

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON 07/10/2014

DATED: 20/08/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.9613 of 2014 &
M.P.No.1 of 2014

K.Selvakumar

... Petitioner

Vs.

1.State Rep. by its Secretary,
Housing & Urban Development Department,
Fort St. George,
Chennai - 600 009.

2.Tamil Nadu Housing Board,
Rep. by its Managing Director,
No.33, Anna Salai,
Nandanam, Chennai - 600 035.

3.The Executive Engineer,
Tamil Nadu Housing Board,
Bhagalur Road,
Hosur - 635 109.

4.The Special Tahsildar (L.A.),
Hosur Housing Scheme,
Bhagalur Road,
Hosur, Krishnagiri District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for a Writ of Certiorarified Mandamus, to call for the records of the first respondent issued in Letter No.4650/LA.2(2)/2013-2, dated 01.08.2013, quash the same, consequently direct the respondents to exclude the petitioner's land bearing plot No.42, in the layout, viz., Jayalakshmi Nagar to an extent of 1200 sq.ft. comprised in Survey No.899/1 Part, Hosur Village and Taluk, Krishnagiri District from the Land Acquisition Proceedings.

For Petitioner : Mr.U.M.Ravichandran
For Respondents : Mr.S.Gomathi Nayagam
Additional Advocate General
Assisted by
Mr.M.S.Ramesh
Addl. Government Pleader for R1 & R4

Mr.V.Anandhamoorthy (TNHB)
for R2 and R3

O R D E R

The petitioner submits that the larger extent of land comprised in Survey No.899/1 of Hosur Village and Taluk, Krishnagiri Taluk, originally belonged to one Mr.Anjappa and his brother Sudappa jointly. The aforesaid landowners have developed the above said land with adjacent lands comprised in Survey No.899/2 and 899/3 etc., and divided the same into various residential plots by forming the Housing Layout, viz., Jayalakshmi Nagar. The petitioner has purchased one of the plot bearing No.42, to an extent of 1200 sq.ft. comprised in Survey No.899/1, Hosur Village and Taluk, Krishnagiri District under a sale deed dated 14.07.1986 registered as document No.6090 of 1986 in the office of the Sub Registrar, Hosur. Eversince from the date of execution of the sale deed, the petitioner has been in peaceful possession and enjoyment of the said plot.

2. The petitioner further submits that the first respondent issued Notification under Section 4(1) of Land Acquisition Act, 1894 vide G.O.Ms.No.1342 Housing and Urban Development Department, dated 09.10.1991 for proposing to acquire the aforesaid land along with other lands to establish Neighbourhood Housing Scheme by the second respondent. In continuation to the said notification, declaration has been issued under Section 6 of Land Acquisition Act 1894 vide G.O.Ms.No.885, dated 21.12.1992. The petitioner further submits that no notice has been issued to him either under Section 4(1) or Section 6 of the Land Acquisition Act. Therefore, he has been deprived of his valuable right to make objection for the said Land Acquisition Proceedings. The respondents herein have not verified the records of concerned Sub Registrar Office with regard to his ownership of the lands before issuing notice and issued all notice to his vendors Mr.Anjappa and his brother Sudappa. The petitioner further submits that the owners of the land, comprised in Survey No.899/3, 902, 903 etc., covered under the same notification by the Land Acquisition, have filed writ petition Nos.16881/1994 and 16882/1994 for challenging the said Land Acquisition Proceedings, wherein they obtained interim stay of dispossession. Thereafter, the said writ petitions were allowed by this Court, by an order dated 20.01.2001 quashing the Land Acquisition Proceedings in respect of their Survey Numbers. The petitioner further submits that against the order passed in writ petition Nos.16881/1994 and

16882/1994, Government preferred Writ Appeals and the same were rejected in the SR stage itself and the Land Acquisition Proceedings had reached finality. Subsequent to the orders of this Court, the adjacent landowners one Mr.Kuppaiah @ Kuppusamy and one Smt.Ramanji approached the second respondent and obtained No Objection Certificates in respect of lands comprised in certain Survey Numbers which were in the subject matter of Land Acquisition Proceedings. The petitioner further submits that the fourth respondent had also given a report to the effect that the Land Acquisition Proceedings had attained finality and no new proposal has come for fresh acquisition. The petitioner further submits that his adjacent landowners filed writ petitions seeking to transfer the patta in their names as the Land Acquisition Proceedings had become final. This Court was pleased to direct the Revenue Officials to transfer the patta and consequently the patta has also been transferred in their names.

