

IN THE HIGH COURT OF JUDICATURE AT MADRAS

C.A.V. dated 23.12.2014

DATED: 29.01.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.34654 of 2014

T.S.Ravi

.... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Adi Dravidar Department,
Fort St. George,
Chennai-600 009.
- 2.The District Collector,
Vellore District,
Vellore.
- 3.The Special Tahsildar (Land Acquisition),
Adi Dravidar Welfare,
Wallajah, Vellore District.
- 4.The Tahsildar,
Arakkonam Taluk,
Vellore District.

.... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Declaration, declaring the Land Acquisition Proceedings initiated under Section 4(1) of the Land Acquisition Act, 1894 in respect of land measuring an extent of 1.25.0 Hectares in Survey No.652/1, 2, 3 and 5 situated in Thanigaipolur Village, Vellore District, deemed to have lapsed in

view of Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-Settlement Act 2013 (30 of 2013).

For Petitioner : Mr.N.Sureshkumar

For Respondents : Mr.V.Shanmugasundar
Government Advocate

O R D E R

The short facts of the case are as follows:

The petitioner submits that his father purchased lands of 1.25.0 Hectares in Survey No.652/1, 2, 3 and 5 situated in Thanigaipolur Village, Vellore District in and by a registered Sale Deed dated 11.03.1992. During the life time of his father, he executed a Will in favour of his sister namely T.S.Sumathi. He submits that in the meantime, a notice was served on him under Rule 5(i) of Tamil Nadu Acquisition of Land for Harijan Welfare Schedule Rules calling him to appear either in person or by authorized agent at the office of the Village Administrative Officer, Thanigaipolur on 26.02.1999 at 1.00 p.m. before the third respondent to show the nature of his interest in the lands, etc. He submits that he presented his objections to the third respondent. He submits that it is also pertinent to bring to the notice of this Court that have categorically stated that the said notice is bad since the statutory provision of issuing a show cause notice to him under Section 4(2) of Tamil Nadu Land Acquisition for a Harijan Welfare Scheme is not complied with. Thereafter, he has also sent telegrams requesting the third respondent to abstain from proceeding further in the above matter in pursuance of the order, without disposing of his representation and objections. So far, he has not received any reply. He continues to possess and enjoy the land, on behalf of his sister. It is also relevant to state that he continues to pay land tax for the fasli 1408 in the year 1999 and for fasli 1409 on 23.02.2000.

2.He submits that with due respect, he produce the Encumbrance Certificate, which discloses no encumbrance for the period covering from 01.01.1987 to 25.09.2003. The acquisition proceedings appear to be incomplete. When he made arrangement, on behalf of his sister, for putting up structure for better utilization, it is objected by Local Village Administrative Officer stating that there are acquisition proceedings and he shall not be permitted to proceed further. He submits that he filed writ petition in W.P.No.29439 of

2003 for issuance of Writ of Certiorari, calling for the records in respect of impugned notice in RCA.No.1052/1998 dated 17.02.1999 issued by the third respondent in pursuance of Notification in G.O. Vellore District, Gazette Extraordinary bearing No.35 dated 19.11.1998 in respect of acquisition proceedings initiated under Section 4(1) of the Tamil Nadu Land Acquisition Act for Harijan Welfare Scheme Act, 1978 issued by the second respondent and quash the same. He submits that the same was dismissed by this Court on 21.10.2003.

3.He submits that right from the date of purchase of property by his father that is from 29.01.1986 they are in absolute possession and enjoyment of the same. He submits that the respondents have neither taken possession nor they have been disposed. He submits that the respondents have not used the land for which it was acquired even after the dismissal of the writ petition. Moreover, the other owners in the very same Survey Number have approached the respondents for re-conveying the same. He submits that in the month of July 2005 he has given representation to the respondents for re-conveyance and they have not done it so far. Similarly on 08.05.2007, 10.09.2008, 16.06.2009, 09.05.2011 and on 18.11.2011 he has given representation to the respondents for re-conveyance. He submits that they have neither chosen to reject his representation nor consider the same. He submits that the entire extent of lands acquired for the said Housing Scheme could not be utilized. Hence, the above lands are kept vacant by the Government without utilization. He submits that as on today he has not received any compensation from the respondents. He submits that as more than 15 years have lapsed, some of the persons who owned lands in the very same area made representations to the Government.

