



W.A.No.3368 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:22.08.2023

Delivered on: 25.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.A.No.3368 of 2019

and

C.M.P.No.21624 of 2019

G.Mohamed Hussain Malim
S/o. M. Gulam Kader Malim

.. Appellant

Vs.

Government of Puducherry,
represented by Special Secretary to Government,
Revenue and Disaster Management
Department, Puducherry.

.. Respondent

Prayer:- Appeal filed under Clause 15 of Letter Patent praying to set aside
the order passed by this Court in W.P.No.25187 of 2010 dated 05.09.2019.

For Appellant : Mr. V. Raghavachari, Senior Counsel
for Tmt. V. Srimathi.

For Respondent : Mr. A. Tamilvanan,
Additional Government Pleader
[Puducherry].



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JUDGMENT

(Judgment of the Court was made by P.B.BALAJI,J.)

The unsuccessful writ petitioner is the appellant before us.

2. The appellant filed W.P. No.25187 of 2010 seeking issuance of a writ of certiorari to quash the notification in G.O.Ms.No.36 dated 22.09.2010, published in Dinakaran issue dated 25.09.2010 in so far as the appellant's land is concerned, namely land comprising Survey No.9/1B2, Akkaravattam Village, Karaikal, Taluk, (Sl.No.131). The appellant's case before the Writ Court was that he purchased the property comprising survey No.9/1B/2, measuring an extent of 2.03.60 hectares, in and by sale deed dated 09.10.2003 and that the said land was not agricultural in character but only a house site. Permission was sought for laying out the site and the Additional Director, Karaikal Planning Authority had also issued a No Objection Certificate on 27.08.2004 for forming the residential layout. Subsequently, The Member Secretary, Karaikal Planning Authority in and by proceedings dated 13.09.2005 also granted an interim approval for the layout. Both the Public Works Department as well as the Revenue Department clarified that the subject lands do not fall in the zone of the proposed western by-pass road. In fact the Revenue Department, in and by



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a communication dated 29.11.2004 also clarified that the proposed layout was not covered under any Land Acquisition Scheme or hit by the Land Reforms Act. In compliance with conditions for granting the layout approval, the appellant also executed a Gift Deed on 17.10.2008 in favour of the Executive Engineer (Electricity Department), Karaikal and another Gift Deed dated 31.03.2009 in favour of the Karaikal Municipal Council. Thereafter the Planning Authority also issued a final approval of the layout on 06.05.2009, subsequent to which the appellant started selling the plots in the layout. At that point of time, the appellant was shocked to come across the acquisition notification in G.O.Ms.No.36 dated 22.09.2009 which included the appellant's property at S.No.131. The appellant came to know that 5A enquiry contemplated under the Land Acquisition Act was also dispensed with by invoking the urgency clause. The appellant therefore sought for information with regard to alleged acquisition and on 04.08.2010, the Public Works Department confirmed that the by-pass road project was only in a preliminary stage and that no funds were also set apart for the said project for the financial year 2010-11. It was also admitted by the Public Welfare Department that the western by-pass road project was initially commenced in the year 1995.



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3. It is the further case of the appellant that originally the alignment of the bypass road was different and only under such circumstances, the approval for his layout had been sanctioned. However, obliging certain vested interested persons, the authorities have changed the alignment of the road and caused the impugned notification and it is the specific case of the appellant that he had not sold 33 plots in the layout and he was in physical possession of the same. The main ground of challenge to the acquisition proceedings was that the very invocation of the urgency clause under **Section 17 of Land Acquisition Act, 1894** was malafide, arbitrary and illegal, especially when the project was initiated way back in 1995 and the authorities had confirmed as late as in 2010 that no funds have been allocated and therefore, the dispensation of Section 5A enquiry under the guise of invoking the urgency clause under Section 17 was clearly erroneous and entire proceedings therefore stood vitiated.

4. The respondent filed a counter affidavit stating that the land acquisition proceedings were initiated on 22.09.2010 and all information received by the appellant before the said date was irrelevant. It was also



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stated that Section 6 declaration was also issued on 18.02.2011 and four modes of publication were also duly followed. According to the respondent, possession of the lands were also taken on 30.10.2013 and the urgency clause was invoked considering public interest for facilitating smooth flow of traffic in Karaikal. It was also contended that 60% of the construction of road work was completed and 80% of the compensation was also paid to the land owners who produced the original documents. It is the further contention of the respondent that six of the purchasers of plots from the appellant also received compensation. Under such circumstances, the respondent prayed for dismissal of the writ petition.

