



W.A.(MD).No.323 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 27.09.2023

PRONOUNCED ON: 30.01.2024

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND
THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

W.A.(MD).No.323 of 2019

and

C.M.P (MD).Nos. 2523, 2524 of 2019 & 6875 of 2023

M.Sathasivam

.. Appellant

VS

- 1.The District Collector,
Collectorate,
Thruchirapalli – 620 001.
- 2.The District Revenue Officer,
Land Acquisition, Collectorate,
Tiruchirapalli- 602 001.
- 3.The Chief Engineer (H),
Planning, Design and Investigation,
Integrated Chief Engineers' Office,
HRS Campus, 76, Sardar Patel Road,
Guindy, Chennai – 600 025.
- 4.The Chief Engineer,
Project Wing,



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Integrated Chief Engineers' Office,
HRS Campus, 76, Sardar Patel Road,
Guindy, Chennai – 600 025.

- 5.The Chief Engineer (H),
Construction and Maintenance Wing,
Integrated Chief Engineers' Office,
HRS Campus, 76, Sardar Patel Road,
Guindy, Chennai – 600 025.
- 6.The Superintending Engineer (H),
Highways Department, Trichy Circle,
Trichy.
- 7.The Divisional Engineer (H),
Project Division,
Highways Department – Trichy Division,
Ponnagar, Trichy – 01.
- 8.The Chief Engineer,
Construction,
GM's Office, Southern Railway Head Office,
Park Town, Chennai – 600 003.
- 9.The Deputy Chief Engineer,
Construction,
Mc.Donalds Road,
Opp. To Malai Nagar,
Trichy – 620 001.
- 10.The Commissioner/Special Officer,
Tiruchirapalli City Municipal Corporation,
Tiruchirapalli – 620 001.
[R10 impleaded vide order



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Dated 10.06.2021 made in

CMP(MD) No.4844/21 in WA(MD)No.323/19]

.. Respondents

Prayer : Appeal filed under Section 15 of Letters Patent to set aside order dated 18.01.2019 made in W.P.(MD).No.4311 of 2018.

For Appellant	: Mr.S.Subbiah, Senior Advocate For Mrs.J.Anandhavalli
For Respondents	: Mr.R.Shanmugasundaram Advocate General Assisted by Mr.Veerakathiravan, Additional Advocate General for Mr.S.ShajiBino Special Government Pleader

Judgment

*(Delivered by **DR.ANITA SUMANTH., J**)*

In this writ appeal, the unsuccessful writ petitioner has challenged an order passed on 18.01.2019 by the writ court. The writ petitioner is a co-owner of the land in T.S.No.10 and 18, Block 37, Ward F, Devadhanam Village, Tiruchirapalli East Taluk, Tiruchirapalli District ('property'/'property in question'). The property houses a multi-storied residential apartment complex



called 'Sankar Abodes 'Crown Block'. There are 28 flats and 14 shops in the complex.

2. R2 in writ petition i.e., the District Revenue Officer (DRO) had issued a notice on 04.07.2017 under Section 15(2) of the Tamil Nadu Highways Act, 2001 ('Act'), which was challenged in the writ petition. Before the writ court, the writ petitioner had argued that the notice did not satisfy the pre-requisites of the Act and was invalid insofar as Section 3 of the Act required the road in question '*to have been declared as a Highway for any acquisition to be carried on in regard to that highway*'.

3. They also argued that the pre-requisites of Section 8 of the Act had not been satisfied since there had been no fixation of highway boundary, building or control line as required and furthermore, no notice had been issued under Section 8 of the Act.

4. The writ petitioner had relied on the decision in *R.Moorthy and 28 others v State of Tamil Nadu* [2014 (2) CWC 763] whereas the respondents had relied on the orders in (i) W.P.(MD)No.2353 of 2018 dated 18.04.2018 in the case of *B.Nambirajan and 23 others v The District Collector, Kanyakumari District at Nagercoil* and *23 others v District Collector, Kanyakumari District at Nagercoil* [W.P.(MD)NO.2353 of 2018 dated 18.04.2018], (ii) *R.Kumar and others v State of Tamil Nadu and others* [(2007) 2 MLJ 384] and



(iii) *CeeDeeYes Standard Towers (P) Ltd. v The District Collector of Chennai and others* [(2013) 1 CWC 425], which was taken in appeal in W.A.Nos. 162,163,164 & 794 of 2014 decided by the Division Bench on 28.01.2015 in the case of *The Collector of Chennai and others v. M/s.CeeDeeYes Standard Towers (P) Ltd.and another*. The Division Bench had remanded the matters to the file of the writ court, which ultimately dismissed the same on 14.09.2016.

