

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2018

CORAM:

THE HONOURABLE MS.JUSTICE INDIRA BANERJEE, CHIEF JUSTICE
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.11427 of 2017
and W.M.P.Nos.12383 & 12384 of 2017

Mr.Balakrishnan,
Son of Kesavan,
The Ex-Panchayat President,
U.Adhanur Village,
Sathappadi Post,
Virudhachallam Taluk,
Cuddalore District.
Petitioner

Vs.

1.State Government of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Industries (NLC) Department Fort St.George,
Chennai - 600 009.

2.The District Collector,
Collectorate, Cuddalore.

3.The Special Tahsildar,
L.A.No.3, Neyveli-2,
Cuddalore District.

4.The Village Administrative Officer,
U.Adhanur Village,
Sathappadi Post,
Virudhachallam Taluk,
Cuddalore District.

5.The Neyveli Lignite Corporation Ltd.,
Rep. by its Chairman and Managing Director,
NH-532, Block-1, M.K.V.Colony, Neyveli,
Cuddalore.

... Respondents

R5 Impleaded as per Order dt.11.12.2017
in W.M.P.No.16163/17 in W.P.No.11427/2017

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records from the 3rd respondent pertaining to the proceedings in pursuance to the urgent memo dated 19.04.2017 in Na.Ka.No.A.3/A/No.1015/2004 issued by the 3rd respondent and quash the same and consequentially forebear the respondents from in any manner initiating any action to evict the villagers in Division Nos.2, 3 & 6 R.S.No.43, 44, 45, 46, 47 & 64 U.Adhanur Village, Virudhachalam, Cuddalore District except by following the procedure enumerated under the relevant provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 in respect of lands belonging to the Schedule Caste communities.

For Petitioner : Mr.Abdul Mubeen

For Respondents : Mr.T.N.Rajagopalan,
Government Pleader
for respondents 1 to 4

Mr.N.Nithianandam
for 5th respondent

ORDER

This writ petition, purported to be in public interest, has been filed by a former Panchayat President of U.Adhanur Village, Sathappadi Post, Virudhachallam Taluk, Cuddalore District, who claims to represent the land owners of U.Adhanur Village, whose lands have been acquired under the Tamil Nadu Acquisition of Lands for Industrial Purposes Act (Act 10/1999) for the benefit of Neyveli Lignite Corporation, the fifth respondent in the instant writ petition.

2. In this writ petition, the petitioner has, inter alia, challenged urgent memo, being Na.Ka.No.A.3/A/No.1015/2004, dated 19.04.2017 issued by the third respondent to the Village Administrative Officer, directing him to inform all villagers by using tom tom that on 29.4.2017 eviction drive would commence at about 9 A.M. for the lands and buildings comprised in

R.S.Nos.43, 44, 45, 46, 47 and 64 in Division Nos.2, 3 and 6 at U.Adhanur Village, Vridhachalam Taluk, and also to be present during the eviction drive with all land revenue records pertaining to the village. From the impugned memo, it appears that the Collector had fixed the dates 20.3.2017 and 5.4.2017 for surrender of the aforesaid lands and buildings, but that had not been done.

3. In the writ petition, the petitioner has also sought an order of injunction restraining the respondents from initiating action for evicting the villagers from the aforesaid land, except by following the procedure prescribed by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "the 2013 Act") in respect of the land belonging to the Schedule Caste communities.

4. By an order dated 4.5.2017 passed in this writ petition, this Court directed that the order of status quo granted earlier with regard to the land in question be maintained till the first week of June, 2017, after which the interim order was not extended.

5. Mr.Abdul Mubeen, learned counsel appearing on behalf of the petitioner submitted that the aforesaid plots of lands were patta lands belonging to villagers, who belonged to the Schedule Caste. Mr.Mubeen referred to the National Rehabilitation and Resettlement Policy, 2007 of the Government and submitted that the requirements under the said Policy for compensation and rehabilitation of members of the Schedule Caste have not been followed.

6. He argued that the villagers had not been rehabilitated in accordance with the Resettlement Policy. Furthermore, those villagers who had been compensated for acquisition of their lands were not paid in accordance with the 2013 Act.

7. Mr.Nithiananadam, learned counsel appearing on behalf of the fifth respondent submitted that the writ petition should be dismissed as the petitioner has deliberately suppressed relevant and material facts. He also questioned the locus standi of the petitioner to initiate this public interest litigation.

8. Mr.Nithiananadam argued that it was not open to the petitioner to challenge a final notice for eviction of encroachments when there was no challenge to the acquisition proceedings initiated long ago under the provisions of the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 (Tamil Nadu Act 10 of 1999), hereinafter referred to as "the 1997 Act" and completed before the 2013 Act came into force.

9. Mr.Nithianandam submitted that the fifth respondent, M/s.NLC India Limited, which was formerly M/s.Neyveli Lignite Corporation Limited, under the control of the Ministry of Coal, Government of India, is engaged, inter alia, in mining lignite and in generating power using lignite. The fifth respondent has three mines and four thermal stations in Neyveli. The fifth respondent has also extended its activities in Barsingsar in Rajasthan and other parts of the country.

