

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON : 08/09/2014

DATED : 07/01/2016

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.18065 of 2007

and

M.P.No.2 of 2007

Vaidiyalingam Petitioner

vs.

1.The Union Territory of India,
Rep. by The Lt. Governor of Puducherry,
Puducherry.

2.The Land Acquisition Officer
cum the Deputy District Collector
(Revenue) South, cum Land Acquisition Officer,
Villianur, Puducherry.

3.Pondicherry Industrial Promotion
Development and Investment Corporation Ltd.,
Rep. by its Managing Director,
60, Romain Rolland Street,
Pondicherry-605 001. Respondents
(R3-impleaded as per order dated 23.07.2014
in M.P.No.3 of 2007 in W.P.No.18065 of 2007)

PRAYER: Writ Petition filed under Article 226 of the
Constitution of India for a Writ of Certiorari, to call for
the records on the file of the first respondent in G.O.(Misc)
No.28, dated 11.03.2005 and quash the same as illegal,
incompetent, Unconstitutional and without jurisdiction.

For Petitioner : Mr.V.Raghavachari

For Respondents: Mr.R.Sreedhar for R-1 and R-2
Government Advocate (Pondicherry)
Mr.T.P.Manoharan for R-3

O R D E R

The petitioner has submitted that the Union
Territory of Puducherry had notified in the impugned order to
acquire the petitioner's lands for Special Economic Zone, and

Notification under Section 4 read with Section 17(A) of the Land Acquisition Act, dispensing with the enquiry under Section 5(A) of the Act was issued. His lands along with that of the third parties are the subject matter of acquisition. However, the petitioner is predominantly affected since all his holdings are the subject matter of acquisition. His lands are located in Survey Nos.95/1, 3, 4, 5, 8, 167/11, 167/9 and 175/13, measuring 3 kani 20 kuzhies of Setharapet Village, Puducherry. He was not put on notice of the proceeding any time before. It was also not notified in the locality or published on papers circulated in the area. The respondents are aware of his ownership as patta in respect of the property stands in his name in patta No.260, 111, 177, 1174, 325 and 158. There is no dispute as regards the ownership and his entitlement in and over the property. There is no dispute either that these are the only agricultural lands that he owns and possesses. He has a family consisting of 9 members and it is an agricultural family. Except agriculture, they do not know of any other business or vocation. His only concern is that the Government of Pondicherry is keen on destroying agriculture and farmers as a whole. They are attempting to commercialize agricultural lands for a different purpose. The notified lands alone are left in his village for doing agriculture. He is agonized to point out that landowners of yesterday are pushed to work as coolies in the industries.

2. The petitioner has further submitted that his lands were acquired for PIPDIC. Repeated acquisitions had affected their financial position badly and their status had been reduced marginally. At the age of 60, the State cannot expect him to engage in a different employment or search for new avenues for survival. The Indian Government has not got any scheme for providing pension for the aged and infirm. Under these circumstances, the least the Government could do is to allow the landowners to enjoy their holdings and make a living for themselves. The petitioner has further submitted that the Government has not even put him on notice before acquisition. He came to know of the acquisition only on 10.05.2005 and immediately, he had lodged the objections before the Chief Minister of Pondicherry and copies of it were sent to the respondents. Except acknowledging the letter, he has not got any responsible reply from the State so far. The petitioner has further submitted that in Pondicherry, there are already adequate business houses, hospitals and colleges and it does not require an economic zone in particular. The object of Special Economic Zone is to enable the business houses to come together in a particular area on an encouragement provided by the State. The State has already acquired substantial properties for PIPDIC and established several business. The agricultural lands alone now deserve protection of and from the State. They are the target of the real estate agents and the Government, equally. Many of the

agriculturists have to flee to Karnataka for employment. Ironically, there is an interstate dispute between the Governments for Cauvery water, when the lands are indiscriminately acquired from the agriculturists and they are pushed to the brink of poverty and agriculture operation had been made difficult. It is needless to state that many of the farmers commit suicide on account of this hapless situation.

