IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on: 04.10.2018 Order Pronounced on:21.12.2018

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition No.10991 of 2011
and
M.P.No.2 of 2011

Integrated Finance Company Limited,
Rep. by its Authorized Signatory,
No.10, R Block, II Floor,
Prem Nagar Colony,
South Boag Road,
T.Nagar, Chennai 600017.

... Petitioner

-Versus-

1.Government of Puducherry,
Rep. by Special Secretary to Government,
Department of Revenue & Disaster Management,
Puducherry.

2.Additional Secretary to Government,
Department of Revenue & Disaster Management,
Government of Puducherry,
Puducherry.

3.Deputy Collector (Revenue South) cum
Land Acquisition Officer,
Government of Puducherry,
Villanur, Puducherry.

4.Tax Recovery Officer-2,
O/o The Tax Recovery Officer,
Deivanayagam Pillai Thottam,
Opp. M.G. Road,
Puducherry 605003.

5.Tax Recovery Officer-II,
Assistant Commissioner of Income Tax,
Company Circle-II(3),
121, Nungambakkam High Road,
Chennai 600034.

[R4 & R5 impleaded as per order dated 06.04.2018 in W.M.P.No.10072 of 2018]

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records of the 1st respondent relating to the Government Order in G.O.Ms.No.34, Department of Revenue & Disaster Management, Government of Puducherry dated 17.11.2009 and the consequential proceedings in GO.Ms.42, Department of Revenue & Disaster Management, Government of Puducherry, dated 14.12.2009 and to quash the above said proceedings of the 1st respondent dated 17.11.2009 and 14.12.2009.

For Petitioner : Mr.V.P.Raman

For Respondents : Mr.A.Gandhiraj, GovernmentAdvocate (Puducherry) for R1 to R3

Mrs.Hema Murali Krishnan for R4 & R5

ORDER

This writ petition filed challenging the validity of the Government Order issued by the 1st respondent in G.O.Ms.No.34, Department of Revenue & Disaster Management, Government of Puducherry dated 17.11.2009 and the consequential proceedings in GO.Ms.42, Department of Revenue & Disaster Management, Government of Puducherry, dated 14.12.2009.

2. The case of the petitioner is that, it is a company registered under the Companies Act. It owns land in S.Nos.165/1B, 116/6, 116/7, 113/3 (part) and 113/3 (part) at Kirumambakkam Village, Bahour Commune, Puducherry, having purchased the same from M/s.Pentafour Products Limited, under a registered sale deed dated 04.03.2002 (vide Doc.No.379 of 2002 on the file of the office of the Sub Registrar at Bahour). Subsequent to the purchase, when the petitioner company had applied for patta transfer, their application for patta transfer was rejected by the Tahsildar, Bahour. Challenging the same, the petitioner had filed an appeal before the District Collector, who, in turn, remanded the matter back to the Tahsildar for reconsideration and the matter was pending. In the mean time, one Kannan had filed a suit before the learned II Additional District Court, Puducherry, disputing the title of

the petitioner company over the property in question, which was, however, dismissed in the year 2009. After the dismissal of the suit, once again the petitioner company had taken steps to get the patta transferred in their name. While so, the Income Tax Department appears to have initiated a proceedings against the petitioner in respect of the alleged income tax dues payable by the petitioner company and an order was also passed in the month of November, 2009 attaching the property belonging to the petitioner company including the land in question. Thereafter, to its shock and surprise, the petitioner company had received a communication from the Deputy Collector (Revenue) / Land Acquisition Officer, Government of Puducherry, stating that as the property belonging to the company had been attached and steps have been taken to recover the income tax dues from the compensation amount payable to the petitioner company for the acquired land. Only, thereafter, according to the petitioner company, they came to know that their lands were acquired by the respondents and compensation payable to the petitioner company has been attached by the Income Tax Department. While so, another communication was received by the petitioner on 09.07.2010 from the 3rd respondent, wherein it was stated that a sum of Rs.1,93,87,372/- had been drawn in favour of the Income Tax Recovery Officer towards the payment of 80% of compensation pertaining to the acquired land. Subsequently, the petitioner company were abled to obtain a copy of the notification issued under Section 4(1) and also also a copy of the declaration made under Section 6 of the Land Acquisition Act (hereinafter referred to as 'the Act') wherein they found that the lands belonged to them were acquired for purpose of constructing a residential school in Kirumambakkam Village and a land acquisition proceedings has been initiated by the respondents invoking the urgency clause under Section 17 of the Act thereby dispensing with the enquiry under Section 5-A of the Act and an award was also passed in the month of June, 2010.

