

(2010) 01 MAD CK 0118

In the Madras High Court

Case No : Writ Petition No. 20424 of 2009 and M.P. No's. 1 to 5 of 2009

Mahindra World City Developers Limited (formerly known as Mahindra Industrial Park Ltd.) APPELLANT

Vs

State of Tamil Nadu and Others RESPONDENT

Date of Decision : 29-01-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 162
General Clauses Act, 1897 — Section 21
Land Acquisition (Companies) Rules, 1963 — Rule 3, 4
Land Acquisition Act, 1894 — Section 4(1), 5A, 6

Citation : (2010) 01 MAD CK 0118

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : G. Masilamani, SC for R. Bharathkumar, for the Appellant; R. Neelakantan, GA for RR1 to 3, Yashod Varadhan, SC for P. Valliappan, for RR4 to 6, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—Heard both sides.

2. The petitioner is a registered company. They have come forward to file the present writ petition seeking to challenge the order of the first

respondent State made in G.O.Ms. No. 88, Industries (MIE-1) Department, dated 30.7.2009 and after setting aside the same in respect of

Survey Nos. 405/3, 405/4 and 405/5, consequently direct the respondents 1 to 3 to continue the land acquisition proceedings and pass such

further orders.

3. It is the case of the petitioner that they were promoting an Industrial Park pursuant to the Government order in G.O.(2D) No. 88, Industries,

dated 11.6.1997. The company had established the Industrial Park in an area about 1400 acres on the Eastern side of National Highway No. 45

near Chengalpattu, Kancheepuram District. Steps were taken by the company to acquire lands in various villages including Veerapuram, Paranur,

Thenmelpakkam, Rajakulipettai, Hanumanthai, Kunnavakkam and Anjur villages as well as patta lands in survey No. 405 in Chettipunyam village

through private negotiations. An approach road to the industrial park was from the side of the National Highway-45 towards east through survey

No. 405 in Chettipunyam village and the lands belonging to the Forest Department in Thirutheri Reserved Forest in S. No. 108/1 at Thirutheri

village.

4. According to the petitioner, since there is high intensity of traffic in the National Highway as it is a vital link between North and South Tamil

Nadu, the entry point to the industrial park became crowded. There are large number of labour intensive industries established and operated by

Multi National Corporations. A foolproof method is required to be taken to prevent terrorist and other sabotage activities. For those purposes,

vehicle entry into the industrial park had to be stopped and parked aside and to be allowed only after a thorough check to the industrial park.

Therefore, the petitioner company wanted to have adequate land at the entry point. Since the present road was carved out from the land allotted

by the State Government from the reserved forest area and for the purpose of operating an huge industrial park which is spread over 1400 acres

of land and to avoid bottleneck, they require 4.88 acres, which were originally notified.

5. It was stated that the land in survey No. 405 in Chettipunyam village was originally included in the master plan of the petitioner's company

project. Contiguous lands were acquired without affecting and displacing the residents of the villages and without hazard to the environment, trees

and lands with irrigation source. The said land was required for widening the approach road and for railway connectivity. It is claimed that the

project costs is running to several hundred crores. It is stated that on the south of the forest land, respondents 4 to 6 are owning 2.5 acres in S.

No. 405/1, which was further subdivided into S. Nos. 405/1b and 2b. The said lands have been purchased by the petitioner on 24.12.1997 under

eight registered sale deeds registered with the Sub Registrar, Chengalpattu. Further east of the said lands, reserved forest in Thirutheri village is

situated. It is in the North of the land of respondents 4 to 6, a road to reserved forest is available with a width of 4 meters. Further on the North of

the said road near the land of respondents 4 to 6 lies a nursery raised by the Forest Department. Therefore, without the land in survey No. 405 in

Chettipunyam village and without permission from the forest department, the land in the reserved forest cannot be used for approach road.

Therefore, the petitioner company approached the State Government for acquiring patta land in survey No. 405 (to an extent of 5 acres) and also

for permission to use the forest land.

6. It was claimed that feasible access is available only through Thirutheri reserved forest and the land in survey No. 405 leading to Veerapuram

village. The State Government granted permission on 10.11.1998 to use 1.845 hectares of forest land in Thirutheri reserved forest to develop the

road with 45 meters width subject to the company transferring to an extent of 6.16 hectares of non forest land to compensate the lands allotted by

the Government. They were also directed to pay compensation, afforestation charges for 40 hectares with other conditions. The petitioner

company had also purchased 6.16 hectares in Appur village and gifted it to the forest department with registered documents and also remitted

about Rs. 29 lakhs for afforestation charges. It was only thereafter, the State Government passed G.O.Ms. No. 201 Forest, dated 11.9.2000,

granting permission to use the forest land. The company had also invested huge amounts to develop the approach road. But, without the land

owned by respondents 4 to 6, the existing road with a width of 45 meters will have no use. The forest department had also declined to give any

land as entry point since forest nursery is situated. Therefore, it is claimed by the petitioner company that the lands in S. Nos. 40/3,4 and 5

belonging to respondents 4 to 6 should be acquired for widening the approach road.