10. Mr.Nithianandam, argued that for uninterrupted mining activities and generation of power, the fifth respondent requires large tracts of lands in and around Neyveli. The required land is acquired by the Government of Tamil Nadu on behalf of the fifth respondent under the Land Acquisition laws applicable from time to time. The fifth respondent is the beneficiary of the acquired land being the subject matter of this writ petition and hence an interested party.

11. Mr.Nithianandam argued that acquisition of land for the fifth respondent is a continuous process and not a one time acquisition. As and when land is required, such land is acquired in terms of the applicable Land Acquisition laws.

12. The land in issue in this case was acquired pursuant to notifications issued under the 1997 Act and awards, being Award No.1/2009, dated 30.1.2009, No.7 of 2011, dated 31.3.2011 and No.17 of 2013, dated 8.11.2013, were made long before the 2013 Act came into force. The land owners have received the compensation determined for acquisition of the land.

13. Mr.Nithianandam also argued that most of the land owners and more particularly, the land owners of the properties comprised in R.S.Nos. 43/1, 2, 3, 6, 7, 10, 13, 14, 15, 44/4D, 4F, 4G, 5A, 5D, 5F, 45/3A, 3B, 3C, 7C1, 18A, 18B, 22B, 22C, 23B, 26A, 26B, 27A, 27B, 46/1, 2A, 2B, 2C, 2D, 3, 5A, 5B, 47/3 and 4, had been paid enhanced compensation in terms of orders of the Lok Adalat. Possession of the plots was also made over to the fifth respondent subject to eviction of unauthorized occupants and/or encroachers. Mr.Nithianandam referred to the counter affidavit of the fifth respondent and in particular a table giving the particulars of the awards, the date of making over of possession, the number of awardees to whom enhanced compensation had been paid pursuant to Lok Adalat proceedings.

14. Mr.Nithianandam further submitted that the fifth respondent had to take up the work of diversion of Paravanar water channel in connection with operation of its Second Mine, as the water channel was close to the Mine Cut Face and there was possibility of seepage of water into the mine. The land is

necessary for the diversion, which is nearing completion, but progress has been held up by reason of unauthorized occupation and encroachments.

15. Mr.Nithianandam submitted that in view of the interim order dated 28.4.2017 of this Court, work has come to a standstill. However, the interim order was never extended after the first week of June, 2017 and there was no reason for the fifth respondent not to proceed with work after the first week of June, 2017.

16. Mr.Nithianandam argued that the credentials of the petitioner were doubtful and in any case information given by him is incorrect, vague and indefinite. Relying on the decision of the Supreme Court in Dr.B.Singh Vs. Union of India and Others, reported in (2004) 3 SCC 363, Mr.Nithianandam argued that this public interest litigation is not maintainable.

17. Mr.Rajagopalan, learned Government Pleader appearing for the third respondent, being the Special Tahsildar, submitted that the fifth respondent had requested the third respondent to acquire lands in R.S.Nos.43, 44, 45, 46, 47 and 64 in Division Nos.2, 3 and 6 at U.Adhanur Village, Vridhachalam Taluk, for carrying out the proposed diversion of Paravanar and facilitating Mine-II expansion to avoid seepage of water into mines. Soon thereafter, action was initiated for acquisition of land under Section 3 of the 1997 Act. The requisitioning body, i.e., the fifth respondent, paid compensation to land owners in two instalments - the first on 22.2.2007 and 14.2.2007 and the second on 27.1.2009 and 29.3.2011. He submitted that compensation was duly paid after which the acquired lands were handed over to the fifth respondent on 26.2.2013 and 31.12.2013 respectively.

18. Mr.Rajagopalan submitted that the petitioner having filed a false and misleading affidavit in support of the writ petition, the writ petition is liable to be dismissed with exemplary costs. In support of his aforesaid submission, Mr.Rajagopalan cited Sciemed Overseas Inc. v. BOC India Limited and others, reported in (2016) 3 SCC 70, where the Supreme Court upheld imposition of cost of Rs.10,00,000/- on the petitioner for filing a false and misleading affidavit.

19. In the affidavit of the third respondent, it is also stated that the fifth respondent had provided alternative site to eligible villagers by memo being Na.Ka.No.1015/2004, dated 24.8.2012 in Mattru Kudiyiruppu, Indira Nagar.

20. As argued on behalf of all the respondents, the 2013 Act came into force on 1.1.2014. The entire proceedings in respect

of the acquisition of land in issue in this writ petition completed before the 2013 Act came into force. The 2013 Act does not have retrospective operation. The writ petition is thoroughly misconceived and liable to be dismissed.

21. As held by the Supreme Court in Dr.B.Singh, supra, public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest, private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to the citizens.

22. The aim of public interest litigation should be redressal of general public wrong or public injury. Public interest litigation should not be publicity oriented or prompted by personal vendetta. The Court has to be satisfied about the credentials of the petitioner, the prima facie correctness or nature of information given by him and that the information so given is definite and not vague and lacking in particulars.

