

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

Writ Petition No.25187 of 2010 and
M.P.No.2 of 2010

G.Mohamed Husa in Malim
Rep.by his Power Agent
M.G.K.Nizamudeen.

...Petitioner

Vs

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

... Respondent

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the respondent impugned Notification vide G.O.Ms.No.36 dated 22.09.2010 and published in Dinakaran Issue dated 25.9.2010 insofar as the petitioner's land is concerned comprised in Survey No.9/1B2, Akaravattam Village, Karaikal Taluk (Sl.No.131) and quash the same.

For Petitioner : Mr.V.Raghavachari

For Respondent : Ms.N.Mala,
Additional Government Pleader
Pondicherry

O R D E R

Challenging the impugned Notification in G.O.Ms.No.36 dated 22.09.2010 of the respondent, published in Dinakaran Issue dated 25.9.2010 in respect of the petitioner's land comprised in Survey No.9/1B2, Akaravattam Village, Karaikal Taluk (Sl.No.131) is concerned and to quash the same, the present Writ Petition has been filed.

2. Learned Counsel appearing for the petitioner would submit that the Principal of the petitioner herein purchased the property comprised in Survey No.9/1B2 measuring an extent of 2.03.60 hectares in Akkaravattam Village in Karaikal Taluk

through a registered Sale Deed dated 9.10.2003. At the time of purchase of the land-in-question, it was not agriculture in character and it was only a house site. In view thereof, the petitioner's principal wanted to develop the property, he applied for approval of the lay out to be formed by him. Initially, the authorities vide Communication No.45/Agri/SLUB/2004-05/K/128 dated 27.8.2004 have given 'No Objection Certificate' for allowing conversion of the land. This communication was addressed by the Additional Director-Agricultural to the Member-Secretary, Karaikkal Planning Authority, Karaikal. Thus, clearance from the Agricultural Department was obtained for promoting the residential layout. Thereafter, vide Communication No.1897/KPA/2003-2005/1198 dated 13.9.2005, the Karaikal Planning Authority through its Member-Secretary granted their interim approval for the layout.

3. The learned Counsel for the petitioner would further submit that thereafter, the Member-Secretary, Karaikal Planning Authority addressed the other departments concerned and the said departments, namely, Public Works Department, as well as the Revenue Department clarified that the formation of residential layout at T.S.No.9/1 pt, R.S.No.134/1 pt. Ward-N-Block-2 Akkaravattam Village does not fall in the proposed Western Bye-Pass road. The Revenue Department also clarified that the subject lay out is not covered under Land Acquisition or Land Reform Act as on 29.11.2004. The petitioner executed a Gift Deed dated 17.10.2008 in favour of the Executive Engineer, Electricity Department, Karaikal, Puducherry State and the same was also registered as Document No.1482 of 2008 on the file of the Sub-Registrar Office, Neravy. Since all the formalities had been duly complied with, Karaikal Planning Authority, Karaikal issued final approval for the lay out on 06.05.2009. Since the layout has received final approval, the sale of the plots picked up. At this stage, the impugned Acquisition Notice has been issued. The respondent also has issued a Notification in G.O.Ms.No.36 dated 22.9.2009 published in Dinakaran Issue dated 25.9.2010 in which the petitioner's property has been shown at Sl.No.131. Strangely, the classification of the land is mentioned as 'Rauatj-Nanjai' and even the requirement of the enquiry has been dispensed with by invoking the urgency clause.

4. The learned Counsel for the petitioner would also submit that in response to a query, the Public Works Department maintained that the Bye-Pass Road Project is only in a preliminary stage. Similarly, in response to another query, the Department admitted that the western bye pass road project was initiated in the year 1995. Therefore, they cannot issue the Impugned Acquisition Notification. Hence, the impugned Proceeding is vitiated by non-application of mind. Moreover, when the Electricity Board and the Municipality of Karaikal have

accepted the gifts for the road portion and the area meant for transformer and and parks and semi public area from the petitioner, it has been held as unfit for land acquisition. In these circumstances, the respondent authorities are not justified in issuing the acquisition notification. Concluding his arguments, the learned Counsel for the petitioner would submit that the impugned Notification is in violative of Article 14 and 300-A of the Constitution of India. Therefore, the same has to be quashed.

