

(2018) 02 MAD CK 0219

In the Madras High Court

Case No : 581 of 2016 and C M P(MD)No 4038 of 2016?AND?W A(MD)No 678 of 2016 and C M P(MD)No 4383 of 2016

A.Rajendran & Anr

APPELLANT

Vs

The Special District Revenue Officer & Anr

RESPONDENT

Date of Decision : 20-02-2018

Acts Referred:

Land Acquisition Act, 1894, Section 11-A -
National Highways Act, 1956, Section 3-A Section 3-B, Section 3-D, <a href=2418

Citation : (2018) 02 MAD CK 0219

Hon'ble Judges : M.Sathyanarayanan, R.Tharani

Bench : Division Bench

Advocate : AR.L.Sundaresan, AL.Gandhimathi, C.Arul Vadivel

Final Decision : Dismissed

Judgement

1. The appellants are the petitioners in W.P(MD)Nos.5366 of 2011 and 2086 of 2012 respectively. Both the writ petitioners made a challenge to

the land acquisition proceedings initiated under the National Highways Act, 1956 [in short "NH Act"] and the writ petitions were dismissed vide

common order dated 10.02.2016 and making a challenge to the said common order, these appeals are filed.

W.A(MD)No.581 of 2016 against W.P(MD)No.5366 of 2011:

2. The appellant/writ petitioner would state that his landed property is admeasuring to an extent of 27 cents comprised in S.No. 304/7J of

Kannudaiyanpatti village and originally, 14 cents of land was acquired by the first respondent through a notification dated 23.01.2018 issued under

Section 3-A(i) of the NH Act and the remaining extent of 13 cents of land is sought to be acquired through the impugned notification dated 02.09.2009.

3. According to the appellant/writ petitioner, a superstructure has been put up on the said land in question and since it was intended to be

demolished, he filed W.P(MD)No.13998 of 2010 praying for a writ of Mandamus to fix the award value based on the decisions rendered by the

Honourable Supreme Court reported in 1997 STPL (LE) 24218 SC, 2004 STPL (LE) 33084 SC and 1998 STPL (LE) 24859 SC and in view

of Section 23 of the Tamil Nadu Land Acquisition Act, 1989 and pass an award within the time limit. A Single Bench of this Court, vide order

dated 26.11.2010, has directed the Special District Revenue Officer, Land Acquisition, National Highways, Pon Nagar, Trichy, to consider and

dispose of the petitioner's representation dated 30.10.2010 in accordance with law within the stipulated time.

4. The appellant/writ petitioner would further aver that he became aware of the fact that the authorities had revised their earlier plan and as per the

revised plan, the land admeasuring to an extent of 13 cents and the superstructure put up therein fell outside the plan area and since the purpose of

acquisition is already over and since the land as well as superstructure are outside the project plan area, the authorities ought to have revised the

acquisition proceedings by taking note of the requirements and however, the appellant/writ petitioner is still under the threat of dispossession and

apprehension that the building is going to be demolished. The appellant/writ petitioner, therefore, sent a representation dated 21.02.2011 to the

first respondent along with a rough sketch which would clearly indicate that the land in question is no longer required for road widening or other

purposes and since no favourable response is forthcoming, came forward to file the writ petition.

W.A(MD)No.678 of 2016 against W.P(MD)No.2086 of 2012:

5. The appellant/writ petitioner would aver that through a notification dated 23.01.2008, issued under Section 3-A of the NH Act, the lands are

sought to be acquired in Manapparai and other surrounding taluks and his land admeasuring to an extent of 225 sq. mtrs., comprised in

S.Nos.310/1, 2, 5, 6 and 36 in Kannudaiyanpatti village was also sought to be

acquired and a part of the said extent has been acquired. The first respondent issued a second notification dated 02.09.2009 proposing to acquire the remaining extent of 13 cents of land and the said notification was followed by subsequent notification under Section 3-D and 3-G(3) of the NH Act on 24.02.2010.

6. It is the case of the appellant/writ petitioner that through first and second notifications dated 30.01.2008 and 08.09.2009 respectively, the land is sought to be acquired for formation of road and no land acquisition proposal was initiated by the National Highways Authority of India beyond the right of way prescribed anywhere in the project and only 90 meters right of way was adopted and however, contrary to the same, through the second notification, 115 meters right of way was also proposed/formulated. Subsequently, the Project Director admitted that 90 meters right of way is sufficient for four laning including junction improvement in KM 361/525 of National Highways.