3. The further case of the petitioner is that though the lands in question were purchased by the petitioner company much prior to the acquisition proceedings, no notice whatsoever, was issued to the petitioner. As the acquisition of land was initiated only for the purposing of constructing a residential school, there is no necessity to invoke the urgency clause thereby dispensing with the enquiry mandated as per the provision in Section 5-A of the Act and by invoking such an urgency clause, the valuable right of the petitioner company to raise their objections had been taken away by the respondents. The urgency clause can be invoked only in a case where the acquisition proceedings cannot brook a delay of few weeks. But, in the instant case, the acquisition of land was for the purpose of constructing a residential school and therefore, there is no necessity to invoke the urgency clause and the Government had

acquired the land invoking the urgency provision with a mala fide intention in order to deprive the valuable right of the petitioner to raise objection to the acquisition proceedings. Under such circumstances, the petitioner company is before this court seeking to quash the entire land acquisition proceedings insofar as it relates to the petitioner is concerned.

4. The 3rd respondent filed a counter affidavit inter alia contending that at the instance of the Adi Dravidar Welfare Department, Puducherry, land acquisition proceedings was initiated to acquire the land belonging to the petitioner company comprised in various survey number, situate at Kirumambakkam Revenue Village for the purpose of constructing a residential school. Earlier, a proposal was submitted by the Adi Dravidar Welfare Department, Puducherry, in this regard and based on that, the Land Acquisition Officer had conducted preliminary inspection on 07.10.2009 and a notification under Section 4(1) of the Act was approved by the Government under G.O.Ms.No.34, dated 17.11.2009, the same was subsequently published in Daily Newspapers having wide circulation in the locality as per the provisions of the Act. As thelands in question were required urgently for the intended purpose, the lands were sought to be acquired invoking the urgency provision under Section 17(3) of the Act, therefore, the enquiry under Section 5-A of the Act was dispensed with. Subsequently, a declaration under Section 6 of the Act was approved by the Government vide G.O.Ms.No.42 dated 14.12.2009 which was accordingly published in the daily newspapers having wide circulation in the locality. The possession of the lands were also taken on 25.02.2010 and the same were, in turn, handed over to the requisitioning department on the same date, and a date was also fixed for award enquiry. Thereafter, as the petitioner did not appear for award enquiry, Award was passed on 16.06.2010 and a notice under Section 12(2) of the Act was served on the petitioner on 12.10.2010. As the notice of attachment under Section 226(3) of the Income Tax Act was issued by the Income Tax Department, the Land Acquisition Officer had paid 80% of the compensation amount to the Income Tax Department towards income tax dues. The 3rd respondent further contended that earlier notice were issued to erstwhile owner of the land as per the revenue records and all the notification have been duly published as contemplated under the Act. under such circumstances, now, it is not open to the petitioner to raise any dispute. Since the lands were requirement immediately for the intended purpose, the Government had thought it fit to invoke the urgency clause to acquire the land thereby dispensing the enquiry mandated under Section 5-A of the Act.

5. The learned counsel for the petitioner submitted that the petitioner company have purchased the land in question in the

year 2002 and even though the acquisition proceedings were initiated in the year 2009 , without the knowledge of the petitioner company, the compensation amount has been paid to the income tax department. So far as invoking the urgency clause is concerned, only in case where the land is urgently required to implement the project, the emergency provision under Section 17 (3) of the Act can be invoked in order to dispense with hearing of the land owner under Section 5A of the Act. The valuable right of the petitioner company cannot be taken away by simply dispensing with the enquiry under Section 5-A of the Act. In the instant case, according to the learned counsel, the acquisition proceedings were initiated only for the purpose of constructing a residential school and there is no grave urgency in it, but, the respondents had illegally invoked the urgency clause of the Act to acquire the land in question belonging to the petitioner.

