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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.10.2021

PRONOUNCED ON : 25.10.2021

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No. 11225 of 2011

and

M.P.No. 2 of 2011

Chandrakasan

... Petitioner

-Vs-

1. The State
represented by the Secretary to Government,
Industries Department,
Fort.St.George,
Chennai - 9.
2. The District Collector,
Office of the District Collector,
Perambalur,
Perambalur District.
3. MRF Limited,
No.124, Grems Road,
Chennai - 6.

(R3 impleaded vide order dated
15.04.2019, made in
W.M.P.No.11325 of 2018 in
W.P.No. 11225 of 2011)

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, calling for the records of the first respondent relating to the notice under Sub Section (1) of Section 3 published by Industries MID1 Department at page 1 and 2 of Part II Section 2 of Tamil Nadu Government Gazette (extraordinary) No.383 in G.O.Ms.No.224, dated 26.12.2008, in respect of petitioner's land at Naranamangalam Village, Kunnam Taluk, Perambalur District in Survey Nos. 251/1B, 251/1D, 251/1E2, 251/1F2, 251/1I, 251/2A8, 251/1C, 251/1E1, 251/1F1, 251/1G and 251/2A7 measuring 0.11.5, 0.14.5, 0.01.0, 0.15.5, 0.08.5,



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0.10.5, 0.36.0, 0.07.0, 0.02.5, 0.03.0 & 0.20.0 Hectares respectively and quash the same.

For petitioner : Mr.A.Navaneetha Krishnan,
Senior Counsel for
Mr.R.Rajamohan and Mr.R.Naveen

For R1 & R2 : Mr.M.R.Gokul Krishnan,
Government Advocate

For R3 : Mr.M.Vijayan for
M/s. King & Partridge.

ORDER

This Writ Petition has been filed for the issuance of Writ of Certiorari, calling for the records of the first respondent relating to the notice under Section 3(1) published by Industries MID1 Department at pages 1 and 2 of Part II Section 2 of Tamil Nadu Government Gazette (extraordinary) No.383 in G.O.Ms.No.224, dated 26.12.2008, in respect of petitioner's land at Naranamangalam Village, Kunnam Taluk, Perambalur District in Survey Nos. 251/1B, 251/1D, 251/1E2, 251/1F2, 251/1I, 251/2A8, 251/1C, 251/1E1, 251/1F1, 251/1G and 251/2A7 ad-measuring 0.11.5, 0.14.5, 0.01.0, 0.15.5, 0.08.5, 0.10.5, 0.36.0, 0.07.0, 0.02.5, 0.03.0 & 0.20.0 Hectares respectively and quash the same.

2. The case of the petitioner is that the property, comprised in Survey Nos. 251/1B, 251/1D, 251/1E2, 251/1F2, 251/1I, 251/2A8, 251/1C, 251/1E1, 251/1F1, 251/1G and 251/2A7 ad-measuring 0.11.5, 0.14.5, 0.01.0, 0.15.5, 0.08.5, 0.10.5, 0.36.0, 0.07.0, 0.02.5, 0.03.0 & 0.20.0 hectares respectively, were owned by the petitioner. He has purchased the said property by a registered sale deed dated 07.03.2001 vide Document No. 338 of 2001. It is an agricultural land and he also obtained electricity service connection for the well situated in Survey No. 251/1G and he is having 3/4th share over the well. Due to financial crisis, he went to Saudi Arabia on 08.12.2004 and stayed there till 18.04.2009 and when he returned to India, he came to know about the land acquisition proceedings initiated for the purpose of establishing a factory under the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 (herein after called "the Act") to locate the third respondent herein. The petitioner's wife was compelled and taken before the Collectorate and made her to sign in a false statement, as if she asked for more compensation and also requested for employment to her son, since her husband is in abroad.



3. Therefore, the petitioner obtained information under the Right to Information Act about the acquisition proceedings, in which he came to know about the acquisition of his land also. Therefore, he challenged the acquisition proceedings vide notification issued under Section 3(1) of the Act and published by MID1 Department at pages 1 and 2 of part II Section 2 of Tamil Nadu Government Gazette, dated 26.12.2008.

