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W.P.Nos.29753 & 29755 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	26.11.2025
Pronounced on	26.02.2026

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.Nos.29753 & 29755 of 2019
& W.M.P.Nos.29654, 29885, 29886, 29883 of 2019,
7600 & 7592 of 2025

Anant Mandgi

... Petitioner in both petitions

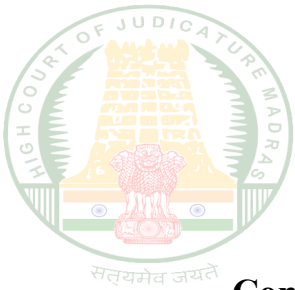
Vs.

1.Union of India,
Ministry of Road Transport and Highways,
Rep by its Secretary,
No.1, Parliament Street,
New Delhi 110 001.

2.The Competent Authority,
Special District Revenue Officer (Land Acquisition),
National Highways-948A,
STRR(I/C), Hosur, Krishnagiri.

3.National Highways Authority,
Rep by its Regional Project Director,
Project Implementation Unit-Bengaluru (Expressway),
No.718 11th Cross, 20th Main,
Padmanabha Nagar, Bengaluru-580 070

... Respondents in both petitions



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Common Prayer:

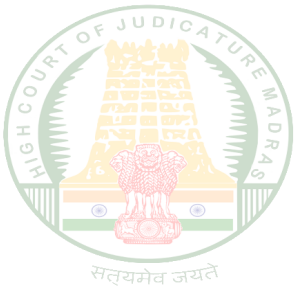
Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Wri

Calling for the records of the 2nd respondent dated 25.6.2019
bearing Reference No.26/2018/L3 and quash the same and thereby
forbear the respondents from further proceeding with the acquisition in
respect of the petitioner land situated in at Bairamangalam Village,
Denkanikottai Taluk, Krishnagiri District bearing Survey Nos.612/B,
612/C1, 824/B4, 824/B5 and 824/C

To call for the records the Notification dated 8.3.2019 bearing
Reference S.O.1333 (E) passed by the 1st respondent under Section 3D
of the National Highways Act, 1956 and quash the same

For Petitioner
in both petitions : Mr.S.R.Raghunathan,
Asst. by Mr.Manjunath Karthikeyan,
Ms.Pavithra Sundararajan,
Ms.Archita Aneesh

For Respondents
in both petitions : Mr.R.Rajesh Vivekananthan,
Deputy Solicitor General of India
for R1 & 2
Ms.S.R.Sumathy for R3



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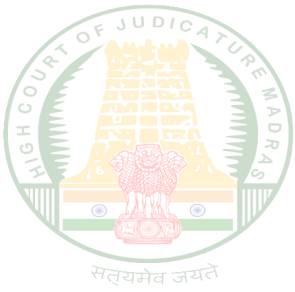
COMMON ORDER

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These writ petitions have been filed challenging the impugned Notification dated 08.03.2019 issued by the 1st respondent and the impugned order dated 25.06.2019 passed by the 2nd respondent.

2.Brief facts of the case:

2.1 In the case on hand, initially, a notification dated 12.07.2018 came to be issued by the 1st respondent for acquisition of subject lands, to an extent of 25941 Hectares, which spread across 25 villages, for public purpose, i.e., formation of the National Highway “NH 948A”. Out of the said total extent, the petitioner's land is about 0.8195 Hectares. Subsequently, the petitioner sent a letter dated 25.07.2018 to the 2nd respondent, whereby he requested for personal hearing and also explained that there were no concrete alignment of proposed ring road and the remaining portion of the land will become redundant after the acquisition. Upon receipt of the said letter, the Surveyors had visited the subject land.



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2.2 Thereafter, another letter dated 20.08.2018 was communicated by the petitioner to the respondents 2 & 3, wherein it was stated that the vacant lands towards edge of property could be used instead of petitioner's land for the purpose of forming the proposed road. On 15.10.2018, the 2nd respondent issued notice to call upon the petitioner for enquiry, which was scheduled to be held on 25.10.2018. Pursuant to the said notice, the petitioner had filed his objection dated 22.10.2018 before the 2nd & 3rd respondents and thereafter, attended the enquiry on 25.10.2018. However, according to the petitioner, the 2nd respondent had rejected the petitioner's objection vide order dated 12.12.2018, without any proper consideration. Against the said order, a writ petition in WP.No.8186 of 2019 was filed by the petitioner, wherein, this Court, vide order dated 20.03.2019, had stayed the operation of the proceedings of Notification issued by the respondents. Thereafter, the said writ petition was disposed of by this Court vide order dated 18.06.2019 with a direction to conduct joint spot inspection and complete the proceedings.

2.3 During the pendency of the above writ petition, the 1st respondent issued the impugned Notification dated 08.03.2019 by

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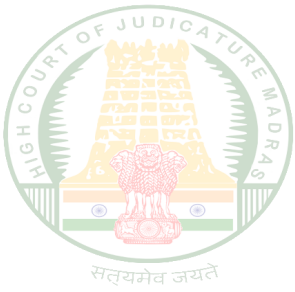
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declaring that the subject land should be acquired. Aggrieved over the said notice, one of the present writ petitions, i.e., WP.No.29755 of 2019 came to be filed by the petitioner.

2.4 Pursuant to the order passed in WP.No.8186 of 2019, the said joint spot inspection was conducted on 22.06.2019. The petitioner's wife and son had attended the joint spot inspection and filed the additional objections before the 2nd respondent. However, the 2nd respondent had rejected the additional objections vide impugned order dated 25.06.2019, against which, the writ petition in WP.No.29753 of 2019 came to be filed by the petitioner.

3. Petitioner's submission:

3.1 The learned counsel for the petitioner raised two grounds against the respondents. The 1st ground is pertaining to non-obtaining of Environment clearance prior to declaration under Section 3D of the National Highways Act, 1956 (hereinafter called as "the Act"). The 2nd ground is pertaining to non-consideration of petitioner's objections.



