

(2015) 01 MAD CK 0271

In the Madras High Court

Case No : Writ Petition No. 7372 of 2014 and M.P. Nos. 1 and 2 of 2014

C. Natarajan

APPELLANT

Vs

The Competent Authority and Special District Revenue Officer
(Land Acquisition and Others)

RESPONDENT

Date of Decision : 23-01-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 4, 11

Constitution of India, 1950 — Article 226, 32

Land Acquisition Act, 1894 — Section 5-A

National Highways Act, 1956 — Section 3(A), 3(A)(3), 3(c), 3(D)(1), 3A

Citation : (2015) 01 MAD CK 0271

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Advocate : V. Raghavachari, for the Appellant; M.S. Ramesh, Additional Government Pleader, Advocates for the Respondent

Final Decision : Allowed

Judgement

C.S. Karnan, J.—The short facts of the case are as follows:

"The petitioner submits that the respondents herein have sought to acquire the property for widening of National Highway 47 and acquisition proceedings were initiated under the National Highways Act Section 3A notice was issued on 04.05.2010 and objections were called for and filed on 21.05.2010 and 26.07.2010. Even before the receipt of the second objection on 26.07.2010, orders were passed rejecting the resistance against the acquisition on 15.07.2010. The writ petition was filed in W.P. No. 17669 of 2010. On 27.09.2010, the writ petition was disposed of with certain observation. Thereafter, representations were made to the authorities explaining the difficulties that would be faced in the event of having truck terminal in the place wherein the petitioner is running an industry.

2. The National Highways Authority were sympathetic and reconsidered their

decision to delete from the acquisition the area earmarked for rest area and truck byes. On 26.03.2011 they have addressed a letter to the Tahsildar, Sulur seeking for availability of alternative "Poramboke lands" adjacent to Salem - Kochin section of NH-47. The Tahsildar also responded on 05.04.2011 placing on record that S. No. 146 measuring 0.81.0 Hectares and S. No. 274/16 measuring 8275 sq. mt. is available. The District Collector on 05.05.2011 had addressed a letter to the Chief Manager, National Highways, St. Thomas Mount, suggesting an alternate spot in the place of Sri Dhanalakshmi Sizing and Spinning Mills. In this letter also forwarded to the second respondent on 20.11.2011. The District Collector had found avoiding the acquisition of petitioner's property would save the exchequer of substantial amounts. The respondents in turn had sought for the opinion of intercontinental consultation and Techno Graft Private Limited, Coimbatore-14 as to whether the alternate proposal for the two numbers of truck lay bys and rest area are feasible. It was also opined that Government land available nearby would be sufficient. They have also requested the competent authority to consider the shifting of the truck lay bys as it is beneficial. He craves leave of this Court to refer the report dated 25.02.2012 issued by the Techno crafts agency confirming that the shifting of truck lay bys and rest area is advisable. Coincidentally, he made a request on 07.03.2012 based on the report of the expert seeking to relocate the truck lay bys from Km. 134+870 RHS to Km. 139+300 RHS. It appears several communications have taken place between the second respondent and Tahsildar as well on this subject. The Tahsildar also addressed a letter on 26.04.2013 giving particulars of the lands available for truck lay bys and informed the competent authorities that the State of Tamil Nadu will have no objection for the shifting.

3. On 03.05.2013, the second respondent had addressed a letter to the Chief Manager National Highways recommended to the competent authority for shifting of the truck lay bys. The proceedings dated 03.05.2013 reads as follows:--

"In view of the above submission, it is requested that the proposals for alternative locations for two truck lay byes at Km. 129 + 200 to Km. 139 + 300 and from Km. 134 + 870 to Km. 139 + 300 may be recommended for approval of competent authority, for using the available Government Lands keeping in view of the Project Completion Time"

Once again on 10.09.2013, a similar request was made by the second respondent to the first respondent. The Project Director was requested by the General Manager, Regional Office, Chennai on 14.11.2013 to secure the consent of the Collector for sparing the Government land for construction of truck lay bys. The District Collector was also approached by the Project Director on 14.11.2013 and a bare perusal of the letter clearly shows that their lands were not required for the purpose originally envisaged. In fact, the need for acquisition of their lands at S. No. 226 had become irrelevant due to the changed circumstances.

4. Unfortunately, the first respondent herein without considering the various

concluded issues had suddenly threatened that he would lay the road demolishing the labour quarters, the power house and LT power room. If it is allowed to take place, the entire industry will come to a standstill. Three years of good work done by various authorities will go waste. The stand taken by the Government officials at the State level and the Regional levels at Madras by the National Highway authorities to save a running industry will go waste. Though the original notification issued had become irrelevant in view of subsequent events, technically, the respondents feel the notification issued for acquisition would obstruct their way from further proceeding with the matter. Apparently, the hitch faced by the respondents is due to the order impugned in the writ petition. He states that in order to make possible the recommendations of the authorities that are made fruitful and equally to ensure that the running industry is not put to unwanted inconvenience, he is constrained to approach this Court for issue of writ of certiorarified mandamus.

5. The first respondent namely the Competent Authority and Special District Revenue Officer, Land Acquisition, National Highways-47, has filed a counter statement and requested this Court to delete him from the cause title of the above writ petition. The first respondent has revealed the brief history of the case, which are as follows:--

"One Thiru. Natarajan of Kaniyoor village has filed a writ petition before this Court in W.P. No. 7372 of 2014 along with MP. No. 2 of 2014, challenging the Notification and the Proceedings of the Special District Revenue Officer in Roc. No. 2/2010 (A1) dated 04.10.2010 for the acquisition of land in S. No. 226/1A etc. of Kaniyur Village, Sulur Taluk, Coimbatore District for construction of Truck Lay-by in the above area and requested this Court to quash the same as illegal, incompetent and unconstitutional and also to forbear the Respondents to put up a Truck terminal in S. No. 226 of Kaniyur Village of Sulur Taluk of Coimbatore District."

6. It is submitted that the notification under Section 3(A) of the National Highways Act, 1956, was issued by the Government of India Gazette vide S.O. No. 451(E) dated 23.02.2010, authorizing the Special DRO, Coimbatore as Competent Authority (Land Acquisition) for the purpose of land acquisition under the National Highways Act, 1956.

7. It is submitted that the Section 3(A) Gazette Notification was published by the Government of India vide S.O. No. 754(E) dated 05.04.2010 for acquisition including Kaniyur Village. The substance the Gazette Notification has been published in Two Local News Papers namely, "The New Indian Express" (English) and "Dhinanthanthi" (Tamil) dated 04.05.2010 as required under the provision of Section 3(A)(3) of the National Highways Act, 1956. After the said publication in two News Papers, including one in vernacular language, the persons interested in the Land has to file their objection within 21 days from the date of publication as per Section 3C(1) of the National Highways Act, 1956.

8. The declaration under Section 3-D was made by the Central Government regarding the acquisition of the said land in Kaniyur Village vide Government of India, Gazette vide S.O.2045(E) dated 23.08.2010 and the substance of the said notification was published in two local Newspapers under Section 3G(3) for ward enquiry purposes i.e., "The New Indian Express" and "Dinathanthi" dated 11.10.2010 as per the National Highways Act, 1956. Once the publication under Section 3D(2) is made, the land shall vest absolutely with the Central Government free from all encumbrances. After the publication of the said declaration in the newspapers and also calling for the award enquiry, the only available remedy to the writ petitioner is to face the award enquiry and negotiate for compensation. However, the petitioner has at this belated stage come out with a writ petition challenging Section 3A Notification and 3D declaration which is maintainable neither in law nor on facts and is liable to be dismissed at limine.

