

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON 23.12.2014

DATED:21.01.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.21694 of 2014
and
M.P.No.1 of 2014

Saravana Kumar

...

Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by its Secretary,
Housing and Urban Development Department,
Fort St.George, Chennai - 600 009.

2.The Tamil Nadu Housing Board,
Represented by its Managing Director,
Nandanam, Chennai.

3.The Special Tahsildar,
Land Acquisition,
Tamil Nadu Housing Board Scheme,
Nandanam, Chennai - 600 035.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India to issue a Writ of declaration or any other writ, order or direction in the nature of Writ of Declaration declaring that the land acquisition proceedings initiated by the Respondents under the Land Acquisition Act, 1894 with respect to the lands comprised in Survey Nos.311/1 and 318/1 measuring 5.71 acres in Sholinganallur Village, Saidapet Taluk, Kancheepuram District have lapsed as per the provisions of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act No.30 of 2013).

For Petitioner : Mr.R.Muthukumarasamy
(Senior Counsel)
and A.Jenasenan

For Respondents :Mr.M.S.Ramesh for R1 and R3
Mr.B.Vivekavanan for R2

O R D E R

The short facts of the case are as follows:

The petitioner submits that he is the son of late Mr.V.K.Subramanian. His father expired in the month of February 2009 leaving behind his mother Kasthuri and his two brothers Arivazhagan and Dhanasekar and himself as his legal heirs of his late father. His younger brother Dhanasekar expired on 03.08.2007 leaving behind his wife Mrs.D.Kalaivani and two sons Karthik and Aravind as his legal heirs. The petitioner further submits that he is filing this writ petition for the benefit of all his family members mentioned above.

2. He submits that the lands comprised in Survey Nos.311/1 and 318/1 measuring 5.71 acres in Sholinganallur Village, Saidapet Taluk, Kancheepuram District (hereinafter referred to as the subject property) originally belonged to his father, Mr.V.K.Subramanian. He had purchased the same by way of registered sale deed 11.05.1979 registered as Document No.1149 of 1979 in the office of the Joint Registrar, Saidapet. He submits that right from the date of purchase, his father always maintained the subject property as a Thope and grew a large number of coconut trees. He invested many years of hard labour and incurred huge expenditure to raise the trees to a viable state.

3. He humbly submits that on 23.05.1990, the first respondent issued notification under Section 4(1) of the Land Acquisition Act, 1894 in G.O.Ms.No.454 to acquire 21.830 hectares including the subject property for the alleged public purpose of developing the Sholinganallur Neighbourhood Scheme. He submits that throughout the acquisition process, his father had approached the Respondents several times requesting them to drop the acquisition of the subject property on various grounds including, inter alia, that the Government policy is not to acquire thope land as far as practicable, the subject property is located on the periphery of the scheme, similarly situated lands had been excluded from the acquisition and that the procedure contemplated under 1894 Act had not been followed. However, without considering the objections raised by his father, the first respondent issued declaration dated 17.06.1991 in G.O.Ms.No.996 under section 6 of 1894 Act acquiring the subject property to implement the neighbourhood scheme. Thereafter, the Special Tahsildar (Land Acquisition) also passed the Award dated 18.06.1993 in Award No.2 of 1993 fixing the compensation to be paid for the

acquisition of the land. It is pertinent here to note that not a single paisa has been paid under the Award till date. To the best of his knowledge, the award amount has also not been deposited with any Court.

4. He submits that having no other option, his father approached this Court by filing Writ Petition No.15331 of 1993, seeking to quash the Section 4(1) notification dated 06.06.1990, the Section 6 declaration dated 17.06.1991 and the award dated 18.06.1993. However, the learned Judge dismissed the writ petition by order dated 04.01.2001 only on the ground of delay and laches since even though the section 6 declaration had been issued on 17.06.1991, his father had approached this Court only in 1993 after a period of two years. The learned Judge did not pronounce any judgment on the merits of the objections raised by his father.

5. He submits that thereafter, his father preferred in Writ Appeal No.517 of 2001 against the order dated 04.01.2001 passed by the Learned Single Judge. However, when the Writ Appeal was taken up for hearing on 20.04.2005, no one appeared before this Court to represent his father and as a result, the Writ Appeal was dismissed, thereby confirming the order of the Learned Single Judge dated 04.01.2001.

