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W.A.No.3696 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE P. B.BALAJI

W.A.No.3696 of 2019 and

CMP No.23512 of 2019

1. The Secretary to Government,
Industries Department,
Fort St. George, Chennai 600 009.

2. The District Collector, Kancheepuram District,
Kancheepuram.

... Appellants

Vs.

1.M/s V.G.P.Housing (P) Ltd.,
Rep. by its Director, Mr.V.G.P.Rajadas,
at VGP square, Saidapet, Chennai 600 015.

2. The Managing Director, SIPCOT,
19-A, Rukmani Lakshmipathy Road,
Egmore, Chennai 600 008 (given up)

... Respondents

Prayer: Writ Appeal filed under Section 15 of Letters Patent to set aside the order passed by this Court in W.P.No.2055 of 2010 dated 10.07.2012



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For Appellant : Mr.A.Selvendran, Spl.Govt.Pleader

For Respondents : Mr.K.Balamurali

for Mr.Sivakumar & Suresh for R1

Mrs.Sundharshana Sundar,

Standing Counsel for R2

JUDGEMENT

(Judgment of the Court was delivered by D.KRISHNAKUMAR, J.)

This Intra Court Appeal has been filed, challenging the order passed by this Court in W.P.No.2055 of 2010 dated 10.07.2012 by the Government.

2. Before the Writ Court, W.P.No.2055 and 2056 of 2010 had been filed challenging the notification No.3/2009 dated 27.10.2009 and notification No.2/2009 dated 09.10.2009 issued by the District Collector, Kancheepuram District respectively, in terms of Section 3(2) of the Tamil Nadu Acquisition of land for Industrial Purposes Act,1997. The main contention of the writ petitioner was that, the Government has to hear and pass the orders, as per the mandate of Section 3(3) and Section 3(1) of the



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Act and the hearing of objections before passing such an order cannot be delegated to the District Collector. The above writ petitions were disposed of by this Court, by directing the government to consider the objection of the petitioner and after giving opportunity of hearing to the petitioner and to take a decision on merits, in accordance with law. Now, challenging the order in W.P.No.2055/2010, the Government has preferred the present intra court appeal.

3. The learned Special Government Pleader appearing for the appellants has placed the order passed by a Division Bench of this Court in W.A.No.3631 of 2019 dated 26.08.2022 and submitted that, in the above said writ appeal, which is similar in nature to the present appeal, the order of the writ court was set aside and the appeal was allowed. Therefore, on the same line, this writ appeal may also to be allowed. He has also placed the above said judgment before this Court.

4. A perusal of the judgment passed in the above writ appeal shows that, the Division Bench of this Court has dealt with the issue by relying



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upon the decision of the Hon'ble Supreme Court as well the Division Bench of this Court and it is useful to extract the relevant portion of the judgment in W.A.No.3631 of 2019 dated 26.08.2022, which is as follows.

5.It is brought to our notice that in an intra-court appeal against W.P.No.2056 of 2010 in W.A.No.1710 of 2017, a Division Bench of this Court by its order dated 01.02.2018 has set aside the order of the learned Single Judge. The Division Bench after considering Section 23A of the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 and the Government Notification dated 02.09.2005, whereby the Government had delegated its functions and under the said Act to be exercised by the District Collectors of the district concern, has held as follows:-

17.Section 23-A of the Tamil Nadu Acquisition of Land for Industrial Purposes Act permits delegation of powers by the Government. The Collector, as a delegatee is empowered to conduct hearing of objections in the place of the Government. The fact that Rule 6 contains a provision for hearing of objections by the Government would not nullify Section 23-A of the Act giving the Government the power of delegation.Rule 6 is subject to Section 23-A of the Act. Wherever the name Government is shown in Rule 6, it has to be read as District Collector, in view of Section 23-A of the Act and the notification in G.O.Ms.No.513Revenue dated 2 September 2005. We therefore reject the contention taken by the learned counsel for the first respondent on the strength of Rule 6 of the Tamil Nadu Acquisition of Land for Industrial Purposes Rules.

