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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.28011 of 2007

and

M.P.No.2 of 2007

N.K.Jaganthi, C/o.N.K.Mithran ... Petitioner
Vs.

1.The Pondicherry Union Government,
Rep. By Joint Secretary,
Revenue Department,
Pondicherry.

2.Deputy Collector,
(Revenue)-cum-Land Acquisition Officer,
Mahe,
Pondicherry.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to quash the impugned Section 4(1) notification in G.O.Ms.No.37, Revenue Department, Pondicherry dated 04.10.2004 and Sec.6 declaration in G.O.Ms.No.148, Revenue Department, Pondicherry, dated 14.11.2005 culminating in issuing notice in Ref.File No.619 /C2/LA/GLPSP (N)/2004 dated 26.07.2007 under Sec.9(1), 9(3) & 10 of the Land Acquisition Act 1894.

For Petitioner : Mr.A.V.M/s.J.R.K.Bhavanantham

For Respondents: Mr.A.V.Ramalingam
Additional Government Pleader

O R D E R

The petitioner is the owner of the land in respect of R.S.No.7/1C of 3- Palloor revenue village. Initially, an extent of 0.38.57 Hectares property owned by his father, V.N.Purushothaman and the petitioner's father is the freedom fighter and the Deputy Speaker of the Pondicherry Assembly in the erstwhile Government and he has held the post of Mayor of Mahe. After the demise of his father, the petitioner inherited the property and has been enjoying the property peacefully. While being so, the Pondicherry Government had initially



acquired the land for formation of National Highways-17, Tellicherry, Mahe, Bye-pass Road from the Assistant Engineer (R&W) Public Works Department. Further, the first respondent issued G.O.Ms.No.37, Revenue Department dated 04.10.2004 and Section 6 declaration in G.O.Ms.No.148, Revenue Department, Pondicherry, dated 14.11.2005 culminated in issue of notice in Ref.FILE No.619/C2/LA/GLPSP (N)/2004 dated 26.07.2007 under Section 9(1), 9(3) & 10 of the Land Acquisition Act, 1894.

2. The petitioner's land is needed for the construction of building for Government Lower Primary School at Palloor Revenue Village and appointing the Deputy Collector, (Revenue)-cum-Land Acquisition Officer, Mahe, Pondicherry. The second respondent office to perform the functions of the Collector under Sec. 5-A of the Land Acquisition Act. The 4 (1) notification in G.O.Ms.No.37, Revenue Department dated 04.10.2004 was published in the daily newspaper on 09.10.2004 and State Gazette notification was published on 26.04.2005 and thereafter the first respondent issued Sec-6 Declaration vide G.O.Ms.No.148 Revenue Department, Pondicherry dated 14.11.2005 and the same was published in the local newspaper on 08.11.2005 and 19.11.2005 and published in the State Gazette under Sec.9(1), 9 (3) & 10 of the Land Acquisition Act 1894 dated 16.12.2005.

3. Challenging the above said Notification and Declaration, the present writ petition is filed.

4. The learned counsel for the petitioner would submit that already the State had taken over the land from the petitioner for the formation of National Highways. Further, the act of the Government in taking over the petitioner's small piece of land through Notification and Declaration is an unsustainable one. In fact, the Lieutenant Governor recommended not to acquire the petitioner's land. However, the Pondicherry State have decided to acquire the land and the same is an unsustainable one.

5. Learned Additional Government Pleader appearing for the respondents would submit that the recommendation made by the Lieutenant Governor is only advisory in nature. After taking note of the Lieutenant Governor's advise, the authority conducted a field inspection and the field inspection reveals that there was a school existing within a radius of 100 mts. Hence, the competent authority decided to acquire the land for the purpose of constructing the school building in the above said land. Accordingly, he prayed to pass an appropriate orders.

6. With regard to the issue involved in the present case, this court has to decide whether 6th Declaration are passed within one year from the date of 4(1) Notification. In the present case, the last date of Publication is 26.04.2005 and the 6th Declaration was published on 19.11.2005. On perusal of the



above said dates, it is clear that the 6th Declaration was passed well within the time of one year. The other issue raised by the learned counsel for the petitioners is the recommendation of the Lieutenant Governor.

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7. The petitioners averred in his affidavit that the Lieutenant Governor recommended not to acquire the petitioner's land for the construction of school building. However, in the counter affidavit, it has been elaborately dealt with the said issue that before acquiring the land, the competent authority considered the recommendation of the Lieutenant Governor. The recommendation of the Lieutenant Governor, after the field inspection has revealed that the petitioner's land is within the radius of 100 mts from the existing school premises. Hence, they decided to acquire the land when the competent authority conducted the field inspection and arrived at a conclusion that the petitioner's land is suitable for construction.

8. Once the competent authority has arrived at a conclusion after field inspection, this court cannot arrive at a different conclusion while exercising power under Article 226 of the Constitution of India. Further without any material, this court cannot interfere with the decision of the competent authority unless the intention of the competent authority is a malafide one.

9. In the result, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

gv

To

1. TJoint Secretary,
The Pondicherry Union Government,
Revenue Department,
Pondicherry.
2. Deputy Collector,
(Revenue)-cum-Land Acquisition Officer,
Mahe,
Pondicherry.



3. The Public Prosecutor,
High Court, Madras,
Chennai.

+1cc to Mr.J.R.K.Bhavanantham, Advocate SR.No.51468

+1cc to Government Pleader (Puducherry) SR.No.50996

W.P.No.28011 of 2007
and
M.P.No.2 of 2007

VD(CO)
GMY(13/08/2019)