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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.NOS.20413 AND 20414 OF 2010

AND

M.P.NOS.2 AND 2 OF 2010

G.K.Vasanthi

... Petitioner in
W.P.20413 of 2010

K.Jothi Senthil Kannan,
Rep. by Power of Attorney,
Mr.G.Karunakaran.

... Petitioner in
W.P.20414 of 2010

.Vs.

1. The Union of India,
Represented by the
Special Secretary to Government,
Department of Revenue and
Disaster Management,
Government of Puducherry,
Puducherry.
2. The Deputy Collector (Revenue)-Cum-
Land Acquisition Officer (South),
Villianur, Puducherry.

... Respondents in
both W.P's

COMMON PRAYER:-

Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records pertaining to the notification issued under Section 4(1) of the Land Acquisition Act, 1894 in G.O.Ms.No.9 dated 23.04.2010 as published in the Gazette of Puducherry No.19 dated 11.05.2010 and the records pertaining to the declaration of notification issued under Section 6 (1) of the Land Acquisition Act, 1894 in G.O.Ms.No.31 dated 05.08.2010 as published in the Gazette of Puducherry No.34 on the file of the first respondent and to quash the same in view of the facts and circumstances.



For Petitioners : Mr.A.V.Arumugam

For Respondents : Mr.J.Kumaran
Additional Government Pleader

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C O M M O N O R D E R

The petitioners have filed these writ petitions seeking issuance of Writ of Certiorari to call for the records pertaining to the notification issued under Section 4(1) of the Land Acquisition Act, 1894 in G.O.Ms.No.9 dated 23.04.2010 as published in the Gazette of Puducherry No.19 dated 11.05.2010 and the records pertaining to the declaration of notification issued under Section 6 (1) of the Land Acquisition Act, 1894 in G.O.Ms.No.31 dated 05.08.2010 as published in the Gazette of Puducherry No.34 on the file of the first respondent and to quash the same.

2. The case of the petitioners is that the petitioners are mother and son. They are in possession and enjoyment of the lands comprised in R.S.No.56/1A/1 in Kirumambakkam and they acquired the same by way of registered settlement deed dated 10.03.2010 executed by the husband of the first petitioner/father of the second petitioner. Whiles, the first respondent proceeded to acquire their lands under the pretext of construction of multi storied building in Kirumambakkam for SC/OEBC people. Notification issued under Section 4(1) of the Land Acquisition Act, 1894 in G.O.Ms.No.9 dated 23.04.2010 was published in the Gazette of Puducherry No.19 dated 11.05.2010 and declaration notification issued under Section 6 (1) of the Land Acquisition Act, 1894 in G.O.Ms.No.31 dated 05.08.2010 was published in the Gazette of Puducherry No.34 on the file of the first respondent. Since the said land is the only source of income for their livelihood, the petitioners have filed these writ petitions.

3. The learned counsel appearing for the petitioners submitted that initially the petitioners names were not found in the notification issued under Section 4(1) of the Land Acquisition Act. After coming to know about the acquisition proceedings, the petitioners made representation and objection dated 21.05.2010 to the Lieutenant Governor of Puducherry and thereafter, it was forwarded to the respondents. Thereafter enquiry under Section 5(A) of the Land Acquisition Act was conducted and the petitioners names were published in the declaration notification issued under Section 6 (1) of the Land Acquisition Act, however, the petitioners objection was not considered.



4. The learned counsel appearing for the petitioners further submitted that for not providing opportunity to the petitioners and for not considering the petitioners objection at the time of enquiry under Section 5(A) of the Act, the entire land acquisition proceedings get vitiated. Hence, the impugned orders are not sustainable for non application of mind and for violation of principles of natural justice.

5. In support of his contentions, the learned counsel appearing for the petitioners relied upon the decisions of the Hon'ble Apex Court reported in (2005) 7 SCC 627 (Hindustan Petroleum Corporation Limited Vs. Darius Shapur Chenai); (2013) 1 SCC 403 (Surinder Singh Brar Vs. Union of India) and the decision of the Hon'ble Full Bench of this Court reported in AIR 1989 Madras 222 (P.C.Thanikavelu Vs. The Special Deputy Collector for Land Acquisition, Madras).

6. Per contra, the learned Additional Government Pleader appearing for the respondents submitted that the petitioners are not the owners of the disputed property. Already a suit in O.S.No.834 of 2003 has been filed on the file of the Principal District Munsif Court at Pondicherry by one Natarajan and Anusuya as against the petitioners and the said suit is still pending. Unless the petitioners establish their title, the claim made by the petitioners is not sustainable one and the petitioners challenging the land acquisition proceedings is non est in law.

7. Heard the arguments advanced on either side and perused the materials available on record.

8. The facts in the present case is not in dispute. Admittedly, the petitioners are mother and son and they are in possession and enjoyment of the lands comprised in R.S.No.56/1A/1 in Kirumambakkam and they acquired the same by way of registered settlement deed dated 10.03.2010 executed by the husband of the first petitioner/father of the second petitioner.

