



W.A.(MD)No.1991 and 1992 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 28.02.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

and

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

W.A.(MD)Nos.1991 and 1992 of 2021

and

C.M.P.(MD)Nos.9099 and 9102 of 2021

W.A.(MD)No.1991 of 2022:-

1.The Union of India, Rep. by its Secretary to Government,
Ministry of Road Transport and Highways,
Transport Bhawan, Parliament Street,
New Delhi-110 001.

2.National Highways Authority of India (NHAI),
Rep. by its Project Director,
H.No.83/1, SBI First Colony Extension,
Bye Pass Road, Madurai - 625 016.

3.M.Muthudayar, Project Director,
National Highways Authority of India,
No.314-E, K.P Road (Near Ayyappankoil),
Parvathipuram, Nagercoil,
Kanyakumari District.

... Appellants

Vs.

1.R.Thamaraiselvan

2.The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Highways and Minor Ports Department,
Secretariat, Chennai - 600 009.



W.A.(MD)No.1991 and 1992 of 2021

3.The Authorised Officer cum
Special District Revenue Officer
(Land Acquisition- National Highways),
Door No.17, Observatory Street,
Kanyakumari - 629 001,
Kanyakumari District.

... Respondents

Prayer : Writ Appeal filed under Clause XV of Letters Patent, to allow the writ appeal by setting aside the order dated 30.04.2021 passed in W.P.(MD)No.7753 of 2018 on the file of this Court.

For Appellants : Mr.Su.Srinivasan

For Respondents : Mr.Udayakumar,
For Mr.A.Thirumurthy for R1.
Mr.G.V.Vairam Santhosh,
Addl. Government Pleader for R2 & R3.

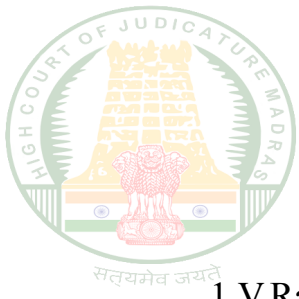
W.A.(MD)No.1992 of 2022:-

1.The Union of India,
Rep. by its Secretary to Government,
Ministry of Road Transport and Highways,
Transport Bhawan, Parliament Street,
New Delhi-110 001.

2.National Highways Authority of India (NHAI),
Rep. by its Project Director,
H.No.83/1, SBI First Colony Extension,
Bye Pass Road, Madurai - 625 016.

3.M.Muthudayar,
Project Director,
National Highways Authority of India,
No.314-E, K.P Road (Near Ayyappankoil),
Parvathipuram, Nagercoil,
Kanyakumari District.

... Appellants



W.A.(MD)No.1991 and 1992 of 2021

Vs.

1.V.Ranjith Shankar

WEB COPY

**2.The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Highways and Minor Ports Department,
Secretariat, Chennai - 600 009.**

**3.The Authorised Officer cum Special District
Revenue Officer (Land Acquisition- National Highways),
Door No.17, Observatory Street,
Kanyakumari - 629 001,
Kanyakumari District.**

... Respondents

Prayer : Writ Appeal filed under Clause XV of Letters Patent, to allow the writ appeal by setting aside the order dated 30.04.2021 passed in W.P.(MD)No. 12172 of 2018 on the file of this Court.

For Appellants : Mr.Su.Srinivasan

For Respondents : Mr.Udayakumar,
For Mr.A.Thirumurthy for R1.

Mr.G.V.Vairam Santhosh,
Addl. Government Pleader for R2 & R3.

