

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2018

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

W.P.Nos.28740 & 28741 of 2017

and W.P.No.467 of 2017

and

WMP.Nos.30924 to 30926 of 2017 and

WMP.Nos.30927 to 30929 of 2017 and

WMP.No.494 of 2017

EVP Estates and Properties Development Ltd.,

Rep by its Chairman and Managing Director

Mr.E.V.Perumalswamy Reddy

No.23, Sir Thiyagaraya Road, Pondy Bazaar

T.Nagar, Chennai - 600 017.

... Petitioner in all WPs

-Vs-

1.The State of Tamil Nadu

Represented by its Secretary

Transport Department

Fort St.George

Chennai - 600 009.

2.The District Collector

Kanchipuram District

Kanchipuram.

3.The Special Tahsildar (Land Acquisition)

Chennai Airport Expansion Scheme

Sriperumbudur Taluk

Kanchipuram District. सत्यमेव जयते

4.Airport Authority of India

Represented by its Director

Southern Region

Chennai Airport

Meenambakkam

Chennai - 600 027.

... Respondents in all WPs

Common Prayer in W.P.Nos.28740 & 28741 of 2017 :- Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent published in Gazette Notifications (i) No.G.O.Ms.53 II (2)/TRA/491(b)/2017 dated 13.06.2017 (ii) G.O.Ms.201 II (2)/TRA/668 (C)/2017 dated 18.08.2017 and quash the same and thereby forbear the respondents from further proceeding with the acquisition in

respect of lands in the writ mentioned survey numbers belonging to the petitioner.

Prayer in W.P.No.467 of 2017 :- Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records of the second respondent in Na.Ka.No.A/228/2013 dated 22.11.2016 and quash the same and thereby forbear the respondents from further proceeding with the acquisition in respect of lands in the writ mentioned survey numbers as tabulated in the writ petition.

In W.P.Nos.28740 & 28741 of 2017 :

For Petitioner : Mr.S.R.Raghunathan

For Respondents : Mr.A.Zakir Hussain
Government Advocate [R1 to R3]
Mr.S.Venkatesan [R4]

In W.P.No.467 of 2017 :

For Petitioner : Mr.S.R.Raghunathan

For Respondents : Mr.A.Zakir Hussain
Government Advocate [R1 to R3]
Mr.V.Ramesh [R4]

COMMON ORDER

1. The facts necessary for the disposal of this batch of cases may be briefly stated as below :

- The petitioner is a private limited company, and it owned about 130 acres of lands spread over several survey numbers in Kolapakkam, Manapakkam and Gerumbakkam Villages in Sriperumbudur Taluk, Kanchipuram District. The said property along with other property totalling 1,069.99 acres were notified for acquisition in G.O.Ms.No.108 Transport (I.2) Department dated 09.10.2007, for expansion of Chennai Airport under the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 (hereinafter Industrial Purposes Act, 1997 in brevity). However, the Airport Authority later conveyed its intention that it did not require the entire 1,069.99 acres of lands and limited its requirement to 216.92 acres. In this about 35 acres of petitioner's property has been acquired. The balance area of 852.88 acres were withdrawn from acquisition by a G.O. dated 30-01-2014. This 852.88 acres includes part of petitioner's properties.
- Be that as it may the District Collector, had issued a notice dated 17-07-2003 on the petitioner inviting its views for acquiring petitioner's that was left out in the earlier acquisition for formation of second runway in the Airport. Petitioner objected to it. This was rejected.

This notice dated 17-07-2013 has resulted in petitioners filing two writ petitions:

- (a) W.P.No.32344 of 2013: For issuance of a writ of certiorari for quashing the said notice.
- (b) W.P.No.13149 of 2014 : For issuance of writ of mandamus for denotifying its lands that were withdrawn by the Govt. Order dated 30-01-2014.

Both these writ petitions were disposed by separate orders dated 29-04-2016. In both the cases the petitioner was reverted back to the authority.

- Ultimately, the District Collector Vide his proceedings dated 22-11-2016 has stated that the properties which the petitioner has strived to save from acquisition have been notified for acquisition under Sec.3(2) of the Tamil Nadu Acquisition of lands for Industrial Purposes Act, 1997. This has resulted in the petitioner filing W.P.No.467 of 2017 for issuance of writ of certiorari to quash the said proceedings of the Collector, with a further direction to follow the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. In that Airport Authority had filed a counter that Vide Sec.105-A, the Tamil Nadu Amendment to Central Act 30/2013, has exempted the Industrial Purposes Act from the operational ambit of the Right to Fair Compensation Act.
- Subsequently, the Government issued a notification in G.O.(Ms.) No.53, Transport (I.2), dated 13-06-2017, under Sec.3(1) of the Industrial Purposes Act, which comprises petitioner's properties in S.F.Nos: 544 and 545. This, the petitioner challenges in W.P.No.28740 of 2017. This was followed by another notification again issued under Sec.3(1) of the Act, in G.O.(Ms.)No.201, dated 18-08-2017, which notified certain other properties of the petitioner for the same purpose. This under challenge in W.P.No.28471 of 2017.