5. The Writ Court, after considering the rival contentions put forth by the appellant and respondent, dismissed the writ petition mainly on the ground that 80% of the compensation had been paid to the land owners who produced the original deeds; 60% of the construction work was already over and the necessity of a western bypass road was formed to essential to mitigate the traffic problem.



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6. Aggrieved by the dismissal of the Writ Petition, the appellant has challenged the order of the Writ Court on the grounds that the Writ Court has not appreciated the fact that the invocation of Section 17 was a colourable exercise of power; though the scheme was framed in 1995, acquisition proceedings were initiated only in the year 2010; the lands of the appellant were not initially covered under the scheme; the averments set out in the counter affidavit of the respondent and relied on by the Writ Court were not substantiated by production of records; the road had already been formed and was being utilised by the public and there was no traffic congestion as alleged by the respondent.

7. We have heard Mr.V.Raghavachari, Senior Counsel appearing for the Appellant and Mr.A.Tamilvanan, Additional Government Pleader, Pondicherry for the respondent. We have also perused the records.

8. The following facts are admitted:

- (i) The scheme for formation of a bypass road was initiated in the year 1995.
- (ii) Only in 2010, acquisition proceedings were initiated.



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- a) Section 4(1) Notification was issued on 22.09.2010.
- b) Section 6 Declaration was made on 18.02.2011.
- c) Possession is said to have been taken on 30.10.2013.
- d) Award was passed only on 27.11.2020.

(iii) In the interregnum period, the appellant's request for layout approval was processed and also sanctioned after requiring gifts deeds to be executed by the appellant, in compliance with layout approval conditions.

(iv) Enquiry contemplated under Section 5A was dispensed with on the ground that the urgency clause under Section 17 of the Land Acquisition Act 1894 was invoked.

(v) Six purchasers of the plots from the appellant opted to receive compensation.

9. During the course of arguments, the Learned Senior Counsel for the appellant vehemently contended that the appellant continued to remain in physical possession and the statement of the respondent in the counter affidavit before the Writ Court was totally contrary to fact and truth. We therefore called upon the respondent to file an additional affidavit. Accordingly, the respondent have also filed an additional affidavit dated 04.08.2023. It is seen from the said additional affidavit that the respondent clearly admitted to the following:



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“the compensation for the land retained by the land owners has not been distributed and apportioned. The road work in second phase of formation of western buy-pass, Karaikal in which the portion of land retained by the appellant covers, has not been taken so far.....”

10. It is further stated that the land sought to be acquired from the appellant was indispensable for completion of the project. It is also stated that the Phase-I, four lane road for the length of 2.98 kms with a width of 20 meters has been completed and the western bypass road Phase-I was inaugurated on 28.01.2021. The Phase -II work was held up because of the injunction in the present case.

11. From the additional affidavit, we are able to see that the stand taken by the respondent before the Writ Court was not factual and correct. The details of the Phase - I and Phase – II of the bypass road were not brought to the notice of the Writ Court. Admittedly, it is seen from the additional affidavit that, the road work has not even commenced in so far as the Phase-II of the western by-pass road is concerned and that possession of the lands were also not taken over from the appellant.



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The Writ Court was given a picture that 60% of the work had been completed and only 40% remained and that 80% of the compensation had also been paid to various land owners. All these can at best relate and pertain only to Phase - I of the bypass road and not Phase – II under which the acquisition is sought to be made in respect of the appellant's lands.

12. Be that as it may, the main ground of attack on the acquisition proceedings is the invocation of the urgency clause and thereby dispensing with the otherwise mandatory enquiry under Section 5A of the Land Acquisition Act. The only reason which has been given by the respondent for invoking the urgency clause is that the decision to form a bypass road was in exigency of public interest for easing traffic in Karaikal. The Learned Senior Counsel for the appellant also points out that even though the State is vested with an absolute right and discretion to invoke the urgency clause, it cannot be done in a routine manner and even otherwise the facts of the given case, the very fact that the scheme formulated in 1995 did not take any shape whatsoever until 2010 by itself would establish the fact that there was no urgency and consequently the invocation of the



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urgency clause was totally unjustified and erroneous. He would also contend that if the Section 5A enquiry had been held, the appellant would have had ample opportunity to put forth all his objections, especially when the state authorities themselves have given approval for his layout and the Public Works Department as well as the Revenue Department have also confirmed that there is no proposal for acquiring the appellant's land for the purposes of the western bypass road.