3. The petitioner has further submitted that the Constitution of India mandates under Article 48 that the State shall endeavour to organize agriculture and animal husbandry on modern and scientific lines, take steps for preserving and improving the breeds and prohibiting the slaughter of cows and calves and other milch and draught cattle. The manner in which the lands are acquired by the State obviously reflects breach of constitutional goal and failure to honour the promise made by the State to its citizen. The petitioner has further submitted that the annihilation of the agricultural lands for a non-existent purpose is deplorable. Promoting industry and formation of economic zone is not sanctioned by the Constitution of India. Primary objects achievable by the State should gain predominance to an unworthy object of promoting commercialization on agricultural lands. If the State is really interested in improving its industries it can well go in for waste lands that are under its control instead of punishing the agriculturist by depriving them of their holdings. The petitioner has further submitted that in the present case, the Rules had been breached. The respondents have no authority to invoke Section 17 3(A) of the Land Acquisition Act. On 07.04.2006, he was called upon to appear on 23.05.2006 and directed to submit the original records for perusal. It is further stated that in the event of non-submission of the records 80% of the compensation would be paid to eligible claimants. Obviously, the procedure resorted to by the respondents is not in consonance with the Land Acquisition Act. The Act contemplates upon payment of 80% of the compensation preceding disturbance to the owners. In the present case, the compensation was not even offered earlier. Even, today, he continues to be in possession of the property and pays the charges to the Pondicherry Electricity System for their service.

4. The petitioner has further submitted that the recourse to Section 17 of the Land Acquisition Act has become a matter of routine in Puducherry. Urgency clause is invoked without application of mind. In the present case, the Lt. Governor had not even accorded approval for invocation of Section 17. There is no urgency either to dispense with Section 5A. This would be obvious from proceedings of the respondents themselves. Acquisition proceeding was initiated on 11.03.2005 by issuance of Section 4. Notice under 17 3(A) had been issued 13 months later. Only in the event of the

acquisition proceedings not brooking a months delay recourse to Section 17 could be made as per the rulings of the Hon'ble Supreme Court. The petitioner has further submitted that casually, the respondents cannot invoke Section 17 and attempt to deprive the owner of his holdings and his valuable right of hearing and that of the public. The State engages itself on the tax payers money and every person interested in the land and against the acquisition are entitled to lodge their obligations. Urgency is not a ritualistic "Mantra" that could be casually uttered to deprive the citizen of his valuable statutory right conferred under Section 5 A of the Act.

5. The petitioner has further submitted that the Government of Puducherry has no competence to proceed with the acquisition. Lands for special economic zone are to be identified and approved by the Committee constituted under Special Economic Zones Act, 28 of 2005. Existing schemes are also covered under the ambit of the Act. The Committee constituted under the enactment has to work out the feasibility of such schemes and whether at all the same is required for the State. None of the provisions of the said enactment had been adhered to. In fact, there is no reference to the enactment. Hence, the petitioner has filed the above writ petition.

6. The third respondent has filed a counter affidavit and has submitted that the Government of Puducherry has established the third respondent State Financial Corporation for the purpose of promotion and development of industries in the U.T. of Puducherry. It is a Government Company registered under the Indian Companies Act, 1956. It is utilizing public money, developing and allotting Industrial Plots to bonafide entrepreneurs by way of lease and also providing financial assistance for the needy entrepreneurs for establishing Industries in the U.T. of Puducherry. The third respondent has further submitted that the Government of Puducherry has decided to set up Special Economic Zone (SEZ) at Puducherry and nominated the first respondent Corporation (hereinafter called as "the Corporation") as the Implementing / Nodel Agency for setting up the said SEZ. The Managing Director of the Corporation has been appointed and functioning as the Member Secretary-cum-Executive Director of the Special Economic Zone (SEZ) Project at Puducherry. The third respondent has further submitted that for establishing the SEZ at Puducherry, after inspection of a lot of lands in various areas in the U.T. of Puducherry, the Site Selection Committee has taken into consideration the nature of requirement and assessed that the land situated in Sethurapet and Karasur Revenue Villages are more suitable and convenient for the purpose. Therefore, a proposal for acquiring the total extent of 351.32.50 HAC was sent to the Government of Puducherry. Even out of the said extent, the second respondent

herein and the Corporation have made joint inspection of those lands, excluded the residential, industrial and public utility areas from the proposal and decided to acquire an extent of 333.32.50 HAC.

7. The third respondent has further submitted that pursuant to the above decision, the Government had issued Notification under Section 4(1) of the Land Acquisition Act, dated 11.03.2005, notifying to acquire 333.32.50 HAC of land. Further, by taking into consideration of the urgency in the implementation of the SEZ Project in Puducherry, the Government has invoked the urgency provisions under Section 17 of the Land Acquisition Act. None of the landowners, including the petitioner have challenged the said Notification, much less, the correctness of the decision to invoke the Urgency Provisions therein. The landowners had only made representations, requesting the Government to delete their lands from the Acquisition Proceedings on various grounds. Thereafter, the Revenue Department and the Corporation had made a joint inspection of all the lands in the presence of the local M.L.A. of the Village Panchayat, Villagers, etc., assessed the location of those lands and also as to whether the SEZ Project can be conveniently established and operated without acquiring those lands and identified an extent of 14.46.95 HAC as deletable from the acquisition. Based on the said assessment and identification, the Government had issued G.O.Ms.No.155, dated 02.12.2005, deleting the said extent from the acquisition.

