

M. MOHAN

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v.

THE STATE GOVERNMENT OF TAMIL NADU & ORS.

(Petition(s) for Special Leave to Appeal (C) Nos. 12616-17 of 2022)

SEPTEMBER 02, 2022

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[M. R. SHAH AND B. V. NAGARATHNA, JJ.]

Land Acquisition – Tamil Nadu Highways Act, 2001 – ss. 15(1), 15(2) and 15(3) – Land of the petitioner-original land owner was acquired under provisions of the Tamil Nadu Highways Act ('Act') – Notice issued u/s.15(2) of the Act inviting objections – Petitioner submitted objections to proposed land acquisition – Thereafter, notification issued u/s.15(1) of the Act – Petitioner filed writ before the High Court contending, inter alia, that the notification u/s.15(1) is in violation of the procedure to be followed u/r.5 of the Tamil Nadu Highways Rules, 2003 – It was contended on behalf of the petitioner that notification u/s.15(1) was issued without waiting for any response from the Highways Departments/authorities to the objections raised by the petitioner – High Court opined that there was substantial compliance and there was no illegality committed in issuing the notification u/s.15(1) of the Act – Special leave to appeal – Held: The object and purpose of r.5(2) is to hear the Highways Department on the objections raised by the original land owners – r.5(2) further provides that the Highways Department may file a statement by way of answer to the objections – It is not a mandatory requirement – Highways Department may or may not file a statement by way of answer to the objections – Therefore, non-filing of statement by way of answer to the objections by the Highways Department and/ or non-furnishing the copy of the same to the original land owners shall not vitiate the entire process of acquisition process and/ or the notification issued u/s. 15(1) of the Act – Therefore, High Court was right in observing that there was a substantial compliance of s.15 of the Act, 2001 r/w r.5 of the Rules, 2003 – No interference called for – Tamil Nadu Highways Rules, 2003 – r.5.

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A **Dismissing the SLPs, the Court**

HELD: 1. Section 15 of the Tamil Nadu Highways Act, 2001 Act is a substantive provision which confers powers upon the authority to acquire the land. Sub-section (1) of Section 15 provides for issuance of the notification to acquire land required for the purpose of any highway or for construction of bridges, culverts, causeways, or other structures thereon or for any purpose incidental or ancillary thereto. Subsection (2) of Section 15 provides that before publishing a notice under sub-section (1), the Government shall call upon the owner and any other person having interest in such land to show cause within such time as may be specified in the notice, why the land should not be acquired. Rule 5 of the Rules, 2003 can be said to be a procedural provision and it provides for the manner of publication of public notice. Sub-rule (2) of Rule 5 provides that if any objection is received from a person interested in the land within the time prescribed in the public notice issued under sub-section 2 of Section 15, the Government or the Collector or the Special Deputy Collector (Land Acquisition), shall fix a date for hearing the objections and give notice thereof to the objector as well as to the Highways Department. It further provides that copies of the objection shall also be forwarded to the Highways Department and the Highways Department MAY file on or before the date fixed by the Government or the Collector, as the case may be, a statement by way of answer or response to the objections and may also depute a representative to attend the enquiry. The object and purpose of sub-rule (2) of Rule 5 seems to be to give an opportunity to the Highways Department also to meet with the objections raised by the land owners and so as to give an opportunity to the Highways Department to put forward their case. It further provides that the Highways Department may file a statement by way of answer to the objections. It is not a mandatory requirement. Therefore, the Highways Department may or may not file a statement by way of answer to the objections. There is no further provision to furnish a statement by way of answer by the Highways Department to the objections filed by the original land owners. Therefore, non-filing of a statement by way of answer to the objections by the Highways Department and/or non-furnishing the copy of the same to the original land owners shall not vitiate the entire process of acquisition process and/or the notification

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issued under subsection (1) of Section 15 of the Act, 2001. [Para 5.1][148-A-C, D-H; 149-A] A

State of Mysore & Ors. v. V.K. Kangan & Ors. (1976) 2 SCC 895 : [1976] 1 SCR 369 – referred to.

Case Law Reference

[1976] 1 SCR 369 referred to Para 3.5 B

EXTRA-ORDINARY APPELLATE JURISDICTION: Petition For Special Leave To Appeal (C) Nos. 12616-17 of 2022.

