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W.A. No.734 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2025

CORAM :

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ**

**W.A. No.734 of 2022
and
C.M.P. No.5122 of 2022**

1.The Additional Chief Secretary to Government,
Highways & Minor Ports Department,
Secretariat, Fort St.George,
Chennai.

2.The Chief Engineer,
Construction and Maintenance Wing,
Highways Department,
Chepauk, Chennai-600 005.

... Appellants(s)

Vs.

1.P.Arunkumar

2.P.Rajesh Kumar

3.P.Ramachandriah son & Co,



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No.1/871, Plot No:28,
Venkateswara Nagar Main Road,
Somu Nagar, Medavakkam,
Chennai-600 100.

4.The Chief General Manager (Tech)
& Regional Officer, National Highways
Authority of India SRI Tower,
3rd Floor, DP 34 (SP) Industrial Estate,
Guindy, Chennai-600 032.

5.The Competent Authority & Special
District Revenue Officer,
Land Acquisition, National Highways,
Kancheepuram & Thiruvallur District,
Kancheepuram-631 501.

6.The Principal Secretary,
Government of Tamil Nadu,
Housing & Urban Development Department,
Fort St.George, Chennai.

7.The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Maligai,
No:1, Gandhi Irwin Road,
Chennai-600 008.

8.The Greater Chennai Corporation,
Rep. By its Commissioner,
Rippon Building, Chennai.

... Respondent(s)



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(R8 is suo moto impleaded vide order of Court dated 11.07.2024 made in W.A.No.734 of 2022)

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Prayer: Writ Appeal is filed under Clause 15 of Letters Patent praying to set aside the order of this Court dated 03.03.2020 made in W.P.No.27285 of 2017.

For Appellant(s)	: Mr.P.Kumaresan Additional Advocate General assisted by Mr.V.Veluchamy Additional Government Pleader
For Respondent(s) 1 to 3	: Mr.K.S.Viswanathan Senior Counsel for M/s.Shivakumar and Mr.Suresh
For R4	: Mrs.S.R.Sumathy Standing Counsel
For R5 & 6	: Mr.S.Senthil Murugan Special Government Pleader
For R7	: Mr.V.Sudalai
For R8	: Mr.D.B.R.Prabhu Standing Counsel



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for Greater Chennai Corporation

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JUDGMENT

(Judgment of the Court was made by *S.M.SUBRAMANIAM, J.*)

Under assail is the order dated 03.03.2020 in W.P.No.27285 of 2017. Government of Tamil Nadu preferred the present intra-court appeal mainly on the ground that subject lands to a larger extent was acquired by National Highways Authority of India (hereinafter referred to as “NHAI”) for construction of Koyambedu Grade Separator in Chennai City. After completing the project, NHAI handed over the project to State Highways Authority for maintenance. Presently, State Highways Department Maintenance Wing is maintaining Koyambedu Grade Separator.

2. Lands were acquired under the provisions of National Highways Act in the year 2005. Compensation has been settled in favour of the



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erstwhile owners pursuant to the award passed under National Highways Act. Thus, land vest with NHAI and project had been implemented and put to public usage.

3. The land owners have not challenged the land acquisition proceedings. It is not in dispute that award passed in the year 2006, compensation received by land owners in the year 2007 and Koyambedu Flyover was constructed and handed over to State Highways Department by NHAI on 15.06.2012.

4. After receiving compensation in the year 2007, appellants herein initially filed W.P. No.15031 of 2008 seeking direction against National Highways authority and the Land acquisition officer, (National Highways) to pay damages/ compensation to the petitioners in view of severance and causing the remaining property measuring an extent of 635 sq.feet in S.No.2/3 and 5683 sq.feet in S.No.441, Block No.43 of Koyambedu



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Village, land locked after the acquisition and to take possession of the

land locked remaining property. Learned Single Judge disposed of the writ petition on 07.08.2008 directing the 1st respondent in writ petition to dispose of the representation submitted by appellants. Subsequently, NHAI has proposed to acquire the land locked portion. Two notifications were issued in 2010 and 2011 and not proceeded with. No further action was initiated and subsequently all further proceedings dropped.

5. Thereafter, appellants filed W.P.No.6085 of 2017 seeking direction to State Highways Department to acquire left out land locked portion of land measuring to an extent of 594.59 sq.m. of land. The said writ petition was disposed of on 22.06.2017 directing State Highways to take a decision. However, land locked portion of land was not acquired. Since the project was handed over by NHAI to State Highways, subsequent direction was issued against State Highways Department to initiate further actions. Thereafter, State Highways informed the



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appellants that lands are not required for any other public purpose

incidental or ancillary to the Grade Separator (Koyambedu flyover).

