
(2015) 01 MAD CK 0137

In the Madras High Court

Case No : Writ Petition (MD) Nos. 9049 and 9050 of 2013 and 4397 and 4398 of 2014 and M.P. (MD) Nos. 1 and 1 of 2013 and 2 and 4 of 2014

Padmavathi

APPELLANT

Vs

Government of Tamil Nadu and Others

RESPONDENT

Date of Decision : 23-01-2015

Acts Referred:

Citation : (2015) 01 MAD CK 0137

Hon'ble Judges : B. Rajendran, J.

Bench : Single Bench

Advocate : N.R. Murugesan, for the Appellant; S. Chandrasekaran, Government Advocate, Advocates for the Respondent

Judgement

B. Rajendran, J.—In view of the issue involved in all the Writ Petitions is one and the same, all the Writ Petitions are taken up together and disposed of by a common order.

2. In all the Writ Petitions the petitioners sought for a direction to the respondents not to install or take over their agricultural cultivable lands under S.F. Nos.298/1,2,3,4,5,6,7,8,9,10, 299/1,2,3-A,3-B, 300/1, 2,3,4,5 in Toto acre 17.67 cents and under S.F. Nos.299/4,5 acre 4 for the formation of multi layer double coated paper board factory through the Tamil Nadu news print and papers limited (TNPL) under the scheme of Rule 110 of Tamil Nadu legislative Assembly Rule which are existing in Manapparai Taluk, Mondipatti Revenue Village on the basis of the resolution dated 07.05.2013, without giving opportunity or notification to the agriculturists.

3. According to the petitioners, during the second week of April, 2013, the fourth respondent along with his subordinates visited the village of Mondipatti, Poduvarpatti, Poongudipatti, Kottapatti which are coming under Mondipatti Revenue Village, Manapparai Taluk and noted all the agricultural and cultivable lands for taking survey. When they enquired the officials about the reasons for the survey, they have stated that they are taking the lands for the Tamilnadu

Newsprint and Papers Limited (TNPL) for starting a paper board factory in the name and style of multi layer double coated paper board manufacturing unit at Mondipatti village. Therefore, the petitioners apprehend that when the lands are cultivable lands and it is sought to be acquired, their very livelihood would be affected. Further more, they would contend that this is a totally backward area and under the Green Revolution Project, they have converted the dry lands into agricultural lands. They would mainly contend that earlier, one Balasubramanian made a representation to the District Collector, Trichirappalli, not to take the agricultural lands but inspite of the same, the respondents have already given some notifications regarding taking over the lands. From the news papers, the petitioners came to know that on 24.05.2013 the Chief Minister is going to lay a foundation for the paper board factory. Therefore, they made a representation to the District President seeking appointment but they have denied and in the peace committee meeting also they have declared that they will not take the agricultural lands. But, now they are attempting to take the lands. Therefore, aggrieved against the same, the petitioners have come forward with these writ petitions for the relief of not to install or taking over the agricultural cultivable lands for the formation of multi layer double coated paper board factory.

4. The respondents have filed a detailed counter and also filed vacate stay petition. In the counter filed by the fifth respondent in W.P.(MD)No.4397 and 4398 of 2014, it is very clearly stated that the acquisition process has been done as per the statutory provisions after giving proper notifications and the lands have been handed over to the fifth respondent on 26.02.2014 and now they are the absolute owner and in possession of the lands in dispute. The lands were acquired for the starting of a state-of-the-art-technology based Multi Layer Double Coated Paper Board industry at Mondipatti, K.Periyapatti (North) and Chettichatram Villages in Manapparai Taluk of Trichy District. The district is a backward area and by virtue of starting the industry, the entire district will be developed. According to them, the Government published a notice under Section 3(2) of Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 (Tamil Nadu Act 10 of 1999) (hereinafter referred to as the Act) calling upon the land owners and any another persons, who in the opinion of the Government may be interested in such land which is proposed to be acquired, to show cause why the land should not be acquired. The notice under Section 3(2) of Act has been issued on 23.10.2013 and thereafter, the petitioners and all other land owners were called for enquiry under Section 3(2) was held on 28.11.2013. The petitioners have participated in the enquiry. Thereafter, Section 3(1) notice was issued on 27.12.2013 and the same was published on 30.12.2013. On publication, as per Section 4(1), the lands vested with the Government. Therefore, 4(2) notice was issued on 25.01.2014 and thereafter, the lands were transferred on 26.02.2014. Therefore, in W.P.(MD)No.4397 and 4398 of 2014 the petitioners have challenged the 3(2) notice and thereafter, they have not chosen to file any writ petition challenging the notice under Sections 3(1) and 4(2) of the Act. Under Section 4(3) of the Act, if any person refuses and fails to comply, the