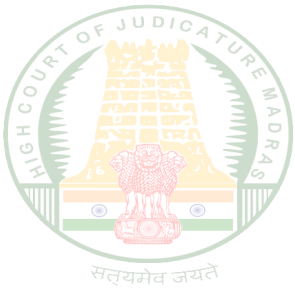
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3.2 As far as the 1st ground is concerned, he would submit that in the Clause 7(f) of Schedule to the Environment Impact Assessment Notification dated 14.09.2016, it has been clearly stated that it is mandatory to obtain environment clearance for all projects and activities mentioned under Category A in the nature of expansion of National Highways greater than 100 km. In such case, the declaration under Section 3D of the Act, can be made only after obtaining the environment/forest clearance. To substantiate his submission, he referred to the judgement rendered by the Hon'ble Apex Court in ***Project Director vs. P.V.Krishnamurthy*** reported in (2021) 3 SCC 572 (hereinafter referred as “PV Krishnamurthy's case”).

3.3 Further, he would contend that in this case, the environment clearance was not at all obtained by the respondents prior to the Declaration made under Section 3D of the Act. The said aspect was also admitted by the respondents vide the impugned order dated 25.06.2019, wherein it has been clearly stated as follows:

".....the process of Environment Clearance is in advance stage and final EIA report as part of the same will be submitted to MOEF&CC with incorporation of public hearing proceedings."

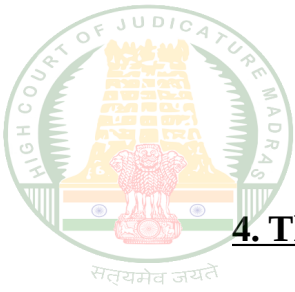
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3.4 Hence, by referring the above, he would submit that no environment clearance was obtained by the respondents prior to the Declaration and thus, the respondents have erroneously implemented the entire project, which is not sustainable in law.

3.5 As far as the 2nd ground is concerned, he would submit that in this case, the petitioner made severe objections to the proposed acquisition and the same were submitted before the respondents. In spite of the same, while passing the impugned order dated 25.06.2019, the respondents had wrongly recorded that the petitioners are not having any objections to the present alignment. When such being the case, it is clear that the respondents had not at all considered the petitioner's objection in a proper manner at the time of passing the impugned order, which is a clear violation of principles of natural justice. Therefore, he requested this Court to set aside the impugned 3D(1) Notification dated 08.03.2019 issued by the 1st respondent and the impugned order dated 25.06.2019 passed by the 2nd respondent.



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4. The respondent's reply:

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4.1 Per contra, the learned counsel appearing for the respondents would submit that the National Highways Authority of India (NHAI), being a Statutory Authority, had proposed to acquire the lands comprising 25 villages at Krishnagiri District, which includes the subject land. In this regard, a Notification under Section 3A(1) of the Act was published on 29.06.2018. Thereafter, a notice dated 15.10.2018 was issued, calling upon the petitioner to attend the enquiry on 25.10.2018. Hence, he would submit that the petitioner was provided with ample opportunities to make objections regarding the acquisition of lands. In spite of the same, the petitioner has made willful attempts to postpone the enquiry. Under these circumstances, after due inspection, the order dated 07.12.2018 came to be passed by the respondents. Subsequently, the Central Government made a Declaration under Section 3D(1) of the Act vide Notification dated 11.03.2019.

4.2 As far as the order dated 18.06.2019 passed by this Court in W.P.No.8186 of 2019 is concerned, he would submit that pursuant to the said order, a complete enquiry was conducted by the respondents and

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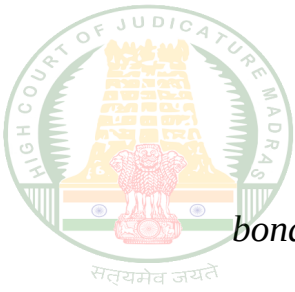
after due consideration, a detailed speaking order came to be passed on 25.06.2019.

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4.3 Further, he would submit that the petitioner's suggestion, with regard to the utilisation of Government Poromboke Lands for the purpose of forming Highway roads, was also examined by the Competent Authority. However, during inspection, it was observed that any change in alignment will affect the Geometry and it will have more social impact, for which, NHAI will be constrained to acquire more patta lands. Hence, the said suggestion was dropped by the Authority. Therefore, he would submit that all the objections and suggestions made by the petitioners were duly considered by the respondents at the time of passing the impugned order.

4.4 He would also submit that the subject lands are inevitably required for the purpose of forming National Highway. In such case, the interest of general public will prevail over the interest of individual land owner. That apart, as per the Doctrine of Eminent Domain, it is well settled that when the Central Government acquires a private land for

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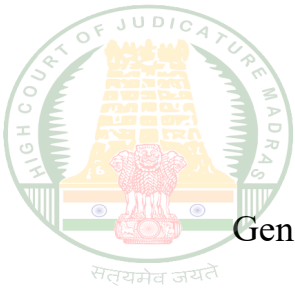
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bonafide public purpose, the Article 14 and 21 of the Constitution of India will not be available against the said acquisition. When such being the case, he would submit that there is no violation of fundamental rights of the petitioner.

4.5 He would further contend that the petitioner's land is inevitably required for formation of National Highway NH 948A. The total length of the road is 35.766 km, out of which, the road passing through the petitioner's land is only to the extent of 200 meter. Even the physical construction of the road has been completed in 28.05 km, for which a sum of Rs.709 Crore has been incurred till date. Due to the stay granted in these petitions, the respondents are not in a position to complete the remaining 0.2 km of road. When such being the case, if the proceedings, pertaining to land acquisition, is quashed at this stage, it will lead to a great Revenue loss to the Central Government. Hence, he prays for dismissal of these petitions.

5. I have given due consideration to the submissions made by the learned counsel for the petitioner and the learned Additional Solicitor

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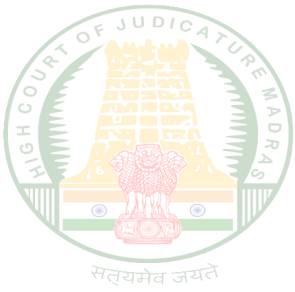


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General appearing for the respondents and also perused the entire materials available on record.

