



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.06.2019
(Reserved on 03.09.2018)

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)Nos.9070, 9092 and 12267 of 2018
and

W.M.P(MD)Nos.8438 to 8440, 15074, 8470 to 8472, 15075 and 11155 to
11157 of 2018

K.Johnson	... Petitioner in W.P.9070/18
Mallika	... Petitioner in W.P.9092/18
A.Raja	... Petitioner in W.P.12267/18

vs.

1)The Principal Secretary to Government,
Public (Military) Department,
St.George Fort,
Secretariat,
Chennai.
2)The Commissioner of Land Administration,
Chennai.
3)The District Collector,
Thanjavur District,
Thanjavur.
4)The Member Secretary,
The Local Planning Authority,
Thanjavur.
5)The Block Development Officer,
Village Panchayat,
Inathukanpatti Village Panchayat,
Thanjavur.
6)The Public Information Officer/
P.A. to District Collector,
(General)
Thanjavur.
7)The Public Information Officer/
P.A to Revenue Divisional Officer,
Thanjavur.

... Respondents in W.P.9070 and 9092 of 2018

1)The Principal Secretary to Government,
Public (Military) Department,
St.George Fort,
Secretariat,
Chennai.



2) The Commissioner of Land Administration,
Chennai.

3) The District Collector,
Thanjavur District,
Thanjavur.

4) The Block Development Officer,
Village Panchayat,
Inayathukanpatti Village Panchayat,
Thanjavur.

5) The Public Information Officer/

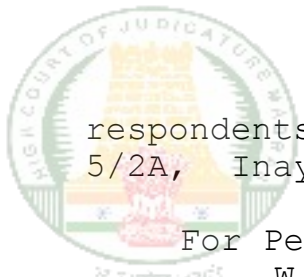
P.A to Revenue Divisional Officer,
Thanjavur.

... Respondents in W.P.12267/18

Prayer in W.P.9070/2018 : Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the Impugned Government Order (Ms) No.148 Public (Military) Department dated 23.02.2018 of the 1st Respondent in so far as acquisition of land proposed for rehabilitation package for Inayathukanpatti Villagers under urgency provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 in respect of Land in Survey Nos.4/5, 6, 8 and 9 Inayathukanpatti Village, Thanjavur District, and quash the same and consequently directing the respondents to release the land in Survey Nos.4/5, 6, 8 and 9 Inayathukanpatti Village, Thanjavur District from acquisition.

Prayer in W.P.9092/2018 : Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the Impugned Government Order (Ms) No.148 Public (Military) Department dated 23.02.2018 of the 1st Respondent in so far as acquisition of land proposed for rehabilitation package for Inayathukanpatti Villagers under urgency provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 in respect of dwelling house in Plot No.3, Krishna Avenue, holding Patta No.1345 lying in Survey Nos.5/4C, 4/D1 & D2 Inayathukanpatti Village, Thanjavur District and quash the same and consequently directing the respondents to release the dwelling house in Plot No.3, Krishna Avenue, holding Patta No.1345 lying in Survey Nos.5/4C, 4/D1 & D2 Inayathukanpatti Village, Thanjavur District from acquisition.

Prayer in W.P.12267/2018 : Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the Impugned Government Order (Ms) No.148 Public (Military) Department dated 23.02.2018 of the 1st Respondent in so far as acquisition of land proposed for rehabilitation package for Inayathukanpatti Villagers under urgency provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 in respect of the land in Survey Nos.5/1, 5/2D 5/2B and 5/2A, Inayathukanpatti Village, Thanjavur District from acquisition and quash the same consequently directing the



respondents to release the land in Survey Nos.5/1, 5/2D, 5/2B and 5/2A, Inayathukanpatti Village, Thanjavur District.

For Petitioner in

W.P.9070 & 9092/18

: Mr.T.S.Mohamed Mohideen

For Petitioner in

W.P.12267/18

: Mr.V.Chandrasekaran

W.P.9070 of 2018:-

For R1 to R4, R6 & R7

: Mr.K.Chellapandian

Additional Advocate General assisted by
Mr.A.Thiyagarajan, Government Advocate

For R4

: Mr.R.C.Vakeeswaran

For R5

: Mr.Kannithevan

W.P.9092 of 2018:-

For R1 to R4, R6 & R7

: Mr.K.Chellapandian

Additional Advocate General assisted by
Mr.A.Thiyagarajan, Government Advocate

For R5

: Mr.R.Murugan

W.P.12267 of 2018:-

For R1, R2, R3 & R5

: Mr.K.Chellapandian

Additional Advocate General assisted by
Mr.A.Thiyagarajan, Government Advocate

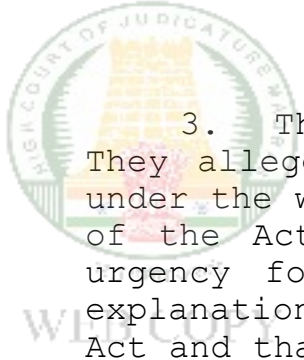
For R4

: Mr.K.Saravanan

COMMON ORDER

These writ petitions have been filed to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the G.O(MS)No.148 Public (Military) Department, dated 23.02.2018, of the 1st respondent in so far as the acquisition of land, covered under the three writ petitions, proposed for rehabilitation package for the displaced Inayathukanpatti Villagers under Urgency provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and quash the same direct the respondents to restore the lands to the petitioners.