13. The Learned Senior Counsel for the appellant also relies on the following judgments:

- (i) ***State of Punjab & Another vs Gurdial Singh and Others* reported in (1980) 2 SCC 471.**
- (ii) ***Darshan Lal Nagpal (Dead) By Lrs vs Government of NCT Delhi & Others* reported in (2012) 2 SCC 327.**
- (iii) ***Hamid Ali Khan (D) through Lrs & Another vs State of U.P. & Others* reported in 2021 SCC Online SC 1115.**
- (iv) ***Delhi Airtech Services Pvt.Ltd and Another vs State of U.P. & Another* reported in 2022 SCC Online SC 1408.**
- (v) ***Essco Fabs pvt. Ltd Vs Panipat Teachers & others* reported in 2009 (2) SCC 377**
- (vi) ***Mahendar vs State of Haryana* reported in 2009 (14) SCC 281**



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(vii)Anand Singh & another vs State of Uttar Pradesh reported in 2010 (11) SCC 242

(viii)Bharat Sewak Samaj vs Lt.Governor & others reported in 2012 (12) SCC 675.

Placing reliance on the above judgments of Hon'ble Supreme Court, Mr.V.Ragavachari, Learned Senior Counsel would state that it is a fit case where the Writ Court ought to have interfered since the invocation of the urgency clause was malafide and in bad faith.

14. Per contra, Mr. A.Tamilvanan, Additional Government Pleader appearing for the State of Pondicherry would state that the appellant's lands are very much required for Phase – II of the western bypass road and the Phase - I was taken up at whopping cost of Rs.21.20 crores, apart from the acquisition cost to the tune of Rs.73.97 crores and if the appellant's lands are not acquired, the alignment of Phase-II would get disturbed, resulting in significant loss to the Government Exchequer. He would also place reliance on the Judgment of the Hon'ble Supreme Court in ***First Land Acquisition Collector & Others Vs. Nirodhi Prakash Gangoli& Another reported in (2002) 4 SCC 160***, where the Hon'ble Supreme



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Court had held that the burden of proof lies on the person alleging malafides and as long as the purpose of acquisition and urgency to acquire continued to exist, exercise of power under Section 17 cannot be held to be malafide.

15. Section 5A of the Land Acquisition Act, 1894 is a valuable right vested on the land owner and it provides an opportunity for the land owner to object to the acquisition and therefore dispensing with the procedure under Section 5A and by invoking the emergency provision under Section 17 of the Land Acquisition Act cannot be as a matter of course and there must be real and grave emergency that warrants invocation of the power under Section 17 of the Act. Here, the question of urgency, though being a matter of subjective satisfaction of the State, viewed and considered in the lights of the given facts of the present case clearly evidences that this was not a fit case for invoking Section 17 and thereby dispensing with Section 5A enquiry, thereby denying a valuable right to the appellant.

16. We have already noticed that the proposal to form the bypass



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road was admittedly taken way back in the year 1995. Thereafter, there had been total silence on the part of the respondent and only in the year 2010, the Section 4 (1) notification came to be issued. In view of the invocation of the urgency clause, the Section 5A enquiry was not conducted and Section 6 declaration came to be made on 18.02.2011. Strangely, it is now admitted by the respondent in the additional affidavit that the award came to be passed on 27.11.2020 only.

17. The Hon'ble Supreme Court in ***Delhi Airtech Services Pvt.Ltd and Another vs State of U.P.& Another*** reported in ***2022 SCC Online SC 1408*** has held that even if Section 17 is invoked by the State, even then Section 11-A would apply and if the award is to be made within the prescribed time. In the very same judgment, the Hon'ble Supreme Court also reiterated that non-compliance of requirement of Section 17(3A) would entitle the land owners to take benefit of Section 11-A of the Act. Though the respondent contend that Section 17(3A) proceedings were passed on 30.10.2013, there is nothing on record to show that there was a tender, leave alone the payment of 80 % of the compensation to the



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appellant as mandated under the statute. Therefore, as held by the Hon'ble Apex Court, in such cases, the land does not vest with the Government. Further, it is also now placed on record that the award was passed only 27.11.2020. In terms on Section 11A, it ought to have been passed on or before 17.02.2013, that is within two years from the date of Section 6 declaration. On this ground also the acquisition proceedings have clearly lapsed.

