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W.P.No.21736 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2023

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.21736 of 2023

and

W.M.P.No.21093 2023

J.Nagammal

... Petitioner

Vs.

1. The State Industries Promotion Corporation Of Tamilnadu,
(SIPCOT), Rep By Its Managing Director,
19-A Rukmani Lakshmipathy Road,
Egmore, Chennai-600 008.

2. The Land Acquisition Officer/
District Revenue Officer (L.A),
SIPCOT Maanellur Phase III,
No 26, Samarapuri Nagar,
Kavaraipettai, Thiruvallur.

... Respondents

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Mandamus, forbearing the respondents from proceeding with acquisition of lands belonging to the petitioner situated in S.No. 309/2, 309/4A, 309/4C, 309/7, 310/1, 310/3, 310/4A2, 310/7, Sanaputhur Village pursuant to public notice dated 19.05.2023 bearing No. Na.Ka.En 4 / 2023 / A1 / Tha. Ma.Va. Aa / Thiruvallur under



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Section 3 (2) of the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 published on 24.05.2021 in Dailythanthi newspaper and direct the respondents to obtain prior environmental clearance under the EIA Notification, 2006, thereafter conduct enquiry under Section 3 (2) Considering the EIA reports, objections of the Petitioner, pass reasoned orders before publication of Notification under Section 3 (1) of the Tamil Nadu Acquisition of Land for Industrial purposes Act 1997 for the 1st Respondents proposed industrial estate in Sanaputhur village and surrounding villages in Gummudipoondi Taluk, Thiruvallur District

For Petitioner	: Mr.Yogeswaran
For Respondents	:
(for R1 & R2)	: Mr.J.Ravindran, Additional Advocate General, assisted by Mr.G.Krishna Raja, Additional Government Pleader

ORDER

The writ on hand has been instituted questioning the validity of the notice dated 19.05.2023, issued under Section 3(2) of the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997, published on 24.05.2021. Further the petitioner sought for to direct the respondents to obtained prior environmental clearance under the E.I.A. Notification, 2006 and thereafter, conduct an enquiry under Section 3 to consider the E.I.A.



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reports, objections of the petitioner, and pass reasoned orders before publication of notification under Section 3(1) of the Tamil Nadu Acquisition of Land for Industrial Purposes, 1997.

2. It is not in dispute that the process of acquisition has already been commenced. The lands belonging to the petitioner is sought to be acquired. Under Section 3(2) of the Act, notice was issued which was published on 24.05.2023. The grievance of the writ petitioner is that an enquiry has already been conducted without obtaining prior environmental clearance under the E.I.A. Notification 2006, which is mandatory.

3. The learned counsel for the petitioner mainly contended that the E.I.A. notification dated 14.09.2006, unambiguously stipulates that clearance from the Ministry of Environment and Forest is mandatory for the purpose of continuing the acquisition proceedings if any initiated for industrial purpose under Tamil Nadu Acquisition of Land for Industrial Purposes Act. The learned counsel for the petitioner reiterated that no such environmental clearance was obtained as required under the E.I.A. notification and thus, the enquiry conducted is illegal and consequently notice is to be set aside.



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4. In support of the contentions, the learned counsel for the petitioner relied on the three judgments and their respective paragraphs are extracted as under:

(i) The case of ***Karnataka Industrial Areas Development Board Vs. C.Kenchappa and others***, reported in **2006 (6) SCC 371**:

“100. The importance and awareness of environment and ecology is becoming so vital and important that we, in our judgment, want the appellant to insist on the conditions emanating from the principle of “Sustainable Development”:

(1) *We direct that, in further, before acquisition of lands for development, the consequence and adverse impact of development on environment must be properly comprehended and the lands be acquired for development that they do not gravely impair the ecology and environment.*

(2) *We also direct the appellant to incorporate the condition of allotment to obtain clearance from the Karnataka State Pollution Control Board before the land is allotted for development. The said directory condition of allotment of lands be converted into a*



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mandatory condition for all the projects to be sanctioned in future.”

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*(ii)The case of **Hanuman Laxman Aroskar Vs.Union of India**,
reported in **2019 (15) SCC 401**:*

“157. The 2006 notification must hence be construed as a significant link in India's quest to pursue SDGs. Many of those goals, besides being accepted by the international community of which India is a part, constitute a basic expressing of our own constitutional value system. Our interface with the norms which the international community has adopted in the sphere of environmental governance is hence as much a reflection of our own responsibility in a context which travels beyond our borders as much as it is a reflection of the aspirations of our own Constitution. The fundamental principle which emerges from our interpretation of the 2006 Notification is that in the area of environmental governance, the means are as significant as the ends. The processes of decision are as crucial as the ultimate decision. The basic postulate of the 2006 Notification is that the path which is prescribed for disclosures, studied, gathering data, consultation and appraisal is designed in a manner that would secure decision making which is transparent, responsive and inclusive.”



