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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 24.01.2022

ORDERS PRONOUNCED ON : 10.02.2022

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.NOS.37413 OF 2007,
21274 OF 2008 AND 21208 OF 2013
AND

M.P.NOS.2 OF 2007 & 1 OF 2012,
W.M.P.NOS.22822 AND 22093 OF 2019,
M.P.NOS.2 OF 2008 & 1 OF 2012 AND M.P.NO.2 OF 2013

W.P.NO.37413 OF 2007

Ari Krishnan

... Petitioner

.Vs.

1. The Union Territory of Puducherry,
Rep. by its Additional Secretary,
Department of Revenue,
Government of Puducherry,
Puducherry.
2. The Deputy Collector (Revenue South)
-cum-Land Acquisition Officer,
Villianur, Puducherry.
3. Josphine Kanthy
4. Regina Mary
5. Sudhander

[R3 to R5 are impleaded vide
order dated 17.07.2019, made in
W.M.P.No.23573 of 2018 in
W.P.No.37413 of 2007]

... Respondents

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, calling for the records of the first respondent in G.O.Ms.No.103 dated 18.11.2006 Department of Revenue and Disaster Management, Government of



Puducherry and published in Puducherry Government Gazette No.49 dated 05.12.2006 and quash the declaration under Section 6 of the Land Acquisition Act.

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W.P.NO.21274 OF 2008

1. Jayalakshmi (Died)
2. V.Kirubanidhi
3. V.Selvanayagam
4. Aroularassou
5. Santhi
6. Gopalakrishnan
7. Minor Kalaivani
Rep. by her Mother & Natural
Guardian P5 herein.

[P4 to P7 are substituted as LR's of
the deceased P1 vide order dated
09.07.2019, made in W.M.P.No.18345
of 2019 in W.P.No.21274 of 2008]

... Petitioners

.Vs.

1. The Union Territory of Puducherry
Rep. by its Additional Secretary
to Government (Revenue),
Department of Revenue and
Disaster Management
Government of Puducherry,
Puducherry.
2. Deputy Collector (Revenue South)
-cum-Land Acquisition Officer,
Villianur, Puducherry.

... Respondents

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, calling for the records relating to the Notification under Section 4(1) of the Land Acquisition Act, 1984 bearing G.O.Ms.No.147, dated 14.11.2005 and published in the Gazette of Pondicherry No.49 dated



06.12.2005 and the Declaration under Section 6 of the Land Acquisition Act, 1984 bearing G.O.Ms.No.103, dated 18.11.2006 and published in the Gazette of Pondicherry No.49 dated 05.12.2006 issued by the first respondent and quash the same in respect of the petitioner's land bearing R.S.No.95/8, Bahour Village, Puducherry and measuring 0.69.0 HAC.

W.P.NO.21208 OF 2013

Ari Krishnan

... Petitioner

.Vs.

1. The Union Territory of Puducherry,
Rep. by its Additional Secretary,
Department of Revenue,
Government of Puducherry,
Puducherry.
2. The Revenue Officer CULAW-cum-
Land Acquisition Officer,
Directorate of School Education,
Office of the Land Acquisition Officer,
Puducherry.
3. A/m. Moolanatha Swamy Temple,
Represented by Special Officer/
Tahsildar Kalal,
Bahour, Puducherry.

... Respondents

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, calling for records of the 2nd respondent in Award No.4 of 2008 dated 04.12.2008 and quash the same read with Section 4(1) Notification in G.O.Ms.No.147 dated 14.11.2005 and Section 6 Declaration in G.O.Ms.No.103 dated 18.11.2006 in respect of the land acquisition proceedings in regard to Survey No.94 = 2.32.50 hectares in Bahour Village, Union Territory of Pondicherry in which the petitioner is the cultivating tenant.

For Petitioner in
W.P.Nos.37413 of 2007 : Mr.K.Chandrasekaran
& 21208 of 2013

For Petitioners in : M/s.Shabnam
W.P.No.21274 of 2008 For Mr.K.P.Jothiswaran



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For R-1 & R-2 in : Mrs.N.Mala
all W.Ps Government Pleader
(Puducherry)