9. It is submitted that after the publication of the 3A notifications in two local newspapers, one in the vernacular language, within 21 days of the date of publication of the said notification, the land owner or any other person interested in the land had to file their objections with the Competent Authority. The petitioner says in his affidavit that he gave his objections for the land in Kaniyur Village on 21.05.2010 to this office. The poramboke land mentioned by the petitioner i.e. S.F. No. 146/2 of Kaniyur Village is classified as Kuttai Poramboke. It is submitted that watercourse Poramboke lands are strictly prohibited by for assignment, alienation by the Government Orders as well as various judgments of this Court. Hence, the request of the petitioner has not been considered. Another S.F. No. 274/16 Kaniyur Village is located away from the NH road and hence not suitable.

10. It is submitted that after publication of the notice under Section 3D(2), the lands in question are absolutely vested with the Central Government. Hence the petitioner was called upon to hand over possession vide their notice dated 19.04.2011 under Section 3E(1). The petitioner had not participated in the award enquiry and hence after proper consideration, the award amount was determined and the petitioner was called upon to receive the award amount. The land owner Thiru. C. Natarajan and Tmt. N. Leelavathi have not received the compensation amount, the same has been kept under revenue deposit by this office Proceedings RC.147/2010 A1 dated 29.01.2014 under Award No. 7/2010 dated 30.03.2011.

11. He submits that in the above writ petition the main prayer of the writ petitioner is to issue a certiorarified mandamus to respondents not to put up a truck terminal in S.F. No. 226/1A2 and 226/1C2 and 226/1D2 and 226/3B of Kaniyur Village and in the meantime to grant an interim injunction restraining the respondents, their men agents, subordinate officials and any other person from interfering with the petitioner's possession over the above fields.

12. He submits that the declaration under Section 3D(1) of NH Act No. 48/1956 to acquire the following extent of Kaniyur Village has been published in the

Gazette of Government of India bearing No. 1737 - S.O. No. 2054(E) dated 23.08.2010.

The possession of above fields have already come under the control of NHAI from the date of publication of above declaration vide Section 3(D)(1) i.e. from 23.08.2010. The NHAI has proposed to construct the terminal lay-by at the above acquired fields.

13. He submits that his duty is acquiring the lands upon the request of the National Highway Authority of India as per the National Highways Act 48/1956. The National Highways Authority of India is the deciding authority as to which lands are needed for the use of NHAI in formation of new road or widening/the existing road and the suitability of the lands the terminal lay-by may be constructed. The second and third respondents are only competent to decide as to whether the proposed truck terminal in the above fields may be constructed or not.

14. He submits that the petitioner herein had earlier (filed) a similar writ petition in W.P. No. 17669 of 2010 before this Court seeking to quash the same acquisition proceedings the said writ petition was dismissed by a well considered order dated 27.09.2010. Under such circumstances, the present writ petition for the same relief is not maintainable and liable to be dismissed for this writ petition on the sole ground.

15. The second respondent namely the Project Director, National Highway - 47 has filed a counter statement on behalf of the third respondent and himself. The second respondent submits that the project for the formation of 6/4 laning/ widening of Chengapalli - Walayar Section from Km. 102/035 to Km. 183/060 excluding the stretch of L and T Bye-pass in NH-47 has been taken up for execution under National Highways Development Programme Phase-II. M/s. Wilbursmith Associates Private Limited carried out the Feasibility Study and furnished the project particulars including Land Plan and Schedule. This civil work contract has been awarded to M/s. IVRCL, Chengapalli Tollways Limited, vide Agreement dated 25.03.2010 under DBFOT (Design, Build, Finance, Operate and Transfer) basis.

16. He submits that the Notification under Section 3(a) of the National Highways Act 1956 was issued by the Government of India and Gazetted in S.O. No. 451(E) dated 23.02.2010 authorizing the Special DRO, Coimbatore as the Competent Authority (Land Acquisition) for the purposes of land acquisition under the National Highways Act, 1956 (the Act). He submits that Section 3(A) Gazette Notification was published by the Government of India vide S.O.754(E) dated 05.04.2010 for acquisition including Kaniyur Village. The substance the Gazette Notification was published in Two Local News Papers namely, "The New Indian Express" (English) and "Dhinathanthi" (Tamil) both dated 04.05.2010 as required under the provision of Section 3(A)(3) of the Act. After the said publication in two News Papers including one in vernacular language, the persons

interested in the land had to file their objections within 21 days from the date of publication as per Section 3C(1) of the Act.

17. He submits that the Notification issued for Government's intention to acquire such lands under Section 3-A contains the brief description of the land which is sought to be acquired and further sets out the land plans and states that the other details of the lands covered under the said notification are available with the Competent Authority and can be inspected by the interested persons. It is submitted that Section 3A Notification shall contain only the brief description of the land, land survey number, nature of the land and the area sought to be acquired. The notification under Section 3D shall alone give the details in description of the land, the name of the land downers/the person interested in the property sought to be acquired and such other details. He submits that the declaration under Section 3-D was made by the Central Government regarding acquisition of the said land in Kaniyur Village vide Government of India Gazette vide S.O.2045(E) dated 23.08.2010 and the substance of the said notification was published in two local newspapers under Section 3G(3) for the purpose of award enquiry i.e., the "New Indian Express" and "Dinathanthi" dated 11.10.2010 as per the Act. Once the publication under Section 3D(2) is effected, the land shall vest absolutely with the Central Government free from all encumbrances. After the publication of the said declaration in the newspapers and also calling for the award enquiry, the only available remedy to the writ petitioner is to face the award enquiry and negotiate for compensation. However, the petitioner has at this belated stage come out with a writ petition challenging Section 3A Notification and 3D Declaration which is neither maintainable in law nor on facts and is therefore liable to be dismissed in limine.

18. The NHAI has not considered relocating the survey fields in question from the acquisition. The NHAI authorities suggested to find out as to whether the request of the individual can be considered? As per NHAI's instruction, the Tahsildar, Sulur was requested for alternate Government Poramboke lands for the purpose of relocating the Truck Lay-By. He affirmed that the statement made in Para-3 of the Affidavit stating that the motivation under Section 3A(1) of the National Highways Act 1956 for the formation of the 4/6 laning Chengapalli - Walayar section of the NH-47 in Kaniyur Village of Sulur Taluk of Coimbatore District has been published by the Central Government. He submits that the allegations made at Para-4 and para-5 of the Affidavit are denied as incorrect and false. It is submitted that after the publication of the 3A Notification in two local newspapers, one of them in vernacular language, the interested land owners had to file their objections with the Competent Authority within 21 days from the date of such notification. The Petitioner herein gave his objections for the land in Kaniyur Village dated 21.05.2010 to the Competent Authority which was considered by the Competent Authority by giving a reasonable and fair opportunity to put forth his grievances.

19. He submits that the allegations made in paras 6, 7 and 8 of the affidavit are

denied as incorrect and false. It is submitted that Section 3A Notification has very clearly stated that the land is ought to be acquired for the formation of 4/6 laning/widening of the NH-47. Section 3-A Notification has specifically provided with Survey Number, Type of land, nature of land and even the area in sq. m. of the portions of land sought to be acquired. Further, the petitioner in the said objections filed by him on 21.05.2010 has stated that the lands belonging to him which have been notified are built-up homes, buildings, the watchman, security, guest house compound wall, etc., are available in the said lands. Further, he has stated that the acquisition of the said lands would result in damaging the facilities, the production in the spinning mills and thereby the 600 odd workers would be affected by the acquisition. The Competent Authority rejected the objections after affording fair and reasonable opportunity to the petitioner. With regard to the notice under Section 3G(3) which was published in the local newspapers i.e., "The New Indian Express" and "Dinathanthi", it is submitted that after the publication of Section 3G(3) notice in the newspapers and calling for the award enquiry, to claim compensation, Award has been passed by the Competent Authority vide Ref. No. 147/2010A1 Award No. 7/2010 dated 30.03.2011. The land owner Thiru. C. Natarajan and Tmt. N. Leelavathi have not received the compensation amount decided by the Competent Authority vide his Award No. 147/2010 Award 7/2010 dated 30.03.2011. Hence, the compensation amount was kept under Revenue Deposit by the Competent Authority vide his Pro.RC.147/2010 A1 dated 14.02.2014.

