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(2010) 11 MAD CK 0143

Madras High Court

Case No: W.A. No"s. 339 to 349 of 2010, W.P. No. 17991 of 2010 and M.P. No"s. 1 of 2010 and Writ Petition No. 17911 of 2010

R. Natarajan and Others		APPELLANT
	Vs	
The Union of India (UOI) and The Project Director National Highways Authority of India R. Natarajan Vs The District Collector, The Competent Authority (Land Acquisition) - cum - District Revenue Officer and The Project Director, National Highways Authority of India		RESPONDENT

Date of Decision: Nov. 9, 2010

Acts Referred:

- National Highways Act, 1956 - Section 3(2)

Citation: (2010) 5 LW 868

Hon'ble Judges: M.Y. Eqbal, C.J; T.S. Sivagnanam, J

Bench: Division Bench

Advocate: V. Ragavachari and G. Saravanan, for the Appellant; J. Ravindran, Asst. Solicitor General for R 1, J. Raja Kalifulla, Govt. Pleader for R 2 and P. Wilson, Addl. SC for P. Wilson, Associates, for the Respondent

Judgement

M.Y. Eqbal, C.J. and T.S. Sivagnanam, J.
Since these appeals arise out of common judgment and order passed in batch of writ

petitions, the same were heard together and are disposed of by this common judgment.

2. The petitioners are the appellants. They filed writ petitions seeking issuance of writ of certiorari for quashing the order dated 9the July, 2008 , in Na. Ka. No. 28943/06/Vu7 published in the Daily Tanthi dated 16th July, 2008, so far as it relates to the petitioners/appellants.

3. The facts of the case lie in a narrow compass.

4. The petitioners/appellants are the owners of the land in Alagumalai Revenue Village, Tirupur Taluk, Coimbatore District. There is a National Highway going from Karur to Coimbatore and the highway is abutting their lands. It is said that the officials of the National Highways Department inspected the lands of the appellants and took measurement. On enquiry, the appellants came to know that the respondents are going to lay bye-pass road connecting NH 67 from Avinashipalayam Sungam to Ramaswamy Koil Pirivu instead of widening the existing NH-67. The appellants case is that, they came to know about the notification dated 21st Nov., 2007 in the newspapers. Immediately, the appellants submitted detailed objections to the respondents on 8th Dec., 2007. The 1st respondent did not pass orders u/s 3-C(2) of the National Highways Act, 1956. The appellants case was that the impugned order came to be passed without passing order u/s 3-C(2) of the said Act, which is violative of principles of natural justice.

5. The authority of the respondents, National Highways, in their counter affidavit, have stated that the gazette notification dated 26th Oct., 2007, for acquisition of land of the appellants was notified and the same was published in two daily newspapers. A public notice was also issued calling for objections from interested persons. Necessary enquiry was made u/s 3-C(2) of the Act on 8th Jan., 2008, and after perusing the representation, the 2nd respondent came to the conclusion that the acquisition of land is inevitable for widening the road and, accordingly, the objections/claim of the appellants was disallowed on 29th Jan., 2008. The further case of the respondents is that after the aforesaid order u/s 3-C(2) of the Act was passed, necessary notification u/s 3-D(1) of the Act was notified in the gazette on 23rd May, 2008 and the substance of the gazette notification was published in the newspapers as required u/s 3-G(3) of the Act.

6. The main contention of the petitioners/appellants in the writ petition was that they were not aware about the order made u/s 3-C of the Act. It was contended that the order u/s 3-C was passed behind the back of the appellants and they were not given opportunity of hearing. Even the copy of this order was not served or communicated to the appellants.

7. Learned single Judge is of the view that since the order made u/s 3C of the Act was not challenged by the appellants and the only challenge was about the notification dated 9th July, 2008, the question of accepting the submission of the appellants with regard to the validity of the order made u/s 3-C cannot be gone into. Learned single Judge is also of the view that once the lands vested with the Government as required u/s 3-D of the

Act, the petitioners/appellants remedy lie only in claiming compensation as provided u/s 3-G of the Act. Accordingly, all the writ petitions have been dismissed. However, while dismissing the writ petition, learned Judge, in the last paragraph of the order observed as under:

10. At this juncture, learned Counsel appearing for the petitioners states that if there is any possibility to give up the lands of the petitioners, the respondents could be directed to consider the same. It is always open to the petitioners to approach the respondents with such request and as and when such request is made by the petitioners, it is open to the respondents to decide the same on merits and in accordance with law.

