

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, THE CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.NO.12980 OF 2020
AND W.M.P.NO.16066 OF 2020

Balkees Ummal

..Petitioner

-vs-

- 1.The Government of Puducherry,
Rep. by Chief Secretary,
Secretariat, Puducherry.
- 2.The Special Secretary to Government,
Revenue and Disaster Management,
Secretariat, Puducherry.
- 3.The Deputy Collector,
Revenue cum Land Acquisition Officer,
Karaikal.
- 4.The Collector,
Karaikal.

..Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Declaration to declare the rule 2 of Puducherry Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Rules (Amendment) 2017, passed vide notification dated 10.07.2018 vide G.O.Ms.No.9, Puducherry as unconstitutional, irrational, ultra vires.

For Petitioner

: Mr.N.A.Nissar Ahmed

For Respondents

: Mrs.N.Mala
Govt. Pleader (Puducherry)

ORDER

(Made by The Hon'ble Chief Justice)

The limited challenge in this writ petition is to an amendment brought about by a notification dated July 10, 2018 to the Puducherry Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Rules, 2016.

2. By the impugned amendment, Rule 34 (i) of the said Rules of 2016 stood altered. Under the original Rules of 2016, Rule 34 (i) thereof read as follows:

"34.Determination of market value for lands acquired under the Land Acquisition Act, 1894. - (i) The reference date for calculation of market value under clause (a) of sub-section (1) of section 24 shall be 1-1-2014 the date of commencement of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013."

Amended Rule 34 (i) of the said Rules as introduced by the notification of 2018 now reads as follows:

"(i) The cases covered under Clause (a) of sub-section (1) of section 24 where the notification was issued on or before 31st December 2013 under section 4 of the Land Acquisition Act 1894 (1 of 1894), the date for determination of market value shall be the date on which such notification was issued."

3. The matter cannot be addressed without a reference to Section 24 of the Act of 2013. Section 24 of the said Act provides for certain acquisition proceedings commenced under Act 1 of 1894 to be deemed to have lapsed. Section 24 (2) of the Act provides broadly for the land acquisition cases started under the predecessor statute to be regarded as lapsed. However, Section 24 (1) preserves the acquisition proceedings commenced under Act 1 of 1894 in cases where no award under Section 11 of the Act had been made and in cases where an award had been made. The cases covered by Section 24 (1) of the Act which are not deemed to have lapsed by virtue of Section 24 (2) of the Act could be continued. However, for determination of compensation in cases covered by Section 24 (1) (a) of the Act which had not lapsed under Section 24 (2) of the Act, the Act of 2013 would be the governing basis. In other words, in matters where acquisition proceedings had been commenced under Act 1 of 1894 and an award had not been made, and the proceedings were also not deemed to have lapsed by virtue of Section 24 (2) of the Act of 2013, the compensation payable for the acquisition

would be governed by the basis therefor indicated in the Act of 2013 and not on the basis of the compensation computed under Act 1 of 1894.

4. However, Section 26 of the Act of 2013, which pertains to the determination of market value of the land, contains an apparent mistake in the proviso to sub-section (1) thereof. Such proviso mandates that the "determination of market value shall be the date on which the notification has been issued under section 11." However, in acquisition proceedings commenced under Act 1 of 1894, there would be no notification issued under Section 11 of the Act of 2013. Indeed, such anomaly had been noticed by several High Courts and the petitioner has cited some judgments where a view has been taken, following a clarification issued by the Central Government, that the relevant date for determining the market value of land for the purpose of Section 24 (1) (a) of the Act of 2013 would be January 1, 2014, which is the day on which the Act of 2013 came into force.

5. The Central Government clarified such position in a letter dated October 26, 2015 addressed by a Joint Secretary in the Department of Land Resources of the Ministry of Rural Development to the Principal Secretaries of all States and Union Territories except the State of Maharashtra and the Government of Jammu and Kashmir. The third item of business referred to in the relevant letter clearly indicated that under Section 26 of the Act of 2013 the date of determination of market value ought to be reckoned to be January 1, 2014 "with a view to ensure that the land owners ... get enhanced compensation under the provisions of RFCTLARR Act, 2013 (as also recommended by Standing Committee in its 31st report)."

6. According to the petitioner, since the Central Government has clarified the position upon the anomaly arising as a result of the proviso to Section 26 (1) of the Act of 2013 not carving out an exception for the exceptional situation recognised in Section 24 (1) (a) of the Act of 2013, no other authority could have got into such aspect of the matter. Though it is quite irrelevant in the context, it must also be recorded that on behalf of the Union Territory of Puducherry it is submitted that the letter of October 26, 2015 issued by the Central Government is of no effect as such order as contained in the letter of October 26, 2015 has not been laid before the Houses of Parliament in accordance with the mandate of Section 113 of the Act of 2013. It is also submitted on behalf of the respondents that a judgment of the Allahabad High Court which accepted January 1, 2014 as the relevant date for the purpose of Section 24 (1) (a) of the Act of 2013 on the basis of the Central Government's letter of October 26, 2015 is now the subject-

matter of an appeal before the Supreme Court. Be that as it may.