From the Judgment and Order dated 22.03.2022 of the High Court of Judicature at Madras in W.A. Nos. 2169 and 2170 of 2021. C

Huzefa A. Ahmadi, Sr. Adv., Senthil Jagadeesan, Arun Anbumani, Aravindan, Ms. Remya Raj, Advs. for the Appellant.

The Judgment of the Court was delivered by

M. R. SHAH, J. D

1. Feeling aggrieved and dissatisfied with the impugned common judgment and order dated 22.03.2022 passed by the High Court of Judicature at Madras in Writ Appeal Nos. 2169 and 2170 of 2021, by which, the Division Bench of the High Court has dismissed the said appeals and has confirmed the judgment and order passed by the learned Single Judge in respective writ petitions, the original writ petitioner – original land owner has preferred the present Special Leave Petitions. E

2. That the lands in question owned by the petitioner herein – original land owner were required to construct Grade Separators on Periyar EVR Salai near Aminjakari, Nelson Manickam Road Junction and Anna Nagar 3rd Avenue junction, for the purpose of constructing a Flyover and Subway in the said location. The said lands were acquired under the provisions of the Tamil Nadu Highways Act, 2001 (hereinafter referred to as the Act, 2001). That a notice under Section 15(2) of the Act, 2001 was issued inviting objections of owners and any other person having interest in the lands to be acquired to show cause as to why the lands may not be acquired. The petitioner herein – original land owner submitted his detailed objections and the notices were also sent to the highways authorities/department of the division concerned. According to the State, after considering the objections raised by the original land F G

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- A owner on the report submitted by the highways authorities, a notification under Section 15(1) of the Act, 2001 was issued. The original land owners being aggrieved with the notification issued under Section 15(1) of the Act, 2001 filed writ petitions before the High Court contending, inter-alia, that the notification under Section 15(1) of the Act, 2001 is in violation of the procedure to be followed under Rule 5 of the Tamil Nadu
- B Highways Rules, 2003 (hereinafter referred to as the Rules, 2003). It was the case on behalf of the original writ petitioner that Rule 5 lays down the manner for publication of the public notice and the manner of conducting the enquiry. According to the original writ petitioner, before publishing a notice under Section 15(1), the Government or Collector or
- C Special Deputy Collector shall call upon the owner and any other person having interest in the land to show cause as to why the land may not be acquired. If objections are received from a person interested in the land, the Government or Collector or Special Deputy Collector shall fix a date for hearing the objections and give notice thereof to the objector as well as to the Highways Department. According to the original land owner,
- D thereafter the Highways Department shall file, on or before the date fixed by the Government or Collector or Special Deputy Collector a statement by way of an answer or response to the objections and may also depute a representative to attend the enquiry and thereafter the Government or Collector or Special Deputy Collector shall hear the
- E objector and the Highways Department and record any evidence that may be produced by either party and on completion of the enquiry, the Collector shall submit all details of the enquiry to the Government to pass an order under sub-section (3) of Section 15. According to the original writ petitioner without waiting for the response from the Highways
- F Department and without giving any opportunity of being heard to the objectors, the notification under Section 15(1) of the Act, 2001 has been issued, which is in clear violation of Rule 5 of Rules, 2003.

- 2.1 On the other hand, it was the case on behalf of the State that the notifications under Section 15(1) of the Act, 2001 was issued after considering the report of the Collector on the objections submitted by
- G the original land owners and even the response from the Highways Department was received. That the learned Single Judge by a detailed judgment and order dismissed the writ petitions by observing that the notification under Section 15(1) of the Act, 2001 was followed by a detailed enquiry and after considering the objections raised by the original
- H land owners. The learned Single Judge opined that there was substantial

compliance and there is no illegality committed in issuing the notification under Section 15(1) of the Act, 2001. A

2.2 Feeling aggrieved and dissatisfied with the judgment and order passed by the learned Single Judge dismissing the writ petitions, the original writ petitioner filed writ appeal(s) before the High Court. By the common impugned judgment and order, the Division Bench of the High Court has dismissed the said appeal(s) which has given rise to the present Special Leave Petitions. B

3. Shri Huzefa A. Ahmadi, learned Senior Advocate has appeared on behalf of the petitioner – original land owner. It is vehemently submitted by Shri Ahmadi that in the present case before issuing notification under Section 15(1) of the Act, 2001, the procedure required to be followed under Rule 5 of the Rules, 2003, which was required to be strictly followed, have not been followed. C

