

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV On: 22.12.2014

DATED:23.12.2014

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.2423 of 2011

and

M.P.Nos.2 of 2011 and 1 of 2014

Nachimuthu Gounder

... Petitioner

...Vs...

1. The State of Tamilnadu
represented by its Secretary to Government,
Housing and Urban Development Department,
Fort St. George, Chennai-9.

2. The Special Tahsildar
Land Acquisition,
Housing Scheme Unit-I,
Coimbatore

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, for a issuance a Writ of Certiorari, to call for the records in relation to the notification issued under section 4(1) of the Land Acquisition Act, 1894, in G.O.Ms.No.386, dated 06.09.1996 (Housing & Urban Development Department) and the declaration made under section 6 of the Land Acquisition Act in G.O.Ms.No.379, dated 28.10.1997 (Housing & Urban Development Department) by the first respondent under the Land Acquisition Act, 1894 and quash the same in respect of the lands belonging to the petitioner, comprised in S.F. No.536/2 situated at Vellakinaru Village, Coimbatore.

For Petitioner : Mr.Mr. K. Ramu

For Respondents : Mr.M.S. Ramesh
(Additional Government Pleader)

O R D E R

The writ petitioner submitted that the lands comprised in S.F. No.536/2 situated at Vellakinaru Village, Coimbatore District belonging to the writ petitioner and he is in possession and enjoyment of the property as of now. As on today the entry in the Revenue Records stands in the name of the petitioner and he is doing cultivation to eke his livelihood in the said land.

2. The writ petitioner further submitted that on 11.01.2011, the officials came from the office of the second respondent, visited the petitioner's lands and made enquiries with regard to the persons interested in the land belonging to the petitioner. When the petitioner asked the officials about the said enquiry, they informed that they are taking note of the particulars about the lands covered under the acquisition, since 1988 for the purpose of the schemes and to the shock and surprise of the petitioner, they explained that the subject land was also subjected to acquisition, however they did not divulge any particulars with regard to the acquisition. Immediately, the petitioner made enquiry in the office of the Second respondent. To the shock and surprise, the petitioner came to know that his land was subjected to acquisition. On further enquiry, the petitioner came to know that a notification under Section 4(1) of the Land Acquisition Act, hereinafter called as "The Act" in G.O.Ms.No.386, Housing and Urban Development, dated 06.09.1996, which was followed by a declaration under section 6 of the Act made in G.O.Ms.No.379, Housing and Urban Development, dated 28.10.1997. Until the said enquiry by the second respondent, the petitioner is not aware of any of the acquisition proceedings initiated in respect of his lands as he was not served with any sort of notice at any point of time by the respondents herein and the entire acquisition proceedings had been done behind the back of the petitioner.

3. The writ petitioner further submitted that with great difficulty, the petitioner had obtained the copy of the notifications mentioned above from the office of the 2nd respondent and on verification it is seen that the notification issued under section 4 (1) of the Act and the Declaration made under section 6 of the Act contained his name in respect of S.F.No.536/2. However, the respondents did not serve any notices with regard to acquisition proceedings to the writ petitioner.

4. The writ petitioner further submitted that the petitioner was not served with any notice for any sort of enquiry with regard to the acquisition proceedings initiated in respect of his lands by the respondents before making the declaration under section 6 of the Act.

Originally the land belonging to the petitioner is an agricultural land and for the past so many years, the petitioner had also engaged in agricultural operations. In fact no notices were served to the petitioner for the enquiry held under section 5-A of the Act and in fact no publication of notification under section 4(1) of the Act was made in the convenient places of the locality, where the property situate as envisaged in the Tamilnadu Land Acquisition Rules 1991.

5. The writ petitioner further submitted that the petitioner is not at all aware of any land acquisition proceedings initiated by the respondents in respect of his lands until the second respondent inspected his lands and made enquiry as stated above.

6. The writ petitioner further submitted that the declaration under section 6 of the Act of the first respondent was not made within the statutory period of one year from the date of the notification under section 4(1) of the Act, as such the entire proceedings become void. Further, the petitioner is not served with any notice for award enquiry under section 9(3) and 10 or any notice under section 12(2) of the Act after the passing of award if any.

