IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18/05/2004

Coram

The Honourable Mr.Justice A.S.VENKATACHALAMOORTHY

W.P.No.8510 of 1996

Murthuzaviya Oriental High School
rep.by its Hony. Correspondent,
186, Big Street,
Triplicane,
Madras 600 005. ... Petitioner

-Vs-

1. State of Tamil Nadu
rep.by Secretary to Government,
Education Department,
Fort St.George,
Madras □ 9.

2. Dr.Valli Manickam

3. Miss.A.Alagammai

4. Mrs.AR.Meenakshi ... Respondents

This Writ petition is filed under Article 226 of Constitution of India, praying this Court to issue a writ of Certiorari, as stated therein.

For Petitioner : Mr.Mohan Parasaran
Senior Counsel
for Mr.Satish Parasaran

For 1st Respondent : Mr.D.Krishnakumar
Special Govt.Pleader

For Respondents 3,4 : Mr.N.Maninarayanan

:O R D E R

According to the petitioner, Murthuzaviya Educational and Cultural Foundation of South India is a Society registered under Societies Registration Act. The said Society is running the petitioner school, which is called Murthuzaviya Oriental High School. The Society has also established several educational institutions including technical, vocational, social and

cultural institutions, apart from running the petitioner school. The petitioner school has been in existence for over four decades and has been rendering great services to the public and is advancing the cause of public interest. The school is located in Big Street, Triplicane, Madras-5. The space and accommodation that is now available has been insufficient, particularly in view of the ever increasing demand for admission of students year after year. The petitioner thought some more space is required and that the adjoining lands situated at R.S.No.2769/1 of Mylapore-Triplicane Taluk and situated in Triplicane village would be most suitable. A request was made by the petitioner in June, 1978 to the Government to acquire the said land. The first respondent, after considering the petitioner's request, directed the petitioner to deposit a sum of Rs.2,35,000/- towards the cost of land acquisition. The petitioner complied with the said direction and deposited the amount on 4th August, 1980 with the first respondent. The first respondent proceeded with the matter and issued Section 4(1) notification in G.O.Ms.No.1456, Education, Science and Technology dated 29.7.1983 notifying that the lands in R.S.NO.2769/1 of Mylapore-Triplicane Taluk in Triplicane village, measuring approximately 6 grounds and 395 sq.ft. was required for public purpose for the purpose of expansion of petitioner school and the said notification was published in the Government Gazette dated 17.8.1983. Objections were received and enquiry as contemplated under Section 5 -A of the Act was held. The father of the respondents 2 and 3 and husband of 4th respondent by name Arunachalam objected for the acquisition. Finally declaration under Section 6 of the Act was made in G. O.MS.No.1087 Education, dated 5.8.1986.

2. It is further contended by the petitioner that respondents 2 and 3 and their father Arunachalam filed W.P.No.8819 of 1986 praying the Court to quash the notification issued under Section 4(1) and 6 of the Land Acquisition Act. In the said writ petition, the present petitioner was 4th respondent. An interim stay of the operation of acquisition proceedings and the notifications impugned was granted in W.M.P.No.13103 of 1986 and the same was made absolute subsequently.

The Government however, decided not to proceed further in the matter and consequently issued a notification in the Gazette dated 12.4.19 95. From the said notification, it appears that the Government issued a letter dated 27th March, 1995. Thereafter, the writ petitioners in W.P.No.8819 of 1986, did not press the writ petition and consequently the same was dismissed.

3. According to the writ petitioner, being surprised by the withdrawal of the acquisition proceedings, sent a letter to the Deputy Collector, Land Acquisition on 10th July, 1995 seeking clarification and wanting to know whether the acquisition proceedings had been withdrawn and if so on what grounds they were so withdrawn. The further plea of the petitioner is, since there was no reply he had to send a reminder and ultimately the petitioner received a reply dated 17.11.1995 from the Special Tahsildar, Land Acquisition that the acquisition proceedings had been withdrawn in terms of the powers conferred on the Government under Section 48(1) of the Land Acquisition Act and notification was issued in Government Gazette dated 12.4.1995 in Lr.No.99542 /U2/90-28 Education, dated 27.3.1995. The contention of the petitioner is that such withdrawal was done behind his back and an opportunity should have been given to the petitioner, particularly when he had deposited the cost of acquisition virtually fifteen years before such

withdrawal. Yet another contention has been raised to the effect that the petitioner had every right in the acquisition proceedings to object the withdrawal of acquisition particularly when such withdrawal was after Section 6 declaration. The petitioner sought for a writ of Certiorarified mandamus calling for the records in the proceedings of the first respondent in Lr.No.99542/U2/90-28 Education, dated 27.3 .1995 and published in Tamil Nadu Government Gazette dated 12.4.1995 and quash the same and consequently issue a mandamus directing the first respondent to proceed further with the acquisition proceedings, finalise the same and hand over possession of the lands in question to the petitioner after payment of necessary compensation as per the provisions of the Land Acquisition Act and rules.

