M/s. Imperial Granites Pvt. Ltd. and M/s. Gem Granites (Karnataka) Vs State of Tamil Nadu, Madras Metropolitan Water Supply and Sewerage and Drainage Board and The Special Tahsildar, Land Acquisition, Madras Krishna Water Supply Scheme

Court: Madras High Court

Date of Decision: April 3, 2007

Hon'ble Judges: A. Kulasekaran, J

Bench: Single Bench

Advocate: G.R. Lakshmanan both the Writ Petitions, for the Appellant; P.S. Raman Additional Advocate General assisted by Mr. M. Dhandapani Additional Government Pleader, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

A. Kulasekaran, J.
The issue involved in both the writ petitions are one and the same, hence, they are disposed of by this Common Order.

The lands of the petitioner in WP No. 11426 of 2007 comprised in Survey Nos. 135/1, 135/2A1 and 135/2B1 and measuring in all 7.50 acres

and the lands of the petitioner in WP No. 11427 of 2007 in Survey Nos. 135/2B2, 135/2A2 and 135/2C1, in all to a total extent of 7 acres 50

cents in Chembarambakkam Village, Poonthamallee Taluk, Tiruvallur District (formerly Sriperumbadur Taluk, Chengai MGR District) were

acquired by the respondents for implementation of Krishna Water Project. According to the petitioners, the said lands were not utilised for the

purpose for which they were acquired, hence, they have filed separate applications u/s 48-B of the Land Acquisition Act, hereinafter referred to as

the Act, on 02.11.2001 for reconveyance of the said lands, which were rejected by the first respondent by separate impugned orders, both dated

28.09.2006, hence, the present writ petitions have been filed to quash the same.

2. Mr. G.R. Lakshmanan, learned counsel for the petitioners submitted as follows:-

The petitioners lands were acquired by the respondents for implementation of water supply scheme namely for erection/ construction of pumping

station/water storage, reservoir/water treatment plant and channel etc., relating to Krishna water project scheme, but the same were not utilised for

several years, for the purpose for which they were acquired, hence the petitioners have applied for re-conveyance of the said lands mentioning the

above said facts, which were rejected without giving opportunity. The impugned orders are non-speaking orders. The first respondent has not

given any specific reasons for rejecting the request of the petitioners for reconveyance of the lands. The impugned orders are passed without

application of mind. The relevant factors required to be considered were not considered by the respondents before passing the impugned orders.

The respondents have exempted the adjacent lands from the purview of acquisition when the proceedings were on, but whimsically refused to

extend the said benefits to the petitioners. The second respondent has falsely averred in the counter in WP No. 46273 of 2006 that the lands under

acquisition have been put into use and construction of water plant in the said property is on progress, with the result, this Court directed the

Tahsildar, Poonamallee to inspect the lands in dispute and report to the Court as to whether the lands of the petitioners are actually been used and

construction are on progress. Thereafter, the said Tahsildar inspected the lands and submitted his report stating that the lands in question are lying

vacant and there is no construction, whatsoever, being carried on for Krishna Water Project, the fact remains that the petitioners lands are not

used till date, which prove the malafide intention of the respondents. As per the original master plan, the lands of the petitioners were proposed to

be utilised for setting up a park and building, hence, acquiring the same for the purpose of water supply project is untenable in Law. The

Government lands are available in plenty near Meppur and Malayambakkam Villages, but the respondents have not chosen to acquire the said

lands and prayed for quashing the impugned orders.

3. The respondents have not filed counter, however, considering the urgency involved in these writ petitions, this Court directed the respondents to

produce the records and the same were also produced.

4. Mr. P.S. Raman, learned Additional Advocate General appearing for the respondents, relying on the records relating to the acquisition

proceedings submitted as follows:-

On receipt of petitions u/s 48-B of the Act from the petitioners, the first respondent requested the second respondent to submit his report, who has

also submitted the same stating that one of the scheme components envisaged under Krishna Water Supply Scheme was construction of water

treatment plant of capacity 530mld. The location for construction of the water treatment plant was chosen as per the technical feasibility such as

these lands are to be located at the down stream of the lake nearer to intake tower. A total extent of 67.61 hectares of land were proposed for

acquisition/ alienation and the lands belonging to the petitioners, put together to an extent of 15.02 acres in which part of the lands proposed for

