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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.10.2021

PRONOUNCED ON : 08.12.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos. 13174, 13304 & 13366 of 2014 and 2168 of 2015
and

M.P.Nos. 3, 3 & 3 of 2014 & 2 of 2015

W.P.Nos.13174, 13304 & 13366 of 2014

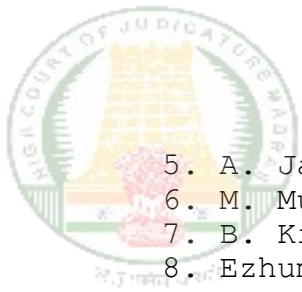
1. L.R.Raviprasad
2. M.K.Sathya Narayanan
3. M.K.Harinarayanan
4. G. Rani

.... Petitioners in
W.P.No.13174/2014

1. K.Kalyanasundaram
2. E. Kalaiazhagan
3. G. Sambandhan
4. Thanigavel
5. R. Sampath
6. Selvam
7. K.Kanniga
8. K. Malligammal
9. Rukmani
10. P. Ramasamy
11. P. Sundaram
12. G. Sivakumar
13. N. Shanmugam
14. P. Shankar
15. R. Mala
16. P. Selvam
17. P. Muthu
18. Sangeetha
19. M.Sarojammal
20. G. Ravi

.... Petitioners in
W.P.No.13304 of 2014

1. Arasumani
2. M. Chandran
3. G. Rathinavelu
4. T. Sundararajan



5. A. Jayaraman
6. M. Munusamy
7. B. Krishnan
8. Ezhumalai

.... Petitioners in
W.P.No.13366 of 2014

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Vs

1. The Government of Tamil Nadu,
Rep by its Secretary,
Rural Development & Local Administration,
Fort St.George, Chennai - 9.

2. The Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road, Egmore,
Chennai - 600 008.

3. The Special Tahsildhar,
Outer Ring Road,
Chennai Metropolitan Development Committee,
Koyambedu,
Chennai - 600 092.

... Respondents in W.P.Nos.
13174, 13304 & 13366/2014

W.P.No.2168 of 2015

B. Nagaratnamba

... Petitioner

Vs

1. The Government of Tamil Nadu,
Rep by its Secretary,
Housing and Urban Development Department,
Fort St.George, Chennai - 9.

2. The Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road, Egmore,
Chennai - 600 008.

3. The Special Tahsildhar,
Outer Ring Road,
Chennai Metropolitan Development Committee,
Koyambedu,
Chennai - 600 092.

.... Respondents

PRAYER in W.P.No.13174 of 2014 : Writ Petition filed under
Article 226 of the Constitution of India, praying to issue a
Writ of Certiorari, calling for the records of the first



respondent in connection with the G.O.Ms.Nos.76 of 2014 & 77 of 2014 dated 28.04.2014 Housing and Urban Development which is published in the local dailies Dinamani dated 29.04.2014 as per the provisions of the Act and Rules and quash the same.

PRAYER in W.P.No.13304 of 2014 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the first respondent in connection with the G.O.Ms.Nos.69/2014, 72/2014 & 73/2014 dated 28.04.2014 Housing and Urban Development which is published in the local daily Dinamani dated 29.04.2014 as per the provisions of the Act 1 of 1894 and quash the same.

PRAYER in W.P.No.13366 of 2014 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the first respondent in connection with the G.O.Ms.No.78/2014 dated 28.04.2014 Housing and Urban Development which is published in the local daily Dinamani dated 29.04.2014 and quash the same.

PRAYER in W.P.No.2168 of 2015 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the first respondent in connection with the G.O.Ms.No.71/2014 dated 28.04.2014 Housing and Urban Development which is published in the local daily Dinamani dated 29.04.2014 as per the provisions of the Act 1 of 1894 and quash the same.

In all W.Ps.

For Petitioners: Mr.V.Ramesh
for T.Thiyagarajan

For R1 & R3 : Mr.Richardson Wilson
Government Advocate

For R2 : Ms.P.Veena Suresh
Standing Counsel for CMDA

COMMON ORDER

All the petitioners have purchased their respective land by a registered sale deed dated 09.08.2010. From the date of purchase, they are in possession and enjoyment of the lands, absolutely till today without any interference from anybody. After verification, they found that some part of the land, which were purchased by them have been acquired under Land Acquisition Act for the purpose of providing Truck Terminal Yard. The said acquisition was without reference to the petitioners ownership



and without reference to incorporation of all the owners in all the revenue records and without reference to the possession and enjoyment of the same. There was no notice before the lands were acquired or after it was declared under Section 6(1) of the Act. Further, they learnt that the respondents were published a declaration under Section 6(1) in G.O.Ms.No.68 of 2014 dated 28.04.2014.

