

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2018

CORAM:

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

AND

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.1739 of 2017 and
CMP No.22187 of 2017

- 1.The Government of Tamil Nadu,
Rep. by its Secretary,
Industries and Commerce Department,
Fort St.George, Chennai - 600 009.
- 2.The District Collector,
Kancheepuram District, Kancheepuram.
- 3.The Special Tahsildar (LA)
SIPCOT Division -5,
Sriperumbudur Development Scheme,
Sriperumbudur, Kancheepuram District. ...Appellants/Respondent
1, 2 & 3

Vs

- 1.M/s.Madras Oxygen
Rep. by its Proprietor P.T.Jestice
No.1A, Thirumuruga Nagar,
Mettupalayam Road, Vallakottai, Oragadam
Kancheepuram District. ... Respondent/Petitioner
- 2.Small Industries Promotion Corporation of Tamil Nadu,
Rep. by its Chairman cum Managing Director,
19-A, Rukmani Lakshmipathy Salai,
Egmore, Chennai - 600 008. ...Respondent/4th Respondent

Prayer:- Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order passed by this Court in W.P.No.14253 of 2012 dated 06.03.2013.

Prayer in W.P.No.14253 of 2012:

Writ Petition Under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus Call for the records of the 1st respondent dated 4.4.2012 in G.O.MS No.82 Industries (SIPCOT LA) and published in

the Government Gazette Extraordinary No.93 dated 4.4.2012 under Subsection (1) of Section 3 of the Tamil Nadu Acquisition of Land for Industrial purposes Act 1997 and its consequential Notice of 2nd and 3rd respondent dated 5.5.2012 in R.C.No.45 of 2010 A Unit V for possession issued under Subsection(2) of Section 4 of the said Act and quash the same in so far it related to the petitioner land in Survey No.265/1 in Thirumuruga Nagar Part-1 in Plot No.1A to a total extent of 11,700 sq.ft. in Sriperumbudur Division Kancheepuram District and consequently direct the respondents to forbear them from in anyway interfering with petitioner's peaceful possession and occupation of the above lands.

For Appellants : Mr.V.Anandhamoorthy
Addl.Govt.Pleader

For Respondents: Mr.P.T.Perumal for R1
Mrs.Sudharshana Sundar for R2

J U D G M E N T

(Judgment of the Court was delivered by
K.K.SASIDHARAN, J.)

The writ petition filed by the first respondent challenging the acquisition of land in Survey No.265/1, Thiru Muruga Nagar, Part I, Sriperumbudur Division, Kancheepuram District on various grounds and more particularly on the primary ground that it would not be possible to acquire the factory premises for locating industries by the Small Industries Promotion Corporation of Tamil Nadu (hereinafter referred to as "SIPCOT"), was allowed by the learned single Judge following the order passed by a learned single Judge in V.G.P.Housing (P) Ltd v. The Secretary to Government (W.P.Nos.2055 and 2056 of 2010 dated 10.07.2012). Feeling aggrieved by the order dated 6 March 2013, the appellants are before this Court.

2. The learned Additional Government Pleader contended that the writ petition was allowed solely on the ground that the District Collector has no authority to exercise the power under Section 3(2) of the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 (hereinafter referred to as "Industrial Purposes Act"). According to the learned Additional Government Pleader, the learned single Judge followed the earlier decision in V.G.P.Housing (P) Ltd (cited supra) to quash the land acquisition. According to the learned Additional Government Pleader, the Division Bench has already set aside the order passed in V.G.P.Housing (P) Ltd (cited supra) and as such, the present appeal must be allowed.

3. The learned counsel for the first respondent by placing reliance on the typed set, which contains voluminous documents, contended that the land acquisition was challenged not only on the ground of excessive delegation or incompetency of the District Collector to conduct enquiry. According to the learned counsel, the first respondent has taken up a substantial contention that the land was purchased for locating an industry and thereafter, the industry for manufacturing and supplying cylinders was established. It was contended by the learned counsel that it would not be legally permissible to acquire the factory premises for industrial purpose. The learned counsel placed reliance on the judgment of the Hon'ble Supreme Court in V.K.M.Kattha Industries Private Limited v State of Haryana [(2013) 9 SCC 338] and others in support of his contention.

4. The land owned by the first respondent in Survey No.265/1, Thirumuruga Nagar, Part I, Sriperumbudur Division, Chengalpattu, was acquired by the State for and on behalf of SIPCOT. The notification under Section 3(1) of the Industrial Purposes Act was issued on 5 May 2012. The notification was challenged by the appellant on multiple grounds.

5. The learned single Judge allowed the writ petition by following the order of a learned single Judge in V.G.P.Housing (P) Ltd. Since the order was quashed on the ground that the District Collector was not entitled to exercise the statutory function assigned to the Government, no other contentions were taken up by the learned single Judge for consideration.

