

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON 08/08/2014

DATED: 02/09/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.11174 of 2014

&

M.P.No.1 of 2014

1.P.Vijaychand
2.V.Asha

...Petitioners

Vs.

1. State of Tamil Nadu,
Rep. by its Secretary,
Highways Department,
Fort St.George,
Chennai - 600 009.
2. The Collector of Kancheepuram,
Kancheepuram District.
Kancheepuram.
3. The Revenue Divisional Officer (RDO),
Chengelpet Division,
Chengelpet,
Kancheepuram District.
4. The Tahsildar,
Tiruporur Taluk,
Tiruporur,
Kancheepuram District.
5. The Divisional Engineer (Highways),
Chenglepet Division,
Chenglepet, Kancheepuram District.
6. The Assistant Divisional Engineer (C&M),
Highways Department,
Chenglepet,
Kancheepuram district.

7. Tamil Nadu Road Development Corporation (TNRDC),
Rep. by its Managing Director,
No.171, II Floor, Tamil Nadu Maritime Board building,
South Kesava Perumalpuram,
Pasumpon Muthuramalinga Devar Road,
Raja Annamalaipuram,
Chennai - 600 028.

...Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for a Writ of Declaration to declare that the Land Acquisition Proceedings initiated under the Land Acquisition Act, 1894 with regard to the land in Plot No.5 measuring 2400 sq.ft. in S.No.73(Part) Thiruvudanthai Village (formerly Semmancherry Village), Chengelpet Taluk, Kancheepuram District belonging to the petitioner having lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 which came into force with effect from 01.01.2014.

For Petitioners : Mr.R.Thiyagarajan
Senior Counsel
For Mr.N.Premkumar

For Respondents : Mr.T.N.Rajagopalan
Spl. Govt. Pleader for R1 to R6
Mr.D.Srinivasa Raghavan for R7

ORDER

The petitioners submit that the subject matter of the writ petition relates to Plot No.5, measuring about 2400 sq.ft. comprised in S.No.73 part of Thiruvudanthai Village (formerly Semmancherry Village), Chengelpet Taluk, Kancheepuram District having been purchased by the petitioners from Balasubramaniam and Diwakar Rathinam under registered sale deed dated 21.11.2003. The petitioners further submit that originally larger extent of land comprised in S.No.73 belonged to Rathina Guruswamy, Balasubramaniam and Rajapaul. Under a partition deed dated 04.08.1987, an extent of 3.86 acres in S.No.73 fell to the share of Balasubramaniam. Separate patta bearing No.277 was also issued in the name of Balasubramaniam and another extent of 3.87 acres comprised in S.No.73 fell to share of Rathina Guruswamy in the partition of 1987. Separate patta bearing No.277 was issued in favour of Rathina Guruswamy. Subsequently, under a settlement dated 13.06.2003 Rathina Guruswamy settled his 3.87 acres in S.No.73 in favour of

his son Diwakar Rathinam. Thus, Balasubramaniam and Diwakar Rathinam became the owners of 3.86 acres in S.No.73/1B and 3.87 acres in S.No.73/3 respectively. The petitioners further submit that both Balasubramaniam and Diwakar Rathinam formed a layout in the property which they got. The layout also was approved in 2003. In the layout plot No.5 measuring 2400 sq.ft. was sold by Balasubramaniam and Diwakar Rathinam to the petitioners under a registered sale deed dated 21.11.2003. At the time of purchase, the Revenue Records reflects Mr.Balasubramaniam and Mr.Rathina Guruswamy were the owners of the land and there is no sight of any acquisition in the revenue records. The said plot is abutting the East Coast Road. Subsequent to the purchase, the petitioners have constructed Villa in Plot No.5 Ever since the purchase, the petitioners are in continuous possession and enjoyment of the same by paying necessary property tax and electricity consumption charges. These Villas are also enclosed by compound wall constructed by leaving sufficient space away from East Coast Road.