7. The writ petitioner further submitted that in the present case, the first respondent herein by virtue of the impugned notification under section 4(1) of the Act had specifically authorised and appointed the second respondent herein, as the Land Acquisition Officer to perform the functions under section 3(c) of the Act. But to his knowledge and on enquiry, the petitioner came to know that the second respondent herein did not conduct any such enquiry proceedings under section 5(A) of the Act after giving any sort of notice to the petitioner contemplated under the Act. In the present case, since the acquisition is for a local authority ie., requisitioning body, the prior approval by the 1st respondent before issuing the impugned 4(1) notification is a mandatory one as contemplated under section 3(f) (vi) of the Act. But, there was no such approval by the 1st respondent, hence the entire acquisition proceedings are not legally valid.

8. The writ petitioner further submitted that in the present case the declaration under section 6 of the Act was made on 28.10.1997 in G.O.Ms.No.379. Hence the award under section 11 of the Act ought to have been pronounced on or before 27.10.1999. But, for the reasons best known to the second respondent, the award was not pronounced within the stipulated period. Hence the entire acquisition proceedings stands lapsed in view of section 11 (A) of the Act.

9. The writ petitioner further submitted that on enquiry, the petitioner came to know that the second respondent herein had sent only the draft award proceedings and pre valuation statement for getting prior approval from the competent authority before pronouncing the award as envisaged under section 11 of the Act and the said prior approval was not obtained and as such the award was not pronounced in time as stipulated under the Act. Hence, the above writ petition is filed.

10. The writ petitioner further submitted that the petitioner came to know that the second respondent is taking steps to revive the proceedings already lapsed by pronouncing the award. In view of the section 11-A of the Act the land acquisition proceedings cannot be continued after two years from the date of the issue of the declaration under section 6 of the Act. The petitioner further submitted that till date the petitioner is in possession and enjoyment of the property. In view of the urgent steps taken by the second respondent as stated above, the petitioner apprehends that the second respondent will forcibly interfere with his peaceful possession and enjoyment of the property.

11. The writ petitioner further submitted that the petitioner has filed a petition in M.P.No.1 of 2014 in W.P.No.2423 of 2011 in and by which, it is sought for a relief to raise the additional grounds as follows in view of the introduction of "The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013" hereinafter called "the New Act":

"(i) When the physical possession of the land is not taken from the petitioner by the Land Acquisition Officer or the District Collector u/s. 16 of the Old Act in the manner known to law till date, the entire Acquisition proceedings initiated under the Old Act shall be deemed to have been lapsed.

(ii) When the petitioner is in continuous possession and enjoyment of the property without any interruption, till date, the acquisition proceedings initiated under the Old Act shall be deemed to have lapsed in view of the Section 24(2) of the New Act.

(iii) In the absence of any material to show that the physical possession of the land was taken from the petitioner, the entire acquisition proceedings initiated under the Old Act shall be deemed to have been lapsed.

(iv) When, neither the petitioner was tendered nor paid the compensation or deposited before the civil court in respect of the subject land by the 2nd respondent, the entire acquisition

proceedings initiated under the Old Act shall be deemed to have been lapsed."

12. The highly competent counsel Mr.K.Ramu, Appearing for the petitioner would contend that apart from the grounds raised in the writ petition originally, a petition in M.P.No.1 of 2014 is filed to raise following additional grounds in view of the introduction of the New Act. He further contended that till now the physical possession of the subject land is with the petitioner and at no point of time the possession of the subject land was not taken by the Land Acquisition officer, ie., the 2nd respondent herein from the petitioner under section 16 of the Old Act. It is further contended that though the declaration under section 6 of the Old Act was made on 28.10.1997, the second respondent did not pronounce any award within the stipulated time as contemplated under section 11 of the Old Act. Further, if at all, any award would have been made by the second respondent, the same should be intimated to the petitioner by serving the notice under section 12(2) of the Old Act to the petitioner. But, till today, the petitioner is not at all served with any such notice.

