

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 13.02.2018

Judgment Pronounced on : 20.08.2018

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

W.P.No.34002 of 2013

and

MP.No.1 of 2013 & WMP.No.1162 of 2016

1. The Trustee, Rep by Thirumal [Deceased]
Dhrowpathiamman Temple
Lawspet, Saram Revenue Village
Puducherry substituted by R.Ramadoss
2. The Present Trustee, Rep by R.Ramadoss
Dhrowpathiamman Temple
Lawpet, Saram Revenue Village
Puducherry.
[P2 is substituted as Lrs of Deceased P1
Thirumal, as per order dated 08.01.2018
in WMP.No.37724 of 2017 in WP.No.34002 of 2013]

..... Petitioners
-Vs-

- 1.The Union of India
Represented by the
Lt. Governor of Puducherry
- 2.The Special Secretary (Revenue)
Department of Revenue and Disaster Management
Government of Puducherry
Puducherry.

..... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari by calling for the records of the proceedings in G.O. 14 dated 20.11.2013 on the file of the second respondent and to quash the same as illegal.

For Petitioners : Mr.V.Raghavachari

For Respondents : Mr.J.Kumaran
Government Pleader [Puducherry]

ORDER

1. The present petition is filed challenging a notification in G.O.Ms.No.14, dated 20.11.2013 issued under Section 4 r/w Section 17 of the Land Acquisition Act, 1894.

2. The present action of the petitioner is founded on following facts:

- The Draupadi Amman Temple, the petitioner herein, owned properties in Survey No.217, Old S.No.210 of Saram Village. Vide the impugned notification dated 20-11-2013, the said property was sought to be acquired by the respondent for establishing an electricity sub-station.
- Prior to issuance of notification, Vide letter dated 28.09.2011, objections were sought by the officials of the Puducherry Hindu Religious Institutions for handing over the property comprised in S.No.217/3, admeasuring 2.06 hectares. In its objection dated 23.11.2011, it was inter alia pointed out to by the then Trustee of the temple, that earlier, at least on two occasions, first in 1979, and then in 1987, lands belonging to the temple in R.S.No.1132, and in S.No.100/3, were handed over to the Government for the construction of a community hall for the benefit of Municipality, but no compensation was ever paid for the same.
- The Trustee of the temple continued to raise objections to the proposed acquisition Vide communications dated 28.9.2012 and 03.9.2012. However, ignoring the same, the Commissioner, Hindu Religious Institutions, Puducherry, had addressed a letter to the temple stating that the Department was willing to pay Rs.1,748/- per sq.ft. This proposal was not accepted by the temple. In stead, it was pointed out to the authority concerned that a property in R.S.No.181/2 correlated to Cadastre No.1148, would be suitable for the purpose of establishing electricity sub-station. This did not manage to evoke any favourable response, and ignoring the objection to the acquisition, the impugned notification was issued by the Government invoking the emergent provision under Section 17 of the Land Acquisition Act. Subsequent efforts to persuade the Government to withdraw the acquisition were also in vain.
- It is in these circumstances, the petitioner has come forward with the present petition, wherein it principally challenges the notification for invoking the emergent provision under Section 17 thereby denying the petitioner of its statutory right of hearing under Section 5-A of the Act and accusing the Government of abusing the statutory power.

3. In this case, an order of interim stay of dispossession was granted by this Court on 16.12.2013, and the respondents have filed a petition in WMP.No.1162 of 2016, for vacating same. The affidavit filed in support of this petition is treated as the respondents' counter. Besides, the respondents have filed an additional counter too. The thrust of the contentions of the respondents in opposing the allegations in the petition are:

