

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.2866-2880 OF 2011

(Arising out of Special Leave Petition (Civil) Nos.34320-34334 of
2009)

Union of India

... Appellant

Versus

Dr. Kushala Shetty and others

... Respondents

J U D G M E N T

G.S. Singhvi, J.

1. Leave granted.

2. The National Highways Act, 1956 (for short, 'the 1956 Act') was enacted by Parliament to provide for the declaration of certain highways as national highways and for matters connected therewith. Sections 3A to 3I of the 1956 Act contains a comprehensive scheme for the acquisition of land for the building, maintenance, management or operation of a national highway or part thereof and determination of amount payable as compensation and other related issues.

3. In exercise of the power vested in it under Section 3A(1) of the 1956 Act, the Central Government issued notification dated 10.8.2005 for the acquisition of land in 18 villages of the Mangalore Taluk of the State of Karnataka for widening of National Highway No.17 from Km.358/000 to Km.375/300, National Highway No.48 from Km.328/000 to Km.345/000 and National Highway No.13 from Km.743/900 to Km.745/000. The notification contained names of the

concerned villages, the survey number including its particular parcel number, nature, type and area of land proposed to be acquired. In the notification it was clearly mentioned that land plans and other details of the land are available and can be inspected at the office of the Special Land Acquisition Officer, Karnataka Industrial Area Development Board, Baikampady, Mangalore (hereinafter referred to as 'the Competent Authority'). It was also mentioned that any person interested in the lands may file objection before the Competent Authority within 21 days from the date of publication of the notification in the official Gazette. The notification was published in the official Gazette dated 10.8.2005. Simultaneously, the substance of the notification was published in two newspapers, namely, "Deccan Herald" and "Udayavani".

4. In response to the afore-mentioned notification, a number of land owners filed objections dated 26.9.2005. Majority of them claimed higher compensation by asserting that after the acquisition, his/her remaining land will become useless and he/she will not carry out any improvement. However, none made a grievance that there was any deficiency or defect in the description of land given in the notification and, on that account, he was prevented from effectively exercising his right to file objections.

5. The Competent Authority issued notice dated 28.9.2005 to the land owners under Section 3C(2) so as to enable them to appear for personal hearing. Thereupon, some of the land owners filed further

objections and pleaded that their land/property may not be acquired and parambok land (government land) lying just opposite the land proposed to be acquired may be used for widening the National Highways. Some others claimed that they had constructed shops etc. and the same can be saved if alignment of the highway was slightly changed.

6. After hearing the objectors, the Competent Authority passed order dated 11.10.2005 whereby it rejected the objections of the land owners. That order reads as under:

"The Persons noted in Serial No.1 to 73 have submitted their written objection against the publication of the notification under sub-Section (1) of Section 3A of the National Highways Act, 1956. The notification was published in Udayavani and Deccan Herald daily news paper on 07.09.2005 mentioning the lands which are required for the extension of existing N.H's into four lanes in villages of Mangalore and Bantwal Taluks.

Proper notice have been issued to the objectors of Padavu village to appear either in person or through the advocates on 01.10.2005 at 11 a.m. before the Special Land Acquisition Officer and Competent Authority National Highways, Baikampady, Mangalore. On the appointed date they have been heard individually.

The persons in Serial No.1, 2, 7, 8, 9, 11, 13, 14, 15, 19, 20, 24, 26, 28, 31, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 50, 54, 55, 57, 58, 59, 60, 65, 66, 68 and 70 have stated that their commercial buildings and shop are situated in the proposed land for acquisition. The persons in Serial No.3, 4, 5, 6, 16, 21, 22, 23, 25, 27, 29, 30, 48, 49, 50, 51, 52, 53, 71, 72, 73 have stated that their residential buildings are situated in the acquired land and also they loose their livelihood. Therefore, these lands should be exempted from the proposed land acquisition.

I heard their objections. It is true that some of them will have serious hardship of their livelihood. However, they will be compensated. But in Padavu Village in most of the places where the lands proposed for acquisition for widening the existing N.H. into Four

lanes, the existing N.H. land is very narrow and widening this road is highly essential.

The lands which are proposed for widening the existing N.H. into four lanes are very much essential and of National important. Here without the land acquisition the four lanes cannot be laid. Since it is National important project connected with the development, hence all the objections are hereby overruled and rejected under Section 3C of the National Highway Act, 1956.