COMMON JUDGMENT

One R.Thamaraiselvan and V.Ranjith Shankar filed W.P.(MD)Nos.7753 and 12172 of 2018 questioning the notification dated 20.11.2017 issued under Section 3A(1) of National Highways Act, 1956

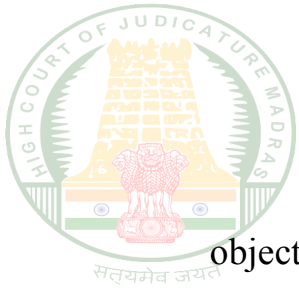
3/15



W.A.(MD)No.1991 and 1992 of 2021

and the consequential notification dated 01.03.2018 issued under Section 3D(1) of the said Act. The lands belonging to the writ petitioners were included in the said notifications. The acquisition was for forming of “Road Safety Advocacy Project” in the stretch of land from Km 203.00 to 232.00 of NH-7 (Madurai – Kanyakumari Section) in the district of Kanyakumari. The writ petitioners contended that the acquisition was liable to be set aside on the ground of vagueness and for being outside the scope of the relevant statutory provisions. This argument found favour with the learned Single Judge who vide order dated 30.04.2021 quashed the impugned notifications insofar as it related to the acquisition of the lands of the writ petitioners. Challenging the said order, Union of India as well as National Highways Authority of India have filed these intra-court appeals.

2.The learned standing counsel for NHAI reiterated all the contentions set out in the memorandum of grounds of writ appeals and submitted that the impugned notifications are very much within the four corners of the statute and that interference with the same was not warranted. He submitted that since the land owners did not lodge their



W.A.(MD)No.1991 and 1992 of 2021

objections in time, they lost the right to challenge. Further, when once the land stood vested with the Government following the publication and notification under Section 3D(1) of the National Highways Act, 1956, the right to question the acquisition stood extinguished. He called upon this Court to liberally construe the words occurring in Section 3A(1) of the Act. He took us through the statutory scheme underlying the National Highways Authority of India Act, 1988 and contended that NHAI is obliged to promote road safety since incidents of accidents occurring in highways are alarmingly high. That is why, NHAI conceived of such a project to spread awareness about road safety. According to him, this would certainly be a public purpose. He added that compensation would be paid to the land owners as per Central Act No.30 of 2013. He called upon this Court to sustain the acquisition notifications and set aside the order of the learned Single Judge and dismiss the writ petitions.

3.Per contra, the learned counsel for the writ petitioners submitted that the learned Single Judge had correctly approached the issue. Section 3A of the Act empowers the Central Government to issue acquisition notification only for the purpose of building, maintenance,



W.A.(MD)No.1991 and 1992 of 2021

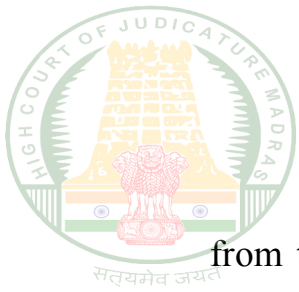
management or operation of a national highway or part thereof. There is no reference to any other purpose. Road safety awareness cannot fall within the purview of public purpose as set out under Section 3A of National Highways Act, 1956. There is no provision in the National Highways Authority of India, 1988 to the effect that NHAI can undertake projects for spreading road safety awareness. Thus, the impugned notifications were on the face of it without jurisdiction. He also added that while the notification under Section 3A(1) of the Act spoke only about acquisition for the purpose of forming of “Road Safety Advocacy”, the subsequent notification read that acquisition is for the purpose of forming of “Road Safety Advocacy Project”. Thus, the purpose set out in the two notifications were not identically worded. According to him, the impugned notifications are vitiated by the vice of vagueness. He relied on the decisions reported in ***(2024) 10 SCC 533 (Kolkata Municipal Corporation Vs. Bimal Kumar Shah)***, ***(1973) 2 SCC 337 (Munishi Singh Vs. Union of India)*** and ***(1992) 2 SCC 168 (Madhya Pradesh Housing Board Vs. Mohd. Shafi)*** in support of his contentions. He called upon this Court to sustain the impugned order of the learned Single Judge and dismiss the writ appeals.