construction of water treatment plant and allied work. Since adequate government lands for these water treatment plant project were not available

in that area, the acquisition of petitioners lands was necessitated. After complying with the other formalities award No.5/92 dated 26.05.1992 was

passed. The Petitioners have also filed writ petitions before this Court, challenging the acquisition proceedings and ultimately the same were

dismissed accepting the contention of the respondents herein, hence, the lands of the petitioners were not immediately put to use. The water

treatment plant has been already located 2 kilometers away from the acquired lands is incorrect. The petitioners lands forms part of the lands

proposed for construction of water treatment plant and allied works. The learned Additional Advocate General further submitted that the

petitioners averments that as per the original master plan the lands were acquired for setting up a park and building is concerned, when water

supply scheme for the benefit of Chennai Metropolitan area had been approved by the Government, the earlier land use pattern for the

construction of park and building and other use becomes invalid. The lands available near Meppur and Malayambakkam are not technically fit for

the scheme, however the government lands at Meppur and Malayambakkam were alienated and taken over by the Board for construction of

water treatment plant and its allied works. Since the project was already approved by the Government and the work is on progress, if any land is

re-conveyed, the project could not be implemented as per the requirement and the integration with other developments would not be possible. The

entire extent of 15.02 acres acquired from the petitioners are essentially required for execution of the scheme. After getting report from the second

respondent, the first respondent called for reports from the Special Commissioner and Commissioner of Land Administration, Chepauk, Chennai

by his letter dated 05.04.2005 and the said Commissioner of Land Administration also sent his reply dated 15.04.2005 stating that the lands of the

petitioners are very much required for the purpose for which they were acquired. Thereafter, the first respondent, after careful consideration of the

report of the second respondent as well as other authorities, by applying his mind, has rightly passed the impugned orders rejecting the request of

the petitioners. It is incorrect to state that the impugned orders are non-speaking orders as the same is passed in terms of Section 48-B of the Act.

It is not in dispute that the scheme is not abandoned, indeed it is on progress. Mere assertion that the lands required for public purpose is sufficient

and the averment that alternative lands belonged to the Government are available and the same were not acquired are irrelevant when the petition

u/s 48-B of the Act is considered. In the counter filed by the second respondent before this Court, no false statement was made and what was

stated therein was that the scheme is on progress, but never stated that the treatment plant was constructed in the lands of the petitioners. In

support of this contention, the learned Additional Advocate General relied on the decision of the Honourable Supreme Court reported in Tamil

Nadu Housing Board Vs. Keeravani Ammal and Others) Civil Appeal Nos. 5928-5929, 5932, 5938, 5933 and 5934 of 2004 dated

15.03.2007, Tamil Nadu Housing Board Vs. Keeravani Ammal and Others, and 10, it was held thus:-

8. It is clearly pleaded by the State and the Tamil Nadu Housing Board that the Scheme had not been suspended or abandoned and that the lands

acquired are very much needed for the implementation of the Scheme and the steps in that regard have already been taken. In the light of this

position, it is not open to the court to assume that the project has been abandoned merely because another piece of land in the adjacent village had

been released from acquisition in the light of orders of court. It could not be assumed that the whole of the project had been abandoned or has

become unworkable. It depends upon the purpose for which the land is acquired. As we see it, we find no impediment in the lands in question

being utilised for the purpose of putting up a multi-storied building containing small flats, intended as the public purpose when the acquisition was

notified. Therefore, the High Court clearly erred in proceeding as if the Scheme stood abandoned. This was an unwarranted assumption on the

part of the court, which has no foundation in the pleadings and the materials produced in the case. The Court should have at least insisted on

production of materials to substantiate a claim of abandonment.

9. We have already noticed that in the Writ Petition, there are no sufficient allegations justifying interference by the Court. Mere claim of

possession by the writ petitioners is not a foundation on which the relief now granted could have been rested either by the learned single judge or

by the Division Bench of the High Court. On the materials, no right to relief has been established by the writ petitioners.

Relying on the above said judgment of the Honourable Supreme Court, the learned Additional Advocate General submitted that the lands of the

petitioners are very much required for implementation of the scheme and steps in that regard have already been taken. Even at the worst, the lands

are not used for the purpose they were acquired, still it is open to the Government to use the same for public purpose, whereas, in this case, the

scheme is on progress and prayed for dismissal of the writ petitions.