2. The impugned G.O(Ms)No.148 Public (Military) Department, dated 23.02.2018 of the 1st respondent granted administrative sanction for acquisition of 65.12.57 hectares of Dry and Manai Lands and alienation of 5.48.5 hectares of Government Poromboke land in Inayathukkanpatti Village in Tanjavur, for extension of Airfield at Airforce station, Tanjavur District and for the rehabilitation of the villagers of the Inayathukkanpatti Village, invoking the urgency provision under Section 40 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013. An extent of 7.28.50 hectares of land from out of the 65.12.57 hectares of private land covered under the notification are specifically earmarked for rehabilitation of the villagers of Inayathukkanpatti Village who are displaced on account of land acquisition for the project. The survey numbers of the land meant for rehabilitation are also specifically mentioned in the impugned

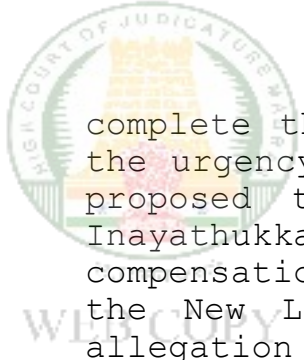


3. The petitioners assail the impugned GO on several counts. They allege that the impugned GO in respect of the lands covered under the writ petitions do not come under the purview of Section 40 of the Act which gives special powers to the State in cases of urgency for specific purposes. It was alleged that there is no explanation under the proceedings that satisfy section 40 (2) of the Act and that the same was passed without following the principles of natural justice. It was also alleged that the mandatory procedures contemplated under Sections 11, 12 & 15 of the Act were not followed. They submitted that the habitants cannot be evicted to rehabilitate other persons or their residences be acquired for providing residence to other persons. It was pointed out that the 3rd respondent had sent the proposal as early as 26.06.2015 and the impugned Order came to be passed only on 23.02.2018 and therefore the invoking of urgency clause is unsustainable and the respondent has not understood the meaning of 'urgency' clause and the applicability of Section 42 of the Act.

4. The petitioners had pointed out that the 5th respondent had affirmed that in his reply to an RTI Application that no land pertaining to survey Nos.4 & 5 of Inayathukanpatti Village is acquired for extension of Airport use and Airport Runway. They had also flagged the instances of the 5th respondent granting approval for the plots during 2013 and the same was regularized by the Local Planning Authority on 19.01.2018 even when the impugned order claims to have received the proposal on 26.06.2015 from the 3rd respondent. They aver that the Government can take their lands for extension of Airport, but not for rehabilitating others by removing them ruining the middle class dreams. They argued that the lands for airfield may fall within the meaning of Section 40 (2) of the Act, where the lands can be acquired under the urgency clause. They pointed out that section 40 (2) cannot be invoked for acquiring lands from rehabilitation of displaced persons.

5. The petitioners submitted that poromboke lands are available for acquisition for the rehabilitation at the neighbouring Nanjikottan Village and other nearby villagers and therefore the respondents can make use of those lands for rehabilitation of the persons displaced in the acquisition process, so that their right to property is not disturbed. They had also relied on the citations AIR 2011 Supreme Court 2582 and AIR 2012 Supreme Court 412 to stress the sanctity of the right to property.

6. The respondents, in their common counter would submit that the land acquisition proceedings is initiated for the expansion of Airforce Station, Tanjavur as a premier air base of Indian Air Force in the southern peninsula. It is slated to induct sophisticated state of art fighter aircrafts and associated combat assets and therefore the invoking of the urgency clause is justified. They pointed out that the requisition authority viz., Indian Air Force has specifically requested to invoke the urgency clause as a special case as acquisition in the normal course will take more time. They also referred to the security and safety aspect and requested to

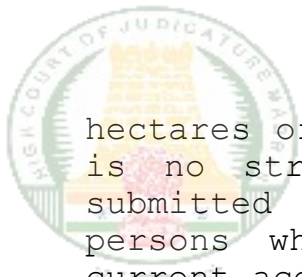


complete the land acquisition with a sense of urgency by invoking the urgency clause. They submitted that 8.69.07 hectares of land is proposed to be acquired for the purpose of rehabilitation of Inayathukkanpatti Villagers in S.Nos.18, 117 & 128 and that the compensation of the land was arrived at by the 3rd respondent under the New Land Acquisition Act of 2013. They submitted that the allegation of non-compliance of Sections 11 to 15 of the Act at this stage is premature.

