

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:21.07.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.34236 of 2014

and

M.P.No.1 of 2014

Order Reserved on 23.12.2014 Judgment Pronounced on
21.07.2015

T.Kalarani

Petitioner

Vs.

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

2. The Chairman,
Tamilnadu Housing Board,
Nandanam, Chennai - 600 006.

Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of declaration, to declare that the Land Acquisition proceedings initiated by the first respondent Notification under Section 4(1) of the Land Acquisition Act 1894 under G.O.Ms.1058 Housing and Urban Department dated 6.7.1978 and section 6 Declaration under the Act in G.O.Ms.715 Housing and Urban Department dated 3.6.1980 in respect of the properties viz. In survey No.2/10 measuring an extent of 0.31 cents, in S.No.2/11 measuring an extent of 0.6 acre out of 0.15 acre and in S.No.2/13 measuring an extent of 0.23 acre at Allagapuram Pudur Village, Salem are lapsed by virtue of section 24(2) of RCTE Act 30 of 2013.

For Petitioner : Mr.T.Arockia Dass
for M/s.Dass Law Associates

For Respondents: Mr.M.S.Ramesh (for R1)
Additional Government Pleader
Mr.R.V.Babu (for R2)

O R D E R

The petitioner submits that her father-in-law, late Ramasamy Chettiar purchased the land in Alagapuram, Pudur Village in his name and his wife's name Pappammal and his daughter-in-law the petitioner herein, and agricultural lands measuring to an extent of 1/3rd of 23 cents comprising in Survey No.199/3, 1 acre and 70 cents comprising in Survey No.1/3 at Alagapuram Village, to an extent of 42 cents comprising in Survey No.1/4 2638 sq. ft. in S.No.2/10A to an extent of 6 cents comprising in Survey No.2/11A to an extent of 31 cents comprising in Survey No.2/10, 0.23 cents in Survey No.2/13, to an extent of 1796 sq. ft. in Survey No.2/11, in total an extent of 2 Acres and 88 cents. The said Ramasamy Chettiar died on 27.11.1993 and his wife Pappammal also died. The petitioner is the joint owners of the property along with her son R.T.Suresh and daughter in law Rathi in respect of Survey No.2/10 measuring an extent of 0.31 acre, in S.No.2/11 measuring an extent of 0.15 acre and in S.No.2/13 measuring an extent of 0.23 acre at Alagapuram Pudur Village, Salem. The first respondent initiated acquisition proceeding for the purpose of construction of houses by Tamil Nadu Housing Board under the neighbourhood scheme in respect of the properties belonging to the petitioner and also in respect of the adjacent properties totalling to 17 Acres and 67 cents and issued Notification under Section 4(1) of the Land Acquisition Act 1894 in G.O.Ms.1058 Housing and Urban department dated 06.07.1978 and published the same in Tamil Nadu Government Gazette on 26.07.1978. The draft declaration under Section 6 of the Land Acquisition Act was approved in G.O.Ms.715 Housing and Urban Department dated 03.06.1980 and published the same in Tamilnadu Government Gazette on 25.06.1980. Even though this was taken in 1978 in a neighbourhood scheme and later on they tried to take the land for construction of apartments, inspite of their objection to country planning direction. The same has been accepted by the Executive Engineer, Tamil Nadu Housing Board in his internal letter dated 03.11.1998. Without any further modification of the G.O. they are trying to build a commercial site.

2. The petitioner objected to the land acquisition proceedings on the ground that the burial ground belonging to the family of the petitioner is in the property which was acquired and 20 meters breadth Odai also situated in the property. In the proceeding dated 03.11.1998 by the Executive Engineer, Tamilnadu Housing Board addressed to the second respondent has stated that the property acquired by the respondents can be used as park and children play ground without putting up any construction, in view of Rule 6(5) of Tamilnadu Town Municipalities Building Rules 1972. The petitioner made a communication dated 06.01.2014 to the Chief Minister Special Cell for which the Executive Engineer cum Administrative Officer, Tamilnadu Housing Board, Salem Division has clarified in their communication letter No.EA/1/731/76 dated 04.02.2014 in respect of the property measuring an extent of 0.15 acre in survey No.2/11, Alagapuram Pudur Village, Salem, they are taking steps through the Special Tahsildar, Land Acquisition, Salem to take possession of the

