

In the High Court of Judicature at Madras

Dated : 19.2.2020

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.3632 of 2015

Kotak Mahindra Bank Ltd., Branch
Office at No.3, Dass India Tower,
2nd Line Beach, Parrys, Chennai-1
Rep.by its Authorized Representative
Mr.M.D.Maheshwaran ...Petitioner

Vs

1.The Special Secretary, Department
of Revenue & Disaster Management,
Government of Puducherry, Puducherry.

2.The Deputy Collector Revenue-cum-
Land Acquisition Officer North,
Government of Puducherry, Puducherry.

3.Mrs.Devaki ...Respondents

PETITION under Article 226 of The Constitution of India
praying for the issuance of a Writ of Certiorari to call for the
records of the first respondent relating to G.O.Ms.No.2 dated
07.6.2013 and G.O.Ms.No.30 dated 24.6.2014 (Department of
Revenue and Disaster Management) seeking to acquire the land
admeasuring 1,00,851 sq.ft. comprised in S.Nos.242/2A/1/A of
Thattanchavady Revenue Village, Oulgaret Taluk belonging to the
third respondent and quash the same.

For Petitioner : Mr.H.Karthik Sheshadri
for M/s.Aiyer & Thomas

For Respondents 1 & 2 : M/s.N.Mala
Additional Government Pleader (Pondy)

For Respondent-3 : Mr.Ramachandran for Mr.S.Sethuraman

ORDER

This writ petition has been filed by the petitioner -
M/s.Kotak Mahindra Bank Limited seeking to quash the Government
Orders in G.O.Ms.No.2 dated 07.6.2013 and G.O.Ms.No.30 dated
24.6.2014 Department of Revenue and Disaster Management, in and

by which, the first respondent proposed to acquire the lands in question for a public purpose.

2. When the writ petition was admitted on 12.2.2015, an order of interim stay was granted and the same was subsequently made absolute by order dated 16.6.2017. However, no counter affidavit has been filed by the official respondents and the stay order has been in force all along.

3. The petitioner - bank would contend that one M/s.Devaki Traders and their group concerns borrowed funds from the petitioner - bank and the husband of the third respondent herein is the proprietor of one of the concerns namely one M/s.Devaki Cement Agencies. The third respondent herein is the proprietrix of one M/s.Devaki Agencies. Her son namely one Mr.T.Gopu is the proprietor of one M/s.Devaki Steels and Cements and her other son namely one Mr.T.Mohan is the proprietor of the said M/s.Devaki Traders.

4. The petitioner - bank sanctioned a sum of Rs.21.08 Crores vide their sanction letters dated 29.3.2011 and 17.6.2011. The third respondent, with a view to secure the loan transaction, deposited the documents of title deeds in respect of the lands in question and created an equitable mortgage by way of a memorandum of deposit of title deeds dated 23.6.2011 registered as doc. No.2241 of 2011 on the file of the Sub-Registrar, Oulgaret.

5. While so, in the year 2013, a Notification was issued by the first respondent under Section 4(1) of the Land Acquisition Act, 1894 (for short, the Act) proposing to acquire the lands for the purpose of construction of a Legislative Assembly complex and Secretariat for the Union Territory of Puducherry. The said Notification under 4(1) of the Act was published in the Official Gazette on 25.6.2013. On coming to know of the said Notification, the petitioner - bank sent a representation dated 25.9.2013 to the second respondent stating that there is an existing mortgage on the lands in question, that they have a statutory right under Section 73(2) of the Transfer of Property Act and that the petitioner - bank has a right to claim the mortgage money from and out of the compensation payable to the land owners.

6. It appears that there was no reply given to the petitioner for the said representation. Since the borrowers including the third respondent committed default, the petitioner - bank enforced their security interest by initiating proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 by issuing a notice dated 23.4.2014 under Section 13(2).

7. It is stated that the total outstanding amount payable by the borrowers as on 19.1.2015 is Rs.21,63,99,757.92 Ps, together with further interest, penal interest and other charges.