3. The petitioner further submits that he purchased the subject matter of the lands in the year 1986 and the fourth respondent did not issue any notice for acquisition of his land. Since the petitioner was not aware of the Land Acquisition Proceedings, he did not approach this Court to quash the Acquisition Proceedings like his adjacent landowners viz., Kuppaiah & Kuppusamy and Ramanji. The petitioner further submits that the second respondent has utilized the acquired lands to an extent of maximum possible and they do not require his plot for their housing scheme. Moreover, the petitioner's plot is located on the edge of the scheme. The petitioner further submits that the lands comprised in Award No.29/1994 have been exempted from acquisition and the actual landowners are enjoying the same. By keeping his plot alone, the purpose of second respondent will not survive. Moreover, the compensation in respect of his land has also not been deposited into the Court concerned and instead it has been deposited into the Sub Treasury of Hosur and thereby he has been deprived of his valuable right and just compensation. The petitioner further submits that the respondents have excluded the lands covered by Award No.29/1994 and comprised in Survey No.899/3, 845/5, 900, 901/1A, 1C, 901/2, 916/1B and 918/2 and in fact the second respondent has issued No Objection Certificate certifying that the lands comprised in the said Survey Numbers are not under any Land Acquisition Proceedings and they have No Objection to transfer the patta to the original landowners. On coming to know the said fact, he has also applied for transfer of patta and No Objection Certificate and the respondents did not consider his request. The petitioner further submits that all the adjacent landowners have obtained No Objection Certificate from the respondents in respect of their own lands and he has not been issued with No Objection Certificate and thereby he has been singled out.

4. The petitioner further submits that his representation dated 26.02.2013 sent to the respondents herein to exclude his lands comprised in Survey No.899/1, considering the above said

facts has not been considered and hence he filed a writ petition in W.P.No.12227 of 2013, before this Court for exclusion of his house site from the Acquisition Proceedings and the said writ petition came to be disposed of by an order dated 26.04.2013 by directing the first respondent to consider his representation on merits and in accordance with law. Subsequently, the first respondent by communication issued in Letter No.4650/LA.2(2)/2013-2, dated 01.08.2013, rejected his request without assigning any valid reason. The petitioner further submits that the physical and actual possession of his land is still with him and he has been enjoying the land from the date of purchase. The award amount neither been deposited into the Court in respect of his land nor paid to him. Hence, the petitioner entreats the Court to allow the above writ petition.

5. The third respondent has filed a counter affidavit and resisted the above writ petition. The third respondent submits that the lands have been acquired for the implementation of Hosur Neighbourhood Housing Scheme totally to an extent of 212.94 acres in Hosur Village. The third respondent submits that the lands mentioned in the writ petition have been acquired under Section 4 (1) Notification vide G.O.Ms.No.1342 Housing and Urban Development Department dated 09.10.1991 to an extent of 11.36.0 hectares and Section 6 Declaration in G.O.Ms.No.885, Housing and Urban Development Department, dated 31.07.1992. In pursuant to the above said notifications, an award was passed in Award No.29 of 1994, dated 20.12.1994 and the possession of lands have been handed over to the answering respondent by the Land Acquisition Officer on 22.02.1995. The compensation amount has been deposited to Land Acquisition Officer on 18.03.1997. The petitioner has alleged that he has purchased the plot No.42 to an extent of 1200 sq.ft in Survey No.899/1, but as per the revenue records it is found that S.No.899/1 was subdivided as 899/1A1A to 899/1A1U, 899/1A2, 899/1B to 899/1L even at the time of passing award.

6. The third respondent further submits that the notices under the Land Acquisition were issued to the landowners and interested persons and they also appeared for enquiry and recorded their claims and objections. Against the order passed in writ petition Nos.16881 of 1994 and 16882 of 1994, which relates to various survey numbers, the answering respondent had preferred Writ Appeals in W.A.Nos.43 and 44 of 2012. Therefore, except the possession in S.No.899/1A1A, possession of other lands in aforesaid various survey numbers have been handed over to Tamil Nadu Housing Board. The lands mentioned in the writ petitions are located in the middle of the scheme and abutting the existing road. The petitioner has purchased the plot from an unapproved layout without identifying his property as if the said plot was situated in Survey No.899/1. But the fact is that the said Survey No.899/1 was subdivided long back. It is for the petitioner to take steps to identify his property first and then only he can claim right over the property mentioned in the writ petition. At this juncture, the

writ petition is not at all maintainable and the petitioner has to approach the proper forum to identify his property in the manner known to law. The lands are essentially required for the implementation of the composite housing scheme. The third respondent further submits that the principle of judgment in rem is not at all applicable to this case. The respondent further submits that the scheme has not been abandoned and the same is in subsistence, mere claim of possession by the petitioner is not a foundation which gives a right of reconveyance. In Keeravani Ammals case (2007) Volume 2 CTC 447 (Supreme Court), the question of release of acquired land which had been transferred to requisitioning body has been considered as follows:-

"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."

