

V.Ranganathan Vs. Project Director

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Court : Chennai

Decided On : Apr-22-2013

Judge : V.Dhanapalan

Appellant : V.Ranganathan

Respondent : Project Director

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATE:

22. 04-2013 CORAM: THE HONOURABLE MR. JUSTICE V. DHANAPALAN
W.P.No.7528 of 2012 and M.P.No.1 of 2012 V.Ranganathan .. Petitioner Vs.

1. The Project Director (A/C) National Highways Authority of India (Ministry of Road Transport and Highways) O/o.The Project Director P.I.U No.10, Govindasamy Nagar Vazhudhareddy Post, Villupura

401. 2. The Competent Authority/ Special District Revenue Officer (LA) National Highways Collectorate, Villupuram .. Respondents Petition under Article 226 of the Constitution of India praying for a writ of certiorarified mandamu calling for the records relating to the order made in Na.Ka.not A/Tha.ma.va.A/N33.A/Tha.No.66/958/2010-2 dated 24-02-2012 passed by the 2nd respondent and quash the same and consequently forbear the 1st respondent from laying Gingee bye pass road in Tindivanam to Krishnagiri Section of NH-66 in pursuant to the notification dated 03-12-2010 made in Tamil New Paper

"Dinamani" Chennai Edition by the 1st respondent in terms of alignment proposal III through the petitioner lands comprised in R.S.No.128/2A, 113/2A and 113/3 at Sirukadambur Village, Gingee Taluk, Villupuram District. For petitioner :: Mr. G. Ethirajulu For respondents :: Mr. P.Wilson, Senior Counsel for Wilson Associates for R1 Mr. N. Sakthivel, GA for R2 ORDER What is challenged in this writ petition is the order passed by the second respondent in Na.Ka.not A/Tha.ma.va.A/N33.A/Tha.No.66/958/ 2010-2 dated 24-02-2012, seeking to quash the same and consequential direction to forbear the 1st respondent from laying Gingee bye pass road in Tindivanam to Krishnagiri Section of NH-66 in pursuant to the notification dated 03-12-2010 made in Tamil New Paper "Dinamani" Chennai Edition by the 1st respondent in terms of alignment proposal III through the petitioner lands comprised in R.S.No.128/2A, 113/2A and 113/3 at Sirukadambur Village, Gingee Taluk, Villupuram District.

2. The facts of the case is as follows: (a) The petitioner is the owner of agricultural lands comprised in R.S.No.128/2A, 113/2A and 113/3 admeasuring an extent of 1.88, 0.22 and 0.32 acres respectively altogether an extent of 2.42 acres situated at Sirukadambur Village, Gingee Taluk, Villupuram District. The first respondent herein had published a notification in Tamil News Paper "Dinamani" "Chennai Edition" dated 03-12-2010 stating that the lands to an extent of 3.988 sq. meters in R.S.No.128/2A, 286 Sq. meters in R.S.No.113/2A and 1058 sq. metres in R.S.No.113/3 out of total extent owned by the petitioner and others, are required by the Government for laying bye-pass road in Highways No.66 viz., Dindivanam-Krishnagiri segment near Gingee Town. (b) It is the case of the petitioner that originally, the survey was conducted and two alignment options were proposed. However, the District Collector has given Option IV through his report made in Rc.A/SDRO/LA.NH/45/2010-3 dated 31-08-2010, to avoid any bye pass road being laid inside the Gingee town itself. The petitioner would further aver that the objection of the District Collector was rejected and option III was proposed by the acquisition authority which runs through the Gingee Town itself disturbing school-going children, agricultural lands, residential buildings and natural draining water course to discharge surplus water to Sankarabarani river which runs as Eastern boundary of Gingee Town and on implementation of the said option, the entire Gingee town would be submerged during the rainy season, of which the general