13. The Learned Counsel further contended that till today the petitioner is neither offered and paid the compensation amount as per award if any in respect of the subject land nor the compensation amount was deposited before the competent Civil Court as envisaged under section 31 of the Old Act.

14. The Learned counsel for the petitioner further contended that since the compensation was neither offered and paid to the petitioner nor deposited in the competent Civil Court and further the physical possession of the subject land is not taken by the respondents from the petitioner and the petitioner is in possession and enjoyment of the property till today, Section 24(2) of the New Act is squarely applicable to the instant case for getting remedy. Hence, the entire acquisition proceedings initiated under the Old Act in respect of the subject land has become lapsed. The learned counsel to sustain his submissions has cited the following judgments:-

(i) Judgement of the Apex Court in Velaxan Kumar -VS- Union of India and others in SLP (C) No.16578 of 2007, dated 11.12.2014

(ii) judgement of the Apex Court in Sree Balaji Nagar Residential Association -vs- State of Tamilnadu reported in (2014)5 CTC page 857

(iii) PUNE MUNICIPAL CORPN. vs. HARAKCHAND MISIRIMAL SOLANKI

reported in (2014) 3 Supreme Court Cases 183

(iv) Raghbir Singh Sherawat vs. State of Haryana reported in (2012) 1 Supreme Court Cases 792

(v) PATASI DEVI v. STATE OF HARYANA reported in (2012) 9 Supreme Court Cases 503.

(vi) Karuppathal -Vs- State of Tamilnadu reported in (2014)5 CTC 282

(vii) Union of India and others -Vs- Shiv Raj and others reported in (2014)6 SCC 564

(viii) Bimla Devi and others -Vs- State of Haryana and others reported in (2014)6 SCC 583

(ix) Bharat Kumar -Vs- State of Haryana and another reported in (2014)6 SCC 586

(x) P. Jeyadevan -VS- State of Tamilnadu reported in (2014)4 MLJ page 325 and

(xi) A. Nagarajan and others -Vs- Secretary to Government and others reported in (2014)6 MLJ 29

15. Relying on the above decisions, the learned counsel for the petitioner contended that since the second respondent herein, who is the Land Acquisition Officer under the Old Act did not take the physical possession of the land from the petitioner and that the petitioner is neither offered nor paid the compensation amount or deposited before the civil court after following the mandatory requirements and procedures before making the deposit in the Civil Court, the entire proceedings under the Old Act become lapsed in view of the Section 24(2) of the New Act. The learned counsel for the petitioner, to sustain his submission has also relied on the information and the documents obtained on 28.11.2013, under the Right to Information Act, 2005 which is filed as additional typed set of papers. It is further contended by the counsel for petitioner that even though, the petitioner is entitled to get the relief under section 24(2) of the New Act, the petitioner reserves his right to agitate on the strength of the grounds originally raised in the writ petition to attack the acquisition proceedings in future if necessary.

16. The very competent Additional Government Pleader Mr.M.S.Ramesh, submits that the 1st respondent had issued a G.O.Ms.No.386, dated 06.09.1996, for acquiring the lands to an extent of 4.73.5 hectares for forming the Neighbourhood Scheme including the petitioners lands. Pursuant of the said Government Order, the Land

Acquisition Officer had issued a notification under section 4(1) of the Act. Thereafter, personnel enquiry was conducted and declaration was passed under Section 6 of the Act. Compensation has been assessed by the Tahsildar and awards passed for a sum of Rs.1,76,654/- including 30% solatium and admissible interest. Thereafter the position had been taken over by the Land Acquisition Officer and in turn the said acquired property handed over to the housing board. The compensation amount had been deposited before the Civil Court. Therefore, after completing the land acquisition proceedings, if the petitioner is in possession of the land it would be an unlawful possession. Hence, the very competent counsel entreats the Court to dismiss the above writ petition.

