



W.P.(MD) No.16552 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.10.2024

CORAM

THE HONOURABLE Ms.JUSTICE P.T.ASHA

W.P.(MD) No.16552 of 2024

and

W.M.P.(MD) Nos.14334 and 14335 of 2024

C.Kayalvizhi

... Petitioner

/vs./

- 1.The Secretary to Government,
Highways and Minor Ports Department,
Fort St.George,
Chennai 600 009.
- 2.The District Collector,
Office of the District Collector,
Madurai District.
- 3.The Special District Revenue Officer,
Land Acquisition and Management,
Madurai.
- 4.The Tahsildar,
Madurai East Taluk Office,
Madurai District.



W.P.(MD) No.16552 of 2024

WEB COPY

5.The Divisional Engineer,
Highways (Construction and Maintenance),
Madurai Division,
Madurai.

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 the records relating to the proceedings of the 3rd Respondent made in Ref.No.11/2022/SG-II dated 28.06.2024 and quash the same and consequently direct the Respondents to from the Vaigai North Bank Road on the Government lands available on the bunds Vaigai North.

For Petitioner : Mr.R.Murali

For Respondents : Mr.D.S.Nedunchezian
Government Advocate

ORDER

The petitioner has filed this writ petition for the following relief and the relief is extracted as set out in the affidavit filed in support of this writ petition:-

“Writ of Certiorarified Mandamus, calling the records relating to the proceedings of the 3rd Respondent made in Ref.No.11/2022/SG-II



W.P.(MD) No.16552 of 2024

WEB COPY

dated 28.06.2024 and quash the same and consequently direct the Respondents to from the Vaigai North Bank Road on the Government lands available on the bunds Vaigai North.”

2. The facts which has been set out in the above writ petition are as follows:-

2.1. The lands comprised in Old.S.No.231, R.S.No.219/2 situate at Vandiyur Bit II, Madurai East Taluk, bearing patta No.584, measuring an extent of 28 cents belonged to one Ramayi Ammal, W/o Ponnu Pillai. The said property had been purchased by one Ramakrishnan and his wife, Muthumeenal under a sale deed dated 16.02.1993 from the said Ramayi Ammal.

2.2. The petitioner would submit that she has purchased the property from the said Ramakrishnan and Muthumeenal after paying the necessary sale consideration under a registered sale deed dated 11.02.2022. Since then, she has been in absolute possession and enjoyment of the property and the patta as also the revenue records have also been mutated in her name. The petitioner has been



W.P.(MD) No.16552 of 2024

paying all the taxes and the other charges in respect of the property to the concerned Authorities.

2.3. The petitioner would submit that she had kept her lands vacant with an intent to put up a house for herself. The land is situate on the northern side of the Vagai River Bridge and the Viraganoor Ring Road. She would state that the Government had decided to lay a Tar road from the northern side of Vaigai River towards Annanagar to Viraganoor as part of the Smart City Project. For this purpose, they had proposed to acquire the petitioner's property. The petitioner would submit that the respondents are trying to encroach and acquire the entire property of the petitioner and lay the road therein. It is her contention that there are Government lands available, which can be used for the aforesaid purpose and it is not necessary to acquire the property of private persons. She would submit that the lands are sought to be acquired for the purpose of laying the road only to satisfy some land owners. She would submit that there is alternate route available for laying the road and the Government lands are also available.



W.P.(MD) No.16552 of 2024

WEB COPY

2.4. Meanwhile on 18.05.2020, the Government vide G.O.Ms.No.71, dated 18.05.2020 had approved a proposal for formation of the road and for acquisition of lands. On the basis of this approval, the second respondent had issued a notice dated 22.11.2021 under Section 15(2) of Tamil Nadu Highways Act, 2001, by fixing the date of enquiry on 02.12.2011. Aggrieved by the said notice, the petitioner had filed W.P.(MD) No.22708 of 2021 and obtained interim orders. The writ petition was disposed of by order dated 11.12.2023 in and by which the impugned notice was set aside on the ground that sufficient opportunity and time in terms of Section 34 of the Act had not been granted. This Court had directed the respondents to issue a fresh notice and liberty was granted to the petitioner to place her objections. With these directions, the Writ Petition was allowed.

2.5. Thereafter, the third respondent has issued an enquiry notice dated 25.04.2024 fixing the date of enquiry on 24.05.2024. Detailed objections were submitted on 23.05.2024 and the same was sent by Registered Post and the petitioner on the very next day ie., 25.04.2024 had appeared in person before the third respondent. The petitioner would submit that the Officer concerned was not available and it was the subordinates who had taken the petitioner's objections.



W.P.(MD) No.16552 of 2024

He was informed that further enquiry would be conducted and contrary to the assurance, the impugned order came to be passed on 28.06.2024 rejecting the petitioner's objections and therefore, the writ petition had been filed.

3. The main ground of challenge which has been set out in the writ petition is that under Section 15(3) of the Tamil Nadu Highways Act (*herein after referred to as Act*), it is the Government, who is the authority to pass orders on the objections and not the third respondent, whereas in the instant case it is the third respondent, who has passed the order. The petitioner would contend that the provisions of Rule 5(2) and 5(3) of the Tamil Nadu Highway Rules, (*herein after referred to as Rules*) had not been complied with. The next main grievance is that on the northern side of the Vaigai River, the respondents have utilized only the Government land, but in the case of the southern bund, in order to favour certain influential encroachers the road has been deviated from its original course.

