

W.P. No. 33567 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 21.06.2023

Pronounced on : 05.07.2023

CORAM

THE HON'BLE MR. SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

W.P. No. 33567 of 2022

and

W.M.P. Nos. 33020 and 33021 of 2022

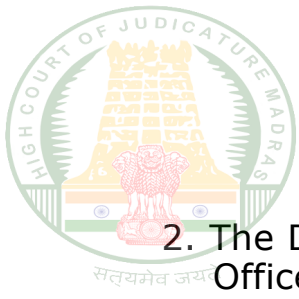
1. I.Jayamurugan
2. Nirmala
3. A.Tamilvanan
4. Srinivasan
5. Santhosh
6. P.Sekar
7. K.Uma
8. C.Rajapushpam
9. Mageshwai
10. Bhavani
11. Balakrishnan
12. Ponsabastin
13. Munusamy
14. Selvi
15. Kanniyammal
16. Somalingam

... Petitioners

-VS-

The State rep. by

1. The District Collector
Office of District Collector
Chennai District.



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2. The Divisional Engineer
Office of High Way Authority
Chennai Metropolitan Development Authority
Division – 1
Chennai – 600 032.

3. The Assistant Divisional Engineer
Office of High Way Authority
Chennai Metropolitan Development Authority
Sub Division – I
Chennai – 600 032.

4. Rajaram @ Raj Rajaraman

5. Sridharan

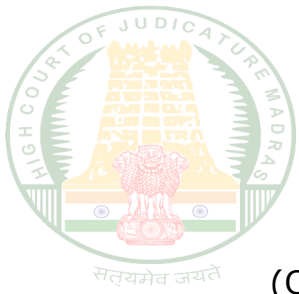
... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, forbearing the respondents from taking any coercive action or demolish the house of the petitioners situated at S. No. 14/5, Aringnar Anna Nagar, VII and VIII Street, Neelankarai, Chennai – 600 115 pursuant to the notices dated 28.11.2022 issued by the Second Respondent to the Petitioners enclosed in the annexure list until the compliance with the provisions of section 156 of Tamil Nadu Highways Act, 2001 and in any event alternate accommodation or compensation to the Petitioners.

For Petitioners : Mr. N.G.R.Prasad
For M/s. Row and Reddy

For Respondents : Mr. P.Muthukumar (R1)
State Government Pleader

Mr. J.Ravindran (R2 & R3)
Additional Advocate General
Assisted by Mr. A.Selvendran
Special Government Pleader



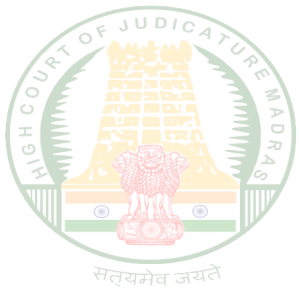
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ORDER

(Order of the Court was made by **P.D. AUDIKESAVALU, J.**)

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The Petitioners in this Writ Petition claim to be in occupation of the area of an extent of 9500 sq. ft. known as Aringnar Anna Nagar, 7th and 8th Street, Chennai-600115, where they have constructed cement thatched houses for shelter of 50 families. It is their case that their families are leading life below poverty line in that property in which they have been in continuous possession without any disturbance and paying taxes to the concerned authorities. The said property in their occupation forms part of the land in S. No. 14/5, Neelankarai Village, Sholinganallur Taluk, Chennai District, which has been acquired under the Tamil Nadu Highways Act, 2001 (hereinafter referred to as 'the Act' for short), for the infrastructure project relating to formation of link-road and construction of bridge across Buckingham Canal connecting Rajiv Gandhi Salai and East Coast Road at Neelankarai for which the Government of Tamil Nadu has administratively sanctioned Rs. 204 crores in G.O. (Ms) No. 70, Highways and Minor Ports (HW2) Department dated 19.06.2014 under Chennai Metropolitan Development Plan.



