

(2006) 09 MAD CK 0188

In the Madras High Court

Case No : Writ Appeal No's. 2191 to 2193 of 2003, 1508, 1576, 1561 and 1427 of 2000 and WAMP No's. 3119 and 3121 of 2003 and 2722 of 2000

S. Alamelu

APPELLANT

Vs

Govt. of Tamil Nadu

RESPONDENT

Date of Decision : 06-09-2006

Acts Referred:

Companies Act, 1956 — Section 3, 617

Land Acquisition Act, 1894 — Section 17(4), 4(1), 50, 5A, 6

Citation : (2006) WritLR 756

Hon'ble Judges : V. Ramasubramanian, J; D. Murugesan, J

Bench : Division Bench

Advocate : David Tyagarajan, for the Appellant; C. Thirumaran, Government Advocate for Respondent-1, for the Respondent

Final Decision : Dismissed

Judgement

D. Murugesan, J.—The unsuccessful writ petitioners are the appellants. The appellants are the owners of the lands which were acquired by

the respondent-State for establishment of an industrial complex viz., SIPCOT. The proposal was initiated in G.O.Ms. No. 134 dated 6.6.1995 to

acquire an extent of 300 acres for SIPCOT industrial purpose with several multinational companies, non-resident Indians and local entrepreneurs

evinced keen interest in investing in Tamil Nadu, especially near Madras. As it was felt that the said extent of 300 acres may not be sufficient, the

Government issued subsequent G.O.Ms. No. 248 Industries (MIG.2) Department dated 27.10.1995 proposing acquisition for 1400 acres. Later

on in G.O.Ms. No. 61 Industries (MID-II) Department, dated 24.2.1997, the Government accepted the proposal for acquisition of land to an

extent of 935.52.0 hectares of land approximately 2300 acres, including patta

and poromboke lands. By the above Government Orders, it was also indicated that the acquisition must be made invoking emergency clause under the Land Acquisition Act, 1894 (hereinafter called as the "Act").

2. In terms of the above Government Orders, notification u/s 4(1) was issued and declaration u/s 6 was published in the Government Gazette on

13.11.1997. For completion of facts, it must also be mentioned that the possession of the lands was taken and the same was handed over to

SIPCOT on 9.1.1998. The appellants had approached this Court questioning the acquisition proceedings, by way of filing writ petitions some time

during February, 1998 after the Award was passed and possession was taken. The challenge to the acquisition proceedings was basically on the

following grounds viz., (i) that the lands were purchased by the appellants much prior to the Section 4(1) notification and their names were found in

the revenue records, but nevertheless, their names did not find a place in the notification u/s 4(1); (ii) that there was a total non-application of mind

on the part of the respondents to invoke the emergency provision; and (iii) that the lands in question were approved plots by the Government in the

year 1995 itself before Section 4(1) notification. All the above contentions were rejected by the learned single Judge and for the same reasons, the

writ petitions were dismissed. Hence the present appeals.

3. Mr. David Tyagarajan, learned Counsel appearing for the appellants raised the following points:

i) Inasmuch as the respondents have invoked the emergency clause u/s 17(4) of the Land Acquisition Act for the purpose of SIPCOT, a

Corporation, they ought to have followed the procedure enumerated under Part VII of the Land Acquisition Act relating to the acquisition of land

for companies. He fairly submitted that this point was not raised before the learned single Judge and being a question of law, he may be permitted

to raise this contention. According to the learned Counsel, inasmuch as the valuable right on the property has been deprived in view of the

dispensation of the enquiry u/s 5-A, the procedure enumerated under the provisions of the Land Acquisition Act shall be strictly followed. In the

absence of the same, the entire land acquisition proceedings are liable to be quashed.

ii) Secondly, he would contend that even before Section 4(1) notification was

published, the names of the appellants were found in the revenue records and non inclusion of their names in the Section 4(1) notification would vitiate the land acquisition proceedings.

iii) Thirdly, the learned Counsel submitted that inasmuch as the authorities are empowered to invoke the emergency clause, they should have

applied their mind as to whether such clause could be invoked or not while bypassing the usual procedure in conducting final enquiry. In the

absence of application of mind, the entire land acquisition proceedings are liable to be quashed.

iv) Lastly, the learned Counsel submitted that the lands are approved layouts and such lands cannot be acquired in view of the G.O.Ms. No. 2135

Revenue dated 24.9.1997.