2. The petitioners further submit that on 27.12.2013, a notice was served by the Office of the Assistant Divisional Engineer, Highways (C & M) Chenglepet on the watchman in the petitioners' property by filling up his name in the notice. The said notice is to the effect that the part of the property of the petitioner has already been acquired for widening the East Coast Road and for converting it into a four lane road and the compensation amount was about to be paid and called upon to the petitioners to vacate their premises as it constituted as an encroachment. Thereafter, the petitioners verified before the Assistant Divisional Engineer / sixth respondent herein and made a representation that the notice was bereft of particulars such as the name of the owner of the property, survey number of the property under reference, description of the property, extent of land, the particulars regarding the alleged acquisition and the relevant notification. Further, the person who came and served the notice signed by the Assistant Divisional Engineer has only filled up the name of the watchman as if he is the owner of the property. In turn the sixth respondent directed to the petitioners to approach the seventh respondent who is executing the road widening work. On enquiry, the seventh respondent has not furnished any particulars despite referring to a Notifications dated 13.11.1992 and 30.11.1993 under Section 4(1) and Section 6 of the Land Acquisition Act which contained the following particulars:-

"Government, dry, S.No.73-1, B-2 belonging to Balu Nadar, bounded on the North by S.No.73-1 A-2, East by S.No.73-2, South by S.No.73-3B and West by S.No.73-1 B-1 0.29.0 hectare (or) 0.72 acre;

Government dry, S.No.73-3B, belonging to Rathina Gurusamy son of Ramalinga Nadar, bounded on the North by S.Nos.73-1, B-2 and 73-2 East by S.No.91 South by S.No.73-4 B and West by S.No.73-3 A-0.23.5 hectare (or) 0.58 acre."

The petitioners further submit that through their agent they sought some information before the Revenue Divisional Officer / the third respondent herein regarding the details of acquisition and compensation paid to the landowners. On reply to the said application, the third respondent in and by letter dated 25.03.2014 categorically stated that no compensation has been paid to the landowners for the land acquired in S.No.73/1B and 73/3B and further stated that the third respondent has written letter to the Government to allot fund for payment of compensation to the landowners. Hence, the petitioners have filed the above writ petition.

3. The sixth respondent has filed a counter affidavit on behalf of the respondents 1, 5, 7 and on behalf of him and resisted the above writ petition. The sixth respondent submits that the Government have decided to strengthen and widen the East Coast Road from Thiruvanniyur to Cuddalore. As part of it, an extent of 4.55.5 hectares or 11.47 acres wet and dry lands in Thiruvidadanthai Village, formerly Chengalpattu and now Thiruporur Taluk, Kancheepuran District have been notified for acquisition under Section 4(i) read in the Section 17(3) Urgency Clause of the Land Acquisition Act (Central Act 1 of 1894) in G.O.Ms.No.1547 (P.W/ (HS.2) Department, dated 05.11.1992. It were published in T.N.G.G on 13.11.1992, Thinathoodu and Makkal Kural on 14.11.1992 and in the locality on 02.12.1992. The Draft Declaration under Section 6 of the Land Acquisition Act (Central Act 1 of 1894) for the above extent of lands was approved in G.O.Ms.No.1662/Public Works (HS-2) Department, dated 30.11.1993. It were published in TNGG on 30.11.1993, Kumari Murasu, Thinathoodu (Tamil Dailies) on 01.12.1993 and in the locality on 01.12.1993. The direction under Section 7 of the Land Acquisition Act was approved by the Government in their letter dated 24.02.1995 and published in the Supplement to Part II Section 2 Issue No.114 in the Tamil Nadu Government Gazette dated 22.03.1995. The Special Tahsildar (LA) Unit I East Coast Road Project, Big Melamaiyur, Chengalpattu has been authorized to perform the function of the Collector under provision of Urgency Clause under Sub Section (i) of Section 17 of the Land Acquisition Act, 1894.