7. The respondents would aver that the impugned GO sets out clear reasons for invoking the urgent clause. They submitted the land acquisition is for the expansion of airfield in Airforce Station, Thanjavur, which is connected to National Security which should not be equated with ordinary acquisition proceedings for housing or establishment of Industries. They argued that there is no wrong in acquiring the approved layouts obtained by the petitioners in connivance with local bodies suppressing the land acquisition proceedings. They alleged that the petitioners being aware of the acquisition from 2010 and having the knowledge of talks of private negotiation for acquiring lands managed to obtain a planning permission in a conspiracy to defeat the land acquisition proceedings. They submitted that the land under acquisition resisted in the writ petitions are not housing plots but tracts of land converted to plots long after the acquisition proceedings commenced with fraudulent intentions to defeat the acquisition proceedings meant for public purpose which is of national importance.

8. The respondents would submit that the petitioners' lands had to be acquired as there is no other contiguous lands extending 8 hectares, in the surroundings, needed for rehabilitation of the villagers of Inathukanpatti. They submitted that it is the bounden duty of the respondents to rehabilitate them. They argued that Section 9 exempts undertaking of social impact assessment study if the acquisition is under the urgency clause of the Act. They argued that Section 40 empowered them to acquire the land within a concise period even when the land is not free from encumbrance. They submitted that the proceedings under the Act will be scrupulously followed in the acquisition proceedings and that the principles of natural justice are not violated. They averred that when the villagers of Inathukanpatti who are displaced on account of land acquisition proceedings for expansion of airforce station, Tanjavur, are rehabilitated in their native village itself, there is no justification for the petitioners to seek to rehabilitate the said villagers to some other place. They argued that the purchasers of plots that are subjects of land acquisition proceedings are not native of Inathukkanpatti village and they cannot make any claim against the subject land acquisition proceedings.

9. The respondents would aver that the details stipulated under Section 31 of the Act will be provided to the land owners at the time of passing the award and there is no necessity that the impugned GO should contain the particulars of the details of the land owners and pleaded that small procedural mistakes in invoking urgency provision would not be held to render the entire land acquisition proceedings invalid. They also submitted that 7.28.5



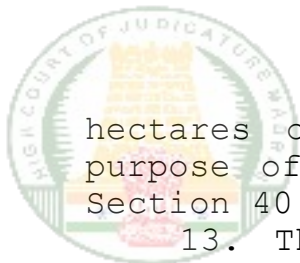
hectares of land under acquisition are still lying vacant and there is no structural buildings meant for rehabilitation. They also submitted that they intend to discard acquisition of land from persons who are already displaced in land acquisitions if the current acquisition is not agreeable to them.

WEB COPY

10. Heard the arguments of the counsels and perused the records. The 1st respondent had issued the impugned G.O(MS)No.148 Public (Military) Department, dated 23.02.2018, granting administrative sanction for acquisition of 65.12.57 hectares of Dry and Manai Lands and alienation of 5.48.5 hectares of Government Poromboke land in Inayathukkanpatti Village in Tanjavur for extension of Airfield at Airforce station, Thanjavur District and for the rehabilitation of the villagers of the Inayathukkanpatti Village under the urgency provision under Section 40 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013. An extent of 7.28.50 hectares of land comprised in Survey Nos.4 & 5 from out of the 65.12.57 hectares of private land covered under the notification are specifically earmarked for rehabilitation of the villagers of Inayathukkanpatti Village and the petitioners are aggrieved by the same. Finding a *prima facie* case in favor of the petitioners, this Court had ordered an interim stay by order dated 24.04.2018.

11. The petitioners have assailed the acquisition of the 7.28.50 hectares of land comprised in Survey No 4 & 5 on multiple grounds. It is the case of the respondents that the acquisition is for defence purposes involving national security. The acquisition is for the purposes of expanding the airfield, Airforce Station, Tanjavur which is being developed as a premier air base of Indian Air Force in the southern peninsula. It is slated to induct sophisticated state of art fighter aircrafts and associated combat assets and therefore the invoking of the urgency clause under section 40 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and resettlement Act, 2013 is justified. They had not denied that 7.28.50 hectares of land comprised in Survey No 4 & 5 are not for the airbase but for the purposes of rehabilitation of the displaced villagers of Inayathukkanpatti who are displaced as a result of acquisition of land for the expansion of the airfield.

