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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.08.2021

Pronounced on : 27.08.2021

CORAM

THE HON'BLE MR. JUSTICE G.K.ILANTHIRAIYAN

WP.No.24213 of 2013 and
MP.Nos.2 & 3 of 2013

1.K.Jayaprakash Narayanan
2.K.Gnanamani
3.K.Sundaramoorthy

..Petitioners

Vs.

1. The Secretary to Government,
Industries Department, Fort St.George,
Chennai 600 009

2. The District Collector,
Tiruvannamalai District,
Tiruvannamalai

3. The Special Tahsildar(L.A),
SIPCOT Expansion Unit-III, Cheyyar,
Tiruvannamalai District

4. SIPCOT,
Rep. by its Managing Director,
At No.19, Rukmani Lakshmipathy Road,
Egmore, Chennai

(R4 - suo motu impleaded vide order

dated 20.04.2021 made in WP.No.24213 of 2013)

..Respondents

PRAYER:

The Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorari calling for the entire records relating to the impugned GO.Ms.No.128, Industries (SIPCOT-L.A), dated 25.06.2013 issued by the first respondent and quash the same insofar as the petitioners are concerned.

(Prayer amended as per order dated 20.01.2020
made in WMP.No.20649 of 2018 in WP.No.24213
of 2013)



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For Petitioners : Mr.A.R.L.Sundaresan,
Senior Counsel
for Mr.C.Prakasam

For Respondents
For R1 to 3 : Mr.Richardson Wilson,
Government Advocate

For R4 : M/s.Sudarshana Sunder

ORDER

This writ petition is filed to issue a writ of certiorari calling for the entire records relating to the impugned GO.Ms.No.128, Industries (SIPCOT-L.A), dated 25.06.2013 issued by the first respondent and quash the same insofar as the petitioners are concerned.

2. The case of the petitioner is that the petitioners are brothers and joint owners of the land comprised in SF.No.2/1 to an extent of 1.89 hectares, SF.No.2/2 to an extent of 0.68.5 hectares, SF.No.218/1 to an extent of 1.02.0 hectares, SF.No.218/2 to an extent of 1.19 hectares, SF.No.218/3 to an extent of 0.59 hectares, SF.No.218/4 to an extent of 1.51 hectares and SF.No.219 to an extent of 2.75 hectares (hereinafter called as 'subject property') situated at Mangal village, Cheyyar Taluk, Tiruvannamalai District. Those lands are agricultural lands and the petitioners are cultivating agricultural crops. In the said lands, there are mango, guava, teakwood, coconut trees, tamarind and other country wood trees. In the said land, there are three open wells and also a borewell for irrigation purposes. While being so, the respondents in the year 2008 issued notice under Section 3 (2) of Tamilnadu Acquisition of Land for Industrial Purposes Act, 1997 (Act 10 of 1999) (hereinafter called as 'the Act'). On receipt of the said notice, the petitioners submitted detailed explanation. The second respondent inspected the said lands and satisfied with that their lands are fertile lands and it is more useful to safeguard and preserve the environment in that locality. Since nearby lands were acquired for SIPCOT industrial purposes and also felt that for the sake of industrial vast expansion of fertile land should not be spoiled and should not be acquired for establishment of industrial purposes. The second respondent conducted elaborate enquiry after his personal inspection of the subject property and by the communication dated 26.11.2009 informed that those lands should be exempted from the land acquisition proceedings. Simultaneously, directed the Special District Revenue Officer (Land Acquisition) to send proposal for grant of exemption in respect of the subject property from the



acquisition proceedings. While being so, the third respondent issued notice in form E under Rule 9 of the Act and thereby directed the petitioners to hand over the subject property as per Section 4 (2) of the Act. Thereafter, the petitioners came to understand about the gazette notification published in GO.Ms.No.128, Industries (SIPCOT-LA) dated 25.06.2013 stating that the subject property was acquired by the Government for expansion of SIPCOT Industrial Park.