7. It is the specific case of the appellant/writ petitioner that the second notification issued for acquiring 227 sq. mtrs., is clearly not required and unnecessary for fulfilling any public purpose and having become aware of the same, he prepared a plan sketch which would indicate that the land in possession of the appellant/writ petitioner is no longer required for the reason that the project has been completed in all respects. The appellant/writ petitioner, in this regard, has submitted a representation dated 12.01.2012 praying for withdrawal of the second notification and since no favourable response is forthcoming, has filed the writ petition.

8. The first respondent has filed the counter affidavit in W.P(MD)No.5366 of 2011, stating, among other things, that a proposal for acquisition of certain private and Government poramboke lands in Kannudaiyanpatti village of Manapparai Taluk to an extent of 1,03,267 sq. mtrs., and additional extent of 24,857 sq. mtrs., of lands including S.F.No.304/7J was initiated for laying four lane in Trichy - Dindigul Section and therefore, a notification was issued to an extent of 1,037 sq. mtrs., covered in Original Award and 523 sq. mtrs., covered in Additional Award in S.F.No.304/7J of the said village. The procedural formalities under the NH Act have been strictly complied with and the objections from the land owners for the proposed acquisition were also invited and whatever objections

received within the time limit was disposed of under Section 3- C

of the NH Act by the competent authority. However, the appellants/writ petitioners did not raise any objection and therefore, the award

declaration under Section 3-D(1) of the NH Act was issued and also published in Government of India Gazette and after publication, the lands

mentioned shall absolutely vest with the Government. In respect of the second notification also, compensation was determined and paid and since

the appellants/writ petitioners did not receive the same, the same has been deposited.

9. It is stated in the counter affidavits filed by the second respondent in both the writ appeals that insofar as the averment that the lands in question

are no longer required, it is pleaded that additional lands were required as per the engineering requirements of NHAI standards and the project

consultant has offered his opinion that the provisioning of space for future widening is required and alignment was designed in line with the Indian

Road Congress standard by keeping in view the built up areas. Therefore, the withdrawal of the notification and avoiding of acquisition of the lands

of the appellants/writ petitioners is not feasible at this juncture and due process of law has been strictly followed and hence, prayed for the

dismissal of the writ petitions.

10. The learned Judge after considering the rival submissions and on perusal of the materials, observed that the entire compensation amount has

been paid and in the light of the judgment in Shri Andal Alagar Kalyana Mandabam Private Limited v. Union of India reported in (2007) 7 MLJ

1021, after passing the award, the writ petitions are not maintainable and observed that though project is over, the respondents have not

demolished the portion of the house till date and since the writ petitioners made an offer to return the money and also submitted the representations

dated 21.01.2011 and 12.02.2012 respectively, directed the respondents to take note of the same and pass orders on merits and in accordance

with law.

11. The appellants/writ petitioners challenging the legality of the common order, had filed these writ appeals.

12. Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the appellants/writ petitioners, has invited the attention of this Court to the typed

set of documents as well as additional typed set of documents and would submit that admittedly, four laning has been successfully completed and in the light of the fact that the lands of the appellants/writ petitioners are no longer required for future expansion or right of way and there is no provision available under the NH Act, to acquire the lands for future and has drawn the attention of this Court to the report of the Chief Engineer, Highways, (Retd.), dated 09.10.2012 and would submit that insofar as the appellant in W.A(MD)No.581 of 2016, his land is no longer required for the reason that the project has been completed and thrown open to public and still toll is also sought to be collected and as per the letter of the Project Director, dated 25.04.2011, 45 mtr., centre line on either side is required to cater to the junction improvements and space for further widening in future and therefore, there is no justification for extending beyond 45 mtrs., and further 67 mtrs., is not required for the project at this stage.

13. The learned Senior Counsel appearing for the appellants/writ petitioners would further contend that the superstructures are also put with considerable cost, wherein the appellants/writ petitioners are residing with their families and in the event of being demolished, the appellants/writ petitioners and their family members would be put to irreparable loss, grave hardship and mental agony and it is not indicated that when will be the probable time of future expansion and in the absence of any specific provision in the NH Act for acquiring and keeping the lands for future expansion, the impugned notifications are liable to be quashed and prays for interference.

