



W.A.No.185 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 30.08.2023

Delivered on: 15.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.A.No.185 of 2019

and

C.M.P.No.1868 of 2019

1. T. Mohanarangam (died)
S/o. Thulasinga Mudaliar.

2. Egambaram S/o. T. Mohanarangam

3. Rajamani S/o. Mohanarangam

4. D. Soranam D/o. Mohanarangam

.. Appellants

Vs.

1. The Government of Tamilnadu
(Municipal Administration & Water
Supply Department),
represented by Special Commissioner &
Secretary to Government,
Fort St. George, Chennai-600 009.

2. The District Collector,
Tiruvallur District.

3. The Executive Secretary,
Madras Metropolitan Water Supply &
Sewerage Board,



W.A.No.185 of 2019

No.1, Pumping Station Road,
Chintadripet, Chennai-2.

4. The Special Tahsildar,
(Land Acquisition),
Metro Water Schemes (Poonamallee),
No.1, Pumping Station Road,
Chintadripet, Chennai-2.

5. M. Saroja W/o. T. Mohanarangam
6. N. Roobavathi D/o. T. Mohanarangam
7. M. Nagendiran S/o. Mohanarangam
8. M. Vengatesan S/o. Mohanarangam
9. Santhanakrishnan S/o. Mohanarangam
10. Gopalakrishnan S/o. Mohanarangam
11. Megavannan S/o. Mohanarangam
12. Karnakaran S/o. Mohanarangam
13. Geetha D/o. Mohanarangam
14. Sarala D/o. Mohanarangam

.. Respondents

Prayer:- Appeal filed under Clause 15 of Letter Patent praying to set aside
the order passed by this Court in W.P.No.32285 of 2004 dated 23.11.2018.

For Appellants : Mr. C.R. Rukmani

For Respondents : Mr. U.M. Ravichandran,
Special Government Pleader [for R1, R2 &
R4]

Mrs. S. Deepika, Senior Counsel [for R3]
[CMWSSB]

JUDGMENT

(Judgment of the Court was made by P.B.BALAJI,J.)

The unsuccessful writ petitioner is the appellant before us.



W.A.No.185 of 2019

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2. The writ petitioner approached the writ court seeking issuance of a writ of certiorari to quash the land acquisition proceedings in G.O. Ms. No.316 dated 10.09.2004 and G.O. Ms. No.325 dated 05.10.2004. The case of the appellant before the writ court was that he being the absolute owner of lands measuring 12.66 acres in survey numbers 136/1, 136/2, 137/3 and 138/4B was cultivating the portion of said lands measuring 5.25 acres in survey number 136/1 and carrying on brick work business in the remaining lands. According to the appellant, the respondents were supposed to acquire the appellant's land for the purposes of constructing a water treatment plant. Section 4(1) notification was issued, followed by Section 6 declaration on 10.09.1987. The appellant had challenged the said land acquisition proceedings in W.P. No.6385 of 1992 and the writ petition was allowed on 20.09.2001. Subsequently, on the ground that the lands of the appellant were still required, the respondents once again initiated acquisition proceedings and issued Section 4(1) notification in G.O. Ms. No.316 dated 10.09.2004 invoking the emergency provision under Section 17(4) of the Act. Subsequently, Section 6 declaration also came to be made on 05.10.2004. In view of the invocation of Section 17(4) of the Act, Section 5-A inquiry was dispensed with. According to



W.A.No.185 of 2019

WEB COPY

the appellant, there was no urgency, necessitating the invocation of the emergency provision and the action of the respondents was biased and further immediately adjoining lands had been left out.

3. To meet the case of the appellant, the respondents filed a counter affidavit before the Writ Court stating that originally the acquisition proceedings were initiated in the year 1987 and has been contended by the appellant, the appellant succeeded in challenging the same. However, it is stated that the Writ Court granted liberty to the respondent to initiate fresh proceedings. Accordingly, necessary proposal was submitted to the District Collector, Tiruvallur on 27.08.2003 and Section 4(1) notification was published on 09.09.2004, followed up with the Section 6 declaration being published on 05.10.2004. According to the respondents, the lands belonging to the appellant were required for laying water pipe lines to connect with the water treatment plant. The allegation of bias raised by the appellant was met stating that adjoining land owners filed writ petitions and they were dismissed and even one of the requests made for exemption of lands was also rejected considering the real and urgent necessity of all the lands for the purposes of implementation of water treatment plant project under Krishna Water Scheme. Further it is also stated that the



W.A.No.185 of 2019

WEB COPY

respondents have applied their mind and taken a decision to invoke the emergency provisions available in the statute.

4. The Chennai Metropolitan Water Supply and Sewerage Board (CMWSSB) filed a separate counter stating that all adjoining lands had already been acquired and possession was also handed over to them. According to CMWSSB, the original plan for setting up the water treatment plant was in respect of 930MLD capacity and in respect of 530 MLD capacity plant, the same was completed and commissioned. In respect of the 305 MLD plant, the lands of the appellant were indispensable. Therefore, CMWSSB sought for dismissal of the writ petition.