9. The first respondent proceeded to acquire lands for construction of multi storied building in Kirumambakkam for SC/OEBC people. Notification issued under Section 4(1) of the Land Acquisition Act, 1894 in G.O.Ms.No.9 dated 23.04.2010 was published in the Gazette of Puducherry No.19 dated 11.05.2010 and declaration notification issued under Section 6 (1) of the Land Acquisition Act, 1894 in G.O.Ms.No.31 dated 05.08.2010 was published in the Gazette of Puducherry No.34 on the file of the first respondent.



10. It is also admitted fact that initially the petitioners names were not found in the notification issued under Section 4 (1) of the Land Acquisition Act. After coming to know about the acquisition proceedings, the petitioners made representation and objection dated 21.05.2010 to the Lieutenant Governor of Puducherry and thereafter, it was forwarded to the respondents. Thereafter enquiry under Section 5(A) of the Land Acquisition Act was conducted and the petitioners names were published in the declaration notification issued under Section 6 (1) of the Land Acquisition Act, however, the petitioners objection was not considered at the time of enquiry under Section 5(A) of the Act.

11. If at all a suit is pending before the competent Civil Court with regard to the title of the petitioners, the respondents ought to have referred the matter for compensation under Section 30 (1) of the Land Acquisition Act. However, without doing so and without considering the petitioners objections, their names were included in the declaration notification issued under Section 6 (1) of the Land Acquisition Act.

12. The moot question that arises for consideration is when the petitioners made representation and objection dated 21.05.2010 to the Lieutenant Governor of Puducherry and the same was forwarded to the respondents, without considering their objections at the time of enquiry under Section 5(A) of the Act and including the petitioners names in the declaration notification issued under Section 6 (1) of the Land Acquisition Act is sustainable.

13. It is useful to extract hereunder the relevant portions of the decisions relied upon by the learned counsel appearing for the petitioners:

(i) The decision of the Hon'ble Apex Court reported in (2005) 7 SCC 627 (Hindustan Petroleum Corporation Limited Vs. Darius Shapur Chenai):

"8.The conclusiveness contained in Section 6 of the Act indisputably is attached to a need as also to the purpose and in this regard ordinarily, the jurisdiction of the court is limited but it is equally true that when an opportunity of being heard has expressly been conferred by a statute, the same must scrupulously be complied with. For the said purpose, Sections 4, 5-A and 6 of the Act must be read conjointly. The court in a case, where there has been total non-compliance or substantial non-compliance with the provisions of Section 5-A of the Act, cannot fold its hands and



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refuse to grant a relief to the writ petitioner. Sub-section (3) of Section 6 of the Act renders a declaration to be a conclusive evidence. But when the decision-making process itself is in question, the power of judicial review can be exercised by the court in the event the order impugned suffers from well-known principles viz. illegality, irrationality and procedural impropriety. Moreover, when a statutory authority exercises such enormous power it must be done in a fair and reasonable manner.

9. It is trite that hearing given to a person must be an effective one and not a mere formality. Formation of opinion as regards the public purpose as also suitability thereof must be preceded by application of mind as regards consideration of relevant factors and rejection of irrelevant ones. The State in its decision-making process must not commit any misdirection in law. It is also not in dispute that Section 5-A of the Act confers a valuable important right and having regard to the provisions contained in Article 300-A of the Constitution it has been held to be akin to a fundamental right."

(ii) The decision of the Hon'ble Apex Court reported in (2013) 1 SCC 403 (Surinder Singh Brar Vs. Union of India):

"84. [Ed.: Para 84 corrected vide Official Corrigendum No. F.3/Ed.B.J./64/2012 dated 23-11-2012.] . What needs to be emphasised is that hearing required to be given under Section 5-A(2) to a person who is sought to be deprived of his land and who has filed objections under Section 5-A (1) must be effective and not an empty formality. The Collector who is enjoined with the task of hearing the objectors has the freedom of making further enquiry as he may think necessary. In either eventuality, he has to make report in respect of the land notified under Section 4(1) or make different reports in respect of different parcels of such land to the appropriate Government containing his recommendations on the objections and submit the same to the appropriate Government along with the record of proceedings held by him for the latter's decision. The appropriate Government is obliged to consider the report, if any, made under Section 5-A(2) and then record its satisfaction that the particular land is needed for



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a public purpose. This exercise culminates into making a declaration that the land is needed for a public purpose and the declaration is to be signed by a Secretary to the Government or some other officer duly authorised to certify its orders. The formation of opinion on the issue of need of land for a public purpose and suitability thereof is sine qua non for issue of a declaration under Section 6(1). Any violation of the substantive right of the landowners and/or other interested persons to file objections or denial of opportunity of personal hearing to the objector(s) vitiates the recommendations made by the Collector and the decision taken by the appropriate Government on such recommendations. The recommendations made by the Collector without duly considering the objections filed under Section 5-A(1) and submissions made at the hearing given under Section 5-A(2) or failure of the appropriate Government to take objective decision on such objections in the light of the recommendations made by the Collector will denude the decision of the appropriate Government of statutory finality. To put it differently, the satisfaction recorded by the appropriate Government that the particular land is needed for a public purpose and the declaration made under Section 6(1) will be devoid of legal sanctity if statutorily engrafted procedural safeguards are not adhered to by the authorities concerned or there is violation of the principles of natural justice. The cases before us are illustrative of flagrant violation of the mandate of Sections 5-A(2) and 6(1). Therefore, the second question is answered in the affirmative."