6. The affidavit filed in support of the writ petition in W.P.No.14253 of 2012 clearly indicates that the first respondent has taken up a substantial contention with regard to the acquisition of a factory for industrial purpose. The first respondent has produced string of documents in support of its contention. Since the learned single Judge allowed the writ petition on the ground of excessive delegation, there was no occasion to consider the primary ground raised by the first respondent.

7. The order passed by the learned single Judge in V.G.P.Housing (P) Ltd was the subject matter before the Division Bench in W.A.No.1710 of 2017. The Division Bench, by judgment dated 1 February 2018 set aside the order passed by the learned single Judge in V.G.P.Housing (P) Ltd and allowed the appeal filed by the Government. The view taken by the learned single Judge in V.G.P.Housing (P) Ltd is no more the correct law, in view of the judgment in W.A.No.1710 of 2017. The appeal filed by the State therefore deserves to be allowed.

8. However, the moot question is as to whether the ground taken by the appellant should be heard by this Court or it should be relegated to the Writ Court for consideration.

9. The question raised by the first respondent regarding acquisition of factory premises for industrial purpose would go to the root of the matter. The said issue requires to be considered in the light of the law laid by the Hon'ble Supreme Court on the point. We are therefore of the view that the writ petition must be heard on merits.

10. We therefore set aside the order dated 6 March 2013 and restore the writ petition in W.P.No.14253 of 2012.

11. We direct the Registry to post the writ petition before the learned single Judge as per roster for deciding the larger issues raised by the first respondent on merits.

12. The first respondent is stated to be in possession of the acquired land. The Status Quo as on today shall be maintained till the disposal of the writ petition in W.P.No.14253 of 2012.

13. The intra court appeal is allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-iv)

//True Copy//

Sub Assistant Registrar

svki

To

1. The Chairman cum Managing Director,
Small Industries Promotion Corporation of Tamil Nadu,
19-A, Rukmani Lakshmipathy Salai,
Egmore, Chennai - 600 008.
2. The Secretary,
Industries and Commerce Department,
Fort St. George, Chennai - 600 009.

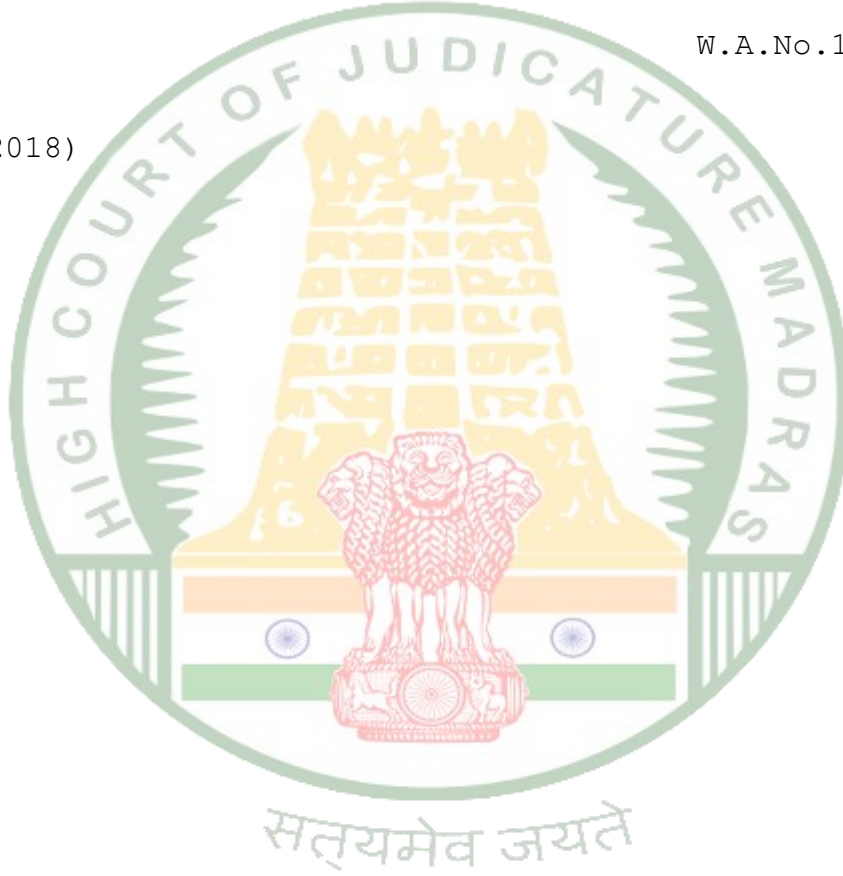
3.The District Collector,
Kancheepuram District, Kancheepuram.

4.The Special Tahsildar (LA)
SIPCOT Division -5,
Sriperumbudur Development Scheme,
Sriperumbudur, Kancheepuram District.

5. The Section Officer,
Writ Section, High Court, Madras.

W.A.No.1739 of 2017

ssv(CO)
TR(14/05/2018)



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