14. Per contra, Mr.C.Arul Vadivel @ Sekar, learned Standing Counsel for the second respondent has drawn the attention of this Court to the typed set of documents as well as the counter filed by the second respondent in W.A(MD)No.678 of 2016 and would submit that in the second batch, the lands in S.Nos.310/1(A), 2, 5, 6 and 36(A) admeasuring to a total extent of 227 sq. mtrs., are required and the compensation amount has also been determined and it has been declined to be received.

15. It is further submitted by the learned Standing Counsel appearing for the second respondent that for the junction improvement and development, the additional lands were required and accordingly, notifications

were issued and objections were invited under Section 3-A(3) of the NH Act and since no response was forthcoming within 21 days from the date of publication of the notification, action was initiated for the publication of the notification under Section 3-D(1) of the NH Act and it was published in the Gazette of India, dated 15.12.2009 and the version of the notification was also published in English and Tamil on 08.03.2010 and the land owners and interested persons were also called upon for enquiry to file their objections under Section 3-G(3) of the NH Act and after following the due formalities, the award came to be passed on 31.03.2011.

16. It is the further submission of the learned Standing Counsel appearing for the second respondent that the Project Consultant has offered his opinion that the provision of space for future widening of road has been stipulated and as such, notification was issued and the lands were acquired and there is no provision in the NH Act for re-conveyance of the land acquired and hence, the claim made by the appellants/writ petitioners cannot be entertained and prays for the dismissal of these writ appeals.

17. The learned Standing Counsel appearing for the second respondent in support of his submissions, has placed reliance upon the following decisions:

(i) Municipal Corporation of Greater Bombay v. I.D.I. Co., Pvt. Ltd., reported in (1996) 11 Supreme Court Cases 501.

(ii) Union of India v. Kushala Shetty and others reported in (2011) 12 Supreme Court Cases 69.

(iii) Shri Andal Alagar Kalyana Mandapam Private Ltd., v. U.O.I reported in (2007) 7 MLJ 1021.

18. This Court paid it's best attention to the rival submissions and also perused the materials placed before it.

19. It is not in serious dispute that the acquisition of land is for the public purpose.

20. Under Section 3-A of the NH Act, the Central Government, if satisfied that for a public purpose, any land is required for the building,

maintenance, management or operation of a national highway or part thereof, may, by notification in the Official Gazette, declare it's intention to

acquire such land and on issuance of the said notification, under Section 3-B of

the NH Act, it shall be lawful for any person, authorised by the Central Government in this behalf, to make any inspection, survey, etc. Section 3-C of the NH Act contemplates that any person interested in the land, may, within 21 days from the date of publication of the notification under Section 3-A(1) of the NH Act, can object to the use of the land for the purpose or purposes concerned and the competent authority, upon hearing all such objections, may allow or disallow the objections. The authority after carrying out the procedures under Section 3-C of the NH Act, is to submit a report to the Central Government and upon receipt of the same, it shall declare by notification in the Official Gazette that the land should be acquired for the purpose or purposes mentioned in Section 3-A(1) of the NH Act and on such publication, the declaration under Section 3-D of the NH Act would be passed and thereby, the land shall vest absolutely with the Central Government free from all encumbrances. Section 3-E of the NH Act provides power to take possession and under Section 3-F of the NH Act, once declaration is issued under Section 3-D of the NH Act, it shall be lawful for any person authorised by the Central Government in this behalf to enter and do other act necessary upon the land for carrying out the purposes of acquisition. Section 3-G of the NH Act speaks about the determination of amount as compensation and Section 3-H of the NH Act says about the deposit and payment of money.

21. In the case on hand, declaration under Section 3-D of the NH Act was made during December 2008 and the lands in question now absolutely vest with the Government.