5. While dismissing the matters on 14.09.2016, this Court had referred to the decisions in *Jayaraman and others v State* [(2014) 4 MLJ 685] and *R.Moorthy* (supra), finding the two decisions to be at variance with each other. In the case of *Jayaraman*, this Court had held that a notification under Section 15(2) is not liable to be challenged for want of declaration under Section 3 of the Act or notification under Section 8 of the Act whereas in *Moorthy's case*, this Court had taken a contrary view. In the decision of the writ court dated 14.09.2016, the ratio in *Jayaraman's case* had been followed as being correct.

6.The writ court noticed the cleavage in opinion as also the decision of the Division Bench in *B.Nambirajan*. While the writ petitioner had submitted that the decision in *Nambirajan's case* was per incuriam, the writ court, being bound by the same and since the Bench in *Nambirajan's case* had reiterated the decision in *Jayaraman's case*, rejected the contentions of the petitioner with



regard to both Section 3 as well as Section 8 of the Act. Since it was only a notice that had been challenged, the writ Court directed the competent authority to take note of the objections filed to the notice and hold a proper enquiry.

7. The submissions made before the writ court are reiterated before us, writ petitioner maintaining that decision in *Nambirajan's* case calls for a relook. Thus, we set out the march of the law and prior thereto, extract the relevant legal provisions to set the decisions in context.

8. The Tamil Nadu Highways Act, 2001 is a code by itself covering various aspects relating to the roads in the State other than National Highways with a view to (i) fixing the building and control lines of the roads (ii) declare the roads as State Highways, Major District Roads and Village Roads, (iii) prevent encroachment on State Highways (iv) acquire required lands for formation and development of State Highways and (v) vest necessary powers in the authorities to undertake the aforesaid objects. Building line and Control line are respectively taken note of under sub-clause (4) and (6) of Section 2 to mean the lines on either side of any Highway or part of highway as may be fixed under Section 8.

9. A highway is defined under Section 2(12) exhaustively as follows:-



“(12)”highway” means any road, way or land which is declared to be a highway under Section 3 and includes –

(a)all land appurtenant thereto, whether demarcated or not;

(b)the slope, berm, burrow pits, footpaths, pavement, whether surfaced or unsurfaced;

(c)all bridges, culverts, causeways, carriageways or other structures built on or across such road or way;

(d)the footway attached to any road, public bridge or; causeway

(e)the drains attached to any such street, public bridge or causeway and the land, whether covered or not by any pavement, verandah or other structure, which lies on either side of the roadway up to the boundaries of the adjacent property, whether that property is private or property belonging to the Central Government or any State Government; and

(f)all fences, trees, posts and boundaries, hectometer and kilometer stones and other highway accessories and materials stacked on such road or public bridge or causeway, but does not include a National Highway declared as such by or under the National Highways Act, 1956(Central Act 48 of 1956).”

10. Section 3 relates to declaration in respect of roads, ways or lands

as highways and reads thus:-

“3.Declaration of roads, ways or lands as highways.- On the recommendation made by the State Highways Authority, the Government may, by notification, declare any road, way or land to be highway and classify it as any one of the following, namely:-

(i)a State Highway;

(ii)a major district road;



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(iii) other district road ; or

(iv) a village road:

Provided that where such road, way or land whether in whole or in part is owned by any local authority, such notification shall be issued with the concurrence of that local authority by a resolution passed by it in this behalf.”

11. Section 8 coming under Chapter III entitled ‘Restrictions of ribbon development’, adumbrates on the power to fix highway boundary, building line, controlling line etc., and contains, inter-alia the procedure to be followed by the authorities in relation to the matters stipulated therein. It reads thus:-

“8. Power to fix highway boundary, building line, control line, etc.

(1)The Highways Authority or 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-
(a) the highway boundary, building line, or control line;
or

(b) the highway boundary and the building line; and
(c) the building line and the control line;

Provided that before the publication of the notification under this sub-section, a draft of the said notification shall be published inviting objections, if any, on the proposed fixation.

(2) The draft of the notification under sub-section (1) shall contain-

(a) all details of lands situated between the highway boundary line and control line proposed to be fixed and in the case of new works, the lands and persons benefited by the construction or development of such highway; and
(b) notice requiring all persons likely to be affected by such notification, to make their objections or suggestions, if any, in writing, with respect to the issue of



such a notification, to the Highways Authority within such period as may be prescribed.

(3) After considering the representation, if any, received under sub-section (2), the Highways Authority may, with the approval of the State Highway Authority-

(i) drop the proposal to fix the highway boundary, the building line or the control line; or

(ii) publish the final notification under sub-section (1) with such modifications as may be considered necessary.