6. In the case on hand, two writ petitions were filed challenging the issuance of notification dated 08.03.2019 and the passing of impugned order dated 25.06.2019.

7. According to the petitioner, Section 3D(1) notification was issued on 08.03.2019, which is consequent to the issuance of Section 3A(1) notice dated 12.07.2018. However, the respondents had failed to obtain environment clearance prior to the issuance of aforesaid Section 3D(1) notification and the same is contrary to the law laid down by the Hon'ble Apex Court in ***PV Krishnamurthy's case***. Further, contention of the petitioner was that the impugned order dated 25.06.2019 was passed without considering the petitioner's objection, which is not only violation of principles of natural justice but also in contrary to the order dated 18.06.2019 passed by this Court in WP.No.8186 of 2019.



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8. Now, the issues that arise for consideration in these writ petitions are as follows:

i) Whether the order dated 25.06.2019 was passed by the 2nd respondent, after due consideration of the petitioner's submission/objection, as per the order of this Court dated 18.06.2019 in WP.No.8186 of 2019 ?

ii) Whether Section 3D(1) notification dated 08.03.2019, issued by the 1st respondent, without obtaining Environment Clearance, is against the law laid down by the Hon'ble Apex Court in *PV Krishnamurthy's case* ?

9. Issue No.1: Whether the order dated 25.06.2019 was passed by the 2nd respondent, after due consideration of the petitioner's submission/objection, as per the order of this Court dated 18.06.2019 in WP.No.8186 of 2019 ?

9.1 Initially, on 12.07.2018, a notification under Section 3A(1) was issued by the 1st respondent for acquisition of land for public purpose, which includes the petitioner's land. On 25.07.2018, a request was made by the petitioner to the 2nd respondent for personal hearing opportunity. Thereafter, on 11.08.2018, a surveyor, engaged by the respondent, had

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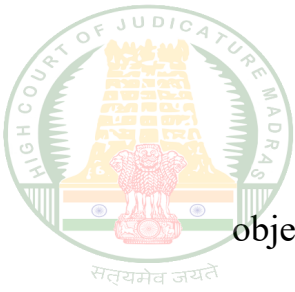


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visited the petitioner's land and conducted survey therein. On 18.10.2018, another survey was conducted by Thasildhar and Revenue Inspector. On 15.10.2018, the 2nd respondent issued notice to the petitioner calling upon him for enquiry, which was scheduled on 25.10.2018. In the meantime, on 22.10.2018, the petitioner placed additional objection on record before the file of respondents 2 and 3. On 25.10.2018, the petitioner attended the enquiry before the 2nd respondent. However, the 2nd respondent had postponed the enquiry without fixing any specific date of hearing. Under these circumstances, all of a sudden, the order dated 12.12.2018 was passed without hearing the petitioner's submission.

9.2 Aggrieved over the said order, the petitioner filed a writ petition in WP.NO.8186 of 2019, wherein this Court vide order dated 18.06.2019, directed the respondent to conduct joint spot inspection on 22.06.2019 and thereafter complete the enquiry proceedings within a period of 3 days. Subsequently, on 22.06.2019, the petitioners attended the joint spot inspection and placed their objections on record. As directed by this Court vide order dated 18.06.2019, subsequent to the joint spot inspection, the 2nd respondent, after considering the said

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objection and other representations filed by the petitioner, passed the impugned order dated 25.06.2019.

9.3 Now, the grievance of the petitioner is with regard to the non-consideration of objections filed by the petitioner at the time of passing the impugned order dated 25.06.2019.

9.4 A perusal of the impugned order would show that the 2nd respondent had given sufficient opportunities to the petitioner to participate in the proceedings and also duly conducted the joint spot inspection, in which the petitioner had also participated. Thereafter, the 2nd respondent had passed a detailed order after duly considering the petitioner's submission/objections. In such case, this Court does not find any fault on the part of the respondent in passing the impugned order dated 25.06.2019.

9.5 Further, this Court only finds fault on the petitioner, who failed to avail the opportunities, which were provided to him by the

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respondents. As stated above, the respondents had duly complied with the direction issued by this Court vide order dated 18.06.2019 passed in WP.No.8186 of 2019. In such view of the matter, the writ petition in WP.No.29753 of 2019, which is filed against the impugned order dated 25.06.2019, is liable to be dismissed. Accordingly, the 1st issue is answered.

10. Issue No.2: Whether Section 3D(1) notification dated 08.03.2019 issued by the respondents, without obtaining Environment Clearance is against the law laid down by the Hon'ble Apex Court in *PV Krishnamurthy's case* ?

10.1 As far as the 2nd issue is concerned, according to the petitioner, in this case, Section 3D(1) notification was issued without obtaining Environment Clearance, which is against the law laid down by the Hon'ble Apex Court in *PV Krishnamurthy* case.

10.2 To answer this issue, it would be apposite to peruse the judgement of the Hon'ble Supreme Court of India, rendered in *PV Krishnamurthy* case, wherein, it had elaborately discussed on the aspect of requirement of obtaining Environmental Clearance. In the said

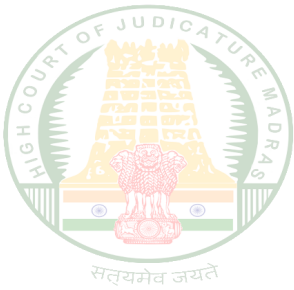
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judgement, it has been clearly stated that Environmental Clearance is required to be obtained before the commencement of construction work or preparation of land by project management for the purpose of development, which would happen subsequent to the entrustment of lands to NHAI. The relevant portion of the order reads as follows:

*“79. Reverting to the notification issued by the MoEF dated 14.9.2006, even this notification does not constrict the power of Central Government to issue notification under [Section 2\(2\)](#) or [Section 3A](#) of the 1956 Act. There is nothing to suggest that before expressing intention to acquire any land for the purpose of the 1956 Act, prior environmental/forest clearance is required. **The environmental/forest clearance, however, is, required to be obtained by the executing agency in terms of this notification “before commencing the actual work or executing the proposed work/project”. That would happen only after the land is vested in the NHAI or the NHAI was to be entrusted with the development work of concerned national highway by the Central Government in exercise of powers under [Section 5](#) of the 1956 Act read with [Section 11](#) of the 1988 Act. The land would vest in the Central Government under the 1956 Act only after publication of declaration of acquisition under [Section 3D](#). And until then, the question of Central Government vesting it in favour of NHAI under [Section 11](#) of the 1988 Act would not arise.** However, until the vesting of the land, the Central Government and its authorised officer can undertake surveys of the notified lands by entering upon it in terms of [Section 3B](#) of the Act. Pertinently, the activities predicated in [Section 3B](#) are of exploration for verifying the feasibility and viability of land for construction of a national highway. These are onetime activities and not in*



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the nature of exploitation of the land for continuous commercial/industrial activities as such. There is remote possibility of irretrievable wide spread environmental impact due to carrying out activities referred to in [Section 3B](#) for assessing the worthiness of the land for using it as a national highway. Thus, the question of applying notification of 2006 at this stage does not arise, much less obligate the Central Government to follow directives thereunder.

80 to 85.

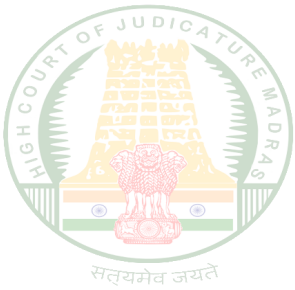
86.Suffice it to observe that the subject notification of 2006 and Office Memorandum dated 7.10.2014 ordain that such permission is required to be obtained (only) before commencement of the work of the new project or activities or on the expansion or improvisation of the project or activities based on their potential environment impact.

87 to 92

93. For the purpose of considering the question posed before us, suffice it to observe that the prior environmental clearance in terms of 2006 notification issued under Section 3 of the Environment (Protection) Act, 1986 Act read with Rule 5 of the Environment (Protection) Rules, 1986, is required to be taken before commencement of the “actual construction or building work” of the national highway by the executing agency (NHAI). That will happen only after the acquisition proceedings are taken to its logical end until the land finally vests in the NHAI or is entrusted to it by the Central Government for building/management of the national highway.

94 to 96.

97.Considering the provisions of the 1956 Act and the 1988 Act, NHAI can take over the work of development and maintenance of the concerned national



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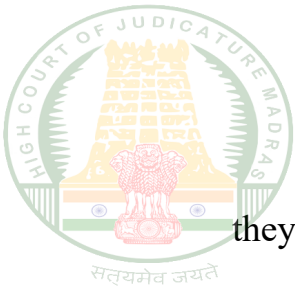
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highway only if the notified land is vested in it or when the same is entrusted to it by the Central Government.”

*(*** Emphasis supplied)*

10.3 In all the above paragraphs, the Hon'ble Apex Court had dealt with 2006 Notification, 1956 Act, 1998 Act and Environmental Protection Act, 1984, and categorically held that the Environmental/ Forest Clearance is required to be obtained before commencing actual work or executing of proposed work/project. Further, it has been held that the said aspect would arise only subsequent to the entrustment of lands with NHAI. Prior to entrustment of lands to NHAI, the lands are required to be vested with the Central Government and that would happen by issuance of Section 3D Notification. Merely, the issuance of Section 3D Notification would not be considered as commencement of actual work or execution of proposed work/project. Such commencement/execution will happen only after the entrustment of lands by the Government to NHAI.

10.4 In terms of the 1956 Act, once the land is vested with the Government by virtue of issuance of Section 3D Notification, thereafter,
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they have to take possession in terms of Section 3E of the 1956 Act. Such possession can be taken only after the determination of compensation for the land by the Competent Authority in terms of Section 3G of the 1956 Act and depositing the same in terms of Section 3H(1) of the 1956 Act. Therefore, it is not that the physical possession of the land can be taken by the Government immediately upon issuance of Section 3D Notification. As stated above, such taking over of physical possession will happen only after quantification of the compensation amount and deposit of the same in accordance with the provisions of Section 3G and 3H of the 1956 Act. Hence, at any cost, one cannot construed that immediately upon issuance of Section 3D Notification, the Government can commence the construction work or execute the proposed work/project automatically.

10.5 Therefore, the Hon'ble Apex Court was conscious of the fact that the commencement of actual work or execution of proposed work/project would happen in terms of 2006 Notification, only after entrustment of land with NHAI. Thus, merely by virtue of issuance of Section 3D Notification, the land will not be entrusted to NHAI but it

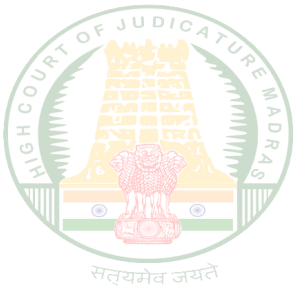
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will only be vested with the Government. Merely, vesting of land with the Government would not amount to automatic commencement of construction work or execution of proposed work/project.

10.6 Therefore, the Hon'ble Apex Court, held in clear terms that the commencement of actual work or execution of proposed work/project will not happen, or cannot construed to be happened, immediately upon issuance of Section 3D Notification. By virtue of Section 3D notification, only the land is going to be vested with the Government. Except vesting of land, nothing is going to happen with regard to commencement of any construction works or development activities, which are all subsequent events. As per the provisions of 2006 Notification, the bar is only for commencement of construction work or execution of proposed project/works, prior to the obtaining of Environmental Clearance and the same would happen once the land is entrusted to NHAI. Therefore, a mere issuance of Section 3D Notification itself cannot not be considered or construed as commencement of construction work.