Date: 11.10.2005

Place: Mangalore

Sd/-
Special Land Acquisition Officer &
Competent Authority, NHAI
Baikampady, Mangalore."

7. The Central Government accepted the report submitted by the Competent Authority and issued notification dated 8.8.2006 under Section 3D(1) of the 1956 Act.

8. In the meanwhile, Shri Arun Kumar Shetty and 11 others filed Writ Petition No.8780 of 2006 with the prayer that the respondents therein may be directed to consider their objections dated 4.10.2005 and representations dated 21.11.2005 and 15.5.2006 within a fixed period. Their grievance was that the objections and representations made by them against the proposed acquisition of their land have not been decided by the Competent Authority. By order dated 10.7.2006, the learned Single Judge of the Karnataka High Court disposed of the writ petition with a direction to the Competent Authority to pass necessary order in accordance with law if such orders have already not been passed on the objections of the petitioners. Paragraphs 4 and 6 of that order read as under:

"4. Their main grievance is in spite of such representations given by them and also the communication between second respondent and first respondent of Annexure "M" dated 26.11.2005, no decision or order u/s 3(C) of the National Highways Act came to be passed. The petitioners are here before this Court as they are not in a position to proceed as they are not definite what the authorities would say ultimately in the matter. Until the first respondent-authority passes the order on the objections of the petitioners, the future course of action is not possible for them. Therefore, they have approached this Court.

6. In the light of the discussions; the respondents are directed to look into the representations of the petitioners and the first respondent-authority is directed to pass necessary orders in accordance with law if such orders are not yet passed by him. In case decision is taken on the objections of the petitioners already, the same be communicated to third respondent or second respondent who is turn shall communicate the same to the petitioners, within the three months from the date of receipt of copy of the order."

9. Since the Competent Authority had already decided the objections of the writ petitioners, copies of the order were made available to them vide endorsement dated 18.8.2006, the relevant portion of which is extracted below:

"ENDORSEMENT

Sub.:Regarding formation of Four Lane Highway (Widening) of National Highway between Surthkal to B.C. Road - Objections of Villagers of Padavu

Ref.:Order of High Court of Karnataka dated 10.07.2006 in Writ Petition No.8780/2006 (G.M.) Objectors of Padavu Village

The enquiry of Objections of the Objectors was conducted on 01.10.2005 in the forenoon by hearing their objections.

The main objections of the objectors is that the residential and commercial buildings at Padavu Village are owned by them are being acquired and thereby they would be suffered loss and their maintenance would be

jeopardized. They contended that the vacant land as well as old buildings are situated in the other side of the road and as such equal distance has to be measured from the center line of the existing highway and they requested to exclude their properties from acquisition proceedings.

The National Highway between Nantur to Kaikamba area of Padavu Village is narrow. The subject land now notified for acquisition is essentially required for the proposed four lane highway (widening) and construction of fly over. The land subjected for acquisition is required for national development as well as public purpose and as such all the objections raised by the objectors is hereby rejected. Compensation will be paid as per rules.

This endorsement is issued to the Applicant as per order dated 10.07.2006 in W.P. No.8780/2006.

Sd/-
Special Land Acquisition Officer and
Competent Authority, National Highway
Baikampady, Mangalore"

10. Although order dated 10.7.2006 passed by the learned Single Judge stood complied with, some of the land owners of Padavu Village made further representations dated 16.10.2006 in which they, for the first time, claimed that notification dated 10.8.2005 was vague inasmuch as the extent of land sought to be acquired from their property had not been indicated. This appears to have been done on the advice given by some lawyer in the light of the judgment of this Court in Competent Authority v. Barangore Jute Factory (2005) 13 SCC 477. They also claimed higher compensation at the rate of Rs.3 lac per cent.

