
(2012) 09 MAD CK 0066

In the Madras High Court

Case No : Writ Petition No's. 15450 of 2012 and 15585 to 15589 of 2012 and M.P. No. 1 of 2012 in Writ Petition No. 15450 of 2012 and M.P. No's. 1 to 3 of 2012 in Writ Petition No's. 15585 to 15589 of 2012

Dr. N. Manu

APPELLANT

Vs

State of Tamilnadu and Others

RESPONDENT

Date of Decision : 27-09-2012

Acts Referred:

Citation : (2012) 09 MAD CK 0066

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : B. Chandrasekaran in W.P. No. 15450 of 2012 and Mr. S. Arivazhagan W.P. Nos. 15585 to 15589 of 2012, for the Appellant; A. Navaneethakrishnan, Advocate General, assisted by Ms. V.M. Velumani, Spl. G.P. for RR-1 to 4 and 6 Mr. V. Ramajagadeesan for R-5, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice V. Dhanapalan

1. Heard Mr. B. Chandrasekaran, learned counsel for the petitioner in W.P. No. 15450 of 2010, Mr. S. Arivazhagan, learned counsel for the

petitioner in W.P. Nos. 15585 to 15589 of 2012, Mr. A. Navaneethakrishnan, learned Advocate General assisted by Ms. V.M. Velumani,

learned Spl. G.P. appearing for respondents 1 to 4 and impleaded sixth respondent and Mr. V. Ramajagadeesan, learned counsel appearing for

the impleaded fifth respondent. What is challenged in these Writ Petitions is the notice of communication issued after issuance of notices under

Sections 15(1), 15(2) and 16(2) of the Tamil Nadu Highways Act (hereinafter referred to as "the Act"), to take over possession, vide impugned

proceedings in Letter No. CMDP/CMRL/Vadapazhani/ADE-I, dated 4.6.2012,

seeking to quash the same.

2. According to the petitioners, they are all owners of the lands in question. As there was proposal for acquisition of the lands for the construction

of Grade Separator at NSK Road and Inner Ring Road at Vadapazhani, the respondents have proceeded under the provisions of the Tamil Nadu

Highways Act and issued notices under Sections 15(1), 15(2) of the Act and thereafter they have proceeded to possess the lands u/s 16(2) of the

Act by issuing the impugned communication. At this stage, the petitioners, aggrieved by the impugned notice of communication to take over the

possession, are before this Court, challenging the same on the ground that the possession notification is ex-facie untenable and deserves to be set

aside, as it is vitiated for want of issuance of statutory notice and enquiry.

3. The first and second respondents have filed counter affidavit, inter-alia contending as follows in W.P. Nos. 15585 to 15589 of 2012:

(a) The petitioners are residing in Vadapalani, Chennai and have filed the Writ Petitions to dispense with the fourth respondent's Letter dated

4.6.2012 and consequently to direct the respondents to grant one year time to vacate the building of the petitioners comprised in the respective

survey numbers which were under the land acquisition proceedings for the construction of Grade Separator in the intersection of NSK Road

(Arcot Road) and Inner Ring Road at Vadapalani.

(b) The Government in their G.O.Ms. No. 229, Highways (HW-1) Department, dated 14.11.2005 gave administrative sanction for construction

of the said Grade Separator. Accordingly, the Divisional Engineer (Planning), Highways Department, Division-I, Chennai-18 sent necessary

requisition for acquisition of the lands in the respective survey numbers for the construction of the said Grade Separator.

(c) The Government in their order No. 224, Highways (HW-2) Department, dated 5.9.2007 and in Government Letter No. 21471/HW2/2007-1,

Highways Department, dated 7.1.2008 delegated powers to the Special Deputy Collector (LA), Tamil Nadu Urban Development Project-III,

Poonamallee to issue notice u/s 15(2) of the Act for Tamil Nadu Urban Development Project-III and CMDP Projects in Chennai, Tiruvallur and

Kanchipuram Districts.

(d) On the above basis, on receipt of requisition from the Highways Department

for acquisition of certain lands in respect of the respective Survey

Numbers for construction of the said Grade Separator, necessary survey was made and it was decided to acquire the lands in Puliur Town

(Block 3) of Egmore-Nungambakkam Taluk of Chennai District.

(e) Necessary notification u/s 15(2) of the Act for acquisition of the respective lands in Puliur Town was published on 6.8.2011/13.1.2011 in the

dailies Malai Murasu and Deccan Chronicle and locality publication was also effected on the same days in the Taluk Office, Egmore-

Nungambakkam, Revenue Inspector, Egmore-Nungambakkam and in the Office of the Divisional Engineer (Planning), Highways Division-I.