7. It was also claimed that notification u/s 4(1) of the Land Acquisition Act, 1894 was issued by the State Government vide G.O.Ms. No. 676,

Industries Department, dated 1.9.1999 in respect of S. Nos. 405/1A2 (Part), 405/1B2 (part), 405/3, 405/4 and 405/5 measuring to an extent of

2.02.5 hectares at Chettipunyam village. The purpose of acquisition revealed in the notification was for setting up an Auto Ancillary Industrial Park

by the petitioner company. The notification was published in the local dailies as well as in the Government gazette. Thereafter, the substance of the

notification was published in the locality. Respondents 4 to 6 sent their objections, dated 28.9.1999 to the third respondent, Special Tahsildar,

Land Acquisition. The third respondent communicated the said objections to the petitioner company. The petitioner company had submitted its

remarks, dated 20.10.1999. Thereafter, an enquiry u/s 5A was fixed on 26.10.1999.

8. It is claimed that the representatives of respondents 4 to 6 were present in the enquiry. The reply given by the petitioner company was also

recorded. Further, declaration u/s 6 was issued vide G.O.Ms. No. 334, Industries Department, dated 20.9.2000. The said declaration was

published in two dailies as well as in the locality. The petitioner company also approached respondents 4 to 6 and their family members for

purchasing the entire extent of 3.21 acres. However, they refused to sell their lands. It was thereafter, the Government was approached to acquire

those lands in a larger public interest. After approaching the State Government, the petitioner company had also deposited tentative land cost of

Rs. 1,95,25,000/-, which is lying with the Government Treasury since 03.10.2005. A draft declaration u/s 6 was duly approved by the State

Government and was published in the Government gazette on 20.9.2000. It was at this stage, respondents 4 to 6 filed writ petitions being W.P.

Nos. 18114 to 18116 of 2000 before this Court, challenging the land acquisition proceedings as well as the notification under Sections 4(1) and 6

of the Act. An interim stay of dispossession was granted on 13.11.2000.

9. The State Government and the petitioner company contested the claim made by respondents 4 to 6. This Court by an order dated 31.8.2001

allowed the writ petitions filed by respondents 4 to 6 and quashed the notification u/s 6 with liberty to respondents 1 to 3 to proceed afresh from

the stage of enquiry u/s 5A. Those writ petitions were allowed on the technical ground that remarks of the requisitioning body was not furnished to

respondents 4 to 6. Time limit of three months to complete the process was also fixed by this Court. Thereafter, an enquiry was held on

09.11.2001, in which respondents 4 to 6 have participated and written objections were also filed on their behalf. The objection raised by

respondents 4 to 6 was that since Tamil Nadu Acquisition of Lands for Industrial Purposes Act, 1997 was enacted, the third respondent has no

jurisdiction to conduct enquiry under the Central Act.

10. It is an admitted case that the State Act (Tamil Nadu Act 10/1999) came into force with effect from 21.09.2001. Thereafter, the State

Government by virtue of Section 23 of the Tamil Nadu Act 10/1999 gave up the land acquisition under the Central Act. However, by virtue of

Section 23 of the Act 10/1999, the State Government issued G.O.Ms. No. 89, Industries Department, dated 6.12.2004 and approved publication

of notice in terms of Section 23(2) of the Act. A public notice was also issued u/s 3(2) of the Act 10/1999. It was also published in the office of

the District Collector. Thereafter, the Government issued G.O.Ms. No. 150, Industries Department, dated 30.11.2006, approved and ordered

publication of notification u/s 3(1) of the new Act for acquiring 2.02.5 hectares of patta lands in S. Nos. 405/3,4 and 5 in Chettipunyam village for

setting up Auto Ancilliary Industrial Park. It was also published in the Tamil Nadu Government Gazette on 3.1.2007. Once publication of notice is

issued, it is claimed that the land acquired will be absolutely vest with the Government free from all encumbrances.

11. The third respondent had proceeded to issue an order, dated 5.2.2007 u/s 4(2) of the T.N. Act 10/1999, directing the respondents 4 to 6 to

surrender and deliver possession of acquired land. It was also stated that the said notice was duly served on respondents 4 to 6 on 8.2.2007. It is

at this stage respondents 4 to 6 moved this Court once again with writ petitions being W.P. Nos. 6010 to 6012 and 7761 to 7763 of 2007 before

this Court, challenging the acquisition under the new Act.

