

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :30.06.2009

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THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

W.P.Nos.9860 to 9862 of 1998

A.Dhanalakshmi .. Petitioner in W.P.No.9860/1998

K.Ganesa Mudaliar .. Petitioner in W.P.No.9861/1998

E.Selvam .. Petitioner in W.P.No.9862/1998

-vs-

1.The State of Tamill Nadu  
rep. by its Secretary to Government  
Revenue Department, Secretariat  
CHENNAI 600 009.

2.The Special Tahsildar (Land Acquisition)  
Master Plan Complex (Unit I)  
Tiruvellore. .. Respondents in all the W.Ps.

Writ petitions are filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the entire records relating to the impugned proceedings of the first respondent in his impugned 4(i) Notification made in G.O.Ms.No.495, Revenue Department, dated 12.6.1998 and the another 4(i) Notification made in G.O.Ms.No.496 Revenue Department dated 12.6.1998 and also the Declaration made under section 6 made in G.O.MS.NO.538 Revenue Department dated 23.6.1998 and another declaration made under section-6 in G.O.Ms.No. 539 Revenue Department dated 23.6.1998, and quash the said impugned proceedings of the first respondent dated 12.6.1998 and 23.6.1998 and 23.6.1998 respectively.

For Petitioners:Mr.M.Venkatachalapathy,Sr.Counsel  
for Mr.M.Sriram

For Respondents: Mr.S.Siva Shanmugam, G.A.-R1 & R2

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C O M M O N O R D E R

Since common issues are involved in all these Writ Petitions, they were heard together and they were disposed of by means of this common order.

2. The petitioner in W.P.No.9860 of 1998 is the owner of the lands comprised in Survey Nos. 241/1; 241/2; 241/3; 242/1; 242/2; 242/3; 242/4; 250/1; 263/2; 265/2; 278/1 and 278/4. Similarly, the petitioner in W.P.No.9861 of 1998 is the owner of the lands comprised in Survey Nos.261/1A; 282/3; 240/2, 264/2, 264/3; 264/4; 265/1, 266, 268/4 and 275 and the petitioner in W.P.No.9862 of 1998 is the owner of the lands comprised in Survey No.242/6 of Perumbakkam Village, Tiruvallur Taluk and district.

3. For the purpose of constructing Collector's Office and other buildings for Revenue Administration for Tiruvallure District, the Government issued G.O.Ms.No.495 Revenue dated 12.6.1998, directing the District Collector to issue Notification under section 4(1) of the Land Acquisition Act to acquire these lands by dispensing with enquiry provided under section 5-A of the Land Acquisition Act. The said G.O. is under challenge in all these Writ Petition.

4. It is contended by the petitioners that to invoke the emergency provision contained in Rule 17(4) of the Act, there was no material available before the Government to conclude that there was urgency to acquire the land by dispensing with the summary enquiry under section 5A of the Land Acquisition Act.

5. The learned Senior counsel appearing for the petitioners would take me through the admitted facts and finally relied on the Judgment of the Supreme Court in UNION OF INDIA AND OTHERS Vs. KRISHNAN LAL ARNEJA AND OTHERS reported in (2004) 8 SCC 453, wherein the Hon'ble Supreme Court has held that urgency for invoking the provision under section 17 of the Act should be one arising naturally out of circumstances which exist when the decision to acquire the land is taken and not such, which is the result of serious lapse or gross delay on the part of acquiring authority. It has been further held in the said Judgment that failure to take timely action for acquisition by the authorities of the Union of India cannot be a ground to invoke the urgency clause to the serious detriment of the right of the land owner to raise objections to the acquisition under section 5-A of the Act. The learned Senior counsel would therefore submit that in this case, there was no need for invoking the urgency clause under section 17(4) and so the G.O. is liable to be set aside, directing the District Collector to hold an appropriate enquiry as provided under section 5-A of the Act.

