IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2017

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.16316, 16404 and 16405 of 2017
and
Connected Miscellaneous

Dalmia Cement (Bharat) Limited,
Registered off: Dalmiapuram - 621 651.
Lalgudi Taluk, Trichy District,
Rep. By its Senior General Manager.
.. Petitioner in all WPs

-vs-

1.The Union of India,
Rep by the Secretary to Government,
Ministry of Mines,
Department of Mines,
3rd Floor, A wing, Shastri Bhawan
New Delhi 110 001.

2.The State of Tamil Nadu,
Rep. By the Secretary to Government,
Industries (MMA2) Department,
Secretariat, Fort St. George,
Chennai - 600 009.

3.The District Revenue Officer,
District Collectorate,
Ariyalur District - 621 704.

4.M/s.Tamil Nadu Cement Corporation,
Rep. By its Chairman & Managing Director,
Second Floor, LLA Building,
735, Anna Salai,
Chennai - 600 002. .. Respondents in all WPs

PRAYER in W.P. No.16316 of 2017:

Writ Petition filed under 226 of the Constitution of India for issuance of a writ of CERTIORARIFIED MANDAMUS or any other writ or order or direction in the nature of writ calling for the records of the third respondent comprised in its Show Cause Notice No.R.C.D1/6532/2015 dated 02.05.2017 issued by the third respondent and quash the same being arbitrary, illegal and consequently issue a mandamus forbearing the respondents, their officers, employees, subordinates, agents or any other persons claiming or acting under them from in any manner interfering with the peaceful possession and enjoyment of the petitioner's land comprised in Survey No.119/1, 119/2, 119/3, 119/4, 119/5A, 119/5B, 119/5C, 119/5D, 119/6, 119/7, 119/8, 119/9A, 119/9B, 119/9C, 119/9D, 119/9E, 119/9F, 119/9G, 119/10A, 119/10B, 119/10C, 119/10D, 119/10E, 119/10F, 119/10G, 119/10H, 122/1A, 122/1B, 122/1C, 122/1G, 122/1H, 122/1I, 122/1J, 122/1K, 122/1L, 122/1M, 122/1Q, 122/1R and 122/1S in ameenabad Village, admeasuring 7.10.5 hectares.

PRAYER in W.P. No.16404 of 2017:

Writ Petition filed under 226 of the Constitution of India for issuance of a writ of CERTIORARIFIED MANDAMUS or any other writ or order or direction in the nature of writ calling for the records of the third respondent comprised in its Show Cause Notice No.R.C.D1/6533/2015 dated 02.05.2017 issued by the third respondent and quash the same being arbitrary, illegal and consequently forbearing the respondents, their officers, employees, subordinates, agents or any other persons claiming or acting under them from in any manner interfering with the peaceful possession and enjoyment of the petitioner's land comprised in Survey Nos.123/1B, 123/2, 123/3, 128/1A4, 128/1C, 128/1D, 128/1E1, 138/1E2, 128/E3, 128/1F, 128/1G1, 128/1G3 and 128/2 in ameenabad Village, admeasuring 5.05.5 hectares.

PRAYER in W.P. No.16405 of 2017:

Writ Petition filed under 226 of the Constitution of India for issuance of a writ of CERTIORARIFIED MANDAMUS or any other writ or order or direction in the nature of writ calling for the records of the third respondent comprised in its Show Cause Notice No.R.C.D1/5222/2015 dated 02.05.2017 issued by the third respondent and quash the same being arbitrary, illegal and consequently issue a mandamus forbearing the respondents, their officers, employees, subordinates, agents or any other persons claiming or acting under them from in any manner interfering with the peaceful possession and enjoyment of the petitioner's land comprised in Survey No.493/2, 494/1, 494/2A, 494/3A, 494/4, 494/5, 494/6, 494/7, 494/8, 494/9, 494/10, 494/11 and 494/14A admeasuring 2.76.0 hectares in Kairlabath Village, Ariyalur Taluk and District.