18.The power of judicial review conferred on the constitutional court is not to legislate. The Court can only interpret the law and



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cannot enter the field of legislation. The Court must interpret the provision enacted by the legislature in a particular manner, taking into account the intention of the legislature. It is not for the Court to say that the Government was not correct in delegating certain power to the executive without there being any challenge to the provision permitting such delegation.

19. We make the position clear that the District Collectors are empowered to conduct enquiry after issuing Notification under subsection(2) of Section 3 of the Industrial Purposes Act and to forward the same with recommendation to the Government for issuance of notification under Sub-Section (1) of Section 3 of the Industrial Purposes Act. We hold that there is no legal requirement mandating that the enquiry should be conducted only by the Government. We are of the view that the order passed by the learned single judge on that aspect is liable to be set aside following the judgement in W.A.No 1710 of 2017.

6. The learned counsel appearing on behalf of the first respondent has not disputed this legal position. Hence, we are of the view that the order passed by the learned Single Judge on that aspect is liable to be set aside following the judgment in W.A.No.1710 of 2017.

7. At this juncture the learned counsel for the first respondent raised an issue that as per Rule 6 of the rules framed under the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997, the objections made by the landowners have to be sent to the requisitioning body and their remarks have to be obtained. Such remarks have to be given to the landowners for them to effectively participate in the hearing. He had also relied upon a judgement reported in **(2006) 4 CTC**



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8.For better appreciation, Rule 6 of the Tamil Nadu Acquisitions of Land for Industrial Purposes Rules, 2001 is extracted hereunder:

6.Hearing of objections by the Government.—(a) If a statement of objections is filed by a person who is not interested in the Land, it shall be summarily rejected.

(b) If any objections are received from a person interested in the land, within the time prescribed in rule 3 or 4, the Government shall fix a date for hearing the objections and give notice thereof to the objector or as well as to the department or company requiring the land. Copies of the objections shall also be forwarded to such department or company. The Department or company may file on or before the date fixed by the Government, a statement by way of answer to the objections and may also depute a representative to attend the enquiry.

(c) On the date fixed for enquiry or any other date to which the enquiry may be adjourned by the Government, the Government shall hear the objector, or a person authorised by him in this behalf, or his pleader and the representative, if any, of the department or company and record any evidence that may be produced by both in support of the objections and in support of the need for acquiring the land.

9.The said rule presupposes that on receipt of the objections from the landowners, the same shall be forwarded to the requisitioning body who may on or before the date of hearing submit its remarks. The



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said rule does not provide that such remarks has to be forwarded/given to the landowners. Further the rule does not mandate the requisitioning body to submit its remarks. The words used are clear that the requisitioning body may submit their remarks, that means that even if the requisitioning body does not submit its remarks, the hearing may be conducted and proceeded further.

10.The judgement relied upon by the counsel for the first respondent reported in **(2006) 4 CTC 609** relates to interpretation of the provisions of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978. Under the provisions of the said Act, a hearing has to be conducted by the Collector or his Authorised Representative. In case, the Authorised Representative had conducted the enquiry then that Authority has to submit the Report to the Collector for him to pass appropriate orders. The facts of the case in the Full Bench judgment would show that the Authorised Officer has conducted the enquiry and has submitted its Report. It was held that the report had to be given to the landowner for them to make any further representation before the Collector passes any order. The reason assigned by the Full Bench was that the Authorised Representative may not have fully considered the objections submitted by the landowners, and in such circumstances the landowners can highlight such objections that were not considered by the Authorised Representative.

11.In this case, the objections of the landowners are before the Authority, their remarks if any submitted cannot alone be the basis for considering the objections of the landowners. It is the specific case of the appellants that even though the first respondent has submitted his



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objections, which has been duly considered before issuing the Notification under Section 3(1), the first respondent had not attended the hearing conducted on 11-06-2010. Hence, the decision of the Full Bench reported in **2006 (4) CTC 609** cannot be applied to the case of the first respondent.