6. The learned Government Advocate would stoutly oppose the Writ Petitions. A detailed counter has also been filed by the first respondent, wherein it is stated that the District of Tiruvallure was formed under G.O.3(D) No. 31 Revenue Department dated 25.7.1996 and the District started functioning with effect from 1.1.1997. Thereafter, the Government constituted a Committee under G.O.(3D) No.40 Revenue Department dated 14.10.1996 for preparing a Master Plan

for construction of Collector's Office and other Offices. The Committee submitted its report in the month of February 1997. Thereafter, the Government accorded administrative sanction under G.O.Ms.No.450 Revenue Department dated 14.5.1997. On that basis proposals were sent to the Government on 22.7.1997 and 23.7.1997 by the Collector for acquisition of lands. Based on the same, the Government issued the G.O. impugned in these Writ Petitions on 12.6.1998. In respect of urgency necessitating the dispensing with of enquiry under section 5A of the Act, it is stated in paragraph No. 11 (B) and (C) as follows:

"11(B) In this instant case, the lands are acquired for the construction of Collectorate and for other Office and residential Quarters who are playing vital role for the benefits of the inhabitants of the entire Districts. So, in order to fulfill the imminent needs of the newly formed Districts and the aspirations of the public situation and the circumstances have warranted the invocation of section 17(4) of the Act by the Government.

(C) The formation of a new District is a policy decision of the Government, it takes various process. The Government have decided to acquire the lands under the urgency provisions only to quick on the construction of buildings of the Collector and other offices for bonafide public purpose only and not making any disadvantages to any citizen as stated by the petitioner. The petitioner has failed to think that the acquisition is for the construction of Collectorate and other offices which are functioning only for the general public. It is not correct to say that the Government has taken a hasty decision in ordering the acquisition under urgency provisions. The Government have formed the New District in G.O.3(D) No.31, dated 25.7.96 and in G.O.3(D) No.40 dated 14.10.96, the Government have constituted a Master Plan Complex Committee for seven newly formed Districts. The said Committee after inspection, survey and consultation has submitted a report during February 1997 for Acquisition of Lands. On 14.5.97, the Government have accorded administrative sanction to take up the land acquisition proceedings. Subsequently, based on the representation of concerned newly formed District Collectors and materials, the Special Commissioner and Commissioner of Land Administration on 26.5.97 has recommended to Government for its prior sanction to invoke urgency clause for acquisition. After careful consideration only, the Government on 26.6.97 has given permission to invoke urgency provisions to initiate Acquisition proceedings. Since no adequate waste extent of Government Poramboke land is available in other areas, the



Government have also issued orders for invoking urgency provisions accordingly. Hence, there is no delay in taking action to acquire the lands under urgency provisions."

7. I have considered the rival submissions.

8. Before going into the facts of the case, let me first analyse the law on the subject. In OM PRAKASH AND ANOTHER V. STATE OF U.P. AND OTHERS reported in (1998) 6 SCC 1, the Hon'ble Supreme Court while interpreting Section 17(4) of the Land Acquisition Act, has held as follows:

"21."according to the aforesaid decision, inquiry under S.5A is not merely statutory but also has a favour of fundamental rights under Arts. 14 and 19 of the Constitution though right to property has no longer remained a fundamental right, at least observation regarding Art.14 vis-a-vis S.5-A of the Land Acquisition Act would remain apposite."

9. Subsequently, the Hon'ble Supreme Court in UNION OF INDIA AND OTHERS Vs. KRISHNAN LAL ARNEJA AND OTHERS reported in (2004) 8 SCC 453 has held in paragraph No.31, as follows:

"31. In the present appeals, the appellants have not been able to show before the High Court any genuine subjective satisfaction depending upon any relevant material available to the State authorities at the time when they issued the impugned Notification under S.4(1) of the Act and dispensed with S.5-A inquiry taking aid of S.17(4) of the Act. A Bench of three learned Judges of this Court in Narian Govind Gavate and others v. State of Maharashtra and others, [(1997) 1 SCC 133] has expressed that S.17(4) cannot be read in isolation from Ss.4(1) and 5-A of the Act and has expressed that having regard to the possible objections that may be taken by the land owners challenging the public purpose, normally there will be little difficulty in completing inquiries under S.5-A of the Act very expeditiously. In the same judgment, it is also stated that "the mind of the Officer or authority concerned has to be applied to the question whether there is an urgency of such a nature that even the summary proceedings under S.5-A of the Act should be eliminated. It is not just the existence of an urgency but the need to dispense with an inquiry under S.5-A which has to be considered."

