

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2019

CORAM

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

W.P. 37282 of 2004

and

W.P.M.P. 44740 of 2004

1. V.Venkatesan
 2. V.Dhanammal @ Dhanalakshmi
 3. V.Kirubanidhi
 4. V.Selvanayagam
- ... Petitioners

Vs

1. Union of India,
Union Territory of Pondicherry,
rep. by Joint Secretary to Govt.
(Revenue),
Pondicherry.
 2. The Sub-Collector (Revenue) South,
-cum-Land Acquisition Officer,
Villianur,
Pondicherry.
- ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records relating to the Notification under Section 4(1) of the Land Acquisition Act, bearing G.O.Ms.No.50, Revenue Department, dated 10.10.2003, issued by the 1st respondent and published in the Gazette of Pondicherry No.43, dated 28.10.2003, the Declaration under Section 6 of the Land Acquisition Act, 1894 bearing G.O. Ms. No.56, Revenue Department, dated 03.12.2003 issued by the 1st respondent and published in the Gazette of Pondicherry No.50, dated 16.12.2003 and Notice under Sec.17(3A) of the Land Acquisition Act, 1894 bearing No. 569/DC(LA)/A4/U/2003, dated 09.11.2004 issued by the 2nd respondent and quash the same.

For Petitioner : Mr.T.M.Naveenkumar
for M/s.D.Kamatchi

For Respondents : Mrs.N.Mala,
Addl. Govt. Pleader

O R D E R

This Writ Petition has been filed challenging the impugned Notification issued by the 1st respondent under Section 4(1) of the Land Acquisition Act, bearing G.O.Ms.No.50, Revenue Department, dated 10.10.2003, and published in the Gazette of Pondicherry No.43, dated 28.10.2003, the Declaration under Section 6 of the Land Acquisition Act, 1894 bearing G.O. Ms. No.56, Revenue Department, dated 03.12.2003 issued by the 1st respondent and published in the Gazette of Pondicherry No.50, dated 16.12.2003 and Notice under Sec.17(3A) of the Land Acquisition Act, 1894 bearing No. 569/DC(LA)/A4/U/2003, dated 09.11.2004 issued by the 2nd respondent and quash the same.

2. The case of the petitioners is that they are the joint owners of the wet lands bearing R.S.No.102/4, Bahour Village, Pondicherry measuring 0.14.00 hec. and the said land is falling within the ayacut of Bahour lake and they are irrigating the same from the waters released from the said lake through channels and raising two paddy crops in a year. That apart, they are also irrigating the said lands from the water pumped from their borewell and raising a third crop therein every year. The said land is a very valuable agricultural land and producing food grains to the nation and also substantial income for the maintenance of their family. As per their family custom, the petitioners were using the eastern portion of the said land measuring 0.02.70 hec. as burial ground for their family. Hence, the petitioners' land is situated 3 ft. lower in level than the road and other adjacent lands. Therefore, it cannot be used for any other purpose.

3. The petitioners have further averred that the poramboke land bearing R.S.No.102/3 in Bahour village measuring 0.63.20 hec. is situated adjacent to their land on the eastern and northern sides. The Government of Pondicherry has earmarked the southern side portion of the said poramboke land measuring 55 kuzhies and in front road side portion measuring about 5 kuzhies, and it has constructed the Fire Station at Bahour and the remaining rear portion, measuring 50 kuzhies is lying vacant. Therefore, if the Government wants to expand the Fire Station or construct Residential quarters for its staff, it can very conveniently use the above said vacant and unutilised poramboke land.

4. While being so, the 1st respondent has issued a notification under Sec.4 (1) of the Land Acquisition Act, 1894, (hereinafter called as 'Act') bearing G.O.Ms.No.50, dated 10.10.2003 and published in the Gazette of Pondicherry dated 28.10.2003 stating that the petitioners land is needed for a public purpose viz., for the construction of Fire Station and

staff quarters therein. Further, in the same notification, the 1st respondent has stated that in view of the urgency of the acquisition, the Administrator of Villianur has ordered that the procedures provided under Sec.5-A of the Land Acquisition Act would not apply to the land acquisition proceedings. Thereafter, the 2nd respondent has issued another notification under Sec.4(1) of the Act dated 12.11.2003 for acquisition of the petitioners land for the said purpose. Immediately after the receipt of notice dated 12.11.2003, the petitioners have given detailed objections dated 23.12.2003 stating the above facts and requested to drop the said acquisition proceedings. However, objections had not been considered by the respondents. In the meantime, the 1st respondent has issued a declaration under Section 6 of the Act bearing G.O.Ms.No.56, dated 03.12.2003 and published in the Gazette of Pondicherry on 16.12.2003 declaring that the petitioners' land was needed for construction of Fire Station and staff quarters and the 2nd respondent was appointed for taking further action and the possession of their land may be taken on the expiry of 15 days after the date of publication of the notice mentioned in Sec.9(1) of the Act. The said declaration had been published only in the Gazette of Pondicherry dated 16.12.2003. The public notice of the substance of such declaration has not been given in the locality.