6. Having no other option, his father preferred Review Application (W) No.125 of 2006 before this Court to review the order dated 20.04.2005 and restore the Writ Appeal No.517 of 2001. The learned Division Bench, by order dated 24.11.2006, was pleased to allow the Review Application filed by father and restored the W.A.No.571 of 2001. He humbly submits that to the best of his knowledge, the Writ Appeal is pending adjudication before this Court.

7. He humbly submits that throughout the above series of events, the possession of the subject property remained with his father. He continued to cultivate the coconut trees and supply to neighbourhood areas. He also erected a compound wall around the subject property. His father had even obtained an electricity service connection in his name in respect of the subject property. He submits that his father passed away on 22.02.2009 from old age. After his father's demise, he along with his siblings are in possession of the subject property. He humbly submits that as stated earlier, no amount has been paid as compensation for the lands acquired by the respondents even though the award was passed as early as in the year of 1993.

8. He humbly submits that when things stood thus, the Parliament enacted the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act No.30 of

2013) which came into force from 01.01.2014. Under the provisions of the 2013 Act, the Land Acquisition Act of 1894 has been repealed. The 2013 Act has been enacted with the object inter alia, of providing for a humane, participative, informed and transparent process for land acquisition for industrialization, development of essential infrastructural facilities and urbanization with the least disturbance to owners of the land and other affected families and provide just and fair compensation to the affected families whose land has been acquired and make adequate provisions for such affected persons for their rehabilitation and resettlement.

9. He humbly submits that Sec.24 of the 2013 Act deals with land acquisition proceedings initiated under the 1894 Act. In particular, Sub Section (2) of Sec.24 states that:

“(2) Notwithstanding anything contained in Sub-Section (1), in case of Land Acquisition Proceedings initiated under the Land Acquisition Act, 1894, where an award under the said Section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid in the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provision of this Act.”

10. He humbly submits that the acquisition proceedings initiated by the respondents herein with respect to the subject property owned by him clearly and categorically falls within the ambit of Sec.24(2) of the 2013 Act. The Special Tahsildar passed the Award under Sec.11 of the 1894 Act in 1993 itself that is, more than 21 years ago. Not a single paise has been paid out as compensation till date. In addition, possession of the subject property remained with his father till his demise and afterwards and he is in continued possession. The scope of Section 24(2) of the Act came up for consideration before Hon'ble Supreme Court in Civil Appeal No.1971 of 2014 in the case of Bharat Kumar Vs State of Haryana decided on 04.02.2014 and it has clearly held that in case award has been passed by the Land Acquisition Special Tahsildar and possession of the land has not been taken or compensation has not been paid, then the land owner is entitled to relief under Section 24(2) of the 2013 Act for a declaration that the land acquisition proceedings initiated under the 1894 Act have lapsed.

11. He humbly submits that phrase “compensation has not been paid” used in Section 24(2) of the 2013 Act has also come up for

consideration before the Full Bench of the Hon'ble Supreme Court in the case of Pune Municipal Corporation Vs Harakchand Misirimal Solanki decided on 24.01.2014 and reported in (2014) 3 SCC 183. The Hon'ble Supreme Court has held in no uncertain terms that deposit of compensation awarded under Section 11 of the 1894 Act into the Government Treasury is not enough and for the purpose of Section 24 (2), compensation shall be regarded to be paid only if the compensation is actually tendered to landowners/affected persons, or is offered to interested persons and on their refusal to accept the same, such compensation is deposited in Court.

12. He humbly submits that in the case of land acquisition proceedings initiated by the respondents with respect to the subject property, no compensation amount has been offered at any point of time even though the Award was passed way back in 1993. Furthermore, no amount has been deposited in the Court entitled to hear reference under Section 18 of the 1894 Act upon his refusal to accept the same either and he submits that his father continued to be in active possession of the subject property till his demise in February 2009. After the same, he has continued to be in continuous possession of the subject property along with his family members.