18. The Hon'ble Supreme Court in ***State of Punjab & Another vs Gurdial Singh and Others***, reported in (1980) 2 SCC 471 held that:

“acquisition of man’s property is a serious matter and denying of a hearing would amount to constitutional anathema and that real urgency is only where public interest does not brook even the minimum time needed to give a hearing to the land owners. A slumbering process, pending for years and suddenly exciting itself into immediate forcible taking, makes a travesty of powers and the



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resort to Section 17 in such cases is evidence of length to which the executive would go to come to terms with the men wielding political power.”

The observation of the Hon’ble Supreme Court can be squarely applied to the facts of the present case. Having conceived the project way back in the year 1995 for no germane urgency, land acquisition proceedings were taken only in the year 2010, that too invoking the emergency clause and there by depriving the appellant of a fair hearing to object the acquisition proceedings.

1. In ***Hamid Ali Khan (D) through Lrs & Another vs State of U.P& Others*** reported in ***2021 SCC Online SC 1115***, the Hon’ble Supreme Court held that the subjective opinion or satisfaction of the authority cannot be whimsical or capricious, especially the power under Section 17 is discretionary and such discretion must be exercised with due care.
2. In ***Essco Fabs pvt. Ltd Vs Panipat Teachers & others*** reported in ***2009 (2) SCC 377***, the Hon'ble Apex Court held that sub-section (4) of Section 17 was an enabling provision and even



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in such cases of invocation of the same, the owner of the property should not be deprived his right to property and possession without following the procedure of law unless the urgency is of such a nature that the government is convinced that holding of 5A enquiry or hearing of objections would be detrimental to public interest.

3. *In Mahendar vs State of Haryana reported in 2009 (14) SCC 281, the Apex Court held that the discretionary power of the government under Section 17(4) being an exception to Section 5A deserves strict construction and scrupulous compliance.*
4. *Anand Singh & another vs State of Uttar Pradesh reported in 2010 (11) SCC 242, the Hon'ble Supreme Court held that since the urgency provision under Section 17 eliminateenquiry under Section 5A, it should be invoked only in deserving cases of real urgency and the government should apply its mind in the aspect of urgency also be able to justify that the urgency was based on considerations which had reasonable nexus to the purposes for which if it was sought to be exercised and that mere phrasology*



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of urgency in the notification was insufficient. The Apex Court
It was held that pre – notification and post- notification delay
would have material barring on the issue when there was no
material justifying the urgency necessitating the elimination of
enquiry under Section 5A.

5. In *Bharat Sewak Samaj vs Lt.Governor & others reported in 2012 (12) SCC 675* finding that there was no evidence to show that the project was being executed under emergency basis and further held that there was no justification in invoking Section 17 especially when Section 5A is a statutory embodiment of the rule of Audi Alteram Partem. The Apex Court held that unless there are compelling reasons, the State cannot invoke the urgency provisions and dispense with the compliance and mandate of Section 5A.

6. In *Darshan Lal Nagpal (Dead) By Lrs vs Government of NCT Delhi & Others* reported in (2012) 2 SCC 327, the Hon'ble



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Supreme Court held that the urgency provision can be invoked only where even a small delay of few weeks or months would frustrate the public purpose for which the land is sought to be acquired and not otherwise and the court is entitled to enquire as to the existence of the genuine urgency which has to be satisfied by acceptable evidence adduced by the state authorities. The Hon'ble Supreme Court also held that the longtime gap between initiation of the proposal and issue of notification cannot be overruled. In the instant case we have already discussed the huge and unexplained delay between the years 1995 and 2010. Considering this in this backdrop of the emergency power under Section 17 having been invoked, it cannot be countenanced for any reason whatsoever.

19. We also refer to the decision of the Hon'ble Supreme Court in ***Union of India & Others vs Krishan Lal Arneja & Others*** reported in ***(2004) 8 SCC 453***, where the Hon'ble Supreme Court held that unless there is any real and genuine emergency and non-invocation of the urgency clause would defeat the very purpose of the acquisition, the urgency



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provision under Section 17 cannot be invoked. The Hon'ble Supreme Court also held that non-compliance of Sub section 3A of Section 17 would vitiate the entire acquisition proceedings and that failure to take timely action for acquisition would disentitle the authorities to invoke urgency clause to the detriment to the land owner.

