
(2010) 10 MAD CK 0394

In the Madras High Court

Case No : Writ Petition No. 17908 of 2009 and M.P. No's. 1 and 2 of 2009 and 1 of 2010

Ace Housing Projects

APPELLANT

Vs

The State and Others

RESPONDENT

Date of Decision : 25-10-2010

Acts Referred:

Tamil Nadu Highways Act, 2001 — Section 10, 14, 15, 3, 8

Citation : (2010) 10 MAD CK 0394

Hon'ble Judges : K.B.K. Vasuki, J

Bench : Single Bench

Advocate : K.M. Vijayan, SC for Fast Track Law Associates, for the Appellant; R. Ramasamy, AAG-I and Viswanathan, AGP for R1 to R8 and B. Dhanaraj, for R9, for the Respondent

Judgement

1. The writ petition is filed for forbearing the Respondents 4 to 8, who are the higher officials of Southern Railways and Highways in the cadre of chief bridge engineer, Chief Engineer, Superintendent Engineer, Divisional Engineer and the Assistant Engineer, from forming a road and the connectivity bridges across Noyyal River of Tiruppur-Somanur Road to Chikanna College Road and road over bridge at KM 1/4 of the Chikanna College Road of Tiruppur to Somanur road in lieu of arch bridge No. 29 at Tiruppur except in accordance with the alignment No. 1 marked in GREEN color as approved by the 6th Respondent on 31.12.2007 and except in consistent with the provisions of Tamil Nadu Highways Act 2001.

2. The Petitioner herein/M/s. Ace Housing Project, as sole proprietorship concern is carrying on real estate business and sale of built up houses. The land in question measuring an extent of 1.80 acres comprised in SF. No. 636/1B at 15 Velampalayam Panchyat, Tiruppur originally belonged to one M/s. Bidaas Apparel Industries Private Limited and the Petitioner herein, M/s. Bidaas Apparel Industries Private Limited and the 10th Respondent/Vijaya Bank who are the bankers of the original owner entered into one triparty agreement on 28.05.2008

for forming a layout for putting up 43 house in the land in question. In the meantime, liquidation proceedings were initiated in Comp. Petn. No. 197/2008 in respect of M/s. Bidaas Apparel Industries Tiruppur Private Limited, and the Petitioner herein having agreed to purchase the property discharged the entire mortgage loan amount due to Vijaya Bank from the owner. Pending liquidation proceedings, the Petitioner herein made efforts to ascertain as to whether land in question is subjected to any acquisition proceedings or planning development and obtained certificate on 11.03.2009 from the Tahsildar to the effect that no such proceedings are pending in respect of the same. In the meantime the Company Court has also, on the strength of the triparty agreement entered into between the Petitioner, owner and Vijaya Bank and mainly on the representation made by the company that the other party who is the Petitioner herein who has put up constructions has already paid a sum of Rs. 109 Lakhs out of Rs. 234 Lakhs to the bank and the project is nearing completion and almost all the sites are sold out and the security is to be released failing which the interest of the third parties would be seriously prejudiced, directed the Bank to realize the balance amount due to the same and discharge the security which is the land in question. The company court order is enclosed at page 26 of the typed set filed along with the writ petition. Thereafter, the same Company Court has, by an order dated 29.03.2010 the copy of which is enclosed at pages 3 to 7 in the additional typed set of papers filed on 1.7.2010 by the Petitioner, directed the Official Liquidator to release the property as entire loan amount was discharged by the Petitioner herein. Thereafter, the Petitioner, as per the tri party agreement carried on the project work in the land in question.

3. While so, according to the Petitioner, the Divisional Engineer and the Assistant Engineer, Highways entered his land and dig certain parts of the land on 23.04.2009 and the same compelled the Petitioner to approach this Court by way of W.P. No. 8645 Of 2009 for issuance of writ of prohibition prohibiting the Divisional Engineer and other persons acting on his behalf from entering the land except under due process of law. The claim was seriously opposed by the Respondent by denying one such occurrence on 23.04.2009. It was represented on the side of the officials that the purpose of the visit in the land in question was to make preliminary soil test in connection with major project for construction of road, over bridge and the Petitioners possession and enjoyment of the land will not be interfered without following the procedure laid down under the rules and regulations of the relevant Land Acquisition Act. Our High Court after recording such statement made by the learned Additional Advocate General closed the writ petition by order dated 14.07.2009.

