

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.12.2017

Pronounced on : 08.02.2018

CORAM :

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.Nos.2051 & 2052 of 2010 and M.P.Nos.1 & 1 of 2010

K.Sabapathy ... Appellant in W.A.No.2051 of 2010

A.Simiyon Raja ... Appellant in W.A.No.2052 of 2010

Vs

1. State rep. by Secretary to Government,
Industries Department,
Fort St. George,
Chennai - 600 009.

2. The District Collector,
Office of the District Collector,
Perambalur, Perambalur District-621212.

3. MRF Limited, rep. by its
Company Secretary,
No.124, Greams Road,
Chennai - 6.

... Respondents in both the writ appeals

Prayer in both the writ appeals: Writ Appeals are filed under Clause 15 of the Letters Patent, against the common order dated 31.08.2010 passed in W.P.Nos.2616 & 2617 of 2009 respectively, by this Court.

WP.Nos.2616 & 2617 of 2009: Writ petitions are filed praying for writ of certiorari to call for the records relating to the notice under section (1) of Section 3 published by Industries MIDI Dept. at Page 1 and 2 of Part II Section 2 of Tamilnadu Government Gazette (extraordinary) No.383 dated 26.12.2008 on the file of the first respondent herein and to quash the same.

For Petitioner : Mr.T.R.Rajagopal, Senior Counsel for
M/s.T.R.Rajaraman

For Respondents: Mr.V.Ayyathurai, AAG assisted by
Mr.V.Anandhamurthy, AGP for R1 & R2
Mr.N.R.Chandran, Senior Counsel for
Mr.M.Vijayan for M/s.Kings & Patrige for R3

COMMON JUDGMENT

P.VELMURUGAN, J.

Both the writ appeals have been filed against the common order dated 31.08.2010 in W.P.Nos.2616 & 2617 of 2009 dismissing the writ petitions filed by the appellants.

2(a). The case of the appellants before the writ court is that the third respondent is a public limited company (herein after referred to as "the Company"), incorporated under the Companies Act, 1956. By letter dated 21.11.2007, the company requested the Government, for acquisition of 16.64 acres of land owned by the appellants as they were not willing to sell the land for various reasons. It was for setting up a new factory, with an investment of approximately Rs.900 Crores. The factory would provide employment opportunity and it would be a huge boost to the industrialisation in Tamilnadu.

b) Before approaching the Government, the Company had entered into an agreement with M/s. Green House Promoters (Pvt) Limited (herein after referred to as "the Promoters") to negotiate for purchase of an extent of 290 acres from the land owners who had agreed to sell their land. The Promoters had negotiated with majority of the land owners, who had agreed to sell their land. However, they were unable to procure the land in Naramangalam Village with an extent of 16.64 acres for various reasons.

(c) The Government, in response to the request made by the third respondent had identified the area in Naramangalam Village of Kunnathur Taluk, Perambalur District, for expansion of the Company's Project. Considering the request made by the third respondent and the overall development of the backward district, the Government had accorded Administrative Sanction vide G.O. (Ms) No.85 Industries (MID 1) Department dated 31.03.2008, for the acquisition of an extent of 16.64 acres of patta dry land in S.No.155/10 etc., at Naramangalam Village, Kunnathur Taluk, Perambalur District under the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 (Tamil Act 10 of 1999) (herein after referred to as "the Act").

(d) Based on the above said Government order, the second respondent issued a notice dated 16.04.2008 under Section 3(2) of the Act, calling upon the appellant to submit their representation within 30 days. The appellants sent a joint representation dated 09.05.2008, pointing out that the notice is vague and requested to furnish certain particulars. The second respondent, without considering the representation made by the appellants, forwarded a revised Show Cause Notice dated