5. The petitioner has further averred that the right given to the petitioners viz., the owners of the land under Sec.5-A of the Act to object to the acquisition proceedings is a very valuable and substantive right available to the petitioners. Hence, to dispense with the procedures provided under Sec.5-A of the Act is unjustifiable. Therefore, the urgency clause provided under Sec.17 of the Act can be invoked only when there is a real and genuine urgency in existence. Further, even if the Government come to the conclusion that there is urgency for acquisition, it cannot simply order to dispense with the procedures provided under Sec.5-A of the Act. The Government has to apply its mind to the object of Sec.5-A of the Act read with the purpose, for which the acquisition is made and the materials on record, satisfy itself and satisfied with the reasons for invoking the urgency clause provided under Sec.17 of the Act. However, suddenly, the 2nd respondent has issued a notice under Sec.17 (3-A) of the Act dated 09.11.2004 directing the petitioners to attend an enquiry under Sec.17(3-A) of the Act at 11.30 a.m. on 24.11.2004. Accordingly, the petitioners have appeared before the 2nd respondent and submitted their objections dated 24.11.2004. Challenging the same, the present Writ Petition has been filed by the petitioners.

6. The learned counsel appearing for the petitioners would submit that though the petitioners land situated just in front of the Fire Station, accordingly, the respondents have decided

to acquire the land in order to reach the main road. However, even though a vast extent of poramboke land was available on either sides, without acquiring the poramboke land, the respondents have acquired the petitioners land, which is unsustainable one. Further, there is no urgency for acquiring the land for the above said purpose. Therefore, to dispense with procedures provided under Sec.5-A of the Act is not justifiable one and when Section 5-A enquiry is available under the Act to facilitate the grievance, dispensing with the enquiry under Sec.5-A of the Act is depriving the right guaranteed under Article 300-A of the Constitution of India. Hence, he prayed to allow the Writ Petition.

7. Mrs.Mala, learned Addl. Government Pleader would submit that the notification under Sec.4(1) of the Act was approved by the Government vide G.O.Ms.No.50, dated 10.10.2003 and the same was published in four modes viz., (i) in Tamil daily "Daily Thanthi" dated 14.10.2003, (ii) in the English daily "The New Indian Express" dated 18.10.2003, (iii) in the Official Gazette No.43, dated 28.10.2003 and (iv) by public affixture on 30.10.2003, since the particular land is very much required for the construction of fire station and staff quarters. The petitioners land is situated adjacent to Kuruvinatham Road and behind the petitioners property, the existing fire station is situated. During urgency time, the fire station vehicle could not be utilised in a proper manner. Hence, considering the urgency and to meet out the needs of the general public, the Government has decided to acquire the petitioners land in order to reach the fire place at the appropriate time. Accordingly, the respondents authority dispensed with Section 5-A enquiry and published the declaration dated 03.12.2003 under Section 6 of the Act and the same was published in four modes viz., in Tamil daily "Daily Thanthi" dated 14.10.2003, in English daily "The New Indian Express" dated 18.10.2003, in the official gazette No.43, dated 28.10.2003 and by public affixture on 30.10.2003. Thereafter, the petitioners have also participated in Section 17 (3) award enquiry. Accordingly, the award was passed in favour of petitioners and fixed the award amount of Rs.1,35,569/-. Hence, in view of urgency, the respondents have invoked Section 17(4) of the Act is valid one.

8. The learned Addl. Government Pleader appearing for respondents, in support of her contentions, has relied upon the decision reported in (1996) 2 SCC 549 in the case of Chameli Singh and others v. State of U.P. and another and the Hon'ble Supreme Court has observed in paragraph 15 as follows :-

"15. The question, therefore, is whether invocation of urgency clause under Sec.(4) dispensing with inquiry under Section 5-A is arbitrary or is unwarranted for providing housing construction for the poor. In