Collector may take possession of the land. In the present case, the Government have complied with Section 3(2) notice and thereafter, 3(1) notice has been published. On and from 27.12.2013, the lands vested with the Government. By letter dated 22.01.2014 issued under Section 4(2) of the Act, the land owners received it on 25.01.2014 and the period comes to end on 24.02.2014 and since no challenge has been made, the lands were transferred by a certificate dated 26.02.2014. In fact, in a batch of Writ Petitions in W.P.(MD)Nos.12521, 12522, 10010 and 4397 of 2014, this Court has closed the interlocutory application stating that no interim order could be granted unless the petitioners challenges the subsequent notice issued on 27.12.2013 under Section 3(1) of the Act. Further, after taking over the possession of the lands, they have proceeded with the levelling and construction activities. The project cost is 1500 Crores and the project has to be completed by the end of 2015. If the factory is established and run, vast scope of direct and indirect employment for more than 2,000 people. The majority of the lands taken is only non-agricultural lands. The allegation that there are more than 2000 families are suffering is not correct since only 620 families are in Mondipatti Revenue Village and the petitioners are not the residents of the village. The petitioners are having jewellery shop in Kavalkaranpatti in Karur District and more so, the lands are dry and barren lands.

5. In compliance of Section 3(2) of the Act, notifications were published in local edition of leading news papers viz., Daily Thanthi, Indian Express on 29.10.2013, 30.10.2013, 07.11.2013 and 08.11.2013 whereby the public were informed to raise their objections. Enquires were conducted under Section 3(2) at Mondipatti village on 26, 27 and 28th November, 2013 and at K.Kariyapatti on 10th, 11th and 12th December, 2013 and at Chettichatram on 13th December 2013. Notification under Section 3(1) was published in Government Tamil Nadu gazette bearing Nos. 387, 389, 390 on 26.12.2013, 27.12.2013 and 30.12.2013 regarding the proposed acquisition. The fourth respondent had verified the suitability of the lands and made a detailed survey through overazmoish which has helped in identification of the exact dry and barren lands for setting up of the factory. Since the petitioner have not challenged the notifications issued under Sections 3(1) and 4(2) of the Act, the present Writ Petitions are not maintainable and the respondents prayed for dismissal of the same.

6. The Collector has also filed a separate counter endorsing the same view and also contend that it is for the public purpose and for the upliftment of the people of the area which is being declared as a remote and underdeveloped area. He further stated that they have followed all the formalities as contemplated under law and the possession also had been duly handed over to the appropriate authority. He would mainly contend that even in the earlier Writ Petition also they have contemplated that 95% of the lands earmarked for acquisition are dry and waste lands and 5% of the cultivable lands which cannot be avoided since the industrial land should be contiguous for establishing the required infrastructure. But the petitioners lands have all along been classified as dry land. The petitioners have not produced any document viz., adangal extract and

chitta to show that they are cultivating crops in the lands. Therefore, the authorities followed the procedures contemplated under law.