13.05.2008 under Section 3(2) of the Act, indicating that the acquisition is for MRF Limited and it was for expansion of their Project. The appellants submitted a representation to the 2nd respondent on 09.06.2008 for providing some more particulars. The second respondent sent a communication to the appellants stating that the lands are required by the third respondent for expansion of its project in Perambalur District with an investment of Rs.900 Crores over a period of three years, providing employment opportunities for approximately 1000 persons directly and 2000 persons indirectly and acquired 117.500 hectares for the said purpose. However, in the said communication, it was stated that, the third respondent was able to persuade the land owners to part with about 109 hectares equivalent to 270 acres of their land and they were unable to procure an extent of 16.64 acres of land in the Village. The second respondent having set out the above particulars failed to furnish the copies of those documents sought for by the appellants to enable them to submit their representation/objections to the Notice under Section 3(ii). The second respondent posted the inquiry on 18.06.2008. The appellant made a request in writing on 16.06.2008 to postpone the inquiry, till the documents sought for by them are furnished. On 17.06.2008, one of the appellants submitted a petition under Section 6 of the Right to Information Act, 2005, to the Joint Secretary to the Government, Public Information Officer, Industries Department, Secretariat, Chennai-9, seeking a copy of the G.O.Ms.No.85 Industries Department dated 31.03.2008. In the meantime, by notice dated 18.06.2008, the second respondent had fixed the date as 27.06.2008 for inquiry. As the appellants were not provided with the particulars by the second respondent, who was acting on behalf of the Government, one of the appellants submitted the petition under RTI Act, on 25.06.2008 requesting him to furnish the same particulars.

(e) The appellants submitted a representation on 26.06.2008 and 27.08.2008 to the second respondent, stating that the information sought for by them was not received. The second respondent without furnishing the documents and without considering the request of the appellants for postponing the inquiry, proceeded to hold the inquiry in a biased manner and stated that the proceedings of the inquiry will be forwarded to the parties, but the appellants did not receive a copy of the proceedings. The second respondent without holding the inquiry, proceeded with the acquisition proceedings. One of the appellants approached the High Court by filing a writ petition in W.P.No.16533 of 2008 for a direction to the State Public Information Officer, the third respondent therein to furnish the documents sought for in their application under Section 6 of the RTI Act, dated 25.06.2008. The petitioner in the said writ petition sought for an interim prayer restraining the second

respondent from proceeding further with the inquiry under Section 3 of the Tamil Nadu Acquisition of land for industrial purpose Act. The said interim prayer was granted and time was extended from time to time and later on the writ petition was dismissed on 17.10.2008.

3 The learned Single Judge, after considering the submissions made on either side and the documents available on record, passed a common order dated 31.08.2010 in W.P.Nos.2616 and 2617 of 2009, dismissing the writ petitions filed by the appellants.

4 Aggrieved by the common order dated 31.08.2010 in WP.Nos.2616 and 2617 of 2009, the unsuccessful writ petitioners have filed the present writ appeals.

5 (a) The learned Senior Counsel for the appellants would submit that the appellants are the owners of the property situated at Naramanaglam Village, Taluk, Perambalur District in S.Nos.155/1B, 155/2A1, 155/2A2, 155/2B, 155/7, 155/8, 155/9, 155/10, 160/3, 160/4, 160/5, 163/1A. 163/1B, 163/1C, 163/2A, 163/2C. 163/2D and 163/2B, measuring an extent of 4.39.5 hectares i.e. 13.67 acres. The properties are standing in the joint name of the appellants. The second respondent issued a notice under Section 3(2) of the Act, dated 16.04.2008 to acquire their lands and called upon them to submit their representation within a period of thirty days, stating that the lands are required for industrial purpose for establishing a factory of the third respondent. The appellants made joint representation dated 09.05.2008, addressed to the second respondent pointing out that the notice is vague and requested to specify the correct particulars of the industry for which the acquisition was initiated.

(b) The second respondent has not given any reply for the representation made by the appellants, dated 09.05.2008. Instead of giving a reply, the second respondent forwarded a revised Show Cause Notice dated 13.05.2008. The revised notice under Section 3(iv), dated 13.05.2008, indicated that acquisition is for MRF Limited and it was for their expansion project. The earlier notice dated 16.04.2008, stated that the acquisition is for formation of MRF Limited and the revised show cause notice dated 13.05.2008 reads as if the acquisition is for expansion Project of MRF Limited. The appellants submitted their representation to the Collector on 09.06.2008 and requested the second respondent to furnish the Government Order, granting permission to the MRF Limited for setting up their expansion project in the particular place and also the documents by which the request was made by the third respondent to the Government for acquiring the land. The second respondent in their

