

(1984) 02 MAD CK 0030
In the Madras High Court
Case No : Writ Appeal No. 453 of 1980

State of Tamil Nadu and Another

APPELLANT

Vs

The Saroja Mills Ltd.

RESPONDENT

Date of Decision : 29-02-1984

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 40, 6

Citation : (1985) ILR (Mad) 351

Hon'ble Judges : Sathiadev, J; Mohan, J

Bench : Division Bench

Advocate : C. Chinnaswami, Special Government Pleader, for the Appellant; R. Arunagirinathan, for Raj and Raj, for the Respondent

Final Decision : Allowed

Judgement

Mohan, J.—The short facts leading to the writ appeal are as follows: An extents of 39.93 acres in S.Nos. 70/1 C, 71/1-C and 72-1 etc in Singanallur was acquired under Part VII of the Land Acquisition Act (for short the Act) and was laced at the disposal of the Respondent, mills. The public purpose as noted in the 4(1) notification and declaration u/s 6 was, for putting up presidential quarters for the labourers of the mills under the subsidised Industrial Housing Scheme. The Respondent mill claimed that it had utilised an extent of 5.78 acres by putting up a few houses. This is disputed on behalf of the State. However, since not very much turns upon the same, we need not dwell at length on that in so far as the other extent was not utilised the Government made proposal in G.O.Ms. No. 4293, dated 25th October 1966 for the resumption of the remaining extent. That G.O. may be extracted:

In the circumstances reported, the Government accepts the Proposal of the Commissioner of Labour, Madras, that the unutilised lands measuring an extent of 34.5 acres acquired on behalf of M/s. Saroja Mills Ltd., Singanallur under the Land Acquisition Act be resumed.

The Commissioner of Labour is requested to take necessary action in consultation with the Collector of Coimbatore in the matter. The Commissioner of Labour, Madras is also requested to send a report to the Government through the Chairman State Housing Board whether the lands after resumption he utilised for construction of houses under subsidised Industrial Housing Scheme (Government Sector) in due course.

2. Thereafter, the Commissioner of Labour acting on the G.O. called upon the Respondent mill to handover the land measuring an extent of 34.15 acres directed to be resumed. To that the Respondent mill wrote a reply on 20th September 1969, agreeing to handover the remaining utilised portion of the said, extent of 34.15 acres. It was, at its stage, the Government passed the impugned in G.O.Ms. No. 382 Housing dated 18th May, 1977 which is as follows:

In the Government order first read above the Government ordered that the unutilised extent of land Singanallur village, Coimbatore taluk and district measuring 34.15 acre (out of 39.93) acres in S.No. 7011 etc. acquired on behalf of Saroja Mills, Singanallur be handed over to the Tamil Nadu Housing Board for its various housing scheme.

The Collector of Coimbatore in his letter third read above, has reported that an extent of 39.93 acres in S.No. 7711, etc of Singanallur village was acquired as per award No. 11.55 dated 18th May 1975 and so there is a difference of 0.10 cents in the total extent indicated in the Government order first read above.

The Regional Director Central Ware Housing Corporation, Madras has requested for allotment of land in the area for construction of godown in Coimbatore taluk.

Thiruvallur Saroja Mills Singanallur, Coimbatore has not utilised the land for the purpose for which the land was acquired. In the circumstances, the Government direct that the extent of 39.93 acres in S.No. 77/1 etc. of Singanallur village Coimbatore Taluk and district be resumed immediately on payment to the Saroja Mills of Rs. 52,752.37 inclusive of 15 per cent solatium based on the cost of the premise fixed at the time of acquisition.

The Collector of Coimbatore is requested to arrange to hand over immediately after resumption of the lands an extent of 5.95 acres lying to the west of Tiruchi Peelamed Erode road to the Central Ware Housing Corporation, Madras on payment of by the institution of proportionate share of Rs. 52,752.37. The Government also direct that the balance of 33.98 acres be handed-over to the Tamil Nadu Housing Board on payment of proportionate share of Rs. 52,752.37. The Collector of Coimbatore is requested to take immediate action in the matter as the Central Ware Housing Corporation is in need of the land very urgently.

