

(2016) 01 MAD CK 0079

In the Madras High Court

Case No : Writ Petition (MD) No. 4264 of 2015 and Miscellaneous Petition (MD) No. 2 of 2015

Sajojini Ammal Educational Trust

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 08-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226, Article 246(1), Article 254(1)
National Highways Act, 1956 — Section 3A, Section 3A(1), Section 3C(2), Section 3D(1), Section 3D(2)
Tamil Nadu Town and Country Planning Act, 1971 — Section 20,

Citation : (2016) 3 CTC 382 : (2016) 2 MLJ 108

Hon'ble Judges : K. Ravichandra Babu, J.

Bench : Single Bench

Advocate : B. Saravanan, for the Appellant; C. Nandagopal, Central Govt. Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

K. Ravichandra Babu, J.—1. The petitioner is an Educational Trust and is aggrieved against the notification dated 13.05.2014 issued by the Ministry of Road Transport and Highways, Union of India, under Section 3A(1) of the National Highways Act, 1956 and the consequential proceedings of the 3rd respondent, dated 09.07.2014, issued under Section 3C(2) of the said Act and further notification issued by the second respondent under Section 3D(1) of the said Act. In effect, through the above-said impugned proceedings, the lands referred to in the writ petition are subjected to acquisition proceedings under the National Highways Act, for the purpose of building, widening/to leaning with paved shoulders etc., Maintenance/Management and operation of National Highways No. 226 on the stretch of land from Kilometer 0/000 to KM 155/626 (Thanjavur-Manamadurai) Section in the District of Pudukkottai. Through the impugned proceedings, vast extent of lands belonging to various persons including the subject matter lands are sought to be acquired for the above-said

purpose.

2. The case of the petitioner in short is as follows:-

"The petitioner trust was established and registered on 20.06.2006 for establishing an Anglo Indian Matriculation School in the outskirts of Pudukottai. The 4th respondent (hereinafter called as SIPCOT) has established an industrial park, namely, SIPCOT Industrial Complex at Pudukottai, after obtaining permission from the Town Planning Commissioner under the provisions of Tamil Nadu Town and Country Planning Act. At the request of the petitioner, the SIPCOT accepted to allot a vacant site within the said industrial complex, which is earmarked for school and playground, for establishing a school by the petitioner. An order, dated 22.12.2008, was passed by SIPCOT allotting a vacant site/plot on a lease to the petitioner for a period of 99 years with further permission to put up school building in the said land. A lease deed in favour of the petitioner was also executed on 20.04.2009. Thus, the petitioner is in possession and enjoyment of the said property. The petitioner obtained building plan approval from the local village panchayat on 11.01.2011 and started constructing the school building and thereby incurred a cost of about Rs. 70,00,000/- so far, towards such construction. While so, the 2nd respondent issued the impugned notification, dated 13.05.2014, under Section 3A(1) of the National Highways Act, 1956, proposing to acquire a part of the land given on lease to the petitioner. A paper publication was issued by the 3rd respondent on 22.05.2014 regarding such proposal to acquire the lands. The petitioner made objection on 07.06.2014 by contending that such acquisition would make it impossible for the petitioner to establish a school, especially, when the said land was earmarked only for the purpose of establishing a school and playground. The petitioner also pointed out the availability of alternative poramboke land, so that the re-alignment of the proposed two laning of National Highways can be made without causing any damage to the petitioner's proposed school. On 09.07.2014, the 3rd respondent rejected the petitioner's request and consequently, the 2nd respondent issued a notification under Section 3D(2) of the said Act. The impugned proceedings are illegal, arbitrary and in violation of the provision of National Highways Act, 1956 and Tamil Nadu Town and Country Planning Act 1971."