23. In this case, the Court is not inclined to reject the public interest litigation on the ground of locus standi of the petitioner, as the petitioner is a former President of the Village Panchayat fighting for the cause of land losers.

24. Public interest litigations are a relatively new genre of litigations, where the concept of locus standi stands diluted. It is based on the principle of Ubi Jus Ibi Remedium, i.e., wherever there is a wrong, there is a remedy. Wherever there is a breach of rights, the Court would intervene. However, in deciding a public interest litigation, the Court has to act in accordance with law. Sympathy for the weaker section does not enable the Court to ignore the law or act in contravention of the law.

25. While this Court is not inclined to reject the writ petition only on the ground of locus standi of the writ petitioner, considering that the petitioner is prima facie fighting for villagers whose land has been acquired, the writ petition cannot be entertained on merits in view of suppression of material facts with regard to the entire acquisition proceedings.

26. The writ petition gives the misleading impression as if the respondents have all of a sudden in 2017 initiated land acquisition proceedings without complying with the provisions of the 2013 Act, suppressing the notice under Section 3 of the 1997

Act, the proceedings initiated pursuant thereto culminating in the awards, referred to above.

27. Section 4 of the 1997 Act 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 vests absolutely in the Government free from all encumbrances, except in circumstances prescribed in the two provisos to Section 4(1) of the 1997 Act. The occupation of patta holders whose land has, as aforesaid, been acquired and has vested in the Government has become unauthorised.

28. The land having vested, there can be no question of orders of this Court restraining the respondents from initiating action for evicting encroachers and/or unauthorized occupants from the said land.

29. The writ petitioner has made an incorrect assertion that the impugned memo has been pasted in the temple without providing any compensation and without giving any time to the villagers.

30. In the result, the Writ Petition is dismissed with costs of Rs.5,000/- to be paid by the petitioner to the Tamil Nadu Legal Services Authority within a period of one week from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

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

2.The District Collector,
Collectorate, Cuddalore.

3.The Special Tahsildar,
L.A.No.3, Neyveli-2,
Cuddalore District.

4.The Village Administrative Officer,
U.Adhanur Village,
Sathappadi Post,
Virudhachallam Taluk,
Cuddalore District.

5.The Chairman & Managing Director,
Neyveli Lighthouse Corporation Ltd.,
NH-532, Block 1, MKR Colony, Neyveli, Cuddalore.

6.The Secretary,
Tamil Nadu Legal Services Authority
Chennai.

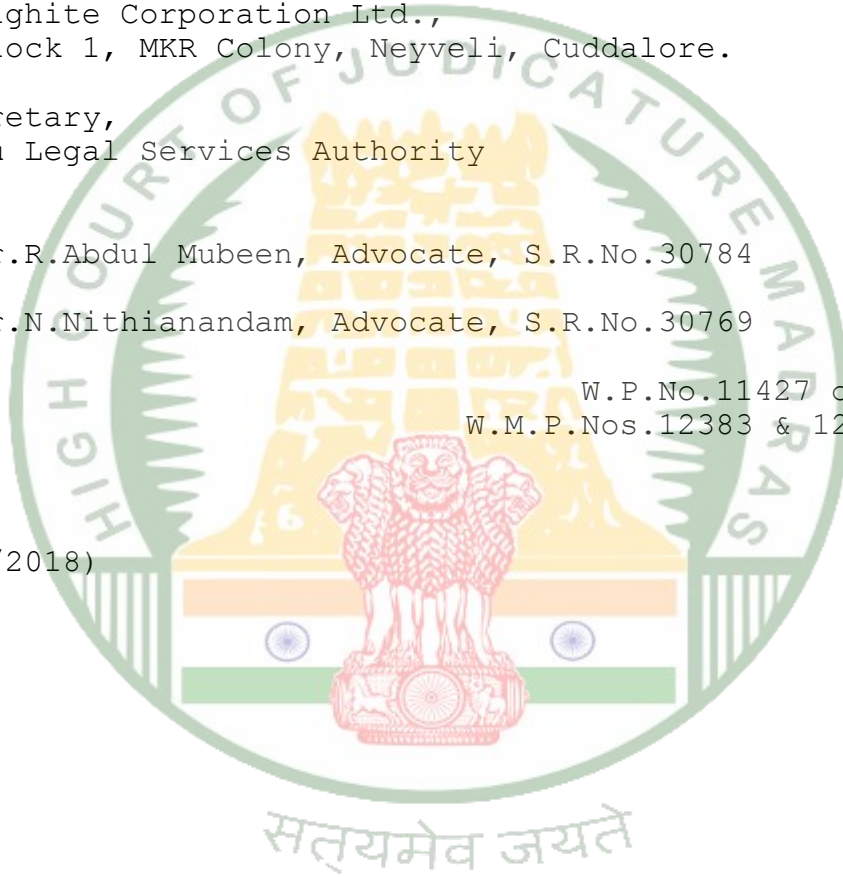
+1cc to Mr.R.Abdul Mubeen, Advocate, S.R.No.30784

+1cc to Mr.N.Nithianandam, Advocate, S.R.No.30769

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NRL (CO)

RRK (26/04/2018)



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