7. Heard both sides.

8. The only ground raised by the petitioners is that the petitioners lands are agricultural lands. In W.P.(MD)No.9847 of 2013 before the Division Bench the respondents have filed a counter stating that the agricultural lands will be eliminated wherever possible before issuing notification and the said statements were recorded by this Court. Therefore, the respondents are taking up the agricultural lands is not correct. The petitioners further contend that the Government have all along been encouraging the conversion of dry lands into cultivable lands and the petitioner have now converted the dry lands into agricultural lands and they have raised certain crops and admittedly certain trees were cut down which is also proved by the proceeding in the earlier Writ Petition. Therefore, the very taking up the agricultural lands for industrial purpose is not correct. Further, they would contend that the question of challenging the notification issued under Sections 3(1) and 4(1) of the Act does not arise as at the initial point of time itself they have challenged the very notice and any notice further made pending adjudication of the Writ Petition will be sub judice. Hence, there cannot be any embargo for filing the present Writ Petitions.

9. First of all when we read the order passed by the Division Bench in W.P. (MD) No. 9047 of 2013 dated 25.06.2013, the Division Bench has observed as follows:

"5. The District Collector, Trichirappalli, the fourth respondent herein, has filed a counter affidavit on 21.06.2013, wherein it is stated that 95% of the lands earmarked for acquisition in Mondipatti, K.Periyapatti North and Chettichatram Revenue Villages are dry and waste lands. There are few patches of land in between the proposed area, viz., 5% having some agricultural activity, which cannot be avoided. Since the industrial land should be contiguous for establishing the required infrastructure. It is further stated that the said proposal is only tentative and after a detailed survey of the status, the agricultural lands will be eliminated where ever possible before issuing notification.

6. In the light of the said averments made in paragraph No. 12 of the counter affidavit filed by the District Collector, Trichirappalli, dated 21.06.2013, the learned counsel appearing for the petitioner submits that the said statements made in the counter affidavit may be recorded and the Writ Petition may be disposed of. The learned Additional Advocate General has no objection to record the said statements contained in the counter affidavit and dispose of the writ petition."

10. From a reading of the above order, it is very clear that even in the counter what they have stated is in between the proposed area to be acquired, 5% of agricultural lands was also available which cannot be avoided because the industrial land should be contiguous for establishing the required infrastructure. In fact, the word used is that the agricultural lands will be eliminated wherever

possible before issuing notification. Therefore, it cannot be now construed by the petitioner that the respondent will completely eliminate the agricultural lands. In fact, in the earlier occasion itself they have clearly pointed out in the counter that they have earmarked the lands for the then proposed staff quarters in order to avoid certain lands to be acquired. But as far as the petitioners lands are concerned, which are in the front of its passage area. Therefore, it could not be avoided. Further, as rightly pointed out by the learned Senior Counsel appearing for the Tamil Nadu News Print and Paper Publication Limited, the dates and events are very clear. In this case, the notice under Section 3(2) of the Act has been issued on 23.10.2013 and thereafter, the petitioners and all other land owners were called for enquiry under Section 3(2) of the Act was held on 28.11.2013. The petitioners have participated in the enquiry. Thereafter, Section 3(1) notice was issued on 27.12.2013 and the same was published on 30.12.2013. As stated by the learned Senior Counsel for the respondents, on publication of notice under Section 4(1) of the Act, the land vested with the Government and free of encumbrance. Thereafter, notice under Section 4(2) was issued on 25.01.2014 and after thirty days time, the lands were transferred to the appropriate authority on 26.02.2014. But as already pointed out, till date the petitioners have not chosen to challenge the 3(1) notification issued on 27.12.2013 or the notification issued under Section 4(2) of the Act.