3. The 2nd respondent filed a counter affidavit and also filed an additional counter affidavit. The 3rd respondent filed a separate counter affidavit. The sum and substance of the counter affidavit filed by the respondents 2 and 3 are as follows:-

"The Ministry of Road and Transport and Highways has committed to develop the Thanjavur-Manamadurai section into two lanes with paved shoulders through the National Highways Authority of India as a single package. However, after considering the financial viability, the project has been divided into two packages. Out of which, Thanjavur-Pudukkottai package is the subject matter in this proceedings. In that package, one bye-pass for Pudukkottai Town starts at

Km. 47/460 and ends at Km.55/228 traversing through Mullur, Vagavasal, Vellanur and Nathampannai villages to reduce the traffic congestion has been considered and accordingly, Land Acquisition proceedings has been initiated in accordance with law. While acquiring the land, the procedures contemplated under the National Highways Act, 1956 have been strictly followed. As per the Revenue Records, subject matter lands belonged to SIPCOT and there is no entry with regard to the lease granted to the petitioner. The 3rd respondent issued notification and paper publication to acquire the lands in accordance with the alignment determined for the project after thoroughly studying the feasibility and possibility on the basis of the ground geometry and reality by the experts and not just on the availability of lands alone. Any deviation in that alignment during the construction period will affect the progress of the project and work will not be completed within the time schedule. All the objections raised by the petitioner were considered and the same were rejected. Now, the lands are vested with the Central Government absolutely free from all encumbrances after issuance of Section 3D(2) declaration. The land at Survey No. 34 measuring 3.35.00 Hectare and portion of the land has been given by the SIPCOT to run the said school without having proper title over the property, as the same has been classified as Government waste in the Revenue records. In this survey number only, an extent of 5995 sq.m of land on the southern portion is required for the project and the remaining area is still available measuring an extent of 2.75.05 Hectare. The school building, which is under construction in 376 sq.m, is on the southern end of the said survey number and thus, not affected by the land acquisition. Only an extent of 69 sq.m, where basement raised for school building, would be affected by the acquisition. The petitioner has been given proper opportunity to represent their case, who in turn appeared and made objections which were considered and rejected in accordance with law. The SIPCOT which claimed right over the property has only sought for compensation through their letter dated 24.12.2014, without objecting to the acquisition. The petitioner is claiming right over the superstructure only and not over the land."

4. Mr. B. Saravanan, learned counsel appearing for the petitioner submitted as follows:-

"The impugned notification is in conflict with Sections 33 and 20 of the Tamil Nadu Town and Country Planning Act, 1971, since the proposed acquisition is against the intention of the Tamil Nadu Act, specifically earmarking the property for establishing a school and playground. The objections raised by the petitioner have not been properly considered by the 3rd respondent and the same were rejected solely based on the remarks made by the 2nd respondent. After issuing a detailed development plan, under the Tamil Nadu Town and Country Planning Act, 1971, any variation and revocation of such development plan can be made only under Section 33 of the Tamil Nadu Act. Therefore, invoking of Section 3A of the National Highways Act, is in variation to the development plan and thus, there is a conflict between the State law and Central Act."

5. In support of the above submissions, the learned counsel appearing for the petitioner relied on the following decisions:-

"(i) , (2012)7 SCC 106 (State of Kerala and others vs. Mar Appraem Kuri Company Limited and another).

(ii) , (2011)3 SCC 139 (Offshore Holding Private Limited vs. Bangalore Development Authority and others).

(iii) , (2014)3 SCC 502 (Dipak Babaria and another vs. State of Gujarat and others)."

6. Per contra, the learned standing counsel appearing for the respondents 1 to 3 submitted as follows:-

"The impugned proceedings were issued strictly in accordance with the procedure contemplated under the National Highways Act and there is no violation of any such procedure at any point of time. The petitioner is claiming to be the lessee under SIPCOT and therefore, they cannot object to the acquisition of the land. At the most, they may seek for compensation in respect of the superstructure alone. The SIPCOT, through their letter dated 24.12.2014, requested the acquiring authorities to treat survey Nos. 34/1 and 34/2A as SIPCOT lands and not Government Poramboke land and consequently the land owner sought for payment of compensation for the said property only. The petitioner also through their letter dated 17.12.2014 sought for compensation of Rs. 93,97,075/-, however, without prejudice to their contention in this writ petition. Now, the proceedings has reached the stage of passing the award."

