

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON : 04/12/2014

DATED : 18/12/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.10043 of 2014

- 1.Ragupathy
- 2.Lakshmipathy
- 3.Tmt.Chitraleka
- 4.Vijay Sankar
- 5.Subiksha

... Petitioners

vs.

- 1.The Managing Director,
Tamil Nadu Housing Board,
Nandanam,
Chennai - 600 035.

- 2.The Executive Engineer and
Administration Officer,
Coimbatore Housing Unit,
Tatabad,
Coimbatore - 641 012.

- 3.The Special Tahsildar,
Land Acquisition (Housing Scheme No.II),
Coimbatore.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for a Writ of Mandamus, to direct the respondents to issue No Objection Certificate in favour of the petitioners in respect of the land in S.F.No.267/5 to an extent of 1.18.0 hectares and the land in S.F.No.268/3 to an extent of 0.99.0 hectares, Vilankurichi Taluk, Coimbatore Taluk and District forthwith, within a time frame to be fixed by this Court.

For Petitioner : Mr.G.Sankaran

For Respondents : Mr.B.Vivekavanan (TNHB) for R1 and R2
Mr.M.S.Ramesh, Addl. Govt. Pleader for R3

O R D E R

The first petitioner has submitted that the first and second petitioners and one Thiru.Kesavan (Late) are legal-heirs of Tmt.K.Savithri Ammal, (mother). The fourth petitioner is wife of Kesavan, 5th and 6th petitioners are the children (son and daughter) of Kesavan and therefore, the respondents 4 to 6 are legal-heirs of Kesavan. The first petitioner has further submitted that the property in S.F.No.267/5 and S.F.No.268/3, Vilankurichi Village, Coimbatore Taluk, Coimbatore District belongs to the mother of the petitioner Tmt.K.Savithiri Ammal and after her demise, it was devolved on the petitioners by inheritance.

2. The first petitioner has further submitted that the land in S.F.No.267/5 measuring to an extent of 1.18.0 hectares and the land in S.F.No.268/3 to an extent of 0.99.0 hectares situated in Vilankurichi Village, Coimbatore Taluk belongs to the grandfather of the petitioners, namely, K.Thiruvengadasamy who died on 06.03.1987. After his demise, the petitioner's mother Tmt.K.Savithiri Ammal, the only daughter has succeeded the property. Subsequently, Tmt.K.Savithiri Ammal has also died on 13th September 2012 and the property devolved on the petitioners by inheritance. The first petitioner has further submitted that while so, the subject lands were sought to be acquired for Tamil Nadu Housing Board for construction of houses under Ganapathy Neighbourhood Scheme, Phase II, for which Notification under Section 4(1) of Land Acquisition Act was published in Government Gazette on 14.06.1995. Subsequently, the acquisition was proceeded and Section (6) Declaration was made in G.O.Ms.No.291, Housing and Urban Development Department, dated 17.06.1996. At this juncture, aggrieved over the Land Acquisition Proceedings, the petitioner's mother Thiru.K.Savithiri Ammal (Late) filed a writ petition in W.P.No.18730 of 1996. This Court passed orders in the writ petition on 07.02.2004 allowing the writ petition by setting aside Section (6) declaration dated 17.06.1996 with liberty to the respondents to issue another declaration within the prescribed time limit.

3. The first petitioner has further submitted that since Section 4(1) Notification itself was vitiated by errors of law and as it was issued in the name of a dead person, the petitioner's mother Tmt.K.Savithiri Ammal filed a Writ Appeal in W.A.No.2105 of 2004 against the orders passed in W.P.No.18730 of 1996, dated 07.02.2004. The said Writ Appeal came to be allowed as per the

orders of this Court dated 17.02.2006, by which the Section 4(1) Notification itself was quashed. The first petitioner has further submitted that the fact remains that even in respect of other lands acquired for Housing Schemes, which remain unutilized, there were number of representations for the reconveyance of the land by the landowners for which orders have been passed by this Court to consider the claim of the reconveyance. The first petitioner has further submitted that after the acquisition proceedings was quashed based on the orders of this Court in W.A.No.2105 of 2004, dated 17.06.2004, the petitioners mother Tmt.K.Savithiri Ammal made representations to the respondents seeking for the issuance of 'No Objection Certificate' (NOC) which is the basic requirement for further development of the land. In spite of quashing of Land Acquisition Proceedings, the respondents have not issued NOC for the land. Therefore, the petitioners mother Tmt.K.Savithiri Ammal filed a writ petition before this Court in W.P.No.30785 of 2007, which came to be ordered on 21.09.2007, directing the respondents to consider the representation dated 20.07.2007 for issuance of No Objection Certificate within a period of 16 weeks from the date of receipt of the order.