Since the request of appellants were not acceded to, W.P.No.27285 of 2017 came to be instituted challenging the decision taken by State Highways not to acquire the land or to pay compensation in respect of the left out portion of land belonging to appellants. Learned Single Judge considered and passed an order on 03.03.2020, directing State Highways Department to take note of the recommendations of NHAI in proceedings dated 04.04.2014 and take a conscious decision in the matter. If any decision is taken not to pay compensation then said portion of the land is directed to be acquired by State Highways Authority. Thus, the present writ appeal came to be instituted by State Highways Authority.

6. Learned Additional Advocate General appearing on behalf of the State would mainly content that Government of Tamil Nadu has not



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implemented the project. Lands were acquired by NHAI under National

Highways Act. Project was constructed by NHAI and handed over to State Highways only for maintenance. Financial support was extended by Government of India, more specifically, NHAI, thus, State Government is not connected with acquisition of land and completion of project but they have to maintain the flyover as per the statute. Thus, State Highways cannot be held responsible for non-acquisition of land locked portion of land or settle compensation to appellants. That apart, the disputed subject land locked portion is a common pathway / access provided in a compromise decree passed in O.S.No.1207 of 1998 on the file of VII Additional City Civil Court, Chennai dated 22.07.1998. The entire extent of property belongs to one family and they have entered into a compromise and a partition effected in the above suit and a compromise decree was passed by the Civil Court. As per the map enclosed along with the decree, the land locked portion is earmarked as an access provided to other allottees as per compromise decree.



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Therefore, appellants cannot claim exclusive right in respect of the said portion as it is a common access provided for all the allottees as per the partition decree.

7. Learned counsel for NHAI would submit that no doubt after completion of project NHAI has proposed to acquire the land and subsequently they found that subject land cannot be used by NHAI for any purpose and therefore the claim set out by appellants were not acceded to. If the lands are not in a position to be utilised for public purpose and NHAI cannot be compelled to acquire the land, which would result in financial loss to the exchequer. Thus, appellants cannot have any claim against NHAI.

8. Learned Senior Counsel Mr.K.S.Vishwanathan, appearing for appellants would strenuously oppose by stating that under Section 49 of Tamil Nadu Land Acquisition Act, 1894, if part of house or building



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proposed to be acquired and the remaining portion cannot be utilised by

owner then the owner is entitled to make a request that the entire land is

to be acquired. The house or building stipulated under Section 49 of

Tamil Nadu Land Acquisition Act, 1894, is extended to vacant land, in

view of the judgment in **Harsook Das Bal Kishan Das vs First Land**

Acquisition Collector and others reported in **1975 2 SCC 256**. High

Court of Kerala at Ernakulam in **Sudeep Kumar vs. National Highways**

Authority of India reported in **2024 SCC Online Kerala 1511** reiterated

the said principles. Thus the land locked portion either to be acquired or

compensation is to be settled in favour of appellants. He would contend

that the land lock arose on account of larger extent of acquisition made

by NHAI. The land is unable to be utilised for any other purpose by

appellants. Building plan permission sought for has been rejected by the

competent authority on the ground that there is no access. NHAI issued

two notifications in the years 2010 and 2011 to acquire the said portion

of the land but dropped all further actions. Thus, appellants are entitled



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for relief of compensation or the land locked portion is to be compulsorily

acquired by State Highways authorities, who is presently exercising control and maintaining the project.

9. This Court has considered the rival submissions made between the parties to the lis on hand.

10. It is not in dispute between the parties that 3A(1) notification was published under National Highways Act on 12.08.2005. Paper publication was made on 20.08.2005 under 3A(3). 3D(1) was published on 18.11.2005 for a total extent of the land. 3G(3) and 3G(4) publications were made on 20.12.2005. 3G(3) enquiry was conducted by Land Acquisition Officer on 05.01.2006. Thereafter, an award was passed by Land Acquisition Officer (National Highways) on 08.12.2006 for a total extent of 24,134 sq.m. Compensation determined under the National Highways Act was settled to land owners in the year 2007. Thereafter,



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NHAI commenced construction of project and completed the same in the

year 2012 and handed over Koyambedu Flyover to State Highways

authority on 12.06.2012. Thus, it is abundantly clear that the erstwhile

owners allowed land acquisition proceedings to be completed in all

respects and received compensation in the year 2007. Thereafter, in the

year 2008, they have filed a writ petition stating that the remaining

portion of the land is to be acquired. In this context, reliance placed on

by Mr.Vishwanathan, learned Senior Counsel that under Section 49, the

land locked portion ought to have been acquired since the said portion

cannot be utilised by the land owner for any other purpose. Section 49(1)

of Land Acquisition Act, 1894, enumerates that “the provision of this Act

shall not be put in force for the purpose of acquiring a part only of any

house, manufacturing or other building, if the owner desires that the

whole of such house or manufacturing or building shall be so acquired.”

