



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2022

CORAM:

THE HON'BLE MR. JUSTICE M.DHANDAPANI

W.P. No.10449 of 2010

and

MP Nos.1 and 2 of 2010

C. Samraj (Deceased)

2. Gowri Samraj

3. S. Vijayarangam

4. S. Kumarakrishnan

P2 to P4 substituted as LRs of
deceased sole petitioner

vide order dated 08.11.2021

made in WMP No.25149 of 2021

... Petitioners

Versus

1. The Government of Puduchery
Rep. By its Special Secretary to
Revenue Department,
Puduchery.

2. The Sub-Collector (Revenue) - cum-
Land Acquisition Officer (South)
Villianur,
Puduchery.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorari to call for the records of the 1st respondent dated 23.04.2010 in G.O. (Ms.) No.8 published in the Daily Thandhi, Puducherry Edition, on 24.04.2010 seeking to acquire the Petitioner's lands measuring an extent of 1 hectare 57 ares 50 centiar in Survey Nos.291/3 and 293/6 of Kalitheerthalkuppam Village, Villiayanur Taluk, Puducherry and to quash the same.

For Petitioners : Mr.N.Muralikumar
for M/s.Mcgan Law Firm

For Respondents : Mr.J. Kumaran
Addl. Govt. Pleader (Puducherry)

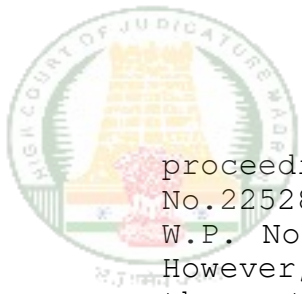


ORDER

This writ petition has been filed to call for the records of the 1st respondent dated 23.04.2010 in G.O. (Ms.) No.8 published in the Daily Thandhi, Puducherry Edition, on 24.04.2010 seeking to acquire the Petitioner's lands measuring an extent of 1 hectare 57 ares 50 centiar in Survey Nos.291/3 and 293/6 of Kalitheerthalkuppam Village, Villiayanur Taluk, Puducherry and to quash the same.

The short facts leading to the filing of the present writ petition are as under :

2. It is averred that the original petitioner is the owner of the land in S. No.291/3 and 293/6 at Kalitheerthankuppam village. While so, the Government of Pondicherry decided to acquire the lands belonging to the original petitioner for the purpose of providing free house sites to land less poor, for which the respondents issued 4(1) Notification on 08.02.1994. Immediately, thereafter the original petitioner made objections on 21.03.1995 to drop the land acquisition proceedings. Thereafter, the parties were served with Notice on 26.07.1995 stating that 5A enquiry was scheduled to be conducted on 22.08.1995. Subsequently, after hearing the objections raised by the original petitioner, Declaration u/s 6 was published on 14.12.1995 in the Gazette. Challenging the said 4(1) Notification and 6 Declaration, the original petitioner filed W.P. No.18036 of 1995 and this Court vide its order dated 09.08.2001 allowed the said petition and accordingly, quashed the proceedings from the stage of enquiry u/s 5 (A). Further, the respondents were granted liberty to proceed in accordance with law. Thereafter, the respondents filed Clarification petition in W.M.P. No.32984 of 1995 in W.P. No.18036 of 1995 and accordingly, this Court vide its order dated 13.10.2003 issued certain clarifications. In compliance of the said order dated 13.10.2003, it is averred that the respondents once again issued notice under section 5A, fixing the date of enquiry as 24.05.2004, which was sent to the original petitioner through RPAD on 11.05.2004 and the same was received by him on 18.05.2004. Further, the original petitioner through his counsel sent a letter dated 20.05.2004 seeking certain information and to file his objection, but the same was rejected by the land acquisition officer. Though the said official rejected the right of the petitioner, however, later gave another opportunity to participate in the 5A enquiry. Again, the original petitioner through his counsel gave representation on the same day and requested to postpone the enquiry so as to file his objections in the 5A enquiry. In the mean time, the original petitioner filed another writ petition before this Court and obtained an order of interim stay of further



proceedings on 14.07.2004 for a period of four weeks in W.M.P. No.22528 of 2004. Subsequently, the main writ petition viz., W.P. No.18818 of 2004 was dismissed as withdrawn on 03.08.2009. However, liberty was granted to the petitioner to appear before the authority concerned for 5A enquiry and to raise all his objections. Pursuant to the order of this Court, it is averred in the petition that notice intimating the date of 5A enquiry as 25.01.2010 was served on 22.01.2010 and a Memo in this regard was sent by the original petitioner / land owner and the same was filed on 25.01.2010 seeking time extension for filing his objections and later his objection was sent on 01.02.2010. However, it is the grievance of the original petitioner that without giving an opportunity of personal hearing, the respondents issued Declaration u/s 6 on 23.04.2010 and the same was published on 24.04.2010. Challenging the same, the present writ petition has been filed.

