IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.10.2017

Delivered on : 25.10.2017

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A No.222 of 2014

1.The Chairman and Managing Director,
TACID, Chennai, Now
State Industries Promotion Corporation of Tamilnadu Ltd.,
No.18-A, Rukmani Lakshmipathi Salai,
Chennai - 600 008.

2.The Project Officer,
SIPCOT Industrial Growth Centre,
Periyaveetvampalayam Post,
Perundurai, Erode District.

...Appellants/Respondents 3 & 5

Vs

1.The State of Tamilnadu,
Rep. by Secretary to Government,
Industries Department,
Fort St.George, Chennai - 600 009.

2.The Special Tahsildar,
(TACID Land Acquisition)
Unit 4, Bharathi Main Road,
Perundurai Taluk, Erode District.

3.The Revenue Divisional Officer,
Erode, Erode District.

... Respondents 1 to 3 /
Respondents R1,R2 & R4

4.K.C.Kandasamy
5.K.C.Natrajan

6.K.C.Duraisamy

7.K.C.Murthi ... Respondents 4 to 7/Petitioners

Prayer:- Writ Appeal filed under clause 15 of the Letter Patent against the order dated 04.09.2013 made in W.P.No.37089 of 2007.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

Praying in WP:Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the Respondents to release the lands comprised in RS.Nos 444 455/1 and 455/1 and 455/2 in Ingur village perundurai Taluk ERode District with an extent of 3.99 hectares to the petitioners.

For Appellants : Ms.Sudharshana Sunder

For Respondents: Mr.A.Zakir Hussain for R1 to R3
Mr.M.Madhu Prakash for R4 to R7

J U D G M E N T

K.K. SASIDHARAN,J.

Introductory

Whether the failure on the part of the Land Acquisition Officer to deposit the compensation amount before the Reference Court would make the Award bad and the land acquisition a nullity, is the question that arises for consideration in this intra court appeal filed by the State Industries Promotion Corporation of Tamilnadu Limited (hereinafter referred to as "SIPCOT"), a public sector undertaking constituted for promoting industries in the State of Tamilnadu.

Facts in Nutshell

2. The Government of Tamilnadu at the instance of SIPCOT acquired 2655 acres of land in Ingur and Perundurai, Erode District, which includes 3.99.0 hectares of land owned by the respondents 4 to 7 for setting up Industrial Growth Centre at Perundurai. Notification under Section 4(1) of the Land Acquisition Act (hereinafter referred to as " the Act"), dated 24 November, 1995 was approved by the Government and it was published in the Tamil Nadu Gazette on 20 December, 1995. Thereafter, statutory declaration was made. It was followed by the Award dated 31 December, 1997. The Land Acquisition Officer valued the property of the respondents 4 to 7 at Rs.5,45,427/-. Thereafter, possession was taken on 21 November, 2001 and 7 January, 2004 and it was handed over to SIPCOT. The revenue records were also mutated.

3. The respondents 4 to 7 initiated a writ petition before the writ court in W.P.No.37089 of 2007 for issuance of a writ of mandamus, directing the appellants to release the land primarily on the ground that the Award amount was not deposited before the Civil Court.

4. Before the writ court, the appellants contended that a Demand Draft for a sum of Rs.5,45,427/- was sent to the First Additional Subordinate Court, Erode on 29 May, 2000. The

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

Demand Draft was returned by the Subordinate Court and it was once again sent on 21 May 2001 through registered post. The amount was deposited before the Reference Court for the purpose of registering the land acquisition original proceedings under Section 30 of the Land Acquisition Act and to disburse the amount to the land owners. According to the appellant, the land was already utilised for the purpose for which it was acquired.

5. The learned single Judge allowed the writ petition with an observation that the appellants have flouted the statutory provisions and deliberately withheld the compensation amount and as such, the same would be a ground to hold that the acquisition proceedings are vitiated. The learned single Judge quashed the acquisition and directed the appellants to release the land to the respondents 4 to 7. Feeling aggrieved, the SIPCOT is before this Court.

Submissions

6. The learned counsel for the appellants contended that there is no merit in the contention that the Award amount was not deposited before the Reference Court. According to the learned counsel, the Award amount is very much available with the Reference Court and the delay in numbering the Reference by the Civil Court would not give a right to the respondents 4 to 7 to treat the land acquisition as null and void. The learned counsel further contended that the SIPCOT has already used the land for the purpose for which it was acquired and as such, there is no question of releasing the land to the respondents 4 to 7.