4. On the other hand, Mr. C. Thirumuaran, learned Government Advocate would submit that the acquisition is for the purpose of the SIPCOT, a

Corporation, which is managed and controlled by the State Government and thus the provisions of Part VII are not applicable. In so far as the

contention as to the non inclusion of the names of the appellants, learned Government Advocate would submit that at the time of the proposals

were forwarded, the appellants were not the owners and they are the subsequent purchasers, but of course, prior to Section 4(1) notification. As

the Section 4(1) notification was issued only on the basis of the acceptance of proposals, their names were not included. Moreover, as the

emergency clause was invoked dispensing with the 5-A enquiry, non mentioning of the names of the appellants in the Section 4(1) notification will

not make any difference and, consequently, will not vitiate the acquisition proceedings. In so far as the third contention as to the non-application of

mind, the learned Government Advocate brought to our notice the finding of the learned single Judge, after perusal of records, that there was

proper application of mind. Lastly, the learned Government Advocate submitted that G.O.Ms. No. 2135 Revenue dated 24.9.1997 is only a

guideline and has no statutory force and, therefore, the learned Government Advocate submitted that the contentions of the learned Counsel for the

appellants are liable to be rejected.

5. Point No. 1: Though the appellants did not raise the issue as to whether the acquisition proceedings are vitiated as the respondents did not

follow the procedure contemplated under Part VII of the Land Acquisition Act and consequently, there was no decision on the same, in view of

the said legal contention we propose to examine the same. In *Union of India and Ors. v. Mukesh Hans etc.* etc. 2004 (2) LACC 424, the Apex

Court has held that the provisions of Section 17(4) dispensing with the enquiry u/s 5-A is only an exception to the normal mode of acquisition

contemplated under the Act and mere existence of urgency or unforeseen emergency though is a condition precedent for invoking Section 17(4),

that by itself is not sufficient to direct the dispensation of 5-A inquiry. As to whether the respondents have followed the procedure under Part VII

of the Act for the purpose of acquisition, the relevant provisions of the Land Acquisition Act can be usefully referred to:

Section 3(cc): The expression "'Corporation owned or controlled by the State'" means any body corporate established by or under a Central,

Provincial or State Act, and includes a Government Company as defined in Section 617 of the Companies Act, 1956 (I of 1956), a society

registered under the Societies Registration Act, 1860 (XXI of 1860) or under any corresponding law for the time being in force in a State, being a

society established or administered by Government and a co-operative society within the meaning of any law relating to co-operative societies for

the time being in force in any State, being a co-operative society in which not less than fifty one per centum of the paid up share capital is held by

the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State

Governments.

Section 3(e): The expression "'company'" means -

(i) a company as defined in Section 3 of the Companies Act, 1956, other than a Government company referred to in Clause (cc);

(ii) a society registered under the Societies Registration Act, 1860, or under any corresponding law for the time being in force in a State, other than

a society referred to in Clause (cc);

(iii) a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State, other than a co-

operative society referred to in Clause (cc);

Section 6. Declaration that land is required for a public purpose.--- (1) Subject to

the provisions of Part VII of this Act

.. .. .

.. .. .

Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or

wholly or partly out of public revenues or some fund controlled or managed by a local authority.

Explanation 1.-- In computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in

pursuance of the notification issued u/s 4, Sub-section (1), is stayed by an order of a Court shall be excluded.

Explanation 2.-- Where the compensation to be awarded for such property is to be paid out of the funds of a Corporation owned or controlled by

the State, such compensation shall be deemed to be compensation paid out of public revenues.

Section 17. Special powers in cases of urgency.-- (4) In the case of any land to which, in the opinion of the (appropriate Government), the

provisions of Sub-section (1) or Sub-section (2) are applicable, the (appropriate Government) may direct that the provisions of Section 5-A shall

not apply, and, if it does so direct, a declaration may be made u/s 6 in respect of the land at any time (after the date of the publication of the

notification) u/s 4, Sub-Section (1).