13. He humbly submits that both the 1894 Act and 2013 Act, being in the nature of expropriatory legislation enacted for the purpose of forcibly acquiring the lands of a citizen in the interest of the greater good, have to be construed strictly. The manner in which compensation should have been paid has been laid out in Section 31 of the 1894 Act. The Special Tahsildar having been conferred with certain powers under the said Act, should have exercised them in the manner so provided or not exercised it at all. Having passed the Award in 1993 itself, the Special Tahsildar, should have tendered the payment of the compensation to the persons entitled as per Section 31 (1) of the 1894 Act. If the land owner had not consented to receive the compensation, or if there is no person competent to alienate the land, or if there is any dispute as to the title, then the Special Tahsildar should have deposited the amount of compensation in the Court to which a reference under Section 18 would be submitted as per Section 31(2) of the 1894 Act. However, the Special Tahsildar has miserably failed to follow the provisions of the 1894 Act regarding payment of compensation. In addition, as stated above, the respondents have not taken possession of the subject property by a procedure prescribed under law. In such circumstances, it has to be held that he is entitled to the benefit granted under section 24(2) of the 2013 Act. He humbly submits that in the light of the above facts and circumstances and the provisions of Section 24(2) of the 2013 Act as interpreted by the Hon'ble Supreme Court, it has to be held that land acquisition proceedings initiated with respect to the

subject property have lapsed.

14. He humbly submits that the respondents took action to acquire the subject property as long back as in 1990. Even though the respondents acquired such a vast extent of land, they have not paid a single paisa as compensation till date. Further, the respondents have not taken possession of the subject property by following any procedure prescribed under law. Even though the respondents are duty bound to follow the provisions of any law enacted by the parliament, they have chosen to ignore the mandatory provisions of the Land Acquisition Act at every step of the way. Even though the right to acquire and own property is no longer a fundamental right, it is still a constitutional right guaranteed under Art 300 A of the Constitution of India, which can only be taken away under authority of law. He humbly submits that in the current case, the respondents have failed miserably in exercising the authority granted under the 1894 Act. In such circumstances, it has to be held that he is entitled to the benefit granted under section 24(2) of the 2013 Act, strong prima facie case and balance of convenience lies in his favour. Hence, this writ petition is filed.

15. The highly competent Senior Counsel Mr.R.Muthukumaraswamy, appearing for the petitioner submits that the cultivable lands comprising in Survey Nos.311/1 and 318/1 measuring an extent of 5.1 acres situated at Sholinganallur Village, Saidapet Taluq. The said property was belonging to the father of the petitioner who had expired in the month of February 2009. After his death, now the petitioner herein, his mother, his brother arivagham and his sister-in-law, wife of late Dhanasekaran and two sons of the late Dhanasekaran, now have become sole legal heirs of the late V.K.Subramanian, the father of the petitioner herein. Now, all the legal heirs have become legal owners of the said property. The Land Acquisition Officer/3rd respondent herein had initiated land acquisition proceedings to acquire the lands to an extent of 21.83 hectares including the subject land for forming a neighbourhood housing scheme. For which the 1st respondent had granted a Government Order in the year of 1990. The Land Acquisition Officer had not conducted an inquiry under Section 5A of the Act and declaration was published under section 6 of 1894 Act. Subsequently, award had been passed in award No.2 of 1993 dated 18.06.1993. The learned Senior Counsel Mr.R.Muthukumaraswamy, vehemently pointed out that the compensation amount had been paid to the father of the petitioner or the legal heirs besides the petitioners and other legal heirs are still in possession and enjoying the said property without any difference from the respondents herein or any third parties. As such the owner of the land are entitled to secure remedy under section 24 (2) of the Act 30 of 2013, since compensation had not been paid and

possession was not taken. Further, the property classified as thope i.e., a number of trees are standing over the land which had been grown by the father of the petitioner herein. The 2nd respondent so far had not implemented the neighbourhood Housing Scheme over the said land after a lapse of around 20 years. As such the said housing scheme had come into oblivion. Hence, the learned Civil Counsel entreats the Court to allow the above writ petition.

16. The very competent Additional Government Pleader Mr.M.S.Ramesh, argued that the 1st respondent had issued a G.O.Ms.No.454 in the year 1990 for acquiring lands to an extend of 21.830 hectares including the subject matter of the land for forming the Sholinganallur neighbourhood Housing Scheme on the request of the 2nd respondent herein. Following the said Government Order the 3rd respondent herein had initiated land acquisition proceedings under the Old Act 1894. The original land owner late Subramanian had participated in the inquiry which was conducted by the 3rd respondent herein under section 5A of the Act. Thereafter, section 6 declaration was published on 17.06.1991. Subsequently, an award was passed in the name of the original owner, late Subramanian. After passing the said award the 3rd respondent had taken the possession and in turn handed over to the requesting body that is the 2nd respondent herein. As such the acquisition proceeding has become final and an award had been passed. Therefore, the above writ petition is not maintainable.