3. The second respondent filed counter stating that the subject properties have been notified for acquisition under the Act for the purpose of expansion of SIPCOT in Mangal village, Cheyyar Taluk, Tiruvannamalai District. There were objections received from interested persons against the acquisition. The acquisition body while offering the remarks have stated that the lands on the east, west and south sides have been already acquired by SIPCOT. In the western portion adjoining the field, there is a cement road laid by the SIPCOT. The subject properties are compulsorily required for SIPCOT for entrance of phase-I of SIPCOT scheme. Therefore, the subject property cannot be exempted and the second respondent agreed with the view and recommended for rejection of objections. Thereafter, the Government approved the notification under Section 3 (1) of the Act. The second respondent called for report on the request for exemption from the petitioners. After receipt of the remarks from the acquisition body, the second respondent inspected the subject property and agreed with the remarks made by the acquisition body. The remarks are extracted hereunder:

(i) that these lands are situated in the middle of the area acquired for SIPCOT.

(ii) These kind of lands with trees were acquired in Alinjalpattu and Ukkamperumbakkam Villages also.

(iii) If these lands are exempted, the contiguity of the lands will be affected.

Hence, the petitioners' request for exemption cannot be granted.

Therefore, the Government have examined the report submitted by the Collector and approved the notification under Section 3 (1) of the Act after due consideration and also issued form-E after the publication of the notification under Section 3 (1) of the Act in the Tamilnadu Government Gazette in GO.Ms.No.128 Industries (SIPCOT-LA) dated 25.06.2013.

4. The learned Senior Counsel appearing for the petitioners would submit that the subject property is an agricultural land and it should not be used for any other purpose. Therefore the



second respondent rightly recommended for exemption from acquisition, that too for the purpose of industry. As required under Section 3 sub clause 2 and 3, no notice was served on the petitioners and no enquiry was conducted as required under the Act. Therefore, the entire proceedings are vitiated. Even till today, no compensation as determined has been paid to the petitioners.

4.1 He further submitted that the Government of India took policy decision to avoid agricultural fertile lands for establishment of industrial park, since in all over India in the name of industrial development all agricultural fertile lands are acquired and reduced the productivity of agricultural crops and agricultural products. Therefore, the Government of India strictly warned the officials not to acquire the agricultural fertile lands. In fact, the second respondent personally inspected the subject property and found that there were thousands of trees standing in the land and therefore recommended for exemption from the acquisition proceedings. The first respondent without considering the recommendations of the second respondent have examined, issued form E under Rule 9 of the Act. In fact, the first respondent failed to issue any notice as required under Section 4 (2) of the Act. The petitioners were never served with notice to surrender or deliver possession to the second respondent within a period of 30 days from the date of service of notice. Therefore, there is complete procedural lapse on the part of the respondents and the entire proceedings is vitiated and liable to be quashed. Under the new Act, namely Central Government brought new enactment called Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and as per Section 24(1), award has been made within a period of five years and more prior to the commencement of the present Act, but physical possession has not been taken and compensation also not paid to the land owner, then the entire land acquisition proceedings are become lapsed. Therefore, in the case on hand, no award has been passed, no compensation was paid and still the possession also with the petitioners. Therefore, the entire acquisition proceedings is lapsed and prayed to allow the writ petition.

5. The learned Government Advocate appearing for the respondents 1 to 3 submitted that the respondents issued form E to the petitioners after issuance of notice under Section 4 (2) of the Act. Only after taking possession of the property as per Section 7 of the Act, the first respondent has to determine the value of the property. There is no bar from acquiring the agricultural land for the purpose of industries. That apart, it is a policy decision and as such it cannot be challenged by way of writ petition under Article 226 of the Constitution of India.