6. The learned counsel further submitted that the provisions in Section 17 of the Act can be invoked only in case where the urgency is grave in nature and it cannot brook a delay of one month. But, in this case, there is not only pre notification delay, but, there is post notification delay as well. So far the Puducherry Government have not taken any steps to construct the residential school building and the petitioner came to understand that there was no fund allocated for the project. The learned counsel in support of his contention placed reliance heavily upon the judgement of the Hon'ble Supreme Court in Darshan Lal Nagpal (Dead) By LRs v. Government of NCT of Delhi, (2012) 2 SC 327.

7. Per contra, the learned Government Advocate appearing for the respondent 1 to 3 would submit that even though the petitioner company claims to have purchased the land in question in the year 2002, no mutation had been taken place in the revenue records and the application for transfer of patta only was pending with the Tahsildar concerned and, as such, the acquisition authority had proceeding with only based on the revenue records.

8. The learned government Advocate further contended that insofar as invoking the urgency provision concerned, the Government had applied its mind, as the land were required for the construction of a residential school in a remote village to provide a quality education to the poor and down trodden students, the respondent government after having applied its mind decided to invoke the urgency clause to acquire the land in question for the intended purpose thereby the enquiry mandated under Section 5A of the Act got dispensed with. The materials placed before the court would goto show that the authority have duly applied their mind and duly satisfied regarding the urgency in acquiring the land and thereafter proceeded to initiate the

acquisition proceedings dispensing with the enquiry under Section 5-A of the Act.

9. I have considered the rival submissions and perused the records carefully.

10. The first and the foremost contention of the learned counsel for the petitioner company is that, the acquisition proceeds were initiated only against their vendors and no notice was issued to the petitioner company. Even though the petitioner company had purchased the property in the year 2002, admittedly, no mutation had taken place in the revenue records showing the petitioner company as the owner of the land sought to be acquired. The application of the petitioner for transfer of patta was rejected by the Tahsildar concerned and on appeal by the petitioner, the matter was remanded by the District Collector for re-consideration and the same was pending at the time of issuance of notification under Section 4(1) of the Act. It is the settled law that the land acquisition authorities would only go by the revenue records and issue notice to the owner of the land on whose name the revenue records were standing. In the said circumstances, in the notification issued under Section 4(1) of the Act and the subsequent declaration issued under Section 6 of the Act only the name of the vendor of the petitioner company was found place. After the award, based on the communication from the Income Tax Department regarding attachment of the land belonging to the petitioner company, a notice under Section 12(2) of the Act was issued to the petitioner. Since mutation had not been taken place, the land acquisition authority had proceeded to issue notice to the vendor of the petitioner and the petitioner cannot have any grievance over the same.

11. Insofar as the next contention of the learned counsel for the petitioner regarding invocation of urgency clause under Section 17 of the Act is concerned, as there was no real urgency involved for acquiring the land in question for the intended project is concerned, the power of 'eminent domain' to acquire any land under the provisions of the Act is by now well recognized. Equally relevant is the right of the owners of the land by virtue of Article 300-A of the Constitution of India, that they shall not be deprived of their land except by the authority of law such as the procedures contemplated under the Act. One of the valuable rights for the owners of lands is to raise objections opposing the acquisition on justifiable grounds. It is a general rule that before a declaration under Section 6 is made, enquiry under Section 5-A must be held. Conducting an enquiry under Section 5-A of the Act and considering the objection of the land owners for the acquisition proceedings is not empty formality and it is a substantive right

which cannot be taken away, but for good and valid reasons. However, the said right to raise objections under Section 5-A is not absolute in all cases, as under Section 17 of the Act, there are certain exception to Section 5-A of the Act, which read as follows:

> 17. Special powers in cases of urgency.- (1) In cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section (1), take possession of any land needed for public purpose. Such land shall thereupon vest absolutely in the Government free from all encumbrances.
>
> (2) Whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway Administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or ghat station, or of providing convenient connection with or access to any such station, or the appropriate Government considers it necessary to acquire the immediate possession of any land for the purpose of maintaining any structure or system pertaining to irrigation, water supply, drainage, road communication or electricity, the Collector may, immediately after the publication of the notice mentioned in sub-section (1) and with the previous sanction of the appropriate Government, enter upon and take possession of such land, which shall thereupon vest absolutely in the Government free from all encumbrances:
>
> Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours' notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.
>
> (3) ... ...
>
> (3-A) ... ...
>
> (3-B) ... ...