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2. According to the Petitioners, the Second Respondent had suddenly on 07.11.2022 issued notices to them stating that the said land has been acquired under the Act for the said project for which compensation has already been paid to the owner of the land and that they should vacate from that premises on or before 17.11.2022, failing which they will be evicted from there. The Petitioners, who were shocked to receive such notices, had submitted their explanations on 24.11.2022 to the Second Respondent stating that they had been in possession of that land for the last 35 years and have been paying taxes to the Government, but no notice was served on them with respect to the acquisition and in such circumstances, it was requested to stop further action to remove them from the possession of that property. At that stage, the Petitioners came to know that the Fourth and Fifth Respondents had falsely claimed and fraudulently obtained compensation of about Rs. 3,50,00,000/- from the Government. It is further stated that the Fourth Respondent, who is residing in the United States of America, has executed a Power



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of Attorney dated 02.03.2020 in favour of the Fifth Respondent,

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who has received compensation using it by furnishing false details as if the said property in S. No. 14/5 is vacant land without disclosing that the Petitioners have been in possession for 35 years in that property. It is alleged that the Fourth and Fifth Respondents had colluded with the officials and have caused loss to the exchequer with oblique motive. It is added that the information obtained on 28.02.2022 under the Right to Information Act, 2005, reveals that the name of one Rajarathinam Pillai has been entered as the owner of the property in S. No. 14/5 in the revenue records and the Fourth and Fifth Respondents could not claim and obtain any compensation amount for the said property. It is contended that despite the said objections raised by the Petitioners, further notices dated 28.11.2022 have been issued by the Second Respondent reiterating that if they did not vacate by 09.12.2022 from that property, the encroachments of the Petitioners in the property would be removed. In that backdrop, the present Writ Petition has been filed seeking to restrain the Respondents from taking any coercive action or demolish their houses situated at S. No. 14/5, Aringnar Anna Nagar, 7th and 8th



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Street, Neelankarai, Chennai-600115 pursuant to the notices

WEB COPY dated 28.11.2022 issued by the Second Respondent until the compliance of the provisions of the Act, and in any event, to provide alternate accommodation or pay compensation to them.

3. The Second Respondent has filed Counter-Affidavit dated 03.01.2023 stating that the Special District Revenue Officer, Land Acquisition, Chennai is the Land Acquisition Officer for the said project, but has not been impleaded in the Writ Petition. It is explained that the land of an extent 747 sq.mtrs out of 7300 sq.mtrs in S.No. 14/5, Neelankarai Village, Sholinganallur Taluk, Chennai District, was acquired following all due procedures as stipulated in the Act for the said project, and that the name of the Fourth Respondent, viz., Thiru. Rajaram S/o. Thiru. Rajagopalan, had been entered as the owner of the said property in the revenue records. As such, notice under Section 15(2) of the Act was issued on 28.08.2018 to him, and notification under 15(1) of the Act was issued in G.O (Ms) No. 90, Highways and Minor Ports (HW1) Department, dated 06.06.2019, and published in Government Gazette No. 28, Part-II division 2 dated 10.07.2019. Thereafter,



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the Fifth Respondent, viz., Thiru. Sridharan attended that enquiry

WEB CONDUCTED on 14.09.2020 under Section 19(5) of the Act on his behalf, and an award was passed on 10.01.2022 for the sum of Rs. 3,29,25,953/- as compensation, which has been paid to him. When the authorities of the Highways Department went to take possession of the land after payment of compensation amount to the land owner, it was found that 16 families have entered into that land and have refused to vacate, and when enquired, it was claimed by them that they had entered into that land thinking that it was Government poromboke and they have no alternate place to go. Though they are claiming to be living in the said land, they have not produced any patta or any other documents proving their ownership of that property. It is highlighted that the infrastructure project for which the land is acquired is a major public welfare scheme, which is very much essential for reduction of congestion of traffic in the years to come by formation of link-road. The claim of the Petitioners for alternate accommodation or compensation is resisted as without any legal right for the same.

