

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.01.2018

Delivered on : 31.01.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A No.1644 of 2017 and

CMP No.21351 of 2017

- 1.State of Tamil Nadu,
Rep. By its Secretary,
Industries Department,
Fort St.George, Chennai - 600 009.
 - 2.The Special Tahsildar (L) Unit,
SIPCOT, Sriperumbudur Expansion Scheme 2
Sriperumbudur, Chennai - 600 086.
 - 3.The District Collector,
Kancheepuram District,
Kancheepuram.Appellants
- Vs
- 1.Usha Kumar
 - 2.The Managing Director,
SIPCOT, 19-A, Rukmani Lakshmipathy Road,
Egmore, Chennai - 600 008.Respondents

Prayer:- Writ Appeal filed under clause 15 of the Letter Patent to set aside the order dated 23.01.2013 in W.P.No.8141 of 2012.
Prayer in WP.8141 of 2012: Writ petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari to Calling for the records of the 1st respondent in G.O.Ms.No.153 in of Part II Section 2 of the Tamil Nadu Government Gazette Extraordinary No.447 dated 29.11.2011 in relation to Plot No.406 in VGP Vinoth Town Part I situate in No.174, Vadakal Village, Sriperumbudur Taluk, Kancheepuram District comprised in Survey No.174/1A1A measuring 1800 sq.ft. belonging to the petitioner herein quash the same.

For Appellants : Mr.P.H.Aravind Pandian
Additional Advocate General

For Respondents: Ms.Sudarshana Sundar for R2
No appearance - R1

J U D G M E N T

K.K. SASIDHARAN, J.

Introductory

The learned single Judge quashed the land acquisition proceedings initiated by the Government under the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 (hereinafter referred to as "Industrial Purposes Act") by following an earlier order passed by another learned single holding that it was not permissible to delegate the function regarding conduct of enquiry to the District Collector by the Government in spite of Section 23 of the Industrial Purposes Act giving authority to the Government to delegate all the functions under the Act to the Collector, except issuance of notification under Section 3(1), withdrawal of acquisition and power to make rules. Since the earlier decision was on account of an incorrect interpretation of the Industrial Purposes Act by ignoring the notification issued by the Government delegating the function to the District Collector, we consider it appropriate to address the issue regarding the legality and correctness of the view taken by the learned single Judge earlier in W.P.Nos.2055 and 2056 of 2010.

The Facts

2. The Government of Tamil Nadu issued a notification under Section 3(2) of the Industrial Purposes Act acquiring the land owned by the first respondent for industrial purpose. The notification was challenged on the ground that enquiry was not conducted by the Government as contemplated under Section 3(3) of the Industrial Purposes Act.

3. Before the learned single Judge, the first respondent contended that the Government was expected to conduct enquiry instead of delegating the said function to the District Collector. It was further contended that the District Collector was authorised to issue notice to the parties. However, enquiry has to be conducted only by the Government.

4. The learned single Judge by placing reliance on the decision of a learned single Judge in M/s.VGP Housing (P) Limited vs. Secretary to Government, dated 10 July 2012 in W.P.Nos.2055 and 2056 of 2010, quashed the entire proceedings. Feeling aggrieved, the appellants have come up with this intra court appeal.

Submissions

5. The learned Additional Advocate General appearing on behalf of the appellants contended that Section 23 of the Industrial Purposes Act empowered the Government to delegate all the powers under the Act to the District Collector, except the power to issue notification under Section 3(1); withdrawal of the land from acquisition under Section 4(1) and the rule making power under Section 25. The learned Additional Advocate General contended that the Government in exercise of the power under Section 23-A of the Industrial Purposes Act issued a notification in G.O.No.513 Revenue, (LA)(1), dated 2 September 2005 delegating all the powers exercisable under the Industrial Purposes Act by the Government to be exercised by the District Collector of the concerned Districts. It was contended that the learned single Judge incorrectly decided the writ petitions in W.P.Nos.2055 and 2056 of 2010 by holding that the enquiry has to be conducted only by the Government and such function cannot be delegated. The learned Additional Advocate General further contended that the erroneous view taken by the learned single Judge in the earlier writ petitions resulted in quashing the acquisition initiated by the Government and as such, the impugned order following the earlier decision is liable to be set aside.

6. None appeared on behalf of the first respondent.

The Issue

7. The core question is as to whether the District Collector is empowered to conduct enquiry pursuant to the notification under Section 3(2) of the Industrial Purposes Act.

Discussion

8. The Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 is a self contained code providing for acquisition of land for industrial purposes in the State. The State legislature enacted Tamil Nadu Act 10 of 1999 for speedy acquisition of land for industrial purposes in the State. The Act contained a summary procedure for conducting enquiry and to take a decision as to whether the particular land is required for the industrial purpose.

9. Sub-Section (2) of Section 3 of the Industrial Purposes Act provides that the Government shall issue notice calling upon the land owners to show cause as to why the land should not be acquired. The objection received from the land owners must be considered before issuing the notification for acquisition under Sub-Section (1) of Section 3 of the Industrial Purposes Act. Section 4 provides that when a notice under Sub-Section (1) of

Section 3 is published in the Tamil Nadu Government Gazette, the land to which the said notice relates shall, on and from the date of such publication, vest absolutely with the Government free from all encumbrances. There are provisions regarding determination of land value, apportionment and reference to the Court either for apportionment, in case, there is a dispute with regard to entitlement or a claim for enhancement.

