

(2008) 08 MAD CK 0107

Madras High Court

Case No: W.A. No. 792 of 2008 and M.P. No's. 1 and 2 of 2008

GHCL Limited, Earlier Known as
the Sree Meenakshi Mills Limited

APPELLANT

Vs

The State of Tamil Nadu and
Others

RESPONDENT

Date of Decision: Aug. 26, 2008

Acts Referred:

- Constitution of India, 1950 - Article 300A
- Land Acquisition Act, 1894 - Section 16, 16B, 23, 40, 40(a)

Hon'ble Judges: A.K. Ganguly, C.J; F.M. Ibrahim Kalifulla, J

Bench: Division Bench

Advocate: Suresh for M/s. Shivakumar and Suresh, for the Appellant; Raja Kalifulla, Govt. Pleader for Respondents 1 to 4 and Mr. N.R. Chandran, for Mr. V.S. Suresh Kumar for Respondents 6 to 8, for the Respondent

Judgement

A.K. Ganguly, C.J.

This appeal has been filed challenging a judgment and order dated 30th April, 2008 passed by a learned Judge of the writ court, whereby the learned Judge dismissed the writ petition. The material facts of the case, which are not in dispute, are as follows: -

The appellant GHCL Limited, the writ petitioner, and also the appellant, is a public limited company registered under the Companies Act, 1956. Sri Meenakshi Mills Limited, hereinafter referred to as the "erstwhile company" was declared a sick company in the year 1996 by BTFR. Thereafter, the said sick company, as per the Rehabilitation Scheme merged with the appellant company. The Scheme of Merger was sanctioned by BIFR and the merger took place w.e.f. 01.04.2001.

2. Much prior to that there was an acquisition of land measuring to the extent of 4.72 acres in Thiruparankundram Village, Madurai by the Government of Tamil Nadu

in favour of the said erstwhile company on 23.10.1957 and thereafter an agreement was entered between the erstwhile company and the Revenue Divisional Officer, Madurai who handed over the possession of the said land to the erstwhile company.

3. Learned counsel for the appellant referred to the agreement dated 23rd October, 1957 entered into between the erstwhile company and the State Government. The said agreement refers to the application made by the said company to the State Government for acquiring certain lands on behalf of the company under the provisions of the Land Acquisition Act, 1894, It is made clear in the said agreement that such acquisition is needed for the construction of a work, which is likely to prove useful to the public namely, construction of quarters for the staff and workmen of the erstwhile company. Learned counsel for the appellant referred to clause 3(e) of the said agreement. The said 3(e) is set out below: -

"3. The terms upon which the said land shall be held by the company are: -

e. That in the event of the voluntary relinquishment of the land by the company as not required for the purpose for which it was acquired, the Governor may resume the land if it is required for a public purpose or if they consider that it should be returned to the original owner. If the Government decides not to exercise this power and inform the company accordingly, the latter may dispose of the land in any manner it likes. In the event of the resumption of the land under this condition, the compensation payable to the company shall be the value of the land at the time of acquisition (less 15 per cent awarded for compulsory acquisition), or its value at the time of resumption, whichever may be less together with the value of the buildings and other improvements at the time of resumption. If there are buildings on the land which the Government do not require, the company shall remove them at its cost."

4. Learned counsel for the appellant submitted that the erstwhile company constructed about 165 staff quarters on a land measuring 3.44 acres out of the acquired lands of 4.72 acres. The admitted position is that in respect of the remaining area i.e., about 1.28 acres, no construction has been made by the erstwhile company.

5. As the remaining part of the acquired land i.e., 1.28 acres was not utilized for any public purpose, the original owner filed a writ petition before this Court being W.P. No. 5311 of 1986. The said writ petition was disposed of by a learned Judge of this Court by a judgment and order dated 21st June, 1986. In the said writ petition, the erstwhile company was impleaded as a party. Though the company was served, it did not appear. Ultimately, the writ petition was heard and disposed of by a learned Judge. In the said writ petition, the State Government also filed a counter affidavit, in which the Government took a stand that the Government would take necessary action in the event of failure on the part of the erstwhile company to carry out the agreement. In the said judgment, it was noted by the learned Judge as follows: -

"It is clear from the facts that the company has not utilized the lands for the purpose for which the lands have been acquired."