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(iii) The case of **Project Director Vs. P.V.Krishnamoorthy**, reported in 2021 (3) SCC 572:

“ 100. Reverting to the dictum of this Court in *Karnataka Industrial Areas Development Board [Karnataka Industrial Areas Development Board v. C. Kenchappa, (2006) 6 SCC 371]* , it must be understood to mean that the declaration under Section 3-D regarding acquisition of notified land, be made only after environmental/forest clearance qua the specific land is granted. To put it differently, the necessity of prior environmental/forest clearance would arise only if finally, the land in question (site specific) is to be notified under Section 3-D, as being acquired for the purposes of building, maintenance, management or operation of the national highway or part thereof. Such interpretation would further the cause and objective of environment and forest laws, as also not impede the timeline specified for building, maintenance, management or operation of the national highway or part thereof, which undeniably is a public purpose and of national importance. This would also assuage the concerns of the landowners that even if eventually no environment permission or forest clearance is accorded, the land cannot be reverted to the original owner as it had de jure vested in the Central Government



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upon issue of notification under Section 3-D of the 1956 Act and no power is bestowed on the Central Government under this Act to withdraw from acquisition.

101. We are conscious of the fact, as has been rightly argued by the appellants authorities, that it is essential to issue a declaration under Section 3-D of the 1956 Act within a period of one year from the date of publication of the notification under Section 3-A in respect of the notified land, failing which notification under Section 3-A ceases to have any effect. It is possible that whilst pursuing the proposal for environmental/forest clearance after notification under Section 3-A, some time may be lost, even though the process under the 1956 Act for acquisition of the land had become ripe for issue of declaration of acquisition under Section 3-D. It is also true that time spent for obtaining environmental clearance or permission under the forest laws has not been explicitly excluded from the period of one year to be reckoned under Section 3-D(3) of the Act. The extension of time or so to say suspension of time is only in respect of period during which the action of the proceedings to be taken in pursuance of notification under Section 3-A(1) is stayed by an order of Court. In other words, there is no express provision in the 1956 Act, which excludes the time spent by the Central



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Government or the executing agency in obtaining prior environmental clearance or permission under forest laws, as the case may be. To get over this predicament, by an interpretative process and also by invoking plenary powers of this Court under Article 142 of the Constitution, we hold that the dictum in para 100(1) of Karnataka Industrial Areas Development Board [Karnataka Industrial Areas Development Board v. C. Kenchappa, (2006) 6 SCC 371] , shall operate as a stay by an order of the Court for the purposes of Section 3-D(3) in respect of all projects under the 1956 Act, in particular for excluding the time spent after issue of Section 3-A notification, in obtaining the environmental clearance as well as for permissions under the forest laws. Only this approach would further the cause of environment and forest laws, as also, the need to adhere to the timeline specified under Section 3-D(3) for speedy execution of the work of construction of national highway, which is also for a public purpose and of national importance. In other words, balancing of competing public interest/public purposes need to be kept in mind as being the only way forward for accomplishing the goal of sustainable development.

102. The argument of the writ petitioners that the expression “shall” occurring in Section 3-D(1) be



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interpreted as “may”, though attractive on the first blush, deserves to be rejected. If that interpretation is accepted, it would render the efficacy of Section 3-D(3) of lapsing of the acquisition process otiose. It is a mandatory provision. Instead, we have acceded to the alternative argument to give expansive meaning to the proviso in Section 3-D(3) of the 1956 Act by interpretative process, including by invoking plenary powers of this Court under Article 142 of the Constitution to hold that the dictum of this Court in Karnataka Industrial Areas Development Board [Karnataka Industrial Areas Development Board v. C. Kenchappa, (2006) 6 SCC 371] be regarded as stay granted by the Court to all notifications issued under Section 3-A of the 1956 Act until the grant or non-grant of permissions by the competent authorities under the environmental and forest laws, as the case may be, including until the stated permissions attain finality. In other words, time spent by the executing agency/Central Government in pursuing application before the authorities concerned for grant of permission/clearance under the stated laws need to be excluded because of stay by the Court of actions (limited to issue of notification under Section 3-D), consequent to notification under Section 3-A. Thus, the acquisition process set in motion upon issue of Section 3-A notification can go on in parallel until the stage of publication of notification



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under Section 3-D, which can be issued after grant of clearances/permissions by the competent authority under the environment/forest laws and attaining finality thereof.”

5. Relying on the above judgments, the learned counsel for the petitioner reiterated that the enquiry is to be conducted after obtaining necessary clearance from the Ministry of Environment and Forest for the purpose of proceeding with the acquisition process in the manner known to law.

6. The learned Additional Advocate General, appearing on behalf of the respondents, made the submission that the competent authorities will proceed with the acquisition by scrupulously following the procedures as contemplated under the Act. All necessary documentation will be done prior to the enquiry to continue the further proceedings.

7. This being the assurance made and presently as no further progress has been undertaken in the land acquisition proceedings, it becomes unnecessary to consider the other grounds raised by the petitioner. It is made clear that the respondents are bound to follow the



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mandatory requirements as contemplated for acquiring land for industrial purposes under the Tamil Nadu Acquisition of Land for Industrial Purposes Act 1997. The petitioner are at liberty to raise their objections by availing the opportunities to be provided by the competent authorities under the provisions of the Land Acquisition Act.

8. With these clarifications, the writ petition stands **disposed of** .No costs. Consequently, connected miscellaneous petition is closed.

(sha)
Index : Yes
Speaking Order
Neutral Citation : Yes

01.08.2023

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S.M.SUBRAMANIAM. J.,

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