20. He submits that the allegation made by the petitioner on Grounds (a) of the affidavit are denied as incorrect and false. The stand of the petitioner that the Notifications under Section 3(A) and Section 3D(1) of the Act are irrelevant in view of the later developments is incorrect. The Notifications were issued after following due procedures as contemplated under the Act. Further, the notice under Section 3G(3) was published in the local News Papers and the Petitioner cannot challenge the Section 3A and Section 3D(1) Notifications at this belated stage. The writ petitioner has earlier challenged 3A and 3D Notifications for acquisition in W.P. No. 17669 of 2010 and this Court by judgment dated 27.09.2010 dismissed the writ petition observing the writ petitioner could claim compensation at higher value and no further relief was granted to the petitioner. The identification of alternate lands as suggested by NHAH authorities are only for consideration by higher authorities and hence notification issued for acquisition is as per statue and not irrelevant as alleged by the writ petitioner.

21. He submits that the allegation made by the petitioner on Grounds (b) of the affidavit are denied as incorrect and false. He submits that the Chief General Manager (T) and RO, Chennai and the NHAH HQ vide their letter NHAH/11015/17(B)/12/RO Chennai/155 dated 15.01.2014 and 934 dated 10.03.2014 has conveyed that Awards have been passed by Competent Authority and Special District Revenue Officer (LA), NH-47 and 67, Coimbatore. The compensation amount decided by the CALA was not received by the land owner and the same was ordered to be kept under Revenue Deposit by the CALA. The

amount was also kept under Revenue Deposit with instructions to the NHAH authorities to take over possession of the lands by the Project Director, PIU, Coimbatore.

22. He submits that the allegation made by the petitioner on Grounds (c) of the affidavit are denied as incorrect and false since no structures within the factory vicinity (i.e.) Power house, factory, buildings, etc. is affected in any way due to the construction of Truck Lay-by at Km. 134+870.

23. He submits that the allegation made by the petitioner on Grounds (d) of the affidavit are denied as incorrect and false. There were proposals for relocation of Truck lay-by in Government Poramboke lands available nearby. The relocation suggested for truck lay-by in S. No. 146/2 is Kuttai Poramboke and hence the CGM(T) and RO Chennai was of the opinion to get clearance from State Government or Collector for recommending for relocation in the water body Poramboke. Mere recommendation for relocation of Truck Lay bye on the request of the petitioner is not sufficient and the NHAH Hqrs. has to approve the same. Further, as per Concession Agreement the lands for construction of Truck Lay-By has to be handed over to the Concessionaire by the NHAH within the stipulated time. In this case, awards passed way back in 2011. Due to non receipt of compensation amount, it was kept in Revenue Deposit by Competent Authority and Special District Revenue Officer with a direction to the Project Director to enter upon the land for construction of Truck lay- by.

24. He submits that the allegation made by the petitioner on Grounds (e) of the affidavit are denied as incorrect and false. The acquisition of lands of the writ petitioner is as per the provisions of NH Act 1956 and after following the due procedures as contemplated in the Act. The contention of the writ petitioner that the acquisition of lands offend the right of livelihood of the writ petitioner and the workman is false since no structures within the vicinity of factory (i.e.) Power House, Factory building etc. is affected in any way due to the construction of Truck Lay-By at Km. 134+870.

25. He submits that the allegation made by the petitioner on Grounds (f) of the affidavit are denied as incorrect and false. The averment in this para is false. Since the construction of truck lay-by at Km. 134+870 will not affect in any way the structures (i.e.) Power House, factory, buildings etc. practically there will be no demolition. The Photos and the proposed layout of Truck Lay-bye location is enclosed. There will be no loss of income to State Government by way of taxes as claimed by the writ petitioner. It is therefore, prayed that this Court may be pleased to vacate the status quo order given by this Court in their Judgment in order dated 12.03.2014 in W.P. No. 7372 of 2014 and dismiss the above writ petition.

26. The highly competent counsel Mr. V. Raghavachari appearing for the petitioner argued the case and disclosed the entire facts of the case and also submitted the legal points besides the highly competent counsel has filed written

arguments which are as follows:-The petitioner runs a sizing and spinning mill operating in the name of M/s. Dhanalakshmi Sizing and Spinning Mills. The mills lands are situated on the National Highways No. 47, more specifically in Survey No. 226/3 in Kaniyur Village of the Salem-Cochin segment of the highway. The second respondent floated a proposed plan for the construction of a truck lay by at the Kms. 134+870 RHS segment of the Highway. The proposed construction would imply the acquisition of portion of the lands belonging to the petitioner and situate at Survey No. 226/3 in Kaniyur Village. This piece of land is the only means of access to the Mill which employs about 450 workmen. In other words, the acquisition would inevitably sound a death knell to the working of the Mill, with the resultant effect that 450 workers would be rendered jobless overnight. The lands belonging to the petitioner were sought to be acquired pursuant to a notification dated 30.04.2010 under Section 3A(3) of the National Highways Act for the purposes of widening/six laning the National Highways from Km. 102/35 to 183/060. This notification was published in the "New Indian Express" and "Daily Thanthi" on 04.05.2010. Objections under Section 3(c) were called for, and the petitioner submitted his objections in writing to the first respondent on 21.05.2010 followed up by a letter dated 26.07.2010. The first respondent rejected the objections submitted by the petitioner vide his order dated 15.07.2010 prompting the petitioner to assail the validity of the notification dated 30.04.2010 published on 04.05.2010 before this Court in W.P. No. 17669 of 2010. This Court, vide its order dated 27.09.2010, had dismissed the writ petition holding that the petitioner was at liberty to work out his rights before the authorities. It may be pointed out that pursuant to the acquisition, the 6 laning project had not been stalled and it was completed and 3300 sq meters of land had been acquired for this purpose. However, the instant dispute concerns the acquisition of a further extent of 3300 sq meters for "truck parking" proposed to be located at S. Nos. 226/1A2, 226/1D2, 226/3B and 226/C2. The cause of action for this writ petition arose after the disposal of the earlier writ petition. Post the order in the writ petition, the petitioner wrote to the official respondents drawing their attention to the existence of alternative poramboke lands that were easily available adjacent to the Salem-Cochin highway and which could be fruitfully utilized for the construction of the Rest area/truck lay-by/This would also save substantial money for the State Exchequer. Pursuant to this, the Collector of Coimbatore District had addressed a letter to Chief General Manager, National Highways of India dated 05.05.2011 to consider the request of petitioner involving substitution of private lands with Government Poramboke lands for the purposes of constructing a truck lay-by. In response, the Manager (Tech), wrote to the Project Director vide his letter dated 20.05.2011 requesting for the submission of a detailed report and sketch for further action. Apropos the aforesaid request, M/s. IVRCL Chengapalli Tollways Limited, an expert in the field of alignment of roads and employed by the National Highways, was commissioned to submit a report on the proposal for the alternative location of 2 Nos. of Truck Lay-Bys and Rest Areas. In its report, found at page 45 of the typeset of papers, the expert body has specifically stated, at page 47, in respect

of the rest area as follows:

"It is also confirmed that the available Govt. land at Km. 130+450 RHS is technically suitable for providing the Truck lay-by and no additional cost is involved." "viii) It is also confirmed that no change of scope is involved in the above proposal."