3. Pending writ petition, the original petitioner died and petitioners 2 to 4 were impleaded to contest the case.

4. Mr.N.Muralikumar, learned counsel for the petitioners submitted that after several rounds of litigation, the petitioners obtained orders from this Court, thereby respondents were directed to provide an opportunity to the original petitioner to participate in the 5A enquiry, and to file his objections. Accordingly, notice dated 13.01.2010 was issued by the respondents and the same was received on 22.01.2010. Immediately, within the time limit prescribed, the original petitioner has forwarded his objections on 01.02.2010, and the same was also acknowledged by the respondents. However, it is his contention that without considering the said objections of the original petitioner, the respondent has published Declaration u/s 6 in the Gazette, which is unsustainable and the same is contrary to the decision of the Hon'ble Full Bench of this Court in the case of M/s.Sharp Tools versus The State of Tamil Nadu, rep. By its Secretary & Others reported in CDJ 2006 MHC 2439, wherein it has been clearly held that where the objections are filed within 30 days as provided under Section 5-A (1); hearing the objectors and Department /Company and further enquiry are mandatory.

5. In the light of the aforesaid decision of the Hon'ble Full Bench of this Court, the learned counsel submits that without complying with the mandatory procedures, the respondents have published the Declaration u/s 6 in the Gazette, which is bad in law and accordingly, he prays before this Court for quashment of the impugned G.O. in G.O. (Ms.) No.8, dated 23.04.2010.



6. Mr.J.Kumaran, learned Additional Government Pleader appearing for respondents submits that it was decided to acquire the lands belonging to the original petitioner for providing free house sites to land less poor. He vehemently opposed the contention raised by the petitioner with regard to non providing of opportunity. Based on the counter affidavit, he submits that from the initial stage onwards i.e., issuance of 4 (1) notification onwards, several opportunities were given to the original petitioner. It is his case that the original petitioner has refused to receive the notice in some occasions and during those times, notice was affixed on the spot by the Village Administrative Officer. Furthermore, the respondents have taken steps and served notices under Sections 9(3) as well as 10 of the Land Acquisition Act, 1894, but the original petitioner did not appear for enquiry and as such Award was passed in the year 1997. In obedience to the directions issued by this Court in W.P. No.18036 of 1995, to proceed the matter from the stage of 5A enquiry, the respondents have sent notice to the original petitioner to appear for 5A enquiry, but the petitioner failed to appear, which shows his intention of dragging on the proceedings and putting blame on the side of the respondents. It is his further submission that barring the petitioner, the other land owners appeared and sought time to file objections. Thereafter, Draft Award was approved in the year 2011 under Section 11 of the Act and the possession of the said lands have not been taken by the Land Acquisition Officer, due to stay of dispossession ordered by this Court.

7. He also drew the attention of this Court that the factum of death of land owners was not brought to the knowledge of Land Acquisition Officer at the time of notification and the same was also not disclosed, while agitating the issue earlier, when these writ petitions i.e., W.P. No.18036 of 1995 and W.P. No.18818 of 2004 were heard. Therefore, the claim of the petitioner that 4(1) notification was issued in the name of dead person, which has been taken as a ground to quash the acquisition proceedings is just to protract the proceedings by filing unnecessary objections. Finally, he submitted that there was no lapse on the part of the Land Acquisition Officer at any point of time, except for the stay period and the G.O., impugned warrants no interference by this Court. Hence, he prays for dismissal of this writ petition.

