



W.P(MD)No.13721 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P(MD)No.13721 of 2023

and

W.M.P(MD)Nos.11546 & 11549 of 2023

1.Rohini Priya

2.Kayalvizhi

... Petitioners

Vs.

1.The District Collector
Collectorate,
Virudhunagar District.

2.The Chairman Cum Managing Director,
TANTRANSCO,
Anna Salai,
Chennai.

3.The Superintending Engineer
GCC/TANGEDCO,
K.Pudur,
Madurai - 7.



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4.The Superintending Engineer
Distribution Circle,
TANGEDCO,
Virudhunagar

5.The Executive Engineer
Tower Line Construction,
TANGEDCO,
Virudhunagar

6.The Assistant Executive Engineer,
Tower Line Construction,
TANGEDCO,
Virudhunagar

7.The Authorised Person
Dalmia Cement,
Sattur Taluk,
Virudhunagar District.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus call for the records passed by the first respondent by its order in Na.Ka.C4/18049/2020 dated 09.03.2023 and quash the same and consequently direct the respondents 2 to 6 to accept the alternative way suggested by the petitioners to install the electric poles and Extra High Tension Lines at Survey No.125/1A situated at Subbiahpuram Village,



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Sattur Taluk, Virudhunagar District, based on the petitioners' objection dated 14.03.2023.

For Petitioner : Mr.G.Kasinathadurai

For Respondents : Mrs.D.Farjana Ghoushia, - for R1
Mr.S.Deenadhayalan - for R2 to R6
Standing Counsel
Mr.M.Prabhakaran - for R7

ORDER

The Writ petition has been filed in the nature of a Certiorarified Mandamus seeking interference with an order passed by the first respondent / District Collector, Virudhunagar District, dated 09.03.2023 in Na.Ka.C4/18049/2020, and direct the respondents 2 to 6 to accept alternate way suggested by the petitioners to install the electric poles and Extra High Tension lines at Survey No.125/1A at Subbiahpuram Village, Sattur Taluk, Virudhunagar District, and in Survey No.125/1C at Pethurettipatti Village, Sattur Taluk, Virudhunagar District. The petitioners had given an objection dated 14.03.2023.



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2. The lands of the petitioners, had been acquired under Section 164 of the Electricity Act and the District Collector, had taking recourse to Section 10 of the Telegraph Act, and had entered into the property of the petitioner with an obligation to pay compensation and had taken it over for erecting electricity poles. It had been very clearly stated that adequate compensation would be granted and further employment would also be given to the members of the family of those whose lands are acquired.

3. It is complained by the learned Counsel for the petitioner that the order had been passed without affording any opportunity. But a reading of the impugned order shows that the petitioners specifically participated in the enquiry and they had only complained was that already a portion of the land had been acquired and that further portions of the lands are now being acquired. But the primary ground on which the impugned order is challenged, that opportunity was not granted may not withstand the scrutiny of this Court since the records speak otherwise. Opportunity had been granted. There is every right vested with the authorities to acquire the lands for public purpose.



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4. As a matter of fact, the first respondent in the order had also stated that if the petitioners produce necessary documents establishing title then compensation would be paid in accordance with law and a direction had also been issued to the fourth respondent/Superintending Engineer, Distribution Circle, TANGEDCO, Virudhunagar, to so calculate the compensation and pay the same to the petitioners herein.

5. The second limb of the arguments advanced by the learned counsel for the petitioners is that the land had been acquired without payment of compensation. But the order itself speaks about that aspect and places an obligation on the petitioner to produce necessary records and has directed the Electricity Department to determine the compensation and pay the compensation.

6. It is thus seen that the petitioner appears to indulge in this litigation only because earlier lands had been acquired and further lands have now been acquired. But the cause is in public interest. It had been very specifically held out that not only compensation would be provided,



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but employment would also be provided. This would only be beneficial to the petitioners herein. They cannot obstruct the acquisition of the lands.

7. In this connection, it would be worthwhile to extract Section 164 of the Electricity Act, 2003 and also Section 10 of the Indian Telegraph Act, 1885.:

Section 164. (Exercise of powers of Telegraph Authority in certain cases):

"The Appropriate Government may, by order in writing, for the placing of electric lines or electrical plant for the transmission of electricity or for the purpose of telephonic or telegraphic communications necessary for the proper co-ordination of works, confer upon any public officer, licensee or any other person engaged in the business of supplying electricity under this Act, subject to such conditions and restrictions, if any, as the Appropriate Government may think fit to impose and to the provisions of the Indian Telegraph Act, 1885, any of the powers which the telegraph authority possesses under that Act with respect to the placing of telegraph lines and posts for the purposes of a telegraph



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established or maintained, by the Government or to be so established or maintained."

