IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.1148 of 2014 and M.P.No.1 of 2014

1.S.Ramakrishnan
2.S.Usha Rani
3.Senthamarai

... Appellants

versus

1.The Government of Tamil Nadu,
rep. by its Commissioner & Secretary,
Department of Adi-Dravidar & Tribal Welfare,
Secretariate, Chepauk, Chennai -9.

2.The District Collector,
Vellore District.

3.The Special Tashildar,
Adi Dravidar Welfare,
Taluk Office of Thirupattur,
Vellore District.

... Respondents

Appeal filed against the order passed by this Court dated 08.07.2014 passed in W.P.No.17992/2014.

PRAYER IN W.P.No.17992/2014:

Writ of Certiorarified mandamus to call for the records from the respondents and particularly the 2nd respondent pertaining to the impugned Cancellate of Acquisition Proceedings Na.Ka. K.10/ 71468/93 dated 26.1.2003 and quash the same and consequently direct the 2nd respondent to acquire the land in S.No.313/5 and 313/6, spread over 0.79.5 Hectares at Pachal Village Tirupathur Taluk, Vellore District in view of the order in W.A. No.30/1997 and 48/1997 (Part) and to provide house sites to the petitioners.

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For Appellants : Mr.P.Vijendran

For Respondents : Mr.M.Karthikeyan
Additional Government Pleader

J U D G M E N T

(Order of the Court made by R.SUBRAMANIAN,J.)

The challenge in this intra-Court appeal is to the order of the learned Single Judge dated 08.07.2014, in and by which, the Writ petition filed by the appellants in W.P.No.17992 of 2014 came to be dismissed for the reason that this Court sitting under Article 226 cannot direct the Government to acquire a particular land.

The facts leading to the filing of the Writ Petition are as follows:-

2. Land of an extent of 0.79.5 hectare was sought to be acquired for the purpose of provision of house sites to the Adi Dravidars residing in Sivrajpet, Thirupathur Taluk. The said acquisition proceedings were initiated in the year 1994 under the Central Act, 1 of 1894. A declaration under Section 6 of the Land Acquisition Act, 1894 was published in the Government gessete dated 17.08.1994 and the award came to be passed on 06.02.1995. The acquisition proceedings were challenged by the land owners in W.P.Nos.16397 of 1994 and 19234 of 1994. The said Writ Petitions came to be dismissed by this Court on 06.02.1995 and 13.07.1995 respectively.

3. Aggrieved, the land owners filed Writ Appeal Nos.30 of 1997 and 40 of 1997. A Division Bench of this Court by its judgment dated 25.06.1997 allowed the appeals quashing the land acquisition proceedings solely on the ground that the awards in question came to be passed after the cutoff date fixed by the Hon'ble Supreme Court in Ananthi Ammal's case reported in 1995 (2) LW 189, wherein, the constitutional validity of the provisions of Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (Act 31 of 1978) were put in issue. The Division Bench while quashing the acquisition proceedings had directed the respondents therein to deliver possession of the lands in question to the appellants viz., the land owners. The Division Bench further observed that the order passed in the Writ Appeals will not in any way preclude the State Government from acquiring very same lands by invoking the provisions of Act 31 of 1978. The directions of the Division Bench are reproduced hereunder.

> "In the result both the Writ Appeals are allowed and the orders passed in W.P.Nos.16397 of 1994 and 19234 of 1994 are set aside. The impugned notification under

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> Section 4 of the Act vide G.O.(3-D) No.859 Adi Dravidar and Tribal Welfare dated 14.12.1993 published in the gezette on 12.01.1994 the Section 6 Declaration in G.O.(3-D) No.502 Adi Dravidar and tribal Welfare dated 22.07.1994 published in the Government Gezette dated 17.08.1994 and the award No.7 of 1994, 95 dated 06.02.1995 are quashed. The respondents are directed to deliver possession of the lands in question to the appellants. The orders now passed will not in any way prevent the State Government from acquiring the very same lands by invoking the provisions of Act 31 of 1978."

4. Pursuant to the order of the Division Bench, the District Collector, Vellore District by his communication dated 15.07.1999 directed the Tahsildar, Thirupathur to carryout necessary changes in village and taluk accounts and handover possession of the land to the land owners or to the legal heirs immediately. Pursuant to the same the Tahsildar, Thirupattur effected the changes.

5. The question of acquisition of the same lands was considered by the Government and the Special Tahsildar (ADW), Thirupathur by his communication dated 13.07.2002 addressed to the District Adi Dravidar and Tribal Welfare Officer, Vellore suggested acquisition of some other lands inasmuch as the value of the land that were subject matter of the earlier proceedings had increased several folds due to lapse of time.

