



W.P. Nos.12212/1994, etc. Batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 03.03.2022

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NOS. 12212, 12462, 12383, 12371, 12459, 12317, 12366, 12382, 12213, 12334, 12402, 12405, 12451, 12458, 12370, 12381, 12434, 12437, 12435, 12600, 12796, 12929, 12493, 12372, 12401, 12495, 12928, 12799, 12315, 12367, 12447, 12368, 12461, 12379, 12385, 12436, 12214, 12380, 12403, 12404, 12438, 12448, 12450, 12750, 12335, 12369, 129384, 12449, 12460, 12596, 12597, 12749, 12930, 13495, 12798, 12926, 13494, 12797, 13493, 16380, 16381, 16382, 17273, 17271, 17275, 17272, 17274, 17700 & 20610 OF 1994

W.P. NO. 12212 OF 1994

Rajagopal

... Petitioner

- Vs -

1. The State of Tamil Nadu
rep. by its Commissioner &
Secretary, Housing & Urban
Development Dept.
Fort St. George, Madras - 9.

2. The Special Tahsildar
Land Acquisition, Housing Scheme No.III
Coimbatore.

... Respondents

W.P. No.12212 of 1994 filed under Article 226 of the Constitution of India

praying this Court to issue a writ of certiorari calling for the records relating to

G.O. Ms. No.878, Housing & Urban Development Department dated 28.5.1991



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under Section 4 (1) of the Land Acquisition Act and G.O. Ms. No.473, Housing & Urban Development Department dated 27.7.1992 u/s 6 of the Land Acquisition Act, quash the same in respect of the lands bearing Survey No.119/2 measuring to an extent of 21 1/2 cents in Vilankuruchi, North Taluk.

For Petitioners : Mr. V.Sanjeevi

For Respondent : Mr. Silambanan, AAG, assisted by
Dr. R.Gowri for RR-3 in all petitions
Ms. D.Tamilselvi, AGP for RR-1 & 2

COMMON ORDER

The present petitions have questioned the acquisition, sought to be made by issuance of Notification u/s 4 (1) and the Declaration u/s 6 of the Land Acquisition Act, 1894 (for short 'the Act').

2. It is the case of the petitioners that various extent of lands in different survey numbers in Vilankuruchi Village, Coimbatore Taluk, were acquired for the purpose of Ganapathy Nagar Neighbourhood Scheme. It is the averment of the petitioners that some of the petitioners were subsequent purchasers. It is the further averment of the petitioner that neither the petitioners nor their predecessor-in-title received any notice about the acquisition. It is the case of the petitioners that the total extent of lands proposed to be acquired for the scheme was 2186.07 acres and lands in Vilankuruchi Village was acquired to an



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extent of 472.21 acres and 24 awards were passed for the acquisition of the said lands from 1994 to 2002. Further, the said scheme implemented in the said Vilankuruchi village covered an extent of 37.85 acres. It is the further averment of the petitioners that major portion of the lands have not yet been acquired due to orders passed by this Court and some of the writ petitions have been filed after passing of the award.

3. It is the further case of the writ petitioners that while the writ petitions were filed in the year 1994, the earlier Act was repealed and the new Act, viz, Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'New Act') and, therefore, the petitioners had filed requisite amendment petition, which was also allowed and the prayer was appropriately amended.

4. When the matter was taken up by this Court earlier, vide order dated 20.10.2017, three questions were framed for consideration, which are as under :-

- a) Whether the requisitioning body, i.e., TNHB ought to have obtained prior approval for the acquisition?*
- b) Whether the period for which the interim order of the*



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Court is operating should be excluded for the purpose of computing compensation qua 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the 'New Act')?

c) Whether the award amount was remitted within the prescribed period in the light of applicability of Section 24 (2) of new Act.

5. Though the aforesaid three questions have been framed for consideration, however, the moot question is only question (a), which determines whether the other questions needs to be addressed. In that, if the answer to question (a) is in the affirmative, then this Court has to consider questions (b) and (c) and if it is otherwise, questions (b) and (c) would have no relevance.

6. Question (a) relates to the necessity of the requisitioning body, viz., the Tamil Nadu Housing Board to obtain prior approval for acquisition in terms of Section 3 (f) (vi) of the Act. Therefore, it becomes necessary for the respondents



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to establish and satisfy this Court that prior approval was granted by the Government for the acquisition, failing which the whole acquisition proceedings will fall down like a pack of cards.

7. For better appreciation of the issue, Section 3 (f)(vi) of the Act is quoted hereunder :-

"3.

(f)

(vi) the provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by Government or by any authority established by Government for carrying out any such scheme, or, with the prior approval of the Appropriate Government, by a local authority or a society registered under the Societies Registration Act, 1860, or under any corresponding law for the time being in force in a State, or a Co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State.