4. Thereafter the proprietor of the Petitioner has by invoking Right to Information Act made an application to the Divisional Accountant officer seeking certain particulars relating to the construction of road over bridge at Tiruppur to Somanur road to Chikanna college road and high level bridge across Noyyal river. The Petitioner has also made similar application to General Manager, Southern Railways, RTI cell 28.07.2009. The Chief General Engineer and Public General

Officer Southern Railway furnished the particulars on 14.08.2009, as per which Highways has not sent any general arrangement drawing for approval but only sent site plan dated 06.02.2008. The Divisional Engineer (H) Project has also furnished the particulars and the Divisional Engineer has also enclosed three drawings relating to the project. According to the Petitioner there were inconsistency and contradictions between the information so furnished and the same run contra to what is stated in the counter filed by the official Respondents in the earlier writ petition in WP. No. 8645 of 2009. The main contradiction according to the Petitioner is that as per the counter filed in the earlier writ petition, the alignment selected and approved by the 6th Respondent and sent to railways for preparation of general arrangement drawing was GREEN alignment which is in the opinion of the officials concerned shortest and economic. Whereas, as per the information furnished by the Divisional Engineer, the alignment selected recommended and approved and forwarded to railway for preparing general alignment drawing is VIOLET in color.

5. According to the Petitioner as per the counter filed on earlier occasion there were two alignments prepared GREEN and RED and out of the two Green is selected for the reasons as mentioned above and the RED alignment is not selected, whereas the VIOLET alignment referred to in the particulars furnished by project Division which is in the same line as that of the RED alignment which is already rejected is newly introduced after the disposal of the earlier writ petition. The further grievance raised by the Petitioner is that in the event of the construction being put up in accordance with Green alignment which is referred to in the earlier counter the same is likely to affect only negligible front portion of the land in question. Whereas, as per the II Ird alignment in VIOLET color the proposed construction is likely to be put up in the middle of the land in question and such revised arrangement is brought in only at the instigation of three other companies whose lands are likely to be affected if the construction is to go on as per the originally approved green alignment. It is seriously argued by the learned senior counsel for the Petitioner that the officials are hurriedly proceeding with the project work and the construction of the bridge over railway and Noyyal river are almost completed and the officials are attempting to proceed with the construction of road over bridge, so as to connect the railway bridge and the Noyyal river bridge as per the revised alignment which is none other than the RED alignment in different color i.e, VIOLET and in the event of the same being allowed to go on it is likely to cut the middle portion of the Petitioner's constructed area of the land in question without resorting to any acquisition proceedings under the relevant provisions of the Highways Act and is hence illegal, without jurisdiction and is also in violation of the principles of natural justice and prejudicial to the Petitioner's right to property and the Petitioner is hence compelled to approach this Court with the present writ petition for the appropriate relief as stated supra.

6. Such claim of the writ Petitioner is seriously opposed on the side of the official Respondents by contending that the theory put forth in the counter filed in the

earlier writ petition is not factually correct and the actual factual position is that after the Green alignment is originally approved by the 6th Respondent further study was made by the design and investigation wing resulting in preparation of totally three alignments including the GREEN and RED alignments referred to in the earlier counter and the same are GREEN, RED and VIOLET in color and the alignment VIOLET was found to be shortest and economic and the same is selected and approved and was sent to railways and the same is since approved by the Southern Railways and the general arrangement drawing for constructing road over bridge railway portion is received by the Highways project division and based on the same, highways portion was finalized in the design wing of Highways department and the bridge over Noyyal river is already constructed and road over bridge over railway line is not yet started and the same requires acquisition of land and the same will be started only after duly acquiring the land including the land in question by invoking the provisions of Tamil Nadu Highways Act. It is further represented by the learned Additional Advocate General, that the official Respondents have no intention to proceed with that part of the project work running through the Petitioner's land in question without acquiring the land as per law and the grievance of the Petitioner as raised herein is hence baseless and premature.

7. Heard the rival submissions made by the learned senior counsel for the Petitioner and the learned Additional Advocate General on behalf of the Respondents and also perused the file relating to the project.

8. The facts made available would reveal that the Petitioner while armed with the order of this Court thereby restraining the official Respondents from interfering with the Petitioner's possession and enjoyment of their land without following the procedure contemplated under the rules and regulations of the relevant Land Acquisition Act, has come forward with the second writ petition for the same relief restraining the Respondents from proceeding with the project in question except in accordance with the provisions of Tamil Nadu Highways Act 2001 and with the additional prayer that the project can be proceeded with only in accordance with the GREEN color marked alignment reportedly approved by the Respondents 6 and 7. The project in question is for the construction of high level bridge across noyyal river and road over bridge across railway line at KM 1/4 of Tiruppur-Somanur Road to Chikkanna College Road. While the construction of the river bridge across Noyyal river does not require any approval from railways, the construction of road over bridge on the railway line requires approval from railways and the project is as of now under progress.