property by the second respondent. The petitioner sent petition under Right to Information Act on 28.08.2006 to the second respondent and through a reply dated 25.09.2006 the second respondent has admitted that in respect of the property measuring an extent of 0.31 acre in S.No.2/10 and the property measuring an extent of 23 cents in Survey No.2/13 that the compensation amount in respect of the above said lands was deposited in State Bank of India, Salem, to the credit to work deposit on 24.01.1992. In respect of property measuring an extent of 31 cents in Survey No.2/10 and 0.23 acre in Survey No.2/13 Alagapuram Pudur Village, Salem Town the compensation amount has not been deposited before the Civil Court and the deposit amount was deposited in their own account and subsequently the same was also withdrawn. In respect of the property measuring an extent of 0.15 acre in survey No.2/11 physical possession has not been taken by the respondent. Hence, the present writ petition.

3. She submits that the RCTE Act 30 of 2013 came into force with effect from 01.01.2004 by virtue of Section 24(2) of the RCTE Act 2013, even though award was passed under Section 11 of the Land Acquisition Act 1894 if physical possession of the property has not been taken or the compensation has not been paid, the proceedings initiated under Land Acquisition Act 1894, shall be deemed to have lapsed. She submits that in the present case in respect of the above said properties, the physical possession of the property has not been taken and compensation amount was not paid to the petitioner. Hence, the petitioner is filling the present writ petition seeking a writ of declaration declaring that the proceedings initiated by the respondent have lapsed.

4. The highly competent counsel Mr.T.Arockia Dass appearing for the petitioner submits that the petitioner and her in-laws have purchased the landed properties for agricultural purpose to an extent of 2 acres 88 cents at Alagapuram Village under registered sale deeds. After the death of her in-laws she and her children have become absolute owners of the property. The first respondent namely the Secretary who is attached to the Housing and Urban Development Department have issued a G.O. for acquiring 7 acres 67 cents at Allagapuram Village including the petitioner's land for forming a Neighbourhood scheme. Hence, the land acquisition officer had issued a notification under Section 4(1) of the Land Acquisition Act, 1894 on the basis of G.O.Ms.No.1058 dated 06.07.1978. The highly competent counsel Mr.T.Arockia Dass further submitted that the Land Acquisition Officer had not conducted an enquiry under Section 5A of the Act. As such, the land acquisition proceedings have become lapse in the initial stage itself, however declaration was approved and published in the Tamil Nadu Government Gazette, as per G.O.Ms.No.715 dated 03.06.1980.

5. The very competent counsel further submits that the

respondents have not executed the Neighbourhood Scheme fully. The respondents have not deposited the compensation amount or paid to the land owners besides the properties have not been taken from the land owners and still the same remained with the petitioner as such the petitioner is entitled to receive remedy under Section 24(2) of the New Act 30 of 2013. The second respondent has furnished information under the Right to Information Act stating that the compensation amount had been deposited in their own account and the same was withdrawn. Further, the compensation amount had not been deposited within the stipulated period that is the deposit made on 24.01.1992 and the declaration under Section 6 of the Act was published on 25.06.1980. Award enquiry was not conducted, as such the Land Acquisition Officer had committed a lapse for acquiring the petitioner's property without adhering to the provision of the Old Act. Further, the Land Acquisition proceedings had been initiated in the year 1978 and as of now the landed property is lying with the petitioner which clearly proves that the subject lands are not absolutely required for the said purpose namely the Neighbourhood Scheme. The petitioner and her family members are belonging to a small agricultural family and in involved in Agri-operations besides being totally dependent upon the land for their livelihood.

6. The very competent counsel further submits that her husband in-laws, father-in-law, brother-in-law and mother-in-law expired and their bodies buried in the subject lands. As such the very competent counsel entreats the Court that the subject lands may be excluded from the acquisition proceedings.