The learned Judge also found that under the agreement even though no time limit has been fixed, but "the company should utilize the land for the purpose for which the lands have been acquired within a reasonable time". Nearly 40 years have passed from the date of the award and even then the company did not utilize the land for which the land was acquired. There is no explanation forthcoming from the company for non-utilisation of the land even after the lapse of nearly 40 years from the date of the award.

6. Under those circumstances, the learned Judge directed the Government to take necessary action to take back the lands in accordance with law and the learned Judge directed the first respondent therein i.e., the State of Tamil Nadu to take necessary proceedings under the Land Acquisition Act for that purpose.

7. Shortly thereafter the erstwhile company became sick on 16.9.1996 and was registered with the BIFR, New Delhi.

8. As nothing was done by the State Government, another writ petition was filed by the original owners being W.P. No. 17121 of 2000. The petitioner in the aforesaid petition was also the second petitioner in the previous writ petitions being W.P. Nos. 5311 & 5322 of 1986. In the second writ petition also (W.P. No. 17121 of 2000), a prayer was made for a direction upon the respondent to receive the land in S. No. 27/1 and 27/4 of an extent of 1.28 acres in Thiruppurankundram Village in Madurai District. In the said writ petition, the learned Judge noted that the previous owner claimed return of the land u/s 48-B of the Land Acquisition Act and the same was filed with the Government and the authorities after inspection of the land recommended passing of an order, but since no order was passed, the second writ petition was filed. The second writ petition was disposed of with the following directions by this Hon"ble Court.

"Without going into the merits of the case, taking into consideration of the fact, that the said application is pending before the first respondent, the first respondent is directed to pass orders on the petitioner's application filed u/s 48-B of the Land Acquisition Act within three months from the date of receipt of copy of this order after giving due opportunity to the second respondent. On the basis of the outcome of the order, the petitioner can work out to get possession of the property."

9. In the second writ petition being W.P. No. 17121 of 2000 also, the erstwhile company was a party, but they did not enter appearance.

10. Ultimately an appeal was filed by the erstwhile company against the order of this Court dated 21.6.1996 in W.P. Nos. 5311 and 5322 of 1986 and also against the order dated 31.1.2001 in W.P. No. 17121 of 2000. The said appeal was heard and disposed of by a Division Bench of this Court by giving certain directions. The

Division Bench in paragraph 6 of the order held that the previous judgment rendered by this Court on 21.6.1986 in W.P. Nos. 5311 & 5322 of 1986 cannot be assailed nor can the said judgment be called *exparte*, in as much as, though the erstwhile company was served, no reason has been given why it could not represent itself at the time of the hearing. Therefore, the findings rendered by the learned Judge in W.P. Nos. 5311 & 5323 of 1986 cannot be overturned. Insofar as the next judgment was rendered by this Court on 31.1.2001, the learned Judges of Division Bench held that the said order is merely a direction to the Government to pass an order on the pending application of the original owner u/s 48-B of the Land Acquisition Act learned Judges, therefore, gave directions by saying that if the Government takes any step for resumption of the lands then all the parties will have the opportunity of being heard and would place their objections and with that observations, the writ appeal was dismissed.

11. On 31.3.2003, a show cause notice was issued by the first respondent to the Managing Director of the erstwhile company asking the company to show cause why the lands in S. Nos. 27/IA and 27/4A of Thirupurankundram Village, Madurai District should not be resumed in view of the fact that the erstwhile company has not utilized the lands for the purpose for which they were acquired for the last 46 years. A reply was given to the said show cause notice not by the erstwhile company, but by the present appellant with a prayer to drop the proceedings and to withdraw the show cause notice. Thereafter, the appellant gave a further representation on 07.02.2006 stating therein that they are going to initiate construction process in the remaining 1.28 acres of land from the next financial year. It was stated in the representation that such construction would be undertaken only after obtaining favourable orders from the first respondent. Thereafter, the first respondent passed an order on 10.10.2006 under G.O.Ms. No. 175 & 176 of 2006 returning the lands in favour of respondents 5 to 7. The said order is however not been disclosed by either of the parties in this proceedings. However, the said order was challenged by the appellant by filing a writ petition and the same came up for hearing before a learned Judge of this Court and the learned Judge by a judgment and order dated 26.2.2007 was pleased to quash the said order and remanded the matter to the Government. The relevant portion of the order is to the following effect: -