public of Gingee town were kept in dark. (c) The petitioner made representations to the second respondent on 21-12-2010 and 30-12-2010. The second respondent by his office proceedings Na.Ka.A/SDRO/LA/NH/958/2010-2 dated 25-05-2011 called upon the petitioner and other land owners, who had also sent objections on their lands being notified for acquisition, to submit their objection for acquisition and to attend for an enquiry to be held on 07-06-2011 by enclosing a letter in the form of an order made by the first respondent in NHA1/PD/VPM/Tdm-K'Giri/LA/2011/625 dated 21-05-2011 sent to the second respondent stating that the Section 3 C(2) enquiry was already completed and directing the second respondent not to deviate from the present bye pass alignment and to take necessary action to give suitable compensation to the land owners. The petitioner therefore, made an objection on 07-06-2011 stating that the second respondent has no jurisdiction to conduct an enquiry in view of the order dated 25-05-2011 passed by the first respondent who is the superior officer to the second respondent. (d) The second respondent did not consider the objections of the petitioner and refused to conduct the enquiry. Hence, the petitioner left without any option has filed W.P.No.15780 of 2011 stating that the notification issued by the first respondent on 03-12-2010 is bereft of material particulars and illegal. The said writ petition was admitted and injunction was also granted forbearing the respondents from laying Gingee bye pass road. The other land owners who were placed under similar position filed W.P.Nos.18688 to 18694 and 18066 to 18074 of 2011 and those writ petitions were dismissed on 21-10-2011. The writ petition filed by the petitioner was remanded for fresh enquiry by this Court and in compliance of the same, the second respondent conducted an enquiry and rejected the objections of the petitioner through his office proceedings made in Na.Ka.not A/Tha.ma.va.A/Nee.A/Tha.No.66/958/2010-2. Aggrieved by the same, the petitioner has come forward with this writ petition.

3. Heard Mr. G. Ethirajulu, learned counsel appearing for the petitioner and Mr. P.Wilson, learned Senior Counsel appearing for the first respondent and Mr. N. Sakthivel, learned Government Advocate appearing for the second respondent. The respondents have filed their counter affidavits separately.

4. Learned counsel for the petitioner would submit that the impugned order itself is vitiated on the ground of violation of Section 5(a)(i) of the National Highways Act. He would further submit that the said bye pass road in the Gingee Town would affect even the existence of the Town and in no way would be useful to the general public. In addition to that, the learned counsel would state that the laying of the bye-pass road would cause great inconvenience to the school-going children, as two Schools were situated nearby viz., Saradha School and Kalai Vani School. The learned counsel would vehemently argue that when this Court remanded the matter for fresh enquiry, the second respondent has not considered the same and rejected the objections of the petitioner, which is not only contrary to law but also irregular and the option proposed by the respondents would cause great inconvenience to the public, at large and hence, would pray for quashing of the impugned order. 5 Per contra, the learned Senior Counsel for the first respondent would submit that the writ petition itself is not maintainable as the petitioner is protracting the proceedings by filing the writ petitions, time and again and causing impediment in the laying of the bye-pass road in Gingee Town which is in larger public interest. The learned Senior Counsel would refer to the following paragraph from the counter filed by the first respondent and submit that the impugned order suffers from no illegality or irregularity. "...the National Highways Authority of India has taken up the project of improving NH-66 in the stretch from Tindivanam to Krishnagiri for rehabilitation and upgrading to 2 lane with paved shoulder configuration of the stretch with bypasses for built up area of the towns. The Project Implementation Unit, Villupuram has been entrusted with the task of implementing the above project. As a part of the project which aims to reduce congestion and to ensure free flow of the traffic atGingee Town, a bypass road has been proposed and the Special District Revenue Officer, Villupuram, 2nd respondent herein, has been appointed as Competent Authority for acquisition of private properties required for the formation of the bypass and for construction of the project road.

4. I submit that initially National Highways Authority of India proposed 4 laning of the Tindivanam Tiruvannamalai Krishnagiri section from the Km.38/150 to km.214/000 of NH-66 and the proposed Gingee bypass was to start at km 63/090 and end at km 71/260 with a total length of 10.76 km. Consequent ton the change

in policy of Government, the proposed four lane was restructured as 2 lane with paved shoulder configuration and the new alignments were proposed by the Detailed Project Report consultants for Gingee bypass and confirmed by NHAI. Accordingly, the DPR consultants have proposed for a bypass starting at km.65.548 at Sakkarapuram and ends at km.68.625 with a length of 4.77 km traversing through Sakkarapuram, Sirukadambur and Krishnapuram villages and action pursued to implement the said project." The learned Senior counsel would further submit that the objections of the petitioner is mainly with regard to the drainage facilities and safety of the school children, which is already taken into consideration by the Competent Authority and provisions of cross drainage system to avoid stagnation of flood water is also already proposed in the project. The learned Senior Counsel also produced a letter dated 26th March 2013, wherein on a direction given by this Court, the National Highways Authority of India has modified the size of the Pedestrian Underpass satisfying the requirements, as sought for by the petitioner.