5. This Court carefully considered the argument of the counsel for both sides and perused the material records. Now, we look into the provisions

of Section 48-B of the Act, 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.

6. It is evident from the above said Section that if the Government is satisfied that the lands vested in it are not required for the purpose for which

they were acquired or for any other public purpose, the lands can be transferred to the original owner. Even the lands vested are not required for

the purpose for which they were acquired, option vest with the Government to use the same for any other public purpose.

7. The petitioners have challenged the acquisition proceedings and filed writ petitions before this Court, which were dismissed holding that the

acquisition is valid, hence, it is needless to say that the lands were vested with the Government, free from all encumbrances.

8. The respondents have produced the layout wherein the location of the water treatment plant, treated water conveying means, quarters of the

employees, the lands of the petitioners, the entire lands acquired for the purpose of the scheme, the adjacent lands which are also covered by the

earlier acquisition proceedings against which cases are pending before this Court and the lands now sought to be acquired for the purpose of the

very same scheme are found mentioned. As mentioned above, the lands comprised in Survey Nos. 136/1 and 136/2 are concerned, it is stated

that necessary steps are now being taken to acquire the same, which are abutting the petitioners property.

9. After receipt of the applications u/s 48-B of the Act from the writ petitioners, the first respondent called for report from the second respondent.

The second respondent also sent his report stating the absolute necessity of the petitioners lands for completion of the scheme. The first respondent

has also called for report from the Special Commissioner and Commissioner of Land Administration, who informed that he, along with the District

Collector of Tiruvallur and Revenue Divisional Officer, Tiruvallur have inspected the petitioners lands and felt that those lands are very much

required for the said purpose. The first respondent also had a discussion in his chamber and thereafter passed the orders which are impugned in

these writ petitions. The averments of the petitioners that the impugned orders passed by the first respondent are non-speaking orders is incorrect

because the first respondent passed the impugned order in terms of Section 48-B of the Act for which no lengthy order is required. The

discussions made above disclose that the impugned orders are passed after inspection of the petitioners property, deliberations with the authorities

and application of mind.

10. The petitioners, in their affidavit filed in support of the writ petitions have canvassed many grounds like the petitioners lands are not fit for the

purpose for which they were acquired; alternate Government lands are available which are not acquired; certain lands adjacent to the lands of the

petitioners were exempted from the acquisition proceedings, which are irrelevant in so far as the relief sought for in these writ petitions are

concerned. It is needless to mention that the petitioners have canvassed the said grounds in their earlier writ petitions, which were filed challenging

the acquisition proceedings and the same were rejected by this Court. The discussions made above is crystal clear that the scheme is on progress

and the lands of the petitioners are very much needed for the said scheme.

11. The Honourable Supreme Court in the judgment mentioned supra held that if the lands acquired are very much needed for implementation of

the scheme and steps in that regard have already been taken, the same is sufficient to reject the petition u/s 48-B of the Act. Moreover, the claim

of possession made by the petitioners do not confer any right to them or it is a valid ground for seeking the relief sought for in these writ petitions.

12. The Honourable Supreme Court in the decision reported in Gulam Mustafa and Others Vs. The State of Maharashtra and Others, as follows:-

5. At this stage Shri Deshpande complained that actually the municipal committee had sold away the excess land marking them out into separate

plots for a housing colony. Apart from the fact that a housing colony is a public necessity, once the original acquisition is valid and title has vested in

the municipality, how it uses the excess land is no concern of the original owner and cannot be the basis for invalidating the acquisition. There is no

principal of law by which a valid compulsory acquisition stands voided because long after the requiring authority diverts it to a public purpose other

than the one stated in the Section 6(3) declaration.

It is evident from the above said judgment that once the original acquisition is over and title is vested with the Government, how it uses the excess

land is no concern of the original owner and cannot be the basis for invalidating the acquisition.