- A proposal was received for establishing 110/22KV Sub-Station for the Electricity Department at a cost of ₹8.06 crores. This project was conceived for catering the requirement of several residential localities and educational institutions that are around the lands of the petitioner. Hence, the petitioner's land was found ideal for implementing the project, and was accordingly identified for acquisition.
- Due and proper public notice was given under Section 4(1) of the Land Acquisition Act, and as there existed an imminent and present urgency in implementing the project, the Government invoked Sec. 17(4) of Land Acquisition Act, 1894. Consequently, G.O.Ms.No.14 was published, dispensing with the enquiry under Sect 5A of the Land Acquisition Act. This was followed by a declaration under Sec.6 of the Act Vide G.O.Ms.No.28 dated 20.02.2014. The entire project is conducted and is being monitored by the Ministry of Power.
- So far as the objection of the petitioner goes, they have been considered properly, adopting the same standards which any objection to a notification under Sec.4 would be considered under Section 5-A.
- In the property to be acquired, no temple or any other construction exists and it remains a barren land.
- The Department of Hindu Religious Institutions too did not raise any objection to the acquisition.
- The present petition is plainly not maintainable as it is instituted in contravention of Sec. 26 of the Pondicherry Hindu Religious Institutions Act, 1972. Section 26 mandates that no suit, prosecution or other legal proceedings by any Board (of Trustees) shall be filed without the previous sanction of the Government. In the instant case, before instituting it, no sanction as contemplated in Sec.26 was ever obtained.

4.1 Opening his argument, the learned counsel for the petitioner laid considerable emphasis on what he would allege as gross

abuse of statutory power by the Government when it opted to invoke Sec. 17 of the Land Acquisition Act, and thereby deprived the citizens of their just right of hearing that statute has conferred before declaring its intention to acquire the lands. It is not the subjective perception of the Government that the implementation of a project is urgent as to warrant invoking the extraordinary power under Sec.17 of the Land Acquisition Act, that matters but the existence of a real and present urgency which is capable of being shown to be objective and demonstrable, which is significant. An unilateral statement of the Government sans any demonstrable facts indicating the urgency of the need for land hardly meets the requirement of the statute, and would amount to abuse of statutory power. It would then reflect itself as a product of arbitrariness, which Constitution will find too allergic to accommodate.

4.2 The public purpose involved in the instant case is one of establishing an Electricity Sub-Station. It may be real, still it cannot be stretched to the extent of labelling the project with a tag of 'urgency', in order petitioner's lands could be acquired without hearing under Sec.5-A. The Administrative functionaries shall be statutorily sensitive and must not conduct their affairs that makes statutory exception into an convenient administrative rule, argued the counsel. Where are the facts, both objective and demonstrable, that can justify the Government's portrayal of the proposed project involving the establishing the Electricity Sub-station as imminently urgent, that it cannot even wait for couple of months to complete the enquiry under Sec.5-A of the Act? Reliance was placed on the authorities in Prabhawati and Others Vs. State of Bihar and Others [(2014) 13 SCC 721]; Laxman Lal (Dead) Through Lrs and Another Vs. State of Rajasthan and Others [(2013) 3 SCC 764]; Radhy Shyam (Dead) Through LRs and Another Vs.State of Uttar Pradesh and Others [(2011) 5 SCC 533]; Deity of Koothandakoil Pethadhampatti Village, Rep. by its Trustee, K.V.Kuppusamy Vs. The Collector of Dharmapuri District & Another [(2009-I-L.W.571]; The Corporation of Madras, Rep. by the Commissioner Vs. J.Periyanayaki & Others [2007 (3) CTC 28]; Om Prakash and Another Vs. State of U.P. and Others [(1998) 6 SCC 1] and State of Punjab and Another Vs. Gurdial Singh and Others [(1980) 2 SCC 471].

5. Countering the contentions, the learned Government Advocate would argue that :

a) The power of eminent domain is an essential facet of State's Authority and it is vested in it for granting benefit to the public, and the State is the best Judge to decide what is urgent or emergent. And, the decision of the Government on it may not be justiciable. Secondly, the Commissioner, Hindu Religious Institutions, himself has given his "no objection" to the acquisition, Vide his

communication dated 12.12.2012.

b) Sec.26 of the Puducherry Hindu Religious Act expressly bar not only the suit but every legal proceedings without the permission of the Commissioner under the Act.