7. The learned counsel for the respondents 4 to 7 vehemently contended that there is no evidence produced by the appellants to prove the deposit of the compensation amount. According to the learned counsel, there is a statutory requirement to deposit the Award amount and in view of the failure to comply with the mandatory requirement, the learned Judge was correct in directing release of the land to the respondents 4 to 7.

8. The learned counsel for the respondents 4 to 7 placed reliance on the judgment of the Hon'ble Supreme Court in Tukaram Kana Joshi and others through Power of Attorney Holder V. Maharashtra Industrial Development Corporation and others [(2013) 1 SCC 353] in support of his contention that the deprivation of property without payment of acquisition would give a right to the land owners to claim release of the property from acquisition.

The Issue

9. The only question that arises for consideration is whether the learned single Judge was correct in declaring that the acquisition proceedings are vitiated and directing the

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

release of the land to the erstwhile land owners on account of failure to deposit the compensation amount in accordance with the Land Acquisition Act.

Analysis

10. The Government of Tamilnadu pursuant to the request made by the appellants acquired 2655 acres of land in Ingur and Perundurai in the district of Erode for setting up Industrial Growth Centre at Perundurai. The land owned by the respondents 4 to 7 was part of the land acquired on behalf of SIPCOT. The Government approved the proposal and issued a notification under Section 4(1) of the Act and it was published in the Government Gazette on 20 December, 1995. The statutory declaration under Section 6 of the Act was published in the Tamilnadu Government Gazette on 31 January, 1997 and in the local news paper. The Land Acquisition Officer conducted enquiry and thereafter, Award was passed on 31 December, 1997. The Land Acquisition Officer fixed a sum of Rs.5,45,427/- towards compensation payable to the respondents 4 to 7.

11. The counter affidavit filed by the SIPCOT indicates that a Demand Draft for Rs.5,46,427/- was forwarded to the First Additional Subordinate Court, Erode for payment to the land owners. The Reference Court returned the Demand Draft along with the Reference Petition for clarification. Thereafter, SIPCOT represented the documents along with the Demand Draft on 21 May, 2001. The Reference Court appears to have not registered the reference and as such, the payment was not made to the respondents 4 to 7. It is the contention of the appellants that they have discharged their obligation by forwarding the Demand Draft to the Reference Court.

12. The learned single Judge was of the view that the appellants flouted the provisions of the Land Acquisition Act by not making payment and the same would vitiate the very Award. The learned single Judge in Paragraph 15 of the order referred to the decision of the Hon'ble Supreme Court in Tukaram Kana Joshi (cited supra) and observed that non-payment of compensation and deliberate withholding of the same would amount to deprival of constitutional and statutory right and the same would also nullify the land acquisition proceedings. The learned single Judge by allowing the writ petition directed the appellants to release the acquired land to the respondents 4 to 7.

13. The Land Acquisition Act, 1894 is a complete code dealing with the acquisition of land and payment of compensation. The Act contains detailed provisions regarding the satisfaction to be arrived at by the Government for acquiring the land for any public purpose and issuing notification under Section 4 of the Act and following further action. The Land Acquisition Officer designated by the Government was expected to hear the objection of the land owners. Thereafter, the Government shall make a declaration in terms of Section 6 of the Act. The Collector was obliged to

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

fix the compensation by passing the Award within the statutory period. The Award is final and conclusive evidence, as between the Collector and the persons interested. In case, the claimants make a protest, the Collector is obliged to refer the case to the Reference Court under Section 18 of the Act. Similarly, the Collector is obliged to refer the matter to the Reference Court under Section 30 of the Act, in case, there is a dispute with regard to apportionment of compensation among the claimants. Section 31 of the Act deals with payment of compensation or deposit of the amount in Court. Section 34 of the Act provides that in case compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of 9% per annum from the time of so taking possession till payment. The Proviso added by Act 68 of 1984 provides for payment of interest at the rate of 15% per annum in case compensation amount is not paid within a period of one year from the date on which possession was taken. Section 36 of the Act permits the Collector to enter and take possession of the acquired land.

14. There is a statutory obligation on the part of the Collector to pay interest to the land owners, in case, there was a delay in paying the compensation amount. However, there is no statutory provision giving a right to the land owners to make a claim for release of the land solely on the ground of non-payment of compensation amount. The provision regarding payment of interest and enhanced rate of interest, in case, payment is not made within a period of one year from the date on which possession was taken clearly indicates that the remedy of the aggrieved is only to claim interest and there is no right to declare the land acquisition as null and void.