(4) Notwithstanding anything contained in sub-sections (1), (2) and (3), the Government may, in consultation with the State Highways Authority, having regard to the situation or the requirements of any highway or the condition of the area through which such highway passes,-

(a) fix different building line and control line for such highway; or

(b) refrain from fixing the building line or control line for such highway or portion thereof.”

12.The power to acquire land is vested in the Government in terms of

Section 15 that reads as under:-

“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.



(2) *Before publishing a notice under sub-section (1), the Government shall call upon the owner and any other person having interest in such land to show cause within such time as may be specified in the notice, why the land should not be acquired. The Government shall also cause a public notice to be given in such manner as may be prescribed.*

(3) *The Government may, after considering the cause, if any, shown by the owner or other person having interest on such land, pass such an order under sub-section (1), as they may deem fit.”*

13. Having seen the statutory provisions, we now advert to the decisions.

The earliest of the decisions is *Jayaraman and others v State of Tamil Nadu* dated 21.02.2014 and the second is *R.Moorthy and 28 others*, decision dated 25.09.2014. Both these decisions came up for consideration before the Division Bench in the case of *Caritas India Rep. by Diocesan Director Fr.Anthony Rajvs Union of India*[2019 (5) MLJ 641].

14. In the case of *Jayaraman*, S.Manikumar.,J considered the challenge to notification issued for acquisition of land in Tindivanam. In that decision too, the challenge was that the mandatory requirement envisaged under Section 8 of the Act had not been followed. It had been the contention of those petitioners that the Highways authorities are mandated to fix highway boundary, building line and control line by way of a draft notification, the notification was to be published inviting objections, the objections were to be considered and the final notification issued only thereafter.



15. The petitioners had averred that proper procedure had not been followed, and hence the acquisition encroached upon their valuable rights of land holding. An additional point laid before the Court was that the road upon which construction of a railway gate bridge had been proposed had not been declared as a highway and hence could not be acquired. For the last proposition, the decision in *CeeDeeYes Standard Towers (P) Ltd* (supra) had been relied upon.

16. Section 15 commences with the requirement that the acquisition is to be preceded by a publication in the Tamil Nadu Government Gazette of a notice specifying the description of land and the purpose for which the acquisition is to be made. The specific point raised is that such publication was conditional upon a declaration under Section 3 of that specific road, ways or lands as a highway.

17. In the case of *CeeDeeYes*, the Court interpreted Section 8 concluding that the procedure set out thereunder was sacrosanct and would have to be adhered to scrupulously. Thus, resort to Section 15 (2) for acquisition without complying with the procedure set out under Section 8 of the Act was held to be an arbitrary exercise of power.

18. In the case of *R.Kumar*, wherein A.Kulasekaran.,J dismissed the writ petition, the petitioners were owners of property in the IT Corridor in Old Mahabalipuram Road (OMR) and a similar relief was sought for by them as in



the case of *CeeDeeYes*, which came to be rejected on the ground that the IT Corridor had been declared as a highway and thus there was no necessity for any further procedure to be followed. The distinction made was that the road in the case of *CeeDeeYes*, had not been so declared as a highway.

19. The matter travelled in appeal and First Bench of this Court dismissed the writ appeals on several grounds, including that the project was a mega one involving a six lane express highway to provide infrastructure development to IT companies and thus public interest would override private interest and require that the activity be proceeded with.

20. In the case of *Jayaraman*, after consideration of the aforesaid decisions, the writ Court was of the view that there was no merit in the writ petition and dismissed the same. They also noticed and relied upon the judgment of the Hon'ble Supreme Court in *Aflatoon v Lt.Governor of Delhi* [(1975) 1 SCR 802] in the context of planned development of Delhi and in *Bhagat Singh vs State of U.P.* (AIR 1999 SC 436).

21. In the case of *R.Moorthy*, which was decided shortly after *Jayaraman's case*, the challenge was to the construction of a Road Over Bridge and Road Under Bridge between Virudhunagar and Thulikkapatti Railway stations. In a very detailed judgment, the writ court held that the State Act was repugnant to the provisions of the Central Act and that mandatory procedures



contemplated under the State Act had not been followed. The notifications impugned therein were set aside granting the State liberty to issue a fresh notification in compliance with the statutory provisions.

22. In the case of *Nambirajan* the two decisions as aforesaid, that is, in the cases of *Jayaraman* and *R.Moorthy* came to be reconciled. In that case, the Division Bench Court considered the proposal of converting the existing National Highway, NH 47 between Kanyakumari – Trivandrum to a four way road. One of the arguments advanced by the petitioners was that the road which is proposed to be formed was a new road, not declared to be a National Highway and that the National Highways Act would be applicable only if a declaration had been made in accordance with Section 2 of the Act.