27. Furthermore, in respect of a truck lay-by, the expert body concluded, at page 48,

"Therefore, in the light of the above factors, savings to NHAI in cost of Land Acquisition and anticipated delay in acquisition of land and Project completion, the available Govt. land at Km. 112+700 to Km. 113+200 LHS may be approved for the Construction of Rest Area in lieu of the originally proposed location of 135+180."

28. The National Highways sought for a second opinion from intercontinental Consultants and Technocrats Private Limited, in its report dated 25.02.2012, M/s. Intercontinental Consultants and Technocrats Private Limited recommended the relocating the rest area between km 112+700 to 113+200 LHS to avoid additional land acquisition and resultant loss of time and money. In so far as the truck lay byes at Km. 129+200 RHS was concerned, the expert body opined that the land 130+450 RHS was technically more suitable on account of the availability of additional Highway frontage. In other words, the stand of the petitioner was vindicated by an independent expert body appointed by the respondents themselves. Vide a letter dated 03.05.2013, the second respondent took note of the recommendations made by the expert body, and had concurred with the opinion tendered by it (page 62 of the typeset of papers). The second respondent had also confirmed that the compensation amount had not been paid to the proposed truck lay-by to the land owner. (page 65). The second respondent, therefore, requested the proposals for the use of alternative sites to be approved by the Competent Authority (page 66). The second respondent wrote to the District Collector on 14.12.2013 requesting his approval for relocating the sites to the alternative places.

29. Requests were renewed through a further correspondence dated 15.01.2014. However, vide a letter dated 22.01.2014, the third respondent overlooking and suppressing all the proceedings conducted at their instance, including the 2 expert reports, had merely stated that the lands were acquired and work has commenced the re-location was not found to be feasible. The very fact that the third respondent has not even adverted to the reports of the experts, nor of the previous correspondences with the District Collector or their own officials, reveal that the order is passed in ignorance of ground realities. Left with no other alternative or expeditious remedy the petitioner is constrained to approach this Court for the reliefs set out earlier in paragraph 1.

30. Countering the case of the petitioner, the respondent raised a preliminary objection that the present petition was barred by res judicata. This submission is

clearly misconceived, misleading and deliberate falsehood. The respondent has failed to see that the present writ petition seeks to assail the notification on facts that have taken place pursuant to the disposal of WP. No. 17669 of 2010. The principle of res judicata operates to preclude a second round of litigation on the same cause of action. It is elementary/rudimentary that principles of res judicata will have any application based on the issues and cause of action. In the present case, the cause of action for the writ petition arose after the disposal of the earlier writ petition. Therefore, the principle of res judicata has no application. The present writ petition is on a different cause of action.

31. The argument of res judicata is, therefore, based upon either an ignorance of the legal principle that governs res judicata or is on account of the callous indifference on the part of the respondent in not even taking the trouble to peruse the grounds on which the present writ petition is founded. As was pointed out by the Supreme Court in *Anwar Khan Mehboob and Co. Vs. State of Madhya Pradesh and Others*, AIR 1966 SC 1637 : (1966) 2 SCR 40 , the rule has no application where the cause of action is entirely distinct. The plea of res judicata is, therefore, nothing but a plea in futility.

32. The averments in paragraph 16 of the written submissions are truly unfortunate. The counter affidavit filed by the third respondent suppresses all material facts that had taken place at their instance. When an expert body constituted by the respondents themselves had opined that no extra cost would be incurred for the relocation and on the other hand it is cost beneficial, it is not known as to how the respondent could make the submission reflected in paragraph 16. The argument that the NHAI must make payments to the State Government is truly unfortunate. It is either a silly excuse or a statement that is made in the air, for the records produced by the petitioner would irrefutably show that the financial obligations were negligent. Further, it is not open to the respondents to plead contrary to the expert committee reports. Both the expert bodies found relocation of the truck lay-by as beneficial to the National Highway. No reason had been given by the respondents to reject the report.

33. The respondent ought to remember that the Supreme Court in *Radhe Shyam v. The State of UP* reported in 2011 3 SCC 581

"(iii) Though, in exercise of the power of eminent domain, the Government can acquire the private property for public purpose, it must be remembered that compulsory taking of one's property is a serious matter. If the property belongs to economically disadvantaged segment of the society or people suffering from other handicaps, then the Court is not only entitled but is duty bound to scrutinize the action/decision of the State with greater vigilance, care and circumspection keeping in view the fact that the land owner is likely to become landless and deprived of the only source of his livelihood and/or shelter."

The Court concluded that "If public purpose can be satisfied by not rendering common man homeless and by exploring other avenues of acquisition, the

Courts, before sanctioning an acquisition, must in exercise of its power of judicial review, focus its attention on the concept of social and economic justice. While examining these questions of public importance, the Courts especially the Higher Courts, cannot afford to act as mere umpires.

34. The respondents have failed to appreciate the well settled principles of Law laid down by this Court and the Apex Court in matters of land acquisition. In fine, the purported exercise of power in the present case is nothing but a fraud on the statute, necessitating the immediate interference of this Court. Abuse of authority and power should be checked at all times and the powers of the Court cannot be fettered by quoting authorities which has no relevance. None of the decisions cited by the respondents have any relevance to the case and has been added only for the purpose of concealing the truth and reality. This Court had directed the National highways to disclose as to who is in possession of the property and on a wrong statement being made directed the petitioner to file a report from the VAO and photograph of the area. Both of them were filed to prove that the lands continue to be with the writ petitioner.

35. It must also be pointed out that the National Highway has completely suppressed the correspondences that had taken place between its authorities and the revenue officials. The cloak and dagger approach of the respondents must be deprecated given the fact that the proposed relocation would only benefit the Department. The attitude of the respondent fortifies the petitioner's apprehension that the authorities have entered into an unholy alliance with vested interests to act in utter disregard of practical and financial implications of the project. They are in reality acting against the interest of the public. It is not in public welfare to stall a running mill or render several employees without work. The counter affidavit filed by the respondent would show that it has not even attempted to meet the case of the petitioner on merits. Instead, it has come up with unacceptable defenses that cannot stand the constitutional scrutiny. And lastly, it may be pointed out that the relocation of lands would have the effect of unnecessarily driving out an industry from existence, and thereby preventing 450 workmen from slipping into unemployment. On the other hand, public interest is not jeopardized as the proposed rest area and truck lay-by would come up on alternative sites on Government land.