2. Heard Mr.S.R.Raghunathan, learned counsel for the petitioner and Mr.A.Zakir Hussain, learned Government Advocate for the respondents 1 to 3 in all the writ petitions and Mr.S.Venkatesan, appearing for the fourth respondent in W.P.Nos.28740 and 28741 of 2017 and Mr.V.Ramesh, counsel for the fourth respondent in W.P.No.467 of 2017 has filed his counter.

3. The prayer sought in W.P.No.467 of 2017 has two parts: (a) To quash a proceeding of the District Collector dated 22-11-2016, under which the Collector had rejected the petitioner's request for return of the lands pertaining to which Government has issued notification for withdrawing them; and (b) To pay compensation in terms of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and

Resettlement Act, 2013.

4. As to the first part of the prayer in W.P.No.467/2017 is concerned, it must be stated that merely because the Government at one point of time decides to spare some lands from acquisition for absence of a present need for the said lands for their utilisation for a public purpose, does not estop it from acquiring it at another point of time. Inasmuch as the impugned proceedings herein only details the enquiry held pursuant to issuance of Sec.3(2) notice etc., and since subsequent notification under Sec.3(1) of the Act has been issued, and are challenged too, this writ petition is devoid of any purpose, for in view of aforesaid notifications under Sec.3(1) of the Act, the lands which were required to be returned could not be so done. Nothing therefore survives as concerning the first part of the prayer in W.P.No.467/2017.

5. As to the second part of the prayer in W.P.No.467/2017 is concerned, and so also the W.P.No.28740/2017 and W.P.No.28741/2017, in the course of the hearing, the petitioner expressed his intention to settle for the payment of compensation in terms Right to Fair Compensation Act and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30/2013). On this the Land Acquisition Authority does not have a difference.

6. There is therefore, a broad consensus that award should be passed and compensation should be awarded only under Sec.7(3) of the Industrial Purposes Act. Here Sec.105-A becomes relevant and it reads :

105-A. Provisions of this Act not to apply in certain cases or to apply in certain Tamil Nadu Acts or to apply with certain modifications-

(1) Subject to sub-section (2), the provisions of this Act shall not apply to the enactments relating to land acquisition specified in the Fifth Schedule.

(2) The State Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and

resettlement as may be specified in the notification, as the case may be.

(3)
.....

7. This Court has to presume the Constitutionality of Sec.105-A, and the challenge to it now pending consideration before a Division Bench of this Court. Sec.105-A(2), if closely read, does not attempt to carve out an absolute exemption from the operation of the Right to Fair Compensation Act, more particularly, those that deal with the beneficial aspects to the owners of the lands acquired. It only requires a notification to do it, but it also ushers in to declare the same should not "reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement". The Government too came up with G.O.(Ms.)No.251 Industries (SIPCOT-LA) Department dated 31.12.2014, and extended the benefits that the Right to Fair Compensation Act confers on the owners of the lands acquired to those who are similarly placed in an acquisition proceedings under the Industrial Purposes Act. And, this is no more res integra, and is decided in V.Sathish Kumar and Ors. Vs. The Secretary to Government, Industries Department, Government of Tamil Nadu and Ors. [MANU/TN/1116/2017]. This Court is in agreement with the said view.

8. Without going into the merit of the contentions raised by the petitioner in W.P.No.467 of 2017, in the context of the submissions of the learned counsel for the petitioner, this Court only directs the land acquisition authority to treat the notice issued under Section 3(1) of the Industrial Purposes Act, 1997, as if the one issued under the Central Act 30/2013 and to pass an award or awards after issuing necessary notice on the petitioner at the address given in this batch of writ petitions, and after giving it an opportunity of hearing in terms of the Central Act No.30/2013 as expeditiously as possible.

9. This Court enquired the Special Tahsildar who is present before the Court as to the time frame within which he can complete the acquisition proceedings. The Tahsildar made a submission that his office is constituted of a Special Tahsildar, a Deputy Tahsildar and an Assistant, and given the extent and the number of claimants, he may be not able to state the precise time within which the award could be passed.

10. The Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 under Section 25 stipulates that an award should be passed within twelve months. Therefore, necessary urgency may be shown by the authority concerned. The officials concerned are directed

to pass an award within the time stipulated to avoid unnecessary complications in the matter, which if ignored may lead to filing of several petitions before this Court. This may not be in the best interest of justice administration.

11. With the above direction, all these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

ds

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

- 1.The State of Tamil Nadu
Represented by its Secretary
Transport Department
Fort St.George
Chennai - 600 009.
- 2.The District Collector
Kanchipuram District
Kanchipuram.
- 3.The Special Tahsildar (Land Acquisition)
Chennai Airport Expansion Scheme
Sriperumbudur Taluk
Kanchipuram District.
- 4.Airport Authority of India
Represented by its Director
Southern Region
Chennai Airport
Meenambakkam
Chennai - 600 027.

+3cc to Mr.S.R.Raghunathan, Advocate Sr.No.5441,5442,5443
+2cc to Mr.S.Venkatesan, Advocate Sr.No.5991, 5992
+1cc to Government Pleader Sr.No.5823

sm:22.3.2018

W.P.Nos.28740 & 28741 of 2017
and W.P.No.467 of 2017