5. The appellant filed a rejoinder before the Writ Court stating that though the notification had originally mentioned that the lands had been sought for the purposes of construction of treatment plant, in the counter affidavit it has been mentioned that the appellant's lands had been acquired for laying water pipes. According to the appellant, he continued to remain in possession and no compensation was also paid to him. Therefore, the appellant was even entitled to benefits of Section 24(2) of the Right to Fair



W.A.No.185 of 2019

Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act (Act 30 of 2013).

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6. The Writ Court after considering the rival contentions of the parties and on perusal of records, found that the government had applied its mind and satisfied itself before invoking the urgency or emergency clauses and the discretion of the government being statutory in nature, it was a matter of subjective satisfaction and the courts would not be entitled to scrutinize the propriety of such satisfaction of the Government. The Writ Court also further held that, at the same time, it was the abundant duty of the government to place necessary materials before the Court to establish that the decision to invoke the urgency clause was taken after due application of mind and based on available materials. Ultimately, the Writ Court dismissed the writ petition. Challenging the said order of dismissal of the writ petition, the appellant has filed the present writ appeal, raising the following grounds namely – the writ court failed to see that there was no real emergency; no materials are placed by the respondents to show that the situation warranted invocation of Section 17(4); there was no necessity to acquire the appellant's lands; possession continued to remain with the appellant; there was no future plan to construct a second treatment plant



W.A.No.185 of 2019

WEB COPY

with a capacity of 305 MLD, the Krishna Water project was to be completed within a specified time frame and the project was completed even in 2007; no proper G.O. has been published with regard to the proposal to construct a second water treatment plant with a capacity of 305 MLD and finally the requirement for water treatment plant was admittedly given up by the respondents in their counter. For all these reasons, the appellant sought for interference of the order of the Writ Court.

7. We have heard Mrs. C.R. Rukmani, Counsel for the appellant, Mr. U.M. Ravichandran, Special Government Pleader for respondents 1, 2 and 4 and Mrs. S. Deepika, Standing Counsel for CMWSSB, for the 3rd respondent. We have also perused the records and various materials placed before us by way of typed sets, besides the order of the Writ Court.

8. The bone of contention that has been raised by the appellant is that when there was no real urgency, the very invocation of Section 17(4) was unwarranted and in such process the valuable right available to the appellant under Section 5-A of the Land Acquisition Act has been taken away and in such process there has been irreparable loss and hardship caused to the appellant. The further contention raised by the appellant is



W.A.No.185 of 2019

WEB COPY

that though the notification was issued requiring the appellants lands for the purposes of construction of water treatment plant, the respondents themselves have admittedly given up the same and took a different stand before the writ court contending that the appellant's lands were acquired for the purposes of laying water pipes to connect to the water treatment plant.

9. Per contra, on behalf of the respondents it is contended that the appellant's lands are still required and according to the respondents, though physical possession alone has not been taken over from the appellant, all adjoining lands have been acquired and possession has also been delivered to CMWSSB. Compensation has also been made in revenue deposit and therefore the order of the writ court does not require any interference whatsoever.

10. We have paid anxious and careful consideration to the arguments advanced by the counsel for the appellant, as well as the respondents. It is seen from G.O. Ms. No.358 dated 03.06.1985 that the original proposal for construction of water treatment plants at Chembarambakkam was for 930 MLD capacity water treatment plant. Subsequently, after the appellant



W.A.No.185 of 2019

WEB COPY

succeeded in his challenge to in the earlier round of land acquisition proceedings, the state issued G.O. Ms. No.128 dated 06.09.2002 reiterating the requirement of the appellant's lands for the project. It is also seen that while allowing the writ petition filed by the appellant, this court also granted liberty to the respondents to proceed fresh to acquire portion of land from the appellants, if required. It is seen from the said G.O that the Government Pleader has given an opinion that the emergency provisions under Section 17 may be invoked. Accordingly, fresh proceedings were initiated invoking the emergency clause, which is under challenge.

11. It is seen from the status report filed by the Special Tahsildar Land Acquisition, the 4th respondent, that since only stay of dispossession was granted by this court, subsequently the award also came to be passed in Award No.1/2005 dated 06.10.2005 and the compensation amount in respect of survey numbers 136/1, 136/2, and 137/3 to the tune of Rs. 44,11,017/- was kept in revenue deposit, and in so far as the remaining lands in survey number 138/4 B, as there was a dispute with regard to ownership between the appellant and one Mr. Sevaga Chettiar, a sum of Rs. 2,28,863/-, being the compensation amount was kept in civil court deposit.