20. From the forgoing discussions we hold that the acquisition proceedings are vitiated for the following reasons.

- (i) The invocation of Section 17 of the Land Acquisition Act had not been shown or proved to be warranted on the facts of the present case and having conceived the project in 1995, the State did not take any steps whatsoever to acquire the land until 2010.
- (ii) In so far as the appellant's lands are concerned, compliance of Section 17(3A) is not proved or established by any material whatsoever, especially when it is the categorical case of the appellant that there was not even a tender of 80% of the compensation for the proposed acquisition. This fact is also further confirmed by the information received in public domain by the



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appellant from various authorities which we have already discussed hereinabove.

(iii) Delay in passing the award is yet another ground for which the entire acquisition proceedings have to necessarily go since after Section 6 declaration on 18.02.2011, the award came to be passed only on 27.11.2020 which is a clear violation of Section 11A of the Land Acquisition Act.

21. In so far the decision of the Hon'ble Apex Court in *(2002) 4 SCC 160* on which the reliance is placed on by the Counsel for the respondent, though the Hon'ble Supreme Court has held that the exercise of power under Section 17 is a matter of subjective satisfaction of the Appropriate Government and the urgency provision can be challenged only on the grounds of non-application of mind and mala fides. We find, from the facts of the said case that the requirement of the lands was for occupation by students of National Medical College, Calcutta and there have been considerable delay in acquiring the premises in question and the existence of the urgency was found to be writ large on the facts of the said case and therefore the court did not choose to interfere with the invocation of emergency provision.



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22. However, on the facts of the present case which we have already discussed and held that there has been inordinate and unexplained delay which has defeated the very purpose of invoking Section 17. Even though the appellant had also alleged malafides, he has not been able to establish the allegation by placing relevant materials on record. Despite the same, for the reasons that the land acquisition proceedings are vitiated on the grounds of delay, hit by Section 11A; non-compliance of Section 17 (3A) and also failure of the State to justify the invocation of emergency provision under Section 17 clearly stare at the face of the respondent. Consequently, the appellant is entitled to succeed.

23. We have already found that true facts were not placed before the Writ Court and accepting the stand of the respondent set out in the counter affidavit before the Writ Court, the writ petition came to be dismissed.

24. In so far as the contentions of the respondent, the mere fact that some of the plot purchasers from the appellant opted to receive compensation, will not militate against the appellant, especially for the various reasons we have discussed in detail hereinabove. In any event, we



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make it clear that the prayer in Writ Petition itself is only to quash the impugned proceedings in so far as the appellant's lands are concerned. Even though many plots have been sold in the layout and six of such purchasers opted to receive compensation, excepting the appellant who claims protection in so far of the unsold plots are concerned, none of the other plot purchasers have opted or chosen to challenge the acquisition proceedings. Therefore, we make it clear that land acquisition proceedings pertaining to the appellant's lands alone are quashed and the other third parties/plot purchasers even if they have purchased from the appellant, would not be entitled to take benefit of this judgment and seek to challenge the land acquisition proceedings hereafter, belatedly.

25. In view of the elaborate discussions made hereinabove, we are constrained to interfere with the order of the Writ Court. Consequently, the Writ Appeal is allowed and the order of the Writ Court is set aside.

26. We however make it clear that the quashing of the land acquisition proceedings in the impugned G.O.Ms.No.36 dated 22.09.2009 is limited to the appellant's lands comprising Survey No.9/1B2



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Akkaravattam Village, Karaikal, Taluk, (Sl.No.131) alone. It is needless to state that if really the respondent are in dire need of the appellant's land for formation of the Phase-II of Western Bypass Road, it is always open to the respondent to initiate appropriate land acquisition proceedings, in accordance with law.

27. There shall be no order as to costs. Consequently the connected miscellaneous petition is closed.

(D.K.K.J) & (P.B.B.J)
25.09.2023

Internet : Yes
Index: Yes/No
Neutral Citation: Yes/No
mjs

To

Government of Puducherry,
represented by Special Secretary to Government,
Revenue and Disaster Management Department, Puducherry.



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D.KRISHNAKUMAR, J.,
and
P.B.BALAJI, J.

(mjs)

Pre-delivery judgment in
W.A.No.3368 of 2019

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