"24. Coming to the consequences of setting aside the impugned orders, it is to be pointed out that the Division Bench of this Court has laid down certain guidelines on the question of consideration of a petition u/s 48-B. The Government is obliged to take note of the principles laid down in the said judgment *R. Shanmugam v. The State of Tamil Nadu*, 2006 (4) CTC 290. Since the impugned orders are set aside only on a technical ground, the matter is remitted back to the Government, for a fresh consideration. The Government shall take fact that the Company had left the land unutilized for several decades and pass orders afresh, within a period of two months from the date of receipt or production of a copy of this order, taking into

account the principles enunciated in the Division Bench judgment in R.Shanmugam v. State of Tamil Nadu, 2006 (4) CTC 290."

By the said order, the learned Judge had recorded that after the compulsory acquisition of land way back in 1957, the company did not move an inch forward for the last 44 years. Insofar as the land in question is concerned, the learned Judge recorded that the conduct of the company is not appreciable. But, thereafter, the learned Judge felt that the only issue that can be considered in the writ petition was whether the impugned orders are in tune with Section 48-B of the Act and in compliance with the directions of the Division Bench of this Court. In paragraph-15 of the said judgment the learned Judge however recorded the following finding: -

"It is not in dispute that the land in question viz., 1.28 acres has not so far been utilized by the company for the purpose for which it was acquired. Therefore, the contingency for the Government to consider whether the land was required for the purpose for which it was acquired, had arisen and the Division Bench of this Court has already directed the Government to provide an opportunity of being heard to the Company, consider the objections and pass orders in accordance with law."

Thereafter, the Government passed G.O.Ms. Nos. 163 & 164 both dated 01.11.2007, which were impugned in the writ petition out of which the present appeal arises.

12. In those two orders i.e., G.O.Ms. No. 163 & 164 dated 01.11.2007, the facts of the case were considered in detail. After a detailed consideration of the fact, the Government came to the conclusion that the appellant has not utilized the land of 1.28 acres for the last 50 years and it has also given a finding that just because no time limit is mentioned in the agreement that cannot mean that the company can unlimited time for construction of the quarters. It was found in the said order that the contingency specified in clause 3(e) of the agreement that in case of relinquishment of land by the company, the Government may resume is just one of the conditions of resumption. The Government also found that apart from non-utilization of the said land, the adjacent lands, which were purchased by the erstwhile company and which merged with the appellant company, were sold to private parties and the Mill premises were sold to one M/s.Visvas Promoters Limited, a real estate promoter. The adjacent properties belonging to the appellant also stands transferred in the name of private parties. It was also found that the Mill was not in existence and it was merged with the appellant company and there were no labour. The following findings were also recorded: -

"More over, Gujarat Heavy Chemicals Limited sold the labour quarters constructed at Thiaharajar Mill Colony at Moolakarai, Thiruparankundram Village to their ex-staff members for consideration and the mill colony is not at all in their name and main object of Gujarat Heavy Chemicals Limited is to encash the vacant land for commercial purpose. The Paravai Meenakshi Mills Limited is a separate legal entity. The lands acquired for Paravai Meenakshi Mills Limited for the construction of the

labour quarters were also not still in use. As informed by Gujarat Heavy Chemicals Limited, Sree Meenakshi Mill Limited was declared as sick in 1996 and an application for plan approval is pending with the local planning authority do not justify the non-utilization of lands for 50 years, further the inaction of the erstwhile Sri Meenakshi Mills Limited., attracts the proviso 3(d) of the agreement entered between the mills and the Government."