6. Responding to the same, the counsel for the petitioner replied that any abuse of emergency power under Section 17 of the Land Acquisition Act taints the administrative action involved in it with arbitrariness and it destabilizes the fundamental right to equality that citizen enjoys under Article 14 of the Constitution. Every occasion where administrative authority dares to abuse the statutory power, it puts the issue in the orbit of Constitutionality, where objection such as the one founded on Sec.26 of the Hindu Religious Institutions Act, pale into insignificance, argued the counsel. Reliance was placed on the ratio in The Corporation of Madras, Rep. by the Commissioner [2007 (3) CTC 28] and Deity of Koothandakoil Pethadhampatti Village, Rep. by its Trustee, K.V.Kuppusamy Vs. The Collector of Dharmapuri District & Another [(2009-I-L.W.571)].

7. Both the objection and the justification for the acquisition of petitioner's land are seen pivoted on (a) an issue of the maintainability for ignoring Sec.26 of the Puducherry Hindu Religious Institutions Act; and (b) on an allegation that invoking Sec.17 of the Land Acquisition Act to the present acquisition is an abuse of statutory power. However, an understanding of the latter point first would be adequate to address both the issues raised.

8. Acquiring lands under the power of eminent domain through the route statutorily guided along Sec.5-A of the Land Acquisition Act, 1894, is a rule and dispensing with it is an exception. This need not halt this Court here, the parameters for invoking Sec.17 of the Act has been delved in Radhy Shyam case [(2011) 5 SCC 553), where the Hon'ble Supreme Court delves on the subject in its deeper layers and declares:

"77. From the analysis of the relevant statutory provisions and interpretation thereof by this Court in different cases, the following principles can be culled out:

(i) Eminent domain is a right inherent in every sovereign to take and appropriate property belonging to citizens for public use. To put it differently, the sovereign is entitled to reassert its dominion over any portion of the soil of the State including private property without its owner's consent provided that such assertion is on account of public exigency and for public good - Dwarkadas Shrinivas v. Sholapur Spg. and Wvg. Co. Ltd., Charanjit Lal

Chowdhury v. Union of India and Jilubhai Nanbhai Khachar v. State of Gujarat.

(ii) The legislations which provide for compulsory acquisition of private property by the State fall in the category of expropriatory legislation and such legislation must be construed strictly - DLF Qutab Enclave Complex Educational Charitable Trust v. State of Haryana, State of Maharashtra v. B.E. Billimoria and Dev Sharan v. State of U.P.

(iii) Though, in exercise of the power of eminent domain, the Government can acquire the private property for public purpose, it must be remembered that compulsory taking of one's property is a serious matter. If the property belongs to economically disadvantaged segment of the society or people suffering from other handicaps, then the Court is not only entitled but is duty-bound to scrutinise the action/decision of the State with greater vigilance, care and circumspection keeping in view the fact that the landowner is likely to become landless and deprived of the only source of his livelihood and/or shelter.

(iv) The property of a citizen cannot be acquired by the State and/or its agencies/instrumentalities without complying with the mandate of Sections 4, 5-A and 6 of the Act. A public purpose, however, laudable it may be does not entitle the State to invoke the urgency provisions because the same have the effect of depriving the owner of his right to property without being heard. Only in a case of real urgency, the State can invoke the urgency provisions and dispense with the requirement of hearing the landowner or other interested persons.

(v) Section 17(1) read with Section 17(4) confers extraordinary power upon the State to acquire private property without complying with the mandate of Section 5-A. These provisions can be invoked only when the purpose of acquisition cannot brook the delay of even few weeks or months. Therefore, before excluding the application of Section 5-A, the authority concerned must be fully satisfied that time of few weeks or months likely to be taken in

conducting inquiry under Section 5-A will, in all probability, frustrate the public purpose for which land is proposed to be acquired.