Section 10 of the Indian Telegraph Act, 1885.

10. Power for telegraph authority to place and maintain telegraph lines and posts –

The telegraph authority may, from time to time, place and maintain a telegraph line under, over, along, or across, and posts in or upon any immovable property:

Provided that –

d. in the exercise of the powers conferred by this section, the telegraph authority shall do as little damage as possible, and, when it has exercised those powers in respect of any property other than that referred to in clause (c), shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers."

8. Further Section 16 of the Indian Telegraph Act, 1885, specifically provides that those who obstruct acquisition, would be deemed to have committed an offence under Section 188 of Indian Penal Code.



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9. Thus, the petitioner would have to abide and the cause being public and there has been no denial for payment of compensation. I hold that the challenge to the order, will necessarily have to fail before this Court.

10. The Hon'ble Supreme Court had very specifically stated that the interest of the public will have to override any individual representation.

11. *In 2022 SCC OnLine SC 1143 [Dr. Abraham Patani of Mumbai and Another Vs. State of Maharashtra and Others]*, the Hon-ble Supreme Court was concerned with a similar dispute which had spread several decades. The facts were as follows:~

"4. The possibility of having a road through the Appellants- land was floated initially in a Development Plan (?DP?) of 1976. After this, the road was realigned in 1984 in order to secure smooth passage through Appellants- land. Appellants raised objections in this regard in 1992 and the planned road was deleted from the DP via notification dated



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12.11.1992 issued by Respondent No. 1.

5. During this period, various complaints were allegedly received from residents in surrounding areas regarding the need for a road in order to connect the Mahakali Caves with the Central Industrial District. Respondent No. 1 issued a directive under Section 37(1) of the Maharashtra Regional Town Planning Act, 1966 (?MRTP Act?) on 07.06.1993, acknowledging the need for a connecting road but stating that it was ?not feasible? to pursue construction of an 18.30 metre road through the Appellants- land. Thus, Respondent No. 2 was instructed to analyse the legal and technical aspects of the project before submitting a proposal for setting up the road with minor modifications in the DP under Section 37 of the MRTP Act.

6. Meanwhile, Appellants completed construction of a bungalow on their land in 1994. However, subsequent sanctions sought by the Appellants for further buildings were rejected by the Municipal Corporation on the ground that a proposal for creation of a link road through the property was under consideration.

7. Respondent No. 2 eventually passed Resolution No. 651 on 10.09.1996 that renewed the



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proposal to have the link road constructed through Appellants- land. Two further resolutions were then passed : a) Resolution No. 39 dated 18.08.1998 by the Improvement Committee affirming the proposal for the link road; b) Resolution No. 536 on 08.12.1998 by Respondent No. 2 under Sec. 126 of the MRTP Act and Secs. 90 (1) & (3) of the Mumbai Municipal Corporation Act (MMC Act) for the acquisition of land in order to build the new road line."

27. This decision to construct a link road and acquisition of land were questioned by filing Writ Petition before the Bombay High Court. The matter travelled upto the Hon-ble Supreme Court twice over.

28. The Hon-ble Supreme Court on the facts presented above had occasion to examine the concept of public interest Vs. private interest.

29. The Hon-ble Supreme Court held as follows:~

C.3. Public Interest V. Private Interest

91. It is important for us to take stock of



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the nature of the present dispute. The Appellants are private citizens who have valid title and ownership over the land in question. Without doubt, their personal and private rights are of great importance. In a democratic society governed by the rule of law, the rights of an individual carry immense importance and are the foundational blocks on which our legal, social, and political milieu thrives. Under no circumstances should the rights of individual citizens be trodden upon arbitrarily and any curtailment of them must be scrutinized with utmost care.

92. At the same time, we must not lose sight of the fact that in several situations, the needs of the many must outweigh that of the few. We say so not with any fervour nor as a mantra, but as a solemn acknowledgment of the realities of modern life. The question of what constitutes 'public interest' has been contemplated upon multiple times and the history of this Court is full of musings by different benches on the exact contours of this phrase in the context of various situations and statutes.