2. In fact, it was challenged by these writ petitioners and there is an interim order of dispossession from the subject land. The respondents issued preliminary notification under Section 4(1) of the Act. After notification under Section 4 (1), a notice in Form 3B dated 20.05.2013 was issued to several land owners. However, the petitioner in W.P.No.2168 of 2015 was not served in Form 3B. The other petitioners in other writ petitions were served in Form 3B, suitably replied by the respective counsels on 03.06.2013. They specifically raised their objections that the truck terminal yard located in Government poromboke instead of acquiring fertile agricultural lands with irrigation facilities. The subject lands sought to be acquired are being cultivated two to three times in a year. These lands are the source of supply of vegetable and other food products to the city of Madras. The objections were received by the third respondent and referred to in the order passed under Section 5A of the Act dated 27.08.2013. However, the third respondent has merely referred to the objections without any discussion and rejected the objections, on the ground that the requisitioning body i.e., the first respondent has rejected the objections and the enquiry officer also rejected the objections and decided to proceed under Section 6 of the Land Acquisition Act.

3. The learned counsel for the petitioners submitted that after rejection of their objections under Section 5A of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 was introduced with effect from 01.01.2014. It prescribes certain safe guards and procedures in acquiring the lands after introducing of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The respondents have published a declaration under Section 6 of the Land Acquisition Act, 1894 in the local daily dated 29.04.2014 preceeded by G.O.Ms.No.71 of 2014 dated 28.04.2014 and published the contents of the declaration in the local daily dated 28.04.2014. The said GO passed by the first respondent refers to Act 1 of 1894 and also the Act 30 of 2013. The declaration specifically refers to Section 24(1)(a) of the Act 30 of 2013 and Section 6 of the Act 1 of 1984.



4. He further submitted that the fertile agricultural lands cannot be acquired under the Act 1 of 1894 and Act 30 of 2013 and the Government has consciously excluded fertile agricultural land being acquired. The object of acquisition is for establishing a truck terminal yard. Whereas, the declaration under Section 6(1) speaks about the purpose as to formation of Outer Ring Road. The Outer Ring Road was already formed and as such, the present purpose referred to in the declaration under Section 6(1) varies with the purpose referred to in the notification issued under Section 4(1) and the declaration under Section 6 of the Act.

5. He further submitted that the lands acquired for specific purpose or providing truck terminal yard abutting the Outer Ring Road. The Outer Ring Road runs from Vandaloore to Nemilichery about 30 KM distance. Between these two points there are many poromboke lands, forest poromboke and social forest land, which can be utilised without affecting the agricultural operations of farmers. Though, some of the land owners raised objections, those objections were simply brushed aside by the third respondent, which is evident from the order passed under Section 5A dated 27.08.2013. Therefore, the procedure adopted by the third respondent vitiates the order passed under Section 5A and the consequent declaration under Section 6 of the Act. The petitioners were not served with a copy of rejection of their objections and it is fatal to the order passed by the third respondent culminating in Section 6 declaration. There is a violation of Rule 4 of the Land Acquisition Rules and as such, the entire acquisition proceedings is vitiated. All the petitioners are in possession and enjoyment of the subject land.

6. He also submitted that Section 4(1) notification was issued on 16.04.2013. Thereafter, the New Act came into force with effect from 01.01.2014. Whereas, Section 6(1) notification issued under the Old Act. After the New Act came into force, the entire acquisition proceedings initiated under the Old Act had been repealed and the respondents ought to have initiated the proceedings under the New Act. In support of his contention, he relied upon the following Judgments ;

(i) 1994 Writ LR 326 in the case of Ramanujam N.D Vs. Collector of Madras and others.

(ii) 2012 (1) SCC 792 in the case of Raghubir Singh Sehrawat Vs. State of Haryana and others.

(iii) 2013 (11) SCC 228 in the case of Gurbinder Kaur Brar Vs. Union of India.