> (4) In the case of any land to which, in the opinion of the appropriate Government, the provisions of sub-section (1) or sub-section (2) are applicable, the appropriate Government may direct that the provisions of section 5-A shall not apply, and, if it does so direct, a declaration may be made under Section 6 in respect of the land at any time after the date of the publication of the notification under Section 4, sub-section (1)."

12. Thus, it is clear that whenever the Government invokes urgency clause under Section 17(1) or unforeseen emergency under Section 17(2) of the Act, it can dispense with the enquiry under Section 5-A of the Act by specifically invoking the provisions of Section 17(4), but, the only requirement is that the Government should apply their mind and satisfy themselves for the invocation of the urgency or unforeseen emergency clauses. The discretion of the Government to dispense with the enquiry under Section 5-A being statutory in nature, it should be exercised on reasonable grounds and there cannot be any arbitrariness. Further, it is also settled law that invoking the emergency provision under Section 17(4) of the Act is the matter of subjective satisfaction of the Government and it is an administrative decision based on the materials available on record. Normally, it is not open to the court to make a scrutiny of the propriety of the satisfaction of the Government. However, when invocation of emergency provision is being challenged , the Government must produce appropriate materials to satisfy the court that the decision was taken after due application of mind and based on the materials available before the authorities. The Hon'ble Supreme Court in Anand Singh v. State of Uttar Pradesh, (2010) 11 SCC 242 has held as follows;

> "43. The exceptional and extraordinary power of doing away with an enquiry under Section 5-A in a case where possession of the land is required urgently or in an unforeseen emergency is provided in Section 17 of the Act. Such power is not a routine power and save circumstances warranting immediate possession it should not be lightly invoked. The guideline is inbuilt in Section 17 itself for exercise of the exceptional power in dispensing with enquiry under Section 5-A. Exceptional the power, the more circumspect the Government must be in its exercise. The Government obviously, therefore, has to apply its mind before it dispenses with enquiry under Section 5-A on

the aspect whether the urgency is of such a nature that justifies elimination of summary enquiry under Section 5-A. 44. A repetition of the statutory phrase in the notification that the State Government is satisfied that the land specified in the notification is urgently needed and the provision contained in Section 5-A shall not apply, though may initially raise a presumption in favour of the Government that prerequisite conditions for exercise of such power have been satisfied, but such presumption may be displaced by the circumstances themselves having no reasonable nexus with the purpose for which the power has been exercised. Upon challenge being made to the use of power under Section 17, the Government must produce appropriate material before the Court that the opinion for dispensing with the enquiry under Section 5-A has been formed by the Government after due application of mind on the material placed before it."

13. In another judgement in Radhy Shyam v. State of U.P., reported in 2011(5) SCC 533, the Hon'ble Supreme Court has held as follows:

"77. From the analysis of the relevant statutory provisions and interpretation thereof by this Court in different cases, the following principles can be culled out:

... ...
... ...

(v) Section 17(1) read with Section 17 (4) confers extraordinary power upon the State to acquire private property without complying with the mandate of Section 5-A. These provisions can be invoked only when the purpose of acquisition cannot brook the delay of even a few weeks or months. Therefore, before excluding the application of Section 5-A, the authority concerned must be fully satisfied that time of few weeks or months likely to be taken in conducting inquiry under Section 5-A will, in all probability, frustrate the public purpose for which land is proposed to be acquired.

(vi) The satisfaction of the Government on the issue of urgency is subjective but is

> a condition precedent to the exercise of power under Section 17(1) and the same can be challenged on the ground that the purpose for which the private property is sought to be acquired is not a public purpose at all or that the exercise of power is vitiated due to mala fides or that the authorities concerned did not apply their mind to the relevant factors and the records."

14. This court in Periathambi Mudaliar v. Special Tahsildar (LA), Planning Scheme, Coimbatore reported in AIR 1965 (Mad) 328 has held as follows:-

> "(3) The use of the emergency powers cannot be lightly resorted to and can be applied only in cases or real urgency, for their application would mean that the person whose land is acquired is deprived of a opportunity to make his representations in respect of the existence of public purpose or the need to acquire a particular land or to suggest an alternative land for acquisition. That is a valuable right of the owner. That right can only be deprived of for proper reasons. That does not mean that informing opinion the Collector or the Government are expected to give elaborate reasons. But there must be something on the record to show that the opinion of the Collector or the Government has been reasonably and fairly formed and neither arbitrarily or capriciously. As I said, this court will look to such material so as to satisfy itself as to the proper exercise of the power."