9. The grievance raised in the earlier writ petition and the present writ petition is in respect of alignment to be adopted for forming the road connecting the bridges and in the course of which, the Petitioner's land was lying. The alignments involved in this project is three in number in three different colors viz. RED, GREEN and VIOLET. It is not in dispute that RED and VIOLET alignments are more or less the same. It is equally not in dispute that in the

event of GREEN alignment being adopted, the portion of the land belonging to the Petitioner likely to be taken away is minimum in extent and in the event of RED and VIOLET alignments being adopted, the project is likely to run through the middle of the Petitioner's portion. It is also true that but for the counter filed by the Respondents in the earlier writ petition and the order obtained by the Petitioner in the earlier writ petition, the Petitioner has no cause of action to file the present writ petition for the relief sought for regarding the alignment to be adopted.

10. Though the earlier writ petition filed for the relief of prohibiting the official Respondents from entering the land belonging to the Petitioner except under due process of law, the official Respondents have in the counter filed in the same, specifically stated to the effect that the various alignments were prepared and studied and the shortest and Economic one out of which is green color marked alignment and the same is selected and approved by the Superintending Engineer, Highways projects, Coimbatore on 18.12.2007 and on the basis of the same, necessary drawings were prepared (General Arrangement Drawing) and the same was sent to the Railways on 6.2.2008 and the Railways have approved the same on 21.4.2009 and in pursuance of the same, tender was floated and work was entrusted with the contractor by the proceedings of the Superintending Engineer, Highways Projects, Coimbatore vide circle Register Agreement dated 25.2.2009 and the work was commenced and is in progress. It is further stated by them in the same counter that as the construction of railway bridge and river bridge lies in the same alignment at distance of 82.00 m and as the construction of river bridge is in progress, it is not possible either to change the alignment or dropping the project and the only portion of the Petitioner's land and not the entire land of 1.80 acres involved in the acquisition has to be acquired under the relevant Land Acquisition Act 2001 and necessary action will be taken for acquiring the land and the Petitioner is at liberty to show objection if any at the relevant point of time. Based on the same, the writ petition was disposed of granting the relief as referred to above. However, the cause of action for the second writ petition lies in the action of the second Respondent in adopting different alignment i.e, VIOLET color marked alignment other than GREEN marked alignment which is in the earlier writ petition reported to be sanctioned and approved and being adopted. Such change in the alignment is sought to be explained by saying the specific contention raised that the authority concerned has after considering the different proposals, found VIOLET alignment to be shortest and economic and the same was sanctioned and approved, but the same was erroneously mentioned as GREEN alignment in the earlier writ petition due to bonafide and inadvertent mistake.

11. Though it is not specifically stated by the Respondents in the counter filed herein, the same is stated so in the course of hearing by the learned Additional Advocate General. The official Respondents have also in para 10 to 16 of the present counter affidavit explained in detail as to how the primary arrangement approved is GREEN in color and thereafter joint inspection was held and three

alignments are prepared after joint inspection of site and as to the circumstances under which the combined proposed alignments of GREEN and VIOLET was subsequently approved by the Superintending Engineer, Highways, Project Circle, Coimbatore and as to how the officials have after working out the cost required for the construction of the bridge as per three alignments found the cost of GREEN alignment is to be costlier and the reasons for which green alignment was not adopted and as to how the entire aspects was discussed and analyzed by technical and expert committee and as to how VIOLET color alignment was found feasible and economic and was sanctioned and approved finally and the same was forwarded to other authority and as to how the project was proceeded with etc.

12. In the course of argument, this Court also directed the Respondents to produce file relating to the project so as to prove the contentions as above referred to in the present counter affidavit. The perusal of the file would reiterate the details furnished in the counter affidavit filed herein in the matter of sanctioning and approving the VIOLET alignment among three different alignments prepared and considered. In my considered view, the particulars furnished herein regarding the circumstances under and the reasons for which the present alignment i.e. violet color is adopted, if viewed in the light of the contents of the file produced herein would only support the stand taken by the officials that the change in alignment is adopted at the appropriate stage after duly making joint inspection of site and after due discussion and analysis of all relevant aspects and after duly forwarding to and consulting Technical and Expert committee and after duly obtaining their sanction and approval.