4. The learned Special Government Pleader appearing for the first respondent contended that the writ petitioner is only the beneficiary and it is up to the Government to withdraw the notification even after Section 6 declaration and in that process the writ petitioner has no say in the matter. The Government Pleader also emphatically submitted that the writ petitioner cannot compel the Government to continue the acquisition proceedings. As to whether a property has to be acquired or not, has to be decided only by the Government and merely because the petitioner has deposited a sum of Rs.2,35,000/- in the year 1980, would not improve the position. The first respondent has acted only in conformity with the provisions of the Act and that the Government took a decision only considering the facts and circumstances of the case and in fact no mala fides had been attributed by the petitioner on the first respondent.

5. The learned counsel appearing for the land owners would submit that the Government after taking into consideration their representation and appreciating the hardships to which they will be put to, withdrew the notification. The Government is the sole authority to take a decision and need not in that process invite objections if any from the writ petitioner before taking a final decision. In fact, the respondents withdrew their writ petition W.P.NO.8819 of 1986 only in view of the withdrawal of the acquisition proceedings and that if the writ petition is allowed, they will be put to serious hardships.

6. As noted supra, the writ petitioner requested the Government to acquire certain lands viz., an extent of 6 grounds comprised in R.S.No.2769/1 of Mylapore-Triplicane Taluk situated in Triplicane village for putting up construction to expand the school to meet the request of the Public to admit more students, particularly in that area and on that, as required by the first respondent, the petitioner also made a deposit of Rs.2,35,000/- on 4th August, 1980. The Government, responding to the request, issued Sec.4(1) notification and following which there was Sec.5-A enquiry. Section 6 declaration was finally made in G.O.Ms.No.1087 Education, dated 5.8.1986. Before any further development, i.e., the Government giving direction to the District Collector under Section 7 of the Land Acquisition Act, the Government withdrew the acquisition proceedings by issuing letter dated 27.3.1995, which was gazetted on 12.4.1995. Of course, this was done without giving an opportunity of hearing to the writ petitioner. The Land Owners subsequent to the withdrawal letter notified in the gazette, withdrew the writ petition filed by them viz., W.P.No.8819 of 1986. As referred above, the submission of the learned counsel for the petitioner is, the first respondent before withdrawing the notification should have heard the writ petitioner and since

that was not done, the notification dated 27.3.1995 which has been gazetted on 12.4.1995 has to be quashed and the Government should be directed to proceed further with the acquisition proceedings and finally hand over the possession of the land in question after payment of necessary compensation.

7. The learned counsel for the petitioner straight away placed reliance on the ruling of the Supreme Court reported in (2001) 1 SCC 610 (State Government Houseless Harijan Employees' Association v. State of Karnataka and others). In that case, an association for the purpose of providing house sites to its members, who belong to Scheduled Castes/Scheduled Tribes, requested the Government to acquire lands to an extent of 15 acres. Responding to the request, the State Government asked the association to deposit some money and the amount was also deposited. Subsequently, some more amount was deposited and thereafter notification under Section 4(1) of the Act was published. There was some difficulty to proceed further with the said 4(1) notification and consequently a fresh notification under Section 4(1) was issued. The land owners objected contending that the association was not registered under the Karnataka Societies Registration Act, 1960 and it would not be legal to acquire land for it. The objections by the land owners were overruled and ultimately a notification under Section 6 was published declaring that the acquisition was for the benefit of public for allotment of house sites to the members of the petitioner Society. An award under Section 9 was also passed thereafter and the association was asked to deposit the balance amount, which it did. The award was approved by the Divisional Commissioner and enquiry was also held to confirm that all the members of the association belonged to SC/ST categories. Following that, orders were issued to hand over the land. At this point, the Government issued a notification under Section 48(1) of the Act withdrawing the acquisition without offering any reason. A learned single Judge of the High Court held that the Government has absolute powers if possession has not been handed over. This view of the learned single Judge was confirmed in writ appeal. The matter was taken up before the Supreme Court where the association primarily contended that they ought to have been given notice before the order under Section 48(1) of the Act and they ought to have been given a hearing. On behalf of the respondents it was contended that the withdrawal of acquisition was made based on the advice of the Law Department and objects of the association did not fall within the provisions of the Karnataka Societies Registration Act and therefore it could not come within the provisions of Section 3(f)(vi) of the Land Acquisition Act. The Supreme Court of India, while upholding the claim of the association held as under,

"31. Admittedly, the appellant was given no opportunity of being heard before the decision was taken by the respondent authorities to withdraw the acquisition in exercise of Section 48(1) of the Act.