Part VII - Section 38-A. Industrial concern to be deemed Company for certain purposes.-- An industrial concern, ordinarily employing not less

than one hundred workmen owned by an individual or by an association of individuals and not being a Company, desiring to acquire land for the

erection of dwelling houses for workmen employed by the concern or for the provision of amenities directly connected therewith shall, so far as

concerns the acquisition of such land, be deemed to be a Company for the purposes of this Part, and the references to Company in (Sections 4, 5-

A, 6, 7 and 50) shall be interpreted as references also to such concern).

Proviso to Section 6 of the Act contemplates that no declaration shall be made unless the compensation to be awarded for such property is to be

paid by a company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority. By Explanation No. 2, it is

explained that where the compensation to be awarded for such property is to be paid out of the funds of a Corporation owned or controlled by the

State, such compensation shall be deemed to be compensation paid out of public revenues.

6. Section 3(e) of the Act defines a "Company" as meaning, a company as defined in Section 3 of the Companies Act, 1956, other than a

Government Company referred to in Clause (cc). By that definition, the Government Company referred to in Clause (cc) cannot be considered to be

a company for the purpose of Part VII. Section 3(cc) relates to the expression "Corporation owned or controlled by the State includes a

Government Company as defined in Section 617 of the Companies Act, 1956.

7. The contention of the learned Government Advocate is that as the acquisition is for the purpose of SIPCOT, a corporation owned or controlled

by the State Government, it can be brought within the definition of Section 3(cc) and excluded by Section 3(e) of the Act.

8. On the other hand, the application Section 17(4) of Part VII relates to an industrial concern which is ordinarily employing not less than one

hundred workmen owned by an individual or by an association of individuals and that Section, in our considered view, would not be applicable to

a Government Company or a Corporation. In fact, the said Part VII relates to acquisition of lands for the Companies enumerated u/s 38-A and

not otherwise. In that view of the matter, we are not impressed on the contention of the learned Counsel appearing for the appellants in respect of

the non compliance of procedure under Part VII of the Act, accordingly we reject the same.

9. Point No. 2: There is no dispute that the names of the appellants were found in the revenue records even before Section 4(1) notification was

issued and, admittedly, their names were not mentioned when the proposals were forwarded in the year 1995, as precisely the proposal was

started in G.O.Ms. No. 134 dated 6.6.1995 and later on the subsequent Government Order was passed in G.O.Ms. No. 248 dated 27.10.1995

and G.O.Ms. No. 61 dated 24.2.1996. The challenge as to the non inclusion of the names of the appellants in 4(1) notification is liable to be

rejected mainly on the following two grounds:

(i) Firstly, when the emergency provisions are invoked, dispensing with the

enquiry u/s 5A, non inclusion of names of the land owners in 4(1)

notification may not have any bearing on the validity of the acquisition proceedings so long as they are given opportunity to participate in the award

enquiry. This position in law is well settled. In the event the emergency provisions are invoked, the land owners are entitled for a reasonable

compensation for acquisition of the lands and for that purpose, they are entitled to be heard in the award enquiry. Hence, non inclusion of their

names by itself shall not vitiate acquisition proceedings.

(ii) Secondly, when the proposals are forwarded to the Government, the entire records relating to the lands including survey nos., extent and the

names of the owners are also forwarded to the Government for their consideration. Admittedly on the date when the proposals were sent, the

names of the appellants were not found in the revenue records and for the said reason, the names were not included in the proposals. When once

the proposals are approved by the Government, the same are not again referred to the acquisition officers for further verification as to the survey

numbers, extent of land and the names of the owners. Section 4(1) notification is prepared and issued on the basis of the details contained in the

proposal. Of course, if the land acquisition officers could have verified the names of the owners after obtaining the approval of the proposals, and it

would have been a fair procedure to avoid any challenge on the ground of non inclusion of names. But, in our considered view, a reasonable

inference could be drawn as to the bona fide of the respondents in publishing Section 4(1) notification as per the details contained in the proposals

approved by the Government.

