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Court : Chennai Madurai

Decided On : Jun-20-2016

Judge : M. Venugopal

Appeal No. : W.P. (MD) No. 7013 of 2016 & WMP (MD) No. 5977 of 2016

Appellant : Sankary

Respondent : The Commissioner of Municipal Administration, Chennai and Others

Judgement :

(Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned notice issued by the 3rd respondent in Na.Ka.GB1/9729/04, dated 22.01.2016 and the consequential impugned order in Ne.Mu.Ka.GB1/9729/2004, dated 09.03.2016 and quash the same as illegal and consequently direct the respondents not to lay road in TS.Nos.1455/2A2 and 1455/2B2, Tirunelveli Town, Tirunelveli, without following the due process of law.)

ORDER

1. Heard the Learned Counsel for the Petitioner; the Learned Additional Government Pleader for the First and Second Respondents and the Learned Government Advocate appearing for the Third Respondent.

2. By consent, the main writ petition itself is taken up for final disposal.

3. According to the Petitioner, by means of partition deed, dated 17.03.2014, he and his daughter S.S.Srinithi and one Ram Kumar are the joint owners of Parvathi Sesha Mahal situated at 38B/2, Sundarar Street, Tirunelveli Town. Further, adjoining the said Mahal, his house is situated at Door No.9, wherein he resides with his family. His house is situated in T.S.No.1455/2A2 and the Parvathi Sesha Mahal is situated in T.S.No.1455/2B2.

4. The stand of the Petitioner is that in the front entrance of the aforesaid property, a North-South road is situated. The Third Respondent/Commissioner, Tirunelveli Municipal Corporation, had planned to form a road from his Parvathi Theatre to Arunagiri Theatre connecting Kurukkuthurai road to a breadth of 50 feet and the said proposed road had to be laid in the middle of green paddy fields.

5. It is the case of the Petitioner that before laying the road, no acquisition proceedings were conducted and in a hurried manner, the tender for laying road was issued without following the 'Due Procedure' under Law.

6. The Learned Counsel for the Petitioner submits that that all of a sudden, the Third Respondent/Commissioner, Tirunelveli Municipal Corporation, issued the impugned notice, dated 22.01.2016, directing Mrs.Subbammal and Mrs.Parvathiammal, to give consent for formation of the road in the aforesaid property.

7. Added further, it is represented that the petitioner acquired title over the property after the death of Mrs.Subammal and Parvathiammal. By his representation, dated 23.02.2016, he raised objections for the impugned notice, dated 22.01.2016, which was rejected by the third respondent. Moreover, the respondents are compelling the petitioner and other parties to give consent for the formation of road.

8. The Learned Counsel for the Petitioner urges before this Court that the impugned proceedings of the Third Respondent, dated 22.01.2016 and 09.03.2016 are without jurisdiction and therefore, they unsustainable in the eye of Law.

9. The Learned Counsel for the Petitioner contends that the Third Respondent should have seen that the Land Acquisition Act, 1984 has been repelled and therefore, the First Respondent is bound to comply with the Provisions of Law.

10. The Learned Counsel for the Petitioner projects an argument that the Third Respondent/Commissioner, Tirunelveli Municipal Corporation, should have seen that unless there is any provision for private negotiation in the statute, the owner cannot be called upon to enter into the private negotiation.

11. The Learned Counsel for the Petitioner proceeds to take a stand that the respondents should have seen that the Petitioner's valuable property measuring 103 sq.m., contains superstructure and under the guise of an illegal acquisition, the Petitioner's property will lose its value and therefore, prays for quashing of the impugned notice, dated 22.01.2016 and the consequential impugned order, dated 09.03.2016.

12. At this stage, the Learned Counsel for the Petitioner cites the common order, dated 17.03.2008, in W.P.Nos.47767 of 2006 etc. batch, between N.SUNDARARAJAN v. GOVERNMENT OF TAMIL NADU, whereby and where under, at paragraph Nos.6 and 7, it is observed as under:-

6. The conduct of the respondents in proposing to acquire the lands for creation of new bus stand at Vellore by private negotiation either under the Government Order or under the impugned order of the Third Respondent is questioned on various grounds including that the said order is illegal and without jurisdiction, apart from the legal ground that the Third Respondent, viz., Commissioner, Municipal Administration, Vellore has no authority to issue such communication to the Sub-Registrar, Vellore, not to register the documents and that the right of the Petitioners to get compensation as per the acquisition proceedings is taken away by the present method, which is not approved to be a due process of law.