4. Mr.A.Navaneetha Krishnan, the learned Senior Counsel appearing for the petitioner submitted that the statement of the wife of the petitioner was obtained after serving the notice under Section 3(2) of the Act and she made it clear that her husband is in foreign country and the land belongs to her husband. However, the District Collector passed an award on 06.10.2010. In the said award, it was mentioned that the notice has been sent under Section 7(5) of the Act to appear on 15.09.2010, to prove the title over the property. As per the said provisions, the District Collector shall give an opportunity to every person to whom the amount has to be paid to state his case as to amount. No notice was given to the petitioner under Section 7(5) of the Act, namely the owner of the land. Therefore, the award was passed without giving an opportunity to the land owner. Hence, the petitioner had sent a detailed representation to drop the proceedings initiated under Section 4(1) of the Act with alternative request to refer the award under Section 8 of the Act for determination of compensation to the competent Court. Since, there was no response from the second respondent herein, hence, the petitioner challenged the acquisition proceedings.

5. He further submitted that notice under Section 3(2) of the Act was also not served to the petitioner, since admittedly, the petitioner was in abroad. Without serving any notice to the land owner i.e., the petitioner herein, obtaining statement from the wife of the petitioner is invalid. She is not the owner of the land or authorized to make such statement before the second respondent. After hearing the land owner or the interested person as contemplated under Section 3(3) of the Act has to pass an order before issuance of notification under Section 3(1) of the Act. Accordingly, after hearing and considering the cause, if any shown by the owner or a person interested, the second respondent ought to have passed an order under Section 3(3) of the Act. There was no "hearing" and "considering the cause" by the second respondent and the second respondent simply recorded the statement of the petitioner's wife on 18.06.2008 in pursuant to the notice issued under Section 3(2) of the Act, and without passing any order, issued notification under Section 3(1) of the Act.

6. Therefore, the procedure laid down under Section 3 was not followed by the second respondent. That apart, the



notification issued under Section 3(1) in respect of the second respondent, it was notified by the District Collector (in charge), who has no authority or who has no delegated power to act on behalf of the Government. He further submitted that no opportunity was given to the petitioner in the award enquiry, while passing an award as contemplated under Section 7(5) of the Act and no notice was served to the petitioner or the interested person. After passing an award, now the subject land has not been taken over from the possession of the petitioner and has not been utilized for the purpose, on which it was acquired.

7. The subject land is situated at the corner adjacent to the public road and the third respondent's activity did not take place near to the petitioner's land. Therefore, the subject land is not at all required for the activities of the third respondent. Therefore, the petitioner had sent a detailed representation to the second respondent to drop the acquisition proceedings, insofar as the subject land is concerned and alternatively asked reference for enhancement of compensation.

8. In support of his contentions, he relied upon the Judgment of the Hon'ble Supreme Court of India in C.A.No. 2772 of 2011 in the case of E.A.Aboobacker & Ors Vs. State of Kerala & Ors, wherein it was held as follows :

"The Hon'ble Supreme Court of India held that this is not a hyper technical ground. When the state wants to acquire the property of a citizen which is a constitutional right of any citizen in Article 300A of the Constitution of India it must strictly follow the procedure prescribed by law. The only view which has to be taken is the legal view. The Special Tahsildar was not authorized to act as Collector for the entire District of Ernakulam and is empowered only in respect of acquisitions of which notification had already been issued for acquiring the land for the Cochin Refineries Limited".

9. He also relied upon the judgment of the Hon'ble Supreme Court of India in C.A.No. 196 of 2011 in the case of D.B.Basnett (D) through L.Rs Vs. The Collector, East District, Gangtok, Sikkim & Anr., wherein it was held that the State must comply with the procedure for acquisition, requisition or any other permissible statutory mode. The State, being a welfare State governed by the rule of law, cannot arrogate to itself a status beyond what is provided by the Constitution. The right to property is now considered to be not only a constitutional or statutory right, but also a human right. Human rights have been



considered in the realm of individual rights such as right to shelter, livelihood, health, employment, etc. Human rights have gained a multifaceted dimension.

