

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2016

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.13829 of 2011

and

M.P.No.2 of 2012

Order Reserved on 27.11.2014 -Judgment Pronounced on 11.01.2016

S.Krishnamurthy ... Petitioner

vs.

1.Union Territory of Puducherry,  
Rep.by its Chief Secretary to Government,  
Puducherry.

2.Government of Puducherry,  
Rep.by Special Secretary to Government,  
Department of Revenue and Disaster Management,  
Puducherry.

3.The Sub Collector (Revenue)-cum-Land  
Acquisition Officer (North),  
Puducherry

...Respondents

PRAYER: Writ petition is filed under Article 226 of the Constitution of India for issuance of a writ of Certiorari, to call for the records pertaining to G.O.Ms.1, dated 31.05.2011, by the Department of Revenue and Disaster Management, Government of Puducherry and the Notification dated 31.05.2011 published in 'Dinakaran' a Tamil Daily Newspaper dated 05.06.2011 by the second respondent and quash the same.

For Petitioner : Mr.T.Dhanasekaran

For Respondents: Mrs.N.Mala

Additional Government Pleader (Puducherry)

O R D E R

The short facts of the case are as follows:-

The petitioner has submitted that on a former occasion, he  
<https://hcservices.ecourts.gov.in/HCServices/4547> of 2011 seeking the following reliefs: "to

call for the records pertaining to G.O.Ms.No.57 dated 07.01.2011 by the Department of Revenue and Disaster Management, Government of Puducherry, and the Notification dated 13.01.2011 published in 'The Hindu' (Daily English Newspaper) dated 13.01.2011 by the second respondent and quash the same by way of writ of Certiorari or any other appropriate writ, direction or order in the nature of a writ". This Court passed the following order:

"The petitioner is at liberty to file a representation giving details of the present ownership of the land in question and file his objections to the authority. The same shall be considered by the Land Acquisition Officer in terms of the provisions of the Central Act within a period of four weeks from the date of receipt of such representation. This writ petition is disposed of accordingly".

2. He has submitted that in pursuance of the order of this Court, he submitted a representation on 02.05.2011 to the respondents. However, the respondents, instead of considering his representation properly, has proceeded on an erroneous assumption that the notification is proper and that if at all he has grievances that grievance is only for claiming compensation. On that erroneous reasoning his representation was disposed of. He has submitted that however, once again the respondents published a Notification under Section 6 of the Land Acquisition Act (Central Act 1/1894) in 'Dinakaran' a Tamil Daily Newspaper dated 05.06.2011 under the caption "Government of Puducherry - Department of Revenue and Disaster Management (G.O.Ms.No.1 dated 31.05.2011) Notification". In that notification under Serial Nos.1, 2, 5, 22, 33, 50, 53, 54, 55, 57, 58, 62, 63, 64, 66, 68, 77, 88, 93, 101 the name of the Land Owners / Interested persons is mentioned as Sitharama Gounder.

3. He has submitted that the above mentioned Sitharama Gounder is his father, who died on 15.02.2010, leaving him as well as others as his heirs. He has submitted that in the notification, in the same manner as done before, only his dead father's name has been mentioned and the names of owners has not been corrected in spite of his earlier W.P.No.4547 of 2011 and subsequent representation dated 02.05.2011. He has submitted that, as mentioned above, he is one of the legal representatives of the deceased Sitharama Gounder and since he is not having any other alternative remedy he is filing this writ petition by invoking the jurisdiction of this under Article 226 of the Constitution of India to quash the said Notification published in 'Dinakaran' a Tamil Daily Newspaper dated 05.06.2011.

4. The third respondent has filed a counter affidavit stating that he is the present incumbent of the third respondent office herein and well acquainted with the facts of the case from the records. He has submitted that the petitioner herein had filed the above writ petition praying to quash the Notification No.1 dated 31.05.2011 issued by the second respondent. He has submitted that the Tourism Department has forwarded a proposal to acquire lands to an extent of 33-63-33 H.A.C in Ariankuppam Revenue Village by invoking "Urgency" provisions of the Land Acquisition Act, 1984. Based on their request necessary Notification under Section 4(1) of the Land Acquisition Act, 1894 was issued by this Department vide G.O.Ms.57 dated 07.01.2011 to an extent 33-63-33 H.A.C. As the said Land Acquisition is being done by invoking urgency provisions under Section 17(4) of the said Act, hearing of objections of the land owners under Section 5 (A) was dispensed with.