17. Having considered the submissions made by the Learned Counsel for the petitioner, the counsel for the respondents and on perusal of the typed set of papers and the information and documents obtained under the Right to Information Act 2005, which is filed as additional typed set of papers by the petitioner, as well as the various decisions referred to above on Section 24(2) of the New Act, this court is of the view that from the typed set of papers and the additional typed set of papers filed by the petitioner, it is clearly seen that the revenue records such as patta and the Adangal stands in the name of the petitioner. Further, as per the reply furnished under the Right to Information Act 2005, in respect of the subject land, it is quite evident that the possession of the subject land is not taken from the petitioner by the second respondent. In the said reply, it is informed that there are no documents to show that the possession of the land is taken from the landowner by the Land Acquisition Officer, ie., the second respondent. With regard to the payment of compensation to the petitioner in respect of the subject land, it is clearly stated in the reply furnished under the RTI that there are no documents to show that the compensation amount is either paid or deposited in the Civil Court, Coimbatore. Moreover, the respondents did not file any documents to prove the contrary. In view of the reply obtained under the RTI as well as the documents furnished by the petitioner, it is clearly established that the respondents did not take the physical possession of the subject land from the petitioner till today. Further, in so far as the payment of compensation to the petitioner in respect of the subject land is concerned, it is clearly seen that the compensation amount is neither paid nor deposited before the Civil Court. In fact, the reply furnished under the RTI, substantiated the said fact. Hence, in view of the decisions cited above, the entire land acquisition proceedings initiated under the Old Act become lapsed Under Section 24(2) of the New Act and as such the petitioner is entitled to get a relief under the New Act.

18. From the above discussion this Court is of the view that:

(i) The respondents had issued land acquisition proceedings in the year of 1996 for acquiring the petitioner's lands for the formation of a Neighbourhood scheme. As per the respondent's record the award had been passed in the year of 1999, but the patta proceedings dated 23.09.2008 stands in the name of the petitioner and in addition to that as per the adangal register dated 08.02.2010, the petitioner is doing cultivation on the land comprised in Survey No.536/2 to an extent of 0.98.0 hectares. It clearly proves that the petitioner as of now is carrying out cultivation over the said land. As such the entire land acquisition proceedings have become lapsed and the Neighbourhood housing scheme had not been implemented after a lapse of 18 years. As such the said scheme has been pushed into oblivion;

(ii) As per the particulars furnished by the 2nd respondent herein under the Right to Information Act, no relevant records are available on his file, regarding mode of compensation, date of taking over the possession from the petitioner and handing over the acquired land to the housing board and this makes up the crucial records for implementation. Therefore, there obviously appears that the land acquisition proceedings had not been strictly followed through, hence a serious lapse of service on the part of the respondents. The authorities could not be permitted to support their decision based on the statements that are vague;

(iii) The petitioner being an Agriculturist and doing cultivation on his land for time memorial in order to eke out a living for his family and himself. The generalized view of this Court is that cultivation is of paramount importance to one and all than the Neighbourhood scheme. As a logical move the Neighbourhood Scheme can be implemented anywhere at available sites and this could avoid disturbance in the Agriculturist's land cultivation. The authority should adduce reasons that would be regarded as fair and legitimate by a reasonable person.

19. Considering the facts and circumstances of the case and arguments advanced by the learned counsels on either sides and on perusing the typed set of papers, the views of this Court indicated in (i) to (iii), the above writ petition is allowed. Consequently, the petitioner's land comprised in S.F. No.536/2 to an extent of 0.98.0 hectares situated at Vellakinaru Village, Coimbatore District

is discharged from the land acquisition proceedings as per G.O.Ms.No.386, dated 06.09.1996 and G.O.Ms.No.379, dated 28.10.1997, Housing and Urban Development Department. Accordingly ordered. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

ub Sub Assistant Registrar

To

1. The State of Tamilnadu
The Secretary to Government,
Housing and Urban Development Department,
Fort St. George, Chennai-9.
2. The Special Tahsildar
Land Acquisition,
Housing Scheme Unit-I,
Coimbatore

+lcc to Mr.K.Ramu, Advocate, S.R.No.63845
+lcc to the Government Pleader, S.R.No.63806

W.P.No.2423 of 2011
and
M.P.Nos.2 of 2011 and 1 of 2014

KSJ(CO)
CA(16/03/2015)

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