"Urgency" for invoking the provision under section 17 of the Act should be one arising naturally out of circumstances which exist when the decision to acquire the

land is taken and not such, which is the result of serious lapse or gross delay on the part of acquiring authority. It has been further held in the said Judgment that failure to take timely action for acquisition by the authorities of the Union of India cannot be a ground to invoke the urgency clause to the serious detriment of the right of the land owner to raise objections to the acquisition under section 5-A of the Act. The learned Senior counsel would therefore submit that in this case the invoking of urgency clause under section 17(4) is not at all required and so the G.O. is liable to be set aside, directing the District Collector to hold an appropriate enquiry as provided under section 5-A. "

10. A close scrutiny of the above two Judgments would make one to understand that it is not a mere urgency to acquire the lands for the public purpose but an urgency which is of so grave in nature necessitating to dispense with enquiry under section 5-A of the Act should be existing so as to invoke the emergency provision contained under section 17(4) of the Act. Unless such an emergency is available, as held by the Hon'ble Supreme Court, the right of the owner of the land to make his representation under section 5A of the Act cannot be dispensed with.

11. Applying the law laid down by the Hon'ble Supreme Court, if the facts of the present case are looked into, the Tiruvallore District started functioning from 1.1.1997 and even before that, Master Plan Complex Committee was formed on 14.10.1996 and it had submitted its report in the month of February 1997. The impugned G.O., came to be issued only in the month of January 1998 i.e. nearly after one year and 10 months. This itself would show that there was no real urgency so as to dispense with the enquiry under section 5-A of the Act in terms of section 17(4) of the Act. Above all, in these Writ Petitions, the impugned G.O. was stayed by an interim order dated 20.12.2002. But, so far the respondents have not taken any steps seeking to vacate the said order. The interim order has been in force for about seven years and as a result, the possession of the lands in question has not been taken. Had it been the existence of real urgency in terms of Section 17(4) of the Act, I am sure, the respondents would not have allowed this much of delay. Having regard to all these facts, as held by the Hon'ble Supreme Court in the instant case, I find no such grave urgency in issuing the Government Order for dispensing with the enquiry under section 5A of the Act.

12. Thus, I hold that the impugned Government Order directing the District Collector to acquire the land by dispensing with the enquiry under section 5A of the Act is set aside. Accordingly, the above Writ Petitions are allowed. But it does not mean that the Government cannot proceed further under law. What is now emphasised

is that the District Collector is required to issue notice to the petitioners, receive their objections, hold appropriate enquiry under section 5(A) of the Act and then to proceed further in accordance with law. If the Government is satisfied that the lands are still required for public purpose on the basis of the report of the District Collector, the Government may issue appropriate orders in accordance with law. In any view of the matter, the above exercise shall be completed within three months from the date of receipt of a copy of this order. No costs.

Sd/  
Asst.Registrar

/true copy/

Sub Asst.Registrar

rpa

To

- 1.The Secretary to Government  
State of Tamil Nadu  
Revenue Department, Secretariat  
CHENNAI 600 009.
- 2.The Special Tahsildar (Land Acquisition)  
Master Plan Complex (Unit I)  
Tiruvellore.
- 3.The District Collector,  
Tiruvellore District.

1 cc To The Government Pleader, SR.27676  
3 ccs To Mr.M.Sriram, Advocate, SR.27515

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W.P.Nos.9860 to 9862 of 1998

KA(CO)  
SRA(17/7/2009)

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