23. That contention was rejected as being totally devoid of merits as the acquisition was for converting an existing road into a road with four lanes. That apart, the procedures set out under the National Highways Act had also been adhered to, notices issued, objections called for and only thereafter was a final notification issued. Finding no infirmity in the order, the order of the writ Court was upheld and in doing so, the decision in *Jayaraman* was relied upon.

24. Thus, the decisions relied upon settle the position that in deciding matters of acquisition, public interest would be given precedence subject however, to all proper procedures having been followed by the authorities. That,



in effect, is the sum and substance of the decisions relied upon. The grievance of the petitioner is that the statutory mandates under the Act had not been followed, in that there had been no declaration of the road as a Highway and neither had the provisions of Section 8 been adhered to.

25. We have heard Mr.S.Subbiah, learned Senior Advocate appearing on behalf of Mrs.J.Anandhavalli, learned counsel for the petitioner and Mr.R.Shanmugasundaram, learned Advocate General assisted by Mr.Veerakathiravan, learned Additional Advocate General and Mr.S.ShajiBino, learned Special Government Pleader appearing for the respondents.

26. The scheme of the Act has to be read in totality. Section 3 provides for a declaration of roads, ways or lands as highways on the recommendation made by the State Highways Authority. In this case, G.O.(Ms).No.206, Highways and Minor Ports (HQ2) Department dated 17.12.2012 had been passed setting out various proposals whereunder the Chief Bridge Engineer Southern Railway had formulated nine proposals for construction of Road Over Bridge and Road Under Bridge (ROB/RUB) in the Railway Works Programme 2012 – 2013. The work in question is at sl.no.3, which reads as follows:-

S.No	Name of work	District	Road	LA cost	Cost of shifting of service utilities	Site investigation charges	Total (Rs in crores)
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3	Construction of Road Over Bridge at km 0/4 of Cauvery Road in lieu of existing LC No. 249 at Railway km 331/7-8 in between Srirangam and Trichy Town Railway Stations	Trichy	Corpn.road	10.00	6.09	0.10	17.05
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27. The proposal had been accepted by the Government and in-principle approval had been granted for the same. Plans had been drawn and the property in question was proposed to be acquired under the relevant provisions of the Act. A public notice had been issued under Section 15(2) of the Act on 05.07.2017. That notice stipulated that lands specified in the schedule situate in Devadhanam Village, Tiruchirappalli (East Taluk), which includes the lands in question were proposed to be acquired for '*between Srirangam- Town Railway Station Construction of highways bridge*'. Persons interested in these lands were required to lodge their objections within stipulated time.

28. The petitioner has responded to the notice and have submitted their objections, simultaneously, challenging the Notification by way of writ petition. Their contention, that there ought to have been a declaration in terms of Section 3 of the Act is, in our view misconceived as the question of such declaration does not arise in this case. The purpose of the project is for construction of ROD/RUB and thus the work contemplated is not akin to development of



highways but a different public purpose altogether. There could be no such declaration in such a case.

29. We now come to Section 15 of the Act, which vests the power of acquisition in the Government. This power is wide and is premised on the assumption that the acquisition is for public purpose. In the present case, the land in question is required for construction of ROB/RUB and would come within the ambit of the phrase '*other structures*' in Section 15. The procedure that has to be followed prior to a final notification as contemplated under Section 15(2), requires the Government to issue a public notice calling for objections, which has been complied with in the present case.

30. In fact, the petitioner is also seen to have filed his objections to the proposed acquisition. The public notice is seen to contain the details of the properties proposed to be acquired and the details of variations. This aligns with the requirements under Section 8 as well. We are thus unable to accede to the submissions of the petitioner that proper procedure has not been followed by the respondents.

31. In the compilation filed on 30.08.2023, the current status of the land acquisition is set out and the project is seen to have stalled solely on account of the 705 square meters of land which is the subject matter of the



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present appeal as it lies in the way of the road over bridge. Moreover, an award has come to be passed on 31.05.2023 granting compensation to those persons whose properties have been acquired including the present appellant.

32. In light of the discussion as aforesaid, we are of the categorical and considered view that there is no merit in this writ appeal and dismiss the same. No costs. Connected miscellaneous petitions are closed.

[A.S.M.,J] [R.V.,J.]
30.01.2024

Index: Yes/ No

Neutral Citation: Yes/No

ssm

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Pre-delivery Judgment
in
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