The main contention of writ petitioners is that there was no personal hearing given to them and he has also relied on Rule 5 of said Rules. Rule 5 of said Rules reads as follows:

'5. Manner of publication of the public notice - Before publishing a notice under sub-section (1) of Section 15 the Government or the Collector or the Special District Collector (Land Acquisition), Tamil Nadu Urban Development Project - III or the Special District Revenue Officer (Land Acquisition) as the case may be, shall in addition to calling upon the owner and any other person



having interest in the land to show cause as to why the land should not be acquired, shall also cause a public notice to that effect to be published in one English and in one Tamil newspaper having circulation in the locality. The said notice shall also be displayed in the offices of the -

(i) Highways Authority of the division concerned; (ii) Village Administrative Officer of the Village concerned; and (iii) Tahsildar of the taluk concerned.

(2) If an objection is received from a person interested in the land within the time prescribed in the public notice issued under sub-section 2 of Section 15, the Government or the Collector or the Special District Collector (Land Acquisition), Tamil Nadu Urban Development Project-III or the Special District Revenue Officer (Land Acquisition) as the case may be, shall fix a date for hearing the objections and give notice thereof to the objector as well as to the Highways Department. Copies of the objection shall also be forwarded to the Highways Department. The Highways Department may file on or before the date fixed by the Government or the Collector or the Special District Collector (Land Acquisition), Tamil Nadu Urban Development Project-III or the Special District Revenue Officer (Land Acquisition) as the case may be, a statement by way of answer to the objections and may also depute a representative to attend the enquiry;

(3) On the date fixed for enquiry or any other date to which the enquiry may be adjourned, the Government or the Collector or the Special District Collector (Land Acquisition), Tamil Nadu Urban



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Development Project-III or the Special District Revenue Officer (Land Acquisition) as the case may be, shall hear the objector or a person authorised by him in this behalf and the representative, if any, of the Highways Department and record any evidence that may be produced in support of the objection and in support of the need for acquiring the land;

(4) Where the enquiry is conducted by the Collector, on completion of enquiry, the Collector shall submit all the details of the enquiry to the Government to pass order under sub-section (3) of Section 15;

(5) Where the enquiry is conducted by the Government, the Government will pass order under sub-section (3) of Section 15.'

9. A perusal of Rule 5 of said Rules brings to light that this rule is applicable only to the authorities exercise powers under Section 15(1) of said Act.

10. Section 15(1) of said Act reads as follows:

'15. Power to acquire land - (1) If the Government are satisfied that any land is required for the purpose of any highway or for construction of bridges, culverts, causeways or other structures thereon or for any purpose incidental or ancillary thereto, in furtherance of the objects of this Act, they may acquire such land by



publishing in the Tamil Nadu Government Gazette a notice specifying the description of such land and the particular purpose for which such land is required.'

11. Section 15(1) of said Act empowers the Government to acquire the land for the purpose of highway or for construction of bridges, culverts, causeways or other structures thereon. Since Rule 5 of said Rules deals with opportunity of personal hearing only to the cases of acquisition of lands, seeking personal hearing is not applicable to the case on hand which is in the nature of removal of encroachment.

12. On a reading of impugned order, it came to light that each and every objections raised by the petitioners herein have been answered by the Assistant Divisional Engineer and he has also ascertained that the subject land belongs to Highways Department.

13. In the support affidavit of the earlier writ petition filed by petitioners herein, they have stated that they were in occupation of Government land for several years and it is not their case that they have



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purchased or they were in possession of patta land. Admittedly, the petitioners were in possession of Government land. Since said land has been transferred in favour of Highways Department for formation of road or Highways, Highways Department are entitled to take possession of said land. It is the case of the Highways Department that they have already formed a road in which petitioners are in encroachment.

14. Considering the facts and circumstances of the case, we are of the view that writ petitioners have not made out any case for interfering with the impugned order.

Accordingly, the Writ Petition is dismissed. There shall be no order as to costs.

(M.S.,J.)

(K.R.S.,J.)

27.11.2024

Index : Yes / No

Neutral Citation : Yes / No

Speaking order / Non-speaking order

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M.SUNDAR, J.,

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K.RAJASEKAR, J.,

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