For R3 to R5 in : No Appearance
W.P.No.37413 of 2007

For R3 in
W.P.No.21208 of 2013 : No Appearance

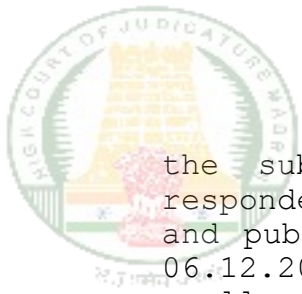
C O M M O N O R D E R

W.P.No.37413 of 2007 is filed to issue a Writ of Certiorari to call for the records of the first respondent in G.O.Ms.No.103 dated 18.11.2006 Department of Revenue and Disaster Management, Government of Puducherry and published in Puducherry Government Gazette No.49 dated 05.12.2006 and quash the declaration under Section 6 of the Land Acquisition Act (hereinafter referred to as 'the Act' for short)

2. W.P.No.21274 of 2008 is filed to issue a Writ of Certiorari to call for the records relating to the Notification under Section 4(1) of the Act bearing G.O.Ms.No.147, dated 14.11.2005 and published in the Gazette of Pondicherry No.49 dated 06.12.2005 and the Declaration under Section 6 of the Act bearing G.O.Ms.No.103, dated 18.11.2006 and published in the Gazette of Pondicherry No.49 dated 05.12.2006 issued by the first respondent and quash the same in respect of the petitioner's land bearing R.S.No.95/8, Bahour Village, Puducherry and measuring 0.69.0 HAC.

3. W.P.No.21208 of 2013 is filed to issue a Writ of Certiorari to call for records of the 2nd respondent in Award No.4 of 2008 dated 04.12.2008 and quash the same read with Section 4(1) Notification in G.O.Ms.No.147 dated 14.11.2005 and Section 6 Declaration in G.O.Ms.No.103 dated 18.11.2006 in respect of the land acquisition proceedings in regard to Survey No.94 = 2.32.50 hectares situated at Bahour Village, Union Territory of Pondicherry in which the petitioner is the cultivating tenant.

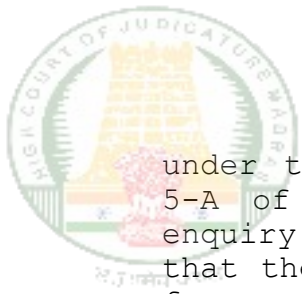
4. The petitioner in W.P.No.37413 of 2007 owned the properties comprised in R.S.No.95/3 to an extent of 0.15.30 hectares, the land comprised in R.S.No.95/6 to an extent of 0.40.0 hectares and the land comprised in R.S.No.95/7 to an extent of 0.30.50 hectares, situated at Bagoor Village (hereinafter referred to as the 'subject properties' for short). The subject properties are agricultural land and the petitioner is in possession and enjoyment of the same. While that being so,



the subject properties were to be acquired by the second respondent by notification issued under Section 4(1) of the Act and published in the Puducherry Government Gazette No.49, dated 06.12.2005 for the public purpose, viz., for construction of a small sports stadium. The petitioner submitted his objections for the enquiry to be conducted under Section 5-A of the Act on 04.10.2006. Thereafter, the declaration was made under Section 6 of the Act in G.O.Ms.No.103, dated 18.11.2006.

5. The case of the petitioner in W.P.No.21208 of 2013 is that he is a cultivating tenant for the land belonging to the third respondent comprised in S.No.94/1 measuring an extent of 2.3250 hectares in Cadastre No.840 in Bahour Village, Pondicherry. As directed by this Court in W.A.No.801 of 2001, the third respondent filed a petition before the Revenue Court-cum-Deputy Collector, Villianur, Pondicherry for eviction of the petitioner under the provisions of the Pondicherry Cultivating Tenants Protection Act, 1970 and it is pending. While that being so, the subject land has been required for construction of Mini Stadium for the Welfare and Youth and notification under Section 4 (1) of the Act was published in G.O.Ms.No.147, Department of Revenue and Disaster Management, dated 14.11.2005 and the Government appointed Deputy Collector (Revenue)-cum-Land Acquisition Officer (South) Villianur, Pondicherry under Section 3(c) of the Act to perform the functions of the Collector under Sub Section 2(4) and under Section 5-A of the Act. It was followed by the declaration made under Section 6 of the Act dated 18.11.2006 in G.O.Ms.No.103 and thereafter, the award was passed under Section 11 of the Act in Award No.4 of 2008 on 04.12.2008.