36. The respondent cannot, therefore, cite the oft quoted public purpose catchphrase to bog down the powers of the Court to do substantial justice. The Supreme Court had in *The Rajasthan State Industrial Development and Investment Corporation Vs. Subhash Sindhi Cooperative Housing Society Jaipur and Others*, (2013) 3 AD 29 : AIR 2013 SC 1226 : (2013) 3 JT 1 : (2013) 2 SCALE 434 : (2013) 5 SCC 427 : (2013) AIRSCW 1174 : (2013) 2 Supreme 345 , at page 439, explained the powers of the Court to promote justice and in paragraph 24 it has held as under:

"24. The primary purpose of the writ is to protect and establish rights, and to impose a corresponding imperative duty existing in law. It is designed to

promote justice (*ex debito justitiae*) and its grant or refusal is at the discretion of the Court. The writ cannot be granted unless it is established that there is an existing legal right of the applicant, or an existing duty of the respondent. Thus, the writ does not lie to create or establish a legal right but, to enforce one that stood already established. While dealing with a writ petition, the court must exercise discretion, taking into consideration a wide variety of circumstances, *inter alia*, the facts of the case, the exigency that warrants such exercise of discretion, the consequences of grant or refusal of the writ, and the nature and extent of injury that is likely to ensue by such grant or refusal. Hence, discretion must be exercised by the court on grounds of public policy, public interest and public good. The writ is equitable in nature and thus, its issuance is governed by equitable principles. Refusal of relief must be for reasons which would lead to injustice. The prime consideration for issuance of the writ is, whether or not substantial justice will be promoted. Furthermore, while granting such a writ, the court must make every effort to ensure from the averments of the writ petition, whether proper pleadings are being made. Further, in order to maintain the writ of mandamus, the first and foremost requirement is that, the petition must not be frivolous and it is filed in good faith. Additionally, the applicant must make a demand which is clear, plain and unambiguous. It must be made to an officer having the requisite authority to perform the act demanded. Furthermore, the authority against whom mandamus is issued, should have rejected the demand earlier. Therefore, a demand and its subsequent refusal, either by words, or by conduct are necessary to satisfy the court that the opposite party is determined to ignore the demand of the applicant with respect to the enforcement of his legal right. However, a demand may not be necessary when the same is manifest from the facts of the case, that is, when it is an empty formality, or when it is obvious that the opposite party would not consider the demand. (*Vide Commr. of Police v. Gordhandas Bhanji, Praga Tools Corpn. v. C.A. Imanuel, Punjab Financial Corpn. v. Garg Steel, Union of India v. Arulmozhi Iniarasu and Khela Banerjee v. City Montessori School*".

The records produced by the petitioner would reveal that the instant case is a clear one of colorable exercise of acquisition power by the respondents and gross abuse of law, especially when settled facts were concealed by the Statutory body before the Court and that too, in respect of matters that had taken place from January 2011 to January 2014 and consequently, it warrants interference in the exercise of the prerogative powers of this Court. For these reasons, it is prayed that this Court may be pleased to allow the writ petition as prayed for.

37. The highly competent Additional Government Pleader Mr. M.S. Ramesh submits that the first respondent has initiated land acquisition proceedings under the National Highways Act for acquiring the petitioner's lands and adjacent land for construction of Truck lay by at the petitioner's land comprised in Survey No. 226/1A etc. of Kaniyoor Village, Sulur Taluk. For that purpose the notification under Section 3(A) of the National Highways Act, was issued by the Government of India Gazette dated 23.02.2010. Following the same a notification was issued

dated 05.04.2010 for acquiring the land at Kaniyoor Village. Subsequently a declaration was published regarding the acquisition of the said land. After this publication the acquired land is vested with the second and third respondents herein. Thereafter, the petitioner was called for an award enquiry. Under the circumstances, the petitioner has filed the above writ petition which is not maintainable, further the petitioner made representation to the respondents and mentioned that Government Poramboke land is available for the said purpose. Actually, the Government land comprised in Survey No. 146/2 of Kaniyoor Village is classified as Kuttai poramboke. This kind of land should not be assigned for any purpose as per the Government standing orders. Further, the petitioner was called upon to hand over the possession to the respondent. The compensation amount also assessed and kept under Revenue District. Therefore, the learned counsel made deep request to dismiss the above writ petition. Supporting his argument, the learned Additional Government Pleader has filed a typed set of papers consisting of notifications, sketch and statement of the land owners including objection letter of the petitioner.

38. The highly competent counsel Mr. P. Wilson appearing for the respondents 2 and 3 submits that a notification was issued under Section 3(A) of the National Highways Act dated 23.02.2010. Following the said notification another notification was issued by the Ministry of Road Transport, dated 05.04.2010. Against the said notification the petitioner has filed an objection petition, thereafter a notice was issued to the petitioner for an enquiry and the objection petition was rejected. The very competent counsel submits that on the similar facts, the petitioner has filed a second objection petition on 26.07.2010, subsequently a declaration was issued under Section 3D of the Act dated 23.08.2010. Thereafter, the petitioner herein has filed writ petition No. 17669 of 2010, the same was disposed of by this Court in its order dated 27.09.2010 and observed that the petitioner to claim compensation at an higher value as observed by the Hon"ble Supreme Court of India, therefore on the same notification original cause of action, the above writ petition has been filed. As such, it is not maintainable before this Court.

39. The very competent counsel further submits that the respondents have given notification for conducting award enquiry. The Special Tahsildar (Land Acquisition) had sent a letter to the petitioner besides requiring to submit the documents pertaining to the acquired land comprised in Survey No. 226/1A. The petitioner also submitted his statement, therefore the compensation had been assessed and award was passed. After observing all necessary legal formalities, the petitioner's land had been acquired and the first respondent had sent a notice to the petitioner on 19.04.2011 with regard to handing over the possession of the land to National Highways Authority of India. Therefore, the petitioner made representation on 14.11.2011 regarding compensation. The first respondent had sent intimation notice to the petitioner regarding collection of compensation amount. Subsequently, the possession was taken over by the respondents and all the relevant records pertaining to the subject land had been

initiated in the name of National Highways. Further, the National Highways Authority of India sent a letter to the Ministry of Road Transport and Highways that shifting of the Truck lay-by is not feasible.

40. The highly competent counsel Mr. P. Wilson supporting his case, in addition to his oral argument has also submitted a written submission that the above writ petition has been filed challenging original impugned order in ROC.2/2010(A1) dated 04.10.2010, on the file of the first respondent. It is submitted that NHAI has implemented the project of formation of 6/4 laning/widening of Chengapalli - Walayar Section (from Km. 102/035 to Km. 183/060) excluding the stretch of L and T Bypass in NH-47 has been taken up for execution under National Highways Development Programme project particulars including Land Plan and Schedule. This civil work contract has been awarded to M/s. IVRCL Chengapalli Tollways Ltd., vide Agreement dated 25.03.2010 under DBFOT (Design, Build, Finance, Operate and Transfer) basis. It is submitted that the Notification under Section 3(a) of the National Highways Act 1956 was issued by the Government of India Gazette vide S.O. No. 451(E) dated 23.02.2010 authorizing the Special District Revenue Officer, Coimbatore as Competent Authority (Land Acquisition) for the purposes of land acquisition under the National Highways Act 1956. It is submitted that the Section 3(A) Gazette Notification was published by the Government of India vide S.O.754(E) dated 05.04.2010 for acquisition including Kaniyur Village. The substance the Gazette Notification has been published in Two Local News Papers namely, "The New Indian Express" (English) and "Dhinanthanthi" (Tamil) dated 04.05.2010 as required under the provision of Section 3(A)(3) of the National Highways Act, 1956. After the said publication in two News Papers including one in vernacular language, the persons interested in the land has to file their objection within 21 days from the date of publication as per Section 3C(1) of the National Highways Act 1956. The Notification issued for Government's intention to acquire such lands under Section 3A which contains the brief description of the land which is sought to be acquired and sets out the land plans and states that the other details of the lands covered under the said notification are available with the Competent Authority and can be inspected by the interested persons. It is submitted that the Section 3A Notification shall contain only the brief description of the land, land survey number, the nature of the land the area sought to be acquired. The notification under Section 3D shall alone give the details on description of the land, the name of the land owners/ the persons interested in the property sought to be acquired and other such details.