17. The highly competent counsel Mr.B.Vivekavanan, appearing for the 2nd respondent submits that the land acquisition proceedings had been initiated in the year 1990 and the same had been completed in the year 1996. After acquiring the said land and adjacent lands i.e, to an extend of 21.830 hectares, the said lands had been handed over to the Tamil Nadu Housing Board, the 2nd respondent herein for the implementation of the Sholinganallur Neighbourhood Housing Scheme. The said scheme was almost carried out for the said public purpose. The subject land also had been acquired after strictly adhering to the legal formalities as per the Old Act. The award had been passed in the year of 1993 and the acquired land came under the care and custody of the 2nd respondent herein. Further, the father of the petitioner had challenged the land acquisition notification before this Court by way of filing the writ petition No.15331 of 1993, the same was dismissed on merits by the learned single judge. Aggrieved by the same, the father of the petitioner had filed a Writ Appeal No.517 of 2001, the same was dismissed. As such, on the same cause of action, the above writ petition is not maintainable. Hence, the very competent counsel, Mr.B.Vivekavanan, made a deep request to dismiss the above writ petition.

18. Per contra, the highly competent Senior Counsel Mr.K.MuthuKumarasamy, submits that the Writ Appeal was dismissed on 20.04.2005 for default. Immediately, restoration application was filed and the same was restored. Therefore, the original challenge of the acquisition proceedings is still pending before the Division Bench. Now the petitioner is seeking remedy under the New Act, since the compensation was not paid and the possession was not taken which is the prevailing position currently.

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

(1) The land acquisition proceedings had been initiated in the year of 1990 and the same was completed in the year of 1993 for acquiring the petitioners land and adjacent lands for formulating the Sholinganallur Neighbourhood Scheme. Now, the petitioners lands are still vacant after a lapse of around 20 years. As such the respondents have relegated the scheme into a long past and forgotten/oblivion

(2) It is an undisputed fact that as of now the subject land had not been utilized by the respondents for the purpose of the public. There is no material evidence that the acquired lands under the case and custody of the Tamil Nadu Housing Board namely no sign board or name board, no compound wall or barbed fencing or guard or security personnel in order to prove that the acquired property is occupied by the 2nd respondent herein. Further there is no documentary proof regarding quantum of compensation, mode of payment to the petitioner. As such the petitioners are entitled to secure remedy under section (24) of New Act 30 of 2013;

(3) The petitioners father had challenged the land acquisition proceedings now the same is pending by way of Writ Appeal, it can be proceeded by the petitioner herein. The said Writ Appeal No.517 of 2001 wherein the prayer is entirely different with the present writ petition;

(4) After a lapse of around 20 years the respondents have not implemented the Neighbourhood Housing Scheme on the subject land, under the circumstances, if the subject matter of the lands is discharged from acquisition proceedings the respondents will not be prejudiced and the public purpose will not be affected, since the said purpose had not been executed within a reasonable period as originally envisaged considering the human life expectancy factor. Therefore, this Court strongly feels there is a serious lapse on the side of the respondents regarding acquiring necessary lands and implementation of the housing scheme.

20. Considering the facts and circumstances of the case and

arguments advanced by the learned counsel on all sides, perusing the typed set of papers and the views of this Court i.e., (i) to (iv), the above writ petition is allowed. Consequently, the land acquisition proceeding initiated by the respondents under the Land Acquisition Act, 1894 with respect to the lands comprised in Survey Nos.311/1 and 318/1 measuring to an extent of 5.71 acres in Sholinganallur Village, Saidapet Taluk, Kancheepuram District have lapsed as per the provision of Section 24(2) of the New Act 30 of 2013. Consequently, connected miscellaneous petition is closed. No Costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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

2.The Managing Director,
The Tamil Nadu Housing Board,
Nandanam, Chennai.

3.The Special Tahsildar,
Land Acquisition,
Tamil Nadu Housing Board Scheme,
Nandanam, Chennai - 600 035.

1 cc to Mr. A.Jenasenan,Advocate, SR.No.2931/15
1 cc to Mr.B.Vivekavanam,Advocate, SR.No..2980/15
1 cc to Government Pleader,Sr.No3155/15

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