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10. Insofar as the delay in filing writ petition, the learned Senior Counsel also relied upon a judgment reported in 2012 (12) SCC 443 in the case of Anil Kumar Gupta Vs. State of Bihar and others, in which the Hon'ble Supreme Court of India held that the vesting of land in the Government can be challenged on the ground that the possession had not been taken in accordance with the prescribed procedure. The land acquisition proceedings can be challenged at various stages of acquisition enumerated, illustratively. The subject land is an agricultural land and it is the only land for the livelihood of the petitioner. In support of his said contentions, he also relied upon the Judgment reported in 1986 AIR 180 in the case of Olga Tellis & Ors Vs. Bombay Municipal Corporation & Ors.

11. He further submitted that the compensation amount has not been paid so far to the petitioner. In fact, no one was served with notice and none had participated in the award enquiry. The petitioner was never paid any compensation. As per Section 10 (3) of the Act, if the owner do not consent to receive the amount, the Government shall deposit the amount so determined in the Court. As per Section 11 of the Act, the amount so deposited by the Government has to be invested in Government approved securities to earn interest. But so far no award amount has been deposited in the Revenue Deposit and it is a clear violation of the provisions under Section 10(3) of the Act.

12. Per Contra, the learned counsel for the third respondent filed a counter stating that to establish a new plant at Perambalur District, the Memorandum of Understanding, dated 02.05.2008, entered between the State of Tamil Nadu and the third respondent. Majority of the people sold their property and a very few land owners refused to sell and it would have led to invoke the provisions of the Act. Accordingly, a notification was published under Section 3(2) of the Act, dated 30.05.2008. The enquiry was conducted and during the enquiry, the wife of the petitioner participated and made a statement on 18.06.2008. She has stated that since her husband was working in Riyadh, she participated in the enquiry on behalf of her husband. It is further stated that she agreed for the acquisition of land and requested to pay more compensation and also employment for her son in the third respondent/company.

13. After satisfaction, the second respondent issued



notification under Section 3(1) of the Act and was published in the Government Gazette dated 26.12.2008. In pursuant to the same, the possession of the entire land had been taken over and the entire compensation amount also duly remitted by the third respondent by way of HDFC Demand Draft No. 846091, dated 15.09.2010. After due enquiry, the award was passed on 06.10.2010. Now, the entire acquired land has been used for the factory of the third respondent and in which the petitioner's land has been used as path way in respect of their Trichy Plant. The land has been planned for construction of Tyre Tube Flap Insertion and Packing Buildings and parking bay for company buses and vehicles.

14. He further submitted that similarly placed land owners have already challenged the acquisition proceedings in W.P.Nos. 2616 and 2617 of 2009 before this Court and this Court by an order dated 31.08.2010 dismissed both the writ petitions. Aggrieved by the same, they preferred writ appeals in W.A.Nos. 2051 and 2052 of 2010 and the Hon'ble Division Bench of this Court had also dismissed the writ appeals by an order dated 08.02.2018. While dismissing the writ petitions filed by the adjacent land owners, this Court observed as follows:

" The next question that arises for consideration is, whether the lands owned by the petitioners are absolutely necessary for carrying out the project or without acquisition of the said lands, the project can be proceeded with. When it is the case of the petitioners that the lands owned by them are not necessary for carrying out the project, it is contended on behalf of the respondents that the lands owned by the petitioners are absolutely necessary. It is stated on the side of the respondents that the Siruvachur Tamil Nadu Electricity Board is situated diagonally across the National Highways and it is advantageous for the plant to bring in the 110 KVA power line from the Sub Station into the plant and build the sub station in the lands to be acquired. Further, it is stated that if the said lands are not acquired, the applicable Floor Space Index would be reduced and the proposal of the third respondent to bring down the covered area of the plant would directly result in loss in the plant capacity affecting the project seriously. When such a stand is taken by the respondents, this Court cannot sit over the decision unless and otherwise a strong case is made out by the petitioners viz., the action of the respondents is mala fide and colourable exercise of power. To make out a case of mala fide against the