The third respondent further submits that the possession has been handed over to the Tamil Nadu Housing Board on 22.02.1995. Even under Section 48B of the Land Acquisition Act, the Government could not withdraw from acquisition or re-convey the lands as the possession of the land had already been taken and the position of law is well settled as held in 1997(5) SCC 432, 2005(1) SCC 558.

7. The third respondent further submits that it is pertinent to note that the identity of the property is in question and there is no survey No.899/1 as claimed by the petitioner. In fact the layout plan has been approved by the Town Planning Authority by his proceedings dated 26.12.1997 for the formation of the Hosur Neighbourhood Scheme Phase XVI, in which plots have been allotted in favour of the allottees and sale deeds have been executed in favour of some allottees. The said copies have been enclosed in the typed-set of papers. A ground of attack was

available in the first or second round of litigation, but the petitioner has not chosen to raise it at that time and hence, the same contention cannot be raised in the next round of litigation as the same will be barred by principle of constructive resjudicata. The Division Bench of this Court in W.A.(MD)No.726 of 2013, by its judgment dated 28.04.2014, while dealing with the same issue has observed as follows:-

"39. But, Act 30 of 2013 cannot be used as a magic wand to resurrect the ghosts of the past. In cases where the acquisition proceedings had attained finality 20 years ago, this Court has nothing to interfere, by taking note of the shift in the focus...."

Hence, the third respondent entreats the Court to dismiss the above writ petition.

8. The fourth respondent has filed a counter affidavit and resisted the above writ petition. The fourth respondent submits that the Hosur Housing Unit of Tamil Nadu Housing Board had proposed to acquire the lands for the implementation of housing scheme in and around the Hosur Town in a phased manner. Hosur Neighbourhood Scheme Phase XVI in Hosur Village is one of the schemes and it was proposed to acquire the land to an extent of 212.94 acres in Hosur Village. The Government approved the 4(1) of Land Acquisition Act vide G.O.Ms.No.1342, Housing and Urban Development Department dated 09.10.1991 to an extent of 11.36.0 hectares. The same was published in the Government Gazette on 30.10.1991. The newspaper publication was also published on 26.11.1991 in Makkal Kural and on 29.11.1991 in Athirstam respectively and locality publication in the same was made on 26.12.1991. As per the Land Acquisition Act Section 55(1) Rule 3, the notices were served to the landowners and 5(A) enquiry was conducted on 24.02.1992. The Draft Declaration under Section 6 of Land Acquisition Act was approved by the Government vide G.O.Ms.No.885 Housing and Urban Development Department dated 31.07.1992. The same was published in the Government Gazette on 21.12.1992 and the paper publication was made on 23.12.1992 in Thina Thuthu and Makkal Kural and locality publication was also made on 24.12.1992. After duly serving the notices under Section 9 (1) and 3 of Land Acquisition Act, the Award enquiry was conducted by the Land Acquisition Officer and Award passed on 20.12.1994 vide Award No.29/94. In this case, the notice under Section 9(3) and 10 of Land Acquisition Act was served in person to Thiru.A.Murugan who is one of the legal-heirs of pattadar Thiru.Kuppiah alias Kuppusamy for Survey No.899/1A 1A etc. However, none of them attended the Award enquiry and hence it was ordered that the Award amount will be deposited under Section 31(2) of Land Acquisition Act. The Award amount was deposited to the Land Acquisition Officer as per the Board's sanction order dated 07.03.1997 vide cheque dated 18.03.1997. The same was deposited by the Land Acquisition Officer under "work deposit" on 24.03.1997. The fourth respondent further submits that the petitioner had purchased an extent of 1200

sq.ft. in S.F.No.899/1 of Hosur Village. But as per Revenue records, it is found that S.F.No.899/1 was sub divided as 899/1A1A to 899/1A1U, 899/1A2, 899/1B to 899/1L and the above survey numbers, the following S.F.Nos.899/1A1B to 899/1A1U, 899/1A2, 899/1B to 899/1L were handed over to TNHB on 22.02.1995 and kept with Tamil Nadu Housing Board. In the Revenue records, the changes were made in faovur of TNHB, the land tax was also paid by TNHB.