7. The Learned Government Advocate on instructions would submit that the proposal for starting a new bus stand is still lying with the local planning authority and therefore, according to him, it is not as if there is no proposal at all for starting a new bus stand, which is of imminent necessity for the said area. The questions to be considered in these cases are as to whether the respondents have any right at all in proceeding with private negotiation without resorting to due process of law for acquisition of land and whether the Sub-Registrar can be informed by any authority not to register any document in respect of the lands on the basis that those lands are likely to be acquired for the purpose of starting a bus stand and that acquisition will be completed by private negotiation. Mr.K.R.Thamizhmani, Learned Counsel appearing for the 3rd respondent has also reiterated his stand as submitted by the Learned Counsel for respondents 1,2 and 4.

13. Further, in the aforesaid order, at paragraph Nos.15 and 16, it is observed and held as follows:-

15. It is also relevant to point out that even if such acquisition of the lands is really intended for the public purpose, it is not as if the Government cannot resort to the due process of law for acquiring the same for public purposes. Unless and until such powers are exercised by the Government in the manner known to law, the impugned Government Order as well as the communication of the Commissioner of Municipal Administration, restraining the registering authority from registering documents in respect of various lands is a clear breach of the legal provisions, taking away the valuable rights of owners of the lands in transferring the same under various documents. In view of the same, the impugned order of the Third Respondent in W.P.No.47767 of 2006 dated 26.07.2002, is set aside and the said writ petition stands allowed.

16. The portion of the impugned G.O.Ms.No.503 Municipal Administration dated 28.10.1999, viz., in so far as it relates to the permission given by the District Collector to acquire the private lands to the extent of 9.75 acres by private negotiation is also set aside without detriment to the Government's power of acquisition of such lands for public purpose in accordance with law. Accordingly, WP.Nos.23199 and 23205 of 2007 are ordered.

14. He also relies on the decision of this Court in B.MOHAMED SHERIFF v. THE DISTRICT COLLECTOR, TIRUCHIRAPPALLI, reported in 2013-3-L.W.240, wherein at special page Nos.245 and 246, at paragraph Nos.11 to 13, it is observed as follows:-

11. Now the points to be decided by this Court is as to whether the (1) private negotiation made by the Collector concerned is permitted under law and (2) the land in question belongs to the Petitioner or not. (3) Before purchase the property on behalf of the Government any minimum effort has been taken by the officials in the Land Acquisition Tahsildar to then District Collector in whose name the purchase has been effected.

12. From the perusal of the Harijan Welfare Act, it is very clear that there is no such provision in the Act for private negotiation. As per Section 4 of the Tamil Nadu Land Acquisition Act, the Collector alone is the competent person to acquire the land, that too, by following due process of law. It is need less to say that before proceeding with the acquisition, the Collector has to give notice to the interested persons calling them to appear before him and after personal hearing, he has to take decision independently. But in the present case, the provision of Section 4 of the Act has been completely violated and it is not known under what authority, the Collector has purchased the land in question without giving any proper notice to the land owner and without hearing the owner of the property.

13. The Government at the larger interest on the welfare of the Harijans intend to provide at least shelter for the Harijans, by the enactment and the validity of the Act has already been questioned and ultimately the Apex Court of India has validated the Act. As per this Act the lands has to be acquired for providing shelter to the Harijans. Whereas in this case, the lands have been purchased by the Collector Mr.Rajiv Ranjan, by private negotiations. To overcome the sufferings of the needy people, the State thought it fit at least to provide shelter for the poor Harijans. Keeping this in mind, the Government has passed G.O.Ms.No.146 Adi Dravidar and Tribal Welfare Department, dated 14.8.1995 and as per the said G.O. they have gone into private negotiations to purchase the lands to provide shelter for Harijans. The Tamil Nadu Highways Act 2001 and The Tamil Nadu

Acquisition of Land for Industrial Purposes Act, 1997, have alone permitted the authorities concerned to purchase the lands under private negotiations, which runs as follows:

Section 19(2) and (3) of the Tamil Nadu Highways Act, 2001 runs as hereunder:-

"19 (2) Where the amount has been determined by agreement between the Government and the person to whom the amount has to be paid, it shall be paid in accordance with such agreement.