7. In support of his contention, the learned counsel for the respondents 1 to 3 relied on the following decision:-

"2014(1) CWC 324 (The Clasic Farms (Chennai) Ltd., vs. Union of India."

8. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

9. Admittedly, the petitioner is only a lessee under SIPCOT in respect of the lands under acquisition proceedings through National Highways Act for the purpose of building, widening/to leaning with paved shoulders etc., Maintenance/ Management and operation of National Highways No. 226 on the stretch of land from Kilometer 0/000 to KM 155/626 (Thanjavur-Manamadurai) Section in the District of Pudukkottai. It is also not in dispute that the SIPCOT, which has given those lands on lease to the petitioner, has not objected to the acquisition proceedings and on the other hand, only sought for payment of compensation, by specifically requesting the authorities to treat two survey numbers, namely, Survey Nos. 34/1 and 34/2A also as SIPCOT lands and not as Government poramboke lands. The said fact is also evident from the letter issued by the SIPCOT dated 24.12.2014 to the Special Tahsildar, Land Acquisition. It is further seen that the petitioner has also through their representation dated 17.12.2014

sought for compensation of Rs. 93,97,075/- in respect of the superstructure, however, without prejudice to their contentions raised in this writ petition.

10. Keeping the above said factual and undisputed aspects of the matter in mind, let me consider the objections raised in this writ petition against the acquisition proceedings.

11. The main contention raised by the learned counsel appearing for the petitioner is that when a development plan is issued under the Tamil Nadu Town and Country Planning Act, any deviation or modification of the same can be made only by invoking the provisions under Section 33 of the said Act and not by any other manner. In other words, it is his contention that issuance of notification under Section 3A of the National Highways Act proposing to acquire the subject matter lands is in contradiction to the object and intention of the State Act and the power conferred on the authorities under the said Act. Therefore, he sought to contend that there is a conflict between the above said State Act and Central Act.

12. I am unable to appreciate the said contention of the learned counsel for the petitioner for the following reasons:-

"It is to be noted that both the State Act and Central Act, namely, Tamil Nadu Town and Country Planning Act and National Highways Act are acting on two different fields and they are not operating on the same subject matter. One is for formation of Town Planning and the other one is for acquisition of lands for the purpose of providing roads, highways etc.,. Therefore, the contention of the learned counsel for the petitioner that the Central Act is in conflict with the State Act deserves to be rejected. If that contention is to be accepted, then no acquisition proceedings under Highways Act can be initiated in respect of a land, which is either coming under the development plan or granted with planning approval. On the other hand, perusal of Section 3A of the National Highways Act, 1956 would show that the Central Government is empowered to acquire "any land" for the purpose referred to therein. Therefore, it goes without saying the term "any land" covers all lands and whether they come under the development plan or were given planning approval. The Central Act does not contemplate anywhere granting exemption of any land from its purview. Therefore, I find that there is no conflict of law in this case as projected by the learned counsel for the petitioner."

13. There is no doubt that insofar as the Tamil Nadu Act is concerned, the variation or revocation of detailed development plan can be made only by the competent authority contemplated under Section 33 of the said Act. But the issue involved in this case is not the variation or revocation of the detailed development plan and on the other hand, the issue is with regard to the acquisition of a land which has come under the development plan. Therefore, I am of the firm view that the contention of the learned counsel has to be rejected in this aspects, since the act of acquisition is totally different from the act of

variation or revocation of a development plan.

