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W.P.No.24292 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2022

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.24292 of 2014
and M.P.Nos.1 and 2 of 2014
and WMP.No.32541 of 2016

- 1.T.Mangilal
- 2.B.Malaram
- 3.V.Tararam
- 4.T.Santhoshkumari

... Petitioners

Vs.

- 1.State of Tamil Nadu,
rep.by its Secretary,
Industries Department,
Fort St.George, Chennai 9.
- 2.The District Collector,
Villupuram Collectorate,
Villupuram District 605602.
- 3.State Industries Promotion Corporation of Tamil Nadu (SIPCOT)
rep.by its Managing Director,
19-A, Rukmani Lakshmipathy Road,
Egmore, Chennai 8.
- 4.Special Tahsildar (L.A),
Unit II, SIPCOT,
Tindivanam 604 001.

... Respondents

PRAYER: This Writ Petition filed under Section 226 of Constitution of India, pleaded to issue a Writ of Certiorari calling for the records of the first respondent in G.O.Ms.No.34 Industries (SIPCOT-LA) dated 5.3.2013 published in the Tamilnadu Government Gazettte Extraordinary in Part-II-



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Section 2 on 5.3.2013 and the consequential notices issued by the fourth respondent on behalf of the second respondent in Form E dated 17.7.2014 and Na.K.A1/21572/2010 dated 17.7.2014 quash the same with respect to the lands owned by the petitioners in Survey Nos.10/1B 10/2B 14/2 14/3 and 14/1A in Pelakuppam Village, Tindivanam Taluk, Villupuram District.

For Petitioner : Mr.A.Jenasenan
For RR1, 2 & 4 : Mr.Yogeshkannadasan
Special Government Pleader
For RR3 : Mr.Sudharshanasundar

Order

This petition has been filed for issuance of writ of Certiorari to call for the records of the first respondent in G.O.Ms.No.34 Industries (SIPCOT-LA) dated 5.3.2013 published in the Tamilnadu Government Gazette Extraordinary in Part-II- Section 2 on 5.3.2013 and the consequential notices issued by the fourth respondent on behalf of the second respondent and quash the same.

2. The case of the petitioner is that the petitioners are the joint owners of the lands comprised in S.F.No.10/1B, 10/2B, 14/2, 14/3 and 14/1A in Pellakuppam Village, Tindivanam Taluk, Villupuram District, measuring a total extent of about 9 acres and they have been in continuous possession and carrying out agricultural operation on the said subject property. While so, sometime in 2012, the 1st respondent initiated action under the Tamil Nadu



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Acquisition of Land for Industrial Purposes Act, 1997 (hereinafter referred as

'the Act') to acquire lands in Pelakuppam Village, Tindivanam Taluk,

Villupuram District to set up a SIPCOT Industrial Park and the subject property

owned by the petitioners were also proposed to be acquired under the Scheme.

Thereafter, the petitioners were issued notice dated 24.04.2012, which was

received on 21.05.2012 from the 2nd respondent calling upon the petitioners to

show cause under Section 3(2) of the Act as to why the subject property should

not be acquired to set up the SIPCOT Industrial Park and the petitioners also

submitted a detailed reply on 06.06.2012, requesting that the subject property

be excluded from the proposed acquisition. Pursuant to the objections, the 2nd

respondent issued notice on 25.07.2012 calling upon the petitioners to attend

the personal enquiry to be held by him on 08.08.2012 and the petitioners also

attended the said enquiry on the said date. Thereafter, the 2nd respondent issued

order dated 23.10.2012, rejecting the objections raised by the petitioner and

subsequently, the 1st respondent issued the impugned order under Section 3(1)

of the Act on 05.03.2013 in G.O.Ms.No.34, acquiring various lands including

the subject property to set up an Industrial Park by SIPCOT. Therefore, it is the

allegation of the petitioners that the State Government without considering the

Rejection Order passed by the District Collector, had mechanically passed the

impugned Government Order and decided to acquire the petitioners land is



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clear violation of Section 3(1) of the Act and contrary to the decision of the Division Bench in W.A.No.1644/2017. Challenging the said 3(1) notification, this Writ Petition is filed.

3. The learned counsel appearing for the petitioner submitted that Section 3 of the Act, makes it clear that the Government may pass an order under Sub Section (1) after hearing and considering the cause, if any, shown by the owner or person interested and therefore, it makes it very clear that the Government has authority to take decision on the land acquisition proceedings. In spite of that the District Collector himself had taken a decision vide order dated 23.10.2012, which is contrary to the above said provision and further the very same issue was came for consideration before the Hon'ble Division Bench of this Court and the Division Bench categorically held that the District Collector after conducting enquiry under Sub Section (2) of Section 3 of the Industrial Purposes Act, must place all the materials before the Government and the Government would consider the objection given by the land owners, comments made by the District Collector and ultimately would take a decision as to whether the notification under Sub Section (1) of Section 3 of the Industrial Purposes Act should be issued for acquiring the land. In the present case on hand, the State Government has mechanically accepted the decision of



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the District Collector, which is non est in the eye of law and hence, applying

the said ratio laid down by this Court in the above said Writ Appeal, the learned counsel prays for allowing of this petition,

4. The learned counsel appearing for the 3rd respondent submitted that admittedly, as per the provisions of law, all requisite notices were issued to the petitioners and further the recommendation of the District Collector and the remarks of the Requisition body were forwarded to the Government through the Commissioner of Land Administration, Chennai and the Government after considering the report of the Commissioner of Land Administration, Chennai, dated 03.01.2013, rejected the objections of the writ petitioners and include the lands mentioned in the writ petition as per G.O.Ms.No.34, Industries (SIPCOT-LA) Department, dated 05.03.2013 and therefore, the impugned order is perfectly valid and the same cannot be interfered with and prays for dismissal of this writ petition.