For Petitioner : Mr.P.S.Raman, Senior Counsel
(in all Wps) for Mr.R.Parthasarathy

For Respondents: Mr.N.Rajan for R1,
(in all Wps) Sr Central Govt.Standing Counsel

(in all Wps) Mr.V.Ayyadurai for R2 and R3
Additional Advocate General-II
Asstd by Mr. S.Diwakar,
Spl.Govt. Pleader

COMMON ORDER

The Government of Tamil Nadu, Industries Department issued show cause notices dated 02.05.2017 under Sub-Section (2) of Section 3 of the Tamil Nadu Acquisition of Land for Industrial purposes Act, 1997 (Tamil Nadu Act 10 of 1999) (herein after referred as 'State Act') to the Writ Petitioner-Company. Challenging the show cause notices, the present writ petitions have been filed by the Petitioner-Company, firstly, on the ground that the State Government has no jurisdiction or authority to initiate any proceedings under the provisions of the State Act. Secondly, the Petitioner-Company is a lease holder under the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred as 'Central Act'), and such a right conferred under the provisions of the Central Act cannot be taken away by the State Government by invoking the State Act.

2.In this regard, Mr.P.S.Raman, learned Senior Counsel, appearing on behalf of the Petitioner-Company urged that the State Government has no powers over riding the effect of the Central Act, pursuant to which a Lease Agreement was entered between the Writ Petitioner-Company and the State Government. Thereafter, the learned Senior Counsel contended that by giving effect to the provisions of the State Act, Petitioner-Company's right of mining granted under the lease by virtue of the Central Act will be taken away.

3.In this context, Mr.Ayyadurai, learned Additional Advocate General, appearing on behalf of the state Government contended that none of those points can be considered, more specifically, at this point of time, and the authority of the State cannot be questioned, since the subject is in concurrent list of the Constitution of India and the State has got powers independently to deal with land acquisition and, such powers vested with the State cannot be taken away either by the Central Act or otherwise. Secondly, the learned Additional Advocate General contended that the orders under challenge are show cause notices issued under the provisions of the State Act and it is left open for the Petitioner-Company to submit their explanations/objections, if any, to the competent authorities and the same has to be considered subjectively and the decision has to be taken under the provisions of the State Act. Such being the course of action left open to the discretion of the State Authorities under the Act, it is premature to entertain these kinds of writ petitions and State will suffer and the public interest also will have certain negative impacts, if these writ petitions are entertained at this stage and kept it pending for an unspecified period by this Court. Thirdly, the learned Additional Advocate General contended that the lease granted under the provisions of the Central Act is nothing but transfer of right to enjoy the property and such a leasehold right cannot be considered or construed as a Statutory right, more specifically when the State Government has taken a decision to initiate land acquisition proceedings under the provisions of the State Act.

4.Heard, Mr.P.S.Raman, learned Senior Counsel assisted by Mr.R.Parthasarathy, learned counsel for the Writ Petitioner-Company, Mr.N.Rajan, learned Senior Central Government Standing Counsel appearing for the First Respondent and Mr.V.Ayyadurai, learned Additional Advocate General appearing for the respondents 2 to 4.

5.Mr.N.Rajan, learned Senior Central Government Standing Counsel appearing for the First Respondent, Union of India contended that the subject matter of these Writ Petitions is in concurrent list of the Constitution and the State has got powers and if there is any repugnancy and if any action has been initiated by the State, then the Central Act will prevail over the State Act. However, such a point is not in question in these Writ Petitions and it is unnecessary to consider at this stage in this regard.



6.May it that be, this Court has to consider the very primary question regarding the maintainability of these Writ Petitions. Admittedly, the show cause notices are issued under the State Act. Let us now look into the provisions of the State Act. Section 2 Sub clause (c) defines “Industrial area” means any area declared by the Government by notification to be an industrial area; sub clause (e) defines “Industrial purpose” includes the starting of a new industry, the expansion of an existing industry, the development of an industrial area and establishment and the management of an industrial estate; sub clause (g) defines the word owner includes any person, entitled to receive the rent of any land or building, whether on his own or on his behalf of himself and others or as an agent, trustee, executor, administrator, receiver or guardian or who would so receive the rent or be entitled to receive the rent, if the land or building were let to a tenant; sub clause (h) defines the word "person interested" in relation to any land includes all persons claiming or entitled to claim, an interest in the amount payable on account of the acquisition of that land under this Act. A person shall be deemed to be interested in land if he is interested in an easement affecting the land. Chapter II of Section 3 of the said Act deals with the power to acquire land, which reads as follows:

3.Power to acquire land.--

(1) If, at any time in the opinion of the Government, any land is required for any industrial purposes, or for any other purpose in furtherance of the objects of this Act, they may acquire such land by publishing in the Tamil Nadu Government Gazette a notice specifying the particular purpose for which such land is required.