7. What is of relevance in the present context is the authority of a State or Union Territory to make rules under the rule-making provision contained in the Act of 2013. The rule-making provision in the Act of 2013 is found in Section 109 thereof and it is no departure from the general provision of similar nature. Ordinarily, such rule-making provision permits the rule-making authority to make rules for carrying out the provisions of the statute. Usually, the rule-making provision stipulates that the rules need to be notified; implying that it is only upon notification that the rules come into force. Notification, by itself, has a connotation in that it ought to be notified in the Official Gazette.

8. Secondly, a rule-making provision provides for the generality of power conferred and, in addition, sets down several specific heads for which rules may be made. The modern form of legislation in this country also parks a residuary clause at the foot of the heads to allow matters not conceived of under the previous heads to also be addressed by the relevant authority by formulating rules in such regard. However, the authority to make rules on any aspect must be found in the rule-making provision and the prescription for the rules must be evident from some other substantive provision of the governing statute.

9. There is a fundamental canon of statutory interpretation. Just as a river cannot rise above its source, the rules brought about by any authority empowered in such regard by a statute cannot go against the drift of the Act or undo what is there in the statute itself. The rule-making authority is for the purpose of implementing and carrying out the provisions of the statute without such rule-making authority having any iota of power to alter the provisions of the statute itself. This is a cardinal principle and is without exception.

10. It is also the practice in enactments engrafted of late that there is a provision made in the statute itself for the removal of difficulties. Indeed, in the unprecedented situation that was brought about by the pandemic, several statutes and several functions have continued in operation by resorting to the provision for removal of difficulties. Such a provision empowers the Central Government in respect of a Central Act or the State Government in respect of a State Act to issue orders to remove difficulties in the implementation of the provisions of the statute. The power to remove difficulties comes along with the power to clarify any anomalies that make it difficult for the statute to be functional or any part thereof to be implemented. In several statutes dealing with specialised

matters, the legislators may not be able to imagine certain situations and it is only at the time of implementation that such situations throw up difficulties that may not have been catered for in the statute. The purpose of a provision of such nature is for the executive to remove the difficulties. If the executive acts excessively, the legislature is there to check such transgression.

11. In the present case, there is an anomaly as noticed above. In the light of such anomaly, the Central Government issued an order. As to the efficacy of the order or the validity thereof, nothing need be said since that is not in issue in the present proceedings. However, what may be said is that whether by original Rule 34 (i) of the Puducherry Rules of 2016 or by the amendment brought about in 2018, the Union Territory of Puducherry could not have made any rules in respect of any anomaly in the parent statute. To the extent that the mistake in the statute was noticed and the clarification of the Central Government came in 2015 and Rule 34 (i) of the Puducherry Rules of 2016 also indicated January 1, 2014 as the relevant date for ascertaining the market value of land in respect of matters covered by Section 24 (1) (a) of the Act of 2013, it did not make any difference. However, by the amendment introduced in 2018, the Union Territory of Puducherry purported to take the relevant date to a point of time anterior to the Act of 2013 coming into effect and, indeed, to the date of the publication of the original notification under Act 1 of 1894. This was in clear derogation of the plain words of Section 24 (1) (a) of the Act read with the proviso to Section 26 (1) thereof, however anomalous the proviso may be seen to be.

12. To sum up, the rule-making authority conferred by a statute does not allow the rule-making body to override anything in the statute itself. However, a provision for removal of difficulties confers the authority tasked to remove difficulties, to notice an anomaly in the statute and provide for a way out. There is an anomaly in the statute, but it is beyond the authority of the Union Territory of Puducherry to address the same or provide for any remedy therefor. If at all, it is only the Central Government which can correct the situation under the provision for removal of difficulties, before Parliament amends the apparently erroneous provision in the body of the Act.

13. For the reasons aforesaid, the amendment of 2018 to Rule 34 (i) of the Puducherry Rules of 2016 cannot be sustained. Indeed, as aforesaid, even Rule 34 (i) as it originally stood cannot be sustained and the anomaly pertaining to the operation

of the proviso to Section 26 (1) of the Act of 2013 in respect of matters falling under Section 24 (1) (a) of the said Act has to be addressed elsewhere.

W.P.No.12980 of 2020 is disposed of by striking down Rule 34(i) of the Puducherry Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Rules, 2016. There will be no order as to costs. Consequently, W.M.P.No.16066 of 2020 is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

sra

To

- 1.The Chief Secretary,
The Government of Puducherry,
Secretariat, Puducherry.
- 2.The Special Secretary to Government,
Revenue and Disaster Management,
Secretariat, Puducherry.
- 3.The Deputy Collector,
Revenue cum Land Acquisition Officer,
Karaikal.
- 4.The Collector,
Karaikal.

+1cc to M/s.N.A.Nissar Ahmed, Advocate, S.R.No.12664
+1cc to the Government Pleader, S.R.No.13117

W.P.No.12980 of 2020

AAB(CO)
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