

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.09.2019

CORAM:

THE HONOURABLE MR. JUSTICE T. RAJA

Writ Petition Nos.4081 and 4146 of 2007 and
M.P.Nos.2 and 2 of 2007

S.Muthurajan ... Petitioner in W.P.No.4081/2007
M.Baby Saroja ... Petitioner in W.P.No.4146/2007

Vs

1. Special Commissioner and Commissioner
of Land Administration, Chepauk,
Chennai-5.
 2. District Collector,
Salem District.
 3. Special Tahsildar (Land Acquisition),
Neighbourhood Scheme,
Tamil Nadu Housing Board, Salem-8.
 4. Tamil Nadu Housing Board
rep. by its Managing Director,
No.493, Anna Salai, Nandanam,
Chennai-35.
 5. State of Tamil Nadu rep. by its
Secretary to Government,
Housing and Urban Development
Department, Secretariat,
Chennai-9.
- ... Respondents in both W.Ps.

(R5 impleaded as per the order of this Court dated 4.7.2007 made
in M.P Nos.3 & 4 of 2007 in W.P.4146 & 4081 of 2007)

PRAYER: Writ Petitions filed under Article 226 of the
Constitution of India, praying to issue a Writ of Certiorari,
calling for the records relating to the Notification dated
04.12.2004 issued by the 2nd respondent herein under Section 4(1)
for the acquisition of an extent of 0.16.50 hectare lands in
S.No.84/1B2B of Kottagoundampatty and published in Salem
District Gazette No.38 dated 08.12.2004 and Consequent Section 6
Declaration dated 13.10.2005 issued by the 1st respondent herein

and published at Page No.325 of the Tamil Nadu Government Gazette No.42, Part-VI, Section-1 dated 02.11.2005 and quash the same insofar as the same relates to the petitioners herein.

For Petitioner : Mr.V.R.Rajasekaran
in both W.Ps.

For Respondents : Mr.M.Elumalai,
1 to 3 & 5 in both Government Advocate
W.Ps.

For 4th respondent : Mr.I.Sathish,
in both W.Ps. Standing Counsel

C O M M O N O R D E R

Both the Writ Petitions have been filed challenging the Notification dated 04.12.2004 issued by the 2nd respondent herein under Section 4(1) of the Land Acquisition Act, for the acquisition of an extent of 0.16.50 hectare lands in S.No.84/1B2B of Kottagoundampatty and published in Salem District Gazette No.38 dated 08.12.2004 and also the Consequent Section 6 Declaration dated 13.10.2005 issued by the 1st respondent herein and published at Page No.325 of the Tamil Nadu Government Gazette No.42, Part-VI, Section-1 dated 02.11.2005 and to quash the same insofar as the same relate to the petitioners herein.

2. Learned Counsel appearing for the petitioners in both the Writ Petitions assailing the impugned 4(1) Notification dated 04.12.2004 issued by the District Collector, Salem District and the Consequent Section 6 Declaration dated 13.10.2005 issued by the Special Commissioner and Commissioner of Land Administration contended that when the respondents have initiated the land acquisition proceedings in the year 1991 to acquire the petitioners lands in S.No.84/1 of Kottagoundanpatty Village for construction of Houses under Salem Neighbourhood Scheme of the Tamil Nadu Housing Board, they have filed W.P.Nos.16204, 17605 and 17837 of 1994 and obtained an order of interim stay against dispossession. During the pendency of those writ petitions, when an order of interim stay of dispossession was in force, they have voluntarily made an offer on 09.11.1995 to provide the lands required by the Tamil Nadu Housing Board to form a 40 feet North-South Road to connect the scheme area to National Highways so as to have an alternative approach Road to the National Highways. However, the 3rd respondent, namely, the Special Tahsildar (Land Acquisition) Neighbourhood Scheme, Tamil Nadu Housing Board, Salem-8 has not come forward to release the remaining lands covered by the acquisition proceedings. Finally, the land acquisition

proceedings were set aside by a judgment dated 04.09.2001 made in W.P.Nos. 16204, 17605 and 17837 of 1994 by this Court on the ground that the petitioners therein were not put on notice of the land acquisition proceedings initiated in the year 1991 in spite of the mutation of the revenue records based on their title deed dated 08.02.1989.