(2) Before publishing a notice under sub-section (1), the Government shall, call upon the owner and any other person, who in the opinion of the Government may be interested in such land, to show cause within such time as may be specified in the notice, why the land should not be acquired. The Government shall also cause a public notice to be given in such manner as may be prescribed. .

(3)The Government may pass an order under sub-section (1) after hearing and considering the cause, if any, shown by the owner or person interested.

Section 4 of the said Act provides land acquired to vest in Government free from all encumbrances. Section 5 deals with use of land acquired. Section 6 is the right to receive the amount. Section 7 regarding the determination of amount.

7.Keeping in mind the provisions of the State Act cited supra, this Court has to analyse the powers of the State under the State Act. When the State has taken a decision to acquire the land for Industrial Purposes, a Notice under section 3(2) of the State Act to the land owners or persons interested has to be issued. Thereafter, on receipt of the objections/explanations, if any, received from the land owners/interested persons, the State has to consider all the materials and the objections submitted and thereafter, take a decision to proceed with the acquisition by passing orders under section 3(1) of the State Act. Subsequently, under the said

Act, a Notification is to be issued. Before issuing the Notification under section 4 of the State Act, reasonable opportunities to all the aggrieved persons by the authorities concerned have to be provided. Thus, the State Act is clear that the notice under section 3(2) has to be issued firstly and, thereafter, by providing opportunities to the aggrieved persons, a decision has to be taken and an order to be issued under section 3(1) of the State Act. Section 3(3) of the State Act made it very clear that the Government may pass an order under sub-section (1), after hearing and considering the objections, if any, shown by the owners or persons interested. Thus, it is unambiguous that receiving of objections/explanations and providing opportunities and hearings to the aggrieved persons, are mandatory under section 3 (3) of the State Act. After completion of these procedures, the State has to issue a Gazette Notification under section 4 of the State Act. Once such a Notification is issued, then the land to be treated as a land belonging to the Government free from all encumbrances. With these facts and circumstances, this Court has to consider the challenge made in these Writ Petitions.

8.These Writ Petitions challenging the show cause notices cannot be entertained in a routine manner. Writ Petitions against the show cause notices may be entertained only on exceptional circumstances viz. (i) if any show cause notice was issued without jurisdiction (ii) the authority issued the show cause notice, has no competency to issue the same (iii) the official has issued show cause notice with a mala fide intention to deprive the right of any person or (iv) issued in violation of principles of natural justice.

9.Let us now look into the manner in which the impugned show cause notices have been issued. The State has identified the land for industrial purposes and issued notices under section 3 (2) of the Act. The further proceedings under the State Act are yet to be commenced and completed. There is no allegation in these writ petitions regarding the jurisdiction, incompetency, mala fides or otherwise. In the absence of any such specific allegations or grounds raised in these writ petitions, the writ petitions cannot be entertained at this stage, warranting any interference under Article 226 of the Constitution of India, since it will create unnecessary enrichment to either of the parties and the Court can never be an instrument to be used for this purpose.

10.Mr.N.Raman, learned Senior Counsel strenuously appraised this Court by stating that the provisions of the Central Act to be taken into consideration before deciding this issue. For that purpose, the learned Senior Counsel referred Section 10(A)

(c) of the Central Act by stating that the right conferred under the Central Act was crystallised through the lease agreement executed on 06.01.2017 between the writ petitioner and the State of Tamil Nadu. When such a lease agreement was in existence and in force and, when the Petitioner-Company is enjoying the benefit of the mining lease, it is not appropriate on the part of the State Government to initiate acquisition proceedings under the State Act and the State has no jurisdiction.