5. A detailed counter affidavit has been filed by the respondent.

6. Learned Additional Government Pleader appearing for the respondent would submit that when a request was made by the Executive Engineer (Buildings & Roads), Public Works Department, Karaikal for the formation of Western Bye Pass Road in 8 Revenue Villages from Keezhakasakudy through Thalatheru, Kovilpathu, Karaikal, Dharmapuram, Oduthurai, Akkaraivattam and Neravy Villages, the acquisition Proceedings were initiated to acquire lands measuring to an extent of 34.75.81 H.A.Ca., the land comprised in Ward-N Block-2, T.S.No.9/1B/2 classified as 'Ryot Wet' of Akkaravattam R.V. of Karaikal District belonging to the petitioner comes under acquisition. Subsequently, the Government had approved the proposal and notified vide G.O.Ms.No.36 dated 22.09.2010, Department of Revenue and Disaster Management, Puducherry. While publishing the Notification under Section 4(1), the petitioner land bearing T.S.No.9/1B/1 was classified as 'Ryot Wet' only as per the revenue records and the same was also reflected in the Notification. Therefore, it is the duty of the petitioner to lodge the application to change the classification of land appropriately. But he, failed to apply for change of classification of the above said land in the revenue records even after the petitioner obtained the final approval of the Member-Secretary, Karaikal Planning Authority for the lay out on 06.05.2009.

7. The learned Additional Government Pleader would further submit that the Revenue Department clarified on 29.11.2004 that the layout proposed by the petitioner was not covered under the Land Acquisition or Land Reforms Act as on 29.11.2004, but the Land Acquisition Proceedings were initiated on 25.09.2010. Therefore, the clarification made on 29.11.2004 by the Department is well before the date of notification, the same cannot be taken into account.

8. Adding further, the learned Additional Government Pleader would submit that Karaikal Port is situated along the NH-45A. Therefore, the transport of Cargo leads to increase

traffic additionally in the city. Taking into account the transportation of cargo, increased cargo and the increased traffic, the construction of the western bye pass is the only way to mitigate the traffic congestion. Accordingly, after issuance of the impugned Notification invoking Sub-Section (1) of Section 17, the possession of the land was taken up on 30.10.2013 which automatically led to vesting of the land in the Government for construction of the Bye Pass road at Karaikal. Thereafter, the petitioner also sold out portions of the land to other parties in the same T.S.No.9/1B/B2 of Ward N, Block 2 of Akkaravattam Revenue Village, though the same was taken on possession on 30.10.2013. The payment of 80% of compensation was made to the land owners who have produced their originals viz., the title deed, Non-Encumbrance Certificate and No Due Certificate from the Village Administrative Officer etc. The following persons who purchased the land from the petitioner were paid towards the payment of 80% compensation for the land bearing T.S.No.9/1B/B2 acquired from them as detailed below:

Sl. No.	Name of the person	Sale Deed No.	Extent H.A.Ca	Amount of 80% compensation paid Rs.	Bill No. and date of payment
1	Muthukumar Ravul	1193 dt. 16.09.2009	0.00.8 7	Rs. 60,406/-	26 dt. 6.2.14
2	K.Nirmala W/o. Krishnamurthy	563 dated 08.05.2009	0.01.7 0	Rs.1,18,036/-	59 dt. 13.8.14
3	Tvl. 1)V.Ravi & 2) Ramalingam S/o.Velayutham	1195 dated 16.09.2009	0.00.4 9	Rs. 34,022/-	193 & 194 dt.17.3.15
4	Indirani W/o.Krishnan	380 dated 16.04.2010	0.01.6 9	Rs.1,17,341/-	53 dt. 7.12.15
5	Tmt.Sheela, W/o.Raju	195 dated 04.03.2010	0.0.64	Rs. 44,437/-	101 dt. 22.9.14
6	Tmt.K.Amutha, W/o.P.Kalyanar aman	29 dated 12.01.2010	0.01.5 9	Rs.1,10,398/-	75 dt. 22.8.14
	Total			Rs.4,50,618/-	

and the remaining construction was hampered due to the filing of several litigations in the High Court. It is also alleged that the award for the payment of full compensation is also under process. Therefore, prays to dismiss the present Writ Petition.