8. Earlier, the petitioner - bank filed a writ petition in W.P.No.1665 of 2014 before this Court seeking a direction to respondents 1 and 2 herein to include the petitioner - bank in the acquisition proceedings, as the petitioner - bank should be considered as one of the interested parties and should be permitted to participate in the award enquiry to be conducted under Section 11 of the Act. The said writ petition was disposed of by order dated 21.3.2014 by directing the second respondent to conduct a detailed enquiry on the petitioner's representation dated 25.9.2013 and dispose of the same within a stipulated time.

9. While so, the first respondent issued a Declaration in G.O.Ms.No.30 Department of Disaster Management dated 24.6.2014 under Section 6 of the Act and in that Declaration, the name of the petitioner - bank was also included. Though a direction was issued in the earlier writ petition, the petitioner would state that the said representation dated 25.9.2013 was not disposed of.

10. In this writ petition, the petitioner challenges the acquisition proceedings as being contrary to the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, the Central Act 30 of 2013).

11. It is submitted by the learned counsel for the petitioner that when the Central Act 30 of 2013 had come into force and no award was passed under the erstwhile Act, the entire land acquisition proceedings are deemed to have been lapsed.

12. The third respondent filed a counter affidavit stating that had the petitioner - bank not challenged the land acquisition proceedings in this writ petition, the third respondent would have got compensation. Therefore, the third respondent would submit that the writ petition as well as the stay petition cannot be entertained. It is further submitted that during the pendency of the writ petition, since no proceedings were initiated by the Government to pass an award, the third respondent requested the second respondent by way of a representation dated 04.11.2019 for issuance of a no objection certificate so as to enable her to sell the properties so that the dues payable to the petitioner - bank could be cleared.

13. In response to the said representation of the third respondent dated 04.11.2019, a reply was given by the second respondent dated 05.2.2020. On a reading of the said reply, it is seen that the acquisition proceedings have been stayed in this writ petition, that the stay has not been vacated and that the procedure for passing the award was not initiated for want of fresh fund availability certificate from the Requisitioning Department namely Legislative Assembly Secretariat. It is also seen that since the matter is sub-judice before this Court, the request for grant of the no objection certificate could not be processed at this juncture.

14. For better appreciation, the entire letter dated 05.2.2020 is extracted as hereunder :

“ Government of Puducherry
Office of the Deputy Collector (Revenue)
North-
cum-Land Acquisition Officer

No.8090/DC(R)N/REV/C2/NOC/2019/216
Puducherry dated 05 February 2020

To
Tmt.Devaki
W/O Thirunavukarasu
No.A-03, Third Floor,
Jeno Sugumaran Apartments,
Azeez Nagar, Puducherry-10.

Madam,

Sub : DC(R)N - issue of NOC - reg.
Ref : Your letter No.NIL dated
04.11.2019

I am to refer to your letter cited and to state that the request for NOC for the land in R.S.Nos.242/2A/1A & 242/ 2A/1B of 34 - Thattanchavady Revenue Village was scrutinized in this office.

Whereas it is ascertained that the Notification under Section 4(1) of the Land Acquisition Act, 1894 was issued vide G.O.Ms.No.02 dated 07.6.2013 and declaration made under Section 6 of the Land Acquisition Act, 1894 was issued vide G.O.Ms.No.30 dated 24.6.2014 for acquisition of land for the construction of Legislative Assembly complex and Chief Secretariat at Thattanchavady Revenue Village. Meanwhile, a writ petition was filed by M/s.Kotak Mahindra Bank Ltd., bearing W.P.No.3632 of

2015 in the Hon'ble High Court of Madras, Chennai. The Hon'ble High Court passed an order on 12.2.2015 for interim stay of the operation of the above said Notification and stay is yet to be vacated. Also it is found that the award procedure has not been initiated for want of fresh availability certificate from the request Department - Legislative Assembly Secretariat. As the matter is sub-judice before the Hon'ble High Court, your request for NOC could not be processed at this stage.