4. The first petitioner has further submitted that after the orders passed by this Court in the writ petition, the Chief Revenue Officer in the Office of the first respondent issued a letter dated 08.12.2007 stating that certain particulars were sought for in the issuance of second and third respondents and on the receipt of the same, appropriate orders would be passed on the representation submitted by the petitioner. However, no further orders have been passed by the first respondent in spite of several representations submitted by Tmt.K.Savithiri Ammal (Late). The first petitioner has further submitted that after hectic efforts taken by Tmt.K.Savithiri Ammal (Late), the second respondent issued proceedings dated 13.09.2010 stating that the opinion of Board's Legal Advisor against the judgment of this Court is requested for filing review petition and on that basis, the request of petitioner for issuance of NOC was stated to be not considered. Such kind of order came to be passed by the second respondent after a period of six years from the date of order passed in the writ petition quashing acquisition proceedings and after a period of three years from the date of receipt of the orders passed in W.P.No.30785 of 2007, dated 21.09.2007.

5. The first petitioner has further submitted that the petitioner's mother Tmt.K.Savithiri Ammal (Late) filed a writ petition in W.P.No.21525 of 2011, challenging the proceedings of second respondent dated 30.09.2010 by which the claim of NOC was not considered on the pretext of getting opinion for filing Review Petition. This Court passed orders in W.P.No.21525 of 2011, dated 29.11.2011, setting aside the impugned proceedings dated 13.09.2010

and had given direction to the respondents to pass appropriate orders within a period of two weeks from the date of receipt of that order. Even after the orders of this Court dated 29.10.2011, the same was not complied and the respondents have not issued any NOC in respect of the subject lands. The first petitioner has further submitted that the petitioner's mother Tmt.K.Savithiri Ammal has become aged i.e. 90 years and in spite of serious ailment suffered by her, she filed a Contempt Petition before this Court in Contempt Petition No.1686 of 2012 for non-compliance of the orders passed in W.P.No.21525 of 2011. While so, the third respondent Special Tahsildar, Coimbatore, issued a reply dated 30.07.2012 to the Contempt Notice that Tamil Nadu Housing Board is the competent authority to issue the NOC for the land proposed for acquisition to TNHB and accordingly Tamil Nadu Housing Board has been addressed to pass appropriate orders in various letter issued by the third respondent.

6. The first petitioner has further submitted that the Contempt Petition filed by Tmt.K.Savithiri Ammal (Late) was listed for hearing before this Court on several dates and the same was adjourned for several occasions for instructions from the respondents. However, when the Contempt Petition, came up for hearing before this Court on 14.06.2013, the learned Government Advocate appearing for the third respondent produced a communication dated 14.12.2012, which stated that Housing Board is requested to pass appropriate orders and further there is one more writ petition pending i.e. W.P.No.16612 of 2004 with reference to S.F.No.268/3 and therefore, the orders would be passed after the disposal of the said writ petition. The first petitioner has further submitted that based on the production of the proceedings dated 14.12.2012 issued by the third respondent, this Court was pleased to close the Contempt Petition with a liberty to the petitioner to work out the remedy in and by order dated 14.06.2013. While so, the mother of the petitioner Tmt.K.Savithiri Ammal has also expired in the mean time on 13.09.2012.

7. The first petitioner has further submitted that the proceedings of the third respondent, dated 14.12.2012, only referred to the fact that No Objection Certificate has to be issued by the Managing Director, Tamil Nadu Housing Board and therefore, the papers are forwarded to the Housing Board for passing orders. The said proceeding further reveals the pendency of another writ petition dated 16.12.2004 with reference to S.F.No.268/3 measuring 0.99.0 hectares and therefore, any orders can be passed only after the disposal of the writ petition. The first petitioner has further submitted that at the first instance, the respondents ought to have issued No Objection Certificate for the land belonging to the petitioners in S.F.No.267/5 covered by the orders passed by this Court in W.A.No.2105 of 2004, dated 17.02.2006. Secondly, the

other writ petitions viz., W.P.No.16612 of 2004 with reference to S.F.No.268/3 also came to be allowed by the orders of this Court dated 13.03.2013. Hence, the first and second respondents, being the Competent Authority to issue NOC, ought to have considered the orders of this Court by issuing NOC for the lands in S.F.No.267/5 and S.F.No.268/3.

8. The first petitioner has further submitted that even after long battle and several orders of this Court, the respondents have not chosen to issue NOC in respect of the subject lands for the reasons best known to them. The following details would make it clear how the petitioners are harassed and subjected to serious hardships and suffering for all these years:-

(i) The Land Acquisition Proceedings were quashed as per the orders of this Court in W.P.No.18730 of 1996, dated 07.02.2004.

(ii) This Court passed orders in writ petition on 07.02.2004 allowing the writ petition by setting aside Section (6) declaration dated 17.06.1996 with liberty to respondents to issue another declaration within the prescribed time limit.

(iii) Even 4(1) Notification was also quashed as per the orders in W.A.No.2105 of 2004, dated 17.06.2006.

(iv) Thereafter based on the writ petition filed by Tmt.K.Savithiri Ammal, the mother of the petitioner in W.P.No.30785 of 2007, the respondents were directed to pass orders for issuance of NOC in and by order dated 20.07.2007.