10. Section 23-A of the Industrial Purposes Act deals with delegation of powers. The said provision reads thus:-

"23-A Delegation of Powers:

The Government may, by notification, direct that all the powers under this Act except the powers,-

(1) to issue notice under sub-section (1) of section 3;

(2) to withdraw the land from acquisition under the first proviso to sub-section (1) of section 4; and

(3) to make rules under section 25, shall, subject to such conditions, if any, as may be specified in the notification, be exercised by the Collector."

11. It would not be possible for the Government to conduct enquiry in each and every case relating to the acquisition for industrial purposes. The Government therefore delegated all the essential functions under the Industrial Purposes Act to the District Collector concerned except the issuance of Notice under Sub-Section (1) of Section 3 or withdrawal of the land from acquisition under sub-section (1) of section 4 or to make rules under Section 25.

12. The Government in exercise of the power conferred under Section 23-A of the Industrial Purposes Act, issued a notification dated 2 September 2005 authorising the District Collector of the districts concerned to exercise all the functions under the Act. The notification dated 2 September 2005 was not challenged at any point of time. The learned single Judge in the writ petitions in W.P.Nos.2055 and 2056 of 2010 considered a question as to whether it was proper on the part of the Government to conduct enquiry through the Collector and thereafter to issue notification under Sub-Section (1) of Section 3 of the Industrial Purposes Act. According to the learned single Judge, since the notification under sub-section (1) of Section 3 has to be issued by the Government, enquiry should also be conducted only by the Government. The learned

single Judge while quashing the acquisition in W.P.Nos.2055 and 2056 of 2010 though placed reliance on the Government order in G.O.Ms.No.513 dated 2 September 2005, made no attempt to interpret the said notification in the light of Section 23-A of the Industrial Purposes Act.

13. The learned single Judge proceeded as if the enquiry has to be conducted only by the Government. The very purpose of enacting Section 23-A of the Industrial Purposes Act and issuing the notification in G.O.Ms.No.513, dated 2 September 2005 was only for the purpose of giving power to the District Collector to conduct enquiry. In case, the enquiry has to be conducted by the Government in all such cases, the acquisition would be delayed and the very purpose of enacting the special statute would be defeated.

14. The District Collector after conducting enquiry under Sub-Section (2) of Section 3 of the Industrial Purposes Act must place all the materials before the Government. The Government would consider the objection given by the land owners, comments made by the District Collector and ultimately would take a decision as to whether notification under Sub-Section (1) of Section 3 of the Industrial Purposes Act should be issued for acquiring the land. Similar provisions are contained in other enactments, and more particularly in certain special statutes prevailing in the State. This is not a case of delegation by executive order. The statute itself contained a provision for delegation. The Government has exercised the power of delegation and issued the order in G.O.Ms.No.513, dated 2 September 2005.

15. Before the learned single Judge neither the legality of Section 23-A nor the consequential order in G.O.Ms.No.513 dated 2 September 2005 were challenged. The learned single Judge was therefore not correct in interpreting the provision and the related Government Order without a specific challenge in the writ petitions.

16. The view taken by the learned single Judge in the order dated 10 July 2012 in W.P.Nos.2055 and 2056 of 2010 would run counter to the provisions of the Industrial Purposes Act and the spirit behind enacting such a special law for speedy acquisition of land for setting up industries in the State of Tamil Nadu. We are therefore of the view that the law laid down by the learned single Judge in W.P.Nos.2055 and 2056 of 2010 is not a good law.

17. The learned single Judge in the subject writ petition simply followed the earlier order dated 10 July 2012 in W.P.Nos.2055 and 2056 of 2010 and quashed the acquisition. Since we are of the considered view that the Government rightly delegated the function to the District Collector and the District Collector exercised the power as a delegatee of the Government, the learned single Judge was not correct in quashing the land acquisition.

18. We make the legal position clear that the District Collectors are empowered to conduct enquiry after issuing Notification under sub-section (2) of Section 3 of the Industrial Purposes Act and to forward the same with recommendation to the Government for issuance of notification under Sub-Section (1) of Section 3 of the Industrial Purposes Act. We hold that there is no legal requirement mandating that enquiry should be conducted only by the Government. We therefore over rule the decision dated 10 July 2012 in W.P.Nos.2055 and 2056 of 2010.

19. In view of the above, the order passed in the writ petition following the order dated 10 July 2012 is liable to be set aside. In the result, the common order dated 23 January 2013 in W.P.No.8141 of 2012 is set aside. The writ petition in W.P.No.8141 of 2012 is dismissed.

20. In the upshot, we allow the intra court appeal. No costs. Consequently, connected miscellaneous petitions is closed.

Sd/-
Assistant Registrar (CS II)

//True copy//

Sub Assistant Registrar

svki

To

- 1.The Managing Director,
SIPCOT, 19-A, Rukmani Lakshmipathy Road,
Egmore, Chennai - 600 008.
- 2.The Secretary,
State of Tamil Nadu,
Industries Department,
Fort St.George, Chennai - 600 009.
- 3.The Special Tahsildar (L) Unit,
SIPCOT, Sriperumbudur Expansion Scheme 2
Sriperumbudur, Chennai - 600 086.
- 4.The District Collector,
Kancheepuram District, Kancheepuram.

+1cc to Government Pleader SR.No.7972

W.A No.1644 of 2017

SK(CO)
GN(23/02/2018)