9. I fully agree with the submission made by the learned Additional Government Pleader, Pondicherry appearing for the respondent.

10. After the impugned notification vide G.O.Ms.No.36 dated 22.09.2010 was issued, although the petitioner has challenged the correctness of the impugned Acquisition Notification, he has also sold out some portions of his lands in T.S.No.9/1B/B2 of Ward N, Block 2 of Akkaravattam Revenue Village to other parties and the payment of 80% of compensation was also made to all the land owners who have produced their original certificates, namely, the Title Deed, Non-Encumbrance Certificate and No Due Certificate etc. from the Village Administrative Officer. When the following persons, namely, Muthukumar Ravul, K.Nirmala, V.Ravi and Ramalingam, Indirani, Sheela and K.Amutha, who have purchased the portions of the petitioner's land were paid with 80% of compensation, 40% of the remaining work alone is pending for completion. As the Karaikal Port is situated along the NH-45A, the transport of Cargo leads to increase traffic additionally in the city. Therefore, according to the respondent, the construction of western bye pass road is essential as it is the only way to mitigate the traffic. In view of all the above, as I have already discussed above, 60% of the construction work was already over and only 40% of the remaining work has to be completed, this Court finds no merit in the Writ Petition.

11. In the result, the Writ Petition fails and the same is accordingly dismissed. It is needless to mention that the compensation payable to the petitioner should also be looked into. Therefore, if the petitioner approaches the respondent with original certificates, namely, the title deed, Non-Encumbrance Certificate and No Due Certificate from the Village Administrative Officer, the request for payment of compensation also to be considered within a period of two weeks from the date of his application. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

tsi

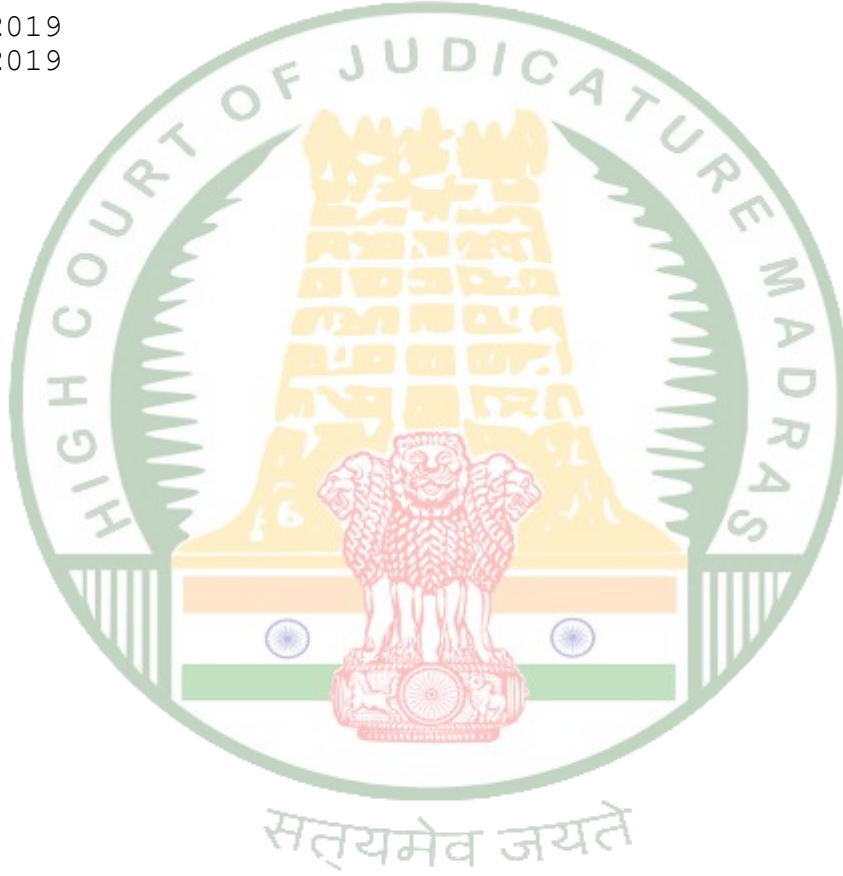
To

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

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.77014
+1cc to the Public Prosecutor (Pondicherry), S.R.No.

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CS/09/10/2019
CS/31/10/2019



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