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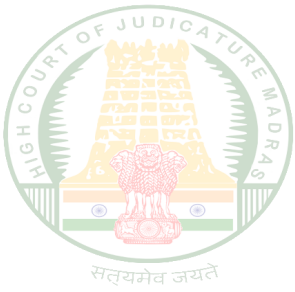
10.7 Now, it would be apposite to extract the Office Memorandum of the Ministry of Environment, Forests and Climate Change dated 07.10.2014 (2014 OM), which reads as follows:

Office Memorandum

Subject: Status of land acquisition w.r.t. project site while considering the case for environment clearance under EIA Notification, 2006-regarding

It has been brought to the notice of this Ministry that in the absence of a guidelines, different EACS/SEACs adopt different criteria about the extent to which the land w.r.t. the project site should be acquired before the consideration of the case for environment clearance (EC). Some of the Ministries in the Government of India and some industrial associations have represented that full acquisition of land for the project site should not be insisted upon before consideration of the case for EC and instead Initiation of land acquisition process should be sufficient for the consideration of such cases. The argument being that land acquisition process can go on in parallel and that consideration of EC need not await full acquisition.

2. The matter has been examined in the Ministry. The EC granted for a project or activity under the EIA Notification: 2006, as amended, is site specific. While full acquisition of land may not be a pre-requisite for the consideration of the case for EC, there should be some credible document to show the status of land acquisition w.r.t project site when the case is brought before the concerned EAC/SEAC for appraisal. It has been accordingly decided that the following documents relating to acquisition of the project site may be



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considered as adequate by EACS/SEACs at the time of appraisal of the case for EC.

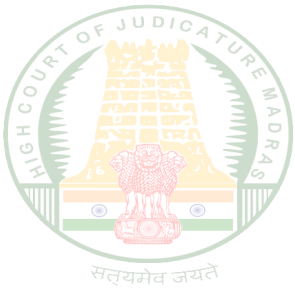
(i) In case the land w.r.t. the project site is proposed to be acquired through Government intervention, a copy of preliminary notification issued by the concerned State Government regarding acquisition of land as per the provisions of Land Acquisition, Rehabilitation and Resettlement, Act, 2013.

(ii) In case the land is being acquired through private Showing the intent of the land owners to sell the land negotiations with the land owners, credible documer the proposed project.

3. It may, however, be noted that the EC granted for a project on the basis of aforesaid documents shall become invalid in case the actual land for the project site turns out to be different from the lang considered at the time of appraisal of project and mentioned in the EC.

4. This issues with the approval of the competent authority.”

10.8 Subsequent to the issuance of 2006 Notification, different Environmental Authorities adopted different criteria with regard to which extent of project site should be acquired before consideration of the case for Environmental Clearance. The said aspect was brought to the knowledge of Ministry of Environment, Forests and Climate Change and hence, the aforesaid 2014 OM came to be issued.



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10.9 As discussed in paragraph Nos.1 & 2 of 2014 OM, after examining all the aspects, the Authorities have categorically arrived at a conclusion that while full acquisition of land may not be a pre-requisite for the consideration of the case for EC, there should be some credible document to show the status of land acquisition with respect to project site when the case is brought before the concerned EAC/SEAC for appraisal. Therefore, insisting of the acquisition of land in full extent by the concerned Authorities has been relaxed by virtue of the aforesaid OM to the extent to show some documents relating to acquisition of project site. Thus, the acquisition of land in full extent at the time of preliminary notice was relaxed to the aforesaid extent.

10.10 Further, at paragraph Nos.3 & 4 of 2014 OM, it was concluded that the Environmental Clearance, granted based on the aforesaid documents, would become invalid in case the actual land for the project site turns out to be different from the land considered at the time of appraisal of project and mentioned in the EC. When such being the case, if the Environmental Clearance is granted after entrustment of lands to NHAI, the question of carrying out the construction work and

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commencement of project in any land, different from the actual project site submitted before the Environmental Authorities for which the EC was granted, would not arise and otherwise, entire exercise for getting EC will become wasteful exercise and the respondent is required to follow the entire exercise of land acquisition from the beginning.

10.11 At this juncture, it would be apposite to extract paragraph No.95 of the ***PV Krishnamurthy*** case, wherein the Hon'ble Apex Court had dealt with the aforesaid 2014 OM and it has been held as follows:

*“95. Applying the tenet underlying this notification, it is amply clear that before the process of acquisition of land is ripe for declaration under **Section 3D** of the 1956 Act, it would be open to the executing agency (NHAI) to make an application to the competent authority for environmental clearance. That process can be commenced parallelly or alongside the acquisition process after a preliminary notification under **Section 3A** of the 1956 Act, for acquisition is issued. ”*

10.12 In terms of the above paragraph No.95, the Hon'ble Apex Court has held that NHAI shall make applications for Environmental Clearance even before the issuance of Section 3D Notification. Further, it was held that the process of obtaining Environmental Clearance can be

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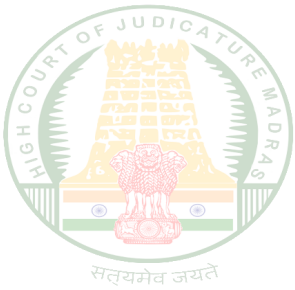


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commenced parallelly or alongside the acquisition process after a preliminary Notification, under Section 3A of the 1956 Act, for acquisition.

10.13 Further, at paragraph Nos.100 & 102, in the case of **PV Krishnamurthy**, the Hon'ble Apex Court had dealt with the aspect of reverting back of the subject lands to the respective land owners and the relevant portion reads as follows:

100. Reverting to the dictum of this Court in Karnataka Industrial Areas Development Board (supra), it must be understood to mean that the declaration under Section 3D regarding acquisition of notified land, be made only after environmental/forest clearance qua the specific land is granted. To put it differently, the necessity of prior environmental/forest clearance would arise only if finally, the land in question (site specific) is to be notified under Section 3D, as being acquired for the purposes of building, maintenance, management or operation of the national highway or part thereof. Such interpretation would further the cause and objective of environment and forest laws, as also not impede the timeline specified for building, maintenance, management or operation of the national highway or part thereof, which undeniably is a public purpose and of national importance. This would also assuage the concerns of the land owners that even if eventually no environment permission or forest clearance is accorded, the land cannot be reverted to the



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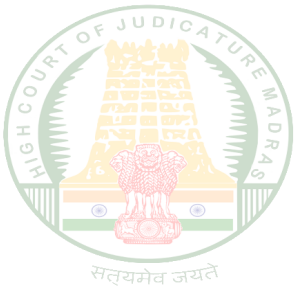
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original owner as it had de jure vested in the Central Government upon issue of notification under Section 3D of the 1956 Act and no power is bestowed on the Central Government under this Act to withdraw from acquisition.