4. The sixth respondent further submits that the lands notified for acquisition has been duly demarcated, surveyed, measured and mapped under Section 8 of the Act. The area shown in

this award is true and correct area of the land. The notice under Section 9(i) and 10 of the Land Acquisition Act was published in the Village on 08.11.1995. The individual notice under Section 9(3) and 10 of the Act was also issued to the landowners on 08.11.1995 calling for them to attend Award Enquiry on 23.11.1995. The landowners did not appear for award enquiry. Hence, the compensation amount has been ordered to be kept in the Revenue Deposit as per Award No.16/90, dated 29.11.1995. The lands comprised in whole S.No.73 of Thiruvидanthai Village has been sub-divided according to the requirement of the land for East Coast Road widening for four lanes from two lanes. The sixth respondent further submits that the acquired lands were taken possession by the Highways Authority on 29.11.1995. The East Coast Road has been formed already and that is being maintained by the Tamil Nadu Road Development Company Limited. The sixth respondent further submits that the subject matter of the writ petition relates to the Plot No.5, measuring about 2400 sq.ft. in Thiruvидanthai Village formerly Chengalpattu Taluk, now Thiruporur Taluk, Kancheepuram District, and this has been purchased by Thiru.P.Vijaychand and his wife Tmt.V.Asha under registered sale deeds dated 21.11.2003 executed by Mr.Balasubramaniam and Mr.Diwakar Rathinam who became the owners of 3.86 acres in S.No.73/1B and 3.87 acres in S.No.73/3 respectively. The above land has been acquired from the landowner Thiru.Balasubramaniam and sub divided as S.No.73/1B2 to an extent of 0.29.0 or 0.72 cents under patta No.580 and another part of the land has been acquired from the landowner Thiru.Ramalinga Nadar and sub divided as S.No.73/3B to an extent of 0.23.5 or 0.50 cents under patta No.1175. Notice under Section 4(i), 6 and 7 have been published to his son Thiru.Rathina Gurusamy Nadar. The compensation amount of Rs.44,204/- and Rs.35,609/- have been kept in the Revenue Deposit since they had neither appeared for the award enquiry nor claimed the amount. It will be refunded on production of documents and 10(i) chitta.

5 The sixth respondent further submits that the writ petitioners have filed stating that on 27.12.2013, a notice was served by the Office of the Assistant Divisional Engineer, Highways (C & M), Chengalpattu on the watchmen in the petitioner's property by filling up his name in the notice. The said notice is to the effect that the part of the property of the petitioners have already been acquired for widening the East Coast Road and for converting it into four lane road and called upon the petitioners to vacate the premises as it constituted as an encroachment, since they have encroached after possession has been taken under the Land Acquisition Act. The petitioners have constructed Villas in Plot No.5 and is maintaining the compound wall after encroachment and constructed building within the acquisition area, acquired for East Coast Road to widen it to four lanes from two lanes in the Western

side of the existing Stage Highways (SH 49). No landowners are available in the East Coast Road Lands, the watchman alone is available in the security room. As the correct address of the petitioners are not known, the State Highway notice intended that the petitioners could not be served in person. At present, the above encroachment in Highways Property (In acquired area) are dealt with Under Section 28(ii) to evict the encroachments. The sixth respondent further submits that the land which is covered under acquisition in the award No.16/90, dated 29.11.1995 was already taken possession of. At the time of award enquiry, the land was registered in the names of Tmt.Kamala W/o.Ebinezer under patta No.135 and Thiru.Balasubramanian under patta No.580 and Thiru.Ramalinga Nadar under patta No.1175 and Thiru.Rajpaul under patta No.1156 in the village accounts. At the time of award enquiry, the above land is vacant. No structure has been noted and no estimate for the value of the structure is noticed in the award proceedings. It itself proved that the land was vacant. The sixth respondent further submits that for the notice issued under Section 9(3) and 10 of the Land Acquisition Act of 1894, nobody has appeared for award enquiry and neither the above pattadars nor the representatives have made any claim. Hence, the compensation has been ordered to be kept in the Revenue Deposit and it would be refunded to them on production of documents and 10(i) chitta as per award. Hence, this respondent entreats the Court to dismiss the above writ petition.