Necessary notices to the land owners/interested persons over the lands were also served u/s 15(2) of the Act inviting objections if any for the

proposed acquisition of the above lands and the enquiry was fixed on 29.8.2011/24.1.2011. During the specified time and also during the enquiry,

only one person attended the enquiry and no objections were received. Accordingly, necessary proposals for acquisition of the respective lands u/s

15(1) of the Act were sent to Government for approval. The Government in their G.O. No. 134, Highways and Minor Ports (HW-2) Department,

dated 29.11.2011 approved the notification u/s 15(1) of the Act and also published the same in Tamil Nadu Government Gazette No. 48, Part-II,

Section- 2, dated 21.12.2011.

(f) After the publication of G.O. u/s 15(1) of the Act in the Government Gazette, the value of the lands had been fixed tentatively and an enquiry

under Sections 19(2) and 19(3) of the Act was conducted by the District Revenue Officer, Chennai on 9.5.2012. The value of the lands was

intimated to the land owners and their objections regarding the land value and the value offered by the land owners, were recorded. The notice u/s

16(2) of the Act was served on the land owners on 30.3.2012 with an instruction to deliver the possession of the lands within 30 days of the

service of notice.

(g) All the land acquisition proceedings have been followed without failure as prescribed in the Act. The petitioners attended the enquiry under

Sections 15(2) and 19(2) and filed their statements. Sufficient time was given to the petitioners to file their objections and attend the enquiry. As

per the Act, after the publication of the notification u/s 15(1) is published in the

Tamil Nadu Government Gazette, the land absolutely vests with the Government and is also free from all encumbrances. Hence, the Government may direct the land owners to surrender or deliver possession within 30 days from the service of the notice u/s 16(2) of the Act. The land owners have been given enough breathing time to make necessary alternative arrangements to shift the belongings of the land owners.

(h) The above facts will be intimated to the Principal Secretary and Commissioner of Land Administration and after getting the permission u/s

19(3) of the Act, the valuation proposals will be submitted to the Principal Secretary and Commissioner of Land Administration for approval. On

approval of the valuation by the Principal Secretary and Commissioner of Land Administration, the Draft Award will be calculated with 9% interest

from the date of possession of the lands.

4. Similar lines of statements have been made by the fourth respondent in the counter affidavit denying all the allegations of the petitioners

contending as follows:

(a) As per the Act, notification had been issued to the land owners on 30.3.2012 itself to hand over the lands to Special Deputy Collector giving a

breathing time of one month i.e. upto 30.4.2012. Again, after a month time (i.e.) upto 31.5.2012, a letter has been issued to the land owners fixing

a date i.e. 12.6.2012 to take possession. It is not a notice. It is a letter by the fourth respondent to the land owners to hand over the lands. Even

after two months time from the issuance of the notification u/s 16(2) of the Act, the land owners are not ready to hand over their lands which is

illegal, arbitrary, discriminatory and violation of principles of natural justice.

(b) In the letter, it is noted that the notice u/s 16(2) had been issued on 30.3.2012 which itself is enough to take possession as per the Act, which is

valid in the eye of law. There is no necessity to remind the land owners again. Through the abovesaid letter, automatically the lands become

Government properties after 30 days' time from the notification u/s 16(2) of the Act. The letter had been issued under humanitarian grounds for

reminding the land owners.

(c) The respondents know the procedure very well and the process of fixing the valuation is under scrutiny in the office of the Commissioner of

Land Administration. After fixation of the compensation, award will be passed and the amount will be disbursed to the petitioners. Due to urgency

of the project, as per the Act, using Sections 15(1) and 16(2), the Government is in need of the lands to complete the project in time. Otherwise,

due to land acquisition delay, the Government has to pay the contractor the escalation of cost, which will be huge amount of nearly Rs. 5 crores.

(d) All the procedures under the Act have been followed systematically and the Gazette Notification u/s 15(1) is valid.

(e) The petitioners have been given opportunity to raise their objections for a period of 1-1/2 years and objections raised by the petitioners availing

enquiry u/s 15(2) of the Act had been relied properly.

(f) On sympathetic and humanitarian basis only, a reasonable time of five months had been given after the notification u/s 15(1) dated 21.12.2011

and two months" time had been given after issuance of notification u/s 16(2). Due to the urgency of the project, the time cannot be extended.

(g) For fixing the compensation amount to the petitioners, proposals had been sent to the Commissioner of Land Administration office and the

process is under scrutiny and within a period of one month, the valuation will be fixed and the compensation will be disbursed to the land owners.