communication, has stated that the third respondent informed that the properties are required to set up an expansion project in Perambalur District with an investment of Rs.900 Crores over a period of three years and it would provide employment opportunities for approximately 1000 persons directly and 2000 persons indirectly and acquired 117.500 hectares for said purpose. However, in the said communication, it was stated that the third respondent was able to persuade the land owner to part with about 109 hectares equivalent to 270 acres of their land and they were unable to procure the land for an extent of 16.64 acres in the Village. The second respondent having set out the above particulars failed to furnish the copies of those documents sought for by the appellants to enable them to submit their representation/objections to the Notice under Section 3 (ii). The second respondent posted the inquiry on 18.06.2008. The appellant made a request in writing on 16.06.2008 to postpone the inquiry, till the documents sought for by them are furnished to them. On 17.06.2008, one of the appellants submitted a petition under Section 6 of the Right to Information Act, 2005, to the Joint Secretary to the Government, Public Information Officer, Industries Department, Secretariat, Chennai-9, seeking a copy of the G.O.Ms.No.85 Industries Department, dated 31.03.2008. In the meantime, by notice dated 18.06.2008, the second respondent fixed the date of inquiry as 27.06.2008. The appellants were not provided with the particulars by the second respondent, who was acting on behalf of the Government. One of the appellants submitted a petition under RTI Act, on 25.06.2008 requesting them to furnish the particulars.

(c) The appellants submitted a representation on 26.06.2008 to the second respondent, stating that the information sought for by the them have not been received. The second respondent without furnishing the documents and without considering the request of the appellants for postponing the inquiry, proceeded to hold the inquiry and stated that the proceedings of the inquiry will be forwarded to the parties, but the appellants have not even received a copy of the proceedings. The second respondent without holding the inquiry, proceeded with the acquisition proceedings. One of the appellants approached the High Court by filing writ petition in W.P.No.16533 of 2008 for a direction to the State Public Information Officer, the third respondent therein to furnish the documents sought for by the petitioners in their application under Section 6 of the RTI Act, dated 25.06.2008

(d) The appellants were under the impression that since the third respondent had already acquired more than 800 acres, there was no need for requiring the land proposed to be acquired from them. Whereas, the very same Green House Private Limited,

claiming to be the agent of the third respondent approached one of the appellants and declared that if they are not parting with their lands for the rates stated by them, the appellants will be in trouble and they have made all arrangements to acquire the land under Section 3 (1) of the Act, without any further notice to the land owners and further declared that they have money and power. One of the Board Members of Green House Private Limited, is the wife of a Central Minister hailing from the same District.

(e) The learned Senior Counsel contended that the third respondent has acquired nearly 800 acres of land in the area in question from the land owners. When the third respondent is able to acquire on their own, for expansion of their industry, there was no need to request the Government to acquire any land for them. M/s.Green House Promoters Private Limited had on their own as agent of the third respondent had entered into an agreement with the private land owners for acquisition of land and acquired about 270 acres through private negotiation, but failed in their attempts to acquire the lands of the appellants. Therefore, acquisition in question is a malafide exercise of power.

(f) The learned Senior Counsel further contended that the Tamilnadu Government had initiated action for acquisition on 16.04.2008. The first and second respondents had not even verified as to the exact extent of land, required for the third respondent for expansion of Project. A letter of request was issued from the third respondent without any supporting documents and straight away a decision was taken to acquire the appellants' lands. The learned Senior Counsel placed reliance on the Judgment in the case of J.Daoraibabu Vs. J. Sridhar reported in 2011 Writ L.R.505 and contended that the action of the Government is not only colorable, but also arbitrary and hence prayed to quash the Notice under Sub-Section (1) of Section 3 dated 26.12.2008 by Industries (MID 1) Department by allowing the writ appeals.

6 The learned Additional Advocate General appearing for the first and second respondents and the learned Senior Counsel appearing for the third respondent justified the acquisition made for a Public limited company to set up an industry in a backward District of Perambalur. The third respondent, with the help of a private agency namely M/s.Green House Promoters (Pvt.) Limited acquired 270 acres of land through private negotiation. The third respondent was not in a position to procure the lands belonging to the appellants. The third respondent felt that they could not start the Project without the appellants' land, which is situated in the middle of the procured land. The third respondent therefore approached the Government on 21.11.2007 and

made a request to the Government for acquiring the land to an extent approximately 6.775 hectares /16.64 acres as specified in the Schedule mentioned properties which belong to the appellants. Further the learned counsel for the third respondent would submit that the industry would employ more than 2500 workers directly and 5000 persons would be benefited indirectly. The Perambalur District is one of the backward Districts in Tamilnadu and if the industry is established, it would develop a backward area. Though, sufficient opportunities were given to the appellants, for the reasons best known to them, they have not co-operated and tried to prolong the matter. Therefore after affording sufficient opportunity, the second respondent completed the inquiry and submitted the report. The land was acquired and possession was handed over to the third respondent, by following the due process of law as contemplated under the Act.

