

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.02.2018

CORAM:

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

AND

THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A No.1710 of 2017 and

CMP No.21922 of 2017

1.The Secretary to Government,
Industries Department,
Fort St.George, Chennai - 600 009.

2.The District Collector,
Kancheepuram District,
Kancheepuram.

...Appellants

Vs

1.M/s.V.G.P.Housing (P) Ltd.,
Rep. by its Director,
Mr.V.G.P.Rajadas,
VGP Square, Saidapet,
Chennai - 600 015.

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 10.07.2012 in W.P.No.2056 of 2010.

WP.No.2056 of 2010:Petition filed under Article 226 of the Constitution of India, praying this Hon'ble Court to issue a Writ of Certiorari Mandamus calling for the records concerned with the notification bearing No.2/2009/F dated 09.10.2009 issued by the Second Respondent and published in the 'Daily Thanthi'dated 31.10.2009 related to the land in S.No.46/1 measuring 0.35.0 Hectares in S.No.47/2, measuring 0.35.5 Hectares in S.No.49/2 and measuring 0.22.0 Hectares in 50/2 Block-1 Mathur Village, Sriperumbudur Taluk, Kancheepuram District and quash the same.

For Appellants : Mr.P.H.Aravind Pandian
Additional Advocate General
Assisted by
Mrs.A.Sri Jayanthi, Spl.Govt.Pleader

For Respondents : M/s.Shivakumar & Suresh R1
Ms.Sudarshana Sundar for R2

J U D G M E N T

(Judgment of the Court was made by 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") 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-A 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 and the notification dated 2 September 2005 delegating the power to conduct enquiry under Section 3(2) of the Industrial Purposes Act.

The Facts

2. The Government of Tamil Nadu issued a notification under Section 3(1) 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(2) of the Industrial Purposes Act.

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

4. The learned single Judge allowed the writ petition primarily on the ground that notwithstanding the power of delegation under Section 23-A of the Industrial Purposes Act, the enquiry must be conducted only by the Government. The learned single Judge opined that Section 23-A and the related Government Order in G.O.Ms.No.513 Revenue dated 2 September 2005 gives authority to the District Collector only to issue notice and not for undertaking the other process relating to the acquisition including hearing of objection. 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-A 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 District. It was contended that the learned single Judge incorrectly decided the writ petition by holding that the enquiry has to be conducted only by the Government and such function cannot be delegated.

6. The learned counsel for the first respondent while justifying the impugned order passed by the learned single Judge submitted that Rules provide for conducting enquiry by the Government and as such, the Collector was not competent to hear the objection submitted by the land owners. According to the learned counsel, the authority of the Collector is only to issue notice and the further proceedings have to be undertaken only by the Government. Since the Government is the authority to acquire the land, the learned single Judge was correct in quashing the notification on the ground that hearing was conducted only by the District Collector. No other contention is raised by the learned counsel for 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. 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 other provisions relating to 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 power to issue 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 considered the 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 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 enacted by the State. This is not a case of delegation by way of executive order. The statute itself contained a provision for delegation. The Government has exercised the power of delegation conferred by the special statute 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.

16. The learned counsel for the first respondent has taken up a contention by placing reliance on Rule 6 of the Tamil Nadu Acquisition of Land for Industrial Purposes Rules, 2001, which provides for hearing objections by the Government.

17. Section 23-A of the Tamil Nadu Acquisition of Land for Industrial Purposes Act permits delegation of powers by the Government. The Collector, as a delegatee is empowered to conduct hearing of objections in the place of the Government. The fact that Rule 6 contains a provision for hearing of objections by the Government would not nullify Section 23-A of the Act giving the Government the power of delegation. Rule 6 is subject to Section 23-A of the Act. Wherever the name Government is shown in Rule 6, it has to be read as District Collector, in view of Section 23-A of the Act and the notification in G.O.Ms.No.513 Revenue dated 2 September 2005. We therefore reject the contention taken by the learned counsel for the first respondent on the strength of Rule 6 of the Tamil Nadu Acquisition of Land for Industrial Purposes Rules.

18. The power of judicial review conferred on the constitutional court is not to legislate. The Court can only interpret the law and cannot enter the field of legislation. The Court must interpret the provision enacted by the legislature in a particular manner, taking into account the intention of the legislature. It is not for the Court to say that the Government was not correct in delegating certain power to the executive without there being any challenge to the provision permitting such delegation.

19. We make the 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 the enquiry should be conducted only by the Government.

20. In view of the reasons above, the order dated 10 July 2012 in W.P.No.2056 of 2010 is set aside. The writ petition in W.P.No.2056 of 2010 is dismissed.

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

Sd/-
Assistant Registrar(CS IV)

Sub Assistant Registrar

svki

To

The Managing Director,
SIPCOT, 19-A, Rukmani Lakshmipathy Road,
Egmore,
Chennai - 600 008.

2.The Secretary to Governement
Industries Department
Fort St.George Chennai-9

3.The District Collector
kancheepuram District
Kancheepuram

+1 cc to M/s.Shivakumar & Suresh Advocate sr 7737
+1 cc to the government pleader sr 7973

W.A No.1710 of 2017

sv(co)
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