

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-03-2016

CORAM:

THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM

W.P.Nos.2728 and 2729 of 2012 & 31448 and 31449 of 2015
W.M.P.Nos.518 and 519 of 2016 in W.P.No.31448 and 31449 of 2015
M.P.Nos.1 and 2 of 2015(2) and M.P.Nos.1 to 3 of 2012(2)

In W.P.Nos.2728 and 2729 of 2012 :

J. Duraibabu ... Petitioner in
W.P. 2728/2015
J. Sridhar ... Petitioner in
W.P.2729/2015

Vs

1. The District Collector
Kanchipuram District
2. The Tashildhar
Sriperampudur Taluk
Kanchipuram District
3. The Secretary to Government
Highways & Minor Ports Department
Chennai ... Respondents

(R3-Impleaded as per order dated 28-02-2012 by KVJ in M.P 4 of
2012 in W.Ps.2728 and 2729 of 2012)

In W.P.Nos.31448 and 31449 of 2015:

J. Duraibabu .. Petitioner in
W.P. 31448/2015
J. Sridhar .. Petitioner in
W.P.31449/2015

Vs

1. State of Tamil Nadu
Rep. by the Secretary to Government
Highways & Minor Ports Department
Chennai

2. The District Collector
Kanchipuram District
3. The Special Tashildhar (Land Acquisition)
Oragadam Industrial Park Road
Infrastructure Scheme
Sriperampudur Taluk
Kanchipuram District

.. Respondents

Writ Petitions, W.P.Nos.2728 and 2729 of 2012 are filed under Article 226 of the Constitution of India praying for the writs of Certiorari calling for the records pertaining to the Notification under Section 15(1) of the Tamil Nadu Highways Act 2001 in G.O.No.151, Highways & Minor Ports (HW 2) dated 28-04-2010 published in Gazette on 2.6.2010 issued by the Secretary to the Government-Highways & Minor Ports Department insofar as the petitioners' lands situate in S.No.190/28 and now subdivided as S.No.190/35 measuring 800 sq. mts. and the consequential notification in Na.Ka.No.46719/2008/F2 dated 22-12-2011 under Section 19(5) and 19(7) of Tamil Nadu Highways Act, 2001 issued by the second respondent and W.P.Nos.31448 and 31449 of 2015 are filed under Article 226 of the Constitution of India praying for writs of Certiorari calling for the records pertaining to the proceedings in Na.Ka. No.46720/ 2008/F2/ dated 10.6.2015 issued by the 3rd respondent on behalf of the 2nd respondent and quash the same.

(Prayer amended as per order dated 28-02-2012 by KVJ in M.P.Nos.5 of 2012 in W.P.Nos.2728 and 2729 of 2012)

For petitioners : Mr. R. Subramaniam
For respondents : Mr. R. Rajeswaran, Spl.G.P.

ORDER

In all these four writ petitions, the challenge is to the proceedings initiated under the provisions of the Tamil Nadu Highways Act, 2001 by issuance of notice under Section 19(5) and 19(7) of the said Act.

2. I have elaborately heard Mr. R. Subramaniam, learned counsel for the petitioners in all the writ petitions and Mr. R. Rajeswaran, learned Special Government Pleader, who is assisted by the Officers of the respondent-Department and they have also produced all the files.

3. One need not elaborate much about the facts though the factual details have been elaborately set out, as the dispute in the writ petition lies only in a narrow campus.

4. The case of the petitioners is that originally the property situate at S.No.190/28(49/1A3) measuring about 4050 sq.mts was purchased by their grandfather and the same devolved on the petitioners after the death of the ancestors. The said property has been subsequently sub-divided as survey No.190/32 and 190/35, Oragadam Village. For the purpose of this case, it is sufficient to take note of the old survey No.190/28/49/1A3. This land along with other contiguous lands, which all stood in the name Jayaraman Naidu, the father of the petitioners, was subject matter of acquisition by the Government for the development of an industrial complex by the State Industries Promotion Corporation of Tamil Nadu Limited ('SIPCOT' in short) at Oragadam. The Government vide G.O.Ms.No.125, Industries (MID1) Department, dated 09-05-1997 accorded administrative sanction for acquisition of the land over an extent of 636.88.0 hectares by invoking the urgency clause under Section 17(1) of the Land Acquisition Act, 1894 (Central Act) and transferred an extent of 190.34.0 hectares of poramboke lands in favour of Tamil Nadu Corporation for Industrial Infrastructure Development Limited (TACID in short), which was subsequently merged with SIPCOT for setting up of an industrial complex at Oragadam and in eight other villages at Sriperumbudur Taluk, Kancheepuram District.