11. Soon after making fresh representations, the land owners filed Writ Petitions Nos.16272/2006, 13413/2006 and 1342/2007 for quashing notification dated 10.8.2005 and endorsement dated

18.8.2006. They pleaded that the acquisition proceedings were ultra vires the provisions of the Act and rules of natural justice and were also vitiated due to mala fides and arbitrary exercise of power. In Writ Petition No.13413/2006, it was also averred that alignment of the highway had been manipulated to save the properties of the persons who were related to politicians and those who could manipulate the things at the level of the National Highways Authority of India (NHAI). The writ petitioners also pleaded that the vacant parambok land could be utilised for widening the National Highways and there was no justification for the acquisition of their land. In paragraphs 5 and 6 of Writ Petition No.13413/2006, Mr. S.Arun Kumar Shetty and 9 others v. Union of India and others, the petitioners made the following averments:

"5. In furtherance of the said publication the 1st petitioner on behalf of himself and the other petitioners filed joint objections dated 16.09.2005 copy of which is produced hereto as ANNEXURE-D. As per the objections filed, the petitioners pointed out that in order to benefit certain influential persons and to protect their establishments, the respondents have, instead of widening the Highways on both the sides equally and providing a straight road, have proposed acquisition on only one side of the road, thereby providing a road with a bend adversely affecting the interest of the petitioners and other who have their properties located on that side of the road. The petitioners also pointed out that the existing National Highways No.13 is almost in a straight road, have proposed acquisition on only one side of the road, thereby providing a road with a bend adversely affecting the interest of the petitioners and others who have their properties located on that side of the road. The petitioners also pointed out that the existing National Highway No.13 is almost in a straight line and the boundaries of private lands adjacent to the road were also in a straight line. That an unnecessary dent had been given in the proposed Highways, only to save properties belonging to politically influential person on

the other side of the road. It was also pointed out that in order to have a straight road, it would be necessary to proportionally acquire land on the both sides of the road calculated from the existing centre point and not by acquiring land only on side of the road and giving an unnecessary dent to the road. The petitioners also pointed out that some portion of the other side of the road belongs to the 1st respondent and that the said side also has lesser number of building and would thereby facilitate not only less financial burden on the exchequer but will also result in having a straight highway rather than a dented road. The petitioners have also urged other grounds for dropping the acquisition proceedings. The 10th Petitioner also filed a separate objection dated 16.9.2005, copy of which is produced proposed widening had a strange deviation in it. The petitioner pointed out that the respondents had not taken into the existing "BITMAC" road's and existing "Road Corridor's" Centre line as a deciding factor for the new Highway Central Median, so that equal distance could have been maintained between two existing "Building Lines" and also could have had enough width without much disturbing, the existing building from survey Nos.126/1 to Survey No.127/2. It was also pointed out that because of this strange proposal of the respondents, many of the newly constructed two to five storeyed buildings with necessary Civil Authorities permissions may have to be partially demolished, making it worthless for the purpose presently used. Similar objections were also submitted by the 10th petitioner (Dated 15.09.2005), 7th Petitioner (Dated 23.09.2005) & 6th petitioner (Dated 26.09.2005), copies of which are produced hereto as ANNEXURE-F, G & H.

6. Thereafter the 2nd respondent in accordance with Section 3-C(2), issued individual notices dated 28.9.2005 to the Petitioners, calling for written objections to the proposed acquisition. Copy of one such notice is produced hereto as ANNEXURE-j. In furtherance of the notices, the petitioners went to the office of the 2nd respondent and after informing about written objections already filed as per ANNEXURE-D & H, inspected the sketch of the proposed widening of the Highway. The petitioners were shocked to note that there was an unnecessary dent given to the Highway so as to enable acquisition only one side of the road. This dent was given by changing the centerline of the existing Highway. It was apparent to the naked eye that the dent was given in the Highway only to favour certain influential persons on the other side of the road. In site No.128/2 a triangular land is left out of acquisition, which gives a dent to the road only in order to save a service station belonging to relative of politically influential person. Similarly a Bar and

Restaurant which is within 10 mtrs from the centre of the existing road is not sought to be touched under the acquisition proceedings for the above stated reason. Although as per the former plan the road was designed in such a way that most of the land proposed to be acquired was on the Southern side of the road where plenty of Government land. However subsequently it was decided to acquire equal portion from both sides of the road. But now in order to safeguard property belonging to politically influential people, most of the land sought for acquisition is on the northern side of the road where the schedule lands are located. The petitioner thereafter met the 2nd respondent on 30.09.2005 and pointed out about the unnecessary dent in the Highway and put forward their objections. The 2nd respondent however in violation of Section 3-C of the Act, has failed to hear the objections of the petitioners and has also failed to give satisfactory explanation for the flaw in the sketch. The 2nd respondent also pointed that other than the sketch and the details of the lands to be acquired, they have no further details. The petitioners were also given to understand that the 3rd respondent is the deciding authority on the objections of the petitioners."

