

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :06.12.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.33144 of 2005

and

W.P.M.P.No.36111 of 2005

1.M.Lakshmanasamy

2.M.Radhakrishnan

3.M.Prabhasankar

4.R.Subasri

...Petitioners

all are represented by their

General Power of Attorney,

Thiru. Subbarayalu, S/o Late Sivaraman,

46, Venkata Subba Reddiar Street,

Ellappillaichavadi Main Road,

Pondicherry-605 005.

vs

1.The Government of Pondicherry,

Revenue Department,

Represented by Joint Secretary to Government (Revenue)

Pondicherry.

2.The Deputy Collector (Revenue North)-cum-

Land Acquisition Officer,

Pondicherry.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records pertaining to the 4(1) Notification issued by the first respondent in G.O.Ms.No.28, Revenue Department, dated 31.08.2004 and also the Declaration issued by the first respondent under section 6 of the Land Acquisition Act, 1894 in G.O.Ms.No.40, Revenue Department dated 11.10.2004 and quash the same in so far as the petitioners' land situate in S.No.147/9-C of 38, Saram Village, Oulgaret Taluk, Pondicherry.

For Petitioners : Mr.K.Goviganesan

For Respondents : Mr.D.Ravichander
Additional Government Pleader
(Puducherry)

O R D E R

The 4 (1) Notification issued by the 1st respondent in G.O.Ms.No.28, Revenue Department dated 31.08.2004 and also the declaration issued by the 1st respondent under Section 6 of the Land Acquisition Act, 1894 in G.O.Ms.No.40, Revenue Department dated 11.10.2004 are sought to be quashed in the present writ petition.

2.The petitioner claims that he is the owner of the agricultural land situated in S.No.147/9-C, Saram Village, Oulgaret Taluk, Pondicherry. The petitioner purchased the said land by way of a Sale deed dated 21.02.1997, registered as Document No.684/1997 measuring One Acre and 80 cents. The 1st respondent issued a Notification under Section 4(1) of the Land Acquisition Act in G.O.Ms.No.28 dated 31.08.2004, to acquire the agricultural lands of the petitioner for construction of Satellite Market at Pakkamudayanpet in Saram Revenue Village invoking urgency clause under Section 17. The 5-A enquiry is dispensed with under Section 17 (4) of the Act.

3.The contention of the writ petitioner is that there was no urgency during the relevant point of time and the respondents had erroneously invoked Section 17(4) of the Act and dispensed with the enquiry, so as to deprive the property right of the writ petitioner. The writ petitioner contends that invoking the urgency Clause provided under the Act is highly unwarranted and therefore, the acquisition proceedings are to be scrapped. This apart, the respondents have notify the said land, which was already sold by way of a registered sale deed. Thus, it is duty of the respondents to issue Section 6 Declaration incorporating the real owners in view of the fact that all the subsequent purchasers were not included in the notification, the acquisition is bad in law.

4.It is further contended that vast Poramboke lands are available in the nearby areas and the Satellite Project can be established in such Poramboke lands instead of acquiring the lands belongs to the individuals.

5.The learned counsel appearing on behalf of the respondents opposed the contentions by stating that at the instance of Deputy Director(MM), Local Administration Department, Pondicherry land acquisition proceedings were initiated to acquire lands to a total extent of 1-04-00 Hectares situated at Re-survey numbers 155/3 and 147/9/C in Saram Revenue Village for the purpose of "Establishment of Satellite Market". As the lands for the above project which includes Fish Market is a part and parcel of the rehabilitation program implemented by the Government through the Agency specially created for this purpose i.e., Project Implementation Agency. As such the project

which is aimed at providing timely assistance and livelihood of the victims of Tsunami, it is deemed fit for proceeding under Urgency Clause and accordingly LAO proceeded the Land Acquisition proceedings invoking Urgency Clause with Prior approval of the appropriate Government. A "Preliminary inspection" of lands under acquisition was conducted by Land Acquisition Officer along with Revenue officials on 28.05.2004 and subsequently Notification under section 4(1) of the Land Acquisition Act, 1894 was issued by the Government vide G.O.Ms.No.28 dated 31.08.2004 of the Department of Revenue and Disaster Management. The Said Notification under Section 4(1) of said Act has been published through four modes as mandated under the Act and "Publication in Government Gazette No.38" on 21.09.2004 is the last mode of publication. The enquiry U/s.5(A) has been dispensed with since the land has been acquired by invoking urgency provision under Section 17(3) of the Land Acquisition Act with the prior approval of the appropriate Government as mandated under the Act.