32. Section 48(1) of the Act provides:

"48. Completion of acquisition not compulsory, but compensation to be awarded when not completed.- (1) Except in the case provided for in Section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken."

33. The section does not in terms exclude the principles of natural justice. However, the section has been construed to exclude the owner's right to be heard before the acquisition is withdrawn. This is because the owner's

grievances are redressable under Section 48(2). No irreparable prejudice is caused to the owner of the land and, if at all the owner has suffered any damage in consequence of the acquisition proceedings or incurred costs in relation thereto, he will be paid compensation thereof under Section 48(2) of the Act. (See Amarnath Ashram Trust Society v. Governor of U.P. (1998) 1 SCC 591 at 596; also Special Land Acquisition Officer v. Godrej & Boyce (1988) 1 SCC 50). But as far as the beneficiary of the acquisition is concerned there is no similar statutory provision. In contrast with the owner's position the beneficiary of the acquisition may by withdrawal from the acquisition suffer substantial loss without redress particularly when it may have deposited compensation money towards the cost of the acquisition and the steps for acquisition under the Act have substantially been proceeded with. An opportunity of being heard may allow the beneficiary not only to counter the basis for withdrawal, but also, if the circumstances permitted, to cure any defect or shortcoming and fill any lacuna. No reason has been put forward by the respondents to exclude the application of the principle of natural justice to Section 48(1) of the Act."
(Emphasis supplied)

The learned counsel for the petitioner also relied on another ruling reported in (1998) 4 SCC 387 (Larsen & Toubro Ltd. v. State of Gujarat and Others). In that case, the Larsen & Toubro Ltd., which was engaged in Engineering Manufactures Industries, which was for a public purpose, made a request to the State Government to acquire certain lands as the same were required for the purpose of a housing colony for its staff. All the lands were situated in the village called Magdalla in Surat District. After issue of notification under Section 6 of the Act, the State Government withdrew the acquisition, but of course before that, it was not made known to the Company. The Supreme Court pointed out that when Sections 4 and 6 notifications are issued, much has been done towards the acquisition process and that process cannot be reversed merely by rescinding those notifications and it is only under Section 48, withdrawal from acquisition has to be made and that compensation due for any damage suffered by the owner during the course of acquisition proceedings is determined and given to him and it is therefore implicit that withdrawal from acquisition has to be notified. After so pointing out, the Supreme Court observed as under,
"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 under Section 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 subsection (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 aginst any order which the State Government proposes to make withdrawing from the acquisition. Reasons for this are not far to seek. After notification under Section 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 under Section 5-A(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 under Section 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 4 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 under Section 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 under Section 5-A(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."

8. Pointing out the above two judgments, the learned counsel for the petitioner contended that in this case even three years before Section 4(1) notification came to be issued, petitioner was asked to deposit Rs.2,35,000/- That was in the year 1980 and which it complied with. The withdrawal of the land acquisition proceedings was made nearly after 15 years and about which the petitioner was not made aware and no opportunity was given to the petitioner to put forth its stand/objections. That being so, the above two rulings of the Supreme Court would support the claim of the petitioner that the impugned order in Lr.No.99542/U2/90-28, Education, dated 27.3.1995 and published in Tamil Nadu Gazette dated 12.4.1995 is liable to be quashed and that further the first respondent must be directed to proceed further in the matter and complete the acquisition and hand over possession, of course after payment of balance price if any.

9. The learned counsel for the first respondent however would contend that it is always open to the Government to rescind the notification under Section 4 or 6 and withdrawal under Section 48(1) is not the only way in

which a notification under Section 4 or 6 can be brought to an end. The learned counsel placing reliance on the ruling reported in AIR 1966 SC 1593 (The State of Madhya Pradesh and others, v. Vishnu Prasad Sharma and others), would submit that those two rulings relied on by the petitioner would not apply to the facts and circumstances of this case. The learned counsel drawing the attention of this Court to para 19 of the Judgment contended that in the two rulings relied on by the writ petitioner all proceedings were over including award proceeding and what was left was only taking of possession. But however, as far as the present case is concerned, withdrawal was immediately after Section 6 declaration even before Government issuing direction under Section 7 of the Act. The learned counsel would rely on the following passage in the said Judgment,