5. He has submitted that the petitioner challenged the above referred Section 4(1) Notification by way of writ numbered as W.P.No.4547 of 2011 on the ground that the notification mentions only his father's name, who had expired as on that date. This Court vide its order dated 09.03.2011 in the W.P.No.4547 of 2011 filed by the petitioner was pleased to order that "the petitioner is at liberty to file a representation giving details of the present ownership of the land in question and file his objections to the authority. The same shall be considered by the Land Acquisition Officer in terms of the provisions of the Central Act within a period of four weeks from the date of receipt of such representation." He has submitted that the petitioner, instead of giving a representation giving details of the present ownership, as directed by this Court, gave a representation on 02.05.2011 to the Land Acquisition Officer, wherein he has objected to the land acquisition per se and requested to drop the land acquisition proceedings.

6. He has submitted that the Section 4(1) Notification had specifically mentioned that the Section 5-A enquiry was being dispensed with in view of the acquisition being done by invoking the urgency provisions under Section 17 of the Central Act. As the Act itself provides that in certain cases the government can proceed with acquisition by-passing any objection to the proposed acquisition from any person interested and since this Court had also in its above referred order had directed this respondent to consider and dispose the representation of the petitioner in terms of the provisions of the Central Act, the Land Acquisition Officer, after duly considering the representation of the petitioner as per the provisions of the Land Acquisition Act, 1894 in vogue and in compliance with the directions of this Court has provided a



reply to the petitioner on 27.05.2011 within the time prescribed by this Court. In the reply, the Land Acquisition Officer has very clearly stated that petitioner's interest over the lands under acquisition will be duly; considered based on the documents produced by him in support of his claim at the time of disbursing the compensation.

7. He has submitted that thereafter, after disposing of the representation of the petitioner based on the order of this Court in W.P.No.4547 of 2011, the Declaration under Section 6 of the Land Acquisition Act, 1894 was published. While disposing off the representation of the petitioner, the Land Acquisition Officer has very clearly stated that his interest over the land will be protected and his requisition for compensation will be duly considered based on the documentary evidence produced at the time of advancing compensation. He has further submitted that the petitioner had not produced any documentary evidences, like death certificate, legal heir certificate, etc., in support of his claim along with his representation, pursuant to the order of this Court.

8. He has submitted that notification under Section 4(1) of the said Act is done based on the names of the Land Owners / interested persons found in the Revenue Records maintained by the Department of Survey and Land Records. Unless, the land owners / interested persons change the Revenue Records in their favour, the names of the dead persons will remain in Revenue Record. Further, it is the bounden duty of land owners to verify the correctness of Revenue Records and the Onus of keeping the ownership status up to date on Government records is on the legal heirs of deceased. That is why the lands cited under S.Nos.1, 2, 5, 22, 23, 33, 50, 53, 54, 55, 57, 62, 63, 64, 66, 68, 77, 88, 93-101 of the notification were published in the name of Thiru.Seetharama Gounder as the land mentioned in the said Serial Numbers stands in the name of Thiru.Seetharama Gounder in Government records as on date. Further, it has been clearly explained to the petitioner that his interest over the property, if any, will be duly considered as per Rules in vogue, on production of necessary documents available with him, at appropriate stages of Land Acquisition i.e. during award enquiry under Section 11 of Land Acquisition Act, 1894. Further, it has been clearly explained to the petitioner that his interest over the property, if any, will be duly considered as per Rules, on production of necessary documents available with him, at appropriate stages of Land Acquisition i.e. during award enquiry under Section 11 of Land Acquisition Act, 1894.

9. He has submitted that the publication of Notification under Section 4(1) of the Land Acquisition Act, 1894 and Declaration under Section 6 of the said Act, in the name of deceased Thiru.Seetharama Gounder, father of the petitioner

will in no way affect the claim of the present owners, whoever it may be. Further in the facts and circumstances of this case, since the acquisition itself is being done by invoking the urgency clause, the law itself does not provide for any hearing and all / any interested persons are obliged to wait for the Section 11 enquiry to state their respective claims. The compensation will be duly advanced to the legal heirs of the deceased land owners / interested persons as per rules in vogue after ascertaining their legal heir status and property documents. This Court in its earlier order also had specifically directed that the representation of the petitioner should be disposed of in terms of the provisions of the Central Act and that is exactly what was done in this case. In fact a detailed reply was given wherein the rights available to the petitioner under the Act was also pointed out.

10. He has submitted that the real intention of the petitioner was to stop the acquisition proceedings itself, as revealed from his representation dated 02.05.2011, wherein he has objected the acquisition per se and requested for the dropping of the acquisition proceedings, which is contrary to the direction of this Court, wherein this Court had only allowed the petitioner to make a representation to this respondent giving details of the present ownership of the land in question. The petitioner failed to give any details as to the present ownership by producing any documents to that effect. Even assuming that the petitioner had done so as directed by this Court, it is submitted that still the only option available to the petitioner under law would be to wait for the Section 11 enquiry. But in this case, inspite of the direction of this Court, the petitioner failed to give any details of the present ownership, including the death certificate and the number of legal heirs, etc. and further since Section 5-A enquiry itself has been dispensed with, all objections / claims by any person interested, including the petitioner, have to wait for the Section 11 enquiry.