14. Insofar as the decisions relied on by the learned counsel for the petitioner which deal with repugnancy between the State Act and Central Act are concerned, I do not think that those decisions will help the petitioner in any manner, as the factual aspects of the present matter are totally different and distinguishable. I have already found and pointed out that there is no inconsistency between both laws and consequently the question of repugnancy does not arise. Even otherwise, perusal of the decision of the Apex Court reported in , (2012)7 SCC 106 (cited supra) relied on by the learned counsel appearing for the petitioner, more particularly, the observation at paragraph 47, would go to show that the contention of the petitioner herein cannot be sustained. Paragraph 47, reads as follows:-

"47. The question of repugnancy between parliamentary legislation and State legislation arises in two ways. First, where the legislations, though enacted with respect to matters in their allotted spheres, overlap and conflict. Second, where the two legislations are with respect to matters in the Concurrent List and there is a conflict. In both the situations, the parliamentary legislation will predominate, in the first, by virtue of non obstante clause in Article 246(1); in the second, by reason of Article 254(1)"

15. Likewise, the other decision relied on by the learned counsel for the petitioner reported in , (2014)3 SCC 502 (cited supra) is also a case where the Apex Court has dealt with the power of Collector of enquiry and resumption of the land and the proper exercise of such power in respect of agricultural land permitted to be sold for industrial purpose under Gujarat Tenancy and Agricultural Lands Act, 1958. Therefore, the above decision is also not relevant for the issue in hand.

16. Insofar as the other decision reported in , (2011)3 SCC 139 (cited supra), relied on by the petitioner's counsel, is concerned, the Apex Court in fact has only considered the scope of State Legislation and the competency in enacting Bangalore Development Authority Act, 1976 and found at paragraph Nos. 102, 117 and 120 are as follows:-

"102. The repugnancy would arise in the cases where both the pieces of legislation deal with the same matter but not where they deal with separate and distinct matters, though of a cognate and allied character. Where the State Legislature has enacted a law with reference to a particular entry with respect to which, Parliament has also enacted a law and there is an irreconcilable conflict between the two laws so enacted, the State law will be a stillborn law and it must yield in favour of the Central law."

"117. We have already noticed that the BDA Act is an Act aimed at implementation of schemes for planned development and stoppage of haphazard construction. On the other hand, the Land Acquisition Act is an Act dealing strictly with acquisition of land. Section 36(1) of the BDA Act refers to application

of the provisions of the Land Acquisition Act to that Act as far as practicable..... "

120. Having examined the pith and substance of the impugned legislation and holding that it is relatable to Entries 5 and 18 of List II of Schedule VII of the Constitution, the question of repugnancy can hardly arise..... "

17. When a question of repugnancy would arise has been considered in detail by the Apex Court in the following decisions:-

"(i) In , AIR 1983 SC 1019 (M/s. Hoechst Pharmaceuticals Ltd., vs. State of Bihar), it has been observed that the question of repugnancy arises only when both the legislatures are competent to legislate in the same field i.e., with respect to one of the matters enumerated in the Concurrent List and that Article 254(1) cannot apply unless both the Union and the State laws relate to a subject specified in the Concurrent List and they occupy the same field.

(ii) In , AIR 1979 SC 898 (M. Karunanidhi vs. Union of India), the Apex Court has observed at paragraph 24 as follows:-

"24. It is well settled that the presumption is always in favour of the constitutionality of a statute and the onus lies on the person assailing the Act to prove that it is unconstitutional. Prima facie, there does not appear to us to be any inconsistency between the State Act and the Central Acts. Before any repugnancy can arise, the following conditions must be satisfied-

1. That there is a clear and direct inconsistency between the Central Act and the State Act.

2. That such an inconsistency is absolutely irreconcilable.

3. That the inconsistency between the provisions of the two Acts is of such a nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other."