"... In the first place, under S.21 of the General Clauses Act (No.10 of 1897), the power to issue a notification includes the power to rescind it. Therefore, it is always open to Government to rescind a notification under S.4 or under S.6, and wi awal under S.48(1) is not the only way in which a notification under S.4 or S.6 can be brought to an end. Section 48(1) confers a special power on Government of withdrawal from acquisition without cancelling the notifications under Ss.4 and 6, provided it has not taken possession of the land covered by the notification under S.6. In such circumstances the Government has to give compensation under S.48(2). This compensation is for the damage suffered by the owner in consequence of the notice under S.9 or of any proceedings thereafter and includes costs reasonably incurred by him in the prosecution of the proceedings under the Act relating to the said land. The notice mentioned in sub-s (2) obviously refers to the notice under S.9(1) to persons interested. It seems that S.48 refers to the stage after the Collector has been asked to take order for acquisition under S.7 and has issued notice under S.9(1). It does not refer to the stage prior to the issue of the declaration under s.6. Section 5 says that the officer taking action under S.4 (2) shall pay or tender payment for all necessary damage done by his acting under S.4(2) shall pay or tender payment for all necessary damage done by his acting under S.4(2). Therefore, the damage if any caused after the notification under S.4(1) is provided in S.5. Section 48(2) provides for compensation after notice has been issued under Section 9(1) and the Collector has taken proceedings for acquisition of the land by virtue of the direction under S.7. Section 48(1) thus gives power to Government to withdraw from the acquisition without cancelling the notifications under Ss.4 and 6 after notice under S.9(1) has been issued and before possession is taken. This power can be exercised even after the Collector has made the award under S.11 but before he takes possession under S.15. Section 48(2 provides for compensation in such a case. The argument that S.48(1) is the only method in which the Government can withdraw from the acquisition has, therefore, no force because the Government can always cancel the notifications under Ss.4 and 6 by virtue of its power under S.21 of the General Clauses Act and this power can be exercised before the Government directs the Collector to take action under S.7. Section 48(1) is a special provision for those cases where proceedings for acquisition have gone beyond the stage of the issue of notice under S.9(1) and it provides for payment of compensation under S.48(2) read with S.48(3). We cannot, therefore, accept the argument that without an order under Section 48(1) the notification under S.4 must remain outstanding. It can be cancelled at any time by Government

under S.21 of the General Clauses Act and what S.48(1) shows is that once Government has taken possession it cannot withdraw from the acquisition. Before that it may cancel the notifications under Ss.4 and 6 or it may withdraw from the acquisition under S.48(1). If no notice has been issued under S.9(1) all that the Government has to do is to pay for the damage caused as provided in S.5; if on the other hand a notice has been issued under S.9(1), damage has also to be paid in accordance with the provisions of S.48(2) and (3). Section 48(1), therefore, is of no assistance to the appellant for showing that successive declarations under S.6 can be made with respect to land in the locality specified in the notification under S.4(1)."

This Court is of the view that the decision reported in AIR 1966 SC 1593 would not in any way help the first respondent.

10. Coming to the present case, as already pointed out, the petitioner, way back in the year 1980, as required by the State Government, deposited a sum of Rs.2,35,000/-. Section 4(1) notification was made in the year 1983 and after conducting enquiry under Section 5-A of the Act, issued Section 6 declaration in the year 1986. Admittedly in this case, the petitioner was not heard by the first respondent before withdrawing the acquisition proceeding. This Court is of the view that the two decisions relied on by the learned counsel for the petitioner reported in (1998) 4 SCC 387 and (2001) 1 SCC 610 (both cited supra) would squarely apply to the facts of this case and consequently it is held that there is considerable force in the submission made by the learned counsel for the petitioner that the State Government has committed an error in not giving the petitioner an opportunity to put forth its objections.

11. The next question is what is that should follow. We have just now noted that the acquisition proceedings started in the year 1980 i.e, two decades back. It is only proper that the matter is decided one way or the other shortly and complete quietus is given. Taking that view, this Court called upon the learned counsel for the petitioner to submit petitioner's objections for the State Government withdrawing the notification. Objections have been filed before this Court in the form of an affidavit. This affidavit shall be sent to the first respondent/State Government by the Registry along with a copy of this order. Once the same are received by the State Government, it shall forward a copy of the affidavit containing objections of the petitioner, to the land owners informing that it would be open to them to file their reply, if any. The State Government shall give them three weeks time from the date of receipt of communication, to file such reply. The State Government shall thereafter consider the matter afresh, of course, after giving an opportunity of personal hearing to all the parties and decide whether to withdraw the acquisition proceedings or not. That exercise shall be carried out within three months from the date of receipt of reply from the land owners. We make it clear that we are not expressing any opinion on the objections filed by the petitioner. It is for the State Government to consider the same and take a decision.

12. The writ petition is disposed of with the above directions. No costs.

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To

1. The Secretary to Government, Education Department,
Fort St.George, Madras 9.

2. The Record Keeper, High Court, Madras.