12.The counsel for the first respondent further relied upon the following judgment to drive home his points:

A Division Bench of this Court has held in **1999-1-LW-519 (N.D.Ramanujam vs. Collector of Madras & Others)** that the land owners are entitled to the report of the requisitioning body for they have to submit their responses to the same before the Section 5A enquiry under Act 1894 is conducted. Again referring to another judgment of the Hon'ble Apex Court argued that the Hon'ble Supreme Court has held in **2005-7- Supreme-297 (Hindustan Petroleum Corpn. Ltd. vs. Darius Shapur Chenai & Ors.)** that there should be application of mind by the Government wherein it has been found that there has been no application of mind by the Government and that they were party to the proceeding did not controvert the issue nor have they filed any independent appeal. But the above cited judgments do not support the case of the first respondent as it is not the case of the first respondent that there was no application of mind by the Government before issuing the notification under Section 3(1) of Act 1978.

The second issue raised in this appeal whether the remarks of the requisitioning body shall be given to the landowners has been answered by a Full Bench Judgment in **2006-4-MLJ-1460 (M/s.Sharp Tools and**



etc. vs. State of T.N. And Anr.etc).

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A Full Bench of this Court has interpreted Section 5A of Act 1894 and after detail analysis has held as follows:

“12.As could be seen, we have elaborately considered the relevant provisions and the case laws, and dealt with various aspects very broadly in view of the complexity involved in the issue. Now, let us sum up the principles standing as answer to the question referred:

(I) Objections to the acquisition are to be submitted by the persons interested in the lands within 30 days from the date of publication of the Notification as provided by sub-section (1) of Section 5-A of the Act.

(II) The 30 days' period is to be reckoned from the last mode of publication as contemplated under Section 4(1) of the Act.

(III) In all cases where objections are filed within 30 days as provided under Section 5-A(1); hearing the objectors and Department/Company and further enquiry are mandatory.

(IV) The Collector shall have to fix the date of hearing the objections. He has to give notice in Form-B to the Objector as well as to the Department. The Department or Company may file a statement by way of answer to the objections before the date fixed by the Collector. The Department may also depute their Representative to attend the enquiry.

(V) If objections are not filed within the time, but the



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person interested/land owner appears before the Collector pursuant to the Notice in Form-B and makes any objection orally, it is incumbent on the part of the Collector to hear the objector, however, conducting further enquiry is not obligatory but it is only a discretion of the Collector. To put it clear, 'personal hearing' is mandatory and 'further enquiry' is discretionary depending upon the submission of objections within 30 days of the last mode of the publication.

(VI) Rule 4(b) is mandatory and to be followed essentially. In terms of Rule 4(b), Form-B is only a Notice to the objectors and the Department to appear for the hearing and it is not a notice for filing the objections. As observed earlier, since the present Form-B is neither in conformity with Rule 4(b) nor Section 5-A(1) of the Act, the State Government is directed to take immediate steps to amend Form-B so as to bring it in conformity with Rule 4(b) of the Rules to avoid misunderstanding on the part of the persons interested in the lands proposed to be acquired."

The procedure laid down above by the Full Bench does not contemplate the remarks of the requisitioning body to be given to the land owner. Hence the procedure as defined by the Full Bench has impliedly overruled the Division Bench of this Court stated supra viz., **1994-1-LW-519**. Therefore, we are of the considered view that the Writ Appeal deserves to be allowed and the order made in W.P.No.8806 of 2012 dated 23-01-2013 is liable to be set aside, hence, the writ petition is dismissed.

13.In view of the above reasons, the Writ Appeal is allowed. No costs.



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Consequently, connected miscellaneous petition is closed."

5. Therefore, in the light of the above said decision, this writ appeal is allowed and the order passed by the writ court in W.P.No.2055/2010 dated 10.07.2012 is set aside. No costs. Consequently, connected miscellaneous petition is closed.

(D.K.K.J.)

(P.B.B.J.)

11.07.2023

Internet: Yes/No

Index : Yes/No

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To

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2. The District Collector, Kancheepuram District,
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3. The Managing Director, SIPCOT,
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