101.

102. *The argument of the writ petitioners that the expression “shall” occurring in Section 3D(1) be interpreted as “may”, though attractive on the first blush, deserves to be rejected. If that interpretation is accepted, it would render the efficacy of Section 3D(3) of lapsing of the acquisition process otiose. It is a mandatory provision. Instead, we have acceded to the alternative argument to give expansive meaning to the proviso in Section 3D(3) of the 1956 Act by interpretative process, including by invoking plenary powers of this Court under Article 142 of the Constitution to hold that the dictum of this Court in Karnataka Industrial Areas Development Board (supra) be regarded as stay granted by the Court to all notifications issued under Section 3A of the 1956 Act until the grant or nongrant of permissions by the competent authorities under the environmental and forest laws, as the case may be, including until the stated permissions attain finality. In other words, time spent by the executing agency/Central Government in pursuing application before the concerned authorities for grant of permission/clearance under the stated laws need to be excluded because of stay by the Court of actions (limited to issue of notification under Section 3D), consequent to notification under Section 3A. Thus, the acquisition process set in motion upon issue of Section 3A notification can go on in parallel until the stage of publication of notification under Section 3D, which can be issued after grant of clearances/permissions by the competent authority under the environment/forest laws and attaining finality thereof.*

*(*** Emphasis supplied)*



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10.14 In the above paragraphs, it has been stated that “*after the issuance of Section 3D Notification, even if no environment clearance is accorded, the land cannot be reverted to the original owner since no power is bestowed on the Central Government under the National Highways Act to withdraw from acquisition*”, which means, in terms of the National Highways Act, if no clearance is obtained or even if any conclusion arrived at to the extent that the subject lands will not be used for the purpose of that Act, no provision is available for reverting back of the land to the respective land owners. May be, by keeping the said aspect in mind, the Hon'ble Apex Court has held at paragraph Nos.100 & 102 that Environmental Clearance has to be obtained prior to the issuance of Section 3D Notification, in order to protect the interest of land owners.

10.15 As far as the observation made, at paragraph No.102 of ***PV Krishnamurthy*** case, with regard to the receipt of Environmental Clearance is concerned, it is not in consonance with the paragraph Nos.79, 86, 93 & 97 of the very same judgement, 2006 Notification and 2014 OM, wherein it has been categorically held that the Environmental Clearance is required to be obtained only prior to the commencement of

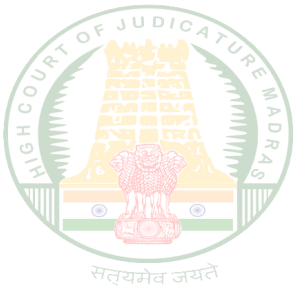


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actual construction work or execution of proposed work, which would occur only after the entrustment of land to NHAI and even after entrustment, NHAI cannot commence the construction work or proposed work until the receipt of Environmental Clearance. Therefore, this Court is inclined to go with the findings of the Hon'ble Apex Court at paragraph Nos.79, 86, 93 & 97, which is in consonance with 2006 Notification and 2014 OM.

10.16 As stated above, at paragraph No.79 of *PV Krishnamurthy* case, the Hon'ble Apex Court held that the Environmental Clearance is required to be obtained not prior to the issuance of Section 3D Notification but before the commencement of any construction work at the project site. Such commencement would occur only after the entrustment of subject lands to NHAI. At the time of issuance of Section 3D Notification, the lands will only be vested with Government. Therefore, it is crystal clear that Environmental clearances is not required to be obtained before issuance of Section 3D Notification but prior to the commencement of construction work by NHAI.

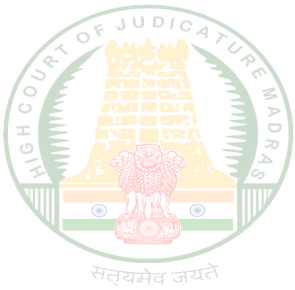
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10.17 To substantiate the above aspect, it would be apposite to, once again, extract the relevant portion of paragraph No.79 of ***PV Krishnamurthy case***, wherein the procedures for land acquisition was elaborately explained and it was categorically held that the clearance/permission has to be obtained prior to the commencement of construction work or implementation of the project, which would happen only after the land is vested in the NHAI or the NHAI was to be entrusted with the development work of concerned National Highway by the Central Government. The relevant portion reads as follows:

“79.The environmental/forest clearance, however, is, required to be obtained by the executing agency in terms of this notification “before commencing the actual work or executing the proposed work/project”. That would happen only after the land is vested in the NHAI or the NHAI was to be entrusted with the development work of concerned national highway by the Central Government in exercise of powers under [Section 5](#) of the 1956 Act read with Section 11 of the 1988 Act. The land would vest in the Central Government under the 1956 Act only after publication of declaration of acquisition under [Section 3D](#). And until then, the question of Central Government vesting it in favour of NHAI under Section 11 of the 1988 Act would not arise. However, until the vesting of the land, the Central Government and its authorised officer can undertake surveys of the notified lands by entering upon it



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in terms of Section 3B of the Act. Pertinently, the activities predicated in Section 3B are of exploration for verifying the feasibility and viability of land for construction of a national highway. ”

10.18 In the above paragraph, the Hon'ble Apex Court had clearly explained the procedures involved in acquisition of land. Initially, Section 3D Notification has to be issued, by virtue of which, the subject lands have to be vested with Government. Thereafter, the said lands will be entrusted to the concerned executing agency, after which, the NHAI would commence the actual work or execution of proposed work/project. Therefore, as per the ruling at paragraph No.79 of the ***PV Krishnamurthy case***, upon the issuance of Section 3D Notification, only the lands will be vested with the Government and it will not amount to entrustment of lands with NHAI. Only subsequent to the entrustment, the NHAI would commence the construction of building and other developmental activities, that too, after the receipt of Environmental Clearance.