15. The Land Acquisition Officer took possession of the land owned by the respondents 4 to 7 on 21 November, 2001 and 7 January, 2004. There is no dispute with regard to the said fact. The land in Survey Nos. 444 and 455/1 and 455/2 owned by the respondents 4 to 7 were already allotted to M/s.V-Guard Industries Limited for industrial purpose. Therefore, it is clear that the land was used for the purpose for which it was acquired by the SIPCOT.

16. The learned single Judge placed reliance on the decision of the Hon'ble Supreme Court in Tukaram Kana Joshi for issuing a direction to release the land to the erstwhile land owners. In Tukaram Kana Joshi (cited supra), notification under Section 4(1) of the Act was issued on 6 June, 1964 and on account of the failure to take follow up action, acquisition proceedings lapsed. Even then, possession of the land was taken by the Land Acquisition officer and it was handed over to the Maharashtra Industrial Development Corporation Limited. Another notification under Section 4(1) of the Act was issued on 14 May, 1981. Since declaration under Section 6 was not made within the statutory period,

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

proceedings once again lapsed. The land owners were not given compensation in spite of the events relating to lapse of two notifications issued under Section 4 of the Act. It was only under the said circumstances, the land owners approached the High Court of Bombay by filing writ petition. The writ petition was dismissed by the High Court. When the matter was taken up in appeal, the Hon'ble Supreme Court found that the authorities took possession of the land without resorting to the procedure prescribed by the statute. The Supreme Court found that there has been no acquisition and even then the authorities took possession of the land from the poor land owners. In view of the illegality committed by the authorities, the State agreed to issue a fresh notification under Section 4(1) and declaration under Section 6 and Award under Section 11 of the Act. The State further agreed to pay compensation to the land owners immediately after passing the Award. The Supreme Court closed the matter by giving liberty to the land owners to pursue the statutory remedies available to them for enhancement of compensation, if so desired.

17. The judgment in Tukaram Kana Joshi is not an authority for the proposition that in case, the Award amount is not deposited, the acquisition would lapse and the land owners would be entitled to claim release of the land. Even though the authorities, in Tukaram Kana Joshi took possession of the land without acquisition, the Supreme Court refused to interfere in the process and ensured that compensation is paid in accordance with the Land Acquisition Act.

18. The judgment in Tukaram Kana Joshi would not give any right to the respondents 4 to 7 to claim release of the land on the ground that the appellants failed to deposit the compensation amount. In fact, it is the consistent case of the appellants that the amount is still lying with the Reference Court. In any case, non-payment of compensation amount would not give a right to the respondents 4 to 7 either to declare the Award as null and void or to claim release of the land. We are therefore of the view that the learned single Judge was not correct in allowing the writ petition and directing release of the land.

19. We are informed that the reference under Section 30 of the Land Acquisition Act is still pending before the First Additional Subordinate Court at Erode. The Reference Court must be sensitive in a matter like this. The Court is required to adjudicate the claim of the parties, in case, the dispute is with regard to apportionment. Similarly, the Court is obliged to fix reasonable compensation by exercising jurisdiction under Section 18 of the Act. In case, the statement made by the SIPCOT is correct, the Subordinate Court committed a jurisdictional error by keeping the matter pending. We, therefore, direct the First Additional Sub-Court, Erode to number the Reference and decide it on merits

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

as expeditiously as possible, and in any case within a period of three months from today.

20. The order passed by the learned single Judge is set aside. The writ petition in W.P.No.37089 of 2007 is disposed of with a direction to the Reference Court to release the compensation to the land owners in accordance with their right. It is needless to point out that the land owners are entitled to the statutory benefits including interest for the delayed payment.

21. The intra court appeal is allowed as indicated above. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

svki

To

1.The Secretary to Government,
The State of Tamilnadu,
Industries Department,
Fort St.George, Chennai - 600 009.

2.The First Additional Subordinate Jude,Erode
Through the Principal District Judge,Erode.

3.The Special Tahsildar,
(TACID Land Acquisition)
Unit 4, Bharathi Main Road,
Perundurai Taluk, Erode District.

4.The Revenue Divisional Officer,
Erode, Erode District.

5.The Principal District Judge,
Erode.

+4cc to Mr.M.Madhu Prakash, Advocate, S.R.No.75951
+1cc to Mr.Sudharshana Sundar, Advocate SR.No75059(21/11/2017)

W.A No. 222 of 2014

SJ(CO)
GN(17/11/2017)

https://hcservices.ecourts.gov.in/hcservices/