Aflatoon v. Lt. Governor of Delhi [(1975) 4 SCC at P.290), a Constitution Bench of this Court had upheld the exercise of the power by the State under Section 17 (4) dispensing with the inquiry under Section 5-A for the planned development of Delhi. In Pista Devi's [(1986) 4 SCC 25]] case this Court while considering the legality of the exercise of the power under Section 17(4) exercised by the State Government dispensing with the inquiry under Section 5-A for acquiring housing accommodation for planned development of Meerut, had held that providing housing accommodation is national urgency of which court should take judicial notice. The pre-notification and post-notification delay caused by the officer concerned does not create a cause to hold that there is no urgency. Housing conditions of Dalits all over the country continue to be miserable even till date and is a fact of which courts are bound to take judicial notice. The ratio of Deepak Pahwas case [(1984) 4 SCC 25]] was followed. In that case, a three Judge Bench of this Court had upheld the notification issued under Section 17(4), even though lapse of time of 8 years had occurred due to inter-departmental discussions before receiving the notification. That itself was considered to be a ground to invoke urgency clause. It was further held that delay on the part of the lethargic officials to take further action in the matter of acquisition was not sufficient to nullify the urgency, which existed at the time of issuance of the notification and to hold that there was never any urgency. In Jage Ram v. State of Haryana [(1971) 1 SCC 671] this Court has held that the lethargy on the part of the officers at an early stage was not relevant to decide whether on the day of the notification, there was urgency or not. Conclusion of the Government that there was urgency, though not conclusive, is entitled to create weight. In Deepak Palwa case this Court had held that very often persons interested in the land proposed to be acquired may make representations to the authorities concerned against the proposed writ petition that is bound to result in multiplicity of enquiries, communications, and discussions leading invariably to delay in the execution of even urgent projects. Very often delay makes the problem more and more acute and increases urgency of the necessity for acquisition. In Rajasthan Housing Board v. Shri Kishan [(1993) 2 SCC 84 at p.91), this Court had held that it must be remembered that the satisfaction under Section 17(4) is a subjective one and that so long as there is material upon which Government could have formed the said satisfaction fairly, the Court would

not interfere nor would it examine the material as an appellate authority. In *State of U.P. v. Keshav Prasad Singh* [(1995) 5 SCC 587 at p.590] this Court had held that the Government was entitled to exercise the power under Section 17(4) invoking urgency clause and to dispense with inquiry under Section 5-A when the urgency was noticed on the facts available on record. In *Narayan Govind Gavate* case a three-Judge Bench of this Court had held that Section 17(4) cannot be read in isolation from Section 4(1) and Section 5-A of the Act. Although 30 days from the notification under Section 4(1) are given for filing objections under Section 5-A, inquiry thereunder unduly gets prolonged. It is difficult to see why the summary inquiry could not be completed quite expeditiously. Nonetheless, this Court held the existence of prima facie public purpose such as the one present in those cases before the Court could not be successfully challenged at all by the objectors. It further held that it was open to the authority to take summary inquiry under Section 5-A and to complete inquiry very expeditiously. It was emphasised that : (SCC p.148, para 38)

"....The mind of the officer or authority concerned has to be applied to the question whether there is an urgency of such a nature that even the summary proceedings under Section 5-A of the Act should be eliminated. It is not just the existence of the urgency but the need to dispense with the enquiry under Section 5-A which has to be considered."

9. On perusal of records, it reveals that the Notification dated 10.10.2003 under Section 4(1) of the Act was issued by the 1st respondent and the same was published in the Gazette of Pondicherry dated 28.10.2003, the Declaration dated 03.12.2003 under Section 6 of the Act issued by the 1st respondent and published in the Gazette of Pondicherry on 16.12.2003 and thereafter, notice dated 09.11.2004 under Sec.17(3A) of the Act was issued by the 2nd respondent. In the present case, for the purpose of constructing the fire station and staff quarters, the land acquisition proceedings was initiated and this Court perused the plan filed by the petitioners in the typed set of papers and found that the fire station is situated just behind the petitioners land and the petitioners land is situated abutting the Kuruvinatham Road and a small pathway is available in order to reach the fire station vehicle to the main road. Further, it appears that the poramboke land is available on the northern side in between one water tank was erected. If the respondents forced to acquire the Government poramboke land, then they have to demolish the water tank erected in between fire station and the poramboke land. However, the petitioners

land is very much available adjacent to Kuruvinatham road in between road and fire station. Hence, it would be appropriate for the respondents authority to establish that there was an urgency to acquire the land in order to reach the main road for taking care of the emergency situation.

10. This Court also perused the decision of Hon'ble Apex Court, it has clearly held that the respondents have invoked the urgency clause and dispensed with the enquiry under Section 5-A on the basis of the materials available before the Government. In the present case, this Court has perused the entire records and satisfied that there was urgency for acquiring the land in order to facilitate the fire station vehicle to reach the main road immediately in view of handling the emergency situation. Hence, I do not find any fault on the part of the respondents and I am not inclined to interfere with the order passed by the respondents. However, a liberty is granted to the petitioners to file an application under Section 18 of the Act for enhancement of compensation. If any such application is received, the respondents are directed to refer the matter to the competent Civil Court for appropriate orders. Further, the pending period may be excluded for the purpose of limitation. Accordingly, the present Writ Petition stands dismissed with the above direction. No costs. Consequently, the connected Writ Petition Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Joint Secretary to Govt. (Revenue),
Union of India, Union Territory of Pondicherry,
Pondicherry.
2. The Sub-Collector (Revenue) South,
-cum-Land Acquisition Officer, Villianur, Pondicherry.

+1 cc to M/s.K.P.Jotheeswaran, Advocate Sr.No. 71285
+1 cc to The Government Pleader Sr.No.70600

AKM/24.09.19/7P- 5C /

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