18. The other contention raised by the learned counsel for the petitioner is that while considering the objection raised by the petitioner, the 3rd respondent has not applied his mind individually and passed the order. Therefore, it is contended that Section 3C(2) has not been properly complied with. Here again, I am unable to appreciate the above contention of the learned counsel for the petitioner. Perusal of the proceedings dated 09.07.2014 issued by the 3rd respondent would show that the said authority has taken into consideration of the objections raised by the petitioner as well as the report submitted by the 2nd respondent and thereafter, passed the said order rejecting the objection raised by the petitioner. The objection raised by the petitioner was purely based on their financial loss and therefore, they called upon the authorities to take a deviation of the formation of Highways. Thus, in effect, it is the contention of the petitioner that in order to avoid the loss to be sustained by the petitioner, the laying of the road

can be deviated. I do not think that the above contention of the writ petitioner can be taken as valid and legally sustainable objection challenging the proceedings. Needless to say that the power of "eminent and domain" always vest with the Government and therefore, what is to be seen is as to whether the authorities have complied with the procedure contemplated under the particular enactment for acquiring the land. It is true that while acquiring such land, the land owner would sustain loss. That is why the compensation is being awarded for acquiring the said land. In this case, if portion of the building constructed by the petitioner is affected by the acquisition, as the owner of such superstructure, the petitioner is always entitled to claim compensation under the National Highways Act and therefore, the petitioner cannot contend that since it causes financial loss, the acquisition should either be dropped or the authorities should deviate the alignment by taking an alternative site.

19. At this juncture, it is to be stated that alignment deviation is very major decision which has to be resorted to only when such deviation is inevitable apart from the fact that it is also feasible. Needless to say that such decision purely of a technical in nature is to be taken by the competent authorities only after studying the feasibility and possibility and not at the simple request made by the landowners at every stage of the project. Here, in this case, it is seen that thorough study of feasibility and possibility was made by the competent authority and on the basis of the ground geometry and reality, the present alignment is determined. Therefore, the second respondent has given the report to the 3rd respondent stating that the objections raised by the petitioner cannot be considered, as the alignment was made and determined for the project after thoroughly studying the feasibility and possibility on the basis of the ground geometry and reality by the experts and not by availability of the lands alone. It is also referred to in the said report that while forming the road, due care will be taken as far as possible not to affect the building depending upon the need of the road. When such report is placed before the 3rd respondent, he has rightly considered the same and rejected the request of the petitioner. Therefore, I find that the petitioner is not right in contending that the procedures contemplated under Section 3C(2) have not been strictly complied with.

20. In an unreported decision relied on by the learned counsel appearing for the respondents 1 to 3 made in W.P(MD) No. 2172 of 2008 dated 15.04.2015, the learned Judge has observed that the Court cannot sit over the opinion of the expert committee while considering the land acquisition proceedings.

21. In a decision reported in (2014)1 CWC 324 (cited supra), this Court has considered the scope of judicial interference in respect of acquisition proceedings initiated under the National Highways Act and at paragraphs 24 to 27, it has been observed as follows:-

"24. Learned counsel for the fifth respondent further relied on the decision of the Apex Court reported in , 1997(1) SCC 134, Ramniklal N. Bhutta and another v. State of Maharashtra and Others, wherein at paragraph No. 10, the Apex Court

has held as follows:

"10. Before parting with this case, we think it necessary to make a few observations relevant to land acquisition proceedings. Our country is now launched upon an ambitious programme of all-round economic advancement to make our economy competitive in the world market. We are anxious to attract foreign direct investment to the maximum extent. We propose to compete with China economically. We wish to attain the pace of progress achieved by some of the Asian countries, referred to as "Asian tigers", e.g., South Korea, Taiwan and Singapore. It is, however, recognised on all hands that the infrastructure necessary for sustaining such a pace of progress is woefully lacking in our country. The means of transportation, power and communications are in dire need of substantial improvement, expansion and modernisation. These things very often call for acquisition of land and that too without any delay. It is, however, natural that in most of these cases, the persons affected challenge the acquisition proceedings in courts. These challenges are generally in the shape of writ petitions filed in High Courts. Invariably, stay of acquisition is asked for and in some cases, orders by way of stay or injunction are also made. Whatever may have been the practices in the past, a time has come where the courts should keep the larger public interest in mind while exercising their power of granting stay/injunction. The power under Article 226 is discretionary. It will be exercised only in furtherance of interests of justice and not merely making out of a legal point. And in the matter of land acquisition for public purposes, the interests of justice and the public interest coalesce. They are very often one and the same. Even in a civil suit, granting of injunction or other similar orders, more particularly of an interlocutory nature, is equally discretionary. The courts have to weigh the public interest vis-a-vis the private interest while exercising the power under Article 226—indeed any of their discretionary powers. It may even be open to the High Court to direct, in case it finds finally that the acquisition was vitiated on account of non-compliance with some legal requirement that the persons interested shall also be entitled to a particular amount of damages to be awarded as a lump sum or calculated at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong; quashing the acquisition proceedings is not the only mode of redress. To wit, it is ultimately a matter of balancing the competing interests. Beyond this, it is neither possible nor advisable to say. We hope and trust that these considerations will be duly borne in mind by the courts while dealing with challenges to acquisition proceedings."