12. In the written statement filed on behalf of the NHAI, it was specifically averred that land plans and other details of the land proposed to be acquired were available in the office of the Competent Authority for inspection. It was further averred that the objections filed by the land owners were rejected by the Competent Authority after giving them opportunity of personal hearing. This is evinced from paragraphs 7 and 8 of the counter filed in Writ Petition No.13413/2006, which are extracted below:

"7. With reference to the para 5 of the Writ Petition it is submitted that, the averments of the petitioners are baseless. This respondent is a statutory authority known as National Highways Authority of India ("NHAI") constituted under the Act No.68 of 1988 of Parliament, namely National Highways Authority of India Act, 1988. The main object for which this authority is constituted is the development and maintenance of the National Highways entrusted to it. It is submitted that, it is a professionally managed statutory body having high degrees of expertise in the field of highway development and

maintenance. NHAI prepares and implements its plans after thorough study by experts in the field and strictly adheres to professional standards of high order. Therefore, the allegation made by the petitioner against the plan in question adopted by this respondent for widening of National Highways between Surathkal and B.C. Road in the State of Karnataka and in specific in respect of Nantoor & Maroli Flyover designed to cater the heavy traffic plying in this stretch is untenable and baseless in the eyes of the law. Hence the writ petition is liable to be rejected.

It is submitted that, the project in question has been designed based on the detailed studies done by Detailed Project Report ("DPR") consultant, keeping in view the various relevant factors including intensity of heavy vehicular traffic and public interest at large. The ministry as well as this respondent have high degree of expertise in the field and they are using the best technical know how for implementation of the projects. Hence the allegations made against the respondent are baseless and unfounded and uncalled for.

As per the approved alignment, a portion of the petitioner's property along with some other properties is required for the construction of the flyovers and widening of the road. Therefore, the said property of the petitioners along with some other properties is coming under the approved alignment of the four laning work. The acquisition has been proposed to the extent of requirement of four laning work and construction of flyovers. The allegation of the Petitioners denied as false.

8. With reference to the Para 6 of the Writ Petition it is submitted that the averments of the petitioners are baseless. The Special Land Acquisition Officer and Competent Authority has informed that after publication of the notification under sub-section (1) of section 3A of National Highways Act, 1956, notices were issued to the petitioners and objections were heard on 1st October, 2005 and overruled and rejected the Objections of the Petitioner as per sub-section (2) of Section 3C of the said act because the land proposed for acquisition is for public purpose i.e. formation of four land (widening) and undertaken only after technical survey and as per the alignments only.

It is further submitted that as per the approved alignment, a portion of the petitioner's property along with some other properties is required for the construction of the flyovers and widening of the road. Therefore, the said property of the petitioners along with

some other properties is coming under the approved alignment of the four laning work. The acquisition has been proposed to the extent of requirement of four laning work and construction of flyovers. The land acquisition is for public purpose namely for the formation of four land (widening) of the National Highway and construction of flyovers and hence the Writ petition is liable to be dismissed. The required procedure as per the National Highways Act 1956 (48 of 1956) has been followed by this Respondent."

(emphasis supplied)

13. The learned Single Judge dismissed all the writ petitions by common order dated 23.1.2009. He held that objections filed by the writ petitioners were rejected by the Competent Authority after giving them opportunity of hearing and the mere fact that they would suffer some hardship due to the acquisition of their land cannot be a ground for nullifying notifications dated 10.8.2005 and 8.8.2006. On the issue of change of alignment, the learned Single Judge referred to judgment of this Court in *Girias Investment Private Ltd. v. State of Karnataka* (2008) 7 SCC 53 and held that the Court cannot sit over the judgment of the authorities entrusted with the task of planning and executing the project relating to widening of the National Highways.

14. The Division Bench allowed the appeals filed against the order of learned Single Judge primarily on the ground that notification under Section 3D of the 1956 Act could not have been issued before communication of the decision taken on the objections/representations made by the land owners. In the opinion of the Division Bench, the rejection of objections should have preceded consideration of the report submitted by the Competent

Authority and issue of notification under Section 3D of the 1956 Act and violation of this requirement has the effect of vitiating the acquisition. However, the Division Bench declined to quash the acquisition in its entirety by observing that such of the objectors who have already received compensation are not entitled to any relief.

