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W.P. No.10367/1995, etc.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 01.07.2022

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NOS. 10367, 16426, 16645 OF 1995 & 13859 OF 1996

1. Shanmugham
 2. Rajagopal
 3. Rathinam
 4. Saraswathi
 5. Amirtham
- 10367/1995

.. Petitioners in WP

1. Muthulakshmi
2. Ramu
3. K.Krishnaveni

.. Petitioners in WP 16426/1995

1. C.A.Mohammed Ali
 2. Mariyam Bibi
 3. Sakunthala
 4. Vijayalakshmi
- 16445/1995

.. Petitioners in WP

Dhanalakshmi

.. Petitioner in WP 13859/1996

- Vs -

1. The State of Tamil Nadu
rep. by its Commissioner &
Secretary, Housing & Urban
Development Dept.



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Fort St. George, Madras - 9.

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

3. The Chairman
Tamil Nadu Housing Board
Nandanam, Madras 600 035.
petitions

.. Respondents in all the

W.P. No.10367 of 1995 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the records of the 1st respondent State of Tamil Nadu culminating in G.O. Ms.474, Housing & Urban Development (LA-1) dated 26.4.1995 relating to No.78, Navalpattu Block III Village, Tiruchirappalli Taluk, Tiruchirappalli District, insofar as it relates to SF 341/1, 342/1, 341/4, 341/5, 341/6 and 342/2 published in Tamil Nadu Government Gazette Part II – Sec. 2 – Supplement dated 31.5.1995 and quash the same.

W.P. No.16426 of 1995 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the records of the 1st respondent State of Tamil Nadu culminating in G.O. Ms.471, Housing & Urban Development (LA-1) dated 26.4.1995 relating to No.78, Navalpattu Block III



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Village, Tiruchirappalli Taluk, Tiruchirappalli District, insofar as it relates to Block No.I, S.F. Nos.291/7 of an extent of 2.67.5 hectare and S.F. No.291/6 of an extent of 0.92.0 hectare published in Tamil Nadu Government Gazette Part II – Sec. 2 – Supplement dated 31.5.1995 and quash the same.

W.P. No.16445 of 1995 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the records of the 1st respondent State of Tamil Nadu culminating in G.O. Ms.472, Housing & Urban Development (LA-1) dated 26.4.1995 relating to No.78, Navalpattu Block No.II, S.F. No.339/2 of an extent of 1.01.0 Hectare, S.F. No.339/3 of an extent of 1.01.0 hectare, S.F. No.339/1 of an extent of 1.01.0 hectare, S.F. No.340/1 of an extent of 1.21.0 hectare and S.F. No.340/2 of an extent of 0.79.0 hectare published in Tamil Nadu Government Gazette Part II – Sec. 2 – Supplement dated 31.5.1995 and quash the same.

W.P. No.13859 of 1996 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the records on the file of the 1st respondent in connection with the order passed by him in his proceedings in G.O. Ms. No.356, Housing & Urban Development (LA-1) dated 19.08.1996 and quash the same and direct the respondents to drop the land acquisition



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proceedings in respect of the lands owned by the petitioner in S.F. No.304/2 at Navalpattu, Trichy Taluk.

For Petitioners : Mr. J.Bharathi Mohan

For Respondents : Mr. P.Sathish, AGP for RR-1 & 2
Mr. D.Murugan for R-3

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. When the matter is taken up for hearing, learned Addl. Government Pleader appearing for respondents 1 and 2 and so also the learned standing counsel appearing for the 3rd respondent fairly submitted that the issue raised in these writ petitions is already squarely covered by the order dated 3.3.2022 passed by this Court in W.P. Nos.12212/1994, etc. Batch, in and by which this Court had quash the acquisition proceedings and, therefore, similar orders may be passed in the present petitions as well.



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3. This Court, vide order dated 03.03.2022 in W.P. No.12212/1994, etc.,
Batch, while considering an identical issue, held as under :-

*"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 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."*



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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 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



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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 aforesaid 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 acquisition 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 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.



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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."

4. The present petitions also raising identical issue, the order passed in the aforesaid case is squarely attracted to the present petitions as well. For the reasons aforesaid, these writ petitions are allowed. In the circumstances of the case, there shall be no order as to costs.

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Index : Yes / No

Internet : Yes / No



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