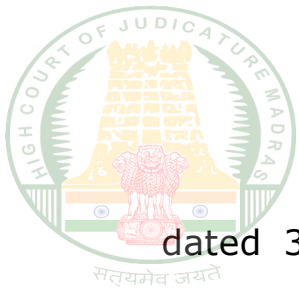
4. Mr. N.G.R.Prasad, Learned Counsel appearing for the



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Petitioners vociferously pleaded that though the official

Respondents have branded the Petitioners as 'encroachers', they cannot be deprived of their legitimate right to alternate accommodation or compensation for the acquisition of the land in their occupation for 35 years. Strong reliance is placed on the decisions of the Constitution Bench of the Hon'ble Supreme Court of India in ***Olga Tellis -vs- Bombay Municipal Corporation*** [(1985) 3 SCC 545] and ***K. Chandru -vs- State of Tamil Nadu*** [(1985) 3 SCC 536] to buttress the claim that slum dwellers have to be protected of their basic entitlement to livelihood as a facet of the fundamental right to life guaranteed under Article 21 of the Constitution by providing them alternate accommodation whenever the State intends to evict them from any public place in their occupation. The judgment of the Division Bench of this Court in ***Sivakasi Region Tax Payers Association -vs- State of Tamil Nadu*** [(2008) 5 MLJ 1425] has been cited to drive home the point that the benefits of assigning house-sites to those who have put up their houses and residing there for more than 20 years in Government land, which is not required, granted by the State Government in G.O (Ms) No. 854, Revenue Department



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dated 30.12.2006, has been upheld. It is also placed on record

that the Government of Tamilnadu by G.O (Ms) No. 318 Revenue Department, dated 30.08.2019 has regularized residential encroachment in non-objectionable Government poramboke land subject to the conditions mentioned therein.

5. Mr. P.Muthukumar, Learned State Government Pleader appearing for the First Respondent and Mr. J.Ravindran, Learned Additional Advocate General assisted by Mr. A.Selvendran appearing for the Second and Third Respondents emphasized that the claim made by the Petitioners cannot be countenanced as the land in their occupation was evidently private land in the name of the Fourth Respondent as per the revenue record, which has been acquired for public purpose of formation of link-road under the Act, and in the absence of semblance of any right, much less acceptable proof, conferring ownership over that property to them, it is not possible to grant them either alternate accommodation or compensation for the acquired land.

6. We have given our anxious consideration for the rival



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submissions made by Learned Counsel appearing for both sides

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and perused the materials placed on record, apart from the pleadings of the parties.

7. In respect of the claim made by the Petitioners that they cannot be dispossessed from the property without following procedure prescribed under the Act, there cannot be any dispute that the notification for acquisition under clause (1) of Section 15 of the Act has been issued on 06.06.2019, which has been published in the Gazette on 10.07.2019, after issuing notice on 28.08.2018 under clause (2) of Section 15 of that Act. Section 16 of the Act postulates that when notice under clause (1) of Section 15 is published in the Gazette, the land shall from then vest absolutely with the Government free from all encumbrances, which would obviously mean that the ownership of the land has passed on to the Government from 10.07.2019 onwards in this case.

8. Rule 5 of the Tamil Nadu Highways Rules, 2003 (hereinafter referred to as 'the Rules' for short) prescribes the manner of publication of the public notice under clause (1) of Section 15 of



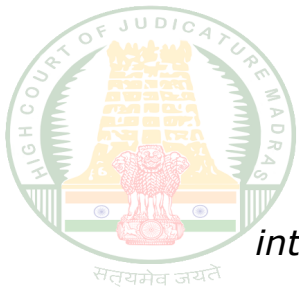
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the Act, which is analogous with Section 5-A of the Land Acquisition Act, 1894. The Full Bench of this Court in