93. In (2018) 13 SCC 491 [Manimegalai v. Special Tehsildar], it was surmised that:



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"14. Similarly, public purpose is not capable of precise definition. Each case has to be considered in the light of the purpose for which acquisition is sought for. It is to serve the general interest of the community as opposed to the particular interest of the individual. Public purpose broadly speaking would include the purpose in which the general interest of the society as opposed to the particular interest of the individual is directly and vitally concerned. Generally, the executive would be the best judge to determine whether or not the impugned purpose is a public purpose. Yet it is not beyond the purview of judicial scrutiny. The interest of a Section of the society may be public purpose when it is benefitted by the acquisition. The acquisition in question must indicate that it was towards the welfare of the people and not to benefit a private individual or group of individuals joined collectively. Therefore, acquisition for anything which is not for a public purpose cannot be done compulsorily."

94. In (2003) 7 SCC 309 [B.P. Sharma v. Union of India], the nebulous nature of phrases such as 'public interest' or in the interest of the general



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public was commented upon, with the Court stating:

15. The phrase "in the interest of the general public" has come to be considered in several decisions and it has been held that it would comprise within its ambit interests like public health and morals, economic stability, stability of the country, equitable distribution of essential commodities at fair prices for maintenance of purity in public life, prevention of fraud and similar considerations"

95. This point was emphasized in (2012) 13 SCC 61 [Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi] as well, which held that no strict definition for 'public interest' existed:

"22. The expression 'public interest' has to be understood in its true connotation so as to give complete meaning to the relevant provisions of the Act. The expression 'public interest' must be viewed in its strict sense with all its exceptions so as to justify denial of a statutory exemption in terms of the Act. In its common parlance, the expression 'public interest', like 'public purpose', is not capable of any precise definition. It does not have a rigid meaning, is elastic and takes its colour from the statute in which it occurs,



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the concept varying with time and state of society and its needs. It also means the general welfare of the public that warrants recognition and protection; something in which the public as a whole has a stake.?

96. It is unnecessary to belabour the point. The proposition is simply that the notion of public interest will necessarily reflect the specificities of the situation at hand. In the present case, the public interest which has been emphasized upon by Respondents is the urgent need for the creation of a connecting road through the Appellants- property. The need stems from the traffic congestion caused on the route from the Mahakali Caves to the Central MIDC. The lack of a direct linkage requires detours to be taken that significantly increase commuting time and cause inconvenience to the general public.

97. When the public interest is so clearly articulated and is an urgent and pressing exigency, private interests must give way to the extent required. This Court has acknowledged this before, such as in (2012) 5 SCC 1 [Ramilila Maidan Incident v. Home Secretary, Union of India] :



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"119. The right to freedom in a democracy has to be exercised in terms of Article 19(1)(a) subject to public order. Public order and public tranquillity is a function of the State which duty is discharged by the State in the larger public interest. The private right is to be waived against public interest. The action of the State and the Police was in conformity with law. As a large number of persons were to assemble on the morning of 5 June, 2011 and considering the other attendant circumstances seen in light of the inputs received from the intelligence agencies, the permission was revoked and the persons attending the camp at Ramlila Maidan were dispersed."

(Emphasis Applied)

98. In (2011) 9 SCC 1 K.T. Plantation Pvt. Ltd. v. State of Karnataka, the origins of 'Eminent Domain' were traced and the ethos behind acquisition of land by the government for public good was discussed. The Court elaborated on this in the following terms:

'134. Hugo Grotius is credited with the invention of the term 'eminent domain' (jus or dominium eminens) which implies that public rights always overlap with private rights to property, and in the case of public utility, public rights take



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precedence. Grotius sets two conditions on the exercise of the power of eminent domain : the first requisite is public advantage and then compensation from the public funds be made, if possible, to the one who has lost his right. Application of the above principle varies from countries to countries. Germany, America and Australian Constitutions bar uncompensated takings. Canada-s constitution, however, does not contain the equivalent of the taking clause, and eminent domain is solely a matter of statute law, the same is the situation in United Kingdom which does not have a written constitution as also now in India after the 44 Constitutional Amendment.'

(Emphasis Applied)

99. With these considerations in mind, we deem the present case to be an appropriate instance where public interest must have paramountcy over private interest. We emphasize once again before parting that the rights of the individual must only be watered down when the necessary circumstances demanding such a drastic measure exist."



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12. The reasonings are directly applicable to the facts of this case. The petitioner cannot claim any specific privilege that the lands should not be acquired. The petitioners are entitled for compensation provided they may make necessary representation as stated in the impugned order.

13. The Writ Petition stands dismissed. Once again the petitioners are given liberty to file a representation seeking adequate compensation before the appropriate authorities as stated in the impugned order. No costs. Consequently, connected miscellaneous petitions are closed.

12.06.2023

Index :Yes/No
Internet :Yes/No
NCC : Yes / No

RM



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C.V.KARTHIKEYAN, J.

RM

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