



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Tuesday, the Second day of August Two Thousand and Twenty Two

PRESENT:

The Hon`ble Mr.Justice S.S.SUNDAR
AND

The Hon`ble Mrs.Justice S.SRIMATHY

CMP(MD)No.6681 of 2022
in
W.A(MD)No.538 of 2019

The Managing Director
State Transport Corporation
Madurai Zone
Madurai.

... Petitioner/Appellant.

Vs

- 1 T.R.Dinakaran
- 2 The State of Tamil Nadu,
Rep.by its Secretary to Government
Transport Department, Fort St. George
Chennai-9.
- 3 The District Collector
Virudhunagar, Virudhunagar District.
- 4 The District Revenue Officer,
Virudhunagar.
- 5 The Revenue Divisional Officer
Land Acquisition Officer
Aruppukottai, Virudhunagar District.
- 6 The Tahsildar,
Arupukottai,
Virudhunagar District.

... Respondents/Respondents.

Prayer in CMP(MD)No.6681 of 2022:-

Civil Miscellaneous Petition filed under Section 151 of C.P.C., to clarify the orders passed by this Court in W.A(MD)No.538 of 2019 dated 28/07/2021 with regard to para 10(iii) regarding the direction pertaining to the application of the Act 30 of 2013.

Prayer in W.A(MD)No.538 of 2019:-

Writ Appeal filed under Clause 15 of the letters patent to set aside the order dated 23/07/2018 in W.P(MD)No.5854 of 2017 on the



file of this Court.

Prayer in WP(MD). 5854/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus or any other order or direction or writ particularly in the nature of a writ of Certiorarified mandamus calling for the records relating to the notification under section 4(1) of the land acquisition act, 1894, published in Tamilnadu Government Virudhunagar district Gazette, extraordinary, in Na.Ka.D2/22052/99 dated 10.09.2014 by the 4th respondent and quash the same in so far as it relates to acquisition of lands in RS.No.301/1(T.S.No.2/1) ward-G, Block-13 having an extent of 0.39 Acres and R.S.No.301/2 (T.S.No.2/2) Ward-G, Block-13 having an extent of 0.45 Acres in Aruppukottai Village and consequently direct the respondents to surrender the vacant possession of the lands in R.S.No.301/1 (T.S.No.2/1) Ward-G, Block-13 having an extent of 0.39 Acres and R.S.No.301/2 (T.S.No.2/2) Ward-G, Block-13 having an extent of 0.45 Acres in Aruppukottai Village, Virudhunagar District and to pay damages for use and occupation from taking over occupation of the land in the year 1977 till the date of payment of compensation or to pay the market value as on date along with damages for their authorized use and occupation to the petitioner.

ORDER:- This Petition is coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.Veerakathiravan, AAG, assisted by Mr.S.C.Herold Singh, Advocate for the Petitioner and of Mr.S.Kadarkarai for the 1st Respondent and of Mr.J.Ashok, AGP for the Respondents 2 to 6, this Court made the following order:

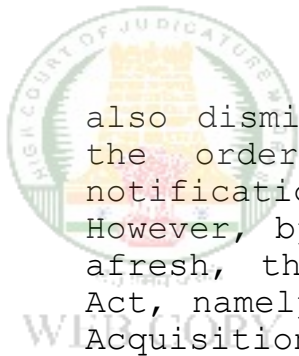
(Order of the Court was made by S.S.SUNDAR, J.)

This petition is filed for clarification of the order passed by this Court in W.A(MD)No.538 of 2019, dated 28.07.2022.

2. Heard Mr.Veera Kathiravan, learned Additional Advocate General assisted by Mr.H.C.Herold Singh, learned counsel for the petitioner, Mr.S.Kadarkarai, learned counsel for the first respondent and Mr.J.Ashok, learned Additional Government Pleader for respondents 2 to 6.

3. The petitioner Corporation initiated acquisition proceedings under the Land Acquisition Act, 1894(Central Act) originally. However, the acquisition proceedings were challenged by the first respondent/writ petitioner in W.P.No.3753 of 2000 and the acquisition proceedings was quashed on account of the fact that the award passed under Section 11 of the Central Act is not within the time stipulated under Section 11(A) of the Central Act.

3. It is admitted that the order passed in the writ petition was not finality as the writ appeal filed by the Department was



also dismissed. After quashing of the acquisition proceedings by the order in the writ petition, dated 18.12.2009, a fresh notification under Section 4(1) of the Central Act, was issued. However, by the time when the acquisition proceedings was initiated afresh, the land acquisition Central Act was repealed by the new Act, namely the Right to Fair Compensation and Transparency in Land Acquisition Act, 2013 (Act 30 of 2013). Therefore, the proceedings initiated by issuing a notification under Section 4(1) of the Central Act, dated 10.09.2014, is wholly illegal. However, the first respondent filed a writ petition in W.P(MD)No.5854 of 2017 to quash the notification issued under the Central Act, dated 10.09.2014. The said writ petition was allowed by the learned single Judge.