(3) Where no such agreement can be reached, the Government shall refer the case to the Collector for determination of the amount to be paid for such acquisition as also the person or persons to whom such amount shall be paid.

Provided that no amount exceeding such amount as the Government may, by general or special order, specify, to be paid for such acquisition shall be determined by the Collector without the previous approval of the Government or such officer as the Government may appoint in this behalf. "

Section 7(2) and 7(3) of the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 runs as hereunder:-

"7(2) Where the amount has been determined by agreement between the Government and the person to whom the amount has to be paid, it shall be paid in accordance with such agreement.

(3) Where no such agreement can be reached, the Government shall refer the case to the Collector for determination of the amount to be paid for such acquisition as also the person or persons to whom such amount shall be paid.

Provided that no amount exceeding such amount as the Government may, by general order, specify, to be paid for such acquisition shall be determined by the Collector without the previous approval of the Government or such officer as the Government may appoint in this behalf. "

15. Also, in the aforesaid decision, at page No.247, at paragraph No.15, it is held as follows:-

15. Once the Act contemplates certain procedure for acquisition, it is need less to say that the same is binding on the authority before proceeding with the acquisition. If there is any deviation in the said process, definitely, the same should be interfered with by the Court. Here, in this case, of course, the authority failed to follow the procedures contemplated under the Act. As already stated the G.O. permits the District Collector to go for the private negotiation as stated by the Government is permissible. Therefore, the first contention raised by the Learned Counsel for the Petitioner is not correct and no force in his arguments. Now it is represented that the said G.O.Ms.No.146, Adi Dravidar and Tribal Welfare Department dated 14.8.1995 has been withdrawn by the Government.

16. In response, it is the submission of the Learned Counsel for the Third Respondent/Commissioner, Tirunelveli Municipal Corporation that the link road from SwamiNellaiapper High Road Parvathy Theatre to Arnagiri Theatre near Kurrukkuthurai Road A4A4, D4D4, D3D3 50 feet wide scheme length of 653 metre was formed under the traffic operation management project and already an administrative sanction was accorded by the Member Secretary Committee, Town and Country Planning as per proceedings dated 25.12.2014.

17. It is represented on behalf of the Third Respondent/Commissioner, Tirunelveli Municipal Corporation that the cost of the land acquisition is Rs.40 lakhs and the cost of formation of road is Rs.60 lakhs and the total project cost is Rs.100 Lakhs.

18. The Learned Counsel for the Third Respondent/Commissioner, Tirunelveli Municipal Corporation, brings it to the notice of this Court that the extent of acquisition of land is 0.7350 sq.m. in various survey numbers and Administrative Sanction was accorded by Municipal Administration and Water Supply Department as per G.O.No.50, dated 16.04.2013 for land acquisition. In fact, letters were obtained from various land owners by means of Rs.20/- non judicial stamp paper. Also that the land owners of the entrance of the road had given their consent to enter upon the land for the formation of the road. Indeed, the council had also approved the land acquisition cost as per Resolution No.50, dated 29.05.2014.

19. The Learned Counsel for the Third Respondent/Commissioner, Tirunelveli Municipal Corporation, strenuously contends that the preparation of link road from

Parvathi theatre to Arunagiri theatre near Kurrukkuthurai road is convenient for the public and only to avoid heavy traffic congestion, in the interest of public, the Third Respondent/Commissioner, Tirunelveli Municipal Corporation formed the link road in the scheme schedule clause 17(ii) of Approved Swamy Nellaiapper High Road Detail Development Plan and an estimate was prepared to provide new formation of 50 scheme road at an estimate cost of Rs.70 lakhs and same was sanctioned as per council Resolution No.88, dated 30.06.2014.