5. Further, the Government issued another order in G.O.Ms.No.139, Industries (MIG-2) Department, dated 03-11-2006 wherein a decision was taken to expand the existing Oragadam Industrial Complex Project and identified 395.87.5 hectares of patta and poramboke land and accordingly, administrative sanction was granted for acquisition of the private patta land and for alienation of an extent of 34.90.0 hectares of patta land in Oragadam and Senkuppam Villages. The acquisition authority issued notices to the persons whose names were found in the revenue records and enquiry was conducted with the land owners and under various Government Orders, all dated 04-07-2007, the Government approved the publication of notices under Section 3(1) of the Tamil Nadu Acquisition of land for Industrial Purposes Act, 1997 ('Industrial Purposes Act', in short). It is not in dispute that the lands in survey No.190/28/49/1A3, which is subject matter of these writ petitions were also covered under the said Notification dated 04-07-2007. Thus the present lands in the said survey number was forming part of the acquisition proceedings initiated under the Industrial Purposes Act for establishment of an industrial complex by SIPCOT at Oragadam.

6. The acquisition proceedings were to put to challenge by the land owners including the petitioners in W.P.Nos.16922, 29294, 29090, 29113, 29707, 29708, 29709, 29710, 30019, 30020, 30021, 29575, 30255, 30256, 33294, 30062 and 32290 of 2007, which were dismissed by a common order dated 03-06-2008. Thus,

as of 03-06-2008, the lands including the lands in survey No.190/28/Part stood vested with the Government for the purpose of establishing an industrial complex by SIPCOT. The petitioners along with other persons, who lost before the Writ Court, filed Writ Appeals, in W.A.Nos.781 and 782 of 2008 etc., batch and the Honourable Division Bench by a common judgment dated 29-04-2011 allowed the writ appeals and the operative portion of the judgement reads as follows:

"63. From the above discussion, we arrive at the following conclusions:

(i) The appellants in W.A.Nos.855 and 856 of 2008, being the purchasers, after initiation of the acquisition proceedings, are not entitled to any relief and accordingly, these two writ appeals are liable to be dismissed.

(ii) Non-service of individual notices on the appellants in W.A.Nos.781, 782, 799, 800 and 859 to 863 of 2008, in spite of the fact that they have purchased the properties long before the initiation of the acquisition proceedings and mutation in the revenue records and issuance of notices in the name of the original owner Mr.Jayaraman, who is dead a decade prior to the initiation of the acquisition proceedings vitiates the acquisition proceedings.

(iii) Notice issued in the name of a dead person is non-est in law.

(iv) The lock, stock and barrel rejection of the lawful objections raised by the appellants in W.A.Nos.781, 782, 799, 800 and 859 to 863 of 2008, by the District Collector, in the process of his undue haste in sending the report to the Government, also vitiates the acquisition proceedings.

(v) Coming to the arguments advanced on the part of the appellants that even though the present impugned proceedings were initiated under the Industrial Purposes Act, the District Collector, Kanchipuram has again issued a notification dated 17.12.2009, published in the Tamil Newspapers 'Thina Thanthi' on 6.1.2010, on behalf of the Highways Department, and hence the earlier notification has been superseded by the latter one, applying the ratio laid down by the Honourable Apex Court in RAGHUNATH vs. STATE OF MAHARASHTRA [(1988) 3 SCC 294 = AIR 1988 SC 1615], extracted above, we have no hesitation to hold that the earlier notification (which is the impugned subject in these appeals) has been superseded and even

on this count, no proceedings could be carried on by the authorities/respondents.

(vi) As the Collector has been delegated with the powers of the Government under the Act and as no Rules have been framed under Section 25(2)(b) for the Collector to delegate his such powers, non-signing of Form 'A' by the Collector cannot be appreciated.

(vii) In view of the wordings in Sections 2(d) and 2(e) of the Industrial Purposes Act, no prior declaration of declaring the area as an industrial estate, before acquiring the land for industrial purposes is necessary.

(viii) Since the appellant in W.A.No.859 of 2008 is running a place of worship, which are excluded categories of acquisition, he is entitled for exemption accordingly.