W.A.(MD)No.1991 and 1992 of 2021

4.We carefully considered the rival contentions and went through the materials on record. The first question that calls for consideration is whether the appellants have the jurisdiction to acquire the writ petitioners' lands under the provisions of the National Highways Act, 1956 for the purpose of “Road Safety Advocacy”. To answer this question, we have to consider Section 3A(1) of the National Highways Act, 1956 and Sections 13 and 16 of the National Highways Authority Act, 1988. The learned standing counsel for the appellants would contend that we must adopt a liberal and purposive construction while interpreting the said provisions. We do not agree. On the other hand, we fully endorse the stand of the learned counsel for the writ petitioners that this legislation, being an expropriatory legislation, ought to be strictly construed since it deprives a person of his or her own land (Vide **(2014) 3 SCC 430 (Godrej and Boyce Manufacturing Company Limited vs. State of Maharashtra)** and **AIR 1966 SC 1593 (State of Madhya Pradesh Vs. Vishnu Prasad Sharma)**).

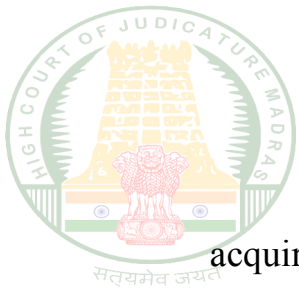
5.The learned standing counsel further contended that since the writ petitioners did not lodge their objections within twenty one days



W.A.(MD)No.1991 and 1992 of 2021

from the date of publication of the notification under Section 3A(1) of the National Highways Act, 1956, they are estopped from questioning the subsequent declaration of acquisition made under Section 3D of the Act. Again, we do not agree. The authority is obliged to demonstrate before this Court that the notification issued under Section 3A(1) of the Act is legal. The Hon'ble Supreme Court in the decision reported in **(2005) 13 SCC 477 (Competent Authority vs Barangore Jute Factory)** held that if the primary notification violated the very statute from which it derived its force, delay in challenging it would not clothe the same with legitimacy. It specifically held that failure to file objections to the notification under Section 3C of the Act within twenty one days cannot non-suit the writ petitioners.

6.The learned Single Judge had quashed the impugned notifications for the reason that the impugned notifications were not within the purview and scope of the National Highways Act, 1956. It was further held that Section 16 of the National Highways Authority Act, 1988 will not include the purpose for which the notifications have been issued. It was also observed that if at all the authorities wanted to



W.A.(MD)No.1991 and 1992 of 2021

acquire the land, they should have acquired the land under Central Act No.30 of 2013. The learned Single Judge specifically held that setting up “Road Safety Advocacy Project” would not form part of the functions of NHAI.

7.Before testing the correctness of the reasoning adopted by the learned Single Judge, it is necessary to extract the relevant statutory provisions. Section 3A(1) of the National Highways Act, 1956 is as follows :

“3A. Power to acquire land, etc.—(1) Where the Central Government is satisfied that for a public purpose any land is required for the building, maintenance, management or operation of a national highway or part thereof, it may, by notification in the Official Gazette, declare its intention to acquire such land.”

Sections 13 and 16 of the National Highways Authority of India Act, 1988 are as follows:-

“13. Compulsory acquisition of land for the Authority.—Any land required by the Authority for discharging its functions under this Act shall be deemed to be land needed for a public purpose and such land may be acquired for the Authority under the provisions of the National Highways Act, 1956 (48 of 1956).]



WEB COPY



W.A.(MD)No.1991 and 1992 of 2021

16. Functions of the Authority.— (1) *Subject to the rules made by the Central Government in this behalf, it shall be the function of the Authority to develop, maintain and manage the national highways and any other highways vested in, or entrusted to, it by the Government.*

(2) *Without prejudice to the generality of the provisions contained in sub-section (1), the Authority may, for the discharge of its functions—*

(a)

(b) *construct offices or workshops and establish and maintain hotels, motels, restaurants and rest-rooms at or near the highways vested in, or entrusted to, it;*

(c)

(d)

(e) *develop and provide consultancy and construction services in India and abroad and carry on research activities in relation to the development, maintenance and management of highways or any facilities thereat;*

(f) *provide such facilities and amenities for the users of the highways vested in, or entrusted to, it as are, in the opinion of the Authority, necessary for the smooth flow of traffic on such highways;*

(g)

(h)

(i)

(j)

(k)



WEB COPY



W.A.(MD)No.1991 and 1992 of 2021

(1) take all such steps as may be necessary or convenient for, or may be incidental to, the exercise of any power or the discharge of any function conferred or imposed on it by this Act.