15. Shri Vivek Tankha, learned Additional Solicitor General appearing for NHAI, referred to the scheme of Sections 3A to 3I of the 1956 Act and order dated 11.10.2005 passed by the Competent Authority and argued that the Division Bench committed serious error by partially quashing the acquisition proceedings only on the ground that the order passed on the objections filed by some of the land owners had not been communicated to them before issue of notification under Section 3D. Shri Tankha emphasized that the objections filed by the land owners were duly considered and rejected by the Competent Authority and the mere fact that the order of rejection was communicated to some of them after the issue of notification dated 8.8.2006 did not justify a conclusion that the acquisition proceedings were ultra vires the provisions of the 1956 Act. He submitted that the High Court should not have partially quashed notifications dated 10.8.2005 and 8.8.2006 by ignoring the fact that majority of the land owners have already received compensation and the acquired land had been utilised for the purpose specified in notification dated 10.8.2005.

16. Learned counsel for the respondents argued that the Division

Bench of the High Court did not commit any error by quashing the acquisition proceedings because the Competent Authority had submitted report without deciding the objections filed by the respondents. Learned counsel further argued that the acquisition of the respondents' land vitiated due to mala fides because the original alignment of the proposed widening of the National Highways was changed to benefit those who have political connections and those who could otherwise pull strings in the power corridors. In support of his arguments, learned counsel invited our attention to site plans, annexures R-6 and R-7 filed with the counter affidavit before this Court. Learned counsel submitted that compliance of provision contained in Section 3C (2) of the 1956 Act is not an empty formality and the Competent Authority is required to objectively consider the objections filed by the land owners and decide the same by passing a speaking order. Learned counsel then assailed the rejection of the objections filed by the land owners on the ground that the Competent Authority had not recorded cogent reasons for refusing to entertain their plea that the proposed extension of the highways can be effectively done by using the parambok land.

17. We have considered the respective submissions. Sections 3A, 3C and 3D, which have bearing on this case, read as under:

"3A. Power to acquire land, etc.-

(1) Where the Central Government is satisfied that for a public purpose any land is required for the building, maintenance, management or operation of a national highway or part thereof, it may, by notification in the Official Gazette, declare its intention to acquire such

land.

(2) Every notification under sub-section (1) shall give a brief description of the land.

(3) The competent authority shall cause the substance of the notification to be published in two local newspapers, one of which will be in a vernacular language.

3C. Hearing of objection, -

(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) of 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.

3D. 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 subsection (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."

18. The scheme of acquisition enshrined in the above reproduced provisions makes it clear that once the Central Government is satisfied that any land is required for the building, maintenance, management or operation of a national highway or part thereof, then, it shall declare its intention to acquire such land by issuing a notification in the official Gazette giving brief description of the land. The substance of the notification is also required to be published in two local newspapers of which one has to be in a vernacular language. Any person interested in the land can file objection within 21 days from the date of publication of the notification in the official Gazette. Such objection is required to be made to the Competent Authority in writing. Thereafter, the Competent Authority is required to give the objector an opportunity of hearing either in person or through a legal practitioner. This exercise is to be followed by an order of the Competent Authority either allowing or rejecting the objections. Where no objection is made to the Competent Authority

in terms of Section 3C(1) or where the objections made by the interested persons have been disallowed, the Competent Authority is required to submit a report to the Central Government, which shall then issue a notification in the official Gazette that the land should be acquired for the purpose or purposes mentioned in Section 3A(1). On publication of declaration under Section 3D(1), the land vests absolutely in the Central Government free from all encumbrances. Sub-section (3) of Section 3D provides that where no declaration under sub-section (1) is published within a period of one year from the date of publication of notification under Section 3A(1), the said notification shall cease to have any effect. By virtue of proviso to Section 3D(3), the period during which any action or proceeding taken in pursuance of notification issued under Section 3A(1) remains stayed by a Court shall be excluded while computing the period of one year specified in Section 3D(3).