5. This Court heard the submissions of the respective learned counsels appearing for the parties and also perused the materials placed before it.



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6. Facts in the present case is not in dispute that admittedly, the petitioners' land were acquired for the purpose of establishment of SIPCOT Industrial Park and the enquiry officer issued notice under Section 3(2) on 24.04.2012 and the said notice was issued to the petitioners on 21.05.2012 and further the petitioners made objections on 06.06.2012 to the 2nd respondent and the 2nd respondent after conducting a detailed enquiry and after obtaining views of the requisition body, had passed the order on 23.10.2012. Further this Court has also perused the said order dated 23.10.2012, passed by the 2nd respondent. A perusal of the same reveals that the land owners objections and the reply of the requisition body were discussed elaborately and ultimately, the 2nd respondent District Collector arrived at a categorical conclusion that the land is required for industrial purpose and thereby the objections made by the petitioners cannot be considered and subsequently rejected the petitioners objections and the said fact has also confirmed by the 1st respondent in its counter affidavit in paragraph no.4, wherein it was categorically held that the District Collector, Villupuram, has enquired the petitioners on 08.08.2012 and the objections of the petitioners have been rejected.

7. Though the respondents in its counter affidavit states that the remarks of the requisition body and the recommendation of the District



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Collector, were forwarded to the Government through the Commissioner of Land Administration and the Government after considering the said report, had rejected the objections of the writ petitioners, the said position has not been established before this Court and in that aspect, it is relevant to rely paragraph nos.12, 13, 14 and 15 of the decision of the Hon'ble Division Bench of this Court in W.A.No.1644/2017:

"12. The Government in exercise of the power conferred under Section 23-A of the Industrial Purposes Act, issued a notification dated 2 September 2005 authorising the District Collector of the districts concerned to exercise all the functions under the Act. The notification dated 2 September 2005 was not challenged at any point of time. The learned single Judge in the writ petitions in W.P.Nos.2055 and 2056 of 2010 considered a question as to whether it was proper on the part of the Government to conduct enquiry through the Collector and thereafter to issue notification under Sub-Section (1) of Section 3 of the Industrial Purposes Act. According to the learned single Judge, since the notification under sub-section (1) of Section 3 has to be issued by the Government, enquiry should also be conducted only by the Government. The learned single Judge while quashing the acquisition in W.P.Nos.2055 and 2056 of 2010 though placed reliance on the Government order in G.O.Ms.No.513 dated 2 September 2005, made no attempt to interpret the said notification in the light of Section 23-A of the Industrial Purposes Act.

13. The learned single Judge proceeded as if the enquiry has to be conducted only by the Government. The very purpose of enacting Section 23-A of the Industrial Purposes Act and issuing the notification in G.O.Ms.No.513, dated 2 September 2005 was only for the purpose of giving power to the District Collector to conduct enquiry. In case, the enquiry has to be conducted by the Government in all such cases, the



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acquisition would be delayed and the very purpose of enacting the special statute would be defeated.

14. The District Collector after conducting enquiry under Sub-Section (2) of Section 3 of the Industrial Purposes Act must place all the materials before the Government. The Government would consider the objection given by the land owners, comments made by the District Collector and ultimately would take a decision as to whether notification under Sub-Section (1) of Section 3 of the Industrial Purposes Act should be issued for acquiring the land. Similar provisions are contained in other enactments, and more particularly in certain special statutes prevailing in the State. This is not a case of delegation by executive order. The statute itself contained a provision for delegation. The Government has exercised the power of delegation and issued the order in G.O.Ms.No.513, dated 2 September 2005.

15. Before the learned single Judge neither the legality of Section 23-A nor the consequential order in G.O.Ms.No.513 dated 2 September 2005 were challenged. The learned single Judge was therefore not correct in interpreting the provision and the related Government Order without a specific challenge in the writ petitions."

(emphasis applied)

8. On perusal of the above said paragraphs makes it clear that the Government in exercise of power under Section 23-A of the Industrial Purposes Act issued notification dated 2 September 2005 authorising the District Collector of the districts concerned to exercise all the functions under the Act and as per the above said notification, the District Collector as Enquiry Officer used to conduct enquiry in between the land owners and the requisition body and shall forward the objections of the land owners and the remarks of the



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requisition body to the Government for taking appropriate decision as to whether the land is to be acquired or not. However in the present case, the District Collector himself has taken decision on 23.10.2012 and such rejection order also not disputed by the Government, which is against the provisions of law. Therefore, in view of the above, the decision taken by the Government is contrary to the provisions of the Industrial Purposes Act and it is liable to be interfered with.

9. For the reasons aforesaid, this Writ Petition is allowed and the impugned notification in G.O.Ms.No.34 Industries (SIPCOT-LA) dated 5.3.2013 published in the Tamilnadu Government Gazette Extraordinary in Part-II- Section 2 on 5.3.2013, is quashed. However liberty is granted to the respondents, if they are so advised to acquire the land, by following the due process of law. No costs. Consequently connected miscellaneous petitions are closed.

14.06.2022

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M.DHANDAPANI,J.

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To

- 1.The Secretary,
State of Tamil Nadu,
Industries Department,
Fort St.George, Chennai 9.
- 2.The District Collector,
Villupuram Collectorate,
Villupuram District 605602.
- 3.The Managing Director,
State Industries Promotion Corporation of Tamil Nadu (SIPCOT)
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