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respondents, no strong case was made out by the petitioners except stating that M/s.Green House Promoters (P) Limited claiming to be the agent of MRF Company, approached the petitioners and threatened them to part with the lands and that one of the Board Members is the wife of a Central Minister hailing from the same District. As I have stated already, why the said company is particular about the lands of the petitioners and what is the motive in acquiring the lands owned by the petitioners, is not made out. The allegation of mala fide has to be pleaded and established in a manner known to law. Unfortunately, the petitioners have not pleaded and established that the action of the respondents is tainted with mala fide. That apart, to show that the action of the respondents is colourable exercise of power, nothing has been pleaded and proved. As stated already, the fact that M/s Green House Promoters (P) Limited was negotiating with the land owners, was made known by the third respondent even at the inception when it has written as letter to the Government on 21.11.2007 requesting the Government to acquire the lands owned by the petitioners. In the judgement reported in (2005) 8 SCC 760, Union of India and Others v. Ashok Kumar and Others, the Hon'ble Apex Court has held that the Courts would be slow to draw dubious inferences from incomplete facts placed before them by a party, particularly when the imputations are grave and they are made against the holder of an office having high responsibility. The burden of establishing malafides is very heavy on the person who alleges it. Para 21 of the said Judgement is usefully extracted here under:

"21. Doubtless, he who seeks to invalidate or nullify any act or order must establish the charge of bad faith, an abuse or a misuse by the authority of its powers. While the indirect motive or purpose, or bad faith or personal ill will is not to be held established except on clear proof thereof, it is obviously difficult to establish the state of a man's mind, for that is what the employee has to establish in this case, though this may sometimes be done. The difficulty is not lessened when one has to establish that a person apparently acting on the legitimate exercise of power has, in fact, been acting mala fide in the sense of pursuing an illegitimate aim. It is not the law that mala fides in the sense of improper motive should be



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established only by direct evidence. But it must be discernible from the order impugned or must be shown from the established surrounding factors which preceded the order. If bad faith would vitiate the order, the same can, in our opinion, be deduced as a reasonable and inescapable inference from proved facts. (S.Pratap Singh v. State of Punjab). It cannot be overlooked that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. As noted by this Court in E.P.Royappa v. State of T.N. Courts would be slow to draw dubious inferences from incomplete facts placed before them by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration. (See Indian Rly. Construction Co. Ltd. v. Ajay Kumar)"

In view of the above reasons set out and in view of the decision referred to above, I am of the considered view that the petitioners have not established that there exists a mala fide in acquiring the lands belonged to them."

15. The learned counsel for the third respondent relied upon the Judgment reported in 2008 (4) SCC 695 in the case of Swaika Properties (P) Ltd Vs. State of Rajasthan and the Hon'ble Supreme Court of India held that the award in respect of the land having become final, the State Government is vested with the powers to take possession of the land concerned and, therefore, there is no reason to disbelieve the claim of the State Government that the possession had been taken before filing of the writ petition. Moreover, the appellants sought enhancement of compensation by filing the reference application under Section 18 of the Land Acquisition Act, 1894. Simultaneously, the appellants filed writ petition before the High Court after passing of the award. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award, which is a material factor to be taken into consideration before exercising the power under Article 226 of Constitution of India.

16. In the case on hand, as stated supra, the award has been passed and the possession of the land admittedly has been taken from the petitioner and it is utilized by the third respondent. Therefore, this Court does not find any grounds to interfere with the acquisition proceedings completed by the



second respondent.

17. Mr. M.R.Gokul Krishnan, the learned Government Advocate appearing for the second respondent submitted that the second respondent issued notification under Section 3(2) of the Act on 26.12.2008 and the same was also published in the Tamil Nadu Government Gazette No.383. Thereafter, the second respondent issued notification under Section 4(2) of the Act, in turn, the Principal Secretary/ Commissioner for Land Administration, Chennai in proceedings dated 25.06.2009, determined the value of the land and fixed compensation at Rs.3,00,000/- (Rupees Three Lakhs only) per acre. Therefore, all the procedures as contemplated under the Act have been duly followed and the entire compensation amount was duly received by the petitioner.

18. Heard Mr.A.Navaneetha Krishnan, the learned Senior Counsel appearing for the petitioner, Mr.M.R.Gokul Krishnan, learned Government Advocate appearing for the respondents 1 and 2 and Mr.M.Vijayan, learned counsel appearing for the third respondent.