6.The "declaration" mandated under Section 6 of the said Act for impugned land acquisition proceedings were approved by the Government vide G.O.Ms.No.40 dated 11.10.2004 and the same was published in four modes as required under Act and the last mode of publication of 6 Declaration was published in "State Gazette" No.43, dated 26.10.2004. Thereafter, the office of the respondents had received the objections from the petitioner against the Land Acquisition proceedings.

7.In response to the petition, the Land Acquisition Officer had issued notices for enquiry Under Section 17(3A) to the land owners fixing 9/9/2005 as the date of enquiry. The petitioners have not appeared on the aforesaid date. The petitioners along with other Land owners/interested persons were again called for enquiry U/s.17(3A) fixed on 30.12.2005 and notices in this regard was served to each person. However, the petitioner refused to receive the notices served through Village Administrative Officer(VAO). Hence, the VAO affixed the said notices on the door of the Petitioners (1) Tvl. Lakshmanasamy, Radhakrishnan. Prabashankar Sons of Muthu Sundaram (2) R.Subasri, W/o. Radhakrishnan. As such 80% compensation to the tune of Rs.2,47,12,032/- (Rupees Two Crore, Forty Seven Lakhs, Twelve Thousand and Thirty Two only) consequent to the enquiry under Section 17(3A) has been disbursed and the remaining 20% compensation has also been deposited in the Civil Court deposits, thus satisfying the entire compensation awarded in the Land Acquisition proceedings.

8.In the meantime, the valuation proceedings were conducted and the value was arrived by the Land Acquisition Officer. Subsequent to the approval of valuation, public notices under

Section 9(1) and 10 of the said Act were published by the mode of Public Affixture in the Notice board of Village, Administrative Officer, Saram Revenue Village for communication and enquiry. Thereafter, individual notices under Section 9(3) and 10 were also served to the land owners / interested persons calling for award enquiry. The individual notices under Section 9(3) and 10, fixing 06.10.2006 as the date of award enquiry was served to the land owners and all persons interested including the petitioners. The notices were received by the petitioners themselves.

9.The learned counsel for the respondents contended that as per the Full Bench decision in the case of P.Tamilarasan Vs. State of Tamil Nadu, AIR 1999 Mad.282 and in the case of P.C.Thamika Velu Vs. Special Deputy Collector, AIR 1989 Mad 222, it is observed that "the notice is mandatory only to those persons whose name are found in the revenue records or who are found by the Collector as person interested received through reliable source". Thus, the entire Land Acquisition proceedings had been completed by observing the mandatory provisions of the Act and there is no infirmity as such.

10.On a perusal of the entire facts and circumstances, this Court is of an opinion that the Urgency Clause was invoked mainly on the ground to provide relief to the Tsunami victims during the appropriate time. This apart, the notices were served to the owners as per the revenue records and an enquiry also had been conducted. The owners had already received 80% compensation to the tune of Rs.2,47,12,032/-. 80% of the amount had already been received and 20% of the compensation had been deposited in the Civil Court. Thus, it is left open to the writ petitioners to approach the Civil Court for the purpose of withdrawal of the balance 20% amount.

11.It is brought to the notice of this Court that the Land Acquisition proceedings were concluded in all respects long back and the Satellite Market is now functioning in that locality for many years.

12.The learned counsel for the respondents by obtaining instructions from the officials states that the Fish market is now functioning in respect of the lands acquired from the writ petitioner. However, when the possession is already taken over by the respondents and the Fish market is commissioned in the portion of the land, this Court is of an opinion that no further adjudication is required in respect of the grounds raised in this writ petition. In respect of the portion kept vacant on account of the interim stay granted in the present writ petition, the authorities are at liberty to take a decision and proceed accordingly.

13.This being the factum of the case, this Court is not inclined to consider the relief as such sought for in the present writ petition and, accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

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To

1. The Joint Secretary to Government (Revenue)
The Government of Pondicherry,
Revenue Department,
Pondicherry.
- 2.The Deputy Collector (Revenue North)-cum-
Land Acquisition Officer, Pondicherry.

+1cc to Mr.K.Govi Gnesan, Advocate SR.No.84231

+1cc to Government Pleader SR.No.84683

W.P.No.33144 of 2005

RGN (CO)

GMV (02/01/2019)

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