P.C.Thanikavelu -vs- Special Deputy Collector for Land Acquisition, Madras [(1989) 1 LW 232] has examined the

question as to whether at the stage of enquiry under Section 5-A of the Land Acquisition Act, 1894, a person whose name is not entered in the revenue records as a 'person interested' in the land, is entitled to notice of the enquiry when the officer conducting the enquiry is informed of the interest possessed by such person in the land, and has answered that reference as follows:-

"6. It is not in dispute that in all cases where emergency provisions are not invoked and an enquiry under Section 5-A of the Act is contemplated, the Collector causes individual notices to be served on every person known or believed to be interested in the land to be acquired. Normally, such notices are sent to persons whose names are found recorded in the revenue records as persons interested. But in several cases it may transpire that persons whose names are found recorded in the revenue records as



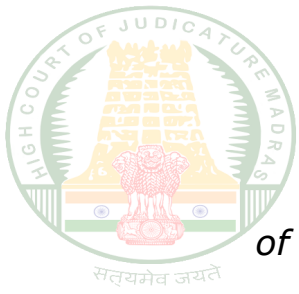
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interested persons may cease to have such interest

by reason of transfers of the holding or otherwise.

Nevertheless, no mutation of names in the revenue records in favour of persons who have become interested in the land might have been effected. The result is that the Collector may cause individual notices to be served only on those persons whose names are found in the revenue records, but who have ceased to be interested in the land. The result is not far difficult to see. Such persons who have ceased to be interested in the land may not respond to the notice, nor would they care to participate in the enquiry to be held under Section 5-A of the Act. In such cases, the statutory enquiry under Section 5-A of the Act which has not been dispensed with, would be completed without affording a reasonable opportunity to the persons who have an existing right, in the land under acquisition. Though it is incumbent upon the Revenue to keep their records up-to-date by effecting mutation of names reflecting the actual state



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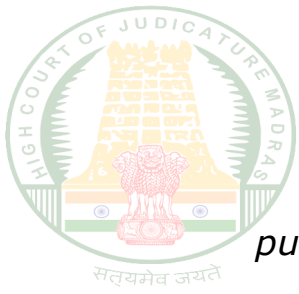
of affairs by showing the persons really interested in the land in their records, yet in a few cases it may so happen that the revenue records are not made upto date and the person who is really interested in the land may not receive any notice from the Collector for the enquiry under Section 5-A of the Act. In such cases, if it is brought to the notice of the Collector by the erstwhile land owner or by any other person including the present owner thereof, of the name of interested persons, the Collector as a statutory functionary cannot decline to afford an opportunity to the person who is really interested in the land and close the enquiry. When such information is brought to the notice of the Collector, it is needless to say that the principles of natural justice enjoin upon him an obligation to issue notice to the person who is found to be really interested in the land even though his name may not be found entered in the revenue records. It is true that the Government has the prerogative to acquire lands belonging to individuals



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*for a public purpose sanctioned under the theory of eminent domain'. But the rule of law which governs and controls the executive functions in the thread that runs through the fabric of constitutional democracy. The rule of law behoves the Government to act fairly and reasonably and the principles of natural justice are the quintessence of such fair play and reasonableness. The decision reported in **Padmavathi -vs- State of Tamil Nadu** (Vol. 91 LW 80) does not reflect the true statement of law. The Supreme Court has held in **Swadeshi Cotton Mills -vs- Union of India** (AIR 1981 SC 818) that even in the absence of express reference to observance of principles of natural justice, such principles should be followed whenever it affects the rights of parties. It cannot be gainsaid that when the lands of an individual are acquired, albeit he may be paid compensation, his civil rights may be affected. It is therefore elementary that, to be consistent with the principles of natural justice, such a person should be*



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*put on notice before his lands are acquired and his objection heard and considered. The enquiry contemplated under Section 5-A of the Act would be full and complete only when the person who is really interested in the land is put on notice. But, at the same time, it is made clear that **individual notice is mandatory only to those persons whose names are found in the revenue records or who are found by the Collector as persons interested on information received through reliable source.**"*

[emphasis supplied]