This G.O. was questioned in Writ Petition No. 3442 of 1977 which came up for adjudication before our learned Brother Padmanabhan, J., Pending the writ petition, the Government made a proposal by its letter, dated 18th January 1980 calling upon the Respondent to state whether it was agreeable to the assignment

of 33.93 acres under B.S.O.:21 on payment of the market value of the lands and whether the Respondent would agree to withdraw the said writ petition. The further condition was within three months it should submit a scheme for construction of houses to the mills workers under the subsidised Industrial Housing Scheme (Private Sector) and for grant of loan and subsidy for the scheme, through the Commissioner of Labour to Government. On the strength of this letter, it was argued before the learned Judge that in view of this proposal the impugned G.O. had become ineffective and the further argument was that because the Respondent mill had utilised an extent of 5.78 acres by putting up building in any event, that extent cannot be resumed. Though opposed on behalf of the State, the learned Judge accepted the contentions and gave clarification with regard to the proposed extent of resumption holding that only 34.15 acres alone be resumed. The further clarification that was given was will regard to the amount to be paid to the Respondent which did not take into account the excess compensation and the solatium that was paid by the Respondent as per the judgment of the High Court which amounted to Rs. 38,373.41. Therefore, it was held that this amount will be due to the Respondent. In these terms, the writ petition was ordered. We are obliged, to concluded in view of the clarification that the learned Judge had practically held the impugned G.O. to be inoperative. Thus, the writ appeal by the State.

2. It is urged on behalf of the State by the learned Government Pleader, Mr. C. Chinnaswami, that it is impossible to held that by reason of a subsequent proposal to assign the remaining unutilised extent under B.S.O.:21 the Government's power of resumption of lands is in any way rendered invalid. One of the conditions entered into between the State and the Respondent mills at the time of acquisition was that the entire extent of 39.95 acres shall be utilised for the purpose of acquisition. Merely because, the Respondent had utilised an extent of 5.78 acres, it would not follow there is no breach of the condition entered into between the parties. If, therefore, there was a breach there is nothing wrong in the Government acquiring the enure extent of 39.95 acres. It is not open to the Respondent mills to say that it had utilised one portion thereof and that must be excluded from the purview of resumption. As regards the subsequent correspondence, even assuming here was a mistake with regard to the extent that is not a matter to be corrected in writ jurisdiction. The Court ought to have directed the parties to work out their rights by negotiations and should not have interfered with under Article 226 of the Constitution. The same argument will apply even as regards the amount to be paid to the Respondent.

3. Mr. R. Arunagirinathan, learned Counsel for the Respondent mills would submit that in this case the Respondent-mills admittedly utilised an extent of 5.78 acres by putting up buildings. Therefore, if at all resumption is made it can be only of the remaining extent and not the entire extent. No doubt, a condition was stipulated at the time of placing the lands at the disposal of the Respondent mills for which the necessary agreement was entered into u/s 40 of the Act that the entire land should be utilised. But where it is not possible and where it was

further proposed that the remaining extent will be assigned, the position of the parties still stand altered as per the subsequent proposal and cannot be relegated to the date of the agreement entered into under 40 of the Act. Equally, the impugned G.O., says that a sum of Rs. 52,752.37 inclusive of 15 per cent solatium should be paid by the Respondent-mills as a pre-condition to the assignment. That does not take note of the earlier payment by the mills. Therefore, rightly the learned Judge deducted that liability.

4. We have given our very careful consideration to the above argument. It cannot be gainsaid that this acquisition by the exercise of the power of eminent domain was under Part VII of the Act. The extent that form the subject-matter Of acquisition was 39.93 acres. It has already been noted the public purpose as manifested by 4(1) notification and the declaration u/s 6 is as follows:

Putting up residential quarters for the labourers of the mills under the Subsidised Industrial Housing Scheme.