19. In this case, notification dated 10.8.2005, which was published in the official Gazette of the same date and of which substance was published in two local newspapers, contained full description of the land proposed to be acquired for widening three National Highways. The names of the villages in which the land proposed to be acquired was situated, the survey numbers including sub-survey numbers, the nature, type and area of the land were also given in the schedule appended to the notification. Not only this, it was clearly mentioned that land plans and other details of the land are available in the office of the Competent Authority. This is the reason why none of the land owners (including the

respondents) made any grievance that the notification issued under Section 3A(1) of the 1956 Act was vague or that due to lack of particulars/details, they were prevented from effectively exercising their right to file objections in terms of Section 3C(1). Of course, a grievance of this score was made in the objections dated 16.10.2006 filed by some of the land owners of Padavu Village, but that was clearly an afterthought and, in any case, the same did not require consideration because of non-adherence to the time schedule specified in Section 3C(1) of the 1956 Act.

20. The only reason assigned by the Division Bench of the High Court for upsetting the well considered order passed by the learned Single Judge negating the respondents' challenge to the acquisition was that declaration under Section 3D(1) was published even before communication of the decision taken by the Competent Authority in terms of Section 3C(2). The process of reasoning adopted by the Division Bench for recording its conclusion appears to have been influenced by an assumption that the objections filed by the land owners had not been decided till the issue of declaration under Section 3D(1). However, the fact of the matter is that the Competent Authority had, after giving opportunity of personal hearing to the objectors, passed order dated 11.10.2005 and rejected the objections. Though, that order was not crafted like a judicial order which is passed by a legally trained mind, the rejection of the representations made by the respondents cannot be faulted only on that ground. The Competent Authority did advert to

the substance of objections, the details of which have been incorporated in Annexure P-3 filed before this Court. The concerned officer rejected the same by observing that the land proposed for acquisition is necessary for widening the existing National Highways into four lanes. If the consideration made by the Competent Authority is judged in the backdrop of the fact that a Special Purpose Vehicle was incorporated with the name New Mangalore Port Road Company Limited for implementation of the project known as New Mangalore Port Road Connectivity Project from Surathkal to Nantoor and B.C.Road to Padil along with bypass from Nantoor to Padil, it is not possible to castigate the proved reasons recorded by the Competent Authority for rejecting the objections.

21. The plea of the respondents that alignment of the proposed widening of National Highways was manipulated to suit the vested interests sounds attractive but lacks substance and merits rejection because except making a bald assertion, the respondents have neither given particulars of the persons sought to be favoured nor placed any material to prima facie prove that the execution of the project of widening the National Highways is actuated by mala fides and, in the absence of proper pleadings and material, neither the High Court could nor this Court can make a roving enquiry to fish out some material and draw a dubious conclusion that the decision and actions of the appellants are tainted by mala fides.

22. A somewhat similar question was considered in Girias

Investment Private Ltd. v. State of Karnataka (supra). In that case, the acquisition of the land under the Karnataka Industrial Areas Development Act, 1966 was challenged on various grounds including the one that the acquisition was vitiated due to mala fides. While rejecting the plea of mala fides, the Court referred to S.R. Venkataraman v. Union of India (1979) 2 SCC 491, State of Punjab v. Gurdial Singh (1980) 2 SCC 471 and Collector (D.M.) v. Raja Ram Jaiswal (1985) 3 SCC 1 and observed:

"14. It is obvious from a reading of the pleadings quoted above that only vague allegations of mala fides have been levelled and that too without any basis. There can be two ways by which a case of mala fides can be made out; one that the action which is impugned has been taken with the specific object of damaging the interest of the party and, secondly, such action is aimed at helping some party which results in damage to the party alleging mala fides. It would be seen that there is no allegation whatsoever in the pleadings that the case falls within the first category but an inference of mala fides has been sought to be drawn in the course of a vague pleading that the change had been made to help certain important persons who would have lost their land under the original acquisition. These allegations have been replied to in the paragraph quoted above and reveal that the land which had been denotified belonged to those who had absolutely no position or power. In this view of the matter, the judgments cited by Mr Dave have absolutely no bearing on the facts of the case."