7. Per contra, the learned Government Advocate appearing for the first respondent contended that the Government of Tamil Nadu, in their noble objective to decentralize the urban development and re-congestion of transportation, have accorded sanction to connect Vandalur Village of Kanchipuram District and Minjur of Tiruvallur District by way of Outer Ring Road Project with a total stretch of 62.3 KM vide G.O.Ms.No.381, Housing and Urban Development Department, dated 25.05.1993. The first phase of the project of land acquisition between Vandalur to Nemilichery Village got completed and the road laying process is in progress. The second phase of the land acquisition between Tirunindrayur to Minjur is also under process.

8. While being so, the Government of Tamil Nadu issued G.O.Ms.No.14, Housing and Urban Development Department, dated 13.01.2011, thereby accorded to sanction for acquisition of 117 acres of land in Karunakarachery and Annambedu Village, for the development of "Truck Terminal project by CMDA". Out of the total extent of 117 acres, to an extent of 65.58 acres of land was earmarked in Annambedu Village. Subsequently, notification under Section 4(1) of the Act was published on 16.04.2013 in furtherance to the enquiry under Section 5A was conducted, in which the petitioners have filed their objections against the acquisition proceedings.

9. The preliminary objections raised by the petitioners were rejected by the first respondent and decided to process further. Accordingly, a declaration under Section 6 of the Act was published in G.O.Ms.Nos.76 & 77 of 2014, Housing and Urban Development Department, dated 28.04.2014. In the mean while, the Government of India have enacted the New Act, which came into force on 01.01.2014 by repealing the Old Act. The New Act prescribes certain guidelines for the categories of land acquisition process, particularly for the cases, in which the 4 (1) notification have been ordered before the enactment of the New Act.

10. He further submitted that the objections raised by the petitioners were duly considered and overruled by the respondents. In fact, some of the petitioners land in question have already been converted in the name and style of "Brick Industry". Whereas, they came forward with a perjury of the proposed lands are cultivated two to three times in a year and stand prime supplier of agricultural products to the city of Chennai. The publication under Section 4(1) of the Act and Section 5A enquiry under the provisions of the Land Acquisition Act, 1894 were carried out well before the enactment of the New Act. The petitioners have no locus to offer opinion to consider the poromboke lands in the place of patta lands. The schemes formulated by the Government for the benefit of the



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public are decided only after carrying out critical analysis and consideration. The Government has envisaged in their circulars that the water course poromboke lands should not be recommended for any purpose otherwise only for the cause that they are classified as 'foresaken' or 'abandoned'.

11. The lands acquired for the Truck Terminal Yard Project and it is formulated only to facilitate the easement of congesting transportation and to provide facilities to the truck travelers of long distances. In fact, the objections raised by the petitioners were forwarded to the first respondent i.e., the requisition body. Thereafter, the requisition body i.e., the first respondent herein after verification and consideration of the objections raised by the petitioners had rejected and the same was conveyed to the petitioners on 27.08.2013. Therefore, the entire process under the Act were strictly followed and there is no question of impunity and negligence on the part of the respondents.

12. Heard, Mr.V.Ramesh, learned counsel appearing for the petitioners, Mr.Richardson Wilson, learned Government Advocate appearing for the first and third respondents and Ms.Veena Suresh, learned Standing Counsel appearing for the second respondent.

13. The points for consideration in these writ petitions,
(i) whether the acquisition proceedings initiated under the Land Acquisition Act 1894, when the repealed Act 30 of 2013 i.e., the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 came into force with effect from 01.01.2014 can be sustainable ?

(ii) whether the respondents conducted enquiry under Section 5A of the Act as prescribed under Rule 4 of the Land Acquisition Rules. In continuation of the Land Acquisition Proceedings for the Outer Ring Road Project, the Government of Tamil Nadu issued G.O.Ms.No.14, Housing and Urban Development Department, dated 13.01.2011, thereby accorded administrative sanction for acquisition of 117 acres of land in Karunakarachery and Annambedu Village of Tiruvallur District, for development of Truck Terminal Project by CMDA i.e., the first respondent. Accordingly, notification under Section 4(1) of the Act was published on 16.04.2013.

14. In pursuant to the notification under Section 4(1) notice in Form 3B dated 20.05.2013 was issued and the notice in Form 3B suitably replied by the petitioners on 03.06.2013, except W.P.No.2168 of 2015. The case of the petitioner in W.P.No.2168 of 2015 is concerned, the petitioner was not served with any notice in Form 3B. Therefore, he was denied the



opportunity to object to the acquisition of lands. On receipt of the objections along with the enclosed documents, the third respondent passed an order on 27.08.2013.