10.19 At this juncture, it would also pertinent to note that the issue before the Hon'ble Apex Court was as to whether the Environmental

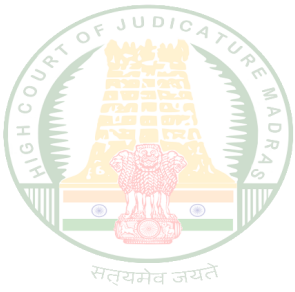
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Clearance is required to be obtained prior to Section 3A Notification or not. The said judgements was passed only on the aspect as to whether the Environmental Clearance is required to be obtained before issuance of Section 3A Notification or not. Ultimately, the Hon'ble Apex Court had concluded that before issuance of Section 3A Notification, there is no requirement for obtaining the Environmental Clearance and the same shall be obtained prior to the commencement of construction work.

10.20 Therefore, at no stretch of imagination, one could construed that immediately upon issuance of Section 3D notification, the construction works or preparation of lands would commence. In terms of the order passed by Hon'ble Apex Court at paragraph No.79 of ***PV Krishnamurthy*** case, unless and otherwise the land is entrusted with NHAI by the Central Government, the question of developmental activities, as mentioned in 2006 Notification, would not arise and even NHAI cannot commence the project prior to the obtaining of Environmental Clearance.



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10.21 When such being the case, the view took by the Hon'ble Apex Court by way of restrictions at paragraph No.102 of the ***PV Krishnamurthy case***, to the extent that Environmental Clearance is required to be obtained prior to the issuance of Section 3D Notification, is only to safeguard the interest of the land owners since there was no provision for withdrawal of acquisition and reverting back the lands to the original owners in terms of National Highways Act. Even if the protection is not available for reverting the land back to the land owners, and if the purpose, for which the lands were acquired, was not achieved, certainly, the respective land owners are entitled to make an application for returning the land, in which case, the respondent-Department is bound to return the same.

10.22 Therefore, I am of the considered view that except securing the land, all the other construction activities would happen only when the property is entrusted by the Government with the NHAI. At the stage of issuance of Section 3D Notification, only the property will be vested with



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Government and the entrustment of the said property with the NHAI will be subsequent event. Only after such entrustment, the commencement of construction work or preparation of land for project/work would arise.

10.23 In view of the above, this Court has no hesitation to hold that immediately upon issuance of Section 3D Notification, no commencement of construction work or preparation of land by project management would occur as held by the Hon'ble Apex Court in ***PV Krishnamurthy case***. Thus, there is no bar either under the Statute or by the Apex Court Ruling in ***PV Krishnamurthy*** for obtaining Environmental Clearance up to the stage of entrustment of land to NHAI by the Government, but before the commencement of construction work or preparation of land, the NHAI must obtain Environmental Clearance Certificate.

10.24 When such being the case, there is no bar for the respondents in issuing Section 3D Notification, prior to the receipt of Environmental Clearance, since the such issuance of Section 3D



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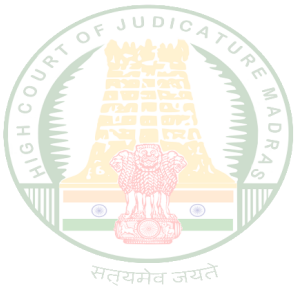
Notification would not amount to the commencement of construction work or preparation of land by the project management. The said aspect would happen only after the entrustment of land by the Government to the NHAI. Even after such entrustment, the NHAI has to wait until the approval of Environmental Clearance for commencement of construction work or preparation of land in the project site. Accordingly, the 2nd issue is answered.

11. Other case laws referred by the petitioners:

11.1 Further, a reference was made to the judgment in ***C.Kenchappa*** case, wherein at paragraph No.100, it has been stated as follows:

“100. The importance and awareness of environment and ecology is becoming so vital and important that we, in our judgment, want the appellant to insist on the conditions emanating from the principle of ‘Sustainable Development’.

(1) We direct that, in future, before acquisition of lands for development, the consequence and adverse impact of development on environment must be properly comprehended and the lands be acquired for development that they do not gravely impair the ecology and environment.



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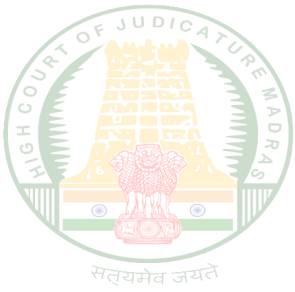


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(2) We also direct the appellant to incorporate the condition of allotment to obtain clearance from the Karnataka State Pollution Control Board before the land is allotted for development. The said directory condition of allotment of lands be converted into a mandatory condition for all the projects to be sanctioned in future.”

11.2 A reading of above paragraph would makes it clear that a direction was issued by the Hon'ble Apex Court to the extent that the consequence and adverse impact of development on environment must be properly comprehended and the lands acquired for development that they do not gravely impair the ecology and environment.

11.3 Keeping the above order in mind, the Notification 2006 was issued by stating that before starting the acquisition process, the respondent had to conduct a thorough Environment Impact Study. Accordingly, a study was conducted and after satisfaction of the respondents only, they have proceeded to acquire land and set up the project. Therefore, the direction issued by the Hon'ble Apex Court, vide **C.Kenjappa** case, has been duly followed by the respondents in this case.



11.4 Yet another reference was made to the order passed by the

Hon'ble Division Bench of this Court in **M.Velu** case and the relevant

portion of the said order reads as follows:

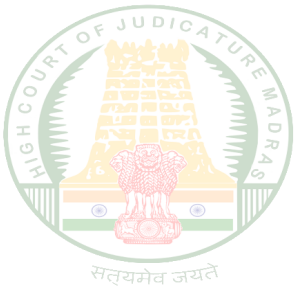
“45. Since the land acquisition proceeding is only in the preliminary stage now, we are of the view that before issuing the notification under Section 3(1) of the Act the authorities have to approach the statutory authority constituted under the environment (Protection) Act for environmental clearance. The report of the statutory authority must also be considered by the Government while dealing with the objections submitted by the land owners and the other interested persons, including the petitioner and the fifth respondent in pursuance of the notice issued under Section 3(2) of the Industrial Purposes Act.