6. The learned counsel for the petitioner in W.P.No.37413 of 2007 and W.P.No.21208 of 2013 submitted that by G.O.Ms.No.147, dated 14.11.2005, the Lieutenant Governor Pondicherry has authorized Deputy Collector (Revenue)-cum-Land Acquisition Officer (South) Villianur, Pondicherry to exercise the Powers under Sections 4(1) and 5-A of the Act. Under Section 6 Declaration in G.O.Ms.No.103, dated 18.11.2006, the Additional Secretary (Revenue) by order of the Lieutenant Governor, has appointed the Deputy Collector (Revenue)-cum-Land Acquisition Officer (South) Villianur, Pondicherry under Sections 3 & 7 of the Act, to perform the functions of the Collector under the Act and directed to take order for the acquisition of the subject land. Therefore, the Deputy Collector (Revenue)-cum-Land Acquisition Officer (South) Villianur, Pondicherry alone can act as a Land Acquisition Officer and nobody else. The said authority is authorised by the appropriate Government to discharge the functions of the Collector. Under Section 3(c) of the Act, Collector includes any officer specially appointed by the appropriate Government to perform functions of the Collector



under the said Act. During the enquiry conducted under Section 5-A of the Act, the third respondent also appeared for the enquiry and objected to the land acquisition proceedings and that their objections were sent to the Requisitioning Department for remarks. In view of the public interest, the objections raised by the petitioner were overruled. But the views of the requisitioning body, were not communicated to the petitioner and were never called for, on the use of the requisitioning body. The third respondent, has no objections to acquire its land comprised in S.No.94 (part) to an extent of 2.25.00 hectares. The Director of School Education stated that the petitioner is a tenant over the subject land and the third respondent has no objections to the acquisition proceedings. Thus, it is clear that the authorized official and appointed Deputy Collector had been acting as the Land Acquisition Officer, but the award in Award No.4 of 2008 dated 04.12.2008 was passed by the second respondent and he is not a person who is authorized either to issue Notification under Section 4(1) of Act or under Section 6 declaration of the Act. Therefore, the award dated 04.12.2008 is non-est in the eye of law.

7. He further submitted that the Revenue Officer is an officer under the Directorate of School Education, Government of Pondicherry. Here, the requisitioning authority, viz., the Revenue Officer himself had passed an award in respect of the subject properties. It is the Deputy Collector (Revenue)-cum-Land Acquisition Officer (South) Villianur, Pondicherry who has taken the order under Section 7 of the Act and not the Revenue Officer, Central University Land Acquisition Wing (CULAW), Department of School Education, Pondicherry. Therefore, the award was passed by the incompetent authority and it is illegal. In support of his contentions, the learned counsel for the petitioner relied upon the judgments as follows:-

(i) CDJ 1989 MHC 140 (P.C.Thanikavelu -vs- the Special Deputy Collector for Land Acquisition, Madras and another)

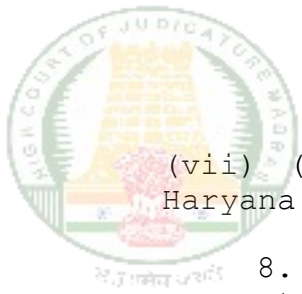
(ii) MANU/TN/9514/2006 (The Chairman and Managing Director, Tamil Nadu Housing Board -vs- Pushpaveni)

(iii) (2013) 11 SCC 235 (Lajia Ram -vs- Union Territory, Chandigarh and others)

(iv) (2013) 16 SCC 660 (Gojer Brothers Private Limited -vs- State of West Bengal and others)

(v) (1976) 2 SCC 128 (Hukam Chand Shyam Lal -vs- Union of India and others)

(vi) 2005-1-L.W.293 (T.K.Ayub -vs- Mohammed Hanif & others), and



(vii) (1996) 8 SCC 664 (Mangat Ram and others -vs- State of Haryana and others).

8. The petitioners in W.P.No.21274 of 2008 owned the property comprised in R.S.No.95/8 ad-measuring an extent of 0.69.00 hectares, situated at Bahour Village, Puducherry. The Department of School Education, Government of Puducherry had proposed to establish a Mini Stadium in Bahour Revenue Village and for the said purpose, a Notification under Section 4(1) of the Act was issued to acquire the said land along with other lands in G.O.Ms.No.147, dated 14.11.2005 and published in the Gazette of Puducherry No.49, dated 06.12.2005. Thereafter, the second respondent has issued a notice under Section 5-A of the Act, dated 30.12.2005 and called upon the petitioners to submit their objections. On receipt of the same, the petitioners have submitted their objections on 25.01.2006 and suggested for other alternative lands. They were further called upon to attend enquiry to be held on 25.01.2006. The petitioners had appeared and explained their objections in respect of the acquisition of their land for the reason that they are farmers and they had only the source of income from the subject land.

9. The learned counsel for the petitioners in W.P.No.21274 of 2008 submitted that the respondents violated the mandatory procedures as contemplated under Section 5-A(2) of the Act and Rules 5, 6 & 7 of the Land Acquisition (Pondicherry) Rules, 1963. There are lots of dry lands owned by big land owners and also "Poramboke" lands are also available. Without taking those lands, the respondents had initiated the acquisition proceedings in respect of the subject lands, which is the livelihood for the petitioners.