15. Insofar as the contention of the learned counsel for the petitioner regarding pre and post notification delay is concerned, the Hon'ble Supreme Court in Anand Singh v. State of Uttar Pradesh, (2010) 11 SCC 242 had an occasion to consider the pre notification and post notification delay wherein the Hon'ble Supreme Court has held that the delay will have a material bearing on the question of invocation of urgency provision. However, it is subject to the justification by the Government in invoking the urgency provision. The relevant portion of the judgement reads as follows:-

> "48. As regards the issue whether pre-notification and post-notification delay would render the invocation of urgency power void, again the case law is not consistent. The view of this Court has differed on this

aspect due to different fact situation prevailing in those cases. In our opinion such delay will have material bearing on the question of invocation of urgency power, particularly in a situation where no material has been placed by the appropriate Government before the Court justifying that urgency was of such nature that necessitated elimination of enquiry under Section 5-A."

16. The above said judgement was followed by the Hon'ble Supreme Court in Darshan Lal Nagpal v. Govt. (NCT of DELHI) v. (2012) 2 SCC 327 and while referring to the judgement in Anand Singh case cited supra, the Hon'ble Supreme Court has held as follows:-

> "47. It is also appropriate to mention that in paragraph 48 of the judgment in Anand Singh v. State of UP (supra) this Court did take cognizance of the conflicting views expressed on the effect of pre-notification and post- notification delay on the invoking of urgency provisions and observed that such delay will have material bearing on the question of invocation of urgency power, particularly, when no material is produced by the appropriate Government to justify elimination of the inquiry envisaged under Section 5A."

17. In the instant case, after a careful perusal of the records, this court finds that authorities had invoked the emergency provision after receipt of a proposal from the Directorate of Adi Dravidar Welfare Department for acquiring the land, the site in question was inspected by the Sub Collector on 07.10.2009 and he had submitted a proposal for approval of notification under Section 4(1) of the Act on 09.10.2009 and that the Government after having considered the urgency involved, directed the authorities to issue a notification invoking emergency provision and thereafter, notification under Section 4(1) of the Act came to be issued in G.O.Ms.34 dated 17.11.2009 and declaration under Section 6 of the Act was issued on 14.12.2009. Subsequently, the value proposal was approved on 10.10.2010, thereafter, a notice under Section 17(3) of the Act was issued to the land owners on 19.02.2010 and possession of the land was taken on 25.02.2010 and the Government had applied its mind and formed its opinion to invoke the urgency and dispense with the enquiry under Section 5-A of the Act. Hence, in the considered opinion of this court, there was no pre notification delay as contended by the learned counsel for the petitioner.

18. The purpose of acquisition is to provide a residential school to the poor and down trodden people in the remote village to impart quality education to the needy children. Therefore, the Government had decided to acquire the land by invoking the urgency clause. Hence, this court is of the view that the Government has fully justified in invoking the emergency clause by dispensing with the enquiry under Section 5A of the Act. Hence, the contention of the learned counsel for the petitioner cannot be countenanced.

19. For the foregoing discussions, this court is of the view that the writ petition deserves only to be dismissed.

20. In the result, the writ petition is dismissed. No costs. Consequently, connected, MP is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

kmk

To

1.The Special Secretary to Government, Department of Revenue & Disaster Management, Puducherry.

2.The Additional Secretary to Government, Department of Revenue & Disaster Management, Government of Puducherry, Puducherry.

3.The Deputy Collector (Revenue South) cum Land Acquisition Officer, Government of Puducherry, Villanur, Puducherry.

4.The Tax Recovery Officer-2, O/o The Tax Recovery Officer, Deivanayagam Pillai Thottam, Opp. M.G. Road,Puducherry 605003.

5.The Tax Recovery Officer-II,Assistant Commissioner of Income Tax, Company Circle-II(3),121, Nungambakkam High Road,Chennai-34.

+2cc to Mr.V.P.Raman, Advocate sr.no.89394
+1cc to Government Pleader(Puducherry)sr.no.89174

W.P.No.10991 of 2011

ks(co)
nr 25/01/2019