

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON : 30/07/2014

DATED : 08/12/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.8130 of 2007

Thiru.M.Ashok Kumar

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. By its Secretary to Government,
Industries Department, Secretariat,
Chennai-600 009.

2.The District Collector,
Krishnagiri District,
Krishnagiri.

3.The Special Tahsildar (Land Acquisition),
SIPCOT,
Hosur,
Krishnagiri District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for a Writ of Certiorari, to call for the records relating to notification vide G.O.Ms.No.109 and G.O.Ms.No.110, Industries (MIG-2), dated 07.09.2006 published by the Industries Department at page of Part-II Section-2 of the

Tamil Nadu Government Gazette, (Extraordinary) dated 7th September 2006 issued by the respondents in respect of the petitioner's property in survey Nos.138/1, 439/3 and 439/4 to the extent of 0.71.5 (part) hectares, 0.24.0 (part) hectares and 0.22.5 (part) hectares respectively in 105, Moranapalli Village Block IV Hosur (TK), Krishnagiri District and quash the same as illegal, arbitrary and violation of fundamental rights guaranteed under the Constitution of India.

For Petitioner : Mr.R.Shivakumar

For Respondents : Mr.M.S.Ramesh
Addl. Govt. Pleader

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ORDER

The petitioner has submitted that he owns a piece of land in Survey Nos.138/1, 439/3 and 439/4 to the extent of 0.71.5 (part) hectares, 0.24.0 (part) hectares and 0.22.5 (part) hectares respectively in 105, Moranapalli Village Block IV Hosur (TK), Krishnagiri District. The revenue records including patta (No.527), Chitta and other revenue records also stands in his name. He is a poor agriculturist and he depends upon this land alone for a livelihood. At this juncture, to his shock and surprise, he received a notice under Form-E, issued by the District Collector, Krishnagiri, the first respondent herein, vide proceeding ROC.11201/98/B2, dated 12.10.2006

under Sub Section(2) of Section 4 of the Tamil Nadu Land Acquisition for Industrial Purpose Act, 1997 (hereinafter referred to as "The Act") directing him to surrender or deliver possession of the land in Survey No.138/1 to the extent of 0.71.5 (part) hectares in 105, Moranapalli Village Block IV Hosur (TK), Krishnagiri District to the first respondent herein as it was required for industrial purpose. The petitioner also came to know through the above Form-E that notice under Sub Section (1) Section 3 of the Act was published by the Industries Department at page 617 of Part-II Section 2 of the Tamil Nadu Government Gazette (Extraordinary) dated 7th September 2006.

2. The petitioner has further submitted that he did not receive any notice under Section (2) of Section 3 of the said Act, which is a mandatory provision and he has not been put on notice about the acquisition of the land and he does not know for which purpose, the land is being acquired. The respondents herein have not followed the mandatory provisions of law for the acquisition of the land. He has not been given any opportunity to raise his objection to the acquisition, which is in clear violation of principles of natural justice and mandatory of law. Upon verification of Part-II Section 2 of the Tamil Nadu Government Gazette (Extraordinary) dated 7th September 2006, he also came to know that the lands in Survey Nos.439/3 and 439/4 to the extent of 0.24.0 (part) hectares and 0.22.5 (part) hectares are also being acquired by the respondents. But till date, he has not received any notice

under Section 3(2) or Section 4(2) in Form-E of the said Act, which are mandatory for acquisition under the above Act. The respondents have not served the mandatory notices to him under provision of the Act, therefore, the entire acquisition is illegal and arbitrary.

3. The petitioner has further submitted that subsequently, he received a notice under Section 7(5) of the said Act calling upon him to appear in person before the Sub-Collector Office on 23.03.2007 at 10.00 a.m. vide proceeding No.Na.Ka.11201/98/B2, dated 08.01.2007 to give objection to the determination of the compensation amount for lands in Survey Nos.138/1, 439/3 and 439/4. The acquisition itself is illegal, if the respondents are allowed to continue, he would be put to irreparable loss and great hardship. Till date he is in possession of the property. He has also raised objection to the notice under Form-E through his letter dated 04.02.2007 raising various objections, but the same has not been disposed of so far.

