

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.12.2017

Delivered on : 20.02.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A No.303 of 2013,
M.P.No.1 of 2013 and C.M.P.No.19897 of 2017

Sakethanath & Co.,
Rep. by its Partner
M.Leema Rose
No.101, Sixth Street Extension,
Gandhipuram, Coimbatore - 641 012.Appellant

Vs

- 1.The Chief Post Master General
Tamil Nadu Circle, Chennai.
- 2.The Post Master General
Western Region, TN,
Coimbatore - 641 002.
- 3.The Senior Superintendent of Post Office,
Coimbatore Division, Coimbatore.Respondents

Prayer:- Writ Appeal filed under clause 15 of the Letter Patent against the order dated 30.07.2012 made in Review Application No.67 of 2012 in W.P.No.14690 of 2009.

Rev.Appl.No.67 of 2012:Rev. Application filed U/Ar.47 rule 1 r/w 114 of the CPC seeking to review the order dated 26.10.2009 in WP.No.14690/2009.

WP.No.14690/2009:Petition filed U/Art.2626 of the constitution of India praying to issue a writ of mandamus directing the respondent to come forward with an acceptance for the alternative post office building by taking cognizance of the Memorandum of Agreement dtd 25/0/1989 with regard to change of place from lotion in TS No. 34-2B-4 TS No. 34- 2B -5 Gandhipuam at the rear side of Lakshmi Complex crosscut road coimbatore to the proposed alternative site with the post office building to be constructed as per the specification of the department of post by demolishing the existing structure at swarnambika layout near cross cut road, coimbatore.

For Appellant : Mr.L.Chandrakumar
for Mr.S.Saravanan

For Respondents: Mr.V.Balasubramanian

J U D G M E N T

K.K.SASIDHARAN, J.

Introductory

The appellant succeeded in making the Postal Department to withdraw the acquisition proceedings initiated to acquire 2 acres and 9268 sq.ft of land which was later reduced to 1 acre 11300 sq.ft situated at Coimbatore for construction of Post Office complex as per Section 4(1) of the Land Acquisition Act dated 3 February, 1982 by promising to construct a building with a plinth area of 4800 sq.ft on a portion of the acquired land and give it on lease without rent and made it part of an order of court in W.P.No.1968 of 1985. However, the appellant, after the notification withdrawing the acquisition pursuant to the agreement entered into on 25 October 1989 resiled from the promise and offered another site, which was not found suitable to the Postal Department. Thereafter, through Court, the appellant made the Postal Department to agree to another site, and constructed a building without planning permission and delayed the matter further, resulting in filing contempt and review petition by the Postal Department. The learned single Judge was pleased to recall the order permitting substitution of property in public interest. The strange action taken by the higher authorities of the Department of Posts at Delhi by yielding to the pressure exerted by the land owners caused the delay of 36 years in the matter of construction of a Post Office complex at Coimbatore. Even now the Postal Department is in Court, without the land for the Post Office and is paying heavily for its unwise decision taken earlier to withdraw the acquisition.

The Facts

2. The State initiated proceedings under the Land Acquisition Act, 1894 for acquiring 2 acres and 9268 sq.ft of land in T.S.No.34-2B 4 and 34-2B 5 of Ward No.9, BLock 3 of Anuparpalayam Village, Coimbatore for construction of a Post Office complex for the Postal Department. The area was later restricted to 1 acre and 11300 sq.ft. The Notification under Section 4(1) of the Act was issued on 3 February 1982. The Declaration under Section 6 of the Act was issued on 31 January 1985. The then land owner M/s.Sakethnath and Company filed writ petitions in W.P.Nos.1968 and 2071 of 1985 challenging the acquisition. The land owner approached the Postal Department at Delhi with a proposal to construct a building and to give it to the department without liability to pay rent, instead of the acquired land. The agreement by name "Agreement for dropping of acquisition proceedings" was signed

by the parties on 25 October, 1989. The agreement was produced before the Court in W.P.No.1968 of 1985 and made it part of the order dated 19 April 1990.

3. The appellant was expected to complete the construction within five years and grant a long term lease of 99 years to the postal department on a nominal rent of Rs.1/- per month.

4. The appellant in deviation of the agreement has shown an unsuitable site for construction. The postal department was not prepared to accept the site. The postal department wanted the appellant to construct the building adjacent to Lakshmi Complex as agreed before the Court.

5. The appellant identified another site at Swaranmbika layout for construction. The appellant moved the High Court to direct the Postal Department to accept the alternative land. The learned single Judge by order dated 26 October 2009 permitted such deviation from the original agreement.

6. The appellant without taking planning permission, constructed a building which was not to the satisfaction of the Postal Department. The local planning authority rejected the subsequent application for construction of Postal Building.

7. Since the matter was delayed indefinitely and the appellant violated its own undertaking, the Postal Department moved the High Court with a contempt petition and a review petition to recall the earlier order dated 26 October 2009 in W.P.No.14690 of 2009 approving the change of location.