9. The fourth respondent further submits that after taking over of the land, the layout to an extent of 213.00 acres including the lands taken over in S.F.No.899/1A1A to 899/1A1U, 899/1A2, 899/1B to 899/1L got approved from the Town Planning Authorities vide approval No.71 of 1998 and the Development works such as laying road, water supply, street lights were carried out. Apart from that, 10 houses were also constructed in the above taken old survey numbers and allotted to the public. The sale deed for those houses is being issued by TNHB. The petitioner in his writ petition had not mentioned the correct S.F.No. (Sub Division No) where his plot was situated. The fourth respondent further submits that as per Award, it is found that S.F.No.899/1 was sub divided as 899/1A1A to 899/1A1U, 899/1A2, 899/1B to 899/1L. The land in all the above survey numbers, except S.No.899/1A1A were taken over by Tamil Nadu Housing Board. The correct survey number was not mentioned in the affidavit filed by the petitioner and the document to show the correct survey number. The fourth respondent further submits that the Land Acquisition Notices were sent to the pattadar and notices were published by the way of affixture at the notice boards of Village Administrative Officer's Office, Sub-Registrar Office, Taluk Office and RDO / Sub-Collector Office. It was informed that any interested persons can also appear for enquiry and record their claims and objections. The Tamil Nadu Housing Board had filed the writ appeal against the order in W.P.Nos.16881 of 1994 and 16882 of 1994, dated 20.01.2001 and it was numbered as W.A.Nos.43 of 2012 and 44 of 2012. The fourth respondent further submits that the petitioner had not mentioned in the order letter number and the NOC (or) report issued for the survey numbers which were subject matter of Land Acquisition Proceedings, hence, it is not acceptable.

10. The fourth respondent further submits that In the Award, the Land Acquisition Officer had stated that due to non-determination of the ownership for S.F.Nos.899/1A1A, 899/3, 902, 918/2 total extent of 3.10.0 hectares, the Award amounts for a sum of Rs.11,34,937/- will be deposited under Section 31(2) of Land Acquisition Act. The amount received from the requisitioning body is kept with work deposit in the name of Special Tahsildar, Land Acquisition Housing Scheme, Hosur. The fourth respondent further submits that the land was also assessed in the name of Tamil Nadu Housing Board. Hence, the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act (30 of 2013) is not applicable. Hence, the fourth respondent entreats the Court to dismiss the above writ petition.

11. The highly competent counsel Mr.U.M.Ravichandran appearing for the petitioner submits that the petitioner has purchased the subject land situated at Hosur Village under a registered sale deed. The petitioner came to know that the first respondent had issued G.O. for acquiring the subject land for the purpose of Neighbourhood Scheme. The petitioner had not been served any notice for acquiring his property. Further, the notification for acquiring the said land and adjacent lands, was challenged before this Court by way of writ petition and the same was allowed. Against the learned Single Judge Order, the respondents had preferred an appeal and the same was rejected at the initial stage. As such, the order passed by this Court in the Land Acquisition Proceedings have become final.

12. The highly competent counsel appearing for the petitioner further submits that the petitioner's land is not required for the said Neighbourhood Scheme. The compensation towards the said land has not been paid to the petitioner. Further, the second respondent has issued No Objection Certificate stating that the subject lands are not under any Land Acquisition Proceedings. The petitioner is in physical possession and enjoying the same. Hence, the petitioner made a representation to the respondents for excluding the said land from the acquisition proceedings and the same was rejected by the respondents, without assigning any reasons. The petitioner has not received compensation for the said land and he is in physical possession continuously. Hence, the highly competent counsel entreats the Court to grant relief under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

13. The highly competent Additional Advocate General Mr.S.Gomathi Nayagam appearing for the first and fourth respondent submits that the subject land and other lands to an extent of 212.94 acres have been acquired for the implementation of Hosur Neighbourhood Housing Scheme. The petitioner's land had been acquired for the said purpose under the Old Act and the same had been handed over to the Housing Board. The compensation amount had been deposited. Therefore, the writ petition is not maintainable at this stage, since the physical possession had been handed over to the Housing Board and the same had been utilized for the said purpose. Under the circumstances, the property cannot be reconveyed to the petitioner. Hence, the highly competent Additional Advocate General entreats the Court to dismiss the above writ petition.