12. The third respondent at the instructions of the District Revenue Officer, Kanchipuram, by a communication, dated 18.6.2008 directed the

petitioner company to send land plan schedule and remarks to him on the ground that respondents 4 to 6 submitted representations to the first

respondent Government seeking exemption from land acquisition proceedings in respect of their lands. The petitioner by a communication dated

26.07.2008 requested the third respondent to furnish copies of representations

made by respondents 4 to 6. It was also claimed by them that the matter of acquisition is sub-judice before the court and it is not proper for them to furnish any remarks. It is claimed that the copies of representations were not furnished to them. However, by a communication, dated 4.9.2008 and 20.10.2008, the third respondent at the instance of the second respondent, DRO, Kanchipuram, requested the petitioner, the Assistant Executive Engineer, PWD and the Forest Range Officer, Chengalpattu to send a report with regard to the value of trees, wells and buildings in the land owned by respondents 4 to 6. It is claimed that the petitioner was shocked when the first respondent issued G.O.Ms. No. 88, Industries Department, dated 30.7.2009 and dropped the land acquisition proceedings in respect of survey numbers in question.

13. It is also found from the said Government Order that respondents 4 to 6 have approached the first respondent for exclusion of land from

acquisition. The second respondent District Collector had recommended for exemption from land acquisition proceedings the lands owned by

respondents 4 to 6 on the ground that the lands are not contiguous and situated as small pieces, which were not fit for the project work of the

petitioner company. As soon as the order of exemption and dropping of acquisition proceedings in respect of the lands belonged to respondents 4

to 6, they withdrew writ petitions in W.P. Nos. 6010 to 6012 and 7761 to 7763 of 2007 pending before this Court. This Court by an order dated

18.8.2009 allowed withdrawal of writ petitions despite opposition from the petitioner. In paragraphs 2 and 3 of the order, this Court observed as

follows:

2. At this juncture, the learned Counsel appearing for the fourth respondent opposes the withdrawal on the ground that they are the beneficiaries to

the land acquisition proceedings and the lands are sought to be acquired only for them and hence the petitioners shall not be permitted to withdraw

the writ petitions.

3. I am unable to accept the said contention of the learned Counsel appearing for the fourth respondent. Though, it may be correct to say that the

lands are sought to be acquired for the fourth respondent, the Government thought it fit to drop the acquisition by G.O., referred to above. Hence,

the petitioners are permitted to withdraw the writ petitions and the writ petitions

are dismissed as withdrawn. No costs. If the fourth respondent company have got any right, they are at liberty to challenge the G.O., referred to above in the manner known to law. Consequently, connected miscellaneous petitions are closed.

14. Therefore, the petitioner has come forward to challenge the dropping of acquisition proceedings under T.N. Act 10 of 1999 by G.O.Ms. No.

88, Industries Department, dated 30.7.2009. In the writ petition, notice was issued to respondents. Pending the writ petition, on 13.10.2009, this

Court granted an interim injunction. An interim stay of the Government Order was also sought for. In the meanwhile, on behalf of respondents 4 to

6, a petition in M.P. No. 5 of 2009 to dismiss the stay application in M.P. No. 2 of 2009 was filed together with the counter affidavit filed by the

sixth respondent. A vacate injunction petition was also filed by them in M.P. No. 4 of 2009. When these matters came up with the consent of

parties, the main writ petition itself was taken up for hearing.

15. In the counter affidavit filed by the sixth respondent, the locus standi of the petitioner to challenge the impugned order is questioned. It was

stated that they being only the beneficiary cannot challenge the action of the Government in abandoning the acquisition proceedings. By virtue of

the earlier interim order, the possession is still with respondents 4 to 6. The lands owned by respondents 4 to 6 are not required for the petitioner.

There are enough space to park the vehicles near Paranur Railway station where already a container terminal has been created. Further, the

provision to park the vehicles, lorry and buses in addition to an entry road also provided in the station campus. There are two major entry roads to

the petitioner's industrial park. One near Paranur railway station and the other in the adjacent land belonging to respondents 4 to 6. The width of

the said road is 45 meters wide. The industrial estate is 1.5 kms. from the National Highway-45.

16. The acquisition was dropped only with a condition that respondents 4 to 6 should withdraw the earlier writ petitions. The Government had

correctly come to the conclusion that the lands were not required for industrial purposes. Exemption from acquisition will not affect the petitioner's

activities and they have been carrying on the activities all these years without the land in question. It was also claimed that in the lands in question,

there are multiple trees and wells. At the time of purchase of those lands, there are number of fruit bearing trees and a well. They have spent huge amounts to develop a thope and the annual yield of trees is substantial.

17. It was also stated that original proceedings initiated under the Central Act was illegal and contrary to the limitation prescribed under the statute.

The petitioner company had approached respondents 4 to 6 through real estate brokers for purchase of lands. But respondents 4 to 6 were not

willing to sell their lands. Therefore, the petitioner company had used its influence to include their lands in the original notification in G.O.Ms. No.

630 dated 24.9.1998. The windmill found in the land was omitted to be mentioned. It will not be out of place to mention that the petitioner

company had also acquired about 1110 acres of land 2 Kms. from the land of respondents 4 to 6. Further, by an order of the Government in G.O.

No. 1761, dated 25.10.1982, the acquisition authorities are forbidden from acquiring thope and agricultural lands.

