

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.03.2021

DELIVERED ON : 26.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.19721 of 2020 and
WMP.Nos.24370 & 24372 of 2020

A.Palanisamy ... Petitioner
vs.

1.Airport Authority of India,
Rajiv Gandhi Bhavan,
Safdarjung Airport,
New Delhi - 110 003.

2.The Director,
Airport, Salem ... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, calling for the records relating to request for proposal in Tender ID-2020_AAI_63082_1 dated nil November 2020 issued by the first respondent for Leasing of land for establishing Flying Training Organisations (FTOs) on Design, Build, Operate, Maintain and Transfer Basis (DBOMT) at Salem Airport at Belagavi, Jalgaon, Kalalburgi, Khajuraho, Lilabari and Salem Airport and quash the same in for as the Salem Airport is concerned and consequently direct the respondents to allot the land in the developed area for establishing one Flying Training Organisation (FTO) out of two earmarked for Salem Airport, as the petitioner's land was acquired for the very same purpose and as recommended by the District Collector to the respondents.

For Petitioner : Mr.U.Karunakaran

For Respondent : Ms.S.R.Sumathy

O R D E R

The petitioner has challenged the impugned tender notification issued dated nil November 2020 issued by the first respondent for Leasing of land for establishing Flying Training Organisations (FTOs) on Design, Build, Operate, Maintain and

Transfer Basis (DBOMT) at Salem Airport at Belagavi, Jalgaon, Kalalburgi, Khajuraho, Lilabari and Salem Airport and consequently direct the respondents to allot the land in the developed area for establishing one Flying Training Organisation (FTO) out of two earmarked for Salem Airport.

Brief facts leading to the filing of this writ petition:

2. The petitioner claims that he is an Engineering graduate and proprietor of M/s.Polynex, Bangalore which is an indigenous MSME (Micro Small and Medium Enterprises) aviation spare parts manufacturing industry. The petitioner claims that he is manufacturing several Military applications certified components and supplies to M/s.HAL (Hindustan Aeronautical Limited) and to the Navy Navel Base at Cochin. According to the petitioner, he owns 7.5 acres of land in Pottypuram Village, Salem, near Salem Airport. According to him, the said land was purchased with an intention of having a Flying School and a private MRO industry. According to the petitioner, the land acquisition officer, Salem has issued a notice to acquire a portion of the petitioner's land measuring an extent of 2.75 acres for the expansion of the Salem Airport. It is the contention of the petitioner that a land pooling scheme was announced by the respondents, by which, the respondents will provide 70% of lands acquired after development to the owner of the land whose lands have been acquired subject to the condition that the owner surrenders the acquired land to the respondents free of cost.

3. It is the case of the petitioner that by letter dated 25.09.2020, the District Collector has also recommended to the respondents for providing an alternate site in the developed area in lieu of the land belonging to the petitioner measuring 2.75 acres which is being acquired for the expansion project for Salem Airport. According to the petitioner, the respondents have issued the tender notification through their website for releasing of land for establishing Flying Training Organisations (FTOs) on Design, Build, Operate, Maintain and Transfer Basis (DBOMT) at Salem Airport ignoring the recommendations of the District Collector by his letter dated 25.09.2020. According to the petitioner, the impugned tender notification issued by the respondents is an arbitrary exercise of power and violative of Articles 14 and 16 of the Constitution of India as the land pooling policy which is available in other States like Andhra Pradesh and Gujarat, has not been adopted in the State of Tamil Nadu.

4. A counter affidavit has been filed by the respondents denying the allegations of the petitioner. They would categorically submit that there is no land pooling scheme as claimed by the petitioner in existence of Airports Authority of India. They would also submit that the respondents are not

involved in anyway in the acquisition proceedings or in the payment of compensation to the land owners. They would submit that the District Collector, Salem by his letter dated 25.09.2020 only forwarded the representation of the petitioner to the Airport Director, Airports Authority of India. According to them, since there is no land pooling scheme implemented by the Airports Authority of India, Salem, the representation of the petitioner to the Airport Director, Airports Authority of India, Salem does not deserve any consideration. They would also submit that the petitioner's claim based on newspaper reports without their being any land pooling scheme, is baseless.

5. The respondents have stated that E-tender was floated for leasing of land for establishing Flying Training Organisations (FTOs) on Design, Build, Operate, Maintain and Transfer Basis (DBOMT) for six Airports namely Belagavi, Jalgaon, Kalalburgi, Khajuraho, Lilabari and Salem Airport. They have also stated that the last date for submission of E-bid was on 22.12.2020 and the same was extended to 12.01.2021. According to them, holding the tender process at Salem Airport, due to status quo order passed by this court will Jeopardize the entire tender process and would adversely affect the interest of the Airports Authority of India.