8. The third respondent has further submitted that thereafter, the Government had issued a Declaration under Section 6 of the Land Acquisition Act, dated 02.01.2006, declaring an extent of 318.85.55 HAC is required for establishment of the SEZ. None of the landowners have challenged the Notification under Section 4(1) of the Land Acquisition Act and the Declaration under Section 6 of the Land Acquisition Act on any ground. Therefore, the Corporation has deposited the entire compensation amount with the Government for making payments to the landowners. After such deposit was made, the second respondent herein has issued Notice to the landowners for payment of 80% of the compensation under Section 17(3)-A of the Land Acquisition Act, heard them collect their original title documents and made ready the cheques for payment of 80%. Further, after following the procedures provided under the Land Acquisition Act, the Government has issued Notice to all the landowners and taken possession of the entire acquired land of 309.64.27 HAC on 20.07.2006 and also handed over possession of the same to the Requisitioning Department viz., the Corporation on 12.01.2007. Hence, the third respondent entreats the Court to dismiss the above writ petition.

9. The learned counsel appearing for the petitioner has submitted that the Union Territory of Puducherry had issued a notification under the old Land Acquisition Act, after invoking emergency provisions, for Special Economic Zone. The petitioner's lands to an extent of 3 Kanies and 20 Kuzhies in Setharapet Village, Puducherry, are the subject matter of the acquisition. The respondents had not published notification for the acquisition proceedings in any newspaper being circulated in the local area. The subject matter of lands are agricultural lands. The petitioner and his family members have involved in agricultural operations and they had depended upon the subject lands for their livelihood. Now, the respondents attempting to acquire the agricultural lands for commercial purpose. The petitioner came to know of the acquisition proceedings during 2005. Immediately, he had made a representation to the Hon'ble Chief Minister to discharge the subject lands from the acquisition proceedings. Actually, the subject lands have not been required for the purpose of Special Economic Zone. The acquisition proceedings have been initiated by the respondents, without following the procedures of Land Acquisition Act and the petitioner has not been paid any compensation.

10. Further, the learned counsel has submitted that the petitioner is in physical possession and enjoyment of the subject lands. He is also remitting mandatory taxes to the statutory authorities. The Land Acquisition Officer has not conducted any enquiry, which is mandatory under Section 5 of the Land Acquisition Act.

11. The learned Government Advocate appearing for the respondents 1 and 2 has submitted that on the request of the third respondent, the subject lands along with other lands were acquired for the purpose of promotion and development of industry. The first respondent had issued a Government Order to acquire the subject lands for the said purpose. Hence, the second respondent had acquired the subject lands under emergency provisions of the old Land Acquisition Act and handed it over to the third respondent. Therefore, the learned Government Advocate has prayed for dismissal of the writ petition.

12. The learned counsel appearing for the third respondent has submitted that the subject lands and other lands, to an extent of 351.32.50 Hectares, were acquired for the purpose of promotion and development of industries in the Union Government of Puducherry. Thereafter, the third respondent along with Revenue Department, had made a joint inspection of all the acquired lands. Subsequently, an extent of 14.46.95 Hectares of land was discharged from the acquisition proceedings. The rest of the acquired lands was handed over to the third respondent on 12.01.2007. In such

circumstances, the learned counsel has prayed for dismissal of the writ petition.

13. On considering the facts and circumstances of the case and the submissions of the learned counsel on either side and on perusing the typed set of papers, it is seen that the second respondent had acquired the subject lands by invoking emergency provisions of the Land Acquisition Act and after acquisition he had handed over the said lands to the third respondent. Further, the respondents had given a publication in the Government Gazette, after assessing compensation for the subject lands. In such circumstances, the writ petition does not generate sufficient force to allow it and hence the same is liable to be dismissed.

14. 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

r n s / krk

To

- 1.The Lt. Governor of Puducherry,
Union Territory of India,
Puducherry.
- 2.The Land Acquisition Officer
cum the Deputy District Collector
(Revenue) South, cum Land Acquisition Officer,
Villianur, Puducherry.
- 3.The Managing Director,
Pondicherry Industrial Promotion
Development and Investment Corporation Ltd.,
60, Romain Rolland Street,
Pondicherry-605 001.

+1 CC to MR.V.Raghavachari Advocate. SR.NO. 859
+1 CC to Govt.Pleader cum Public Prosecutor.Pondicherry
SR.NO. 1990

W.P.No.18065 of 2007 &
M.P.No.2 of 2007

CO-PA

JD 27/01/2016

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