18. The respondents have made their objections when subsequent proceedings were initiated under the TN Act 10/1999. Considering their

objections, the State Government exempted their lands as being absolutely not necessary for the industrial park maintained by the petitioner

company. Further reference was made to Section 6 of the Tamil Nadu Act 10/99, which is a special enactment, where it is clearly stated that

before publishing the notification u/s 3(1), the Government will have to call upon the owner or other person interested in the land to show cause as

to why the said lands should not be acquired. It was thereafter considering the cause and hearing the affected parties, a notification u/s 3(1) may be

issued. Though the said provision requires mandatory public notice, the State Government had not issued any notice to respondents 4 to 6.

19. In the earlier proceedings, this Court had directed a fresh enquiry to be conducted and to be completed within three months time. But

respondents 1 to 3 have given a go-by to the earlier proceedings and for the reasons best known to them and the provisions of the Act 10/99 was

resorted to. The acquisition of agricultural land for a private enterprise was not proper and the existing approach road sufficiently satisfies the

petitioner company. Their attempt to bring in security concern is imaginary. It was also claimed that the petitioner company is motivated by profit

for personal gain. They are more of real estate promoters than intended to establish a Special Economic Zone. Therefore, they sought for dismissal of the writ petition.

20. Mr. G. Masilamani, learned Senior Counsel leading for Mr. R. Bharathkumar appearing for petitioner submitted that the purpose for which

acquisition was made was already set out in the acquisition proceedings under the Central Act. This Court set aside those proceedings only on the

technical ground of limitation. Subsequently, a notification u/s 3(1) under the Tamil Nadu Act 10/99 was published in the Tamil Nadu Government

gazette on 3.1.2007. It was thereafter, respondents 4 to 6 have sent representations dated 11.4.2008. The State Government received a report

from the District Collector in letters dated 30.10.2008 and 20.5.2009. The State Government after examining the recommendations of the District

Collector decided to accept the request of respondents 4 to 6 and dropped the acquisition of land belonging to respondents 4 to 6. Further

condition was also made that they should withdraw the related cases filed in the High Court. It is this order which is under challenge in the writ

petition. In paragraphs 6 and 7 of the order, it was stated by the Government which is as follows:

6. The District Collector, Kancheepuram, in his letter third read above, has recommended that exemption from land acquisition may be given as

requested by the petitioner considering the following:

a) 0.68.0 hectare land in S. No. 405/1B2B is a patta land, situated in East to National Highways and extended into West and North direction.

There is no other patta lands in S. No. 405 around 3 K.M. distance.

b) The lands for which exemption is required are not contiguous and situated as small places not fit for project work.

c) Requisition body (MIP) has requested these lands for approach road. However, the Requisition body is utilizing 100 feet road with the

permission of Forest Department. The width of this road is 43 metre. Therefore, if exemptions is given to the above lands from acquisition the

project plan will not be affected.

7. The District Collector, Kancheepuram, has also recommended that if exemption to the above lands are given from acquisition, the project plan

will not be affected, since there is already a approach road to the developer

company and the lands in question are surrounded by the Reserve Forests.

21. In this backdrop, the learned Senior Counsel for the petitioner had stated that dropping of acquisition proceedings was illegal. Principles of natural justice was not followed inasmuch as the petitioner company was not heard before dropping the proceedings. The public purpose for which acquisition made was already settled in the earlier acquisition proceedings made under the Central Act 1/1894.

22. The learned Senior Counsel placed reliance upon the following judgment of the Supreme Court in support of his contentions:

- a) M/s. Larsen and Toubro Ltd. Vs. State of Gujarat and Others, ;
- b) State Government Houseless Harijan Employees Association v. State of Karnataka and Ors. AIR 2001 SC 437; and
- c) Rajinder Singh Bhatti and Others Vs. State of Haryana and Others, .

It was for the proposition that an action of the State Government in withdrawing from land acquisition u/s 48 requires publication in the gazette.

23. In order to appreciate the rival contentions, it is necessary to extract the relevant provisions found in the Act 10/99. Section 4 reads as follows:

4. Land acquired to vest in Government free from all encumbrances.-(1)When a notice under Sub-section (1) of Section 3 is published in the Tamil

Nadu Government Gazette, the land to which the said notice relates shall, on and from the date of such publication, vest absolutely in the

Government free from all encumbrance:

Provided that if before actual possession of such land is taken by, or on behalf of, the Government, it appears for the Government, that the land is

no more required for the purpose of this Act, the Government may, by notice published in the Tamil Nadu Government Gazette, withdraw the land

from acquisition. On the publication of such notice, the land shall revert with retrospective effect in the person from whom it was divested on the

issue of order under Sub-section (1) of Section 3, subject to such encumbrances, if any, as may be subsisting at that time:

Provided further that the owner and other persons interested shall be entitled to payment of an amount as determined in accordance with the

provisions of Section 7 for the damage, if any, suffered by them in consequence of the acquisition proceedings.

(2) Where any land is vested in the Government under Sub-section (1), the Government may, by order, direct any person who may be in

possession of the land to surrender or deliver possession thereof to the Collector or any person duly authorised by him in this behalf within thirty

days of the service of the order.