6. It is also contended by the respondents that as seen from the affidavit filed by the petitioner in support of this writ petition, the petitioner has approached this Court by filing a writ petition earlier for the same relief which came to be dismissed in the admission stage itself. In the counter affidavit, the respondents have sought for a direction to the petitioner to furnish a copy of the earlier writ petition as well as the orders passed therein.

7. Heard Mr.U.Karunakaran, learned counsel for the petitioner and Ms.S.R.Sumathy, learned counsel for the respondents.

8. Learned counsel for the petitioner drew the attention of this Court to the Hindu Newspaper report dated 17.05.2017 and would submit that as per the said report, the land pooling scheme to benefit the land owners whose lands have been acquired to enter into partnership with the Airports Authority of India, by which, on exchange for the lands free of cost, the Airports Authority of India will have to give 70% of the acquired lands in the developed area to the land owners.

9. Learned counsel for the petitioner also drew the attention of this Court to the letter dated 25.09.2020 sent by the District Collector to the Airports Authority of India based on the petitioner's representation requesting the respondents'

consideration for allotment of an alternate site within the developed area to the petitioner in lieu of the land surrendered by him on account of acquisition for the purpose of creating private (MRO) facility and flying school. He would submit that till date, the recommendations of the District Collector has not been considered by the respondents and without considering the same, the respondent have gone ahead by issuing the impugned tender notification.

10. Learned counsel for the petitioner also drew the attention of this Court to the additional typed set of papers filed by him before this Court today and would submit that despite the petitioner's application under the Right to Information Act with regard to the land pooling policy, no concrete information till date has been received by him. He would submit that in other States namely Andhra Pradesh and Gujarat, land pooling scheme has been implemented and therefore, there cannot be any discrimination in Tamil Nadu alone which according to him, violates Article 14 of the Constitution of India.

11. Per contra, learned counsel for the respondents at the outset would submit that the interim order of status quo granted by this Court is detrimental to public interest. According to her, the expansion project under the impugned tender is for five other Airports apart from Salem Airport and because of the status quo order, the project is stalled for all the six Airports. Learned counsel for the respondents drew the attention of this Court to the counter affidavit filed by the respondents and would submit that there is no land pooling scheme introduced by the respondents as alleged by the petitioner. She would also submit that insofar as land acquisition is concerned, the respondents have no role to play. According to her, the State Government acquires land and hands over possession of the same to the respondents for its Airport expansion project. It is also contended by her that the letter of the District Collector dated 25.09.2020 has no bearing as the District Collector has only forwarded the representation of the petitioner to the respondents. She would also further submit that the lands are acquired only by the State Government and the compensation to the land owners are also paid only by the State Government.

Discussion:

12. The petitioner has raised his claim only based on the Newspaper report that there is a land pooling scheme introduced by the respondents. This writ petition was filed on 14.12.2020. Till date, the land pooling scheme which the petitioner claims to be in place has not been produced before this Court. In the counter affidavit filed by the respondents, they have categorically denied the existence of any such land pooling

scheme which enables the petitioner to get an alternate site in the developed area in lieu of the lands surrendered by him on account of land acquisition free of cost.

13. The impugned tender notification is for the expansion of Airports at Belagavi, Jalgaon, Kalalburgi, Khajuraho, Lilabari and Salem Airport. When the respondents have categorically denied the existence of any such scheme in their counter affidavit and the petitioner has also not produced the alleged scheme before this Court, this Court cannot stall the tender which is in public interest, merely based on press reports and on conjectures and surmises.

14. The petitioner has also stated in his affidavit that he had earlier filed a writ petition which was dismissed by this Court. The contention of the respondents is that for the same relief, the petitioner may have filed the earlier writ petition which was dismissed in the admission stage itself. Though a specific request has been made by the respondents to produce a copy of the said writ petition filed by the petitioner earlier as well as the order passed therein, till date the petitioner has not placed a copy of the same before this Court. This will clearly indicate that the petitioner has not approached this Court with clean hands.

15. The scope for interference in tender matters is limited and only when the petitioner is able to satisfy any of the parameters required for judicial review of the tender, this Court can interfere. In the case on hand, none of the parameters have been satisfied by the petitioner and absolutely there is no merit in this writ petition.

16. This Court is of the considered view that there is no arbitrariness or irrationality in the tender floated by the respondents.

17. For the foregoing reasons, there is absolutely no merit in this case. Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed

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Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1.Airport Authority of India,
Rajiv Gandhi Bhavan,
Safdarjung Airport,
New Delhi - 110 003.

2.The Director,
Airport, Salem

+1cc to Mr.U.Karunakaran, Advocate, S.R.No.20323

W.P.No.19721 of 2020

PCH(CO)
KM(19/04/2021)



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