(emphasis supplied)

25. The categorical observation of the Apex Court made in the above decision would show that the power under Article 226 in the matter like this has to be exercised only in furtherance of interests of justice and not merely on the making out of a legal point. It is further pointed out therein that in the matter of land acquisition for public purposes, the courts have to weigh the public interest vis-a-

vis the private interest while exercising the power under Article 226 of the Constitution of India.

26. The learned counsel further relied on a decision of the Apex Court reported in , 2011(8) MLJ 53, Union of India v. Dr. Kushala Shetty and Others, wherein at paragraph No. 24, it is observed as follows:

"Here, it will be apposite to mention that NHAI is a professionally managed statutory body having expertise in the field of development and maintenance of National Highways. The projects involving construction of new highways and widening and development of the existing highways, which are vital for development of infrastructure in the country, are entrusted to experts in the field of highways. It comprises of persons having vast knowledge and expertise in the field of highway development and maintenance. NHAI prepares and implements projects relating to development and maintenance of National Highways after thorough study by experts in different fields. Detailed project reports are prepared keeping in view the relative factors including intensity of heavy vehicular traffic and larger public interest. The Courts are not all equipped to decide upon the viability and feasibility of the particular project and whether the particular alignment would subserve the larger public interest. In such matters, the scope of judicial review is very limited. The Court can nullify the acquisition of land and, in rarest of rare cases, the particular project, if it is found to be ex-facie contrary to the mandate of law or tainted due to malafides. In the case in hand, neither any violation of mandate of the 1956 Act has been established nor the charge of malice in fact has been proved. Therefore, the order under challenge cannot be sustained."

27. In the above decision, the Apex Court considered the importance of the national highways project and thus, observed that the courts are not at all equipped to decide upon the viability and feasibility of the particular project and the court can nullify the acquisition of land and in rarest of rare cases, the particular project, if it is found that the acquisition of land and the particular project are contrary to the mandate of law or tainted due to mala fides."

22. Thus, this Court is satisfied that the entire proceedings have been initiated and proceeded with strictly in accordance with law, namely, National Highways Act.

23. Above all, admittedly, the petitioner is only a tenant/lessee in respect of the land under acquisition. They may be the owner of the superstructure. Therefore, the petitioner, at the best, can make a claim towards the compensation payable in respect of the superstructure and at any event, they are not entitled to question the very acquisition of the land, over which, the petitioner is not having any title. On the other hand, in this case, the owner of the land, namely, SIPCOT has not objected to the acquisition and they only seek compensation. Therefore, I am of the firm view that the petitioner, being the owner of the superstructure alone, is not having any locus standi to question the very acquisition of the land.

24. Considering all these aspects, I am of the view that the petitioner has not made out a case for interfering with the impugned acquisition proceedings and thus, this Court finds that the writ petition deserves no merits and accordingly, the same is dismissed. The interim stay granted already is vacated. Needless to say that the petitioner can workout their remedy before the competent Authority for seeking compensation in respect of the superstructure. No costs. Consequently, connected miscellaneous petition is closed.