22. In *Union of India v. Kushala Shetty and others* reported in (2011) 12 Supreme Court Cases 69, the scope of the National Highways Act, 1956 came up for consideration and the appeal filed by the Union of India, challenging the quashment of notification was allowed and it is relevant to extract hereunder paragraph 28:

28. Here, it will be apposite to mention that NHAI is a professionally managed statutory body having expertise in the field of development and maintenance of national highways. The projects involving construction of new highways and widening and development of the existing highways, which are vital for the development of infrastructure in the country, are entrusted to expertise in the field of highways. It comprises of persons

having vast knowledge and expertise in the field of highway development and maintenance. NHAI prepares and implements projects relating to development and maintenance of national highways after thorough study by experts in different fields. Detailed project reports are prepared keeping in view the relative factors including intensity of heavy vehicular traffic and larger public interest. The courts are not at all equipped to decide upon the viability and feasibility of the particular project and whether the particular alignment would subserve the larger public interest. In such matters, the scope of judicial review is very limited. The court can nullify the acquisition of land and, in the rarest of rare cases, the particular project, if it is found to be *ex facie* contrary to the mandate of law or tainted due to *mala fides*. In the case on hand, neither has any violation of mandate of the 1956 Act been established nor has the charge of malice in fact been proved. Therefore, the order under challenge cannot be sustained.

23. In *Shri Andal Alagar Kalyana Mandapam Private Ltd., v. U.O.I* reported in (2007) 7 MLJ 1021, challenge was made on the ground of vagueness and *mala fides*. In paragraph 24, the learned Judge dealt with the issue as to the challenge made after the award came to be passed. In paragraph 49 of the said order, the learned Judge observed that in the light of the scheme of National Highways Act, 1956 and in the absence of any provision for divesting or reconveyancing, and that too, after the land vested with the Central Government, there is no provision in the National Highways Act, 1956, akin to Section 11-A of the Land Acquisition Act, 1894, which speaks about the lapse and the only provision in the National Highways Act, 1956, by which the proceedings shall lapse, is found in Section 3-D(3) and it prescribed that if a declaration under Section 3-D(1) was not published within one year of a notification under Section 3-A(1), the notification shall cease to have effect.

24. As rightly contended by the learned Standing Counsel appearing for the second respondent, the formalities/procedures prescribed under the NH Act have been scrupulously complied with and the lands in question absolutely vest with the Central Government and in the absence of any provision for reconveyance, the prayer sought for by the appellants/writ petitioners cannot be granted.

25. The primordial submission made by the learned Senior Counsel appearing for the appellants/writ petitioners is that in the absence of any provision for acquiring the land for future expansion, the acquisition is bad.

26. In the considered opinion of this Court, the said submission lacks merit and substance for the reason that a project of this kind which would definitely benefit the public, forevision and thought also require that the concerned authorities have to consider the future expansion and need also and since it is the act of acquisition of land for laying the road, it is purely in public interest and in the light of the increase in vehicular traffic, need for acquisition of land for future expansion cannot be faulted with.

27. The laying of quality road, development of road and infrastructure, is very much essential for the economic development of the country and as such, the acquisition cannot be found fault with.

28. It is also to be pointed out that whatever objections raised by the appellants/writ petitioners have been duly complied with and thereafter, notification came to be issued under Sections 3-D and 3-G(3) of the NH Act. No doubt, there exist superstructures on the lands in question and however, the appellants/writ petitioners are compensated for the superstructures also.

29. It is always open to the appellants/writ petitioners to go for higher compensation under Section 3-G(5) of the NH Act also.

30. This Court is also of the considered view that the experts had gone into the issue and suggested that the lands have to be acquired for future expansion also and this Court cannot sit over the said decision in the absence of any plea regarding arbitrariness or mala fides and the lands are acquired for public purpose and as such, the decision on the part of the respondents to acquire the additional lands cannot be faulted with.

31. It is also to be noted at this juncture that after acquiring the lands, the National Highways authorities are expected to carry out the laning and expansion of the road within the time stipulated by the project authorities and also expected to lay all-weather roads strictly as per the norms of Indian Road Congress and this Court had also come across the cases, wherein after acquiring the lands, the said lands are not put to use for such a public purpose which led to encroachments and the authorities are finding it difficult to remove the said encroachments.

32. This Court is optimistic that the National Highways Authority of India would take into consideration the said aspect and discharge their duties and responsibilities in public interest.

33. In the result, both the writ appeals are dismissed, confirming the common order dated 10.02.2016 passed in W.P(MD)Nos.5366 of 2011 and 2086 of 2012. In the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected civil miscellaneous petitions are also dismissed.