10. The third respondent in W.P.No.37413 of 2007 filed counter affidavit, from which, it reveals that, at the instance of the Director, Directorate of School Education, Puducherry, Land Acquisition proceedings were initiated to acquire the lands ad-measuring an extent of 05.05.50 hectares comprised in R.S.Nos.94 part, 95/1, 95/2, 95/3, 95/4, 95/5, 95/6, 95/7 and 95/8 situated at Bahour Revenue Village for the purpose of Mini-Stadium. Thereafter, the Notification under Section 4(1) of the Act was issued on 14.11.2005, vide G.O.Ms.No.147 of the Department of Revenue & Disaster Management, Puducherry and the same was published in the Official Gazette No.49, dated 06.12.2005. Thereafter, the individual notices were served through the Village Administrative Officer in respect of the land owners/interested persons including the petitioner. On receipt of the notices, the petitioner submitted his objections on 12.01.2006, in pursuance to the objections, a notice was also sent to attend the enquiry as contemplated under Section 5-A of the Act to be conducted on 29.09.2006. Thereafter, the



petitioner had attended the enquiry also and asked for time and the same was granted by the Acquisition Officer. After obtaining the objections from the petitioner, the same was forwarded to the requisitioning body, viz., the Director, Directorate of School Education for its remarks. The requisitioning body, requested to over-rule the objection, in view of the public interest involved in the acquisition proceedings. Further, the alternative land suggested by the petitioner, was not suitable for establishment of Stadium, since high tension electric lines passes through the site. After considering the objections, the Declaration under Section 6 of the Act was published in G.O.Ms.No.103, dated 18.11.2006. Thereafter, the individual notices as contemplated under Sections 9 (3) and 10 of the Act were served to the land owners/interested persons, including the petitioner for the award enquiry on 06.08.2008. Thereafter, the draft award was sent by the Government on 03.11.2008 and the same was approved on 03.12.2008. Thereafter, the award was passed by the land acquisition officer in Award No.4 of 2008 dated 04.12.2008.

11. Heard both sides and perused the materials available on record.

12. At the instance of the Director, Directorate of School Education, Puducherry, the land acquisition proceedings were initiated to acquire the private dry land ad-measuring an extent of 05.05.50 hectares, comprised in R.S.Nos.94 part, 95/1, 95/2, 95/3, 95/4, 95/5, 95/6, 95/7 and 95/8, situated at Bahour Revenue Village for the provision of Mini-Stadium. The preliminary inspection was conducted on 23.12.2003 and the Notification under Section 4(1) of the Act was issued on 14.11.2005, vide G.O.Ms.No.147 of the Department of Revenue & Disaster Management, Puducherry and published in the Official Gazette No.49, dated 06.12.2005. After publication of the Notification, the individual notices were duly served through the Village Administrative Officer of Bahour Revenue Village to all the land owners/interested persons including the petitioners therein. The petitioners have duly acknowledged the receipt of the notices and submitted their objections before the Acquisition Officer. In pursuant to the objections received from the petitioners, a notice was issued calling upon them to attend the enquiry under Section 5-A of the Act, to be held on 27.09.2006, and the said Notice was served on the petitioners. After obtaining objections from the petitioners, the same were forwarded to the requisitioning body, viz., the Director, Directorate of School Education, for their remarks regarding to the acquisition.

13. From the remarks, it reveals that the objections were over-ruled in view of the public interest involved in the



acquisition of lands. Further, the alternative lands suggested by the petitioners, were not suitable for establishment of Stadium, since the high tension electric lines passed through the site. Thereafter, the Land Acquisition Officer is of the opinion that the lands proposed for acquisition were suitable for the purpose for which it was acquired. The alternative site suggested by the petitioners, is found to be not suitable, as high tension electric lines passes through the land. That apart, there is no other Government "Poramboke" land available in the area. As such, the objections raised by the land owners including the petitioners were over-ruled in the large interest of the public, by proceedings dated 27.09.2006. Thereafter, the Declaration under Section 6 of the Act was published in G.O.Ms.No.103, dated 18.11.2006 by the second respondent. It was published, vide Puducherry Government Gazette No.49, dated 05.12.2006. Thereafter, the individual notices as contemplated under Sections 9(3) and 10 of the Act, were served on the land owners, including the petitioners, for the award enquiry to be conducted on 06.08.2008. During the award enquiry, the land owners had participated and the draft award had also been sent to the Government on 03.11.2008. It was approved by the Government, by order dated 03.12.2008 and the award has been passed on 04.12.2008. The possession of the subject land has not been taken over, in view of the interim orders are pending in these Writ Petitions.