11.To meet out these contentions, this Court is willing to look into the relevant entries in the Constitution of India.

Entry 42 in List III (Concurrent List) reads as follows

"Acquisition and requisitioning of property".

It may be noted here that Entry 33 in List I, Entry 36 in List II and Entry 42 in List III were amended by Section 26 of the Constitution (Seventh Amendment) Act 1956, by which Entry 33 of List I and Entry 36 of List II were deleted and Entry 42 List III was amended to read as set out hereinabove. Entry 33 in List I and Entry 36 in List II conferred legislative power on the Union and the State respectively for acquisition or requisitioning of property for its own purpose. Constitution (Seventh Amendment) Act, 1956, which made the aforementioned amendment was designed to clear the ambiguity about the power of acquisition and requisitioning of property being not a power incidental to any of the legislative powers but an independent power by itself. The object behind the amendment has been thus explained:

"The existence of three entries in the legislative lists (33 of List I, 36 of List II and 42 of List III) relating to the essentially single subject of acquisition and requisitioning of property by the Government gives rise to unnecessary technical difficulties in legislation. In order to avoid these difficulties and simplify the constitutional position, it is proposed to omit the entries in the Union and State Lists and replace the entry in the concurrent list by a comprehensive entry covering the whole subject, (see Statement of Objects and Reasons in respect of Constitution (Seventh Amendment) Act, 1956)."

The scope of Entry 42 in List III of the Seventh Schedule has been considered in detail in Rustom Cavasjee Cooper v. Union of India, AIR 1970 SC 564 : (1970) 1 SCC 248. After tracking the history of different Entries in Lists I and II in relation to acquisition of property, the Court stated as under:

Before the Constitution (Seventh Amendment) Act, Entry 33 List I invested Parliament with power to enact laws with respect to acquisition or requisitioning for the purpose of the Union, and Entry 36 List II conferred upon the State Legislature the power to legislate with respect to acquisition or requisitioning for the remaining purposes. Those entries are now deleted, and a single Entry List III invests Parliament and the State Legislatures with power to legislate with respect to 'acquisition and requisitioning' of property. By Entry 42 in the Concurrent List power was conferred upon Parliament and the State Legislatures to legislate with respect to 'Principles on which compensation for property acquired or requisitioned for the purpose of the Union or for any other public purpose is to be determined, and the form in which such compensation is to be given'. Power to legislate for acquisition of property is exercisable only under Entry 42 List III, and not as an incident of the power to legislate in respect of a specific head of legislation in any of the three list;.......”

In Ishwari Khetan Sugar Milk (P) Ltd. v. State of U.P. AIR 1980 SC 1955 : (1980) 4 SCC 136, following the R.C.Cooper case, the Court stated as follows:

“There is thus a long line of decisions, which clearly establishes the proposition that power to legislate for acquisition of property is an independent and separate power and is exercisable only under Entry 42, List III and not as an incident of the power to legislate in respect of a specific head of legislation in any of the three lists. This power of the State legislature to legislate for acquisition of property remains intact and untrammelled except to the extent where on assumption of control of an industry by a declaration as envisaged in Entry.

52, List I, a further power of acquisition is taken over by a specific legislation.”

In a subsequent Judgment in Shri Krishna Gyanoday Sugar Ltd. v. State of Bihar, AIR 2003 SC 3436 : (2003) 4 SCC 378, a three-Judge Bench expressly rejected the argument advanced on behalf of the petitioners therein that the decision in Synthetics & Chemicals Ltd. v. State of U.P., AIR 1990 SC 1927 : (1900) 1 SCC 109, overrules the decision in Iswari Khetan, Sugar Milk (P) Ltd. v. State of U.P. (Supra), and held that the said argument is plainly untenable. The Bench observed as follows:

“In Synthetics & Chemicals Ltd. v. State of U.P. (supra) case, this Court was concerned with the question of levy of excise duty on alcohol not fit for human consumption and three questions have been posed by this Court for consideration and they are as under:

i. Whether the power to levy excise duty in case of Industrial alcohol was with the State Legislature or the Central Legislature? F i

ii. What is the scope and ambit of Entry 8 of List II of the Seventh Schedule of the Constitution?