3.1 Shri Ahmadi, learned Senior Advocate appearing on behalf of the petitioner has submitted that before issuing a notification under Section 15(1), the following procedure as per Rules 5(2) and 5(3) shall have to be strictly followed: - D

- (i) State's delegated authority receives objections of the land owner - Rule 5(2);
- (ii) State's delegated authority fixes a date for hearing the objections and gives notice thereof to the objector and the requisitioning authority - Rule 5(2); E
- (iii) Copy of the land owner's objections shall be forwarded to the requisitioning authority - Rule 5(2);
- (iv) On the date fixed for enquiry, the State shall hear the objector and the representative of the requisitioning authority, if any and record evidence - Rule 5(3); F
- (v) On or before the date fixed for hearing, the requisitioning authority may submit an answer statement to the objections - Rule 5(2) G

It is submitted that in the present case, without waiting for any response from the Highways Department/authorities to the objections raised by the original land owner, notification under Section 15(1) of the Act, 2001 has been issued.

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A 3.2 It is further submitted that in the present case the acquisition of the petitioner's land was sought to be done in two parts. While in the first part, the petitioner's objections were submitted on 15.12.2010. However, the requisitioning authority's (Highways Department) response thereto was sent only on 25.01.2011 – a month after the enquiry was superficially held on 24.12.2010. It is contended that the aforesaid is in clear violation of the procedure envisaged under the Rules. It is submitted that having forwarded the objections to the requisitioning authority seeking for its comments, the enquiry ought not to have been held prior to receipt of the comments. That even after receiving of the comments of the requisitioning authority, post the superficial enquiry, the same were not provided to the petitioner and/or no fresh enquiry was conducted thereafter, prior to the issuance of notification under Section 15(1) of the Act, 2001. That if such comments were provided to the petitioner, he would have been in a better position to place before the State, inter-alia, that his objections were not properly considered and/or that the response of the requisitioning authority did not respond to his specific objections; the response was faulty, incorrect, etc. It is submitted that therefore, the petitioner was deprived of a meaningful enquiry under the Act and Rules, thereby causing grave prejudice to him.

E 3.3 It is submitted that meanwhile, in case of the acquisition under the second part, the petitioner submitted his objections on 15.12.2011, and the enquiry was superficially held on 15.12.2011 itself. It was an empty formality. Therefore, for the second part of the acquisition, the petitioner's objections were never forwarded to the requisitioning authority, which is a mandatory requirement as per Rule 5(2). Further, there was no notice fixing a date for hearing of objections under Rule 5(2) and the hearing was held on the same day the objections were required to be submitted, which is also contrary to Rules.

G 3.4 It is submitted that even otherwise a perusal of the responses given by the requisitioning authority shows identical and mechanical responses it gave in response to all objectors, thereby clearly showing non-application of mind.

H 3.5 It is further contended by Shri Ahmadi, learned Senior Advocate appearing on behalf of the petitioner that as such the Division Bench of the High Court has materially erred in not considering and/or in holding that Rules 5(2) and 5(3) are to be ignored as they are not in conformity with Section 15(2) of the Act and therefore not enforceable. It is urged

that there was no occasion for the Division Bench of the High Court to hold so, more particularly, when these Rules were duly framed and placed before the Legislative Assembly and issued, and have stood the test of time. It is submitted that their *vires* have never been questioned and the State has been following the Rules without demur. That the High Court ought to have appreciated that the procedure set down by these Rules are a safeguard against arbitrariness, and protect the expectation of fair adjudication. Reliance is placed on the decision of this Court in the case of **State of Mysore & Ors. Vs. V.K. Kangan & Ors.; (1976) 2 SCC 895** wherein it is held by this Court that there is no conflict between Rule 3(b) of the Tamil Nadu Land Acquisition Rules and Section 5A(2) of the Land Acquisition Act, 1894. It is submitted that the said Rule 3(b) is similar to the present Rule 5(2).

3.6 Making the above submissions it is prayed to set aside the impugned judgment(s) and order(s) passed by the High Court and consequently to set aside the acquisition.

