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W.A.No.1797 of 2017

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN  
AND  
THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

**W.A.No.1797 of 2017**

**and**

**C.M.P.Nos.5789 of 2018 & 22612 of 2017**

1.The Government of Tamil Nadu,  
Rep. By its Secretary,  
Industries Department,  
Fort St.George, Chennai – 600 009.

2.The Special Tahsildar (LA),  
Oragadam Expansion Scheme,  
SIPCOT, Unit-4, Sriperumbudur (Post),  
Kancheepuram District.

...Appellants

Vs.

1.T.Prakatheeswaran  
Prop-Kaizen Engineers,  
No.2/263, Manapakkam,  
Giri Gori Nagar, Near Anthony Church,  
Manappakkam, Chennai – 600 125.

2.The State Industries Promotion Corporation  
of Tamil Nadu Limited,  
19-A, Rukmani Lakshmipathy Road,  
Post Box No.7273, Egmore,  
Chennai – 600008.

..Respondents



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Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 06.03.2013 made in W.P.No.1657 of 2012.

For Appellants : Mr.B.Vijay

Additional Government Pleader

For Respondents : Mr.S.Krishnaswamy for R1

Mr.Vadivelu Deenadayalan

Additional Government Pleader for R2

### **J U D G M E N T**

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

Challenge in the Writ Appeal is to the order of the Writ Court made in W.P.No.1657 of 2012 allowing the Writ Petition and quashing the land acquisition proceedings initiated by the respondents by issuing a publication under Section 3(i) of the Tamil Nadu Acquisition of Land for Industrial Purpose Act, 1997 on 23.05.2007.

2.The acquisition, which was initiated under the said enactment was challenged mainly on the ground that the notification issued by the District Collector under Sub-section (ii) of Section 3 and the consequent enquiry conducted are not valid and it was for the Government to have



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conducted enquiry under Section 3(ii) of the Act. It was also further contended that no notices under Section 3(ii) of the Act was served on the land owner. The Writ Court allowed the Writ Petition based on the judgment of the Single Judge in **V.G.P.Housing Private Limited and Others Vs. the Secretary to Government, Industries Department and Others** dated **10.07.2012** wherein, an acquisition under the very same enactment was quashed on the ground that the Collector cannot conduct an enquiry. Since the Writ Petition was disposed of on the said ground, the other questions relating to service of notice and the compliance with the procedure for conduct of enquiry under Section 3(i) were not gone into by the Writ Court.

3.The learned Special Government Pleader appearing for the appellant would contend that the judgment relied on by the Writ Court in **V.G.P.Housing Private Limited and Others Vs. The Secretary to Government, Industries Department and Others** was reversed by a Division Bench of this Court in **W.A.No.1710 of 2017**, on the ground that under Section 23-A of the Acquisition of Land for Industrial Purposes Act,



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which was introduced in the year 2005, power was vested in the Government to delegate the powers to conduct enquiry to the Collector and the Government order, delegating such powers to the Collector has also been produced. Therefore, according to the learned Special Government Pleader, the basis on which the Writ Court allowed the Writ Petition is incorrect and hence, the appeal has to be allowed.

4.We concur with the learned Special Government Pleader with reference to the said submission. Section 23-A of the Acquisition of Land for Industrial Purposes Act permits the appropriate Government to delegate its powers except the powers to issue notice under Sub-section 1 of Section 3, to withdraw any land from acquisition and make rules under Section 25. A notification was published in the gazette on 02.09.2005, delegating the powers of the Government to the Collector.

5.It is a settled law that a delegatee can only perform such functions that are delegated to it and not the others. The final decision to acquire or not to acquire has to be taken by the Government and that is the



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precise reason why the Section 23-A, which empowers delegation, excludes the powers to issue notification under Sub-section 1 of Section 3. Therefore, while the power to conduct enquiry can be delegated, the power to acquire cannot be delegated. The final decision as to whether the acquisition should be made or not must be taken only by the Government and not by the Collector. Since a claim was made by the petitioner that no notice under Sub-section (ii) of Section 3 was served on him and that the decision to acquire was taken by the Collector and not by the Government, we had required the Government Pleader to produce the files.

6.A perusal of the records shows that a notice under Section 3(ii), which is the only notice contemplated under the Act to the land owner, before the decision to acquire lands is taken, is stated to be have been sent by certificate of posting, that too, to an incomplete address, which reads as follows:-

T.பிரகதீஸ்வரன்,  
கைஸன் இன்ஜினியரிங் நிறுவனம்,  
தகப்பனார். தண்டாயுதம்,  
திரு.வி.க.இண்டஸ்ட்ரியல் எஸ்டேட்,  
கிண்டி, சென்னை 32,



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7. There is no acknowledgment or proof of service of the said notice on the land owner. This special enactment contains a very special provision, which enables the Government to despatch the notices by way of certificate of posting. While all the other enactments, which enable exercise of power of eminent domain, provide that such notices are to be served either in person under acknowledgment or by registered post.