6. The highly competent senior counsel Mr.R.Thiyagarajan appearing for the petitioners submits that the petitioners had purchased the subject matter of the land to an extent of 2400 sq.ft., which had been partitioned among the owners and patta also issued separately to the respective parties. The highly competent senior counsel further submits that the subject land had been laid out and sold by landowners viz., Balasubramaniam and Diwakar Rathinam to the petitioners. At the time of alienation of the said property, both joint owners possessed valid title deeds. After purchase of said property, the petitioners had constructed villa over the said land and they are in possession and enjoyment. Further, the petitioners had obtained electricity service connection and also raised compound wall around the said Villa after leaving sufficient space from the East Coast Road. The petitioners have also been remitting mandatory taxes to the Statutory Authorities. Under the circumstances, the sixth respondent had issued notice on 27.12.2013. The same was served on the watchman of the Villa. Further, the notice did not contain all particulars. 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, since the petitioners are in

possession and they have not received any compensation from the respondents. The highly competent senior counsel had also annexed relevant documents viz., adangal record, property tax and photographs in order to prove that the physical possession is under the occupation and enjoyment of the petitioners. In support of his contentions, the highly competent senior counsel has cited the following judgment:-

PUNE MUNICIPAL CORPORATION v. HARAKCHAND MISIRIMAL SOLANKI reported in 2014(1) CTC 755

"Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013), Section 24(2) - Land Acquisition Act, 1894 (1 of 1894), Section 31-Lapse of Land Acquisition Proceedings initiated under 1894 Act by virtue of Section 24(2) of RCTE Act 2013 - Acquisition proceedings were initiated under 1894 Act and Award was passed - Landowners filed Writ Petition challenging Acquisition on ground that Award was made more than five years prior to commencement of 2013 Act and no compensation has been paid to owners nor amount of compensation has been deposited in Court - Section 24(2) of 2013 Act, contemplates that where an award has been made five years or more prior to commencement of 2013 Act, but physical possession of land has not been taken or compensation has not been paid, such Acquisition Proceedings shall stand lapsed - Award was made on 31.01.2008 and compensation amount was deposited in Government Treasury, since landowners did not receive compensation - Expression "Compensation has not been paid" occurred in 2013 Act - Compensation shall be regarded as "paid" if Compensation has been offered to person interested and such Compensation has been deposited in Court - Mere deposit of Compensation amount in Government Treasury is of no avail and cannot be held to be equivalent to Compensation paid to landowners - Land Acquisition Proceedings deemed to have lapsed for non-compliance of Section 24(2) of 2013 Act."

Hence, the highly competent senior counsel entreats the Court to allow the above writ petition.

7. The highly competent Special Government Pleader Mr.T.N.Rajagopalan appearing for the respondents 1 to 6 submits that the Government had decided to strengthen and widen the East Coast Road from Thiruvananthapuram to Cuddalore. For that purpose, the Land Acquisition Proceedings had been initiated under the urgency clause. The notice was issued in the year 1992, but the petitioners

had purchased the said land in the year 2003. As such, the sale deed is not valid since during the relevant period, the subject lands have been acquired. The highly competent Special Government Pleader further submits that the property had been acquired in the year 1995 and the same was demarcated. Further, notices were issued on the landowners for enquiry including award enquiry. However, the landowners did not appear. Hence, the compensation had been deposited in the Revenue Department. The acquired lands were taken possession of by the Highways Authority, who have also extended East Coast Road and it is being maintained by "Tamil Nadu Road Development Corporation". As such, the petitioners' prayer is not maintainable since the compensation amount has been deposited in the name of the original owner and possession also is with the seventh respondent herein. Therefore, the prayer in the writ petition 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. Hence, the highly competent Special Government Pleader entreats the Court to dismiss the above writ petition.