11. In fact, on 06.08.2014, while disposing of M.P.(MD)Nos.2,2,2 and 3 of 2014 in W.P.(MD)Nos.12521, 12522, 10010 and 4397 of 2014, this Court has passed the following order:

"It is submitted by the learned counsel appearing for the petitioner, who is the counsel for the petitioner in W.P.(MD)No.9049 and 9050 of 2013, wherein a challenge has been made to the same acquisition proceedings stating that the issues are now pending before the Hon"ble Division Bench. Since earlier there was a Public Litigation Petition pending, in which, an undertaking was given not to acquire agricultural land, the said W.P.(MD)Nos.9049 2013 and 9050 of 2013 were also tagged along with the said Public Litigation Petition and though the Publication Litigation Petition has been disposed of, those writ petitions are pending before the Hon"ble Division Bench. In the present batch of cases, the challenge is only to G.O. Ms.no.179, dated 10.10.2013 on the ground that after the passing of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, proposal of the Government under the provision of the State Act is without jurisdiction and illegal. Though the writ petition was entertained no interim order was granted and the matter is pending. In the interregnum, the respondent has proceeded with the acquisition proceedings and notices under Section 3(1) of the State Act have been issued. Pursuant to which, the District Revenue Officer is proceeding further in the matter. In such circumstances, unless the petitioner challenges the subsequent notification issued under the State Act, the question of granting stay of the impugned Government Order does not arise. Accordingly, these applications are closed." 12. From a cursory perusal of the above order, it is very

clear that even as early as on 06.08.2014, this Court has categorically stated that no interim order could be granted as the petitioners have not challenged the subsequent notices issued on 27.12.2013 under Section 3(1) of the Act. Even when this Hon"ble Court has given an opportunity to the petitioners to challenge the notification issued under Section 3(1) of the Act, the petitioners have not chosen to challenge the same. Therefore, the present argument of petitioners that pending writ petitions in W.P.(MD) Nos. 4397 and 4398 of 2014, the notice under Section 3(1) of the Act was issued therefore, they need not challenge the same, is baseless. In fact, when we analyse further the very Writ Petitions in W.P. (MD) Nos. 4397 and 4398 of 2014 itself were filed only on 12.03.2014. Therefore, on the date when the Writ Petitions were filed itself, 3(1) notification was already invoked and subsequently 4(2) notification was also issued and possession of the land was also handed over even on 26.02.2014. Therefore, on the date of filing of the Writ Petitions much water has flown including possession has been transferred to the appropriate authority. Therefore, the petitioners have not even chosen to file writ petitions challenging the notifications. Now when we go to earlier Writ Petitions in W.P.(MD)No.9049 and 9050 of 2013, the writ petitions were filed on 05.06.2013 and the prayer was not to take over the agricultural cultivable lands for formation of multi layer double coated paper board factory and not to take the lands without giving opportunity or notification to the agriculturists. Hence, those writ petitions cannot be maintained at this point of time as the petitioners have confined their prayer only not to take the lands without giving opportunity or notification to the agriculturists. Whereas the notification has been issued on 23.10.2013 and enquiry was conducted on 28.11.2013 and the petitioners had also participated and thereafter, 3(1) notification has been issued on 27.12.2013. Therefore, even after the enquiry was over, the petitioners have not even chosen to challenge the order dated 26.12.2013. Therefore, literally speaking the petitioners have given a consent to the notice as they have not challenged the same as on date. Therefore, as already pointed out by the learned Senior Counsel the prayer in all these Writ Petitions are only in respect of the events prior to 3(1) notification. Therefore, no such relief could be granted at this point of time when much water has flown under the bridge and subsequent events have already taken place.

13. This Court has also taken into consideration the importance of the public need. Admittedly, Manapparai area is a dry and backward area in which if a very big industry like the one now proposed to be started would generate more employment. This aspect has to be taken note of in the interest of the public at large. Further, the petitioners have not produced any documents to show that the lands have been cultivable lands all along. They have not even produced adangal extract or chitta and even in the documents produced by them, they have not stated anything in regard to the agricultural activities and the nature of the lands. Even as admitted by the petitioners, they raised only trees and dry crops and not punja crops. Therefore, the grievance of the petitioners that the respondents have violated the undertakings given in the counter in the earlier

Writ Petitions is not correct. In the earlier counter also they have only stated that only 5% of the lands is amenable for cultivation even that they will try to avoid and that does not mean that they will not totally acquire any lands. Therefore, the petitioners have not made out any case to stall the process of formation of multi layer double coated paper board factory. Hence, all the Writ Petitions are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.