(3) If any person refuses or fails to comply with an order made under Sub-section (2), the Collector may take possession of the land, and may, for

that purpose, use such force as may be necessary.

24. Therefore, a clear reading of the said provision will show that after notification u/s 3(1) of the State Act, the first proviso to Section 4(1) will

show that if the State Government before taking actual possession of land is of the opinion that the land is no more required for the purpose of the

Act, then it can by notice published in the State Government Gazette withdraw the land from acquisition. On publication of such notice, the land

will revert with retrospective effect to the person to whom it was divested on the issue of order u/s 3(1). It is only when they proceed with the

acquisition, the question of directing the person, who is in possession of land, to surrender and deliver possession to the Collector or any person

duly authorised in this behalf will arise in terms of Section 4(2) of the Act. In case when the land owner failed to comply with the order, the District

Collector can take possession of land for the purpose for which acquisition was made, u/s 4(3) of the TN Act 10/99.

25. In the present case, except for the notification u/s 3(1), no further steps have been taken by the Government. Even on the issuance of Section

3(1) notification, respondents 4 to 6 have a grievance that Section 3(3) notice was not given to them before publication of the notification. Be that

as it may, in the present case, the State Government had taken the decision to drop the acquisition proceedings by the impugned Government

Order. The only question is whether the petitioner is entitled to notice before dropping of proceedings.

26. It must be stated that Act 10/99 (enacted by the State Legislature) is yet to be tested about its constitutional validity. The provisions of the Act

are summary and more draconian than the Central Act and hence it requires strict interpretation of its provisions. Any attempt to interpret it as per

the Central Act is impermissible. When a similar enactment was made by the

State Legislative, i.e. Tamil Nadu Acquisition of Land for Harijan

Welfare Schemes Act, 1978 (TN Act 31/78), its constitutional validity was challenged. Ultimately when the matter reached the Supreme Court,

the Supreme Court upheld the vires of the said Act vide its judgment in State of Tamil Nadu and Others Vs. Ananthi Ammal and Others, . When

an attempt was made to compare it with the Central Act for the purpose of interpretation, the Supreme Court rejected the said contention. In

paragraphs 6 and 7, it had held as follows:

6. In State of M.P. v. G.C. Mandawar a Constitution Bench held that Article 14 does not authorise the striking down of the law of one State on

the ground that, in contrast with the law of another State on the same subject, its provisions are discriminatory, nor does it contemplate the law of

the Centre or of a State dealing with similar subjects being held to be unconstitutional by a process of comparative study of the provisions of the

two. The sources of authority for the two being different, Article 14 can have no application. In Sant Lal Bharti v. State of Punjab this was

reiterated.

7. When a statute is impugned under Article 14 what the court has to decide is whether the statute is so arbitrary or unreasonable that it must be

struck down. At best, a statute upon a similar subject which derives its authority from another source can be referred to, if its provisions have been

held to be reasonable or have stood the test of time, only for the purpose of indicating what may be said to be reasonable in the context....

27. In the present case, though the proceedings were initially made under the Central Act, it was struck down by this Court. The present

proceedings only refers to Section 23 of the TN Act 10/99. The power of withdrawal under this new Act is referable only to first proviso to

Section 4(1). Though u/s 4(1) it is declared that on publication of the notification u/s 3(1), the land in question shall vest absolutely with the

Government free from all encumbrance, it has to be read along with first proviso to Section 4(1). Therefore, under this Act, vesting of the land with

the Government is different from the actual possession of land being taken by the Government.

28. Admittedly, in the present case, no possession was taken from respondents 4 to 6. By virtue of the earlier interim orders, possession continued

to vest with respondents 4 to 6. Therefore, the Government in order to revoke the notification u/s 3(1) of the new Act has to form an opinion that

the land is no more required for the purpose of the Act and thereafter give a notification in the Government gazette to withdraw the land from

acquisition. Only on such publication, the land shall revest with the original owner.

29. The term ""industrial purpose"" is defined u/s 2(e). Originally as found in the notification u/s 3(2), it is for the purpose of setting up an Auto

Ancillary industrial park by the petitioner company. It must be noted that the industrial park had also come into existence since the last several

years. The present claim is about the land for the purpose of checking vehicles before it enters into the approach road to the industrial park. On the

basis of the report sent by the District Collector, the Government found that the land for which exemption is sought for was not contiguous and

situated in small pieces and was not fit for the project. The petitioner company wanted those lands only as a buffer before entering the approach

road. But, they are already having 150 feet road (width is 43 meters). If exemption is granted for the land in question, their project plan will not be

affected. In the present case, it is surrounded by a Reserve Forest. Therefore, the State Government was of the opinion that the land in question

was not required for the industrial purpose.

30. In the light of the above, the following questions arise for consideration:

a) Whether the Government was empowered to exempt any land from acquisition under the Tamil Nadu Act 10/99?

b) In such circumstances whether requisitioning body like petitioner has any say before dropping the proposal?

c) Whether publication in the gazette is required for revesting to take place?