8. Mr. V. Raghavachari, learned Counsel appearing for the appellants assailed the impugned judgment and order passed by learned single Judge as being contrary to law, and facts and evidence on record. Learned Counsel submitted that learned single Judge gravely erred in law in dismissing the writ petitions on the ground that the appellants had not challenged the order of the 2nd respondent made u/s 3-C of the Act without considering the appellants specific case that no order u/s 3-C of the Act was ever served or communicated to the petitioners/appellants. Learned Counsel further submitted that in absence of any proof or evidence to establish that the order of the 2nd respondent u/s 3-C of the Act was served on the appellants, the finding of the learned Judge that the appellants could not challenge the order u/s 3-D of the Act is totally erroneous and against the provisions of the Act. Learned Counsel vehemently assailed the order dated 29th Jan., 2008 on the ground that it is violative of principles of natural justice and further on the ground that there is total non-application of mind on the part of the respondents while passing the said order and also the same has been passed without giving any reasons. According to the learned Counsel, in view of the fact that the aforesaid order passed u/s 3-C is absolutely erroneous and violative of principles of natural justice, the subsequent orders and notifications issued u/s 3-D cannot be sustained in law.

9. On the other hand, Mr. P. Wilson, learned Addl. Advocate General, appearing for the respondents strenuously contended that the appellants participated in the enquiry on 8th Jan., 2008 and, therefore, they cannot be allowed to say that they are not aware of the order made u/s 3-C of the Act. According to the learned Counsel, after the notification was issued u/s 3-D(1) of the Act and once the lands stood vested with the Government, the only remedy available to the appellants is to claim compensation as required u/s 3-G of the Act.

10. Before considering the merit in the submission made by the learned Counsel appearing for the respective parties, we would first like to go through the relevant provisions of the National Highways Act, 1956. The Act was enacted to provide for the declaration of certain Highways to be National Highways and for matters connected therewith. Section 3 was substituted by the National Highways Law (Amendment), 1997 (Central Act 16 of 1997). Section 3 defines the word competent authority and the word land. Section 3-A empowers the Central Government to declare its intention to acquire

such lands if it is satisfied that the said land is required for the purpose of operation of National Highway or for the building, maintenance and management of the National Highways. Such notification shall give brief description of the lands and the notification shall be published in two local newspapers one of which will be in a vernacular language. After the said declaration made by notification, the authorities of the Central Government have been empowered u/s 3-B of the Act to make inspection, survey, measurement, valuation or enquiry, to set out boundaries, mark such levels, dig or bore into sub-soil or do such other acts or things as laid down by rules made in this behalf by the Government.

11. Section 3-C is the important and relevant section for the purpose of the instant case. Sub-section (1) to Section 3-C gives right to a person interested in the land to file objections within twenty-one days and object to the use of the land for the purposes mentioned u/s 3-A of the Act. Sub-section (2) provides that such objection shall be made to the competent authority in writing and shall set out the grounds thereon and the competent authority shall allow or disallow the said objections. Sub-section (3) of Section 3-C provides that orders made by the competent authority under Sub-section (2) shall be final. For better appreciation, Section 3-C of the Act is reproduced hereinbelow:

3-C. Hearing of objections.- (1) Any person interested in the land may, within twenty-one days from the date of publication of the notification under Sub-section (1) of Section 3A, object to the use of the land for the purpose or purposes mentioned in that Sub-section.

(2) Every objection under Sub-section (1) shall be made to the competent authority in writing and shall set out the grounds thereof and the competent authority shall give the objector an opportunity of being heard, either in person or by a legal practitioner, and may, after hearing all such objections and after making such further enquiry, if any, as the competent authority thinks necessary, by order, either allow or disallow the objections.

Explanation.- For the purposes of this Sub-section, "legal practitioner" has the same meaning as in Clause (i) ot Sub-section (1) of Section 2 of the Advocates Act, 1961 (25 of 1961).

(3) Any order made by the competent authority under Sub-section (2) shall be final.