(v) Subsequently, the second respondent issued proceedings dated 13.09.2010 stating that the claim for NOC cannot be considered since legal opinion has been sought for to file a Review Petition against the order passed in W.A.No.2105 of 2004, dated 17.06.2006.

(vi) When, it was challenged, this Court passed orders in W.P.No.21525 of 2011, dated 29.10.2011 quashing the same with direction to the respondents to pass appropriate orders for granting of NOC within two weeks from the date of receipt of that order.

(vii) Since the order was not obeyed, Contempt was filed in Contempt Petition No.1686 of 2012

and the same was adjourned on several occasions for instructions from the respondent.

(viii) However, when the Contempt Petition came up for hearing on 14.06.2013, the learned Government Advocate appearing for the third respondent produced the proceedings dated 14.12.2012 by which, it is stated that NOC has to be issued only by Managing Director, TNHB and therefore, the petitions are forwarded to TNHB and further pendency of another writ petition in W.P.No.16612 of 2004 with reference to S.F.No.268/3 is also stated.

(ix) However, the fact remains that the said writ petition in W.P.No.16612 of 2004 with reference to S.F.No.268/3 also came to be allowed as per the orders of this Court dated 13.03.2013.

(x) The Contempt Petition was closed by referring to the proceedings dated 14.12.2012 with liberty to the petitioner to work out the remedy.

Hence, the petitioner has filed the above writ petition.

9. The learned counsel appearing for the petitioners has submitted that the landed property, comprised in S.F.Nos.267/5 and 368/3 of Vilankurichi Village, Coimbatore Taluk, Coimbatore District, measuring about 1.18 hectare and 0.99 hectare respectively, is belonging to the petitioners by inheritance. Initially, the said landed property was belonging to the petitioners' grandfather, namely, Thiruvengadasamy, who died on 06.03.1987. After his demise, the petitioners' mother had succeeded the same. She had also expired on 13.09.2012 and subsequently the said property is devolved on the petitioners by inheritance. The said landed property along with other adjacent lands were sought to be acquired for Tamil Nadu Housing Board for the purpose of Neighbourhood Scheme and accordingly a notification was issued during 1995. The same was challenged by the petitioners' mother before this Court by filing a writ petition and this Court allowed the writ petition with liberty to the respondents to issue another declaration within the prescribed time limit.

10. Further, the learned counsel has submitted that the notification was quashed as the same was issued in the name of dead persons. The acquired lands remain un-utilized. Hence, the

petitioners had made several representations for reconveyance of the acquired lands. Since the respondents had not considered the same, they had filed a writ petition seeking direction to the respondents to consider their representation. Further, the mother of the petitioners made a representation to the respondents for issuance of no objection certificate. This was not considered by the respondents after a specific direction issued by this Court to consider the same. The Chief Revenue Officer, attached to the first respondent's office, had sought certain particulars from the office of the respondents 2 and 3 and they had stated that appropriate orders will be passed. But, as of now, no order has been passed. The second respondent had passed orders after a period of six years. Further, the mother of the petitioners filed a contempt petition before this Court against the respondents for disobeying the order passed by this Court. In the said contempt petition, the learned counsel for the Government had submitted that the Tamil Nadu Housing Board had been requested to pass appropriate orders. Subsequently, on 15.03.2013, the first petitioner made a representation to the respondents to issue no objection certificate. Hence, the learned counsel has prayed for a direction to the respondents to issue no objection certificate.

11. The learned counsel appearing for the respondents 1 and 2 has submitted that the subject lands have been utilized by the Housing Board for the purpose of neighbourhood scheme. Further, the third respondent had sent a communication, dated 14.12.2012, to the petitioners and informed them that no objection certificate cannot be issued. Hence, the learned counsel has prayed for dismissal of the writ petition.

12. The learned Additional Government Pleader appearing for the third respondent has submitted that the third respondent had initiated acquisition proceeding, during 1995, to acquire the subject lands along with its adjacent lands for the purpose of neighbourhood scheme and the same was completed during 1996. After acquiring the lands, the same have been handed over to the Housing Board. Now, the entire acquired lands are vested with Tamil Nadu Housing Board. Therefore, the learned Additional Government Pleader has prayed for dismissal of the writ petition.

13. On considering the facts and circumstances of the case, arguments advanced by the learned counsel on either side and on perusing the typed set of papers, this Court is of the view that the land acquisition proceedings had been initiated during 1995 and the same was completed during 1996. Further, the petitioners have not produced any relevant documents including current documents to prove that they are still in possession and enjoying the said property. In such circumstances, this Court cannot give direction to the respondents to issue no objection certificate in respect of

the subject matter of lands. As such, the writ petition does not generate sufficient force to allow it and hence, the writ petition is liable to be dismissed.

14. In the result, the writ petition fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

r n s / krk

-sd-

Assistant Registrar

//True copy//

Sub Assistant Registrar

To

1.The Managing Director,
Tamil Nadu Housing Board,
Nandanam,
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+1 C.C. to MR.B.Vivekavanam Advocate SR.NO.68629

+1 C.C. to The Government Pleader, High Court, SR.NO.69237

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VS 02.02.2016