31. It must be noted that under the Central Act when Section 48 provides for withdrawal from land acquisition, there is no specific provision for

making publication in the gazette. However, the Supreme Court had taken the stand that withdrawal from acquisition must be notified in the gazette

even if there was no specific provision for a publication in the gazette under the Central Act. The Supreme Court in *Shanti Sports Club and Anr. v.*

Union of India and Ors. reported in AIR 2009 SCW 6953 dealt with a similar issue. In paragraph 28, the Supreme Court had observed as

follows:

28. The requirement of issuing a notification for exercise of power u/s 48(1) of the Act to withdraw from the acquisition of the land can also be

inferred from the judgments of this Court in *Municipal Committee, Bhatinda Vs. Land Acquisition Collector and Others*, ; *U.P. State Sugar Corpn.*

Ltd. Vs. State of U.P. and Others, ; *State of Maharashtra and Another Vs. Umashankar Rajabhau and Others*, and *State of T.N. and Others Vs.*

L. Krishnan and Others, . In *M/s. Larsen and Toubro Ltd. Vs. State of Gujarat and Others*, , the Court considered the question whether the

power u/s 48(1) of the Act can be exercised by the Government without notifying the factum of withdrawal to the beneficiary of the acquisition. It

was argued that in contrast to Sections 4 and 6, Section 48(1) of the Act does not contemplate issue of any notification and withdrawal from the

acquisition can be done by an order simpliciter. It was further argued that power u/s 21 of the General Clauses Act can be exercised for

withdrawing notifications issued under Sections 4 and 6. While rejecting the argument, the Court observed:

...When Sections 4 and 6 notifications are issued, much has been done toward the acquisition process and that process cannot be reversed merely

by rescinding those notifications. Rather it is Section 48 under which, after withdrawal from acquisition is made, compensation due for any damage

suffered by the owner during the course of acquisition proceedings is determined and given to him. It is, therefore, implicit that withdrawal from

acquisition has to be notified.

31. Principles of law are, therefore, well settled. A notification in the Official Gazette is required to be issued if the State Government decides to

withdraw from the acquisition u/s 48 of the Act of any land of which possession has not been taken. An owner need not be given any notice of the

intention of the State Government to withdraw from the acquisition and the State Government is at liberty to do so. Rights of the owner are well

protected by Sub-section (2) of Section 48 of the Act and if he suffered any damage in consequence of the acquisition proceedings, he is to be

compensated and Sub-section (3) of Section 48 provides as to how such compensation is to be determined. There is, therefore, no difficulty when

it is the owner whose land is withdrawn from acquisition is concerned. However, in the case of a company, opportunity has to be given to it to

show cause against any order which the State Government proposes to make withdrawing from the acquisition. Reasons for this are not far to

seek. After notification u/s 4 is issued, when it appears to the State Government that the land in any locality is needed for a company, any person

interested in such land which has been notified can file objections u/s 5A(1) of the Act. Such objections are to be made to the Collector in writing

and who after giving the objector an opportunity of being heard and after hearing of such objections and after making such further enquiry, if any,

as the Collector thinks necessary, is to make a report to the State Government for its decision. Then the decision of the State Government on the

objections is final. Before the applicability of other provisions in the process of acquisition, in the case of a company, previous consent of the State

Government is required u/s 39 of the Act nor (sic) unless the company shall have executed the agreement as provided in Section 41 of the Act.

Before giving such consent, Section 40 contemplates a previous enquiry. Then compliance with Rules 3 and 4 of the Land Acquisition (Company)

Rules, 1963 is mandatorily required. After the stage of Sections 40 and 41 is reached, the agreement so entered into by the company with the

State Government is to be published in the Official Gazette. This is Section 42 of the Act which provides that the agreement on its publication

would have the same effect as if it had formed part of the Act. After having done all this, the State Government cannot unilaterally and without

notice to the company withdraw from acquisition. Opportunity has to be given to the company to show cause against the proposed action of the

State Government to withdraw from acquisition. A declaration u/s 6 of the Act is made by notification only after formalities under Part VII of the

Act which contains Sections 39 to 42 have been complied and the report of the Collector u/s 5A(2) of the Act is before the State Government

who consents to acquire the land on its satisfaction that it is needed for the company. A valuable right, thus, accrues to the company to oppose the

proposed decision of the State Government withdrawing from acquisition. The State Government may have sound reasons to withdraw from

acquisition but those must be made known to the company which may have equally sound reasons or perhaps more, which might persuade the

State Government to reverse its decision withdrawing from acquisition. In this view of the matter it has to be held that Yadi (memo) dated

11.4.1991 and Yadi (memo) dated 3.5.1991 were issued without notice to the appellant (L & T Ltd.) and are, thus, not legal.

32. But, inspite of the fact that Section 48 do not contain provision for a gazette notification, the Supreme Court after referring to the previous cases has held that such notification is necessary.