In view of the aforesaid legal position, it is beyond cavil that individual notice is mandatory only to those persons whose names are entered in the revenue record or who are found by the authority as 'persons interested' on information received through reliable source. Admittedly, the names of the Petitioners in this case have not been entered in the revenue record, and they have not been able to show any right, title or interest in the property. There is also nothing to infer that the Government had any information through reliable source that the Petitioners were



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'persons interested' in the land prior to the issue of notice for enquiry under Rule 5 of the Rules before publishing notification for acquisition under clause (1) of Section 15 of the Act. In any event, there is no explanation from the Petitioners for not having raised their claims as 'persons interested' in that enquiry, after proceedings were initiated under clause (2) of Section 15 of the Act before publishing notification for acquisition under clause (1) of Section 15 of the Act. The Petitioners have to only blame themselves for this precarious situation which they have placed themselves in respect of the claim made to the property. This would obviously mean that the question of restraining the First to Third Respondents from dispossessing the Petitioners from the acquired land which has already vested with the State cannot arise at this distant stage of the land acquisition proceedings.

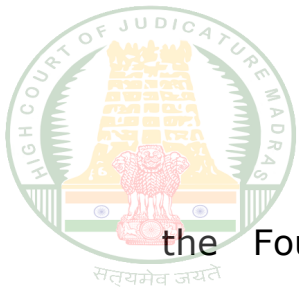
9. Coming to the dispute raised by the Petitioners relating to the entitlement of the Fourth and Fifth Respondents to receive the compensation amount for the acquired property, it was not their case either before the Second Respondent or the Land Acquisition Officer that they have any valid right, title or interest to the



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property. It is borne out from the materials placed on record that

before acquisition, the land in question has been treated by the State as private property belonging to the Fourth Respondent. The Petitioners had represented before the Second Respondent when they were issued notices dated 07.11.2022 that they were under the impression that the said land was Government poramboke. As such, the Land Acquisition Officer is under no obligation to entertain the claim for compensation for acquisition made by the Petitioners for the private property. Be that as it may, this Court following summary procedure in proceedings under Article 226 of the Constitution cannot venture into disputed questions of fact requiring recording of evidence in a full fledged trial relating to title to property as highlighted by the Hon'ble Supreme Court of India in **Roshina T. -vs- Abdul Azeez K.T.** [(2019) 2 SCC 329]. Inasmuch as the name of the Fourth Respondent has been entered as owner of the property in the revenue record, and the Fifth Respondent had represented him to receive the compensation amount, the Land Acquisition Officer could not be faulted for having made such payment, especially when no rival claim had been received from the Petitioners till that stage. In other words, if



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the Fourth and Fifth Respondents have wrongfully received

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compensation for the acquired property, the Petitioners would have to work out their remedies against them in appropriate proceedings, but cannot invoke the discretionary powers of this Court under Article 226 of the Constitution by making claim against the First to Third Respondents in that regard.

10. *A fortiori*, it is also not possible to countenance the claim made by the Petitioners for alternate accommodation. The judicial decisions and Governmental Order from which support is sought to be drawn relate to encroachment on Government land, which cannot have any application to a claim made by encroachers on private property, like the Petitioners in this case, who have not established any right, title or interest in proof of such claim.

11. In view of the foregoing discussion, it is not possible to grant any of the reliefs sought by the Petitioners in this Writ Petition.

In the upshot, the Writ Petition, which is devoid of merits, is dismissed. Consequently, the connected Miscellaneous Petitions



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are closed. No costs.

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(S.V.G., CJ.) (P.D.A., J.)
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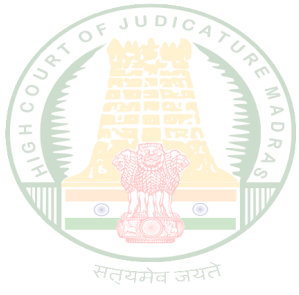
Maya

Index : Yes/No

NCS : Yes/No

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