12. According to the petitioners, there is no problem with the 1st respondent acquiring the land for the purposes of expansion of Airfield for Airforce Station, Tanjavur which is for strategic purposes by invoking Section 40 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and resettlement Act, 2013. But they find that the acquisition of the 7.28.50 hectares of land comprised in Survey Nos.4 & 5 of the petitioners for rehabilitating the displaced villagers of Inayathukkanpatti is not justified. They argue that the urgency clause cannot be invoked for that portion of the land acquisition. They contended that all of the provisions of Sections 11 to 15 of the Act have to be complied with for the acquisition of the 7.28.50

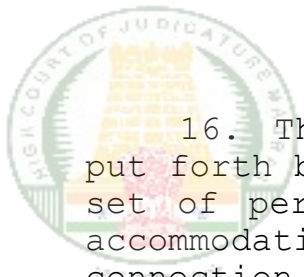


hectares of land comprised in Survey Nos.4 & 5, as the stated purpose of that portion of the land acquisition does not attract Section 40 of the Act.

13. The respondents see a conspiracy in the act of the petitioners purchasing plots in the 7.28.50 hectares of land proposed to be acquired for rehabilitation and later obtaining the planning permission by deceit. The petitioners dismiss the allegations as outrageous and unacceptable and argued that the approvals were done by the other wings of the Government in day light. It is their case that the right to property cannot be alienated from one set of people for rehabilitating another set of people.

14. The petitioners point to alternate poromboke land available at the disposal of the respondents that can be alienated to rehabilitate the displaced villagers of Inayathukkanpatti. The respondents, on the other hand, would highlight that one such land in Pillayarparatti Village is vaari poromboke and the same is needed for conservation for the future. They submit that the petitioners do not belong to the village and rightly the displaced villagers have to be accommodated in the same village as the respondents have an obligation under the Act to rehabilitate them. I fear, this argument of the respondents, if accepted, will have bizarre consequences. There is no two opinions that as long as the petitioners' title to the land is not disputed, the petitioners cannot be argued to be aliens to the village.

15. In view of the contrasting claims of the parties, the question that arise before this court is whether the respondents are right in invoking the urgency provision under Section 40 of the Right to Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, for acquiring the 7.28.50 hectares of land belonging to the petitioners for the purposes of rehabilitation. The answer is a strict "No". The answer is in the negative, because Section 40 is an exception carved out under the Act for emergency purposes catering to demands of strategic national interests. While the expansion of airfield of Airforce Station, Thanjavur, qualify for the exception, the acquisition of land of the petitioners for the rehabilitation of displaced persons on account of the expansion of the said airfield does not qualify for the exception. This is so because, the power of the State for compulsive acquisition of land is itself an exception and not a rule in view of the right to property guaranteed under Articles 19 & 21 of the Constitution of India. Therefore, Section 40 of the Right to Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 should be sparingly used in cases of land acquisition. Adequate cautions have to be shown while invoking Section 40 of the Act. Otherwise, the principal object of the Act to involve constitutional bodies for local self-government and Gram Sabhas for consultations in matters of land acquisition will be defeated.



16. The other question that arise on account of the arguments put forth by the petitioners is whether the right of property of one set of persons can be alienated compulsorily for the purposes of accommodating/rehabilitating another set of people. In this connection, it is important to note that one of the important objects of the Act is to achieve a humane, participative, informed and transparent process of land acquisition with the least disturbance to the owners of the land. Therefore, it follows that rehabilitation need not necessarily be done in the land acquired for the project by disturbing more land owners. In the event, the rehabilitation is proposed in the land acquired for the project, it is imperative that equity is ensured in rehabilitation for all the land losers in the land acquisition proceedings. Neither the Act contemplate displacing one set of people for the purpose of rehabilitating another set of people, nor it is justified in the eyes of law. In my considered opinion, the land has to be restored to the petitioners as the same defy equity and Section 40 of the Act is wrongly invoked.

17. In view of the above discussions, the G.O(MS)No.148 Public (Military) Department, dated 23.02.2018 of the 1st respondent in so far as the acquisition of land, covered under the three writ petitions, proposed for rehabilitation package for the displaced Inayathukanpatti Villagers under urgency provisions of the Right to Fair Compensations and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is quashed and the respondents are directed to release the lands of the petitioners from acquisition forthwith.

18. With the above direction, these Writ Petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1) The Principal Secretary to Government,
Public (Military) Department,
St. George Fort,
Secretariat,
Chennai.



2) The Commissioner of Land Administration,
Chennai.

3) The District Collector,
Thanjavur District,
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7) The Public Information Officer/
P.A. to Revenue Divisional Officer,
Thanjavur.

+2cc to Mr. T.S. MOHAMMED MOHIDEEN, Advocate, SR.No. 68694, 68695

+1cc to Mr. V. CHANDRASEKAR, Advocate, SR.No. 68662

Pre-Delivery common order made in
W.P(MD) Nos. 9070, 9092 and 12267 of 2018
14.06.2019

BALA

KK/SAR/25.06.2019/9P-11C

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