3. The learned Counsel for the petitioners further contended that even after the judgment of this Court, the petitioners made a sincere offer on 08.11.2001 to the 3rd respondent to give their lands roughly measuring 10865 sq.ft. required for laying an approach road of 40 feet width subject to the assurance that Tamil Nadu Housing Board will not make any fresh proposal to acquire the remaining lands of an extent of about 1.60 acres owned by them for the purpose of forming 60 feet approach road. Finally, the respondents have resorted to compulsory acquisition of the petitioners lands although they have expressed willingness to give the land required for the 40 feet approach road. Thereafter, the 3rd respondent approved a Notification under Section 4(1) of the Land Acquisition Act (Central Act No.1 of 1894) and the same was published in Salem District Gazette No.38 dated 08.12.2004. The 3rd respondent has also conducted an enquiry under Section 5-A of the Land Acquisition Act. In the said enquiry, the petitioners reiterated their stand that they were willing to part away with the land required for forming a 40 feet approach road and raised objection against the compulsory acquisition of lands to form a 60 feet road instead of 40 feet as the other roads in the scheme area are only 40 feet width. Thereafter, the respondents have also issued a Declaration dated 13.10.2005 under Section 6 of the Land Acquisition Act.

4. Continuing his arguments, the learned Counsel for the petitioners also contended that as the petitioners have been put to great problem in view of the compulsory acquisition of their lands and the 4(1) Notification has been issued only in the District Gazette, Salem, but not in the Official Gazette of Tamil Nadu, they have advised to approach this Court by way of filing the present Writ Petitions since the issue-in-dispute has already been decided by a Division Bench of this Court in Tamil Nadu Housing Board rep. by its Managing Director, Nandanam, Chennai-35 and another vs. DPF Textiles rep. by its MD. S.Margin Mettupaayam Road, Gnanambigai Mills Post, Coimbatore and 5 others in W.A.No.151 of 2012 dated 08.12.2017 holding that the publication of Notification in the Official Gazette is a mandatory requirement and the publication of the notification in the District Gazette would not serve the purpose. After referring to the relevant portion of the judgment passed by the Division Bench of this Court cited supra, the learned Counsel for the petitioners prayed that the Notification issued under

Section 4(1) of the Land Acquisition Act published in the District Gazette, Salem is not legally maintainable. Therefore, the writ petitions deserve to be allowed.

5. A detailed Counter Affidavit has been filed by the respondents.

6. Mr.M.Elumalai, learned Government Advocate appearing for the respondents 1 to 3 and 5 urging this Court to dismiss the writ petitions, meeting the sole argument advanced by the learned Counsel for the petitioners that there was no any Gazette Notification issued in the Official Gazette, referring paragraph 11 of the Counter Affidavit contended that after issuance of the 4(1) Notification by the District Collector, Salem in Roc.No.61287/2002 (B3) dated 4.12.2004 which was published in Salem District Gazette No.38 dated 8.12.2004, a Section 6 Declaration under the Land Acquisition Act was approved by the Special Commissioner and Commissioner of Land Administration, Chennai vide D.Dis.H2/34572/05-1 dated 13.10.2005 and it was published in Tamil Nadu Gazette in T.N.G.G.No.42 part IV Section 1 dated 2.11.2005 and thereafter, an award enquiry was conducted for the above said lands on 7.2.2007 by the Land Acquisition Officer/Neighbourhood Scheme, Salem. Subsequently, a draft award and award proceedings have been prepared and submitted to the District Revenue Officer/Salem for approval.

7. It is relevant to extract paragraph 11 of the counter affidavit filed by the respondents hereunder :

'11. It is submitted that (Para.6) of the affidavit, the 4(1) notification of the land in S.No.84/1B2B measuring 0.16.5 hectare of Kottagoundampatti Village was approved by the District Collector in Roc.No.61287/2002 (B3) dated 4.12.2004 and it was published in Salem District Gazette No.38 dated 8.12.2004 and the D.D. U/s.6 of L.A. Act was approved by the Special Commissioner and Commissioner of Land Acquisition/Chennai vide D.Dis.H2/34572/05-1 dated 13.10.2005 and it was published in T.N.G.G.No.42 part IV Section 1 dated 2.11.2005. The award enquiry was conducted for the above said land on 7.2.2007 by the Land Acquisition Officer/Neighbourhood Scheme, Salem. The draft award and award proceedings (Award No.1/2006-2007) has been prepared and submitted to District Revenue Officer/Salem for approval.'