(vi) The satisfaction of the Government on the issue of urgency is subjective but is a condition precedent to the exercise of power under Section 17(1) and the same can be challenged on the ground that the purpose for which the private property is sought to be acquired is not a public purpose at all or that the exercise of power is vitiated due to malafides or that the authorities concerned did not apply mind to the relevant factors and the records.

(vii) The exercise of power by the Government under Section 17(1) does not necessarily result in exclusion of Section 5-A of the Act in terms of which any person interested in land can file objection and is entitled to be heard in support of his objection. The use of word "may" in sub-section (4) of Section 17 makes it clear that it merely enables the Government to direct that the provisions of Section 5-A would not apply to the cases covered under sub-section (1) or (2) of Section 17. In other words, invoking of Section 17(4) is not a necessary concomitant of the exercise of power under Section 17(1).

(viii) The acquisition of land for residential, commercial, industrial or institutional purposes can be treated as an acquisition for public purposes within the meaning of Section 4 but that, by itself, does not justify the exercise of power by the Government under Sections 17(1) and/or 17(4). The Court can take judicial notice of the fact that planning, execution and implementation of the schemes relating to development of residential, commercial, industrial or institutional areas usually take few years. Therefore, the private property cannot be acquired for such purpose by invoking the urgency provision contained in Section 17(1). In any case, exclusion of the rule of audi alteram partem embodied in Section 5-A(1) and (2) is not at all warranted in such matters.

(ix) If land is acquired for the benefit of private persons, the Court should view the invoking of Sections 17(1) and/or 17(4) with suspicion and

carefully scrutinise the relevant record before adjudicating upon the legality of such acquisition.

Not parameters of ordinary variety are they, nor merely a set of principles for the Courts to follow, but are judicial instructions to the Executive to avoid misuse and abuse of emergent power while acquiring the land. The Supreme Court subsequently found occasions to rely on and reiterate the guidelines it had evolved in Radhy Shyam case in Prabhawati and Others Vs. State of Bihar and Others [(2014) 13 SCC 721] and Laxman Lal (Dead) Through Lrs and Another Vs. State of Rajasthan and Others [(2013) 3 SCC 764].

9. The soul of Sec.17 of the Land Acquisition Act is that "the purpose of acquisition cannot brook the delay of even few weeks or months". To state it differently, it must be of such nature that it should be a race against the time set in a stop-clock, lest the public purpose behind the acquisition which is waiting to be addressed is defeated. In the instant case, the project to be implemented is one of establishing a Sub-station for the Electricity Board. And, it is contended that it is intended for the benefit of few residential localities and educational institutions around the petitioner's property. It is no case of the Government that these residential localities or the educational institutions, are yet to experience electricity, and that they would see electricity only if the sub-station is established. And, even if it were so, a few weeks delay would not defeat the public purpose involved in the intended acquisition. A sub-station, enables only efficient supply of electricity at a reasonably constant voltage, but it defies an argument that it brooks no delay, not even few weeks to complete the process of an enquiry under Sec.5-A. This court therefore, struggles to convince itself that the Government/its authorities have been able to demonstrate that there existed an urgency to skip an enquiry under, and to jump-over Sec.5-A of the Act. Apparently, the Government appears to have thrown the inbuilt caution in Sec.17 of the Act to wind, short circuited the spirit behind the said provision, cried eureka at the sight of the provision, and rushed to walk into an area where the sensible would fear to tread: The area of statutory abuse and administrative arbitrariness. Necessarily, the notification in G.O.Ms.No.14 requires to be interfered with and has to be quashed.

10. This now, takes this court to the second issue: Is the petition maintainable despite the fact no prior of sanction of the Government was obtained under Sec.26 of the Puducherry Hindu Religious Institutions Act, 1972 (Act 10 of 1972) was obtained.