(iii) The decision of the Hon'ble Full Bench of this Court reported in AIR 1989 Madras 222 (P.C.Thanikavelu Vs. The Special Deputy Collector for Land Acquisition, Madras):

"6. It is not in dispute that in all cases where emergency provisions are not invoked and an enquiry under S. 5-A of the Act is contemplated, the Collector causes individual notices to be served on every person known or believed to be interested in the land to be acquired. Normally, such notices are sent to persons whose names are found recorded in the revenue records as persons interested. But in several cases it may transpire that persons whose names are found recorded in the revenue records as interested persons may



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cease to have such interest by reason of transfers of the holding or otherwise. Nevertheless, no mutation of names in the revenue records in favour of persons who have become interested in the land might have been effected. The result is that the Collector may cause individual notices to be served only on those persons whose names are found in the revenue records, but who have ceased to be interested in the land. The result is not far difficult to see. Such persons who have ceased to be interested in the land may not respond to the notice, nor would they care to participate in the enquiry to be held under S. 5-A of the Act. In such cases, the statutory enquiry under S. 5-A of the Act which has not been dispensed with, would be completed without affording a reasonable opportunity to the persons who have an existing right, in the land under acquisition. Though it is incumbent upon the Revenue to keep their records up-to-date by effecting mutation of names reflecting the actual state of affairs by showing the persons really interested in the land in their records, yet in a few cases it may so happen that the revenue records are not made upto date and the person who is really interested in the land may not receive any notice from the Collector for the enquiry under S. 5-A of the Act. In such cases, if it is brought to the notice of the Collector by the erstwhile land owner or by any other person including the present owner thereof, of the name of interested persons, the Collector as a statutory functionary cannot decline to afford an opportunity to the person who is really interested in the land and close the enquiry. When such information is brought to the notice of the Collector, it is needless to say that the principles of natural justice enjoin upon him an obligation to issue notice to the person who is found to be really interested in the land even though his name may not be found entered in the revenue records. It is true that the Government has the prerogative to acquire lands belonging to individuals for a public purpose sanctioned under the theory of 'eminent domain'. But the rule of law which governs and controls the executive functions in the thread that runs through the fabric of constitutional democracy. The rule of law behoves the Government to act fairly and reasonably and the principles of natural justice are the quintessence of such fair play and



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reasonableness. The decision reported in *Padmavathi v. State of Tamil Nadu* does not reflect the true statement of law. The Supreme Court has held in *Swadeshi Cotton Mills v. Union of India*² that even in the absence of express reference to observance of principles of natural justice, such principles should be followed whenever it affects the rights of parties. It cannot be gainsaid that when the lands of an individual are acquired, albeit he may be paid compensation, his civil rights may be affected. It is therefore elementary that, to be consistent with the principles of natural justice, such a person should be put on notice before his lands are acquired and his objection heard and considered. The enquiry contemplated under S. 5A of the Act would be full and complete only when the person who is really interested in the land is put on notice. But, at the same time, it is made clear that individual notice is mandatory only to those persons whose names are found in the revenue records or who are found by the Collector as persons interested on information received through reliable source."

14. Perusal of the decisions cited supra makes it clear that when an opportunity of being heard has expressly been conferred by a statute, the same must scrupulously be complied with. For the said purpose, Sections 4, 5-A and 6 of the Act must be read conjointly. The Court in a case, where there has been total non-compliance or substantial non-compliance with the provisions of Section 5-A of the Act, cannot fold its hands and refuse to grant a relief to the petitioner. Sub-section (3) of Section 6 of the Act renders a declaration to be a conclusive evidence. But when the decision-making process itself is in question, the power of judicial review can be exercised by the Court in the event the order impugned suffers from well-known principles viz. illegality, irrationality and procedural impropriety.

15. In the present case, the petitioners made representation and objection dated 21.05.2010 to the Lieutenant Governor of Puducherry and the same was forwarded to the respondents, however, without considering their objections at the time of enquiry under Section 5(A) of the Act, their names were included in the declaration notification issued under Section 6 (1) of the Land Acquisition Act, which is not sustainable one. Hence, applying the ratio laid down in the decisions cited supra, the impugned land acquisition proceedings are liable to be quashed and the same are hereby quashed.



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16. The writ petitions are allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Special Secretary to Government,
Department of Revenue and
Disaster Management,
Government of Puducherry,
Puducherry.
2. The Deputy Collector (Revenue) -Cum-
Land Acquisition Officer (South),
Villianur, Puducherry.

+2ccs to Mr.A.V.Arumugam, Advocate, S.R.Nos.20179 & 20180
+1cc to the Government Pleader (Puducherry), S.R.No.20437

W.P.NOS.20413 AND 20414 OF 2010
AND M.P.NOS.2 AND 2 OF 2010

VBM(CO)
PBS/11/04/2022