

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.02.2018

Delivered on : 27.02.2018

CORAM:

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

AND

THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A No.44 of 2018 and

CMP No.314 of 2018

- 1.The State of Tamil Nadu,
Rep. By its Secretary to Government,
Industries Department,
Chennai - 600 009.
 - 2.The District Collector,
Kancheepuram District,
Kancheepuram.
 - 3.The Revenue Divisional Officer,
R.D.O.Office,
Kancheepuram. ...Appellants/Respondents 1 to 3
- Vs
- 1.A.Kumar ...Respondent 1/Petitioner
 - 2.The Managing Director,
SIPCOT,
19-A, Rukmani Lakshmipathy Salai,
Egmore, Chennai - 600 008. ...Respondent 2/Respondent 4

Prayer:- Writ Appeal filed under clause 15 of the Letter Patent to set aside the order dated 23.01.2013 in W.P.No.7815 of 2012.

WP.No.7815/2012:Writ petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus, to calling for the records of the 2nd respondent in his proceedings No.Na.Ka.O.V. Thee 2/2009/2 dt 23.7.2011 quash the same and further direct the 2nd respondent to conduct personal hearing to the petitioner based upon the representation dt 20.9.2010 after furnishing the reports of the 3rd and 4th respondents.

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

For Respondents: Mr.M.Rajasekaran for R1
Mr.Sudarsana Sundar
Standing Counsel for R2

J U D G M E N T

K.K. SASIDHARAN, J.

Introductory

The writ petition filed by the first respondent challenging the land acquisition was quashed by the learned single Judge by placing reliance on the earlier decision of 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]. In the said decision, the learned single Judge opined that enquiry must be conducted only by the Government notwithstanding Section 23-A of the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 (hereinafter referred to as "Industrial Purposes Act), delegating the power to the District Collector concerned and the related Government Order in G.O.Ms.No.513 dated 2 September 2005. The order is under challenge at the instance of the State.

The Facts

2. The land owned by the first respondent in Sriperumbudur Taluk, was acquired by the State along with larger extent for expansion of existing industrial complex at Sriperumbudur. The total land acquired was 173.25.5 hectares. The District Collector issued notice under Section 3(2) of the Industrial Purposes Act to show cause as to why the land should not be acquired. The District Collector on receipt of objection conducted enquiry after issuing notice. The District Collector after conclusion of the enquiry submitted his report to the Government for acquisition of land. The Government after consideration of the report and the recommendation made by the District Collector issued a notification under Sub-Section (1) of Section 3 of the Industrial Purposes Act acquiring the land.

3. The first respondent challenged the notification on the ground that enquiry was not conducted in accordance with the Industrial Purposes Act and the Rules made thereunder.

4. The learned single Judge quashed the land acquisition by following the earlier decision in V.G.P. Housing (P) Ltd. In the earlier decision, the learned single Judge held that notwithstanding the power of delegation under Section 23-A of the Industrial Purposes Act, enquiry must be conducted only by the Government.

Submissions

5. The learned Additional Advocate General by placing reliance on the material documents available on record submitted that the District Collector after issuing notice under Section 3 (2) of the Industrial Purposes Act conducted enquiry. The objection given by the first respondent was considered and thereafter, it was overruled. The learned Additional Advocate General contended that the District Collector is empowered to conduct enquiry as a delegatee of the Government, in view of Section 23-A of the Industrial purposes Act and the order in G.O.Ms.No.513 dated 2 September 2005. The learned Additional Advocate General further contended that the learned single Judge was not justified in quashing the land acquisition.

6. The learned counsel for the first respondent contended that the enquiry contemplated under the Industrial Purposes Act is not an empty formality and it is a substantive right given to the land owner. The learned counsel contended that the views expressed by the requisitioning body were not communicated to the land owner and as such, the very notification issued under Section 3(1) of the Industrial Purposes Act is bad in law. The learned counsel by placing reliance on Rule 6 of the Tamil Nadu Acquisition of Land for Industrial Purposes Rules, 2001, contended that the Government is obliged to conduct enquiry. According to the learned counsel, the learned single Judge was therefore correct in quashing the land acquisition.

Discussion

7. The land owned by the first respondent was part of larger extent acquired by the State by invoking the provisions of Tamil Nadu Act 10 of 1999. The acquisition was initiated for expansion of existing industrial complex at Sriperumbudur.

8. The notification issued by the Government was challenged by the first respondent on the ground that enquiry was not conducted by the District Collector after furnishing the relevant materials to the land owner.

9. Before the Writ Court, the District Collector filed a counter affidavit justifying the acquisition. The District Collector explained the steps taken by him for issuing notice under Section 3(1) of the Industrial Purposes Act and consideration of objection received from the land owners and the disposal of such objection and recommendation made to the Government for acquisition.

10. There are two questions involved in this intra court appeal. The first question relates to the validity of the order passed by the learned single Judge in VGP Housing case (cited supra), which was taken as the binding precedent by the learned single Judge to quash the acquisition in question. The second issue relates to the legality and correctness of the enquiry conducted by the District Collector under Section 3(2) of the Industrial Purposes Act.

First Issue

11. The first issue is covered by our decision in Secretary to Government v. M/s. V.G.P.Housing (P) Ltd [W.A.No.1710 of 2017 dated 1 February 2018]. This Court by placing reliance on Section 23-A of the Industrial Purposes Act made the legal position clear that on account of the statutory delegation, the District Collector is empowered to conduct enquiry under Section 3(2) of the Industrial Purposes Act. Therefore, the first issue does not require adjudication once again in this appeal.

Second Issue

12. The second issue relates to the validity of the enquiry conducted by the District Collector. The Notification under Section 3(2) of the Industrial Purposes Act dated 24 December

2009 was published in newspapers. The counter affidavit filed by the District Collector indicates that statement of objection given by the first respondent was considered and it was rejected.

13. We have perused the file produced by the appellants. We are convinced that the enquiry was conducted in accordance with the legislative mandate. The objection was mainly on account of the construction of multi storeyed building in and around the locality. The objection was overruled by the Collector by giving reasons.

14. The Collector is expected to conduct a summary enquiry. The Collector after giving reasonable opportunity to the land owners conducted enquiry. The individual objections were considered on merits. It was only thereafter a report was submitted to the Government recommending further proceedings for acquisition. The Government thereafter issued notification under Section 3(1) of the Industrial Purposes Act. The first respondent miserably failed to prove that there was non-compliance of the procedural provisions while conducting enquiry by the District Collector.

15. The learned single Judge quashed the acquisition not on the ground that enquiry was not conducted properly. The learned single Judge followed the earlier decision relating to delegation and allowed the writ petition. Since the learned counsel for the first respondent made submissions on other grounds, we have perused the file. We are convinced that there was no illegality committed by the District Collector in the matter of acquisition. We are of the considered view that the learned single Judge was not justified in quashing the acquisition initiated by the Government in larger public interest.

16. The order dated 23 January 2013 is set aside. The writ petition in W.P.No.7815 of 2012 is dismissed.

17. The intra court appeal filed by the State is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

+1cc to Government Pleader SR.No.15409
+1cc to M/s.Sundharshana Sundar, Advocate Sr.No.14744

RV(CO)
sm:14.3.2018