Yours faithfully,

Sd/-

Deputy Collector (Revenue) North-
cum-Land Acquisition Officer."

15. Admittedly, the acquisition proceedings were initiated under the erstwhile Act. As admitted by the second respondent, the entire acquisition proceedings remained stayed since 2015. That apart, the second respondent would also admit that the award procedure has not been finalized and the funds have not been sanctioned by the Requestioning Department. The land acquisition proceedings were initiated under the provisions of the erstwhile Act, which now stood repealed and if the acquisition is to proceed afresh, then obviously the official respondents will have to resort to the procedure under the Central Act 30 of 2013.

16. Therefore, in the considered view of this Court, the impugned proceedings worked themselves out and no purpose will be served in keeping the impugned proceedings pending because the award enquiry was not conducted and no award was passed as the Requestioning Department did not sanction the funds.

17. For the above reasons, the writ petition is allowed and the impugned proceedings are quashed. It is open to the first respondent to initiate fresh proceedings under the Central Act 30 of 2013 if they desire to do so. No costs.

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Sd/-

Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

RS

To

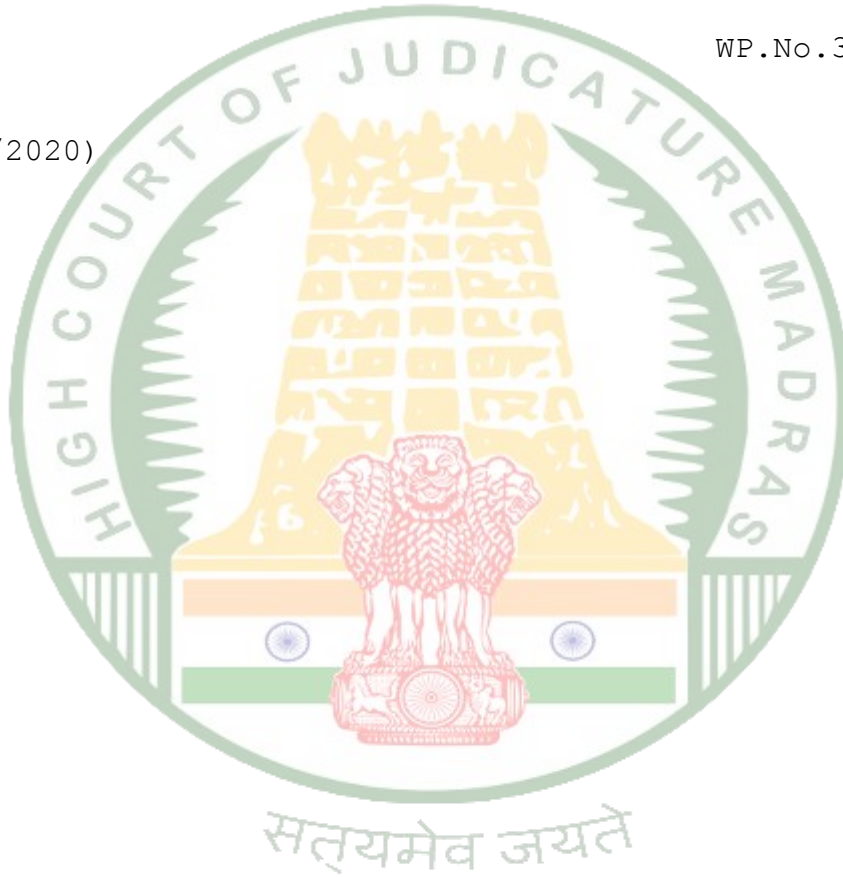
1.The Special Secretary, Department of Revenue & Disaster
Management,
Government of Puducherry, Puducherry.

2.The Deputy Collector Revenue-cum-Land Acquisition (Officer),
North
Government of Puducherry, Puducherry.

+lcc to Mr.Karthik Seshadri, Advocate SR.No.14461

WP.No.3632 of 2015

SSI (CO)
GMY (03/03/2020)



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