10. Point No. 3:-In so far as the challenge to the acquisition proceedings on the ground of non application of mind, our attention was drawn by the

learned Government Advocate to the paragraph Nos. 28,29 and 30 of the order of the learned single Judge. The learned Judge has found factually

that the respondent-State has applied their mind before the proposals were accepted after perusing the files. That apart, the learned Counsel for

the appellants submitted that the Government Order relates to the lands belonging to the appellants for issue of notification in G.O.Ms. No. 256

dated 24.9.1997. While applying the mind to the emergency clause, the Government had relied upon only G.O.Ms. No. 61 dated 24.2.1997,

which Government Order is not applicable to the cases on hand. However, our attention was drawn by the learned Government Advocate that the proposals were initially considered by the Government in G.O.Ms. No. 134 dated 6.6.1995 and thereafter, only G.O.Ms. No. 248 dated 27.10.1995 and lastly, for an extent of nearly 2300 hectares in G.O.Ms. No. 61 dated 24.2.1997. The application of mind is not only in respect of the patta lands but also for the poromboke lands. The said Government Order relates to the entire extent of land including the land belonging to the appellants notified in G.O.Ms. No. 256 dated 24.9.1997.

11. In view of the above, we are not inclined to accept the contention of the learned Counsel for the appellants. However, he relied upon the judgment of the Supreme Court reported in Mukesh Han's case (cited supra). It is true that the Apex Court has held that before an emergency clause is invoked, it requires an opinion be formed by the Government that along with the existence of such urgency or unforeseen emergency, there is also a need for dispensing with 5-A enquiry. The said judgment is not applicable to the facts of these cases, as we have found that the respondent-State had applied their mind to the acceptance of the proposal for acquisition and the consequential decision to dispense with 5-A enquiry is in conformity with the law laid down by the Apex Court. The learned Counsel for appellant has also relied upon another judgment of a Division Bench of this Court in Chinnamma and Others Vs. State of Tamil Nadu and Another, on the same line. As we have factually found that there was application of mind at the instance of the State government, the decision cannot be made applicable to the facts of these cases.

12. Point No. 4:-So far as the last contention is concerned, the learned Counsel for the appellants would rely upon the judgment of this Court reported in Somasekar and Anr. v. State of Tamil Nadu and Ors. 2000 Writ L.R. 231 for the proposition that G.O.Ms. No. 837 Housing dated 15.6.1976 excluded certain categories of lands from acquisition. One such category was in respect of all areas covered by layouts approved by Director of Town and Country Planning. Learned Counsel submitted that the lands covered under the acquisition proceedings have been approved by the Government in the year 1995 itself and therefore, in view of the said Government Order, those lands are excluded. We are not in agreement

with the said submission. Firstly, the said Government Order is only an administrative instruction and utmost can be called as guidelines. Even in the case referred to above by the learned Counsel for the appellants, though the learned Judge has referred to the above Government Order,

ultimately, did not accept the contention, as could be seen from paragraph-42 in point No. 2 of the said order, where the learned Judge has held

that the Government Order will be helpful to screen applications and would not enjoin any responsibility on the second respondent nor would it

create any right in the land owners since the said guidelines were only an exercise of discretion. In fact, a similar question came up for consideration

before the Apex Court in the judgment in State of Tamil Nadu and another Vs. Mahalakshmi Ammal and others, . In that case, the Supreme Court

was considering G.O.Ms. No. 583 dated 11.3.1983. In fact, the Government Order in G.O.Ms. No. 837 dated 15.6.1976 and subsequent

similar Government Order in G.O.Ms. No. 413 Housing and Urban Development Department dated 3.3.1979 and one more G.O. in G.O.Ms.

No. 57 Housing and Urban Development dt.12.1.1980 excluding certain lands came up for consideration before the apex Court and ultimately the

apex Court found that those Government Orders have been subsequently withdrawn vide G.O.Ms. No. 583 dated 11.3.1983. Moreover, the

above Government Orders relate to the exclusion of plots earmarked for residential purpose for acquisition and allotment of the same for others for

housing purpose. In our opinion, those exclusions are applicable only in case of acquisition for housing schemes and not to one in the present cases

that the acquisition of lands for industrial purpose.

13. In Collector Ongole and Another Vs. Narra Venkateswarlu and Others, , the apex Court did not accept a similar challenge on the basis of the

G.O., incorporating the power on the authority where the compensation amount was Rs. 20,000/- and above. The contention was repelled on the

ground that it was only an administrative instruction and cannot have any statutory force to challenge the land acquisition proceedings.

14. On all the above reasons, we are of the considered view that there are no merits in the writ appeals and the same are dismissed. No costs.

Consequently, connected WAMPs are also dismissed.