In the meantime, due to the urgency of the project, possession will be taken as per the Act. Moreover, a portion of the petitioners" building is

going to be acquired (varying from 1 meter to 3 meters) and the remaining portion of the shops may be modified and shops can be rented.

5. On the above background of pleadings, learned counsel for the petitioners contended that the impugned possession notification is vitiated for

want of issuance of statutory show cause notice and enquiry. The extent of compensation has neither been quantified nor disbursed to the

petitioners, and therefore, the respondents are not bound to take possession.

6. Resisting the said contentions, learned Advocate General appearing for the respondents 1 to 4 and 6 contended that the respondents have

followed the procedures contemplated under the Act scrupulously by issuing notices under Sections 15(1), 15(2) and afterwards, the notice u/s

16(2) had been issued, and only after following the provisions of the Act, the present impugned communication has been issued, and therefore, it

cannot be found fault with. Learned Advocate General consistently pleaded that

sufficient opportunity had been given to the petitioners by holding necessary enquiry u/s 15(2) of the Act and the petitioners have also filed their objections and only after conducting enquiry, notification u/s 15(1) of the Act had been issued, which had also been published in the Gazette, to acquire the lands of the petitioners and therefore, the petitioners, instead of handing over possession after issuance of notice u/s 16(2), have come before this Court challenging the impugned communication dated 4.6.2012.

7. I have also heard the learned counsel appearing for the fifth respondent-CMRL on the above aspects.

8. Though several points have been raised by the petitioners, the learned counsel for the petitioners mainly focused on the non-payment of compensation. According to them, they have constructed portion in the premises in question and let it out to the tenants and they are holding over and therefore, it is impossible for them to hand over the possession unless the compensation is paid to enable them to disburse the same to the tenants and they are ready to hand over the possession to the respondents if appropriate compensation is paid to them.

9. This Court intended to have the views of the respondents and the officers of the respondents have come before this Court and expressed certain difficulties in determining the compensation and disbursing the same to the land owners, as it involves cumbersome process to be followed, like verification of title deeds, assessment of the value of the lands, etc. In that process, the respondents may require considerable time. At the same time, the respondents also inform this Court that the project in question is essential in the interest of the public and the people of the city of Chennai and therefore, the project cannot be delayed further because of non-payment of compensation to the land owners, and hence, when the acquisition is for public purpose, the land owners have to hand over the possession immediately without any further delay, else, there will be delay in the execution of the project.

10. In the light of the above stated position, as the petitioners and the respondents have expressed their hardship and difficulties before the Court, in order to meet the ends of justice, this Court, after hearing both parties, directed the Commissioner of Land Administration to take some personal

attention in the matter considering the importance of the project to avoid any delay, who had coordinated with the competent authority/respondents

along with their officers and determined the value of the compensation and also intimated the same to the land owners for collecting the amounts.

During the earlier hearing of these Writ Petitions, it was reported that there were certain difficulties in calling the persons to coordinate in the

matter. Ultimately, this Court granted further time to disburse the entire amount to the land owners and thereafter, the land owners have to vacate

their properties and hand over the possession to the respondents.

11. The petitioners as well as the respondents are present in the Court along with their respective counsel. The petitioners (land owners) with

cordial atmosphere reported that they have received the respective compensation and requested that some reasonable time may be granted to

hand over the possession. Though this has been resisted by the competent authority and the official respondents, ultimately, the learned counsel for

the petitioners, in the presence of the petitioners undertook to vacate and hand over the possession within a period of two weeks from today

(27.9.2012). The said undertaking of the petitioners along with their counsel is recorded in the open Court.

12. It is also informed by the respondents that in case of any failure on the part of the petitioners to hand over the possession, the authorities will

take steps in accordance with law to evict the petitioners from the premises in question. At this stage, the petitioners have informed with gentleman

agreement that they undertake before this Court to vacate and hand over the possession on or before 11.10.2012. Such an undertaking is

recorded.

13. When acquisition of land is for a public purpose, any delay caused will have an impact on the execution of the project, which may lead to

incurring heavy expenditure on account of escalation of price. In order to avoid such a delay in the project, the approach made by the parties in

these petitions, has come to such a stage as to taking the compensation as determined and also giving an undertaking to vacate and hand over

possession, which is a matter for appreciation. In the light of the above stated facts and the submissions made and considering the importance of

the project, these Writ Petitions are disposed of, with a direction to the

petitioners to vacate and hand over the possession to the respondents on or before 11.10.2012 without any further delay. In the event of the failure on the part of the petitioners in handing over the possession, it is for the respondents to take necessary steps in accordance with law to evict the petitioners. No costs. The Miscellaneous Petitions are closed.