8. The law relating to service of notice by certificate of posting is well settled and the despatch of letter by certificate of posting will only lead to a presumption that a letter addressed to the petitioner / land owner was sent to the addressee. There is no presumption that it was served on the addressee. This was pointed out by the Hon'ble Supreme Court as early as in 1981 in **Mrs.L.M.S.Ummu Saleema Vs. Shri B.B.Gujaraj & Another** reported in **(1981) 3 SCC Page 317**. The same conclusion was reiterated in **Mohd. Asif Naseer Vs. West Watch Company** reported in **(2020) 17 SCC Page 136**.



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9. However, the State Legislature, which had enacted the special law in its special wisdom has chosen to provide for service of notice by certificate of posting. Even, if such notice is sent by certificate of posting unless it is shown to have been served on the land owner, we cannot draw a presumption that the notice has been served on the land owner. Even in the affidavit filed in support of the Writ Petition, the land owner has come up with a specific plea that no notice was served on him. The records produced by the land acquisition officer only show that the notice has been sent by certificate of posting. There is no acknowledgment or proof of service. Therefore, we are unable to draw a presumption, as suggested by the learned Special Government Pleader, to the effect that the notice had been served on the petitioner. Be that as it may. Both the Collector as well as the Government had proceeded on the footing that notice was sent by the Registered Post. This demonstrates that the proceedings have been pursued in a mechanical fashion without application of mind.

10. There is a further anomaly in the proceedings in as much as the District Collector himself, after conducting the enquiry, had concluded



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to reject the objections and had suggested to the Government that the lands

be acquired. We find that the District Collector has exceeded his brief.

Under the delegation as a delegatee, he can conduct an enquiry but, he cannot take a final decision to acquire or not to acquire. That final decision always vested in the appropriate Government.

11.A perusal of the files relating the decision to acquire also shows that the Government is merely accepted the recommendations of the District Collector without considering any material that was placed before it. We therefore, find that there was total non-application of mind on the part of the Government also in deciding to acquire the land. Even the Governments files show that the notices were served by the Registered Post.

12.It will be useful to extract the contents of the report of the Collector forwarded to the Commissioner of Land Administration dated 12.04.2007 in this regard. i) Paragraph 3 of the report reads as follows:-

*“3.The notices were sent to the land owners through **Registered Post.** Form-B Public notice was also issued on 26.01.2007 calling for objections if any from the land owners*



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/ interested persons within 30 days from the date of issue of form B notice.”

ii) Paragraph 7 reads as follows:-

*“The Chairman and Managing Director, SIPCOT has responded on 09.04.2007 to the objections raised during the enquiry under Section 3(2) of the Industrial Purpose Act. He has stated that the proposed expansion of the Industrial Complex for automobile units, is highly desirable and inevitable. In the existing complex at Oragadam, several automobile units have been allotted lands. A National Automotive Testing Research and Development Infrastructure Project has also been created in the exiting Industrial Complex.”*

Finally, the Collector also makes a request for issuance of a notification under Section 3(i). The Government reconsidered this report has by proceedings dated 28.04.2007 concluded that the recommendation of the Collector be accepted. Neither in the Collector's file nor in the Government's file, we find any reference to the objections that were made by the land owners. While the Collector refers to the remarks of the requisitioning body namely, the SIPCOT, the Government does not do that also. It merely accepts the report of the Collector.



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13.As per the scheme of the Act, after issuance of a notice Section

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3(ii), the Collector will have to collate the objections of the land owners as well as the remarks of the requisitioning body and place those records before the Government, it is for the Government to decide as to whether the acquisition should be made or not. No such exercise has been carried out in the case on hand. The Collector merely refers to the remarks of the requisitioning body namely, the SIPCOT without even touching upon the objections of the land owners, despite the fact that 14 objections were received by him. The Government, which is a decision making authority merely follows the recommendations of the Collector. Both of them surprisingly would reiterate that notices were served by registered post whereas the records show that notices were sent by certificate of posting.

14.The above facts would show that there has been callous indifference in the manner in which the decision to acquire was taken. There was total non-application on the part of the Collector to the objections of the land owners and also to the mode of service of notices under Section 3(ii).

We are therefore, unable to sustain the acquisition proceedings



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15.No doubt, the Writ Court has not gone into these questions but, considering the fact that 17 years have lapsed, since the issuance of notice for acquisition in the year 2005, we undertook the exercise of looking into the files to find out as to whether the acquisition could be sustained or not. Since we find that there was total non-application of mind on the part of the authorities in taking the decision to acquire the land under Section 3(ii). We have no other option to confirm the order of the Writ Court quashing the acquisition for different reasons. This Writ Appeal is therefore, dismissed. No costs. The saving grace now is the State's special wisdom cannot be exercised any more, since the postal department has dispensed with certificate of posting. No costs.

(R.S.M.,J.) (K.B.,J.)  
24.11.2022

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Internet:Yes/No

Index:Yes/No

Speaking/Non-speaking order



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