12. It further reveals that after the objection is finally disposed of in the manner required under Sub-section (2) of Section 3-C of the Act, the authority shall proceed u/s 3-D, which provides, inter alia, that after the objection having been disallowed, the competent authority shall submit a report to the Central Government and the Central Government, on receipt of the report so declare by notification in the official gazette that the land has been acquired for the purpose mentioned under Sub-section (1) of Section 3-A. Section 3-D reads as under:

3-D. Declaration of acquisition.- (1) Where no objection under Sub-section (1) of Section 3C has been made to the competent authority within the period specified therein or where the competent authority has disallowed the objection under Sub-section (2) of that

section, the competent authority shall, as soon as may be, submit a report accordingly to the Central Government and on receipt of such report, the Central Government shall declare, by notification in the Official Gazette, that the land should be acquired for the purpose or purposes mentioned in Sub-section (1) of Section 3A.

(2) On the publication of the declaration under Sub-section (1), the land shall vest absolutely in the Central Government free from all encumbrances.

(3) Where in respect of any land, a notification has been published under Sub-section (1) of Section 3A for its acquisition but no declaration under Sub-section (1) has been published within a period of one year from the date of publication of that notification, the said notification shall cease to have any effect:

Provided that in computing the said period of one year, the period or periods during which any action or proceedings to be taken in pursuance of the notification issued under Sub-section (1) of Section 3A is stayed by an order of a court shall be excluded.

(4) A declaration made by the Central Government under Sub-section (1) shall not be called in question in any court or by any other authority.

13. After the aforesaid requirement of law, as contemplated u/s 3D, is complied with by the competent authority of the Central Government, the competent authority shall direct the land owner or the person in possession to surrender or deliver possession of the land u/s 3-A of the Act. If any person refuses or fails to comply with the direction, then the Commissioner or the Collector shall enforce the surrender of the land to the competent authority or the person duly authorised by it. Section 3-F of the Act further provides that after the land stood vested with the Central Government u/s 3-D, it shall be lawful for any person authorised by the Central Government to enter and do other acts necessary upon the land related to or in connection with the National Highway. Section 3-G prescribes the mode of determination of amount of compensation payable to the land owners.

14. In the light of the aforesaid provisions of the Act, the only question that falls for consideration is whether the authorities of the respondents have complied with the mandatory requirements of law quoted hereinabove before acquiring the appellants'' lands for the purpose of National Highway or for the purposes connected therewith.

15. As noticed above, after the Central Government declared its intention by issuing a notification in the Official Gazette to acquire the lands for the building, maintenance, management or operation of the National Highway, the land owners or person interested have the right to file their objections within twenty one days from the date of publication of the notification, and can object to the use of the land for the purpose or purposes mentioned in Sub-section (1) of Section 3-A of the Act. Sub-section (2) of Section 3C of the Act very specifically provides that the Competent Authority before whom such objection is made, shall give the objector an opportunity of being heard either in person or by a legal practitioner, and may, after hearing such objections, and after making further

enquiry, if necessary, either allow or disallow the objections. At this juncture, again we take the opportunity to reproduce Sub-section (2) of Section 3C of the Act.

Every objection under Sub-section (1) shall be made to the competent authority in writing and shall set out the grounds thereof and the competent authority shall give the objector an opportunity of being heard, either in person or by a legal practitioner, and may, after hearing all such objections and after making such further enquiry,if any, as the competent authority thinks necessary,by order, either allow or disallow the objections.

Prima facie, therefore, it is manifestly clear that the compliance of the aforesaid provision is not a mere formality. Sub-section (2) cast a duty upon the competent authority to consider the objections, and after hearing such objections, and after making such further enquiry, if any, shall allow or disallow the objections.

16. The respondents in their counter affidavit filed in the writ petitions, has stated that the appellants have raised their objections in the petition dated 23.08.2007 and 18.12.2007. It is further stated that u/s 3-C(2) of the Act necessary enquiries have been conducted by the competent authority (LA) and the District Revenue Officer, Coimbatore on 08.01.2008 and after perusing the documents and examining the case, the competent authority and the District Revenue Officer, Coimbatore came to the conclusion that the acquisition of lands are inevitable for the widening of the National Highways project and has disallowed the petition. From the objections raised by the appellants, the copies of which are available on record, it is evidently clear that several objections had been raised by the appellants including that the notification issued for acquiring the lands for the expansion of the National Highways on the lands in question are proposed to be used to lay new roads instead of expansion project of the National Highways. Due to this many farmers like the appellants, who hold small piece of agricultural lands, would be led to irreparable loss. For better appreciation, the grounds taken by the appellants in the objection petition are reproduced herein below: -

4. At present, the national highways is running near the survey numbers 316 and 317. If the available national highways is developed and regulated, the national highways would be constructed in a proper manner. I being the farmer and the other farmers would not be affected.