14. The same acquisition proceedings were challenged to the adjacent land owners in W.P.Nos.33593 to 33595 of 2012 and all the Writ Petitions were dismissed by the Court on 09.04.2013. Aggrieved by the same, they also preferred Writ Appeals in W.A.Nos.1426 to 1428 of 2013 before the Hon'ble Division Bench of this Court. The Hon'ble Division Bench of this Court, by judgment dated 11.02.2014, dismissed all the Writ Appeals. In those Writ Petitions, the land owners had raised a ground that the award was not passed within a period of two years from the date of declaration under Section 6 and the declaration under Section 6 of the Act was made by none other than the Revenue Officials attached to the Revenue Officials Department. The Hon'ble Division Bench of this Court W.A.Nos.1426 to 1428 of 2013, dated 11.02.2014, held as follows:-

"8. The notification under Section 4(1) was issued on 14 November, 2005. The Government appointed the Deputy Collector (Revenue), South-cum-Land Acquisition Officer, Villianur as the authorised officer to initiate the land acquisition proceedings. The declaration under Section 6 was issued vide order in G.O.Ms.No.103 dated 18 November 2006. The declaration was issued by the Additional Secretary (Revenue). The Revenue



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Officer, Culaw appears to have forwarded the views of the requisitioning department earlier to the Land Acquisition Officer. The Revenue Officer in the said report indicated that it was at the instance of the Directorate of School Education. The Revenue Officers were later designated as Land Acquisition Officers by the Government of Pondicherry. The Revenue Officer attached to Culaw conducted the proceedings subsequent to the declaration under Section 6 of the Act. There is nothing on record to show that the revenue officer has acted as the requisitioning authority. The revenue officer simply forwarded the views of the Director of School Education to the Land Acquisition Officer. The acquisition was for the purpose of education department and as such the Directorate of School Education rightly offered the comments.

9. The appellants have taken up a contention that the award was sent by the Deputy Collector-cum-Land Acquisition Officer to the Government on 4 December 2008. The Contention has no basis. The award file produced by the Additional Government Pleader clearly indicates that the Government have approved the draft of the award on 3 December 2008 and permitted the land acquisition officer to pass the award. The land acquisition officer thereafter passed the award on 4 December 2008. The award was forwarded to the Government on 4 December 2008. The appellants have wrongly construed that only on 4 December 2008, the award was sent to appropriate Government. The award was published within a period of two years from the date of declaration under Section 6 of the Land Acquisition Act. We therefore reject the contention taken by the appellants with regard to the invalidity of the award.

10. The appellants have also taken up a contention that the compensation amount was not deposited before passing the award. No such contention was taken before the writ Court. Even if the amount was not deposited, still the land acquisition proceedings would not lapse. Similarly, the participation of the revenue officer earlier attached to the Education Department during the subsequent proceedings also would not render the land acquisition proceedings invalid. We, therefore do not find any merit in the contentions raised by the appellants."



15. Therefore, one of the grounds raised by the petitioners herein is already answered by the Hon'ble Division Bench of this Court. As far as the enquiry as contemplated under Section 5-A of the Act as stated supra, all the petitioners had duly participated in the enquiry conducted under Section 5-A of the Act and the respondents passed detailed order on the enquiry by applying mind and over-ruled the objections raised by the petitioners, by order dated 27.09.2006. Thus this Court finds no infirmity or illegality in the acquisition proceedings. In fine, all the Writ Petitions are devoid of merits and it is liable to be dismissed.

16. In the result, these Writ Petitions are dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional Secretary,
Union Territory of Puducherry,
Department of Revenue,
Government of Puducherry,
Puducherry.
2. The Deputy Collector (Revenue South)
-cum-Land Acquisition Officer,
Villianur, Puducherry.
3. The Special Officer/Tahsildar Kalal,
Arulmigu Moolanatha Swamy Temple,
Bahour, Puducherry.

+1cc to Mr.K.Chandrasekaran, Advocate, S.R.No.8764
+1cc to the Government Pleader, S.R.Nos.9061 to 9063

+1cc to Mr.K.Chandrasekaran, Advocate, S.R.No.8765 (31/03/2022)

W.P.NOS.37413 OF 2007, 21274
OF 2008 AND 21208 OF 2013

NK(CO)
PBS/21/03/2022