DIRECTIONS:-

46. Therefore keeping in view the direction given by the Supreme Court in the Karnataka Industrial Areas Development Board case, (cited supra) we are inclined to issue the following directions:-

(1) The petitioner is granted liberty to make a comprehensive representation within fifteen days from the date of receipt of a copy of this order before the statutory authority constituted to hear objections relating to the land acquisition in question in pursuance to the notice issued under Section 3(2) of the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997. Similar liberty is granted to the fifth respondent also.

(2) The statutory authority exercising powers under the Industrial Purposes Act, simultaneous with the process of hearing the objections from the land owners, petitioner, fifth respondent and other interested persons should



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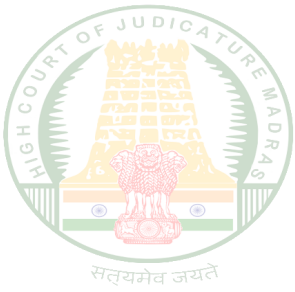
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approach the State Level Environmental Impact Assessment Authority for prior environmental clearance before proceeding further in the matter of issuance of notice under Section 3(1) of the Act.

(3) In case the State Environmental Impact Assessment Authority gives clearance for the project in question, it would be open to the Government to proceed further with the acquisition of property.

(4) As undertaken by SIPCOT in their counter affidavit dated 6 February, 2007, appropriate provisions should be incorporated in the Lease Agreements mandating preservation of ecology and to maintain the ponds and other natural streams by the concerned industrial units.

11.5 As far as the Paragraph No.45 is concerned, in above case, it was recorded that no Environmental Assessment Study was made after obtaining acquisition order. However, in this case, as contended by the respondents, a thorough Environmental Impact Assessment Study was conducted and after that only the land acquisition process was initiated. Therefore, the question of obtaining acquisition order/initiating the acquisition process without conducting Environment Impact Assessment Study would not arise in this case.



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11.6 As far as the directions issued at Paragraph Nos.46(2) & 46(3) are concerned, in above case, the Hon'ble Division Bench had no occasion to consider the 2006 Notification. As discussed above, in terms of the said 2006 Notification, the question of obtaining Environmental Clearance would arise only before the commencement of any construction work or preparation of land by the project management, which would occur subsequent to the entrustment of land by the Government to NHAI as held by the Hon'ble Apex Court in the case of *PV Krishnamurthy* case at paragraph Nos.79, 86, 93 & 97. Therefore, the said directions will not apply to the present case at the stage of issuance of Section 3D Notification.

12. Findings:

12.1 In the present cases, the procedures mentioned in 2006 Notification, 2014 OM and the law laid down by the Hon'ble Apex Court in *PV Krishnamurthy* case and *C.Kenchappa* case, have been duly adopted by the respondents. Therefore, I am of the considered view that Section 3D Notification was issued duly in accordance with 2006



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Notification, 2014 OM and in compliance with paragraph Nos.79, 86, 93 & 97 of the order passed by the Hon'ble Apex Court in ***PV Krishnamurthy*** case.

12.2 As discussed above, in these cases, merely by vesting of land to Government would not amount to commencement of any construction work or preparation of land by the Project Management. Admittedly, the construction or other development works would commence only after obtaining the Environmental Clearance. Until then, the acquisition process shall go on parallelly as held by the Hon'ble Apex Court at paragraph Nos.93 & 95 of ***PV Krishnamurthy case***.

12.3 As held by the Hon'ble Apex Court at paragraph No.79 of ***PV Krishnamurthy case***, the lands can be entrusted to the NHAI. However, the NHAI has to wait for the purpose of commencement of construction work until the receipt of Environmental clearance. Therefore, as stated above, all the acquisition process, including the entrustment of land to NHAI, shall go on, but the commencement of construction work and

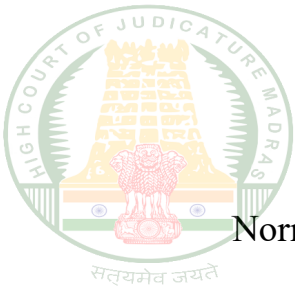


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other developmental activities shall be deferred until the receipt of Environmental Clearance.

12.4 As far as the petitioner's land is concerned, it is inevitably required for formation of National Highway “NH948A”. It was also pointed out by the respondents that the total length of the road is 35.766 km, out of which, the road passing through the petitioner's land is only to the extent of 200 meter. Even the physical construction of the road has been completed in 28.05 km, for which a sum of Rs.709 Crore has been incurred till date. Now, only 0.2 km could not be completed because of the interim stay order granted by this court in the present cases. As rightly contended by the respondent, since the public money to the tune of Rs.709 Crore was already spent on this project, if the proceedings, pertaining to land acquisition, is quashed at this stage, it will certainly lead to a great loss to the Central Government.

12.5 Further, the present petitions are not filed with regard to the public interest but it is only about the private interest of the petitioners.



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Normally, the public interest will prevail over the private interest. That apart, as stated above the Environmental Clearance was duly obtained by the respondents and now, only the formation/construction of 0.2 km of road is yet to be completed. In such view of the matter, now, it is not proper to entertain these petitions by considering the petitioner's private interest.

13. Result:

For all the reasons stated above, this Court is not inclined to entertain these cases. Therefore, these writ petitions are dismissed as devoid of merits. The interim stay/injunction orders, if any, granted in these writ petitions stand vacated. No cost. Consequently, the connected miscellaneous petitions are also closed.

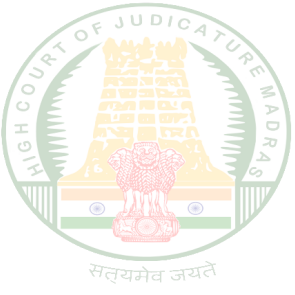
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Speaking/Non-speaking order

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KRISHNAN RAMASAMY.J.,

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