13. It is quite unfortunate that the officials concerned who owe not only greater duty to the public but also towards the court, have casually dealt with the matter and furnished incorrect particulars in the counter filed both in earlier and the present writ petitions sworn in by high official in the rank of Divisional Engineer (H), Projects, Coimbatore and also signed by the Assistant Engineer, Highways, Projects, Tiruppur who are arrayed as the Respondents in both the writ petitions. Though the learned Additional Advocate General has in the present writ petition, made a representation before this Court as if the counter filed in the earlier writ petition contained bonafide mistake, there is no supporting affidavit filed in the present writ petition by either of the officials filed the counter i.e. the Divisional Engineer or the Assistant Engineer arrayed as the Respondents 7 and 8 respectively herein. The officials have conveniently filed counter in the present writ petition through Deputy Secretary to Government, Highways and Minor Ports Department and such conduct on the part of the officials is highly deprecated and deserves to be viewed very seriously. As rightly argued by the learned senior counsel for the Petitioner, the action of the Respondents 7 and 8 in filing such counter affidavit before the court in earlier writ petition with incorrect particulars that too without filing any further affidavit herein as to the circumstances under which such particulars are furnished erroneously would amount to gross negligence and carelessness in discharging their official duties warranting due

action.

14. Be that as it may, the relief sought for herein is, already stated, in two parts to forbear the Respondents not to proceed with the work except as per the green alignment and in accordance with the provisions of Tamil Nadu Highways Act. In so far as the first part of the relief is concerned, the alignment now being adopted is found to be available even as on the date of filing of the earlier counter and in the event of the Petitioner being aggrieved in any manner by the incorrect particulars stated in the counter filed in the earlier writ petition, the Petitioner can be given the liberty to agitate the same at the appropriate stage for appropriate relief either at Section 9 enquiry stage or during award proceedings. In so far as the second part of the relief is concerned, the Respondents have in the earlier writ petition definitely stated that they will not interfere with the Petitioner's possession and enjoyment of land except under due process of law. It is not in dispute that the authority concerned is yet to commence any acquisition proceedings in respect of the land in question and the Respondents have at the end of para 17 of the present counter specifically stated that the work commenced is only for the construction of bridge over Noyyal river and the construction of road over bridge over railway line is yet to be started and it will be started after duly acquiring the land under Tamil Nadu Highways Act 2001.

15. The learned senior counsel for the Petitioner at this juncture has taken the court to various provisions of Tamil Nadu Highways Act 2001 viz., Sections 3, 8 to 10, 14 and 15. Section 15 deals with the power of the Government to acquire the land 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. As per Section 15 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 and thereafter, after considering the cause shown by the owner or other person having interest on such land, pass such an order and in the event of the government being satisfied any land being acquired, issue draft notification u/s 8 inviting objections if any on the proposed fixation of highway boundary, building line or control line or highway boundary and the building line and the building line and the control line and the draft notification shall contain all the particulars as contemplated under the Act and after considering the representation if any, the Highways Authority shall with the approval of the State Highways Authority, drop the proposal or issue final notification and on or after the date of the publication of the notification, no person shall as per the restriction contained u/s 9, erect any construction except with written permission of the Highways Authority. It is pointed out that such restriction imposed u/s 9 against any construction is not applicable to the construction of building before the date of notification issued under Sub-Section 8. Thus, according to the learned senior counsel for the Petitioner before any land is sought to be acquired at the commencement of the acquisition proceedings, the Petitioner is entitled to be heard at two stages. If

that is so, the Petitioner/land owner will be definitely given due opportunity to raise all his objections including his objections regarding the alignment to be adopted and the conduct of the Respondent in the matter of sanction of different alignment, at the appropriate stage as above referred to. Except such liberty, the Petitioner is not entitled to any more relief in this writ petition.

16. In the result, the Respondents are directed to proceed with the project in question in accordance with the provisions of Tamil Nadu Highways Act 2001 and also in compliance with the earlier direction of this Court made in W.P. No. 8645 of 2009 dated 14.7.2009 and the Petitioner is at liberty to raise all the objections available to the same including the objections regarding alignment at the appropriate stage before the appropriate authority for appropriate relief.

17. The writ petition is accordingly ordered. No costs.

Consequently, connected Miscellaneous Petitions are closed.