5. I am ready to offer the lands which would be required to develop and expand the national highways which is running near my lands at present, without raising any objection, whatsoever. In the same fashion, the other farmers near my lands are read to offer the lands for the expansion of the roads.

6. It could not be accepted that as lot of accidents are caused in Avinasipalaym junction of this highways, the new national highways is being constructed. Because, in the junction which separates from Avinasipalayam-Customs Division and Tarapuram Road to Road leading to Coimbatore, which comes under the jurisdiction of Avinasipalayam Police

Station, in the year 2006, only three accident cases have been registered (Crime Nos. 11/2006, 143/2006 and 193/2006). Further in the year 2007, only 2 cases have been registered (Crime Numbers 57/2007, 168/2007). All not been caused due to the above mentioned curves. The accidents had occurred due to the dashing of vehicles directly with each other. It could not be said that if the National Highways are made straight, the accidents would not occur. If in the two junctions near the Avinasipalayam junction, are provided with roundtana and the bulbs are installed, it would reduce the causes for accident.

7. If we go from the Avinasipalayam junction of the present National Highways, it will lead to loss of time also could not be accepted. The distance in the present national highway from the Avinasipalayam junction, the new highways which is going to connect the old road, is about 1450 metres. The distance or which the new road had been planned is 1300 metres. In order to reduce 150 metres highways, the proposal to destroy the agricultural lands, and to construct the new road and to spend several crores for such road construction could not be accepted.

17. The appellants in support of the grounds taken in the petition submitted the map and other documents. However, the said objection was disallowed by the authority vide order dated 29.01.2008. It would be relevant and important to quote the order dated 29.01.2008 whereby the objections of the appellants were rejected u/s 3-C(2) of the Act.

PROCEEDINGS OF THE
COMPETENT AUTHORITY (NH 67) AND COIMBATORE
DISTRICT REVENUE OFFICER

Present: Dr. S. Prabhakaran, M.B.S.C., M.B.A.

Na. Ka.58775/2007/VU 7(1)

Sub: Land Acquisition "National Highways 67 (Karur to Kovai)" Kovai
District "Tirupur Taluk" Alakumalai Village Survey No. 316 -
Section 3A(1) The objection received Enquiry completed and order passed.

Ref: 1. The objection of Marathal dated 23.8.2007 & 18.12.2007
2. The proceedings of the competent authority dated 28.12.2007
Na. Ka.58775/07/Vu 7 (1). The letter of the Project Director, National Highways, Trichy dated 7.1.2008.

ORDER

1. Pursuant to the objection submitted against the land acquisition in Survey No. 316, Alagumalai Village , Tirupur Taluk, Coimbatore District for the purpose of 4 lane N.H.67 from Karur to Coimbatore, notice of enquiry was issued for the enquiry on 8.1.2008 by the Competent Authority. The land owners/objectors appeared in person and gave statement.

2. The objection of the petitioner was perused. The Project Director of NHAI has informed that with the help of technical experts/consultant NHAI has already prepared detailed project report, land acquisition work was started and the project work is under progress. Therefore, the acquisition of the lands could not be dropped/alignment could not be changed. Since the land is acquired for public interest and compensation is paid u/s 3(G), the objection of the petitioner is rejected u/s 3-C(2) of the National Higways Act, 1956.

Sd.
Competent Authority(NH 67) and
District Revenue Officer,
Coimbatore.

To
Smt. Marathal, W/o Ramasamy Gounder, Sundakadu

18. A perusal of the order shows that the Competent Authority disallowed the objection not on the ground that there was no substance in the objection, rather on the ground that the technical expert/consultant (NHAI) has already prepared detailed project report, land acquisition work was started and the project work is under progress. The objection was also disallowed on the ground that since the land is acquired for public interest, and compensation is paid u/s 3-G of the Act, the objection so raised is bound to be rejected. We are really shocked and surprised to see the order and the manner of exercising power u/s 3(2) of the Act. The order clearly shows that the authority passed the order purely on the basis that the technical experts have already given their opinion. Nothing is reflected from the order that the objection raised by the appellants were even considered or dealt with by the authority. Moreover no reasons have been assigned while rejecting the objection. In our opinion, there is total non-application of mind on the part of the authority while passing the order rejecting the objection u/s 3(2) of the Act.