7 We have gone through the original files placed before us.

8 The case of the appellants is that the third respondent is a public limited company. The company wanted to establish one of its business unit in Perambalur District. They have purchased the land through private agent. Therefore, there was no need to the Government to initiate acquisition proceedings. Even without acquiring the land of the appellant, the third respondent can very well establish the project. The notification issued by the second respondent is vague. The Government have already decided to take over the lands and conducted the inquiry for name sake.

9 Since the first respondent considered the request of the third respondent as genuine and the fact that the industry would give adequate employment opportunity to several persons, initiated the land acquisition proceedings and instructed the second respondent to conduct the preliminary enquiry under the Act. Accordingly, the second respondent issued a notice to the appellants under the Act. Though the notice was duly served on the appellants, they sought for further information and records and also prayed for adjournment. The request of the appellants was considered to some extent. The second respondent adjourned the inquiry for more than two times. Even after giving sufficient opportunity, the appellant resorted to filing applications one after another under Section 6 of the RTI Act.

10 In the representation made by the appellants, they have stated that they have purchased the land for establishing a school and Health Unit. On a perusal of the records, it is not clear when they had purchased the land and from whom it was purchased. It is also not clear whether they have initiated any action to establish the school or Health Unit.

11 The appellant in W.A.No.2051 of 2010 is an advocate residing at Chennai. The second appellant is also a resident of Chennai.

12 The third respondent proposed to establish one of its Units in the Perambalur District. They engaged M/s.Green House Promoters (Pvt.) Limited as agent for purchasing the property without seeking the help of the Government. They could not get the land owned by the appellants. Since the appellants refused to sell the land to the third respondent, the company approached the Government. The Government acquired the land through the land acquisition proceedings contemplated under the Special Act. The only contention of the appellants is that sufficient opportunity was given and the Government has already decided to acquire the land even prior to the conduct of preliminary enquiry to find out the suitability of the land. The learned Single Judge has elaborately discussed the points raised by the appellants and answered it against them by giving reasons.

13 The documents available on record would show that the authorities have given sufficient opportunity to the appellants. Since the acquisition is purely for industrial purpose, the Act does not contemplate an elaborate enquiry except an opportunity to the owners to put forth their objections. The Government shall consider the objections raised by the land owner. If it is reasonable, the same shall be accepted. If it is not bona fide, the same can be rejected by giving reasons. But in the case on hand, the appellants themselves admitted that notice has been served and they sought adjournment on the ground that they need certain documents. The second respondent considered the request and afforded sufficient opportunity by furnishing the available documents as sought for by the appellants and adjourned the enquiry for more than two times and finally completed the enquiry on 27.06.2008. The respondents 1 & 2 meticulously followed the land acquisition proceedings as contemplated under the Act. The appellants have not shown any serious prejudice caused to them.

14. The Government found that the subject land is situated at a centre point and the remaining land acquired privately cannot be conveniently enjoyed without the land owned by the appellants. The satisfaction was arrived at on the basis of relevant materials. It is not for the Court to decide whether the land is needed for industrial purpose. The Court is concerned only with the decision making process, which was done here in accordance with the provisions of the Act. The appellants have not demonstrated any statutory violations in the process of acquisition.

15 In view of the above discussion, we are of the considered view that the common order passed by the learned single judge on 31.08.2010 in W.P.Nos.2616 & 2617 of 2009, does not warrant interference. The appellants have not made out any valid ground to take a different view in the matter.

16 In the result, the writ appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

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

2. The District Collector,
Office of the District Collector,
Perambalur, Perambalur District - 621212.

+2cc to M/s.T.R.Rajaraman, Advocate Sr.No.10541 & 10542

+1cc to Government Pleader SR.No.10264

+2cc to M/s.King & Partridge, SR.No.9857

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JUDGMENT IN
W.A.Nos.2051 & 2052 of 2010

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