4. Heard Shri Huzefa A. Ahmadi, learned Senior Advocate, appearing on behalf of the petitioner.

4.1 That the petitioner herein – original writ petitioner before the High Court challenged the acquisition of lands in question which were acquired under the provisions of the Tamil Nadu Highways Act, 2001. The acquisition was challenged, inter-alia, on the ground that the procedure required under Rule 5 of Rules, 2003 has not been followed and while considering the objections raised by the petitioner – land owner the opinion of the highways authorities of the division concerned was not considered and also on the ground that before issuing notification under Section 15(1) of the Act, 2001, the objections of the land owner were not properly considered. That the learned Single Judge dismissed the writ petitions observing that there was a substantial compliance of the procedure as required to be followed under Rule 5 of Rules, 2003 inasmuch as the objections raised by the petitioner – original land owner, were specifically dealt with and considered before issuing the notification under Section 15(1) of the Act, 2001. However, while affirming the judgment and order passed by the learned Single Judge, the Division Bench of the High Court has further observed that Rule 5(2) to Rule 5(3) is not in consonance with Section 15(2) and therefore, it is to be ignored.

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A 5. While appreciating the submissions made by Shri Ahmadi, learned Senior Advocate, appearing on behalf of the petitioner, Section 15 of the Act, 2001 and Rule 5 of Rules, 2003 are required to be referred to and considered, which are as under: -

 “TAMILNADU HIGHWAYS ACT, 2001

B **Section 15. Power to acquire land:**

C (1) If the Government are satisfied that any land is required for the purpose of any highway or for construction of bridges, culverts, causeways or other structures thereon or for any purpose incidental or ancillary thereto, in furtherance of the objects of this Act, they may acquire such land by publishing in the Tamil Nadu Government Gazette a notice specifying the description of such land and the particular purpose for which such land is required.

D (2) Before publishing a notice under Sub-section (1), the Government shall call upon the owner and any other person having interest in such land to show cause within such time as may be specified in the notice, why the land should not be acquired. The Government shall also cause a public notice to be given in such manner as may be prescribed.

E (3) The Government may, after considering the cause, if any, shown by the owner or other person having interest on such land, pass such an order under sub-section (1), as they may deem fit.”

 “TAMIL NADU HIGHWAYS RULES, 2003

F **5. Manner of publication of the public notice.** - Before publishing a notice under sub-section (1) of section 15, the Government or the Collector or the Special Deputy Collector (Land Acquisition), Tamil Nadu Urban Development Project III, as the case may be shall in addition to calling upon the owner and any other person having interest in the land to show cause as to why the land should not be acquired, shall also cause a public notice to that effect to be published in one English and in one Tamil newspapers having circulation in the locality. The said notice shall also be displayed in the offices of the,-

- G (i) Highways Authority of the division concerned;
- H (ii) Village Administrative Officer of the village concerned; and

(iii) Tahsildar of the taluk concerned. A

(2) If any objection is received from a person interested in the land within the time prescribed in the public notice issued under sub-section 2 of section 15, the Government or the Collector or the Special Deputy Collector (Land Acquisition), Tamil Nadu Urban Development Project III, as the case may be, shall fix a date for hearing the objections and give notice thereof to the objector as well as to the Highways Department. Copies of the objection shall also be forwarded to the Highways Department. The Highways Department may file on or before the date fixed by the Government or the Collector as the case may be, a statement by way of answer to the objections and may also depute a representative to attend the enquiry; B C

(3) On the date fixed for enquiry or any other date to which the enquiry may be adjourned, the Government or the Collector or the Special Deputy Collector (Land Acquisition), Tamil Nadu Urban Development Project III, as the case may be, shall hear the objector or a person authorised by him in this behalf and the representatives, if any, of the Highways Department and record any evidence that may be produced in support of the objection and in support of the need for acquiring the land; D

(4) Where the enquiry is conducted by the Collector, on completion of the enquiry, the Collector shall submit all the details of the enquiry to the Government to pass order under sub-section (3) of section 15; E

(5) Where the enquiry is conducted by the Government, the Government will pass order under sub-section (3) of section 15;” F

5.1 In the present case public notice under Section 15(2) of the Act, 2001 was issued on 30.11.2010 and paper publication under Section 15(2) notice was issued on 03.12.2010. That the petitioner submitted his objections on 15.12.2010; enquiry was conducted on 24.12.2010; objections were sent to the Highways Department and the remarks were called for on 20.12.2010. The Highways Department forwarded its reply/ statement may be after conduct of the enquiry on 24.12.2010 but before the notification under Section 15(1) of the Act, 2001 was issued. It is the case on behalf of the petitioner that at the time when the enquiry was conducted response from the Highways Department was not before the H