(ix) As the appellant in W.A.No.863 of 2008 is running a tiny industry and as the entire impugned acquisition is for industrial purposes, no sanctity could be attached to the move of the respondents/authorities in seeking to acquire the lands of the appellant in W.A.No.863 of 2008 also. Therefore, this appellant is also entitled for exemption. Similar is the position with regard to the appellant in W.A.No.799 of 2008 also, who has obtained proper licence from the Industries Department for running an industry in the locality."

7. The learned counsel for the petitioners submits that as against the said judgment, the respondents therein preferred a Special Leave Petition before the Honourable Supreme Court, which was dismissed by the Honourable Supreme Court. However, a copy of the said order is not produced before this Court.

8. Be that as it may. The correctness of the Notification issued under the provisions of the Tamil Nadu Highways Act, 2001, which commenced with the issuance of notice under Section 19(5) and 19(7) of the Tamil Nadu Highways Act, 2001 (Tamil Nadu Act 34 of 2002), published by the first respondent on 22-12-2011, in which further proceedings were being initiated, has to be decided in these writ petitions. At this juncture, these writ petitions have been filed and interim orders have been granted at the time when the writ petitions were entertained. As on 29-04-2011 (the date on which W.A.Nos.781 and 782 of 2008 etc., batch were disposed of), the land acquisition proceedings in respect of the entire extent of land acquired under the Industrial Purposes Act were quashed by the Honourable Division Bench.

(ii) Even prior to that, in respect of a portion of the land viz., the land in survey No.190/28/Part, parallel acquisition proceedings were initiated under the Tamil Nadu Highways Act by issuance of a Government Order approving the Notification under Section 15(2) of the Act, by order dated 20-12-2009. Therefore, the respondents in the present writ petition could not have proceeded further pursuant to the approval granted on 30-12-2009, since as on the said date, the writ petitions were pending before the Honourable Division Bench and the land was a Government land having been acquired under the Industrial Purposes Act. Therefore, all further proceedings upto the stage of publication of the Notification under Section 15(1) of the Highways Act stand vitiated, since during the relevant point of time, the proceedings were pending before the Honourable Division Bench. After the Honourable Division Bench allowed the writ appeals by its judgment dated 29-04-2011, the entire acquisition proceedings were set aside and the land reverted back to the land owners and the respondents could not have proceeded from that stage under the Highways Act in respect of the proceedings initiated, when the property was admittedly under acquisition proceedings under the Industrial Purposes Act.

9. The factual position has not been disputed in the counter affidavit filed by the District Collector, the first respondent. In fact, the first respondent has taken a stand that the judgment of the Honourable Division Bench in the Writ Appeal has no relevance with the present proceedings. But that is not so. The present proceedings has got a greater relevance with that of the judgment of the Honourable Division Bench in W.A.Nos.781 and 782 of 2008 dated 29-04-2011, because on the date when the proceedings under the Highways Act was initiated, the authorities could not have proceeded with the matter, since the lands were covered under the acquisition proceedings initiated under the Industrial Purposes Act, which was the subject matter under challenge in those writ appeals.

10. In view of the above, the impugned proceedings are held to be bad in law and are liable to be quashed. Accordingly, the writ petitions are allowed and the impugned proceedings are quashed.

11. The learned Special Government Pleader submitted that the lands which are subject matter of these writ petitions are urgently required since it is adjoining the over-bridge and due to the pendency of these proceedings, the matter could not be proceeded further causing irreparable hardship to the motoring public.

12. In any event, this Court does not foreclose the right of the respondents to initiate fresh proceedings in accordance with law, since the land owner has to be dealt with only as per

the Rules and Regulations provided under the Statute, though right to property is no longer a fundamental right, but a statutory right and if the petitioners are to be thrown out of their property, the same has to be done in the manner known to law. Therefore, this Court has interfered with the acquisition proceedings only on the technical ground mentioned above, and this will not preclude the respondents from initiating fresh proceedings in accordance with law.

13. The Officials, who are present in Court submit that they are ready and willing to negotiate with the land owners. Mr. R. Subramaniam, learned counsel appearing for the petitioners submitted that the petitioners are also ready and willing to hold discussion with the authorities.

14. Costs made easy. The connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

glp

To

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2. The Tashildhar
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Oragadam, Industrial Park Road,
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Kancheepuram District

+4 ccs to Mr.R.Subramanian Advocate sr.14576
14577

+1 cc to Government Pleader sr.15058

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