8. The learned single Judge having found that public interest would suffer on account of the delay, which was solely attributable to the appellant, recalled the earlier order dated 26 October 2009 permitting the change of location. The common order dated 30 July 2012 in Review Petition No.67 of 2012 and Contempt Petition No.103 of 2011 is under challenge in this intra court appeal.

Submissions by Parties

9. The learned counsel for the appellant contended that the appellant constructed a building in the alternative site approved by the respondent and indicated in the order in W.P.No.14690 of 2009. Since planning permission was not granted by the planning authority, further action could not be taken. According to the learned counsel, the appellant is even now prepared to construct a building to the Postal Department as per the agreement dated 25 October 1989.

10. The learned counsel for the Postal Department contended that the Postal Department is deprived of a

convenient building on account of the unreasonable attitude of the appellant. The Department believed the words of the appellant and agreed to withdraw the acquisition. Thereafter, the appellant has shown its true colour by backing out from the undertaking and changing the site. The learned counsel on instructions from the Postal authorities made a statement before us that the Postal Department is agreeable for taking a building as per the agreement dated 25 October 1989 and it should be constructed adjacent to the Lakshmi Complex, as indicated in the communication dated 13 July 2009 sent by the Post Master General to the appellant. The learned counsel further submitted that the building should be located on a portion of the acquired land with direct public view and access to mail van and the area should be as indicated in the Memo of settlement.

Discussion

11. The Postal Department with a view to shift to a convenient building, to cater to the need of the public requested the State to acquire a land situated at a convenient place. Accordingly, the State Government identified the land owned by the appellant. The extent of land was reduced to 1 acre and 11300 sq.ft from 2 acres and 9268 sq.ft. The appellant challenged the land acquisition before the Writ Court. The appellant thereafter rushed to New Delhi and submitted an impressive proposal to the Postal Department. The rest is history.

12. The alternative proposal given by the appellant to construct the building at Swarnambika Lay out had the approval of this Court. Even then, the appellant could not construct a suitable building for the Postal Department with sanctioned plan and permit. It was only under the said circumstances, the respondent filed the contempt petition and an application to review the earlier order permitting substitution of site.

13. The notification for acquisition was given on 3 February 1982. The memorandum of agreement was executed on 25 October 1989. Even after a period of 13 years of agreement, the Postal Department was not given the building as undertaken by the appellant. The learned single Judge instead of punishing the appellant rightly reviewed the earlier order permitting change of location.

Resolution of Dispute

14. The Memorandum of Agreement dated 25 October 1989 is still intact. The appellant is bound to construct a building with a plinth area of 4800 sq.ft. The building as per the agreement must be constructed at a convenient location by making use of the acquired land, which is adjacent to Lakshmi Complex, Cross cut Road, Coimbatore.

15. The Postal Department is prepared to accept the building in case it is constructed strictly in accordance with the agreement dated 25 October 1989. The appellant is agreeable for such a course. We are therefore of the view that appropriate direction should be issued in public interest, taking into account the memo of agreement dated 25 October 1989 and the willingness shown by the appellant to construct a new building by making use of a portion of the acquired land. We therefore issue the following directions.

Directions

16(i) The appellant shall allot a portion of the land acquired earlier and situated at Anupparpalayam, Cross Cut Road, Coimbatore, for construction of Post Office Complex.

ii) The land required for construction of a building with a plinth area of 4800 sq.ft with set back on all the sides, approach road and parking mail motor vehicles and other vehicles out of the acquired land will be identified by the Post Master General, Coimbatore along with the Engineer from the Central Public Works Department or any of the Engineers of their choice.

iii) The plan for the building, taking into account the need of the Postal Department and as indicated in Clause No.3 of the agreement dated 25 October 1989 should be drawn by the Post Master General in accordance with the applicable building regulations.

iv) The plan so drawn shall be presented by the appellant to the appropriate planning authority. The appellant and the Postal Department shall take follow up action with the Planning Authority.

v) The appellant shall commence the construction immediately after obtaining planning permission and complete it within a period of one year.

vi) The building with all the amenities as per the specification of the Postal Department shall be delivered to the Department within one year from the date of sanctioning the building plan.

vii) The lease term and rent should be as per the Memorandum of Agreement dated 25 October 1989.

viii) The appellant shall abide by the terms and conditions of the agreement dated 25 October 1989 in its entirety.

ix) In case, the appellant fails to comply with the above direction or delay the matter, liberty is given to the Postal Department to proceed with the acquisition for acquiring 1

acre and 11300 sq.ft. as indicated in the notification dated 3 February 1982.

17. The intra court appeal is disposed of with the above direction. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/--

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

svki
To

1.The Chief Post Master General
Tamil Nadu Circle, Chennai.

2.The Post Master General
Western Region, TN,
Coimbatore - 641 002.

3.The Senior Superintendent of Post Office,
Coimbatore Division, Coimbatore.

+1cc to Mr.S.Saravanan, Advocate SR.No.12618/18

+2cc to Mr.V.Balasubramanian, Advocate SR.No.12611/18

GP(CO)
sm:23.2.2018

Judgment in

W.A No. 303 of 2013

सत्यमेव जयते

WEB COPY