33. Very recently, the Supreme Court in Rajendra Agricultural University v. Ashok Kumar Prasad and Ors. reported in JT 2009 (14) SC 516

held that if the statutes provides for publication, then the provision is mandatory. The following passages found in paragraphs 14, 14.1 and 15

reads as follows:

14. In B.K. Srinivasan and Others Vs. State of Karnataka and Others, , this Court explained why publication in the Gazette was mandatory and

necessary in regard to subordinate legislations:

There can be no doubt about the proposition that where a law, whether Parliamentary or subordinate, demands compliance, those that are

governed must be notified directly and reliably of the law and all changes and additions made to it by various processes. Whether law is viewed

from the standpoint of the "conscientious good man" seeking to abide by the law or from the standpoint of Justice Holmes's "Unconscientious bad

man" seeking to avoid the law, law must be known, that is to say, it must be so made that it can be known. We know that delegated or

subordinate legislation is all pervasive and that there is hardly any field of activity where governance by delegated or subordinate legislative powers

is not as important if not more important, than governance by Parliamentary legislation. But unlike Parliamentary Legislation which is publicly made,

delegated or subordinate legislation is often made, unobtrusively in the chambers of a Minister, a Secretary to the Government or other official

dignitary. It is, therefore, necessary that subordinate legislation, in order to take effect, must be published or promulgated in some suitable manner,

whether such publication or promulgation is prescribed by the parent statute or not. It will then take effect from the date of such publication or

promulgation. Where the parent statute prescribes the mode of publication or promulgation that mode must be followed.

14.1. However, if the parent law had been silent about the manner of publishing or notifying the statute, and had not prescribed publication in the

official Gazette as the mode of publication, the contentions of respondents might have merited some consideration. But when the Act clearly

provided that the statute required publication in the Gazette, the requirement became mandatory. In fact, in *B.K. Srinivasan*, this Court explained

the position, if the parent Act was silent about publication in the Gazette:

Where the parent statute is silent, but the subordinate legislation itself prescribes the manner of publication, such a mode of publication may be

sufficient, if reasonable. If the subordinate legislation does not prescribe the mode of publication or if the subordinate legislation prescribes a plainly

unreasonable mode of publication, it will take effect only when it is published through the customarily recognised official channel, namely, the

Official Gazette or some other reasonable mode of publication. There may be subordinate legislation which is concerned with a few individuals or

is confined to small local areas. In such cases publication or promulgation by other means may be sufficient.

15. The decision of this Court in *I.T.C. Bhadrachalam Paperboards and Another Vs. Mandal Revenue Officer, A.P. and Others*, , also throws

considerable light on this issue. In that case, Section 11 of the Andhra Pradesh Non-Agricultural Land Assessment Act 1963, conferred upon the

government the power to exempt any class of non-agricultural land from the levy by an order published in the Andhra Pradesh Gazette. The state

government issued GOM No. 201 dated 17.12.1976, providing certain exemptions including exemption from non-agricultural land assessment, by

way of an incentive and concession to industries to be established in certain schedule areas, the object being to provide rapid industrialisation of

those backward areas. The said order was not published in the official gazette. One of the questions considered by this Court was whether the

Government Order which did not comply with the mandatory requirement of publication in the Gazette could be relied on by person who acted

upon it, to invoke the principle of promissory estoppel against the government and claim the benefit under the government order on the ground that

it contained a promise or representation held out by the government to the members of the public. This Court held that the requirement u/s 11 of

the Act relating to publication of the government order in the Gazette, was mandatory and that where an enactment requires an act (making a

government order) to be done by the government only in the manner prescribed therein, then non-compliance with the mandatory statutory

requirement will make the act (making of a government order) invalid and consequently, the government order cannot be considered as a valid and

binding one, nor as a representation held out by the government, creating any right to seek the benefit of that government order by invoking the

principle of promissory estoppel against the government. This Court held:

30. Sri Sorabjee next contended that even if it is held that the publication in the Gazette is mandatory yet G.O.Ms. No. 201 can be treated as a

representation and a promise and inasmuch as the appellant had acted upon such representation to his detriment, the government should not be

allowed to go back upon such representation. It is submitted that by allowing the government to go back on such representation, the appellant will

be prejudiced. Learned Counsel also contended that where the government makes a representation, acting within the scope of its ostensible

authority, and if another person acts upon such representation, the government must be held to be bound by such representation and that any

defect in procedure or irregularity can be waived so as to render valid which would otherwise be invalid. Counsel further submitted that allowing

the government to go back upon its promise contained in G.O.Ms. No. 201 would virtually amount to allowing it to commit a legal fraud. For a

proper appreciation of this contention, it is necessary to keep in mind the distinction between an administrative act and an act done under a statute.