8. In view of all the above, this Court is unable to find any merit on the submission of the learned Counsel appearing for the petitioners. The reason being that after the issuance of

Section 4(1) Notification by the District Collector, Salem in Roc.No.61287/2002 (B3) dated 4.12.2004 which was published in Salem District Gazette No.38 dated 8.12.2004, Section 6 Declaration under the Land Acquisition Act was approved by the Special Commissioner and Commissioner of Land Administration, Chennai vide D.Dis.H2/34572/05-1 dated 13.10.2005 and the same was published in Tamil Nadu Gazette in T.N.G.G.No.42 part IV Section 1 dated 2.11.2005. Thereafter, it appears that an award enquiry was also conducted for the above said lands on 7.2.2007 by the Land Acquisition Officer/Neighbourhood Scheme, Salem and an Award has been passed by the Land Acquisition Officer in Award No.1/2006-2007.

9. At this stage, the learned Counsel for the petitioners submitted that after passing of an award, the compensation amount of Rs.1,03,143/- has been deposited before the Sub-Court, Mettur, under section 30 and 31(2) of the Land Acquisition Act in violation of the order of stay passed by this Court.

10. But this Court finds no merit in the said submission of the learned Counsel for the petitioners for the simple reason that Section 6 Declaration has been published in the Tamil Nadu Gazette in T.N.G.G.No.42 part IV Section 1 dated 2.11.2005 and it appears that the purpose of land acquisition is for the limited extent requiring 60 feet road to connect the National Highways. Therefore, this Court, taking into account the larger public interest, is unable to accept with the claim of the petitioners.

11. In the result, the Writ Petitions fail and the same are accordingly dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. Special Commissioner and Commissioner
of Land Administration, Chepauk,
Chennai-5.
2. District Collector,
Salem District.

3. Special Tahsildar (Land Acquisition),
Neighbourhood Scheme,
Tamil Nadu Housing Board, Salem-8.

4. The Managing Director,
Tamil Nadu Housing Board,
No.493, Anna Salai, Nandanam,
Chennai-35.

5. Secretary to Government,
State of Tamil Nadu,
Housing and Urban Development
Department, Secretariat, Chennai-9.

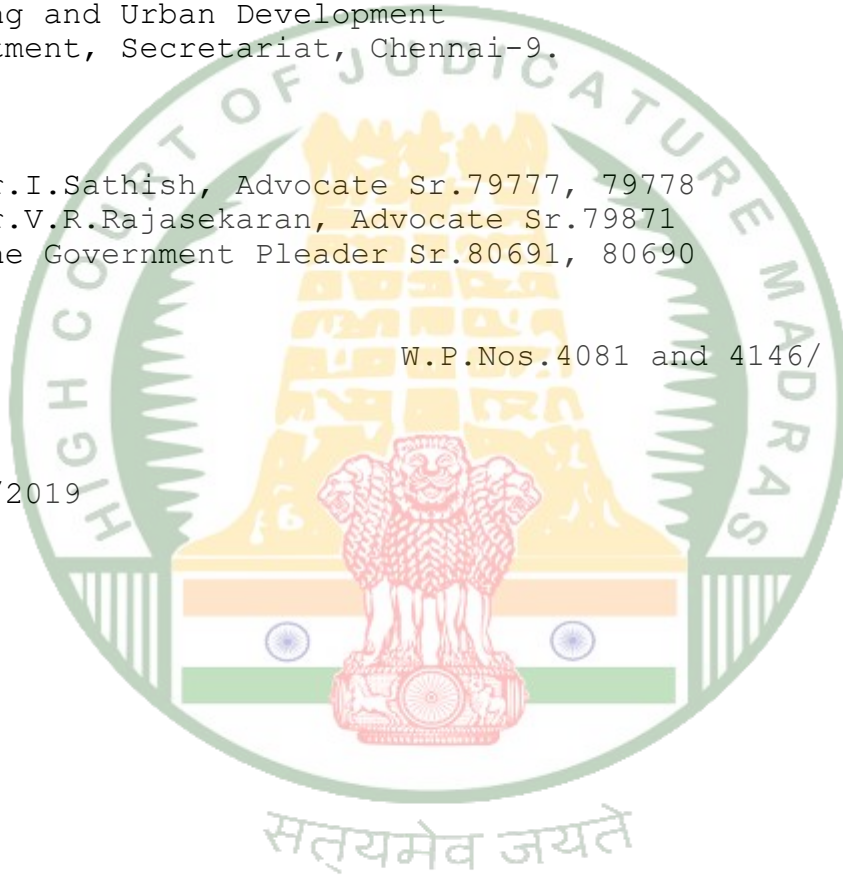
+2cc to Mr.I.Sathish, Advocate Sr.79777, 79778

+2cc to Mr.V.R.Rajasekaran, Advocate Sr.79871

+1cc to the Government Pleader Sr.80691, 80690

W.P.Nos.4081 and 4146/ 2007

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