As per Section 3 of the Act, the second respondent has power to acquire the land for the purpose of industries. Under Section 23 (A) of the Act, the Government may, by notification, direct that all the powers under this Act except the powers, i.e. (i) to issue notice under sub-section (1) of section 3, (ii) to withdraw the land from acquisition under the first proviso to subsection (1) of section 4 and (iii) to make rules under section 25, shall be exercised by the Collector i.e. the second respondent herein. He further vehemently contended that Section 5(A) of the Land Acquisition Act, 1894 and Section 3 (2) of the Tamilnadu Acquisition of Land for Industrial Purposes Act, 1997 are not one and the same with regards to hearing of objections. In support of his contention, he relied upon the judgment in the case of N.Murugan Vs. District Collector, Kancheepuram reported in (2014) 5 LW 385 and submitted that neither the provision relating to the 5A enquiry nor the rules related to enquiry under Section 5A, nor the ratio laid with respect to the enquiry under Section 5A of Land Acquisition Act, 1894 shall have any relevancy to the acquisition proceedings of the present Act. That apart, such a situation is not contemplated expressly either in Section 3 of the T.N. Acquisition of Land for Industrial Purposes Act or under Rule 6 of T.N. Acquisition of Land for Industrial Purposes Rules.

5.1 He further submitted that the second respondent is duly empowered to conduct enquiry pursuant to the notification under Section 3 (2) of the Act. Under Section 23 A of the Tamilnadu Acquisition of Land for Industrial Purposes Act, the Government may, by notification, direct that all the powers under this Act except the powers i.e. (i) to issue notice under sub-section (1) of section 3; (ii) to withdraw the land from acquisition under the first proviso to subsection (1) of section 4; and (iii) to make rules under section 25, shall be exercised by the Collector. In support of his contention, he relied upon the judgment of the Hon'ble Division Bench of this Court in the case of Secretary to Government Vs. M/s.V.G.P. Housing Pvt. Ltd., rep. by its Director, Chennai in WA.No.1710 of 2017 dated 01.02.2018.

6. Heard, Mr.A.R.L.Sundaresan, Senior Counsel appearing for the petitioners, Mr.Richardson Wilson, Government Advocate appearing for the respondents 1 to 3, and M/s.Sudarshana Sunder, learned counsel appearing for the fourth respondent.

7. The petitioners are brothers and they owned the subject property situated at Mangal village, Cheyyar Taluk, Tiruvannamalai District. Those lands are agricultural lands and the petitioners are cultivating agricultural crops. In the said lands, there are mango, guava, teakwood, coconut trees, tamarind and other country wood trees. In the said land, there are three



open wells and also a borewell for irrigation purposes. While being so, the subject properties owned by the petitioners have been notified for acquisition under the Tamilnadu Acquisition of Land for Industrial Purposes Act, 1997 for expansion of SIPCOT in Mangal Village, Cheyyur Taluk, Tiruvannamalai District under Section 3 (2) of the Act. On receipt of notice, the petitioners submitted detailed explanation along with the documents to prove that the subject properties are agricultural properties and fertile lands for cultivation. On receipt of explanation submitted by the petitioners dated 21.01.2009 and requisition dated 09.11.2009, second respondent by his communication dated 26.11.2009 recommended for exemption and also requested the third respondent to send declaration to exempt the subject property from acquisition. The requisitioning body i.e. the fourth respondent herein offered their remarks on the objections raised by the petitioners and stated that the lands on the east, west and southern side of the subject property have already been acquired and on the western portion adjoining the field, there is a cement road laid by the fourth respondent. Therefore, the subject properties are compulsorily required for entrance of phase I of the scheme. Though the second respondent recommended for exemption of the subject property from the acquisition by the communication dated 26.11.2009, the Collector inspected the subject property and recommended for acquisition for the reason that the subject property is situated in the middle of the area acquired for SIPCOT and the similar property were already acquired and if the subject property is exempted, the contiguity of the lands will be affected. Thereafter, the first respondent issued notification under Section 3(1) and published GO.Ms.No.128 Industries (SIPCOT-LA) dated 25.06.2013, the order impugned in this writ petition.