6. The learned Senior Counsel would further submit that on the petitioner's challenge against the 3C(2) orders passed for the lands in R.S.Nos.128/2A, 113/2A & 3 of Sirukadambur Village, Gingee Taluk, Villupuram District by the second respondent on 24-02-2011, 3D Notification has been published in GOI No.974 in S.O.No.1178(E) dated 24-05-2012 and enquiry was called for and completed on 12-06-2012 and the petitioner was also present on that date. Therefore, the learned Senior Counsel would submit that the impugned order warrants no interference.

6. Mr. N. Sakthivel, learned counsel appearing on behalf of the second respondent affirming the averments made by the learned Senior Counsel would submit that the second respondent has properly followed the procedure as contemplated under Section 3C(2) of the National Highways Act, 1956, conducted enquiry on 13-02-2010, on the fresh objection petition filed by the petitioner as per the direction of this Court vide order dated 23-11-2011, and passed a detailed speaking order dated 24-02-2012 and there is no failure on the part of the second respondent.

7. This Court carefully gone into the rival submissions made on behalf of the parties and perused the entire materials annexed in the typed set of papers and also the sketch produced by the petitioner showing the topography of the area wherein the Schools are situated. In W.P.Nos.18688 to 18694 and 18066 to 18074 of 2011 dated 21-10-2011, this Court considered the above aspects in detail and held thus: "38. In the matter of land acquisition for public purposes, the interest of justice and public interest coalesce. They are very often one and the same, and therefore, the Courts have to weigh the public interest vis-a-vis the private interest, while exercising the power under Article 226 of the Constitution of India, indeed, any of their discretionary powers. It may even be open to the Court to direct, in case it finds finally that the acquisition is vitiated on account of non-compliance with some legal requirement, that the persons interested shall be entitled to a particular amount of damages to be awarded as a lumpsum or calculated at a certain percentage of compensation payable. Now, the trend is that as far as the compensation is concerned, the authorities as well as Courts are arriving at a fair determination of compensation, taking into consideration the various factors, namely, the market value, potentiality of the lands and other developments of the lands in question. Ultimately, there are many ways of affording appropriate relief while redressing the grievances of the petitioners and it is a matter of balancing the competing interests and beyond that, it is neither possible nor advisable to say anything. These considerations will be duly borne in mind by the Courts while dealing with the challenges to the acquisition proceedings. This view is also endorsed in various decisions of the Supreme Court as well as this Court.

39. With the above observations, and for the foregoing reasonings, the Writ Petitions are dismissed. No costs. The Miscellaneous Petitions are closed. It is always open to the petitioners herein to claim a fair and proper compensation for their lands, which are acquired for a public purpose, in which event, the respondents are bound to consider the same, taking into consideration the various factors in determining a fair and proper compensation." However, on a consideration of the petitioner's objection, which relates to the access of the School children, a matter of great concern and the drainage facilities, this Court directed Mr. P. Wilson, learned Senior Counsel on 22-03-2013, to appraise the position, as it is stated by the learned counsel for the petitioner that the decision of

the National Highways Authority of India in providing a culvert of size 3m x 2m (10 feet x 6 = feet) will cause hardship due to the heavy vehicular movement and pedestrian movement.

8. Mr. P. Wilson, learned Senior Counsel has produced a letter bearing not NHA/DP/VPM/Court Case/2013/235 dated 26th March 2013, wherein the National Highways Authority of India has modified the size of the Pedestrian Underpass, on which the learned counsel for the petitioner also has no objection and the relevant portion of the letter runs thus: "now the Independent Engineer has recommended Pedestrian Underpass (PUP) of size 5.50m wide and 3.00m vertical clearance (5.50m x 3.00m) as per standards of NHA for safe crossing of school children near the junction of cross road." 9. The learned Senior Counsel has contended that adequate provisions have been made for the drainage facilities to forestall any possible stagnation in the event of incessant floods and would submit that the project has been approved by the Public Private Participation Appraisal Committee (PPPAC) and Cabinet Committee on infrastructure (CCI) and every care is taken, by now and then, to facilitate the necessities of the general public. The above submission of the learned Senior Counsel is recorded.

10. With the above observations, the writ petition is disposed of. However, there will be no order as to costs. The connected miscellaneous petitions are closed. It is needless to state that it is always open to the petitioner to claim a fair and proper compensation for their lands, which are acquired for a public purpose, in which event, the respondents are bound to consider the same, taking into consideration the various factors in determining a fair and proper compensation.
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