



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos.13162, 13724, 14466 and 14636 of 2018
and

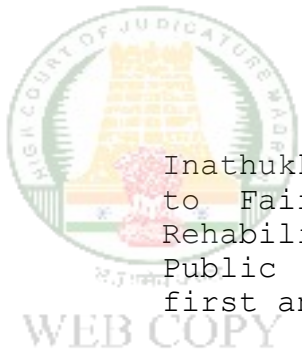
W.M.P.Nos.15475, 16185, 16186, 17076, 17279, 39768,
39374, 39377 and 39378 of 2018

- | | |
|----------------|--|
| 1. S.Jayanthi | ... Petitioner in W.P.No.13162 of 2018 |
| 2. Jaiprinacy | ... Petitioner in W.P.No.13724 of 2018 |
| 3. M.Yogaraj | ... Petitioner in W.P.No.14466 of 2018 |
| 4. Badurunnisa | ... Petitioner in W.P.No.14636 of 2018 |

Vs.

- | | |
|---|---|
| 1. The Principal Secretary to Government (FAC),
Public (Military) Department,
Fort St.George,
Chennai - 600 009. | |
| 2. The District Collector,
Thanjavur District,
Thanjavur. | ... Respondents in W.P.Nos. 13162, 13724
& 14466 of 2018 |
| 1. The Commissioner for Land Administration,
Chepauk,
Chennai - 600 005. | |
| 2. The Principal Secretary to Government (FAC),
Public (Military) Department,
Fort St.George,
Chennai - 600 009. | |
| 3. The District Collector,
Thanjavur District,
Thanjavur. | ... Respondents in W.P.No.14636 of 2018 |

Writ Petitions filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, to call for the records relating to an extent of rehabilitation package for



Inathukkanpatti Villagers under urgency provision of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 under G.O(Ms).No.148 Public (Military) Department dated 23.02.2018 on the file of the first and second respondent respectively and quash the same.

For Petitioners
in all W.Ps : Mr.D.Veerasekaran

For Respondents
in all W.Ps. : Mr.Richardson Wilson
Government Advocate

C O M M O N O R D E R

These Writ Petitions have been filed to issue a writ of Certiorari, to call for the records relating to an extent of rehabilitation package for Inathukkanpatti Villagers under urgency provision of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 under G.O(Ms).No.148 Public (Military) Department dated 23.02.2018 on the file of the first respondent and quash the same.

2. The case of the petitioner in W.P.No.13162 of 2018 is that the petitioner purchased the punja land to an extent of 42 cents (0.17.0 ares) comprised in Survey No.4/5 situated at Inathukkanpatti Village and Taluk by the registered sale deed dated 20.07.2006, vide document No.3215 of 2006. After purchasing the said land, the Revenue Records were changed in the petitioner's name under Patta Pass Book and A register. Therefore, the petitioner is the absolute owner and enjoying the said land. The said land is developed into 6 plots after the provision for road etc., and the same was approved by Village Panchayat of Innathukkanpatti on 15.04.2013 along with the other survey numbers, totally to an extent of 3 acres and 35 cents of Innathukkanpatti Village. The layout is formed as per the norms of the Tamil Nadu Town and Country Planning Act under the name of Green Garden layout.

3. The case of the petitioner in W.P.No.13724 of 2018 is that the petitioner purchased a house site in Plot No.25 in Avenue Layout to an extent of 2400 sq.ft comprised in old Survey No.5/1 situated at Inathukkanpatti Village and Taluk by the registered sale deed dated 23.11.2011, vide document No.6629 of 2011. After purchasing the said land, the petitioner is the absolute owner and enjoying the said land. The promoters of the Arul Avenue layout in Innathukkanpatti is duly approved by



WEB COPY

Village Panchayat of Innathukkanpatti in Resolution No.42 of 2011 dated 09.02.2011. The said layout is formed nearly 4 acre and 40 ½ cents of Innathukkanpatti Village. The petitioner is one of the purchaser of the said Plot No.25 with intent to construct a house.

4. The case of the petitioner in W.P.No.14466 of 2018 is that the petitioner purchased a house site in Plot No.28 in Krishna Avenue to an extent of 2860 sq.ft comprised in old Survey No.4/5 and New Survey No.5/4D1 and 5/4D2 situated at Innathukkanpatti Village and Taluk by the registered document No.508 of 2013, vide document No.508 of 2013. After purchasing the said land, the revenue records were changed in the petitioner's name under Patta Pass Book and A register. Therefore, the petitioner is the absolute owner and enjoying the said land. The said plot is approved by the Village Panchayat of Innathukkanpatti on 06.08.2008. The layout is formed as per the norms of the Tamil Nadu Town and Country Planning Act under the name of "Krishna Avenue".

5. The case of the petitioner in W.P.No.14636 of 2018 is that the petitioner purchased the punja land in Plot No.4 of Royal Avenue to an extent of 1918 sq.ft comprised in Survey No.5/3 situated at Innathukkanpatti Village and Taluk by the registered sale deed dated 13.03.2014, vide document No.1644 of 2014. After purchasing the said land, the revenue records were changed in the petitioner's name under Patta Pass Book and A register. Therefore, the petitioner is the absolute owner and enjoying the said land. The construction was in Plot No.4 in the Royal Avenue of Innathukkanpatti for 965 sq.ft. The construction was completed and occupied in the said house. The property tax also levied in the said plot for Bill No.44382 for the period 2016-2017 and electricity service connection also given to his house and he paid the necessary consumption charges.

6. Already, this Court in W.P(MD) Nos.9070, 9092 and 12267 of 2018 passed an order dated 14.06.2019 and allowed those writ petitions. The present Writ Petitions are also connected with the very same issue raised in W.P(MD) Nos.9070, 9092 and 12267 of 2018. Useful reference to the order dated 14.06.2019 can be extracted hereunder:-

"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



WEB COPY

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 Pillayarpatti 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 Compensation 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."

7. Following the above said order dated 14.06.2019, these Writ Petitions are also allowed on the same terms and accordingly, G.O(MS)No.148, Public (Military) Department, dated 23.02.2018 of the 1st respondent in W.P.Nos. 13162, 13724 & 14466 of 2018 and 2nd respondent in W.P.No.14636 of 2018 in so far as the acquisition of land, covered under the four 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, is quashed. The respondents are directed to release the lands of the petitioners from acquisition forthwith. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

kv

To

1. The Principal Secretary to Government (FAC),
Public (Military) Department,
Fort St.George,
Chennai - 600 009.

2. The District Collector,
Thanjavur District,
Thanjavur.

3. The Commissioner for Land Administration,
Chepauk,
Chennai - 600 005.

+1cc to Mr.D.Veerasekaran, Advocate, S.R.No.51839

W.P.Nos.13162, 13724, 14466
and 14636 of 2018

PCH(CO)
CB(01/11/2021)