4. At the time of allowing the writ petition, the learned single Judge of this Court finding that the writ petitioner was not paid any compensation even though two decades had gone after initiation of acquisition in 2000, fixed the compensation at the rate of Rs.800/- per sq. ft. This was challenged by the appellant. The appellant though took possession of the land long back, refused to pay compensation and insisted that they would pay only Rs.4,95,000/- to the first respondent. Therefore, this Court passed the following order:

"10. In the light of the above,

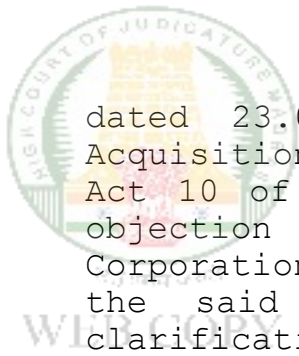
(i) the Writ Appeal is dismissed. Consequently, the writ petition is allowed and the 4(1) notification dated 10.09.2014 issued under 1894 Act is quashed.

(ii) the appellant corporation is directed to vacate and surrender vacant possession of the lands in question to the first respondent within a period of three months from the date of receipt of a copy of this judgement.

(iii) In the alternative, if the appellant corporation and the official respondents are of the view that the land is still required for them for the purpose of the bus depot, we give liberty to the official respondents and the appellant to initiate land acquisition proceedings under Act 30 of 2013 within two months from the date of receipt of a copy of this judgment. It goes without saying that if proceedings are initiated under Act 30 of 2013 and the acquisition proceedings is sustained and it travels up to the stage of payment of compensation, the compensation needs to be computed based on the value of the property on the date of notification which is to be issued."

5. Despite the fact that the Division Bench of this Court disposed of the writ appeal in W.A(MD)No.538 of 2019 by judgment dated 28.07.2021, no steps have been taken to acquire the land under Act 30 of 2013, as directed.

6. It is now admitted before this Court that the District Revenue Officer cum Acquisition Officer has issued a notification



dated 23.07.2022 under the provisions of the The Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 (Tamil Nadu Act 10 of 1999) calling upon the writ petitioner to submit his objection for acquisition of land for the appellant Transport Corporation. Since the notification had already been issued under the said Act, this miscellaneous petition is filed seeking clarification of the order.

7. The learned Additional Advocate General submitted that the Tamil Nadu State Transport Corporation is an industry and that therefore, the acquisition has to be made only under the Tamil Nadu Land Acquisition of Land for Industrial Purposes, Act 1997 (Tamil Nadu Act 10 of 1999). It is further stated that under Section 105-A of Act 30 of 2013, the said Act is not applicable to the enactments specified in Schedule-V.

8. The learned Additional Advocate General pointed out that the Tamil Nadu Acquisition for Industrial Purposes Act 1997, was included in Schedule - V. It is submitted that the land acquired for industrial purposes cannot be acquired under the Central Act namely Act 30 of 2013. The learned Additional Advocate General submitted that there is a statutory bar under Section 105-A of Act 30 of 2013, which reads as follows:

"105-A. Provisions of this Act not to apply to certain Tamil Nadu Acts or to apply with certain modifications.- (1) Subject to sub-section (2), the provisions of this Act shall not apply to the enactments relating to land acquisition specified in the Fifth Schedule.

(2) The State Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act, relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fifth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be.

(3) A copy of the notification proposed to be issued under sub-section (2) shall be laid in draft before the Legislative Assembly of the State of Tamil Nadu and if the Legislative Assembly agrees in disapproving the issue of the notification or the Legislative Assembly agrees in making any modifications in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by the Legislative Assembly. - Tamil Nadu Act 1 of 2015, S.2 (w.r.e.f. 1-1-2014) "



9. This Court is unable to accept the submissions of the learned Additional Advocate General not only on merits but also on moral principles. It is admitted that the State Government proceeded to acquire land under the Central Act in the year 2014 for the same purpose. Only after noticing that the notification issued under Section 4(1) of the Act was after the Act was repealed by the new Act, namely, Act 30 of 2013 Central Act, the proceedings were dropped. Therefore, it is not now open to the appellant to once again seek clarification of the order to enable them to invoke the provisions of the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997, after a lapse of one year from the date of order especially when the order of the Division Bench was also upheld by the order of the Hon'ble Supreme Court by order, dated 10.12.2021. Further, the delay in initiating proceedings to acquire the land as directed by this Court is not explained. After issuing a notification under the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997, this petition is filed to clarify the order of this Court, dated 28.07.2021.

