IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.07.2018

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.19308 of 2013
and
M.P.No.2 of 2013

P.Vedambal ..Petitioner

vs

1.Government of Puducherry,
rep.by its Secretary to Government,
Department of Revenue and
Special Disaster Management,
Puducherry.

2.Sub Collector(Revenue),
Cum Land Acquisition Officer,
Office of the Sub Collector,
Karaikkal.

3.Tahsildar(Land Acquisition),
Office of the Tahsildar,
Karaikkal. ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for records from the respondents relating to the impugned notification issued under section 4(1) of the Land Acquisition Act(Central Act 1 of 1894) in G.O.Ms.No.4 dated 27.6.2011 and the consequent declaration made under section 6 of the said Act in G.O.Ms.No.7 dated 29.7.2011 by the Department of Revenue and Disaster Management, Government of Puducherry and quash the same as illegal and unsustainable in so far which are against the interests and claim of the petitioner and consequently forbear them from acquiring his lands situated in S.No.80/3 to an extent of 0.36.00 ares in Kottucherry commune, Karaikkal Taluk, Pondicherry State as notified by them in the aforesaid impugned proceedings.

For Petitioner :Mr.S.Kanniah

For Respondents :Mr.R.Syed Mustafa, AGP(Puducherry)

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O R D E R

The relief sought for in this writ petition is to call for the records from the respondents relating to the impugned notification issued under section 4(1) of the Land Acquisition Act(Central Act 1 of 1894) in G.O.Ms.No.4 dated 27.6.2011 and the consequent declaration made under section 6 of the said Act in G.O.Ms.No.7 dated 29.7.2011 by the Department of Revenue and Disaster Management, Government of Puducherry and to quash the same as illegal and unsustainable in so far which are against the interests and claim of the petitioner and to forbear them from acquiring his lands situated in S.No.80/3 to an extent of 0.36.00 ares in Kottucherry commune, Karaikkal Taluk, Pondicherry State as notified by them in the aforesaid impugned proceedings.

2.The land acquisition proceedings initiated in respect of the land belongs to the writ petitioner in proceedings dated 27th June 2011 is under challenge in this writ petition.

3.The learned counsel appearing on behalf of the writ petitioner made a submission that the similar writ petitions filed, challenging the very same land acquisition proceedings are allowed by this Court on 29.04.2016 in W.P.Nos.43 of 2013 & etc batch, the operative portions of the orders are as under:

> "18. In the preceding paragraphs, this Court pointed out that there has been non-compliance of Section 17(3A) of the Act. While on this issue, this Court would wish to point out that the necessity to invoke the urgency clause appears to be unrealistic, after all 30 days is required to conduct the enquiry under Section 5A of the Act. The Hon'ble Supreme Court in the case of Radhy Shyam (Dead) through Lrs., & Anr., vs. State of U.P. & Ors., (supra), pointed out that a public purpose, however, laudable it may be does not entitle the State to invoke urgency provisions because the same have the effect of depriving the owner of his right to property without being heard and only in case of real urgency, the State can invoke the urgency provisions and dispense with the requirement of hearing the landowner or other interested persons, that the provisions can be invoked only when the purpose of acquisition cannot brook the delay of even few weeks or months. While considering the various purposes for which acquisition of land is made, the Hon'ble Supreme Court also took into consideration, when acquisition is for institutional purposes and it was held as follows:-
>
> 77(viii) The acquisition of land for residential, commercial, industrial or institutional purposes can be treated as an acquisition for public purposes within

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the meaning of Section 4 but that, by itself, does not justify the exercise of power by the Government under Section 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.

19. From the counter affidavit it is seen that the Government of India issued orders for establishing 10 National Institute of Technology through out the country by order dated 30.10.2009. The proposal was implemented and the National Institute of Technology was established in Karaikal during the academic year 2010-11 in a rental building which was a building meant for a college. After the institution was established acquisition proceedings were initiated. By issuance of notification under Section 4 of the Act, though 4(1) notification was published in the newspapers on 30.06.2011, for nearly two months, no steps were taken to gazette the notification and the gazette publication was only on 20.08.2011. This delay has not been explained in the counter affidavit. In any event, the property sought to be acquired was a property owned by private persons and that could not have been acquired invoking the urgency provision contained under Section 17(1) of the Act.

20. Hence, for all the above reasons, the Writ Petitions are allowed for the following reasons:-

(i) The invocation of urgency provisions under Section 17 of the Act is vitiated on account of non-adherence to the mandatory requirements under sub-section(3A) of Section 17 and in utter disregard to the law laid by the Hon'ble Supreme Court in the case of Radhy Shyam (Dead) through Lrs., & Anr., vs. State of U.P. & Ors., (supra).

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(ii) As the possession of the lands have not been taken over as required under law as pointed out by the Hon'ble Division Bench in the case of TNHB vs. Igate Global Solutions Ltd., (supra) and the compensation having not been tendered or paid to the landowners or deposited before the Civil Court, the land acquisition proceedings would stand lapsed in terms of Section 24

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(2) of the Act 30 of 2013. As this Court has set aside the acquisition proceedings as having been lapsed, liberty is granted to issue fresh notification under Act 30 of 2013, if the respondents so desire.

No costs. Consequently, connected Miscellaneous Petitions are closed."

4.In view of the judgment cited supra, the present writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
   Government of Puducherry,
   Department of Revenue and
   Special Disaster Management,
   Puducherry.

2.Sub Collector(Revenue),
   Cum Land Acquisition Officer,
   Office of the Sub Collector,
   Karaikkal.

3.Tahsildar(Land Acquisition),
   Office of the Tahsildar,
   Karaikkal.

+ 1 cc to Mr. S. Kanniah, Advocate Sr.51119

W.P.No.19308 of 2013

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EU(20/08/2018)

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