(3)”

8.The National Highways Act was originally enacted in the year 1956 for the declaration of certain highways to be national highways and for matters connected therewith. The National Highways Authority of India Act, 1988 was enacted to provide for the constitution of an authority for the development, maintenance and management of national highways and for matters connected therewith or incidental thereto. Both statutes will have to be read together. It is interesting to note that Central Act No.16/1997 which incorporated Section 3A and other provisions in National Highways Act, 1956 also amended Section 13 of National Highways Authority of India Act, 1988. Section 3A(1) of National Highways Act, 1956 could have been better drafted. The use of word “for” twice does strike a jarring note. It cannot be denied that building, maintenance, management or operation of a national highway or part thereof is obviously a public purpose. We get the impression that



W.A.(MD)No.1991 and 1992 of 2021

the legislative intent behind Section 3A(1) of the National Highways Act, 1956 is that acquisition of land under the National Highways Act, 1956 can only be for the particular public purpose set out therein and not any other purpose. This impression is however misplaced. Because on account of the amendment of Section 13 of the National Highways Authority of India Act, 1988, the scope of public purpose has been substantially broadened. Section 3A(1) of the National Highways Act, 1956 will have to be read together and along with Section 13 of the National Highways Authority of India Act, 1988. The resultant effect is that if a land is required for effectuating the functions of NHAI, then, it is deemed to be a land needed for the public purpose set out in Section 3A(1) of the National Highways Act, 1956. Employing a legal fiction is a well known legislative device. The scope of the legal fiction must be extended to the consequences which logically flow from its creation. A legal fiction must not be limited to treating facts that do not exist as real but must be expanded to understand the effects and consequences that flow from the legal fiction (vide **(2025) 1 SCC 1 (State of Punjab v. Davinder Singh)**). The interpretative effect of the expression “shall be deemed” occurring in Section 13 of the National Highways Authority of



W.A.(MD)No.1991 and 1992 of 2021

India Act, 1988 is that any land which is required to enable the NHAI to discharge its functions under the 1988 Act can be acquired under the provisions of the National Highways Act, 1956.

9.The appellants are therefore required to show that NHAI is obliged to spread awareness about road safety as part of its statutory functions. The primary function of NHAI is to properly manage and operate the national highways vested in or entrusted to it. Proper management and operation of roads would include road safety. As per Section 16(2) of NHAI Act, 1988, the Authority can construct offices or workshops at or near the highways. It has to regulate and control the plying of vehicles. It can carry on research activities in relation to the development, maintenance and management of highways or any facilities therein. It can provide such facilities and amenities necessary for the smooth flow of traffic. NHAI had conceived the subject project to spread awareness about road safety. Road safety campaigns have led to substantial decrease in accidents. We, therefore, conclude that setting up of “Road Safety Advocacy” would fall within the statutory functions of NHAI. The necessary corollary is that acquisition of lands for the said purpose under the provisions of National Highways Act, 1956, is legal.



W.A.(MD)No.1991 and 1992 of 2021

10.We do not find any merit in the contention of the learned counsel for the writ petitioners that the impugned notifications suffer from the vice of vagueness. By adding the expression “project” in the notification under Section 3D, no confusion has been created as claimed by the learned counsel for the writ petitioners.

11.In view of the above, the order of the learned Single Judge allowing the writ petitions is set aside. These writ appeals are allowed.

**(G.R.S. J.) & (M.J.R. J.)
28.02.2025**

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
ias

To:

- 1.The Principal Secretary to Government,
Highways and Minor Ports Department,
Secretariat, Chennai - 600 009.
- 2.The Authorised Officer cum
Special District Revenue Officer
(Land Acquisition- National Highways),
Door No.17, Observatory Street,
Kanyakumari - 629 001, Kanyakumari District.



WEB COPY



W.A.(MD)No.1991 and 1992 of 2021

G.R.SWAMINATHAN, J.
and
M.JOTHIRAMAN, J.

ias

W.A.(MD)Nos.1991 and 1992 of 2021

28.02.2025