Sec.26 reads:

" 26. No suit, prosecution or other legal proceeding by any Board shall be filed or commenced before any court without the previous sanction of the Government and no suit, prosecution or other legal proceedings shall be withdrawn or compromised by the Board except with the previous sanction of the Government."

11.1 In *Om Prakash and Another Vs. State of U.P. and Others* [(1998) 6 SCC 1] the Hon'ble Supreme court has declared:

" 21. Our attention was also invited by to a decision of a two-Judge Bench of this Court in the case of *State of Punjab v. Gurdial Singh* wherein Krishna Iyer, J. dealing with the question of exercise of emergency powers under Section 17 of the Act observed in para 16 of the Report that save in real urgency where public interest did not brook even the minimum time needed to give a hearing, land acquisition authorities should not, having regard to Articles 14 and 19, make an inquiry under Section 17 of the Act. Thus, according to the aforesaid decision of this Court, inquiry under Section 5-A is not merely statutory but also has a flavour of fundamental rights under Articles 14 and 19 of the Constitution though right to property has now no longer remained a fundamental right, at least observation regarding Article 14, vis-a-vis, Section 5-A of the Land Acquisition Act would remain apposite."

In *Deity of Koothandakoil Pethadhampatti Village, Rep. by its Trustee, K.V.Kuppusamy Vs. The Collector of Dharmapuri District & Another* [(2009-I-L.W.571)], this Court has held that "When the land belongs to the temple, the notice must go to the trustees, who are lawfully managing the temple"

11.2 If the issue posed is spread on the plane which dicta of the aforesaid judgements has provided, it emerges that the Trustee of the temple has a right vested in him to be heard to defend the interest of the temple against any acquisition, and if this right is denied by any arbitrary exercise of statutory power, it then assumes the character of violation of fundamental right under Article 14 of the Constitution.

12. This Court, having already concluded that invoking Section 17 of the Land Acquisition Act in the instant case ranks as a statutory abuse, as an inevitable consequence it has left a trail of arbitrariness, inviting an infringement of the right to equality under Article 14 of the Constitution. Where fundamental rights are violated, then right to remedy it shall

not be fettered by any statutory restrictions. Constitutional remedies knows not any such restrictions, nor does it recognise it. In L. Chandra kumar Vs Union of India [(1997)3 SCC 261], the Supreme Court declared:

"78..... We, therefore, hold that the power of judicial review over legislative action vested in the High court under 226 of the Constitution and in this court under article 32 of the Constitution is an integral and essential feture of the constitution, constituting part of its basic structure."

In Govind Vs State of (Govt. of NCT of Delhi) [(2003) DLT 510], which was approved by the Supreme court in Surya Dev Rai Vs Ram Chander Rai [(2003)6 SCC 675], the Delhi High Court has held (in paragraph 74) that:

"The powers of the High court under Article 226 cannot be whittled down, nullified, abrogated, diluted or taken either by judicial pronouncement or by the legislative enactment or even by the amendment of the Constitution. The power of judicial review is an inherent part of the basic structure and it cannot be abrogated without affecting the basic structure of the Constitution."

The supremacy of power of judicial review under Article 226 being what it is, can a legislation restrain the right of the citizen seeking judicial review of an administrative action be fettered by a statutory provision. If it were to be considered that permission under Sec.26 of the Hindu Religious Institutions Act is a precondition to invoke Article 226 of the Constitution, the consequence would be catastrophic in the face of the interpretations that the Hon'ble Supreme Court has given.

13. To conclude, this court allows the petition, quash the G.O.Ms.No.14, dated 20.11.2013. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To:

1.The Lt. Governor of Puducherry
Union of India
Puducherry.

2.The Special Secretary (Revenue)
Department of Revenue and Disaster Management
Government of Puducherry
Puducherry.

+1cc to Mr.M.Raghavachari, Advocate, S.R.No.56649
+1cc to the Government Pleader, S.R.No.56803

W.P.No.34002 of 2013

MN (CO)

rrs 26/10/2018



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