

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON 22/12/2014

DATED: 08/04 /2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.30994 of 2014

D.Sumathi

... Petitioner

Vs.

1. The State Government,
Represented by its
Secretary to Government,
H & UD Department,
Fort St. George,
Chennai - 600 009.

2.The District Collector,
Collectorate,
Kanchipuram, Kanchipuram District.

3.The Tamil Nadu Housing Board,
Represented by its Managing Director,
Nandanam, Chennai - 600 035.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for a Writ of Mandamus, to direct the respondents to release unutilized land bearing Survey Nos.337/1, 337/2B, 337/3, 337/4B, 337/7A1, 337/7A2, 337/7B, 337/7C, 337/7B, 337/7B1, 337/7B2, 337/7B5, 337/6, 337/8, 337/8B, 340, 341, 343/8A2, 343/8A, 343/8B, 334/2, 344, 345/3, 345/3A, 337/2B2, 325/2 and 337/5B, 344/3, 344/5 and 402 to an extent of 5 acres 71 cents in Sholingnallur Village, Tambaram Taluk, Kanchipuram District, as per New Act Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

For Petitioner : Mr.V.Dinesh Raja

For Respondents : Mr.M.S.Ramesh
Additional Govt. Pleader for R1 and R2
Mr.B.Vivekavanam for R3

O R D E R

The short facts of the case are as follows:-

The petitioner submits that she is the owner of the property bearing Survey Nos.337/1, 337/2B, 337/3, 337/4B, 337/7A1, 337/7A2, 337/7B, 337/7C, 337/7B, 337/7B1, 337/7B2, 337/7B5, 337/6, 337/8, 337/8B, 340, 341, 343/8A2, 343/8A, 343/8B, 334/2, 344, 345/3, 345/3A, 337/2B2, 325/2 and 337/5B, 344/3, 344/5 and 402 in Sholinghanallur Village, Kanchipuram District, to an extent of 5 acres 71 cents. The said property was originally belonging to various owners, who authorized and had given a General Power of Attorney in favour of the petitioner's husband, viz., Duraisingam. On the capacity of the Power of Attorney, her husband Duraisingam, possessing a property and enjoying the same without any disturbances. In the said circumstances, the respondents herein had initiated the Land Acquisition Proceedings for the purpose of Sholinghanallur Neighbourhood Housing Scheme Phase III. Immediately, the petitioner's husband challenged the acquisition proceedings before this Court by way of filing a writ petition in W.P.No.15410 of 1993 and the same was allowed on 31.01.2000. Then, the respondent had filed a writ appeal in W.A.No.485 of 2001 before this Court. In these circumstances, with the confidence, the petitioner's husband had transferred the property in her favour by way of registered sale deed document Nos.7666 of 2006 to 7674 of 2006, on the file of Sub Registrar Office, Neelankarai. Ever since the transaction, the petitioner is in possession and enjoying the property continuously without any disturbances. Thereafter, the Writ Appeal allowed by this Court in the year 2008, then, the petitioner had filed a Special Leave Petition before the Hon'ble Supreme Court in the year 2008 and the Hon'ble Supreme Court admitted and granted stay and in the year 2011, the said Special Leave Petition was disposed against the petitioner. However, the petitioner and others are continuously possessing the property.

2. The petitioner further submits that as per the Act, 1894, the possession has not been taken over by the respondents and had not been utilized for the purpose for which, the land was acquired. As such, the respondents have not utilized the said land for more than 25 years and without framing any scheme, have taken over the possession. Therefore, as per the New Act, the unutilized land has to be released from the Land Acquisition and the petitioner is entitled to receive the same. Hence, the

petitioner made a representation before the respondents under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, on 18.07.2014 for the release of lands from the acquisition proceedings and return of the property, but the respondents did not give any reply on her representation. Hence, the above writ petition has been filed.

3. In the above writ petition, the respondents have not filed a counter statement.

4. The highly competent counsel Mr.V.Dinesh Raja appearing for the petitioner submits that the petitioner had purchased the said subject matter of the property prior to initiation of the Land Acquisition Proceedings by the respondents. The respondents had issued a notification on 30.05.1990, subsequently a declaration was published on 21.06.1991 under Section 6 of the Land Acquisition Act. Therefore, the Land Acquisition Proceedings are not sustainable under law, besides the respondents had neither passed any award nor deposited the compensation amount before the concerned jurisdictional Court. In the instant case, the petitioner is in possession and enjoying the same without any interference of the respondents or any third party. Further, the petitioner has not received any compensation amount from the respondents. Further, as per the Hon'ble Supreme Court's judgment reported in the Law Weekly 2014 (2) 430, the Hon'ble Court held that, "Award made more than five years prior to the commencement of the 2013 Act, compensation awarded neither paid to landowners / persons interested not deposited in the Court - Acquisition Proceedings to have lapsed under Section 24(2). Then, the Division Bench of this Court had also passed similar findings on a similar case. Therefore, the petitioner is entitled to obtain relief under the New Act. Hence, the highly competent counsel entreats the Court to allow the above writ petition and consequently, the unutilized lands have to be released from the acquisition proceedings and the same has to be handed over to the petitioner.