8. The point for consideration is that whether the respondents followed the procedure contemplated under Section 3 (2) and (3) read with Rule 6 of the Tamilnadu Acquisition of Land for Industrial Purposes Act, 1997. Admittedly, the notice under Section 3(2) was duly served on the petitioners and they submitted their explanation in the form of objection on 21.01.2009 and 09.11.2009. On receipt of the same, the second respondent inspected the subject property and by the communication dated 26.11.2009, recommended for exemption from the acquisition in respect of the subject property and also requested the third respondent to send report. According to the respondents, the requisitioning body i.e. fourth respondent herein filed their remarks to the objections raised by the petitioners. Thereafter, the second respondent did not conduct any enquiry and failed to give opportunity of hearing as contemplated under sub-section 3 of Section 3 of the Act read with Rule 6 of the Act. Rule 6 reads as follows:



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(b) If any objections are received from a person interested in the land, within the time prescribed in rule 3 or 4, the Government shall fix a date for hearing the objections and give notice thereof to the objector or as well as to the Government or company requiring the land. Copies of the objections shall also be forwarded to such department or company and the Department or company may file on or before the date fixed by the Government, a statement by way of answer to the objections and may also depute a representative to attend the enquiry.

(c) On the date fixed for enquiry or any other date to which the enquiry may be adjourned by- the Government, the Government shall hear the objector, or a person authorized by him in this behalf, or his pleader and the representation if any, of the department or company and record any evidence that may be produced by both in support of the objections and in support of the need for acquiring the land.

9. Accordingly, after receipt of objections from the land owners, the objections shall be forwarded to the requisitioning body and after receipt of the remarks to the objections, the second respondent shall conduct enquiry. In the case on hand, on receipt of objections and also remarks from the requisitioning body, there was no enquiry conducted by the second respondent. In this regard, the learned Government Advocate relied upon the judgment in the case of N.Murugan Vs. District Collector, Kancheepuram reported in (2014) 5 LW 385, wherein it is held as follows:

13. The Hon'ble Division Bench of this Court in the case of K. Ramakrishnan v. The Government of Tamilnadu in W.P. Nos. 40850 of 2006 Batch, decided on 02.03.2007, has refused to quash the proceedings initiated under the Tamil Nadu Acquisition of Land for Industrial Purposes Act, by holding as under:

"26. In pith and substance, the State Government for speedy industrial growth in the State felt the lands for industrial purpose have to be acquired speedily and enacted the T.N. Acquisition of Land for Industrial Purposes Act with a conceptualized vision that more industries would be started in Tamil Nadu and the acquisition of lands for setting up such industries would be expedited to achieve the laudable object of big



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industrialization in the State of Tamil Nadu. Such power of the State to enact T.N. Acquisition of Land for Industrial Purposes Act or such powers conferred under the authorities under the Act for speedy acquisition of lands for industrial purpose cannot be strangled on the ground of legislative competency, as such power of acquisition and requisitioning of property conferred under Entry 42 of List III (Concurrent List) is independent by itself, but not ancillary or incidental to the power to regulate mines and minerals under Entry 54 of List I (Union List). It is thus clear that neither the T.N. Acquisition of Land for Industrial Purposes Act suffers from any legislative competency nor the impugned acquisition proceedings initiated under the T.N. Acquisition of Land for Industrial Purposes Act suffer for want of jurisdiction. 27.1. Next, we proceed to examine the attack on the impugned acquisition proceedings made by the land owners/interested persons, for non compliance of Rule 6 of the T.N. Acquisition of Land for Industrial Purposes Rules due to the failure to furnish the remarks of the requisitioning body/NLC. 27.2. Of course, our attention was invited to the decision of the Division Bench of this Court in Ramanujam N.D. v. Collector of Madras, 1994 WLR 326. The said case arose under the provisions of Land Acquisition Act, 1894, where the lands were acquired by the Madras Metropolitan Water Supply and Sewerage Board/requisitioning body to provide water supply to the residents of a locality. During the acquisition proceedings even though objections were filed by land owners/interested persons, there was no record to show that the reply of the requisitioning body was communicated to the petitioner therein to make the enquiry contemplated under Section 5A of the Land Acquisition Act, 1894 effective and purposeful. Therefore, it was held that the enquiry conducted under Section 5A of the Land Acquisition Act, 1894 was illegal and contrary to the relevant Rules that are applicable for 5A enquiry in the matter of acquisition under the Land Acquisition Act, 1894. Rule 4 of the Land Acquisition (Tamil Nadu) Rules prescribes the procedure to be followed in the matter of hearing the objections of the land owners/interested persons to the acquisition and



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holding an enquiry in that regard. Rule 4 of Land Acquisition (Tamil Nadu) Rules reads as follows:

"Rule (4) (a) If a statement of objections is filed by a person who is interested in the land, it shall be summarily rejected.

