

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.12909 of 2014 &
M.P.No.1 of 2014

1.R.Balasubramanian
2.Diwakar Rathinam

... 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 tat the Land Acquisition Proceedings initiated under the Land Acquisition Act, 1894 with regard to the lands comprised in S.No.73/1B and 73/3, Thiruvidanthai 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

O R D E R

The petitioners submit that the subject matter of the writ petition relates to land comprised in S.No.73/1B and S.No.73/3 of Thiruvidanthai Village (formerly Semmancherry Village), Chenglepet Taluk, Kancheepuram District. The petitioners further submit that the said properties originally belonged to first petitioner herein and Rathina Guruswamy, the father of the second petitioner herein and Rajapaul. Under a partition deed dated 04.08.1987, an extent of 3.86 acres in S.No.73/1B fell to the share of the first petitioner. Separate patta bearing No.277 was also issued in the name of first petitioner and another extent of 3.87 acres comprised in S.No.73 fell to share of second petitioner's father Rathina Gurusamy in the partition of 1987. Separate patta bearing No.277 was issued in favour of second petitioner's father Rathina Guruswamy. Subsequently, under a settlement dated 13.06.2003 Rathina Guruswamy settled his 3.87 acres in S.No.73 in favour of the second petitioner, viz., Diwakar Rathinam. Thus, the petitioners 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 by leaving a sufficient space of 40 feet between the existing East Coast Road and housing plot in their layout and they never parted with that. Subsequently, the plots alone in the layout were sold out to the third parties and in turn, they have constructed a villa in their respective plots by constructing compound wall in the space kept by them. The petitioners further submit that there is sufficient space of about 47 feet from the road to the plot and 29 feet from the road in front of the main gate constructed in the compound wall in the said layout. At the time of forming of the layout the Revenue Records reflects the first petitioner's name and the father of the second petitioner by name Mr.Rathinagurusamy were the owners of the land and there is no sign of any acquisition in the revenue records. The petitioners further submit that the first petitioner and second petitioner's father has cultivated Casuarina in the said land ever since from the date of partition upto formation of layout and Revenue records also reflect the same. The petitioners further submit that no one has interfered with the peaceful enjoyment of the petitioners land ever since the partition.

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 not filed any counter affidavit in this writ petition. However, counter affidavit has been filed by the sixth respondent in connected writ petitions and as this case is similar in nature, the counter affidavit filed in those writ petition is adopted in the present case. The sixth respondent submits that the Government have decided to strengthen and widen the East Coast Road from Thiruvannmiyur 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 Thiruvidadanthai 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 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 sold out the plot to the third parties and they have constructed Villas and are 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 and 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 which had been partitioned among them and patta also issued separately to them. The highly competent senior counsel further submits that the subject land had been laid out and sold by the petitioners to the third parties. At the time of alienation of the said property, the petitioners possessed valid title deeds. After purchase of said property, the third parties had constructed villa over the said land and they are in possession and enjoyment. Further, the third parties had obtained electricity service connection and also raised compound wall around the said Villa after leaving sufficient space from the East Coast Road. They 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 third parties 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 third parties. 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 Thiruvanniyur 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 sold the said properties to the third parties 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 had alienated the property to the third parties and as such, the relief sought for by them under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, 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 sold out the subject land to the third parties in the year 2003 under registered sale deeds. 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. 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.

सत्यमेव जयते

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

- 1.The Secretary,
Government of Tamil Nadu,
Highways Department,
Fort St.George,
Chennai - 600 009.
- 2.The Collector of Kancheepuram,
Kancheepuram District.
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+2 ccs to Mr.N.PremKumar, Advocate sr.47433

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