Proviso clause states that “The owner may at any time before the

Collector has made his award under Section 11, by notice in writing,



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withdraw or modify his expressed desire, that whole of such manufacturing or building shall be so acquired”.

11. Learned counsel for NHA would submit that provisions of Tamil Nadu Land Acquisition Act, 1894, would have no application since the subject lands in entirety was acquired under National Highways Act, 1956. Looking into the provisions of National Highways Act, 3D(1) notification was published on 18.11.2005. Once notification under Section 3D(1) was made, sub-section(2) to Section 3D states “that on the publication of declaration under sub-section(1), the land shall vest absolutely in this new format free from all encumbrances”. Section 3G of National Highways Act provides determination of amount payable as compensation. Sub-section(7) stipulates that “the competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (5) as the case may be shall take into consideration the market



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value of the land from the date of notification of publication under

Section 3(A)(b). Damage, if any, suffered by the person interested at the time of taking possession of the land by reason of severing of such land from other land”.

12. The above provision is in *pari materia* with Section 23 of Tamil Nadu Land Acquisition Act, 1894, regarding determination of compensation. Holistic reading of Section 23, 49 of Land Acquisition Act, 1894, and Section 3D and 3G of National Highways Act, one can arrive at conclusion that objections or claims, if any, to acquire the left out portions of land or damages shall be made by owners at appropriate stage as stipulated under above provisions i.e., before acquisition or determination of compensation. In the present case, acquisition commenced in the year 2005, award passed in the year 2006 and compensation paid in the year 2007. After settling compensation to land owners, a representation was sent to NHAI in the year 2008 and a writ



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petition came to be instituted. Once the land vests with the Government,

title transfer, objections or claim to acquire left out portion under the provisions of the Act, ought to be made before completion of land acquisition proceedings or determination of compensation. There is a possibility even at the time of determining compensation to claim damages on the ground that severance of land would result in loss to the owners. None of these claims were made by the owners in the present case at the appropriate stage. Contrarily, they allowed land acquisition to be completed in all respects, received compensation and thereafter set out a claim for damages or in alternate to compulsorily acquire the land under the Act.

13. Section 3A of National Highways Act, provides power to acquire land. Sub-section(1) states that whether the Central Government is satisfied for public purpose any land or building is required for maintenance, management or part thereof by NHAI, it may by



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notification in the official Gazette Government declare its intention to

acquire the said lands. Therefore, an element of public purpose is an essential ingredient contemplated for invoking power under National Highways Act. The authorities competent found that subject land left out is not required for any purpose and therefore decided not to acquire even after provisional decision was taken to acquire the land. As far as State Highways department is concerned, they have not acquired the land nor constructed project. After completion of project in the year 2012, Koyambedu flyover was handed over to State Highways by National Highways for maintenance. Therefore, compelling State Highways to acquire the land or pay compensation or damages would also result in financial loss to State exchequer nor the owners expressed their desire that entire lands are to be acquired prior to acquisition or during determination of compensation. Once they allow land acquisition proceedings to be completed in all respects and not exercised the right contemplated under the Act, at later point of time, land owners cannot



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claim such a right which would result in financial loss to the exchequer.

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14. High Court in exercise of powers of judicial review cannot direct National Highways Authority or State Highways Authority to compulsorily acquire the land when authorities have expressly made that the subject land cannot be utilised for any public purpose. Since the administrative decision has been taken on the ground that left out land cannot be utilised for public purposes, the same cannot be insisted upon. No doubt, in the present case, land owners may suffer certain loss, however, in this regard also, we have examined the compromise decree between the family members passed in a partition suit in O.S.No.1204 of 1998 on the file of VII Additional City Civil Court dated 22.07.1998 and the land locked portion has been earmarked as a common pathway for usage of respective allottees of plots in the entire location. Therefore, we are in doubt whether appellants alone can claim exclusive right in respect of such common access provided pursuant to



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the partition decree. In any event, land owners have not been vigilant in

exercising their right conferred under National Highways Act. Therefore,

this Court at this length of time cannot allow the owners to exercise such

right nor direct the Central or the State Government to pay damages or

to acquire the land compulsorily.

15. In view of the above discussions, the writ order dated 03.03.2020 is set aside and the writ appeal is allowed. No costs.

Consequently, connected miscellaneous petition is closed.

[S.M.S., J.]

[M.S.Q., J.]

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Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/ No

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To:

- 1.The Chief General Manager (Tech)
& Regional Officer, National Highways
Authority of India SRI Tower,
3rd Floor, DP 34 (SP) Industrial Estate,
Guindy, Chennai-600 032.
- 2.The Competent Authority & Special
District Revenue Officer,
Land Acquisition, National Highways,
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S.M.SUBRAMANIAM, J.
AND
MOHAMMED SHAFFIQ, J.

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