5. The highly competent Additional Government Pleader Mr.M.S.Ramesh appearing for the first and second respondents submits that the first respondent had issued a Government Order in G.O.Ms.No.474, dated 30.05.1990, for acquiring the lands at Sholinganallur Village including the petitioner's lands to an extent of 204.70 acres for Tamil Nadu Housing Board Scheme. On the basis of the said G.O., the Land Acquisition Officer had initiated Land Acquisition Proceedings under the Old Act, 1894. The Land Acquisition Officer had strictly adhered to the Land Acquisition Proceedings and completed the same. After acquiring the said land, in turn, the acquired land was handed over to the Tamil Nadu Housing Board. Under the circumstances, the above writ

petition is not maintainable. Further, the compensation amount had been deposited before the concerned Court. As such, the New Act is not applicable in the present case.

6. The very competent counsel Mr.B.Vivekavanan appearing for the third respondent submits that the Land Acquisition Officer had acquired the said subject land along with lands of others for forming the Neighbourhood Scheme. Accordingly, the lands had been acquired from the original owners, who have also participated in the enquiry which had been conducted as per Section 5 A of the Old Act. Subsequently, a declaration was published under Section 6 of the Act. The Land Acquisition Officer had taken the acquired land who in turn handed over the same to the Housing Board. The Housing Board had implemented the Neighbourhood Scheme and houses have been allotted to general public. Further, the petitioner is not in physical possession and is not in enjoyment of the same.

7. Per contra, the highly competent counsel appearing for the petitioner submits that the respondents had initiated Land Acquisition Proceedings for acquiring the petitioner's land in the year 1990 for the purpose of a Neighbourhood Scheme. The entire acquired lands have not been utilized for the said purpose. Now, the petitioner is seeking a remedy to release the unutilized lands since the said lands have not been utilized after a lapse of 24 years. It clearly proves that the unutilized lands are not required for the Neighbourhood Scheme.

8. Considering the factual position of the case and from the above discussion, this Court is of the view:-

(i) The respondents had issued a G.O.Ms.No.474, dated 30.05.1990 for acquiring the petitioner's lands for the Neighbourhood Scheme. After acquiring the said land under the Old Act, the entire acquired lands of the petitioner / interested person have not been utilized. However, the Housing Board had utilized a portion of the acquired land for the said purpose. The remaining lands have not been utilized and still vacant as per the statement of the petitioner. Therefore, the petitioner is entitled to receive back the unutilized lands since the respondents have not utilized the same for the Neighbourhood Scheme after a lapse of 24 years.

(ii) The respondents have not produced any documentary proof that they have paid the compensation amount for the said lands.

(iii) The respondents have also not produced any documentary proof that they have utilized the entire acquired lands of the petitioner. Therefore, this Court accepts the

statement of the petitioner that some portion of the acquired lands are unutilized. If this Court directs the respondents to release the unutilized lands to and in favour of the petitioner herein, the respondents will not be prejudiced since they had not taken any steps to implement the Neighbourhood Scheme even after a lapse of around 24 years. It clearly establishes that the unutilized lands are not required by the respondents.

9. On considering the facts and circumstances of the case and arguments advanced by the learned counsels on either side and on perusing the typed-set of papers and this Court's views as mentioned above (i) to (iii), the above writ petition is allowed. Consequently, this Court directs the respondents to release the unutilized land bearing Survey Nos.337/1, 337/2B, 337/3, 337/4B, 337/7A1, 337/7A2, 337/7B, 337/7C, 337/7B, 337/7B1, 337/7B2, 337/7B5, 337/6, 337/8, 337/8B, 340, 341, 343/8A2, 343/8A, 343/8B, 344/2, 344, 345/3, 345/3A, 337/2B2, 325/2 and 337/5B, 344/3, 344/5 and 402 to an extent of 5 acres 71 cents in Sholingnallur Village, Tambaram Taluk, Kanchipuram District, as per New Act Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, within a period of two months.

10. In the result, the above writ petition is allowed. There is no order as to costs.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

r n s
To

1.The Secretary to Government,
Government of Tamil Nadu,
H & UD Department,
Fort St. George,
Chennai - 600 009.

2.The District Collector,
Collectorate,
Kanchipuram, Kanchipuram District.

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

1 cc to Mr.G. Ranganathan, Advocate, Sr. 19298

W.P.No.30994 of 2014

GJ (CO)
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