4. A counter has been filed by the third respondent, wherein it had been stated that there has been a compliance of the provisions of the Act before the lands of the petitioner had been acquired. He was permitted to appear for the



W.P.(MD) No.16552 of 2024

enquiry and he had appeared in person as well as gave the written submissions on 02.12.2021. After hearing the objections from the owners, orders under Section 15(3) of the Act came to be passed by the Commissioner of Land Administration, Chennai.

5. Thereafter, on behalf of the Government, the Commissioner of Land Administration had published 15(1) notice under the Act in the Official Gazette dated 18.04.2023. The petitioner was called for private negotiation under Section 19(2) of the Act on 20.07.2022 and this notice has been received by the petitioner, who had however not participated. The subsequent enquiry under Section 19(5) of the Act for fixation of compensation was attended by the petitioner, but no document to prove the ownership of the land had been submitted. The petitioner had in the meantime challenged the 15(2) notice dated 22.11.2021 and as per the orders of this Court in the said writ petition, namely W.P.(MD) No.22708 of 2021, which is allowed, a fresh date of enquiry was communicated to the petitioner by way of speed post on 25.04.2024. The petitioner has attended the meeting on the day as set out in the revised notice and the objection of the petitioner was turned down by the third respondent.



W.P.(MD) No.16552 of 2024

WEB COPY

6. The respondents would further submit that the District Revenue Officer of the District was empowered by Tamil Nadu Act 34 of 2002 to perform the functions of the Collector of the District concerned under the Act. Further, in exercise of the powers given conferred on the Government under Section 56 of the Act, the Government had authorized the Commissioner of Land Administration to exercise the power of the Government vested in them under sub Section 1 and 3 of Section 15 of the Act. They further submitted that the acquisition, according to the respondents, was under the restriction of Ribbon Development. They had therefore sought for dismissal of this writ petition.

7. When the matter had come up for hearing on 19.09.2021, this Court had wanted the respondents to produce the project report to verify as to whether the inclusion of the petitioner's property was subsequent to the original notification. The project map was produced for the scrutiny of this Court. They had also provided the photographs of the proposed road. The respondents explained to the Court that even at the outset the lands of the petitioner had been acquired, they had proposed to lay the road as in the case of the southern bund through the



W.P.(MD) No.16552 of 2024

poramboke lands abutting the river. However, a technical objection was raised stating that the road cannot be stretched right on to the bridge as a slopping gradient is required which cannot be provided in the southern bund, as the poramboke land tappers into a smaller size as it near the bridge and the river would stretch out till the trees. Therefore, they had decided to reroute the road through the lands that had been acquired, for which the compensation has been deposited. The diagram would show the formation of the mud road leading up to the road which continues from the bridge. The learned counsel have more or less reiterated the contents of the affidavit and the counter.

8. As regards the second contention of the petitioner that only his lands have been taken out for acquisition cannot be countenanced in view of the very notification, which clearly sets out the various survey numbers that are sought to be acquired and also the photographs which clearly shows that the road runs across the property of several others. This Court was also given to understand that except for the writ petition filed by the petitioner, none of the others have challenged the acquisition. The main ground of challenge is that the impugned order has been passed by a person, who is not an authorized authority as



W.P.(MD) No.16552 of 2024

contemplated under Section 15(3) of the Act as well as the Rules. Section 15 of the Tamil Nadu Highways Act, 2001, would read 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.

(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.”



W.P.(MD) No.16552 of 2024

WEB COPY

9. Rule 5 of the Tamil Nadu Highways Rules, 2003 provides the manner in which the publication of the public notice as contemplated under Section 15(1) of the Act and the procedure for disposal of the objections under Section 15(2) of the Act has been set out. Rule 5(2) of the Tamil Nadu Highways Rules, 2003, is extracted herein below:

“5.2. If any 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 Deputy Collector (Land Acquisition), Tamil Nadu Urban Development Project III] 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, as the case may be, a statement by way of answer to the objections and may also depute a representative to attend the enquiry.”



W.P.(MD) No.16552 of 2024

WEB COPY

10. A perusal of Rule 5(2) would indicate that where an objection is received from a person, the Government or the Collector as the case may be shall fix the date for hearing the objection after giving due notice to the objectors as well as the Highways Department. The objection shall be forwarded to the Highways Department. On the date fixed for the enquiry or its adjourned date, the Government or the Collector shall hear the objectors or the persons authorized by them, record the evidence if any produced in support of the objections or in support of the need for acquiring the land. Where an enquiry is conducted by the Collector as per Rule 5(4), the details of the enquiry has to be forwarded to the Government who will pass orders under Section 15(3) and Rule 5(4) would say that where the enquiry is conducted by the Government, the Government can directly pass orders as contemplated under Section 15(3).

11. In the instant case, the third respondent has conducted the enquiry. He has also passed orders thereon. The third respondent is only authorized to conduct the enquiry, record the evidence and thereafter send a report to the Government, who thereupon shall pass orders. In the case on hand, the third respondent has himself passed the orders. Therefore, to that extend, the impugned order requires



W.P.(MD) No.16552 of 2024

WEB COPY

to be set aside. In fine, the Writ Petition is partly allowed and the impugned order insofar as it rejects the objections is set aside and the report shall be forwarded to the Government or the Authority delegated by the Government for passing orders under Section 15(3) of the Act, who shall thereafter pass orders based on the report to be submitted. No costs. Consequently, connected Miscellaneous Petitions are closed.

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No

01.10.2024

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13/15



W.P.(MD) No.16552 of 2024

WEB COPY

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WEB COPY



W.P.(MD) No.16552 of 2024

P.T.ASHA, J.

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W.P.(MD) No.16552 of 2024

01.10.2024