In as much as the acquisition was under part VII of the Act undoubtedly, an agreement in terms of that part will have to be entered into, because it is not that agreement the lands are placed a the disposal of the Respondent. One of the terms of the agreement was which was common cause between the parties. That the entire extent of 39.93 acres must be utilised for the purpose of Acquisition. If therefore there is a failure or a breach of the condition, it is not open to the Respondent mills to say that they have utilised a portion of the extent 5.78 acres and put up houses for labourers and therefore that should be exempt from resumptions. As to what type of building that were put up in the 5.78 acres is borne out by the report of the Collector made in Ref. No. 149469:75 F2, dated 10th March, 1977 in paragraph 6 which is extracted below:

In the reference third cited, the Revenue Divisional Officer, Coimbatore has submitted resumption proposals for the entire extent of 39.93 acres of land comprising of land comprising of S.No. 70/1-A etc. of Singanallur village Coimbatore Taluk. The Revenue Divisional Officer, Coimbatore in his report has stated that in S.No. 72/2, there are 5 houses in unfinished stage and that these buildings appear in the same stage for the past several years. The bricks from the above buildings are being removed by miscreants and it seems that no attempt has been made by the owner of the land to protect the building or complete and make them fit for use. Thus the buildings can be said to have been abandoned. Further, he has stated that this bit of land in S.No. 72/2 (3.75 acres) is surrounded by the lands covered under resumption, and that the portion of the land with its incomplete buildings will be an eyesore and hindrance to the Housing Board for its housing schemes. There is a tiled building in S.No. 70/1C and it is said that it was in existence even at the time of acquisition. There is a well in S.No. 70/1A. It is being used for drinking purposes.

Therefore, in fact, there is no proper utilisation, at all. It was only on the assumption that the Respondent had utilised 5.78 acres G.O.Ms. No. 4293

(Housing), dated 25th October, 1966 was passed stating that the unutilised land measuring an extent of 34.15 acres acquired on behalf of the mills be resumed. It was only on that basis the Commissioner also wrote on 6th September, 1969 to the Respondent mills calling upon them to place the land at the disposal of the Chairman of the State Housing Board to which the Respondent mills also agreed to by its letter, dated 20th September 1969. As a matter of fact the Respondent-mills itself in paragraph 4 of the affidavit states thus:

In spite of the above agreement, neither the Respondents nor the State Housing Board took any steps to implement the terms of the agreement.

However, when the Government came to know because of the improvised structure put up by the Respondent mills, there was no utilisation at all, they are well entitled to resume the entire extent of 39.93 acres under the impugned G.O.Ms. No. 382, Housing dated 13th May, 1977. Therefore, we are unable to agree with the Respondent's contention that because of the subsequent proposal to assign the remaining extent of 34.15 acres the power of resumption is in any way whittled down. That is a power which is corollary to the power of eminent domain. That cannot in any way be diluted or diminished by reason of the subsequent proposal. This much we have to make clear because of the judgment under appeal though in terms did not say the G.O. is ineffective, practically it accepted the Respondent mills' contention. Therefore, we have no hesitation in upholding the G.O.Ms. No. 382, Housing, dated 13th May, 1977.

5. What is the legal consequence of the subsequent events? No doubt, the Government stated in their letter, dated 18th January, 1980 that they were willing to assign, the lands on the payment of market value under B.S.O.:21. But that was hedged in by conditions: (1) the Respondent should withdraw the Writ Petition No. 3442 of 1977 immediately. (2) Should submit within three months a scheme for construction of houses to the mill's workers under the Subsidised Industrial Housing Scheme (Private Sector) and for grant of loan and subsidy for the scheme through the Commissioner of Labour to Government. We are unable to hold from the records available that these proposals have attained fruition. The parties before us are at variance whether this proposal still exists and could be completed or not. Therefore, we leave that question open. Once that is left open, the clarifications given by the learned Judge both with regard to the extent and also with regards to the quantum will have to be set aside. Accordingly they are set aside. In the result, we hold (i) that the impugned order made in G.O.Ms. No. 382, Housing, dated 13th May, 1977 directing resumption of the entire extent is valid; (ii) that by reason of the subsequent correspondence between the parties, we are not in a position to hold from the records made available before us that the proposal regarding assignment had attained fruition; (iii) the Respondent is at liberty to negotiate for assignment and if the Government are willing this judgment will not stand in the way of such an assignment, on such terms as the Government may deem it fit to impose. The writ appeal is allowed with costs.