19. On the request made by the third respondent, by a letter dated 21.11.2007, for acquisition of 16.64 acres of land for the project of manufacture of Passenger and Truck Radial Tyres in Naranamangalam Village, in addition to the 270 acres which the Company has already negotiated with the land owners. Therefore, the Government of Tamil Nadu initiated the proceedings under the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 (Act 10 of 1999) and accorded administrative sanction in G.O.Ms.No.85, dated 31.03.2008. As per the G.O., the land to an extent of 6.74.0 hectares proposed to acquire the land including the subject land of the petitioner. The second respondent issued notification under Section 3(2) of the Act, dated 13.05.2008. On receipt of the same, the wife of the petitioner appeared for enquiry on 18.06.2008 and stated that she received the notice issued under Section 3(2) of the Act and appeared for enquiry on 18.06.2008. She accepted the acquisition for the establishment of third respondent/company. Since her husband i.e., the petitioner herein is working in abroad and the adjacent land was sold out in higher price, she requested for higher compensation and also requested for employment to her son in the third respondent/company.

20. In the meanwhile, the acquisition proceedings was challenged by the adjacent land owners in W.P.Nos .2616 and 2617 of 2009 and however, both the writ petitions were dismissed by this Court by an order dated 31.08.2010, for the reason that the



second respondent had followed all the procedures as contemplated under the Act. It is also confirmed by the Hon'ble Division Bench of this Court in W.A.Nos.2051 and 2052 of 2010 by an order dated 08.02.2018. Thereafter, the notification under Section 3(1) of the Act was issued vide G.O.Ms.No.224, dated 26.12.2008 and the same was published in the Tamil Nadu Government Gazette No.383. Accordingly, the notice under Section 4(2) of the Act was approved by the second respondent dated 12.01.2009 and duly served to the land owners who had surrendered the possession of the lands as per the rules. Possession of the entire land had been taken over on 06.09.2010 and handed over to the third respondent. The value of the land is determined at Rs.3,00,000/- (Rupees Three Lakhs only) per acre and the sum of Rs.7,41,000/- (Rupees Seven Lakhs Forty One Thousand only) per hectare. Accordingly, the award has been passed on 06.10.2010. Thereafter, the petitioner on 06.12.2010 made a representation to the third respondent and other authorities concerned to drop the acquisition proceedings and with alternative prayer to refer the matter under Section 8 of the Act to the competent Court of law to enhance the compensation.

21. The counsel for the third respondent produced the drawing of the third respondent plant and it reveals that the entire factory has been fully set up in the acquired land and the lands, which were purchased by the third respondent. Insofar as the lands, which were acquired from the petitioner is concerned, they erected part of the plant and the work is in progress of Tyre Tube Flap Insertion and Packing Buildings. Therefore, the entire possession of the said property had been taken over from the petitioner and the work is in progress under the third respondent.

22. Further, the wife of the petitioner had duly attended the enquiry and accepted the acquisition of their land and also requested for employment to her son. That apart, the petitioner also made a representation dated 06.12.2010 to drop the proceedings and with alternative request to refer the matter for enhancement of compensation.

23. Therefore, the judgment cited by the learned Senior Counsel is not helpful to the case on hand. This Court finds no flaws in the acquisition proceedings and the writ petition is devoid of merits and deserves to be dismissed.

24. However, the second respondent is directed to refer the matter under Section 8 of the Act to the competent Court for enhancement of compensation within a period of two weeks from the date of receipt of a copy of this order, if not already referred.



25. The petitioner is directed to make a representation before the third respondent for providing employment to his son, if so advised. If any representation made by the petitioner, the third respondent is directed to consider the same and provide employment.

26. Accordingly, the writ petition stands dismissed. Consequently, connected Miscellaneous petition is closed. There shall be no order as to costs.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
The State of Tamil Nadu,
Industries Department,
Fort.St.George,
Chennai - 9.
2. The District Collector,
Office of the District Collector,
Perambalur,
Perambalur District.
3. MRF Limited,
No.124, Greams Road,
Chennai - 6.

+1cc to M/s.R.Rajamohan, Advocate, S.R.No.54415

+1cc to M/s.King & Partridge, Advocate, S.R.No.54541

+1cc to the Government Pleader, S.R.No.55083

Pre-delivery order in
W.P.No. 11225 of 2011
and M.P.No. 2 of 2011

VSN-II (CO)
SU(17/11/2021)