8. The highly competent counsel Mr.D.Srinivasa Raghavan appearing for the seventh respondent submits that the land had been acquired by the respondents 1 to 6 after invoking urgency clause as per the Old Act. The acquisition proceedings had been initiated in the year 1992 and the same was completed in the year 1995. Thereafter, the acquired lands were taken possession of by the Highways Authority on 29.11.1995 and the same was utilized for widening the East Coast Road. Further, now the said road has been maintained by the seventh respondent. After acquisition was over, the petitioners made wrong entry into the said property and are claiming relief under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, which is not appropriate. Hence, the highly competent counsel makes a deep request to dismiss the above writ petition.

9. 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 the petitioners had purchased the subject land on 21.11.2003 under the registered sale deed. As per the counter statement filed by the respondents, on the basis of documentary facts which have been maintained by the respondents, it is evident that the Land Acquisition Proceedings had been initiated as per G.O.Ms.No.1547, dated 05.11.1992. After acquisition proceedings was over, the acquired lands were taken possession of by the Highway Authorities on 29.11.1995. The land has been acquired for the purpose of widening the East Coast Road, which is of paramount

importance to the welfare of general public. Even though the petitioners occupied the property after raising Villa, they do not have any civil rights, since the acquisition proceedings had been completed on or before 29.11.1995. The compensation had been deposited in the name of original owner of property / now erstwhile owner to the petitioners. Hence, the above writ petition does not have sufficient force to allow it. Therefore, the above writ petition is dismissed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

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Sub Assistant Registrar

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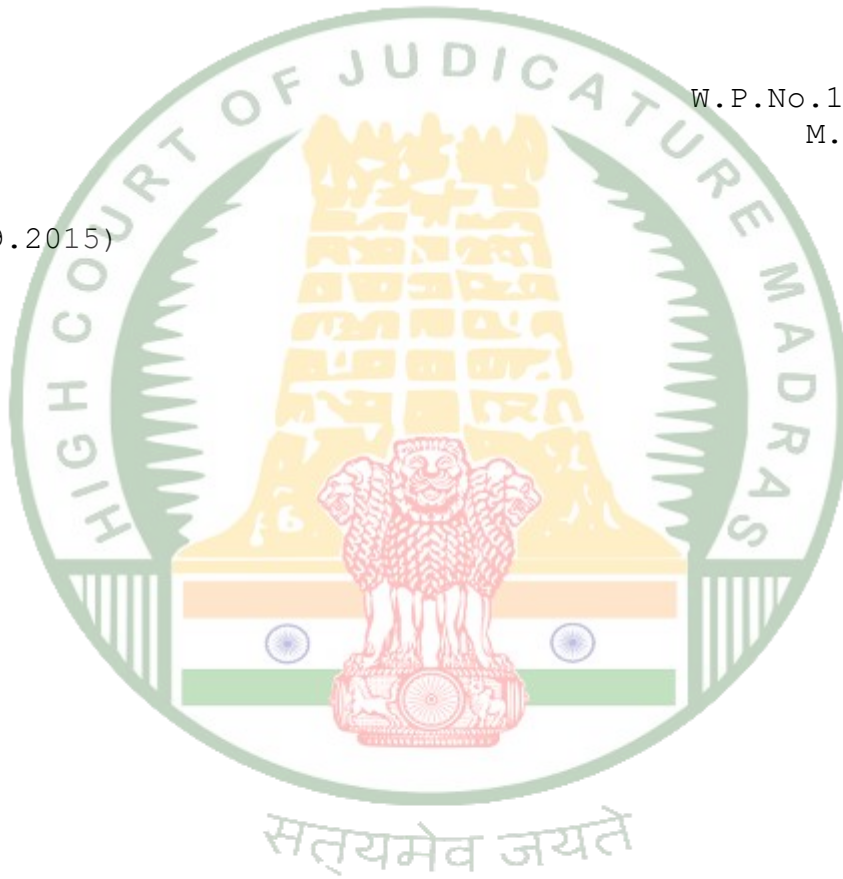
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2 CCs to Mr.N.Premkumar, Advocate SR.No. 47436

W.P.No.11174 of 2014 &
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PA (CO)
PSI (29.09.2015)



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