20. The Learned Counsel for the Third Respondent/Commissioner, Tirunelveli Municipal Corporation proceeds to state that for the proposed link road, two tenders were received on 25.07.2014 for the project work and that lowest tender of one T.Balasubramanian quoted price bit was accepted by the council as per Resolution No.143, dated 31.07.2014. Moreover, pursuant to the Resolution, the Third Respondent/Commissioner, Tirunelveli Municipal Corporation, formed the link road, WMM (wet mix macadam) was formed from Parvathi theatre to Arunagiri theatre near Kurrukkuthurai road.

21. Apart from that, after completion of the work, now the vehicles were allowed to ply from 15.01.2015 onwards and that the Second Respondent/District Collector, Tirunelveli District, had advised to complete the scheme road for laying B.T.surface work on or before 15.01.2016, as per letter, dated 02.01.2016. Therefore, the Third Respondent Commissioner, Tirunelveli Municipal Corporation, laid B.T.surface road for free flow of the traffic in the scheme road and the same is utilised for public convenience. Also that no illegality is found for the formation of link road.

22. The Learned Counsel for the Third Respondent also submits that the Third Respondent/Commissioner, Tirunelveli Municipal Corporation, who issued notice to the Petitioner, as per office letter, dated 22.01.2016 and 09.03.2016, had also informed the land owner of the land in Survey6 Nos.1455/2B1B and 1455/2B2B of 103 sq.M for the purpose of extending the road. Furthermore, the Third Respondent/Municipal Corporation, is ready to grant compensation to the Petitioner's property based on the value fixed by the District Administration.

23. It is to be borne in mind that the benefits under 'The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013', will be available in all the cases of land acquisition under Land Acquisition Act, 1894, where the award has not been made or possession of land had not been taken.

24. It is to be noted that Section 24 of 'The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013' speaks of 'Land Acquisition Process under Act No.1 of 1894 shall be deemed to have lapsed in certain cases'. Section 25 of the Act, refers to 'Period within which an award shall be made'. Section 26 of the Act, deals with 'Determination of market value of land by Collector'. Section 27 of Act, enjoins with 'Determination of amount of compensation'. Section 28 of the Act, deals with 'Parameters to be considered by Collection in deter of award'. Section 29 of the Act, refers to 'Determination of value of things attached to land or building'. Section 30 of the Act, speaks of 'Award of solatium'.

25. As a matter of fact, Section 37 of the Act, seeks of mention that that 'awards of Collector shall be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and market value of the land and the assets attached thereto, solatium so determined and the apportionment of the compensation among the persons interested.'

26. One cannot ignore a very vital fact that Section 2(1) of 'The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013' specifies that 'The Provisions of this Act relating to land acquisition, compensation, rehabilitation and resettlement, shall apply, when the appropriate Government acquires land for its own use,hold and control, including for Public Sector Undertakings and for public purpose etc.' In fact, the words 'Public Purpose' under 'The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013', have been comprehensively defined.

27. On a careful consideration of respective contentions and also this Court, taking note of an essential fact that the Third Respondent/Commissioner, Tirunelveli Municipal Corporation, is ready to grant compensation, to the Petitioner's property, based on the value fixed by the District Administration, this Court comes to an inevitable conclusion that the impugned order passed by the Third Respondent, dated 09.03.2016, assigning reasons thereof, does not suffer from any material irregularities or patent illegalities in the eye of law. Furthermore, in the 'Revised Land Plan Schedule' the town survey No.1455 was sub-divided and in T.S.Nos.1455/2B1B and 1455/2B2B only an extent of 103 sq.m. alone is proposed to be acquired. Looking at from any angle, keeping in mind the interest of public and to avoid accidents because of traffic congestion only, the Thar road was sought to be formed. Therefore, the reliefs sought for by the petitioner in the writ petition i.e.(i) to quash the impugned notice, dated 22.01.2016 of the Third Respondent/Tirunelveli Corporation; and (ii) the consequential impugned order, dated 09.03.2016, are not acceded to by this Court to prevent an aberration of justice.

28. In fine, the Writ Petition is dismissed directing the parties to bear their own costs. The Third Respondent/Commissioner, Tirunelveli Municipal Corporation, is required to pay the compensation to the Petitioner's property based on the value fixed by the District Collector, Tirunelveli District, in the manner known to Law and in accordance with Law. Consequently, connected Miscellaneous Petition is also dismissed.

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