6. The District Collector by his proceedings dated 26.01.2003 accepted the recommendations of the District Adi Dravidar Welfare Officer, Vellore and cancelled the acquisition proceedings. By another communication dated 26.01.2003 the District Collector had recommended that suitable land of a lesser value may be chosen for acquisition under Act 31 of 1978. It is this order of the District Collector dated 26.01.2003 that was challenged in W.P.No.17992 of 2014 by the petitioners who claim to be the beneficiaries of the acquisition proceedings that were quashed by this Court.

7. The learned Single Judge had held that the prayer sought for in the Writ Petition viz., a direction to the Government to acquire an extent of 0.79.5 hectare at Pachal village, Thirupathur Taluk cannot be granted. The learned Single Judge had also took note of the directions issued by the Division Bench and concluded that the Division Bench had only said that it is open to the Government to acquire the very same lands by

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invoking the provisions of Act 31 of 1978. It is the conclusion of the learned Single Judge that the Division Bench in its order in W.A.Nos.30 and 40 of 1997 had not issued positive direction to the Government to acquire the very same land under Act 31 of 1978. On the above findings the learned Single Judge dismissed the Writ Petition.

8. Aggrieved the petitioners are before us by way of Intra-Court appeal. We have heard Mr.P.Vijendran, learned counsel for appearing for the appellants and Mr.M.Karthikeyan, learned Additional Government Pleader appearing for the respondents.

9. Mr.P.Vijendran, learned counsel appearing for the appellants would contend that the order of the Division Bench made in W.A.Nos.30 and 40 of 1997 dated 25.06.1997 would amount to a positive direction for acquisition of the lands under Act 31 of 1978. We are unable to agree. The operative portion of the order of the Division Bench extracted above would show that there was no positive direction to that effect. The positive direction was only with reference to handingover possession of the acquired lands to the land owners. In view of the fact that the land acquisition proceedings initiated under Act 1 of 1894 were quashed by the Division Bench, the Division Bench had only left it open to the State Government to acquire these lands under Act 31 of 1978.

10. Acquisition of land undoubtedly is the power of Government. Whether to exercise such power or not it is exclusively within the domain of the State Government to decide. It is not for this Court to issue a positive direction requiring the State Government to acquire a particular land for any purpose be it for the benefit of the oppressed classes or otherwise. From the available materials it is seen that the State Government had decided not to acquire the land in S.Nos.313/5 and 313/6 of Pachal Village, in view of the fact that the value of the land had increased several folds and it will not be feasible to acquire the land worth several lakhs for the purpose of provision of free house sites to the Adi dravidar people. It was also concluded that it will be a financial burden to the State Government.

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11. In the light of the above facts we are of the considered opinion that the learned Single Judge was perfectly justified in dismissing the Writ Petition on the ground that this Court had not issued a positive direction for acquisition of a particular land for any purpose whatsoever. We do not see any reason to interfere with the conclusion of the learned Single Judge. However, we are also alive to the fact that the petitioners who were the beneficiaries of the acquisition proceedings initiated

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in the year 1994, unfortunately for them the acquisition proceedings were quashed by this Court on the ground that the award in question was passed after the cutoff date fixed by the Hon'ble Supreme Court in Anandiammal's case reported in 1995 (2) LW 189.

12. Hence, we deem it appropriate to give liberty to the petitioners to make a fresh representation to the State Government for allotment of free house sites to them. We also direct the Government to consider any such representation made by the petitioners sympathetically, bearing in mind the fact that they were already beneficiaries of a scheme for allotment of free house sites and the said scheme could not fructify, in view of the fact that the acquisition proceedings were quashed by this Court. We are sure that the State Government will consider the representation of the petitioners sympathetically at the earliest. The Writ Appeal is disposed of with the above directions in the circumstances without costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-iii)

//True Copy//

Sub Assistant Registrar

dsa
To

1.The Commissioner & Secretary,
Department of Adi-Dravidar & Tribal Welfare,
Secretariate, Chepauk, Chennai -9.

2.The District Collector,
Vellore District.

3.The Special Tashildar,
Adi Dravidar Welfare,
Taluk Office of Thirupattur,
Vellore District.

+1cc to Mr.P.VIJENDRAN, Advocate, S.R.No. 28221
+1cc to the Government Pleader, S.R.No. 29220

W.A.No.1148 of 2014

RK(CO)
TR(15/05/2018)

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