10. One of the submissions of the learned Additional Advocate General is that Section 105-A of Act 30 of 2013, bars initiating proceedings under the Central Act when the acquisition is for industrial purposes. Section 105 and 105-A of the Central Act has different objects. As per Section 105, the Central Government is expected to issue a notification within one year from the date of commencement of Central Act ie., on 01.01.2014. The notification to the effect that the land acquisition under the enactments specified under the Fifth Schedule should provide compensation under the Central Act namely Act 30 of 2013. By the said amendment, Section 105-A was introduced for this purpose. Sub-section 2 of 105-A is nothing but reproduction of sub-section 3 of Section 105. Therefore, the object of Section 105-A, is regarding requirement of issuing notification by the State Government within one year from the date of commencement of the Act with a direction that the land acquisition under the enactments which are included in Schedule - V should provide specific provisions that do not reduce the compensation payable under the Central Act.

11. Section 105-A cannot be interpreted to mean that it does not permit the State Government to acquire land for industrial purposes under Act 30 of 2013(Central Act). Under Section 3(za) of Act 30 of 2013, "public purpose" means the activities specified under sub-section (1) of Section 2. Sub-section 1 of Section 2 of Act 30 of 2013, reads as follows:

2.Application of Act - (1) The provisions of this Act relating to land acquisition, compensation, rehabilitation and resettlement, shall apply, when the appropriate Government acquires land for its own use, hold and control, including for Public Sector Undertakings and for public



purposes, and shall include the following purposes, namely:-

(a) for strategic purposes relating to naval, military, air force, and armed forces of the Union, including central paramilitary forces or any work vital to national security or defence of India or State police, safety of the people; or

(b) for infrastructure projects, which includes the following, namely:-

(i) all activities or items listed in the notification of the Government of India in the Department of Economic Affairs (Infrastructure Section) number 13/6/2009-INF, dated the 27th March, 2012, excluding private hospitals, private educational institutions and private hotels;

(ii) projects involving agro-processing, supply of inputs to agriculture, warehousing, cold storage facilities, marketing infrastructure for agriculture and allied activities such as dairy, fisheries, and meat processing, set up or owned by the appropriate Government or by a farmers' cooperative or by an institution set up under a statute;

(iii) project for industrial corridors or mining activities, national investment and manufacturing zones, as designated in the National Manufacturing Policy;

(iv) project for water harvesting and water conservation structures, sanitation;

(v) project for Government administered, Government aided educational and research schemes or institutions;

(vi) project for sports, health care, tourism, transportation or space programme;

(vii) any infrastructure facility as may be notified in this regard by the Central Government and after tabling of such notification in Parliament;

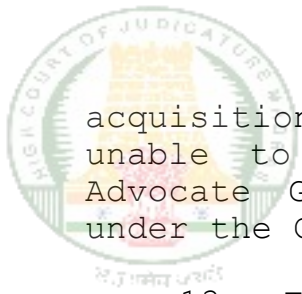
(c) project for project affected families;

(d) project for housing for such income groups, as may be specified from time to time by the appropriate Government;

(e) project for planned development or the improvement of village sites or any site in the urban areas or provision of land for residential purposes for the weaker sections in rural and urban areas;

(f) project for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by the Government, any local authority or a corporation owned or controlled by the State.

12. Therefore, sub-section 1 of Section 2 of the Central Act is amended to cover the acquisition for any purpose including the



acquisition for any industrial purpose. Therefore, this is unable to countenance the arguments of the learned Additional Advocate General that the petitioner Corporation cannot proceed under the Central Act as it was directed by this Court.

13. The present notification issued under the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997, is dated 23.07.2022. Therefore, to save further time, the petitioner Corporation is directed to resort to the provisions of the Central Act as expeditiously as possible to avoid payment of higher compensation due to appreciation of value. This petition is therefore dismissed.

Sd/-

Assistant Registrar(AE)

// True Copy //

26/08/2022

Sub Assistant Registrar(CS)

TO

1. The Secretary to Government
Transport Department, Fort St. George, Chennai - 9.
2. The District Collector,
Virudhunagar, Virudhunagar District.
3. The District Revenue Officer,
Virudhunagar.
4. The Revenue Divisional Officer
Land Acquisition Officer, Aruppukkottai.
5. The Tahsildar,
Aruppukkottai, Virudhunagar District.
6. The Managing Director,
State Transport Corporation
Madurai Zone, Madurai.
7. The Special Govt. Pleader,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.S.C. HEROLD SINGH, Advocate (SR-35488[F] dated 03/08/2022)

+1 CC to M/s.S.KADARKARAI, Advocate (SR-35704[F] dated 03/08/2022)

+1 CC to M/s.SPL.GP (SR-35668[F] dated 03/08/2022)

ORDER DATED : 02/08/2022

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ORDER

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CMP(MD)No.6681 of 2022
in W.A(MD)No.538 of 2019
Giving direction and etc.
as stated within.

TR(26.08.2022) 7P 11C

<https://www.mhc.tn.gov.in/judis>