W.A.No.185 of 2019

WEB COPY

It is further stated that excepting the appellant's lands, all other lands required for the project were already acquired and possession of the same was also handed over to CMWSSB and even in the revenue records, necessary mutations had been carried out. It is also stated that various other proceedings initiated by adjoining land owners also ended only in favour of the respondents. In support of the said contentions regarding deposit of compensation amount, G.O. Ms. No.141 dated 15.12.2020 is produced which confirms the factum of revenue deposit and also subsequent renewals of the same.

12. The counsel for the appellant contended that the necessity for second water treatment plant was not disclosed earlier and once the water treatment plant had been inaugurated in 2007, the necessity for acquiring appellant's land did not continue to subsist thereafter. However, it is seen from the original acquisition proposal that the capacity of water treatment plant was 930 MLD. It is the discretion of the respondents to carry out the said project in phases. Merely because the respondents have come up with a 530 MLD plant already, it does not in any way militate against them in respect of the balance requirement. The respondents have also assigned valid reasons and explanation for the inability to take up the entire project



W.A.No.185 of 2019

with full capacity especially in view of the challenge laid by the appellant, in the earlier round of litigation and also in the present round of challenge where he had also obtained an order of interim stay of dispossession.

13. In so far as the argument that the requirement of the appellant's lands has changed, we are unable to accept the said contention of the counsel for the appellant. It is specifically stated that the entire adjoining lands have already been acquired and possession of such lands have also been handed over to CMWSSB. Further, the need to lay water pipes to connect to the water treatment plant is clearly ancillary to the water treatment project and therefore merely because it has been stated before the court that the appellant's land is required for laying water pipes, it does not mean or in any manner indicate that the purpose is totally different than the rigid requirement for setting up of a water treatment plant.

14. With regard to next and main contention regarding invocation of emergency clause by the respondents, as the Writ Court had rightly found, the State is vested with a statutory discretion in this regard and the Courts exercising writ jurisdiction should not normally interfere with such discretion being exercised by the authorities, unless in cases where the



W.A.No.185 of 2019

WEB COPY

authorities are unable to establish a rational decision making process and subjective satisfaction in order to exercise such emergency power available to them under Section 17(4).

15. The Writ Court has elaborately discussed this contention of the appellant, factoring aspects of prejudice and infringement of right that may be caused to the land owner and ultimately held that, before invoking emergency provision the respondents had sought for opinion from Government Pleader, High Court of Madras and also a proposal was forwarded by the CMWSSB to the Government which was duly followed up with a proposal submitted by the Special Tahsildar to DRO, Tiruvallur, who in turn considered the entire materials and gave his nod for invoking the emergency provisions. Thereafter, the Special Commissioner, Land Administration, independently considered the proposals placed before him and recommended issuance of a notification under Section 4(1), invoking the emergency provision available under Section 17(4) of the Act. Therefore, we are unable to see any procedural lapse or irregularity. In the instant case, authorities at various levels have applied their mind independently and concluded that it was necessary to invoke the emergency clause, especially considering the Krishna Water Scheme was a



W.A.No.185 of 2019

WEB COPY

time bound project. The Writ Court has also taken note of the fact that the challenge to the land acquisition proceedings by neighbouring land owners were all dismissed / rejected in favour of the respondents. One another relevant factor that we may have to take note of is that excepting the appellant, the lands of all adjoining land owners have already been acquired and only because of the strategic location of the appellant's lands the entire project had to be stalled and done in a phased manner. A sketch showing the lay of the lands on which the project is to come up is also produced before us by the CMWSSB. It is clear that without the appellant's land being acquired, the respondents will not be in a position to implement the second water treatment plant of 305 MLD. We are unable to see that the authorities have not applied their mind before deciding to invoke Section 17(4) of the Act.

16. Infact, after the dismissal of the writ petition, the appellants have also filed W.P. No.32285 of 2004 seeking invocation of Section 24(2) of Act 30 of 2013. This Court has dismissed the said writ petition on 23.11.2018, in light of the ratio laid down by the Constitution Bench of the Supreme Court in *Indore Development Authority's case reported in (2020) 8 SCC 129*.



W.A.No.185 of 2019

WEB COPY

17. For all the above reasons, we are unable to accept any of the contentions put forth by the appellant. However, considering the fact that the respondents had admittedly not taken physical possession of the lands from the appellant, the appellant shall be entitled to seek enhancement of compensation under the provisions of the Land Acquisition Act, 1894.

18. With this observation, the writ appeal stands dismissed. There shall be no order as to costs. Consequently the connected miscellaneous petition is closed.

(D.K.K.J) & (P.B.B.J)
15.09.2023

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Neutral Citation: Yes/No
mjs

To

The Government of Tamilnadu
(Municipal Administration & Water
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represented by Special Commissioner &
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W.A.No.185 of 2019

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W.A.No.185 of 2019

D.KRISHNAKUMAR, J.,
and
P.B.BALAJI, J.

(mjs)

Pre-delivery judgment in
W.A.No.185 of 2019
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C.M.P.No.1868 of 2019

15.09.2023