14. The highly competent counsel Mr.V.Anandhamoorthy appearing for the second and third respondents submits that the entire acquired lands have been utilized by the Housing Board for providing house sites and houses to the general public. The acquisition proceedings had been completed in and around the year 1995 itself. Thereafter, after 20 years, the petitioner has filed

the above writ petition and seeking relief under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is not maintainable, since similar writ petition has been filed challenging the acquisition proceedings and the same was dismissed. Therefore, on the same cause of action, the above writ petition has been filed. Further, the petitioner's representation was duly considered and rejected by stating that the compensation had been deposited and property had been handed over to the Housing Board. Hence, the highly competent counsel entreats the Court to dismiss the above writ petition.

15. On considering the facts and circumstances of the case and arguments advanced by the highly competent counsels on all sides and on perusing the typed-set of papers, this Court is of the view that the petitioner has not produced any relevant current documents to prove that as of now, he is in physical possession and enjoyment of the property. As such, the above writ petition filed by the petitioner seeking the relief under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is not maintainable. Hence, the above writ petition is dismissed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

r n s

To

1.The Secretary,
Government of Tamil Nadu,
Housing & Urban Development Department,
Fort St. George,
Chennai - 600 009.

2.The Managing Director,
Tamil Nadu Housing Board,
No.33, Anna Salai,
Nandanam, Chennai - 600 035.

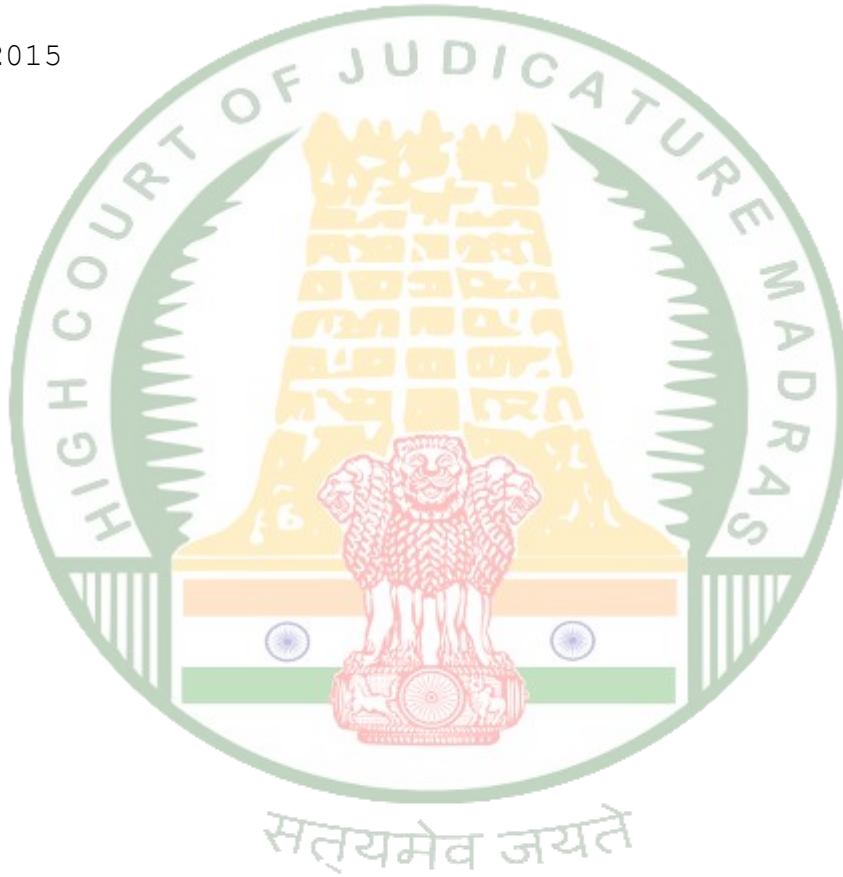
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4.The Special Tahsildar (L.A.),
Hosur Housing Scheme,
Bhagalur Road,
Hosur, Krishnagiri District.

1 cc to Mr. V.Anandhamoorthy , Advocate Sr.No.44833
1 cc to Mr.U.M.Ravichandran , Advocate Sr.No.44819
1 cc to Government Pleader.Sr.No.44722

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