13. After considering all these facts, the following order was passed by the Government:-

"16. Now, therefore, in exercise of the powers conferred u/s 16-B of the Land Acquisition Act, 1894 (Central Act I of 1984), the Governor of Tamil Nadu, after affording M/s. Gujarat Heavy Chemicals Limited reasonable opportunity of being heard as required under the proviso to the said section hereby directs that the lands measuring an extent of 0.39.0 Hectares (0.96 Cents) as shown below in Thiruparankundram Village, Madurai South Taluk, Madurai District be forfeited as penalty and they shall hereinafter vest with Government with immediate effect in Revenue Department free from all encumbrances. Accordingly, the Collector, Madurai District is directed to resume and take possession of the lands mentioned below:

District: Madurai	Village
Taluk: Madurai South	Thirupuramkundram
S. No. 27/1A	0.05.0 hectares
S. No. 27/4A2	0.34.0 hectares
Total	0.39.0 hectares

14. Thereupon, an order was passed u/s 48-B of the Land Acquisition Act, and the District Collector, Madurai was requested to take action to give possession of the said land to the legal heirs of late Thiru Balashanmugappa on collection of award amount already paid.

15. From the materials which are on record, it is clear that the erstwhile company had closed their unit at Madurai and had sold away their lands comprised in the erstwhile company premises measuring 3,50,658 sq.feet to M/s.Viswas Promoters Private Limited for a valuable consideration of Rs.2,89,32,793/- through a registered sale deed dated 17.4.2003 and thereupon the vendees have raised residential houses and are selling the same to higher income groups. From the aforesaid admitted facts it is clear that the erstwhile company had changed the nature of the land used for industrial purposes by selling it to a promoter, who used the same for residential purposes, without obtaining any permission from the Government. However, it is clear that the writ petitioner who claims to have stepped into the shoes of the erstwhile company has not come to the court with clean hands. In view of the aforesaid facts, which are not disputed, it is not difficult for this Court to see the reason why the petitioners are challenging the resumption proceedings. May be, they are trying to utilize the said land for some private purpose, and

not for carrying out any public purpose for which the land was acquired. The learned Judge of the writ court in the judgment under appeal also found that all the objections which were raised by the appellant, after order of remand was passed, were duly considered by the Government and an order was passed u/s 48-B of the Act.

16. Section 48-B of the Act has come by way of State amendment by the Government of Tamil Nadu, which runs as follows: -

"48-B. Transfer of land to original owner in certain cases: -

Where the Government are satisfied that the land vest in the Government under this Act is not required for the purpose for which it was acquired, or for any other public purpose, the Government may transfer such land to the original owner who is willing to repay the amount paid to him under this Act for the acquisition of such land inclusive of the amount referred to in sub-section(1-A) and (2) of Section 23, if any paid, under this Act."

On a perusal of the said section, it is clear that if the Government is satisfied that the land vest in the Government under this Act is not required for the purpose for which it is acquired or for any other public purpose, the Government may transfer such land to the original owner who is willing to repay the amount, which is paid to him under the Act for the acquisition of such land inclusive of the land referred to in sub-section (1-A) and (2) of Section 23, if any paid, under this Act.

17. From the undisputed facts of the case, it is clear that the public purpose for which the land was acquired namely, for construction of staff quarters for the workers does not exist. The appellant has not been able to construct staff quarters on the land in question, i.e., 1.28 acres, in furtherance of the public purpose in the last 50 years. Rather the land which was the property of the erstwhile company and which got merged with the appellant have been sold to one M/s.Viswas Promoters, which is in the real estate business, for residential use. Further, the company is resorting to change the use of land for which it was originally acquired. In this back ground of facts, the company cannot contend that any public purpose still survives in respect of the unutilized portion of the land.

18. Learned counsel for the petitioner has relied on the agreement which was entered into between the erstwhile company and the State Government. Such agreements are made u/s 41 of the Act. The said agreement can be entered into, provided the Government is satisfied after making necessary enquiry of the proposed acquisition in view of the purpose so specified u/s 40 as referred to in clause (a), clause (aa) or clause (b) of sub-section (1) of Section 40. Since, admittedly, the purpose mentioned either in Section 40(a), (aa) & (b) does not survive on the day the Government passed its order u/s 48-B, the said agreement, which was entered into pursuant to the provision of Section 41, cannot be pressed into service for nullifying the order u/s 48-B.