* * * * *

(Emphasis Supplied)

8. Before embarking upon analysing the legal position, it is pertinent to point out that with regard to the present petitions, relating to prior approval u/s 3 (f) (vi) of the Act, reference to a Larger Bench was made by a learned single



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Judge of this Court and during the deliberations, a categorical admission was made by the learned Addl. Advocate General that there has been no prior approval from the Government. But the only point on which the reference was made by the learned single Judge was that the learned single Judge had entertained a doubt with regard to two other decisions rendered by coordinate Benches of this Court, which has held that prior approval is necessary.

9. Learned counsel appearing for the petitioners, vehemently stressed that the prior approval of the Government, as provided u/s 3 (f)(vi) of the Act, is mandatory and in the absence of any approval, the acquisition proceedings would stand vitiated and is liable to be quashed. In this regard, attention of this Court is drawn to the decision of the Division Bench of this Court in ***K.Rakkianna Gounder & Ors. - Vs - The Secretary, Government of Tamil Nadu (2014 (1) CTC 64)***, wherein it has been held as under :-

"5.6. We are of the view that the decisions relied upon by the learned Counsels appearing for both sides are not applicable to the case on hand. There is no difficulty in appreciating the law as laid down by the Honourable Apex Court in H.M.T. House Building Co-operative Society v. M. Venkataswamappa, AIR 1995 SC 2253; and Bangalore City Co-operative Housing Society Ltd. v. State of Karnataka, 2012 (2) MLJ 401 (SC), that prior to the issuance of Notification, there has to be an approval of the



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Scheme by the Government concerned. As stated above, when such an approval is very much available, the decisions relied upon by the learned Counsel appearing for the Appellants have no Application to the case on hand."

10. In ***Devinder Singh & Ors. - Vs - State of Pubjab & Ors. (2008 (1) SCC 728)***, the Hon'ble Apex Court had occasion to consider the construction that ought to be given to expropriatory statute and in that context, the Apex Court held as under :-

"42. It is furthermore trite that the Land Acquisition Act is an expropriatory legislation. (See Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai [(2005) 7 SCC 627] and Indore Vikas Pradhikaran v. Pure Industrial Coke & Chemicals Ltd. [(2007) 8 SCC 705 : (2007) 8 Scale 110])

43. Expropriatory legislation, as is well known, must be strictly construed. When the properties of a citizen are being compulsorily acquired by a State in exercise of its power of eminent domain, the essential ingredients thereof, namely, existence of a public purpose and payment of compensation are principal requisites therefor. In the case of acquisition of land for a private company, existence of a public purpose being not a requisite criterion, other statutory requirements call for strict compliance, being imperative in character."

11. The aforesaid decision in *Devinder Singh's case (supra)* was also



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considered by the Division Bench in *Rakkianna's case (supra)* and it was held as under :-

"5.8. We are also not convinced with the arguments of the learned Additional Advocate General that prior approval is not mandatory since it is settled law as held in Devinder Singh v. State of Punjab, 2008 (1) SCC 728, Land Acquisition Act, 1894, is a expropriatory statute and is a provision regarding acquisition are mandatory and also the said issue is already covered by the Judgment of the Honourable Apex Court referred supra. Accordingly, the Writ Appeal fails and the same is dismissed. No costs. Consequently connected Miscellaneous Petitions are also dismissed."

12. From the aforecited decision, it is amply evident that the requisitioning body has to obtain prior approval of the Government, which is mandatory, prior to issuance of Section 4 (1) Notification and in the absence of any approval by the Government, the whole acquisition proceedings, initiated by the acquisitioning body would stand vitiated.

13. In view of the settled position of law, it now becomes necessary for this Court to find out whether the mandatory approval from the Government, as provided u/s 3 (f) (vi) of the Act has been obtained or not. Though a statement has been made across the Bar by the learned Addl. Advocate General in the



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earlier round of hearing in which reference has been made that no prior approval has been granted by the Government, however, this Court deemed it fit to call for the records and peruse it to satisfy itself about the said stand taken by the learned Addl. Advocate General. A perusal of the entire records as also the files produced by the respondents reveal that approval, as mandated u/s 3 (f) (vi) of the Act has not been given by the Government. Learned Addl. Advocate General is not able to point out any material in and by which approval has been granted by the Government. In the absence of compliance with the mandatory condition, viz., Section 3 (f) (vi), this Court is of the considered view that the acquisition proceedings is vitiated and, therefore, the present batch of petitions deserve to be allowed.

14. For the reasons aforesaid, these writ petitions are allowed and the acquisition proceedings are quashed insofar as the petitioners are concerned. However, this Court makes it clear that in case of any other petitions, which have already been dismissed or any other order having been passed, the benefit of this order shall not enure to the petitioners therein and the said petitions shall not be reopened by virtue of the order passed in the present petitions. There shall be no order as to costs.



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Index : Yes/No

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