19. It is true that a limited right has been given to the land owner or person interested u/s 3(2) of the Act to file objection to the acquisition proceedings. But such a right given to the person is not an empty formality, rather it is a substantive right. It has been consistently held by the Supreme Court that the person whose property is being or is intended to be acquired should have a proper and reasonable opportunity of persuading the authorities that the acquisition of property can be avoided. In Munshi Singh and Others Vs. Union of India (UOI), , their Lordships taking notice of the object and importance of Section 5-A of the Act observed as under: - 7. Section 5-A embodies a very just and wholesome principle that a person whose property is being or is intended to be acquired should have a proper and reasonable opportunity of persuading the authorities concerned that acquisition of the property belonging to that person should not be made. ... The legislature has, therefore, made complete provisions for the persons interested to file objections against the proposed acquisition and for the disposal of their objections. It is only in cases of urgency that special powers have been conferred on the appropriate Government to dispense with the provisions of Section 5-A:

The aforesaid view has been subscribed by the Supreme Court in the later decision in the case of Union of India (UOI) and Others Vs. Mukesh Hans etc., , wherein their Lordships held as under: - (Para.36, page 28) It is clear from the above observation of this Court that right of representation and hearing contemplated u/s 5-A of the Act is a very valuable right of a person whose property is sought to be acquired and he should have appropriate and reasonable opportunity of persuading the authorities concerned that the acquisition of the property belonging to that person should not be made. Therefore, in our opinion, if the appropriate Government decides to take away this minimal right then its decision to do so must be based on materials on record to support the same and bearing in mind the object of Section 5A.

20. Coming back to the order again, by which objection was disallowed, admittedly no reasons had been assigned. Although the authority was exercising the statutory duty to invite objection, hear the parties, and take a decision either allowing or disallowing the objection, the authority was bound to assign valid reasons. As per the 14th Report relating to Judicial Administration in India, the Law Commission recommended that even in administrative decision, provisions should be made that it should be accompanied by reasons.

21. The contention of Mr. P. Wilson, learned Additional Advocate General that since the appellants are challenging only the notification issued u/s 3D of the Act and not the order passed u/s 3C(2) of the Act, the validity of the order need not be gone into in the writ petition. We do not find any force in the said submission of the learned Additional Advocate General. The appellants challenged the notification of the Central Government u/s 3D of the Act mainly on the ground that the objection u/s 3C(2) of the Act was not considered, or if considered, the order disallowing the objection was not served upon the petitioners. While deciding a similar question, the Supreme Court in the case of Competent Authority Vs. Barangore Jute Factory and Others, , held as under:

About the argument based on vesting of the land in the Central Government, it is to be seen that if the initial notification is bad, all steps taken in pursuance thereof will fall with it. Vesting u/s 3-D(2) arises on a declaration by the Central Government u/s 3-D(1).The declaration is the result of disposal of objections u/s 3C. Each step is a consequence of earlier step and in that sense all the steps are linked to the initial notification for acquisition under Sections 3-A (1) and (2). This initial notification has been held to be not in accordance with law. When the foundation goes, rest of the edifice falls. The invalid notification u/s 3-A renders all subsequent steps invalid. Therefore, vesting of land in the Central Government in the present case cannot be said to be lawful and it does not advance the case of the competent authority or NHAI. Taking possession of the land is yet another step in the same sequence and is again subject to the initial notification being held valid. The initial notification having been invalidated, there can be no legal or valid vesting of land in favour of the Central Government.

22. After having gone through the entire facts of the case and giving our anxious consideration in the matter, we are of the considered view that the objections filed by the appellants have not been considered in its right perspective and has not been disposed of by giving reasons as contemplated u/s 3C(2) of the Act. Moreover, admittedly, the copy of the order was neither served nor was communicated to the appellants. The learned single Judge, therefore, failed to consider this aspect of the matter.

23. For the reasons aforesaid, these appeals and the writ petition are allowed. The impugned order passed by the learned single Judge is set aside. Consequently, the order passed by the Competent Authority u/s 3C(2) of the Act and the consequential orders are quashed. The matter is remitted back to the Competent Authority of the respondent to consider the objections filed by the appellants u/s 3C(2) of the Act, and the Competent Authority is directed to dispose of the same in accordance with law by passing a reasoned order. Needless to say that after complying with the requirements of law, the respondents shall proceed in the matter.