(b) If any objections are received from a person interested in the land and within the time prescribed in sub-section (1) of section 5-A, the Collector shall fix a date for hearing the objections and give notice thereof in Form 'B' to the objector as well as to the department or company acquiring the land. Copies of the objections shall also be forwarded to such department or company. The department or company may file on or before the date fixed by the Collector, a statement by way of answer to the objections and may also depute a representative to attend the enquiry, (c) On the date fixed for enquiry or any other date to which the enquiry may be adjourned by the Collector, the Collector shall hear the objector, or a person authorised by him in this behalf, or his pleader and the representative, if any, of the department or company and record any evidence that may be produced by both in support of the objections and in support of the need for acquiring the land."

27.3. No doubt, the said Rule 4 of the Land Acquisition (Tamil Nadu) Rules framed under Section 55 of the Land Acquisition Act, 1894 is akin to Rule 6 of T.N. Acquisition of Land for Industrial Purposes Rules made under Section 25 of T.N. Acquisition of Land for Industrial Purposes Act. But, in view of Section 21 of the T.N. Acquisition of Land for Industrial Purposes Act, the provisions of Land Acquisition Act, 1894 are excluded save as otherwise provided in the Act, and therefore, neither the provision relating to the 5A enquiry nor the rules related to enquiry under Section 5A, nor the ratio laid with respect to the enquiry under Section 5A of Land Acquisition Act, 1894 shall have any relevancy to the acquisition proceedings of the present Act. That apart, such a situation is not contemplated expressly either in Section 3 of the T.N. Acquisition of Land for Industrial Purposes Act or under Rule 6 of T.N. Acquisition of Land for Industrial Purposes Rules. What all Section 3 contemplates is only to publish notice under



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Section 3(2) by the Government calling upon the land owners/interested persons to show cause as to why the lands should not be acquired and also cause a public notice in that regard, and thereafter to receive objection, forward the copy to requisitioning body and after getting statement by way of answer from the requisitioning body, to hold an enquiry and take a decision and thereafter pass an order under Section 3(1) as provided under Section 3(3) of the Act that the land is required for industrial purpose and in furtherance of the object of the Act. 27.4. In our considered opinion, in view of Section 21 of the Act, the provisions of the Act and Rules should be interpreted strictly applying the golden rule of interpretation that the literal interpretation should be adhered to in the absence of any anomaly or absurdity in reading the words of the statute as it stands, and a statute cannot be looked at with a coloured glass.

28. Lastly, we are unable to comprehend such grievance of the land owners/interested persons that the Government failed to provide sufficient rehabilitation measures/safeguards to the land owners/interested persons, as contemplated under the National Policy on Resettlement and Rehabilitation for Project Affected Families-2003, in view of the undertaking given by the respondents in the counter affidavit that rehabilitation package has been provided in order to give relief and rehabilitation measure to genuinely displaced land oustees, which, we record, would take care of the interest of the petitioners seeking sufficient rehabilitation measures/safeguards under the National Policy on Resettlement and Rehabilitation for Project Affected Families-2003.

29. In fine, all the attempts to strangle the impugned acquisition proceedings under the provisions of T.N. Acquisition of Land for Industrial Purposes Act fail as devoid of merits and for want of legal contentions.

30. Resultantly,

(i) the T.N. Acquisition of Land for Industrial Purposes Act and the Rules framed thereunder does not suffer from lack of



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legislative competency of the State Government and therefore, the same are held constitutionally valid;

(ii) the impugned acquisition proceedings initiated under the T.N. Acquisition of Land for Industrial Purposes Act does not suffer any illegality, irrationality, or procedural impropriety; and

(iii) the writ petitions and connected miscellaneous petitions are dismissed. No costs."