19. From the facts, which have been recorded in the impugned order, and also the facts which have been recorded in the counter affidavit filed by the first respondent in this writ petition, it is clear that the agreement u/s 41 cannot survive. In this connection, reference

may be made to paragraphs 9, 10 and 17 of the counter affidavit of the State filed in opposition to the writ petition out of which this appeal arises. Those averments have not been denied by the petitioner before the writ Court nor have they been denied by the appellant before us in the appeal Court.

20. Learned counsel for the appellant referred to a judgment of a Division Bench of this Court in the case of R. Shanmugam Vs. The State of Tamil Nadu, rep. by its Secretary, Housing and Urban Development, Fort St.George, Chennai reported in 2006(4) CTC 290. In that judgment the provisions of Section 48-B came up for consideration. The learned Judges after considering the various judgments came to a conclusion that Section 48-B, which was introduced by the Land Acquisition (Tamil Nadu Amendment) Act, 1996 was a provision which is meant for enabling the State Government for re-conveyance of the land to the original owner after the land which has been taken possession by the State Government is not required by it. The learned Judges held that right to property is still a constitutional right in terms of Article 300A of the Constitution, and therefore, under the said provision the original owner can make an application for re-conveyance of the unutilized land subject to the fulfillment of the conditions enumerated in Section 48-B. But the learned Judges further held that the Government couldn't unilaterally withdraw from the acquisition proceedings without the consent of the erstwhile owners. In fact, the learned Judges referred to a judgment of another Division Bench of this Court in the case of Southern Railways, etc. Vs. S.Palaniappan and others, reported in 2005(2) LW 325. where the learned Judges came to the following finding:

"33. Mr.R.Krishnamoorthy, learned Senior Counsel for the respondents-land owners placed reliance on the decision of a learned single Judge in M. Manimegalai Vs. State of Tamil Nadu. 2004 W.L.R. 789 (vide paragraph - 10) wherein it was observed:

"Section 48-B has been introduced with a view to protect the interest of the persons from whom the land has been acquired but not utilized. Such provision is a benevolent provision. Even though it is not specifically indicated in Section 48-B regarding the right of such a person to file application, it is obvious that such a person has to indicate his willingness to get the land back subject to repayment of the compensation."

34. We respectfully do not agree with the learned single Judge that Section 48-B has been introduced only to protect the interest of the persons from whom the land has been acquired. In our opinion, Section 48-B can also protect the interest of the State Government which wants to re-convey the land which it had acquired, but in such a case the State Government must get the consent of the erstwhile land owner before it can re-convey the land to him u/s 48-B. The State Government cannot act unilaterally in this connection as already held above.

35. For the reasons given above, we are of the opinion that the impugned order dated 31.12.2003 does not fall within the ambit of Section 48-B as it is a unilateral act and hence, it has to be declared as invalid, because by a mere executive order, unsupported by statute, land which stands vested in the State Government u/s 16 of the Land Acquisition Act cannot be unilaterally re-conveyed by the State Government to the erstwhile land owners."

21. The learned Judges in Shanmugam expressed the aforesaid finding referred to in the case of M. Manimegalai Vs. State of Tamil Nadu, 2004 W.L.R.789. This Court is also in respectful agreement with the said finding. The learned Judges in Shanmugam held that in passing an order u/s 48-B, the Government has to consider the facts and circumstances of the case and the decision of the Government must be supported by reasons and materials, and must be in accordance with law. We find that in the instant case, the decision of the Government is a reasoned one and it has already been held that it has not passed the order on arbitrary consideration of the facts. It is based on reasonable consideration in the facts and circumstances of the case. Therefore, the said decision does not support of the contention of the appellant. Now, it appears that after the order u/s 48-B has been passed on 01.11.2007 the Tahsildar has filed a compliance report after the possession of the land was taken over by the Government, and thereafter, on 09.06.2008 patta has been issued in favour of the respondents 5 to 7 who are the erstwhile owners. So, for the reasons aforesaid, this Court does not find any merit in the appeal. The appeal is therefore dismissed. Consequently, connected miscellaneous petitions are also dismissed. However, there will be no order as to costs.