- A authority and no opportunity was given to the petitioner to put forward his case on the answers to the objections tendered by the Highways Department. However, it is to be noted that Section 15 is a substantive provision which confers powers upon the authority to acquire the land. Sub-section (1) of Section 15 provides for issuance of the notification to acquire land required for the purpose of any highway or for construction of bridges, culverts, causeways, or other structures thereon or for any purpose incidental or ancillary thereto. Sub-section (2) of Section 15 provides that before publishing a notice under sub-section (1), the Government shall call upon the owner and any other person having interest in such land to show cause within such time as may be specified in the notice, why the land should not be acquired. Sub-section (3) of Section 15 provides that the Government may, after considering the cause [objections raised pursuant to the notice under sub-section (2) of Section 15], pass such order under sub-section (1). Rule 5 of the Rules, 2003 can be said to be a procedural provision and it provides for the manner of publication of public notice. Sub-rule (2) of Rule 5 provides that if any objection is received from a person interested in the land within the time prescribed in the public notice issued under sub-section 2 of Section 15, the Government or the Collector or the Special Deputy Collector (Land Acquisition), shall fix a date for hearing the objections and give notice thereof to the objector as well as to the Highways Department. It further provides that copies of the objection shall also be forwarded to the Highways Department and the Highways Department **MAY** file on or before the date fixed by the Government or the Collector, as the case may be, a statement by way of answer or response to the objections and may also depute a representative to attend the enquiry. The object and purpose of sub-rule (2) of Rule 5 seems to be to give an opportunity to the Highways Department also to meet with the objections raised by the land owners and so as to give an opportunity to the Highways Department to put forward their case. It further provides that the Highways Department may file a statement by way of answer to the objections. It is not a mandatory requirement. Therefore, the Highways Department may or may not file a statement by way of answer to the objections. There is no further provision to furnish a statement by way of answer to the objections filed by the Highways Department to the original land owners. The object and purpose of said sub-rule (2) of Rule 5 as observed hereinabove is to hear the Highways Department on the objections raised by the original land owners. Therefore, non-filing of a statement by way
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of answer to the objections by the Highways Department and/or non-furnishing the copy of the same to the original land owners shall not vitiate the entire process of acquisition process and/or the notification issued under sub-section (1) of Section 15 of the Act, 2001. It can be said that the said provision is for the benefit of the Highways Department so that no adverse decision is taken by the State Government without giving an opportunity to the Highways Department.

6. In the present case, before issuance of notification under Section 15(1) of the Act, 2001, fullest opportunity has been given to the original land owner to submit his objections. Thereafter, the enquiry has been conducted as required under sub-section (2) of Section 15 and after considering the objections and having been satisfied that the land is required for the purpose of Highways Department, the notification under Section 15(1) of the Act, 2001 has been issued. It is to be noted that before issuing the notification under Section 15(1) of the Act, 2001, a statement by way of answer to the objections by the Highways Department was before the authority and thereafter the notification under Section 15(1) of the Act, 2001 has been issued. Therefore, the learned Single Judge and the Division Bench of the High Court was right in observing that there is a substantial compliance of Section 15 of the Act, 2001 read with Rule 5 of the Rules, 2003 and no interference of the Court is called for.

7. However, at the same time Shri Ahmadi, learned Senior Advocate, appearing on behalf of the petitioner, is right in making submission that as the validity of Rule 5 was not before the High Court therefore, the High Court ought not to have held Rule 5 to be *ultra vires*. However, from the impugned judgment and order of the Division Bench of the High Court, it appears that the Division Bench of the High Court was of the opinion that Rule 5 being a subordinate legislation is inconsistent with the provision of Section 15(2) of the Act, and therefore, the same is to be ignored. It is true that the same was not warranted and we are of the opinion that Rule 5 cannot be said to be inconsistent with Section 15(2) of the Act. However, on merits and for the reasons stated above, we are in complete agreement with the ultimate view taken by the learned Single Judge confirmed by the Division Bench of the High Court upholding the acquisition in question. Hence, we do not propose to further enter into the observations made by the Division Bench that the provision of Rule 5 of the Rules, 2003 is inconsistent with Section 15(2) of the Act, 2001.

A 8. In view of the above and for the reasons stated above, there is no substance in the present Special Leave Petitions and therefore, the same deserve to be dismissed and are accordingly dismissed.

Bibhuti Bhushan Bose
(Assisted by : Preetam Bharti, LCRA)

SLPs dismissed.