8. Admittedly, the land acquisition proceedings were initiated by the respondents for the purpose of providing free house sites to landless poor and subsequently, 4(1) Notification as well as 6 Declaration were published Further it is undisputed that subsequent to directions issued by this Court, the respondents have proceeded the matter from the stage of 5-A enquiry by calling upon the petitioner for enquiry under



Section 5A of the Act. On a careful perusal of records, it reveals that pursuant to the order passed by this Court, the respondents issued notice to the original petitioner and fixed the 5A enquiry on 18.05.2004 and 24.05.2004 and the petitioner has also filed his objections. While so, the original petitioner filed another writ petition before this Court in W.P. No.18818 of 2004 and ultimately, this Court dismissed the writ petition as withdrawn, granting liberty to the petitioner to participate in the 5A enquiry proceedings and also to submit his objections. As per the directions of this Court, the respondents have fixed the date of enquiry under Section 5A on 25.01.2010 and communicated the same to the petitioner. In response to the said notice, which was received by the original petitioner on 22.01.2010, he has also sent the objections on 01.02.2010. That being so, a perusal of impugned order reveals that the respondent without considering the objections filed by the original petitioner, though the same is available on record, rejected the same stating the reason as belated submission i.e., beyond the time limit prescribed under the Act, taking into account the initial notification. In the instant case, it has to be noted that the period starts from only 13.01.2010, the date of notice for 5-A enquiry and not from the period of initial notification. In support of the stand, it is relevant to quote the decision of the Hon'ble Full Bench of this Court, particularly paragraph No.12, which reads as follows :-

12. As could be seen. We have elaborately considered the relevant provisions and the case laws, and dealt with various aspects very broadly in view of the complexity involved in the issue. Now, let us sum up the principles standing as answer to the question referred.

i) Objections to the acquisition are to be submitted by the persons interested in the lands within 30 days from the date of publication of the Notification as provided by sub-Section (1) of Section 5(A) of the Act.

ii) The 30 days' period is to be reckoned from the last mode of publication as contemplated under Section-4 (1) of the Act.

iii) In all cases where objections are filed within 30 days as provided under Section 5-A (1); hearing the objectors and Department /Company and further enquiry are mandatory.

iv) The Collector shall have to fix the date of hearing the objections. He has to give notice in Form-B



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to the Objector as well as to the Department. The Department or Company may file a statement by way of answer to the objections before the date fixed by the Collector. The Department may also depute their Representative to attend the enquiry.

v) If objections are not filed within the time, but the person interested /land owner appears before the Collector pursuant to the Notice in Form-B and makes any objection orally, it is incumbent on the part of the Collector to hear the Collector. To put it clear, 'personal hearing' is mandatory and 'further enquiry' is discretionary depending upon the submission of objections within 30 days of the last mode of the publication.

vi) Rule-4(b) is mandatory and to be followed essentially. In terms of Rule 4(b), Form-B is only a Notice to the objectors and the Department to appear for the hearing and it is not a notice for filing the objections.

As observed earlier, since the present Form-B is neither in conformity with Rule-4(b) nor Section 5-A(1) of the Act, the State Government is directed to take immediate steps to amend Form-B so as to bring it in conformity with Rule-4(b) of the Rules to avoid misunderstanding on the part of the persons interested in the lands proposed to be acquired.

9. Since the original petitioner has made his objection on 01.02.2010, in respect of the notice dated 13.01.2010, which was received by him only on 22.01.2010, the objection filed is well within the time frame contemplated under the Act. Applying the ratio laid down in the decision of the Hon'ble Full Bench of this Court supra, it is clear where objections are filed within the time limit, 'personal hearing' is mandatory. But, without considering the aforesaid objection, publishing of Declaration u/s 6 by passing impugned G.O. is unsustainable and the same cannot be countenanced.

10. Be that as it may. A careful perusal of the records reveal that lands only in respect of the petitioner are sought to be acquired, while that of the adjacent land owners, who own vast extent of lands, have not been acquired. The above act of the respondents also casts a serious doubt on the genuineness of entire land acquisition proceedings. However, this Court is not dwelling into it in much depth, except to state that due opportunity has not been afforded to the petitioner and without considering the objections and without personal hearing, which



is mandatory, the impugned Government Order has been passed, which requires to be interfered with, as the same is in violation of principles of natural justice.

11. For the reasons aforesaid, the impugned G.O. is illegal, arbitrary and unsustainable and accordingly, the same has to be quashed. Accordingly, the writ petition stands allowed by quashing the impugned G.O. Viz., G.O. (Ms.) No.8, dated 23.04.2010 issued by the 1st respondent. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Special Secretary to
Government of Puduchery
Revenue Department,
Puduchery.
2. The Sub-Collector (Revenue) - cum-
Land Acquisition Officer (South)
Villianur, Puduchery.

+lcc to M/s.Mcgan Law Firm, Advocate, S.R.No.27366
+lcc to the Government Pleader, Puduchery. S.R.No.27798

W.P. No.10449 of 2010

GPL (CO)
CT 14/06/2022