15. A perusal of the order dated 27.08.2013 reveals that the objections raised by the petitioners were considered and rejected by the first respondent, by an order dated 27.08.2013 and as such, the objections raised by the petitioners, thereby overruled and recommended for declaration under Section 6 of the Act. The said conclusion accepted by the third respondent and recorded the same and again recommended for declaration under Section 6 of the Act by the third respondent. Therefore, there was no enquiry conducted by either first respondent or by the third respondent as contemplated under Section 5A of the Act.

16. A perusal of the objections raised by the petitioners dated 03.06.2013, they specifically raised objections that the lands in Karunakarachery village are fertile agricultural lands with irrigation facilities and the lands are capable of being cultivated three times in a year. Therefore, an abundant lake in Nadukuthagai Village admeasuring 100 acres, which is just 1 ½ KM from Karunakaracheri Village, which abuts the Outer Ring Road completely encroached by the third parties, is available for constructing a truck terminal and it is the best suited land for the said purpose. It is further stated that the encroachers can be evicted and the land can be utilized without spending for compensation as the value of the land. Further the outer ring road between two points i.e., Vandalur and Nemilicheri is about 35 KM and the location of Karunakaracheri is almost near Nemilichery where the outer ring road proceeds towards GNT Road between Vandalur and Nemilicheri, there are large parcels of poromboke, forest poromboke and social forest lands, which can be utilised for the formation of truck bay.

17. Further, any one of the objections raised by the petitioners was not discussed and not considered by the respondent, while overruling the objections raised by the petitioners. Without even stating any of the reasons to reject the objections raised by the petitioner and also without stating any of the reasons to dissatisfy with the objections raised by the petitioners, mechanically overruled the objections for the only reason that the first respondent also overruled the objections raised by the petitioners. It is also pertinent to mention here that the first respondent and the third respondent are not the competent person to conduct enquiry under Section 5A of the Act. It shows that the non-application of mind of the respondents, in pursuant to the order passed by the third respondent, Section 6 declaration was published on 28.04.2014 in G.O.Ms.No.78. On perusal of the said declaration revealed that the subject land acquired for the public purpose and the



Government satisfied for acquisition and issued declaration. Nothing referred about the orders passed by the first respondent or the third respondent herein about the overruled the objections raised by the petitioners.

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18. In this regard, it is also relevant to extract the provisions under Section 5A of the sub-section 1 and 2 of the Act :-

5-A. Hearing of objections - (1) Any person interested in any land which has been notified under Section 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a company may, [within thirty days from the date of the publication of the notification], object to the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being hearing [in person or by any person authorised by him in this behalf] or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, [either make a report in respect of the land which has been notified under Section 4, sub-section (1), or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of the Government]. The decision of the [appropriate Government] on the objections shall be final.

19. Accordingly, the Collector, i.e., the third respondent gave the objector an opportunity of being hearing and after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified under Section 4, sub-section (1), or make different reports in respect of different parcels of the land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of the Government.

20. In the case on hand, there is no records to show that the third respondent considered the objections raised by the petitioners as prescribed under Section 5A(2) of the Act. In this regard, the learned counsel for the petitioners relied upon the Judgment reported in 2012 (1) SCC 792 in the case of Raghbir



Singh Sehrawat Vs. State of Haryana and others. The relevant portion of the Judgment is extracted hereunder:

39. In this context, it is necessary to remember that the rules of natural justice have been ingrained in the scheme of Section 5A with a view to ensure that before any person is deprived of his land by way of compulsory acquisition, he must get an opportunity to oppose the decision of the State Government and/or its agencies/instrumentalities to acquire the particular parcel of land. At the hearing, the objector can make an effort to convince the Land Acquisition Collector to make recommendation against the acquisition of his land. He can also point out that the land proposed to be acquired is not suitable for the purpose specified in the notification issued under Section 4(1). Not only this, he can produce evidence to show that another piece of land is available and the same can be utilised for execution of the particular project or scheme.