41. The declaration under Section 3D was made by the Central Government regarding the acquisition of the said land in Kaniyur Village vide Government of India, Gazette vide S.O.2045(E) dated 23.08.2010 and the substance of the said notification was published in two local newspapers under Section 3G(3) for award enquiry purposes i.e. the "New Indian Express" and "Dinanthanthi" dated 11.10.2010 as per the National Highways Act 1956. Once the publication under Section 3D(2) is made, the land shall vest absolutely with the Central

Government free from all encumbrances as referred in the Judgment "V. Nandakumar v. Union of India {2010 1 MLJ 901}"

"When once the lands vests with the Central Government the Petitioners will be entitled only for a compensation and the same will be deposited as per 3G of the Act. As on date, the Petitioners were served with sec 3G notice and it is for them to agitate the matter before the authorities for determining the compensation payable to their lands which is sought to be acquired and now vests with the Central Government."

After the publication of the said declaration in the newspapers and also calling for the award enquiry, the only available remedy to the writ petitioner is to face the award enquiry and negotiate for compensation. However, the Petitioner has at this belated stage come out with a Writ Petition challenging Section 3A Notification and 3D Declaration which is maintainable neither in law nor on facts and is liable to be dismissed in limine.

42. It is submitted that after the publication of the 3A Notification in two local newspapers, one in the vernacular language, within 21 days of the date of publication of the said Notification, the land owner or any other person interested in the land had to file their objections with the Competent Authority. The Petitioner herein gave his objections for the land in Kaniyur Village dated 21.05.2010 to the Special District Revenue Officer (LA), NH-47 and 67, Coimbatore which was considered by the Competent Authority by giving a reasonable and fair opportunity to put forth his grievances. It is submitted that the Section 3A Notification has very clearly stated that the land is ought to be acquired for the 4/6 laning/widening of the NH-47 has specifically provided with the Survey Number, Type of land, nature of land and even the area in sq. m. of the portions of land sought to be acquired. Further the petitioner in the said objections filed by him on 21.05.2010 has stated that the lands belonging to him which have been notified in the Section 3A Notification are built up home, buildings, the watchman, security, guest house compound wall etc. in the said lands. Further, he has stated that the acquisition of the said lands would result in damage of facilities and the production in the spinning mills, the 600 odd workers will be affected by the acquisition. The Competent Authority and Special District Revenue Officer (LA), Coimbatore in his letter No. 147/2010 A1 dated 15.07.2010 over ruled the objection filed by the Writ Petitioner under Section 3C(1) of NH Act 1956. With regard to the notice under Section 3G(3) which was published in the local newspapers i.e. "The New Indian Express" and "Dinathanthi", it is to state after the publication of Section 3G(3) notice in the newspapers and calling for the award enquiry, to claim compensation, Award has been passed by the Competent Authority and Special District Revenue Officer (LA), NH-47, Coimbatore vide ref. No. 147/2010A1 Award No. 7/2010 dated 30.03.2011. Notices under Section of the Act, were also issued to the writ petitioner Special District Revenue Officer (LA), NH-47, Coimbatore vide RC. No. 147/2010 dated 10.05.2012.

43. The land owner Thiru C. Natarajan and Tmt. N. Leelavathi have not received the compensation amount decided by the Competent Authority and Special District Revenue Officer (LA), NH-47 and 67 Coimbatore vide his Award No. 147/2010 Award No. 7/2010 dated 30.03.2011. Hence, the compensation amount was kept under Revenue Deposit by the Special District Revenue Officer (LA), NH-47 and 67 Coimbatore vide his Pro. RC.147/2010 A1 dated 14.02.2014 after exhausting all the provisions under the Act. Moreover it is submitted that the notification under Section 3(A) and Section 3D(1) of the National Highways Act 1956 are irrelevant in view of the later events is not correct. The Notifications were issued after following due procedures contemplated under the Act. Further the notice under Section 3G(3) was published in the local News Papers and at this stage the Petitioner shall not challenge the Section 3A and Section 3D(1) Notifications. The writ petitioner has earlier challenged the 3A and 3D Notification for acquisition in W.P. No. 17669 of 2010 and this Court in its judgment dated 27.09.2010 dismissed the writ petition with observation that the writ petitioner can claim compensation at higher value and no further relief was granted to the petitioner. The issues and findings in a previous case constitute res judicata for a present writ petition. When the prayers of the parties, the cause of action, the averments of parties are the same in the previous case subsequently the findings in the present writ petition is not maintainable and could not be reopened (State of Karnataka and Another Vs. All India Manufacturers Organization and Others, AIR 2006 SC 1846 : (2006) 11 JT 337 : (2006) 4 SCALE 398 : (2006) 4 SCC 683 : (2006) 2 SCR 86 Supp : (2006) AIRSCW 2234 : (2006) 5 Supreme 819).

44. The Chief General Manager (T) and R.O., Chennai and the NHAI H. Qrts. Vide their letter NHAI/11015/17(B)/12/RO Chennai/155 dated 15.01.2014 and 934 dated 10.03.2014 has conveyed that Awards have been passed by a Competent Authority and Special District Revenue Officer (LA), NH-47 and 67, Coimbatore. The compensation amount decided by the CALA was not received by the land owner and the same was ordered to be kept under Revenue Deposit by the CALA. The amount was also kept under Revenue Deposit with instructions to the NHAI authorities to take over possession of the lands by the Project Director, PIU, Coimbatore. Subsequently 3(E) Notification dated 20.12.2013 was also issued for possession of land by the Competent Authority. The suggestion of the petitioner seeking for relocation of truck lay bye in Government Poramboke land does not involve finance commitment to NHAI is not correct. Even Government Poramboke lands if taken by NHAI for Construction of Roads, Toll Plaza and Truck Lay bye etc. market value fixed by the District Collector and approved by Government of Tamil Nadu will have to be paid by NHAI to the State Government. It is submitted that there were proposals for relocation of Truck lay-by in Government Poramboke lands available nearby. The relocation suggested for truck lay-by in S. No. 146/2 is Kuttai Poramboke and hence the CGM(T) and R.O. Chennai was of the opinion to get clearance from State Government or Collector for recommending for relocation in the water body Poramboke. Mere recommendation for relocation of Truck Lay-by on the request of the petitioner is

not sufficient and the NHAI Hqrs. has to approve the same. Further, as per Concession Agreement the lands for construction of Truck Lay-By has to be handed over to the Concessionaire by the NHAI within the stipulated time. The acquisition of lands of the writ petitioner is as per the provisions of NH Act 1956 and after following the due procedures as contemplated in the Act. The contention of the writ petitioner that the acquisition of lands offend the right of livelihood of the writ petitioner and the workman is false since no structures within the vicinity of factory (i.e.) Power House, Factory building etc. is any way affected due to the construction of Truck Lay-By at Km. 134+870 will not affect in any way the structures practically there will be no demolition. In this case, awards passed way back in 2011. Due to non receipt of compensation amount, it was kept in Revenue Deposit by Competent Authority and Special District Revenue Officer with a direction to the Project Director to enter upon the land for construction of Truck lay-by.

45. It is submitted that truck lay-by is a project implemented by the National Highways Authority of India to enable the drivers to park their vehicles on the truck lay-by for various purposes, like fuel refilling, auto garage for repairing and servicing the vehicles, short relaxation stay for drivers, etc. The land acquired by the National Highways of India for this project is utilized only for that particular purpose. It is of national importance provided for the public purpose by the Government of India under National Highways Act, 1956. It is clearly stated in the Judgment "A. Palanisamy and anr. v. District Revenue Officer {CDJ 2009 MHC 5779}"

"The term "operation of a National Highway will cover providing those facilities and, in any case building, maintenance, management or operation of a National Highway are different facets of public purpose. The principal part of the Section permits the Central Government to acquire a land for public purpose and some facets of public purpose are mentioned as building, maintenance, management or operation of a National Highway."