10. The Hon'ble Division Bench of this Court held that in view of Section 21 of the T.N. Acquisition of Land for Industrial Purposes Act, the provisions of Land Acquisition Act, 1894 are excluded save as otherwise provided in the Act, and therefore, neither the provision relating to the 5A enquiry nor the rules related to enquiry under Section 5A, nor the ratio laid with respect to the enquiry under Section 5A of Land Acquisition Act, 1894 shall have any relevancy to the acquisition proceedings of the present Act. Though the procedure laid down under Section 5A of the old Act, shall have no relevancy to the present Act as contemplated under Section 3 (2) and (3), the second respondent on receipt of summons from the requisitioning body on the objections raised by the land owners, shall conduct an enquiry before issuance of notification under Section 3(1) of the Act. Therefore, the above judgment is not helpful to the case on hand, since there is no evidence to show that the second respondent conducted enquiry after giving opportunity of hearing to the petitioners. There is no evidence to show that the second respondent issued notice as contemplated under Rule 6 of the Tamilnadu Acquisition of Land for Industries Purposes Rules to fix the date for enquiry.

11. Though the petitioners raised additional grounds that the entire acquisition proceedings is lapsed under Section 24 of the new Act, since award has not been passed till today and no compensation amount paid and possession of the subject land has not been taken even till today, in this regard, the learned Government Advocate relied upon the judgment in the case of A.Rani Vs. State of Tamilnadu rendered in WP.No.25222 of 2018 dated 08.01.2020, wherein it is held as follows:

4. Subsequent to the issuance of notice, the State Government of Tamil Nadu has brought out The Tamil Nadu Land Acquisition Laws (Revival of Operation, Amendment and Validation) Act, 2019. By virtue of this Act, the acquisitions made under Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978; Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 and the Tamil



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Nadu Highways Act, 2001 have been validated retrospectively from 26.09.2013. The subsequent developments, after filing of the instant writ petition, renders the instant writ petition infructuous.

Therefore, the Tamilnadu Acquisition of Land for Industrial Purposes Act, 1997 has been validated retrospectively from 26.09.2013 by The Tamil Nadu Land Acquisition Laws (Revival of Operation, Amendment and Validation) Act, 2019. Therefore, the additional ground raised by the petitioners cannot be considered in this writ petition.

12. However, there is violation of non compliance of the procedure laid down under Section 3 (2) and (3) of the Act read with Rule 6 (b) and (c) of Tamilnadu Acquisition of Land for Industrial Purposes Rules, 2001. That apart, the respondents did not issue notice under Section 4 (2) of the Act directing the petitioners to surrender or deliver possession of the subject property. Without issuing notice under Section 4 (2) of the Act, straight away issued form E notice as contemplated under Rule 9 of the Act. Therefore, the impugned GO is liable to be quashed.

13. Accordingly, this writ petition is allowed and the impugned GO.Ms.No.128, Industries (SIPCOT-L.A), dated 25.06.2013 issued by the first respondent is quashed insofar as the petitioners are concerned. However, the second respondent is at liberty to conduct fresh enquiry after giving opportunity of hearing to the petitioners and proceed further in accordance with law. Consequently, connected miscellaneous petitions are closed. No order as to costs.

Sd/-
Assistant Registrar(CS VII)

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Sub Assistant Registrar

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To

1.The Secretary to Government,
Industries Department, Fort St.George,
Chennai 600 009.

2.The District Collector,
Tiruvannamalai District,
Tiruvannamalai.



3.The Special Tahsildar(L.A),
SIPCOT Expansion Unit-III, Cheyyar,
Tiruvannamalai District.

4.The Managing Director,
SIPCOT,
At No.19, Rukmani Lakshmipathy Road,
Egmore, Chennai.

+lcc to Government Pleader Sr No.43923
+lcc to C.Prakasam, Advocate Sr No.43241

WP.No.24213 of 2013

JP (CO)
PR (20/09/2021)