III. Whether, the State Government has exclusive right or privilege of manufacturing, selling, distributing, etc. of alcohols including industrial alcohol? In this connection, the extent, scope and ambit of such right or privilege has also to be examined. None of these questions covers the aspects raised before us. Therefore, we hold that the decision in Synthetics & Chemicals Ltd. v. State of U.P. (supra) case does not overrule impliedly or otherwise the decision in Ishwari Khetan Sugar Milk (P) Ltd. v. State of U.P. (supra) case. The argument that at any rate the takeover of distillery is bad cannot also be sustained in as much as the concept of acquisition of an undertaking is an entirely different matter from the control and regulation of the industries.”

12.Thus, it is a settled position of law that power of acquisition is an independent power emanated from Entry 42 of List III in the Seventh Schedule of the Constitution of India and it is not an ancillary or incidental to any of the Entries in List I, List II and List III. Entry 29 of List I does not include the power of acquisition and such a power of acquisition flows independently from Entry 42 of List III.

13.To mitigate the effective arguments advanced by Mr.P.S.Raman, learned Senior Counsel that the Lease Agreement executed by the State with the writ petitioner is undoubtedly an occupied field under the provisions of the Central Act and therefore, the corresponding law under the provisions of the Central Act alone should prevail and the State cannot under the State Act institute any acquisition proceedings. Such an argument deserves to be rejected at the outset, in view of the settled principles as enumerated supra through the Judgments of the Hon'ble Supreme Court of India as well as on the basis of the amendment in the Constitution. Further, there is no conflict between the State Act and the control exercised by the Central Government under the provisions of the Central Act. The lease entered under the provisions of the Central Act is totally independent and it is unconnected with the independent powers of the State Act. There is not even a remote encroachment on the field occupied and there is no reason to accept the narrow interpretation and the expression set out by the learned Senior Counsel in this regard. Therefore, the State has the power of acquisition, is to be held independent power under Entry 42 in

List III of the Seventh Schedule of the Constitution of India and the arguments so advanced in this regard deserves no consideration and accordingly rejected.

14.The parties to the lis are to be restrained from challenging such show cause notices at the stage of initiation of land acquisition proceedings which will stall the entire public welfare and the public schemes, proposed by the State or Central Government. This Court is of the firm opinion that any such cause for stalling the public policies framed by the Central or State Governments has to be dealt with cautiously, because the interest of the public will certainly be affected if such implementation of the policies are either prolonged or stalled. The Courts has to scrutinise whether such a policy is genuinely in the interest of the public or not. In the case on hand, it has been clearly stated in the show cause notices itself that the lands, which are the subject matter of the present acquisitions are needed for industrial purposes to wit for mining of lime stones for Tamil Nadu Cements Corporation Limited, Ariyalur. Therefore, the very object of the acquisitions are also very well explained in the show cause notices. Tamil Nadu Cement Corporation Limited is owned by the State of Tamil Nadu and therefore, the Court cannot have any doubt that the acquisitions are certainly for State and in the interest of the public in general.

15.The parties approaching this Court for personal enrichment to be discouraged and the public interest in general should prevail over and therefore, the challenge to the present show cause notices, are unsustainable. In view of the discussions made out above, this Court is an undoubted opinion that no Writ will lie against the present show cause notices issued under Section 3 (2) of the State Act. Accordingly, the Writ Petitions are to be dismissed in limine.

16.In the result, all the Writ Petitions stand dismissed. Consequently connected Miscellaneous Petitions are closed. However no order as to costs.

Sd/-
Assistant Registrar(CS VI)



//True Copy//

Sub Assistant Registrar

ah/rpa

To

1.The Secretary to Government,
Ministry of Mines, Department of Mines,
3rd Floor, A wing, Shastri Bhawan, New Delhi 110 001.

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4.The Chairman & Managing Director,
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Second Floor, LLA Building,
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+3ccs to Mr.Sathish Parasaran, Advocate SR.No.46123,46124,46126
+3cc to Mr.N.Rajan, Advocate SR.No.45646 to 45648

W.P.Nos.16316, 16404 & 16405 of 2017

SK(CO)
GN(14/07/2017)