46. Moreover it is submitted that NHAI (HQ) vide letter dated 22.01.2014 to the Director General (Road Department) and Special Secretary, Ministry of Road Transport and Highways has rejected their proposal of change of alignment informing that shifting of the truck lay-by is not feasible. It is well stated in para 21 of the Judgment Union of India (UOI) Vs. Dr. Kushala Shetty and Others, AIR 2011 SC 3210 : (2011) 8 JT 160 : (2011) 4 RCR(Civil) 353 : (2011) 7 SCALE 654 : (2011) 12 SCC 69 : (2011) 2 SCR 1087 : (2011) AIRSCW 5115 " as

"NHAI is a professionally managed statutory body having expertise in the field of development and maintenance of national highways....

In such matters the scope of Judicial Review is very limited.... Therefore the order under challenge cannot be sustained."

Hence it is submitted that this Court may be pleased to vacate the stay granted on 12.03.2014 as it is a time bound project and has to be completed before

30.06.2015 or otherwise it will incur great loss to the National Highways Authority of India. Looked at from any angle the aforesaid Writ Petition is absolutely ill-conceived and devoid of any merits besides tantamount to abuse of process of law and that it is liable to be dismissed.

47. The learned counsel Mr. P. Wilson had cited 5 judgments supporting his case which are as follows:--

1. State of Karnataka and Another Vs. All India Manufacturers Organization and Others, AIR 2006 SC 1846 : (2006) 11 JT 337 : (2006) 4 SCALE 398 : (2006) 4 SCC 683 : (2006) 2 SCR 86 Supp : (2006) AIRSCW 2234 : (2006) 5 Supreme 819

A. Constitution of India - Art. 226 - Res judicata - Principle of - Applicability to PIL - If previous litigation was in respect of a right in public interest and was bona fide it would be a judgment in rem and would bar a subsequent PIL raising same issues as were raised in the previous litigation or connected issues by persons interested in such right - Practice and Procedure - Res judicata - Civil Procedure Code, 1908, S. 11 Expln. VI

B. Civil Procedure Code, 1908 - S. 11 Explns. III, IV - Res judicata - Matters "directly and substantially in issue" in previous proceeding - Prayers made in previous and subsequent proceedings substantially the same - Cause of action in both the proceedings same - Issue raised in the subsequent proceeding had been specifically raised by one party and denied by the other party in the earlier proceeding - Previous proceeding exhausted all possible issues and it would be an abuse of process of court to re-examine the issues that had been raised or ought to have been raised in the earlier proceeding - Held, previous decision would operate as res judicata for questions raised in the subsequent litigation - Explns. III and IV applicable.

C. Constitution of India - Arts. 226 and 32 - PIL - What amounts to - Writ petition challenging a govt. project filed by a retired Chief Engineer having special expertise to impugn the project - Held, such petitioner cannot be dismissed as a busybody and in principle the petition was a PIL.

2. CDJ 2009 MHC 5779 (A. Palanisamy and Another v. The District Revenue Officer/Authorized Officer for Land Acquisition and Others)

"2.The appeals seek to challenge the orders passed by the learned Single Judge whereby the learned Judge has dismissed the petitions filed by the appellants herein. The respondents have issued a notification dated 03.01.2008 under Section 3-A of the National Highways Act, 1956 calling upon the appellants and the other land owners to submit objections, if any, within the time specified therein, to the proposed land acquisition for the purpose of building, maintenance, management and operation of National Highway No. 67.

3. Section 3A of the National Highways Act, 1956, as inserted by the National Highways Laws (Amendment) Act, 1977, read as follows:--

"3-A. 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.

(2) Every notification under sub-section (1) shall give a brief description of the land.

(3) The competent authority shall cause the substance of the notification to be published in two local newspapers, one of which will be in a vernacular language."

3. (2010) 1 MLJ 901 (V. Nandakumar and others v. Union of India (UOI) rep. by its Secretary Ministry of Road Transport and Highways, The Project Director National Highways Authority of India, No. 8, The Special District Revenue Officer (Land Acquisition) National Highways Project and the Special Tahsildar (Land Acquisition) National Highways Project)

"Property - Acquisition - Validity of Notification - Sections 3A(1), 3C, 3G and 3D(1) of the National Highways Act, 1956 - Present writ petition filed challenging notifications for acquisition issued under Sections 3A(1) and 3D(1) of Act pertaining to suit property - Held, having not raised any objection within prescribed time as contemplated under Section 3C of Act, now petitioners cannot be heard to say at this stage that there is a flaw in notification and that there are discrepancies in survey numbers and extent of property between notification and paper publication - Section 3D of Act contemplates that if no objection is received as contemplated under Section 3C of Act or where competent authority disallowed objections raised for acquisition of land, issuance of impugned notification can not be faulty - In present case, after submission of report to Central Government and on such report, Central Government issued notification in official Gazette, that land should be acquired for purpose or purposes mentioned in Section 3A(1) of Act - On publication of such declaration, suit lands will vest with Central Government - Once suit lands vests with Central Government, petitioners will be entitled only for compensation and same will be deposited as per Section 3G of Act - In above facts and circumstances, Court is not inclined to interfere with Notifications made under Section 3A of Act or declaration made under Section 3D of Act - Writ petition dismissed accordingly."

4. Union of India (UOI) Vs. Dr. Kushala Shetty and Others, AIR 2011 SC 3210 : (2011) 8 JT 160 : (2011) 4 RCR(Civil) 353 : (2011) 7 SCALE 654 : (2011) 12 SCC 69 : (2011) 2 SCR 1087 : (2011) AIRSCW 5115

"A. Infrastructure Laws - Roads and Highways - Land acquisition for - Sustainability of challenge to - Mala fides/Colourable exercise of power - Allegations of - Sustainability - Material particulars - Necessity - Respondents alleged that alignment of proposed widening of National Highways was manipulated to suit vested interests - Held, lacks substance and merits rejection because except making a bald assertion, respondents had neither given particulars of persons sought to be favoured nor adduced any material to prima

facie prove allegations - In absence of proper pleadings and material, neither High Court nor Supreme Court could make a roving enquiry to fish out some material and draw dubious conclusion that decision and actions of appellants were tainted by mala fides - Besides, NHAI is a professionally managed statutory body having expertise in field of development and maintenance of national highways - Courts on other hand are not equipped to decide viability and feasibility of particular project and whether particular alignment would subserve larger public interest - Thus, scope of judicial review is limited in such a situation - Court can nullify acquisition of land in rarest of rare cases if it is found ex facie contrary to law or tainted due to mala fides - In instant case neither was any violation of mandate of the 1956 Act established nor was charge of malice proved - Hence, impugned order set aside and acquisition restored - Land Acquisition and Requisition - National Highways Act, 1956 - Ss. 3-A, 3-C and 3D - Civil Procedure Code, 1908 - Or. 6 R. 4 - Administrative Law - Judicial Review - Grounds for judicial review - Mala fides/Colourable exercise of power (Paras 25 to 28)

B. Land Acquisition and Requisition - National Highways Act, 1956 - Ss. 3-A, 3C and 3-D - Objections to notification under S. 3-A - Adherence to time schedule specified in S. 3C - Objections filed on 16.10.2006 pertaining to vagueness of Noti. dt. 10.8.2005 issued under S. 3-A(1) - Sustainability - Held, said objections were clearly an afterthought which did not require consideration because of non-adherence to time schedule (objections to be filed within 21 days of publication of notification) specified in S. 3-C(1) - Besides, said notification contained full description of land proposed to be acquired, names of villages in which it was situated, survey numbers including sub-survey numbers, nature, type and area of land - It was also clearly stated that land plans and other details were available with competent authority - That was the reason why none of the landowners (including respondents) initially made no grievance pertaining to vagueness of notification - Infrastructure Laws - Roads and Highways - Land acquisition for (Paras 20 to 22)