If the statute requires that a particular act should be done in a particular manner and if it is found, as we have found hereinbefore, that the act done

by the government is invalid and ineffective for non-compliance with the mandatory requirements of law, it would be rather curious if it is held that

notwithstanding such non-compliance, it yet constitutes a "promise" or a representation for the purpose of invoking the rule of promissory/equitable

estoppel. Accepting such a plea would amount to nullifying the mandatory requirements of law besides providing a licence to the government or

other body to act ignoring the binding provisions of law. Such a course would render the mandatory provisions of the enactment meaningless and

superfluous. Where the field is occupied by an enactment the executive has to act in accordance therewith, particularly where the provisions are

mandatory in nature. There is no room for any administrative action or for doing the thing ordained by the statute otherwise than in accordance

therewith. Where, of course, the matter is not governed by a law made by a competent Legislature, the executive can act in its executive capacity

since the executive power of the State extends to matters with respect to which the Legislature of a State has the power to make laws (Article 162

of the Constitution). The proposition urged by the learned Counsel for the appellant falls foul of our constitutional scheme and public interest. It

would virtually mean that the rule of promissory estoppel can be pleaded to defeat the provisions of law whereas the said rule, it is well settled, is

not available against a statutory provision. The sanctity of law and the sanctity of the mandatory requirement of the law cannot be allowed to be

defeated by resort to rules of estoppel. None of the decisions cited by the learned Counsel say that where an act is done in violation of a

mandatory provision of a statute, such act can still be made a foundation for invoking the rule of promissory/equitable estoppel. Moreover, when

the government acts outside its authority, as in this case, it is difficult to say that it is acting within its ostensible authority.

34. With reference to the granting of opportunity to the petitioner before dropping of proceedings are concerned, as already held that TN Act

10/99 is a different piece of legislation. Hence the concept under the Central Act cannot be blindly read into the State enactment. The Supreme

Court in Shanti Sports Club's case (cited supra) in paragraph 28, as extracted above, dealt with the Central Act where there is requisitioning body

with which the State enters into an agreement and an elaborate procedure of Section 5A enquiry and a draft declaration u/s 6 are required. But the

present enactment under TN Act 10/99 is more summary and the requisitioning body hardly comes into picture at the time of either Section 3 or

under Sections 4(1) or 4(2). It is only u/s 5 when the land is completely taken over, the acquired land is handed over to such authorities. Till such

time, the petitioner has no locus standi except to request the Government for making such acquisition.

35. The provisions relating to Sections 5A, 39, 40 and 41 as found in the Central Act are totally absent in the TN Act 10/99. As laid down by

the Supreme Court in Anandhi Ammal's case (cites supra), the provisions of the Central Act or any other enactment cannot be telescoped into the

special enactment like Tamil Nadu Act, 10/99. Therefore, the first contention that the impugned G.O. suffers from principles of natural justice cannot be accepted.

36. On the second question that publication in the Government Gazette for revesting is absolutely essential as set out in both Shanti Sports Club

case (cited supra) and Rajendra Agricultural University case (cited supra). But the petitioner has come forward to challenge the Government Order

without waiting for any gazette notification. Therefore the non publication in the gazette cannot by itself invalidate the G.O. under challenge. If at all,

the impugned Government order only expresses the intention of the Government to drop the proceedings. The act of publication in the gazette is

only an administrative or ministerial act, which may be forthcoming after the impugned Order. Since the petitioner had rushed to this Court within a

few weeks from the date of the Government order and had also obtained an interim injunction, the notification could not have been published. But,

the fact of the matter is though vesting had taken place u/s 3(1), possession has not been taken over from respondents 4 to 6. As already held, the

term vesting is different from taking possession. In the present case, in order to revest the land, a gazette notification is required. But, that lapse will

in no way help the case of the petitioner and it is an issue purely between respondents 4 to 6 and the first respondent State Government.

37. Further, the arguments made by the learned Senior Counsel and also the ground raised in the writ petition that in order to meet terrorist threats,

the petitioner company requires the piece of land owned by respondents 4 to 6 so that vehicles can be checked in advance before letting them into

the approach road also cannot be countenanced by this Court. The petitioner company if they perceive any threat, there is always way out to

safeguard their interest.

38. The Central Industrial Security Force Act, 1968 has been amended by the Central Ordinance 2/2009 with effect from 10.1.2009. The act has

now included joint venture companies, which is defined u/s 2(cb) of the Act. It is defined as a joint venture undertaken by the State Government

with private industrial undertaking. Correspondingly, u/s 10, the duty of the Force was also to protect such industrial undertaking. By virtue of

Section 14, the Managing Director of the joint venture or private sector is also

entitled to make a request for providing CISF to guard their premises. Therefore, the contention that the piece of land required only to prevent future terrorist attacks cannot be raised as a ground to make the Government to acquire lands for the industrial purpose.

39. It is one thing to say that the land is required for industrial purpose. The alleged terrorist attack, will have to be defended by taking recourse to the other provisions of other laws, which may have bearing on the issue.

40. In the light of the above, the impugned order does not suffer from any infirmity or illegality. The impugned order is informed of reasons. The reasons adduced by the State Government based on the District Collector's report cannot said to be either irrelevant or illegal. The contentions of the petitioner do not merit consideration by this Court. Hence the writ petition is liable to be dismissed. Accordingly, the writ petition will stand dismissed. No costs. Consequently, connected miscellaneous petitions stand closed.