11. He has submitted that in the above circumstances it is clear that what the petitioner could not have done directly under the provisions of the Act, wherein hearing of objections has been dispensed with, the petitioner is seeking to do by abusing the process of the Courts. In the above circumstances it is clear that neither the Section 4(2) notification nor the Section 6 declaration suffers from any legal infirmity and this objection raised by the petitioner has to fail. He has submitted that the other objection raised by the petitioner is that the respondents have not justified the reasons for invoking the urgency clause, and further that, in his person view there is no merit in invoking the urgency clause. He has submitted that there is no merits in these contentions raised by the petitioner. The provisions of the Central Act does not oblige the respondents to set out the reasons and justification

for invoking the urgency clause to the public at large or to the person interested while issuing the Section 4(1) notification or while making the Section 6 declaration. He has submitted that however, as the petitioner has now raised this objection in this case, it becomes the duty of the respondents to apprise this Court of the justification and necessity for invoking the urgency clause in this acquisition proceedings.

12. He has submitted that the land under the present acquisition proceedings is of rare historic value and has great cultural significance, and is an important archaeological site with typical tradition, which has to be preserved. He has submitted that "Arikanmedu", the archaeological site of the ancient Rome Trade Centre, is 4 Kms, South of Pondicherry on the banks of Ariyankuppam River. The port town dates back to 2<sup>nd</sup> Century B.C. and was inhabited by Romans, Cholas and French, who have all left their indelible marks on this wonderful place. The archaeological excavations at the site revealed strong trade links between Pondicherry and Ancient Rome. The manufacturing of beads, pottery and muslin cloths and the extensive presence of amphora vessels at the site points to the fusion of Indian and Mediterranean skills in the terracotta industry. Arikanmedu is the earliest known settlement dating perhaps from the 2<sup>nd</sup> Century B.C. by people whose pottery relates to the Iron-age (Megalithic) cultures of South India. Arikanmedu, a fishing colony was used as a port for trade with the Romans and Greco-Romans. An ancient Chola coin dating back to 1 B.C. suggests involvement of Cholas in various port related activities. Some names on seals that were found here have been mentioned in the Sangam literature as well. Jouveau-Dubreail identified Arikanmedu as Poduke in the Periplus Maris Erythraei. Even today if one looks carefully, after a bout of heavy rains, beads could be found on the bank of river. Fragments of Amphoras and a copper coin of Constantine minted between 306 and 324 A.C. Suggest that Arikanmedu was occupied from 300 A.D. to 700 A.D. There is also considerable evidence to suggest that the site was occupied during medieval Chola times. Finds of Chola coins, Chinese Celadon pottery and other East Asian glazed ceramics suggest occupation of the site and some involvement in the Medieval East-West maritime trade as well. This Historic remains of Arikanmedu site were declared as National Heritage Assets under the Ancient Monuments and Archaeological Sites and Remains Act, (AMASR) 1958, and the Archaeological Survey of India (ASI) maintained it.

13. He has submitted that the lands, which are now being acquired, will be utilized to conduct archaeological studies, which will bring out the rich heritage of our ancient civilization which, in turn, attract the tourism of our Nation. Further, the Department of Tourism in view of developing Archaeological Tourism has appointed Hudco as consultant agency for development of Arikanmedu as a Tourist destination. In



principle, the Archaeological Survey of India has also been accorded for the Development Plan. The approximate cost of the project is Rs.50.00 crore. The features comprised in the project are Sculpture / Miniature Model Park, Museum / Interpretation Centre Watch Tower, Eco park, National History Museum etc.

14. He has submitted that Article 51 A(F) of the Constitution of India states that "It shall be the duty of every citizen of India to value and preserve the rich heritage of our composite culture". On similar lines the Constitution of India also provides through Entry 67 of list 1 of seventh schedule that Ancient and historical monuments and records and archaeological sites and remains, [declared by or under law made by parliament] to be of national importance. This entry clearly confers a corresponding legislative power upon the parliament, Entry 12 of list 2 and Article 51A. It is necessary that the State Governments should necessarily protect monuments of local importance. Equally urgent is the necessity for taking proper care of the monuments and ancient sites left to its charge and also for further exploration of the antiquities within the boundaries of each State.