4. The petitioner has further submitted that there are unused Government lands and poramboke lands unfit for the cultivation available adjacent to the land sought to be acquired which can be used for industrial purpose. The respondents are leaving the same and acquired the petitioner's land, which is arbitrary and colourable exercise of power. He is a poor agriculturist and therefore, the respondents cannot seek to acquire the same

for industrial purpose for setting up of SIPCOT Industrial Complex, which is not in public interest. The power of Eminent Domain cannot be misused by the respondents and it would affect the right of the petitioner to hold the property guaranteed under the Constitution of India. Hence, the petitioner has filed the above writ petition.

5. The learned counsel appearing for the petitioner has submitted that the petitioner owns the subject land. He is a poor agriculturist and he is depending upon the cultivation from the said land for his livelihood. The second respondent had issued a notice under the land Acquisition for Industrial Purpose Act, 1997 and directed the petitioner to surrender the subject land. He had not received any prior notice under the said Act. Further, he is not aware that the subject land is being acquired for the said purpose. Without following the mandatory provisions and without giving any opportunity, the subject land had been acquired and publication had also been made in the Government Gazette. Particularly, the petitioner had not been served any notice under Section 3(2) or 4(2) in Form-E of the said Act, which are mandatory for acquisition under the said Act. As such, the acquisition proceedings are illegal and arbitrary. As of now, the petitioner is in possession and enjoyment of the subject land and hence he made several objections to the respondents, however all these representations have not been disposed of. Further, there are Government Poromboke lands adjacent to the

subject land. The purpose for acquisition of the subject land is not of paramount importance when comparing to the cultivation of the subject land. Hence the learned counsel has prayed this Court to set aside the impugned notification issued by the respondents in the Government Gazette with regard to the acquisition of the subject land.

6. The learned Additional Government Pleader appearing for the respondents has submitted that the third respondent had issued 4(1) notification during 2000 in the Government Gazette and local publication in the vernacular language. Subsequently, an enquiry was conducted under Section 5(a) of the Act. Thereafter, a publication was made in the Government Gazette under Section 6 of the Act. As such, the respondents had followed all legal formalities and acquired the subject land during 2001 itself. Thereafter also the respondents had invited objections from the landowner, for which the landowner had not chosen to give any objection. Further, the petitioner has filed this writ petition in order to stall the acquisition proceedings. After observing all the legal formalities, Form-U was issued to the petitioner on 12.10.2006 to surrender the possession of the acquired land. Accordingly, the petitioner had also surrendered the subject land to the respondents 1 and 2, who in turn handed over the same to SIPCOT on 01.12.2006. Therefore, the writ petition is not maintainable.

7. On considering the facts and circumstances of the case, arguments advanced by the learned counsel on either side and on perusing the typed set of papers, this Court is of the view that the second respondent had issued Form-U to the petitioner on 12.10.2006 to surrender the possession of the land and the petitioner had also handed over the possession to the respondents 1 and 2, who intturn handed over the possession to the third respondent on 01.12.2006. In such circumstances, the writ petition is liable to be dismissed.

8. In the result, the writ petition fails and it is dismissed. No costs.

08/12/2015

(1/2)

Index : Yes/No.
Internet : Yes/No.

r n s / krk

C.S.KARNAN, J.
r n s / krk

To:

- 1.The Secretary to Government,
Government of Tamil Nadu,
Industries Department, Secretariat,
Chennai-600 009.
- 2.The District Collector,
Krishnagiri District, Krishnagiri.
- 3.The Special Tahsildar (Land Acquisition),
SIPCOT, Hosur,
Krishnagiri District.

Pre Delivery Order made in
W.P.No.8130 of 2007

08/12/2015
(1/2)