40. Though it is neither possible nor desirable to make a list of the grounds on which the landowner can persuade the Collector to make recommendations against the proposed acquisition of land, but what is important is that the Collector should give a fair opportunity of hearing to the objector and objectively consider his plea against the acquisition of land. Only thereafter, he should make recommendations supported by brief reasons as to why the particular piece of land should or should not be acquired and whether or not the plea put forward by the objector merits acceptance. In other words, the recommendations made by the Collector must reflect objective applications of mind to the objections filed by the landowners and other interested persons."

21. Thus, it is clear that the recommendations made by the Collector must reflect objective application of mind to the objections raised by the land owners and other interested persons. The Collector should make recommendations supported by brief reasons as to why the particular piece of land should or should not be acquired and whether or not the plea put forward by the objector merits acceptance.

22. A perusal of the order dated 27.08.2013 reveals that though the objectors appeared and raised objections and there is no records to show that they were enquired and their objections were duly considered or not. Therefore, the above Judgment is



squarely applicable to the case on hand. It is clear that the third respondent failed to follow the provisions under Section 5A of the Land Acquisition Act and Rule 4 of the Land Acquisition Rules. In fact, under Section 6 declaration also there is no mention about the recommendations of the third respondent and no mention about the reasons for satisfaction to acquire the land.

23. The learned Government Advocate for the respondents produced the order dated 19.12.2013 passed by the Principal Secretary and Commissioner of Land Administration, Chepauk, Chennai issued to the Government, thereby approved draft declaration under Section 6 of the Land Acquisition Act. It revealed that the District Revenue Officer (LA), Outer Ring Road Project has now sent the proposal of Draft Declaration for approval in respect of Block No.3, S.No.117/1A, etc., admeasuring to an extent of 3.44.5 hectare of wet lands to be proposed for acquisition. The report submitted by the District Revenue Officer (LA) revealed that the objections were forwarded to the requisitioning body, i.e., the first respondent herein and the requisitioning body recommended the development of a new Truck Terminal of Karunakaracheri and Annambedu Villages at the intersection of the Outer Ring Road and 200 proposed arterial road. As the lands are essential for the development of Truck Terminal and the objections of land owners may be overruled and the request may be negatived. Thus, it is clear that the objections raised by the petitioners were not at all considered either by the third respondent or by the District Revenue Officer (LA), Outer Ring Road and mechanically recorded that the reasons stated by the respondents overruled the objections raised by the petitioners.

24. In this regard, the learned counsel for the petitioners relied upon the Judgment reported in 2013 (11) SCC 228 in the case of Gurbinder Kaur Brar and another Vs. Union of India and others. The relevant portion of the Judgment is extracted hereunder :

"9. We also agree with the learned counsel for the appellants that the report of the Land Acquisition Officer was vitiated due to total non-application of mind by the officer concerned to a large number of substantive objections raised by the appellants under Section 5A(1). He mechanically rejected the objections and senior officers of the Chandigarh Administration accepted the report of the Land Acquisition Officer despite the fact that the same had been prepared in violation of Section 5A(2)."

25. The above Judgment is squarely applicable to the case on hand, the third respondent or the District Revenue Officer



(LA), Outer Ring Road rejected the objections raised by the petitioners mechanically, without application of mind. Therefore, the entire acquisition proceedings is vitiated and the G.O.Ms.Nos. 69, 71, 72, 73, 76, 77 & 78, dated 28.04.2014 (Housing and Urban Development) published in the local daily Dinamani dated 29.04.2014 as per the provisions of the Land Acquisition Act, 1894, is quashed.

26. In the result, all the writ petitions are allowed. Consequently, connected miscellaneous petitions are closed. No order as to costs.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

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To

1. The Secretary,
Government of Tamil Nadu
Rural Development & Local Administration,
Fort St.George, Chennai - 9.
2. The Secretary,
Government of Tamil Nadu
Housing and Urban Development Department,
Fort St.George, Chennai - 9.
3. The Member Secretary,
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4. The Special Tahsildhar,
Outer Ring Road,
Chennai Metropolitan Development Committee,
Koyambedu, Chennai - 600 092.

+lcc to T.Thiyagarajan, Advocate, S.R.No.65560
+lcc to Ms.P.Veena Suresh, Advocate, S.R.No.64969
+lcc to the Government Pleader, S.R.No.65928

W.P.Nos. 13174, 13304 & 13366 of
2014 and 2168 of 2015 and
M.P.Nos. 3, 3 & 3 of 2014 & 2 of 2015

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