23. We may also refer to the Constitution Bench judgment in E.P. Royappa v. State of Tamil Nadu and another (1974) 4 SCC 3. In that case, the petitioner, who was transferred from the post of Chief Secretary and posted as Officer on Special Duty, challenged the action of government on various grounds including the one that the decision of the government was vitiated due to mala fides of the Chief Minister. This Court rejected the plea of mala fides by

making the following observations:

"90. The petitioner set out in the petition various incidents in the course of administration where he crossed the path of the second respondent and incurred his wrath by inconvenient and uncompromising acts and notings and contended that the second respondent, therefore, nursed hostility and malus animus against the petitioner and it was for this reason and not on account of exigencies of administration that the petitioner was transferred from the post of Chief Secretary. The incidents referred to by the petitioner, if true, constituted gross acts of maladministration and the charge levelled against the second respondent was that because the petitioner in the course of his duties obstructed and thwarted the second respondent in these acts of maladministration, that the second respondent was annoyed with him and it was with a view to putting him out of the way and at the same time deflating him that the second respondent transferred him from the post of Chief Secretary. The transfer of the petitioner was, therefore, in mala fide exercise of power and accordingly invalid.

91. Now, when we examine this contention we must bear in mind two important considerations. In the first place, we must make it clear, despite a very strenuous argument to the contrary, that we are not called upon to investigate into acts of maladministration by the political Government headed by the second respondent. It is not within our province to embark on a far-flung inquiry into acts of commission and omission charged against the second respondent in the administration of the affairs of Tamil Nadu. That is not the scope of the inquiry before us and we must decline to enter upon any such inquiry. It is one thing to say that the second respondent was guilty of misrule and another to say that he had malus animus against the petitioner which was the operative cause of the displacement of the petitioner from the post of Chief Secretary. We are concerned only with the latter limited issue, not with the former popular issue. We cannot permit the petitioner to side track the issue and escape the burden of establishing hostility and malus animus on the part of the second respondent by diverting our attention to incidents of suspicious exercise of executive power. That would be nothing short of drawing a red herring across the trail. The only question before us is whether the action taken by the respondents includes any component of mala fides; whether hostility and malus animus against the petitioner were the operational cause of the transfer of the petitioner from the post of Chief Secretary.

92. Secondly, we must not also overlook that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. Here the petitioner, who was himself once the Chief Secretary, has flung a series of charges of oblique conduct against the Chief Minister. That is in itself a rather extraordinary and unusual occurrence and if these charges are true, they are bound to shake the confidence of the people in the political custodians of power in the State, and therefore, the anxiety of the Court should be all the greater to insist on a high degree of proof. In this context it may be noted that top administrators are often required to do acts which affect others adversely but which are necessary in the execution of their duties. These acts may lend themselves to misconstruction and suspicion as to the bona fides of their author when the full facts and surrounding circumstances are not known. The Court would, therefore, be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration. Such is the judicial perspective in evaluating charge of unworthy conduct against ministers and other high authorities, not because of any special status which they are supposed to enjoy, nor because they are highly placed in social life or administrative set up—these considerations are wholly irrelevant in judicial approach—but because otherwise, functioning effectively would become difficult in a democracy. It is from this standpoint that we must assess the merits of the allegations of mala fides made by the petitioner against the second respondent.”

24. Here, it will be apposite to mention that NHA is a professionally managed statutory body having expertise in the field of development and maintenance of National Highways. The projects involving construction of new highways and widening and development of the existing highways, which are vital for development of infrastructure in the country, are entrusted to experts in the field of highways. It comprises of persons having vast knowledge

and expertise in the field of highway development and maintenance. NHAI prepares and implements projects relating to development and maintenance of National Highways after thorough study by experts in different fields. Detailed project reports are prepared keeping in view the relative factors including intensity of heavy vehicular traffic and larger public interest. The Courts are not at all equipped to decide upon the viability and feasibility of the particular project and whether the particular alignment would subserve the larger public interest. In such matters, the scope of judicial review is very limited. The Court can nullify the acquisition of land and, in rarest of rare cases, the particular project, if it is found to be ex-facie contrary to the mandate of law or tainted due to mala fides. In the case in hand, neither any violation of mandate of the 1956 Act has been established nor the charge of malice in fact has been proved. Therefore, the order under challenge cannot be sustained.

25. In the result, the appeals are allowed, the impugned judgment is set aside and the order passed by the learned Single Judge dismissing the objections filed by the respondents is restored.

.....J.
(G.S. Singhvi)

.....J.
(Asok Kumar Ganguly)

New Delhi,
February 21, 2011.

SUPREME COURT OF INDIA



JUDGMENT