C. Land Acquisition and Requisition - National Highways Act, 1956 - Ss. 3-A, 3-C and 3-D - Communication of decision taken in terms of S. 3-C(2) on objections to landowners before issuing declaration under S. 3-D - What amounts to - Division Bench by impugned judgment holding that rejection of objections should have preceded consideration of report by competent authority, and declaration issued being in violation of this requirement, acquisition stood vitiated - Held, Division Bench appears to be influenced by assumption that objections had not been decided until issue of declaration under S. 3-D(1) - However, fact of matter was that competent authority after giving opportunity of hearing, had rejected objections - Though said order was not crafted like a judicial order passed by a legally trained mind, rejection of representations cannot be faulted on that ground alone - Competent authority had adverted to substance of objections and rejected same - Impugned judgment set aside and order of Single Judge dismissing objections of respondents, restored - Land Acquisition Act, 1894, S. 5-

A. (Paras 23, 24 and 29)"

5. A.R. Adil Basha Vs. The Project Director (A/C), National Highways Authority of India, (Ministry of Road Transport and Highways), O/o The Project Director PIU, No. 10, Govindasamy Nagar, Vazhudhareddy Post, Villupuram-605 401 and The Competent Authority/Special District Revenue Officer (LA), National Highways, Collectorate, Villupuram

"Land Acquisition - Proceedings - Legality thereof - Sections 3-A and 3-C(2) of National Highways Act, 1956 - Petitioners challenged Notification issued under Section 3A of Act and order passed under Section 3-C(2) of Act - Whether impugned Notification met requirement of description of lands as contemplated under Section 3-A(2) of Act - Held, Notification issued under Section 3-A of Act, was made with proper description, namely, extent of lands, boundaries, measurements and other particulars - Brief particulars of lands sought to be acquired, had been given in Schedule, as required by law - Section 3-A(1) Notification was only preliminary Notification, notifying intention of Government to acquire certain lands for public purpose, for building, maintenance, management or operation of a National Highway - There was brief description of land as contemplated under provisions of Section 3-A of Act - Appendix to impugned Notification showed that in many cases, small parts of larger chunks of lands had been notified for acquisition - Therefore, Notification in question made plan/sketch of area in occupation - Absence of plan also rendered a right to file objections under Section 3-c(1) of Act, nugatory - If there was proper description of lands with other particulars and plan/sketch, then objector-land owner could make an effective objection - Objection about use of land alone was a matter required to be considered under provisions of Act, and such a right was a legal right with regard to questioning use of lands and not acquisition - Particulars shown in Schedule to Notification as contemplated under Section 3A(2) of Act, were only brief description and brief description did not mean a complete description and that would not be the intention of the statute - Acquisition Notification was only required to convey to persons claiming interest in lands about intention of Government to acquire a particular land - Description given in impugned Notification met requirement under Section 3-A of Act - Therefore, it could not be said that, there was no proper description of lands as per provisions of Act - Competent authority, after considering every aspect, including report of NHAI, passed a speaking order, considering every objection raised by Petitioners and decided objections after giving an opportunity of hearing to Petitioners - Merely because competent authority had taken into account report of NHAI, it could not be construed that competent authority had not independently decided objections - Competent authority had considered each and every aspect of matter and over-ruled objections, taking into account larger public interest involved in case and need for implementation of project, after following procedures contemplated under provisions of Act - Therefore, competent authority's order, after due consideration of every aspect, could not be stated to have been passed without application of mind - It was under the domain of

authorities to have expert opinion including consideration of feasibility report and it was an administrative requirement - Expert opinion had been taken into account by competent authority while deciding objections and it could not be found to be procedures/rules in deviation, and there was due consideration of every objections - Competent authority had acted as per law and proceeded with land acquisition proceedings - Petitions dismissed."

48. Per contra, the highly competent counsel Mr. B. Raghavachari submits that the Revenue Authorities certified that there is a Government Poramboke Land available existing along side Salem-Cochin Highway of National Highway-47 in Arasur Village. Further, the said land is classified as Kuttai Poramboke Natham vacant land, supporting his statement, FMB sketch also attached. Thereafter, the respondents are very particular to acquire the petitioner's land, which is causing irreparable loss to the petitioner, since the spinning mill is operating over the said land. The learned counsel also produced photocopies which reveals that the spinning mill pucca building has been constructed recently. Further about a great number of employees working in the spinning mill.

49. From the above detailed discussion, this Court is of the view:

"(1) The respondents acquired the subject lands for the formation of Truck terminal/Truck lay-bye for which an uniform formation is not compulsory and the road construction could be through contours on sufficient available lands. In the instant case, the Tahsildar who is attached to the Sulur Taluk has informed the second respondent herein stating that formation of 4/6 laning of NH47 from Chengapalli to Walayar and formation of 4 laning from Coimbatore to Mettupalayam, the Government poramboke land is available comprised in Survey No. 146 to an extent of 0.81.0 hectares classified as Kuttai Poramboke situated along side the existing Salem-Cochin Highway of NH-47 in Arasur Village and also available to an extent of 3275 sq. meters in Survey No. 274/16 classified as Government Natham vacant land in the same location of the village. Strengthening the statement, the Village Administrative Officer had submitted FMB sketches. As such, if the respondent is to form a truck lay-by alongside existing Cochin-Salem Highway, accordingly no one will be inconvenienced or prejudiced.

(2) The highly competent counsel Mr. P. Wilson submits that the Kuttai Poramboke Lands suggested by the Tahsildar is of a step water catchment area which is unsuitable for the said purpose. The very competent counsel Mr. V. Raghavachari submits that if the formation of 4/6 laning of NH-47 could be alongside the existing Salem-Cochin Highway on the Kuttai Poramboke land, the petitioner's Spinning Industry will not be demolished and the structure of the Industry will be intact. Further, a great number of employees are working in the Industry and the Spinning Industry also is functioning for the welfare of the public. This Court accepts the views of the learned counsel Mr. V. Raghavachari. Further, the availability of the land is as certified by the Revenue Tahsildar, who is a competent authority/authorized officer.

(3) The same petitioner has filed writ petition No. 17669 of 2010 before this Court and challenged the same acquisition proceedings dated 15.07.2010 of the first respondent. Now, the above writ petition has been filed and challenged by the subsequent proceedings of the first respondent dated 04.10.2010 on the subsequent cause of action. Therefore, the above writ petition is to be dealt with by this Court.

(4) If the petitioner would utilize the available land as suggested by the Tahsildar, the respondents purpose will not be affected. At the same time, if the petitioner's land is acquired after demolishing the front face of the Industry, the Industry will lose its originality and the petitioner placed into hardship."

50. Considering the facts and circumstances of the case and arguments advanced by the learned counsels on all sides and on perusing the typed set of papers, this Court's view as in 1 to 4 mentioned above, the above writ petition is allowed, consequently the first respondent's proceedings in ROC.2/2010 (A1) dated 04.10.2010 is quashed, regarding the petitioner's land alone comprised in Survey Nos. 226/1A2, 226/102, 226/3D, 226/1C2, Srinagar, Kanniyur Village, Karumathampatti, Coimbatore District is discharged from the land acquisition proceedings.

51. In the result, the writ petition is allowed. Consequently, connected miscellaneous petitions are closed. No costs.