15. He has submitted that the historical important site of Arikanmedu should not be left ruined due to modernization and urbanization by its present inmates and also, its protection, in its original form becomes a matter of urgent concern. Therefore, it is highly justified to invoke urgency provisions under Section 17 of the Land Acquisition Act, 1894 to acquire the lands situated at historically important place of Arikanmedu in order to prevent it from being ruined by modernization and urbanization process. Therefore, it is just and necessary to invoke the urgency provisions of the land acquisition to acquire the above said lands. He has submitted that the claim by the petitioner that there is no justification for invoking the urgency clause or that in his personal opinion there is no such urgency only reveals either the utter ignorance or the total disregard and indifference to importance and significance of the land under the present acquisition proceedings. It is often presented and is quite commonly observed and seen practice that, while the economic value of lands attracts developers, its cultural value is not recognized many a time. The petitioner herein, while giving utmost importance to the economic value of the property, refuses to accept its cultural value. Further, unlike other projects, the said project cannot be implemented in an alternate site, as this project is site-specific. Therefore, for the reasons stated above, as the petition lacks merits and as there is no iota of truth in it, he prays that this Court dismisses the above writ petition.

16. The highly competent counsel Mr.T.Dhanasekaran appearing for the petitioner has submitted that on an earlier occasion the petitioner had filed a writ petition in W.P.No.4547 of 2011, before this Court, to quash the Government Order in G.O.Ms.No.57, dated 07.01.2011, and the Notification, dated 13.01.2011, published by the second respondent in "The Hindu" on 13.01.2011. This Court, by Order, dated 09.03.2011, had disposed of the said writ petition by giving liberty to the petitioner to submit a fresh representation to the Land Acquisition Officer and the Land Acquisition Officer was directed to consider the same, within a period of four weeks from the date of receipt of such fresh representation, in terms of the provisions of the Central Act. Accordingly, on 02.05.2011, the petitioner had submitted a fresh representation to the respondents. However, the respondents instead of considering his representation properly, had proceeded on an erroneous assumption that the impugned notification is proper and decided that if the petitioner has any grievance it is only for claiming compensation. Accordingly, they had published a notification, under Section 6 of the Land Acquisition Act (Central Act 1 of 1894), in the Tamil Daily Newspaper, on 05.06.2011. In the said notification, the respondents had mentioned the petitioner's father as the owner of the subject lands. Infact, his father expired on 15.02.2010, but the Government Order was passed on 31.05.2011 i.e. subsequent to the death of his father. Therefore, the learned counsel has prayed this Court to allow the writ petition.

17. The very competent Additional Government Pleader appearing for the respondents has submitted that the Tourism Department had forwarded a proposal to the respondents to acquire lands to an extent of 33-63-33 H.A.C., in Ariankuppam Revenue Village by invoking urgency provisions of the Land Acquisition Act, 1894. Accordingly, the respondents have initiated land acquisition proceedings for acquiring lands. Since the said acquisition proceedings were initiated by invoking urgency provisions under Section 17(4) of the Land Acquisition Act, hearing of objections of the land owners, under Section 5(A) of the Act, was dispensed with. The petitioner's interest over the subject lands would be considered based on the documents produced by him in support of his claim at the time of disbursing compensation.

18. Further, the learned Additional Government Pleader has submitted that the acquisition proceedings have been initiated based on the name of the land owners and interested persons found in the revenue records. Therefore, there is no irregularity in the acquisition proceedings initiated by the respondents and the subject lands have been acquired for public purpose. Hence, the learned Additional Government Pleader has prayed for dismissal of the writ petition.



19. 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 respondents had invoked urgency provisions to acquire the subject lands for public purpose and hence hearing of objections of the land owners, under Section 5(A) of the Act, was dispensed with. Subsequently, the Government passed G.O.Ms.No.1 on 31.05.2011 and published a notification on 05.06.2011. Though the petitioner's father expired on 15.02.2010, the same had not been communicated to the respondents. Therefore, the said error can be rectified and compensation amount can be disbursed. Further, the subject lands have been acquired for public purpose. Therefore, the writ petition does not possess sufficient force to allow it and the same is liable to be dismissed.

20. In the result, the writ petition fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

sd/-  
Assistant Registrar(Cs-VII)

/TRUE COPY/

Sub-Assistant Registrar

vs / krk

To

- 1.The Chief Secretary to Government,  
Union Territory of Puducherry,  
Puducherry.
- 2.The Special Secretary to Government,  
Government of Puducherry,  
Department of Revenue and Disaster Management,  
Puducherry.
- 3.The Sub Collector (Revenue)-cum-Land  
Acquisition Officer (North),  
Puducherry.

+1 CC to MR.T.Dhanasekaran Advocate. SR.NO.2062  
+1 CC to MR.N.Mala Advocate. SR.NO.2207  
+1 CC to Govt.Pleader. SR.NO. 2216

W.P.No.13829 of 2011  
and M.P.No.2 of 2012

CO-PA  
JD 27/01/2016