13. In the decision reported in (Chandragauda Ramgonda Patil and Another Vs. State of Maharashtra and Others, the Honourable Supreme

Court held in Para-2 thus:-

2.....We do not think that this Court would be justified in making direction for restitution of the land to the erstwhile owners when the land was

taken way back and vested in the Municipality free from all encumbrances. We are not concerned with the validity of the notification in either of the

writ petitions. It is axiomatic that the land acquired for a public purpose would be utilised for any other public purposes. It is not intended that any

land which remain unutilised, should be restituted to the erstwhile owner to whom adequate compensation was paid according to the market value

as on the date of notification. Under these circumstances, the High Court was well justified in refusing to grant relief in both the writ petitions.

In the above said Judgment, the Honourable Supreme Court held that the acquired lands remaining unutilised cannot be restituted to the erstwhile

owner to whom adequate compensation was paid according to the market value as on the date of notification.

14. In C. Padma and Others Vs. Dy. Secretary to the Govt. of T.N. and Others, , the Honourable Supreme Court held inPara-5 as follows:-

5. Shri. G. Ramaswamy, learned Senior counsel appearing for the appellants, contends that when by operation of Section 44-B read with Section

40 of the Act, the public purpose ceased to be existing, the acquisition became bad and therefore, the GO was bad in law. We find no force in the

contention. It is seen that after the notification in GOR 1392 dated 17.10.1962 was published, the acquisition proceedings had become final, the

compensation was paid to the appellant"s father and thereafter the lands stood in the State. In terms of the agreement as contemplated in Chapter

VII of the Act, the Company had delivered possession subject to the terms and conditions thereunder. It is seen that one of the conditions was that

on cessation of the public purpose, the lands acquired would be surrendered to the Government. In furtherance thereof, the lands came to be

surrendered to the Government for resumption. The lands then were allotted to SRVS Ltd. 5th respondent which is also a subsidiary amalgamated

company of the original company. Therefore, the public purpose, for which acquisition was made was substituted for another public purpose.

Moreover, the question stood finally settled 32 years ago and hence the writ petition cannot be entertained after three decades on the ground that

either original purpose was not public purpose or the land cannot be used for any other purpose.

In this case, the Honourable Supreme Court held that the acquired lands having vested in the State and compensation is paid to the claimant,

thereafter, the claimants are not entitled to restitution of possession on the ground that either the original purpose had ceased to be in operation or

the lands could not be used for any other purpose.

15. In yet another decision reported in Northern Indian Glass Industries Vs. Jaswant Singh and Others, wherein in Para-12, the Honourable

Supreme Court held thus:-

12. If the land was not used for the purpose for which it was acquired, it was open to the State Government to take action but that did not confer

any right on the respondents to ask for restitution of the land. As already noticed, the State Government in this regard has already initiated

proceedings for resumption of the land. In our view, there arises no question of any unjust enrichment to the appellant company.

In the above decision, the Honourable Supreme found that if the land was not used for the purpose it was acquired, it was open to the State

Government to take action but that did not confer any right on the land owners to ask for restitution of the lands.

16. The other argument advanced by the learned counsel for the petitioners is that the first respondent has passed the impugned orders without

affording an opportunity to the petitioners.

17. The Honourable Supreme Court in the decision rendered in Canara Bank and Others Vs. Shri Debasis Das and Others, held that"" natural

justice is another name for commonsense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the

conscience of man. Natural justice is the administration of justice in a commonsense liberal way."" The Honourable Supreme Court also held in

Karnataka State Road Transport Corporation and Another Vs. S.G. Kotturappa and Another, that ""the question as to what extent, principles of

natural justice are required to be complied with would depend upon the fact situation obtaining in each case. The principles of natural justice cannot

be applied in vacuum. It cannot be put in any straight jacket formula. The principles of natural justice are furthermore not required to be complied

with when it will lead to an empty formality.

18. A bare reading of Section 48-B of the Act makes the position clear that there is no requirement of being granting an opportunity to hear the

owners of the land. The petitioners could not have improved their stand even if an opportunity of hearing in person was granted. In this case, the

discussion made above disclose that the respondents not passed the impugned orders without valid materials. The materials relied on by the

respondents were also perused by this Court and this Court is of the considered view that the impugned orders were passed by the first

respondent after duly considering the need for the purpose for which the petitioners lands were acquired, hence, this Court is left with no other

alternative except to reject the said argument of the counsel for the petitioners and accordingly it is rejected. In view of the above discussions, this

Court is of the considered view that the impugned orders are perfectly valid, interference of this Court is not warranted, hence, the writ petitions

are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.