7. The very competent Additional Government Pleader appearing for the first respondent submits that the second respondent requested the petitioner for acquiring the lands to an extent of 17 acres 67 cents at Alagapuram Village, adjacent lands including the petitioner's land for forming the Neighbourhood Scheme. The same was approved by the first respondent and issued in G.O.Ms.No.1058 Housing and Urban Development Department, dated 06.07.1978. Following the said G.O. the Land Acquisition Officer had given publication under Section 4(1) of the Act 1894. Thereafter enquiry was conducted under Section 5(A) of the Act. Subsequently a draft declaration was approved as per G.O.Ms.No.715, Housing and Urban Development Department dated 03.06.1980, the same was published in the Government Gazette and the press media locally. The land acquisition officer had strictly followed the provision as per the Old Act and acquired the petitioner's land and the lands of others and handed over the same to the second respondent herein who is the requesting body. An adequate compensation had been assessed and the same was deposited in the Sub-Court at Salem. As such, the acquisition proceedings was completed, possession was taken over from the petitioner and the same was assigned to the second respondent herein. Under these circumstances, the above writ petition is not maintainable.

8. The very competent counsel Mr.R.V.Babu appearing for the

second respondent submits that the second respondent namely Tamil Nadu Housing Board wanted to form a Neighbourhood Scheme at Alagapuram in Salem District. Therefore, the second respondent made a request to the first respondent for acquiring the land to an extent of 17.67 acres at Alagapuram including petitioner's land. The first respondent had accepted the request and passed a G.O. in the year 1978. Pursuant to the G.O.Ms.No.1058 dated 06.07.1978, the Land Acquisition Officer had initiated acquisition proceedings for acquiring the said land in totality under the Old Act. Subsequently, the acquisition proceedings had been completed after strictly adhering to the provisions of the Old Act. The compensation amount had been deposited before the Sub Court. The second respondent after acquiring the lands being assigned to them, the Neighbourhood scheme was partly implemented and the rest of the lands including the petitioner's land, will the Scheme will be completed. As such, the petitioner's plea for relief cannot be entertained.

9. From the above discussions, this Court is of the view:

(1) The land acquisition proceedings had been initiated in the year 1978 under the old Act. As of now i.e. after a lapse of around 36 years the subject lands are still remaining with the petitioner who is farming it;

(2) The petitioner relatives comprising of father-in-law, mother-in-law, brother-in-law and her husband were all buried in the subject land, as such, besides a desecration, the lands not suitable for Neighbourhood Scheme;

(3) There is no authentic records or any outwards physical signs such as fencing, sign boards, etc. put up around the said lands by the Housing Board that the subject lands are under their care and custody;

(4) There is no relevant records regarding mode of compensation period to the land owners, as such, it is quite apparent that the petitioner is physical possession throughout and maintaining the land, agriculturally under her care and supervision. Therefore, the petitioner is entitled to receive relief under Section 24(2) of the New Act 30 of 2013;

(5) The respondents' Scheme kept in abeyance for a long period of around 36 years hence its logical to assume that the scheme has gone into oblivion.

10. Considering the current factual position of the case and arguments advanced by the highly competent counsels on all sides and on perusing the typed set of papers, besides the views of this Court as expressed in 1 to 5 as above, this Court allows the above writ

petition and declares that the Land Acquisition proceedings initiated by the first respondent Notification under Section 4(1) of the Land Acquisition Act 1894, under G.O.Ms.1058 Housing and Urban Department dated 06.07.1978 and section 6 Declaration under the Act in G.O.Ms.715 Housing and Urban Department dated 3.6.1980 in respect of the properties viz. in survey No.2/10 measuring an extent of 0.31 cents, in S.No.2/11 measuring an extent of 0.6 acre out of 0.15 acre and in S.No.2/13 measuring an extent of 0.23 acre at Allagapuram Pudur Village, Salem are lapsed by virtue of section 24(2) of RCTE Act 30 of 2013.

11.In the result, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1. The Secretary to Government,
Housing and Urban Development Department,
Fort St. George, Chennai - 600 009.
2. The Chairman,
Tamilnadu Housing Board,
Nandanam, Chennai - 600 006.

+ 1 cc to Mr.R.V.Balu, Advocate SR 36966

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