4.He submits that the Hon'ble Apex Court and this Court in various decisions have held that if any lands have been acquired by the Government for a particular scheme and if there is an inordinate delay in implementing those projects, the lands should be re-conveyed to the original owners who are suffering from such acquisition. In his case, he has not received any compensation and the entire money might have been deposited by the Land Acquisition Officer with the State Treasury. He submits that the third respondent has not utilised the subject matter of lands for the purpose for which it was acquired and thereby they have dropped the Scheme or the scheme is defunct. The third respondent neither used the land for the purpose it was acquired nor paid him compensation till date. He submits that in various Judgments, the Hon'ble Apex Court and this Court have repeatedly held that payment of compensation in respect of the acquired land must be paid at the earliest point of time to the land owners or at least within a reasonable time.

5.He submits that recently the Government of India enacted a new Act viz., Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-Settlement Act 2013 (30 of 2013). Section 24(2) of the said Act reads as under:-

"24(1) Notwithstanding anything contained in this Act, in any case of Land Acquisition Proceedings initiated under the Land Acquisition Act, 1894 ---

(a)Where no award under Sec.11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of Compensation shall apply; or

(b)Where an award under said Sec.11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2)Notwithstanding anything contained in sub Sec.91, in case of Land Acquisition Proceedings initiated under the Land Acquisition Act, 1894, where an award under Sec.11 has been made five years or more prior to the commencement of this Act but the physical possession of the said land has not been taken or the compensation has not been paid, 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 provisions of this Act.

Provided that where an award has been made and compensation in respect of a majority of land holding has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the Notification for acquisition under Sec.4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act."

Therefore, the entire Land Acquisition Proceedings initiated under the Central Act 1894 have lapsed in view of non compliance of Section 24(2) of the New Act. He has already sent representations on 08.05.2007, 10.09.2008, 16.06.2009, 09.05.2011 and on 18.11.2011 consecutively to re-convey and exclude his lands from the acquisition proceedings and the adjacent lands to his lands have been excluded from the acquisition proceedings. The respondents have neither taken any steps to make the compensation nor re-conveyed the lands to him placing him in a state of oblivion. The respondents are duty bound

to consider his representation in accordance with law as expeditiously as possible but they are not doing so for the reasons best known to them. Hence, this above writ petition is filed.

6.The third respondent namely Special Tahsildar has filed a counter statement on behalf of respondents 1, 2 and 4 and himself. The respondents submit that to an extent of 3.08 acres dry land comprised in Survey No.652/1, 2 and 3 situated at Thanigaipolur Village in Arakkonam Taluk of Vellore District was acquired under Tamil Nadu Harijan Welfare Act for the provision of House site to House less Adi Dravidars by the Special Tahsildar, Adi Dravidar Welfare, Walajah, in his Award No.18/95-99, dated 08.03.1999. Intimation for awarding Thiru.T.S.Ravi was sent by post on 06.06.1999. The layout for 81 persons were approved by the Collector on 31.12.2003. At this state, Tmt.T.S.Sumathi the sister of T.S.Ravi has filed a writ petition in W.P.No.393 of 2004 on 12.01.2004 praying to stay all further proceedings in pursuance of the impugned order dated 23.10.2003 made in award No.10/98-99 in pursuance of Notice No.RCA/1052/98, dated 17.02.1999 issued by the second respondent till the disposal of the writ petition. This Court in its order dated 12.02.2004 in WP.MP.No.373 of 2004 in W.P.No.393 of 2004 ordered interim stay of the dispossession of the petitioner if not already dispossessed. Finally, this Court in its order dated 20.04.2009 in W.P.No.393 of 2004 ordered as follows:

"It is humbly submitted that, this writ petition has been filed by the petitioner challenging the award No.10/98-99, dated 23.10.2003, passed by the second respondent in pursuance of the notice No.RCA.1052/98, dated 17.02.1999, in respect of the acquisition proceedings initiated, under section 41 of the Tamil Nadu Acquisition of land for Harijan Welfare Scheme Act, 1978, relating to the land, measuring about 1.25.0 Hectares of land in Survey No.652/1, 2, 3 and 5 in Thanigaipolur Village in Vellore District.

It is submitted that the main contention of the petitioner that in spite of her being a legal heir of her father T.Sundarabashyam, the land acquisition proceedings had been initiated only against the third respondent, T.S.Ravi, who is her brother. Therefore, the land acquisition proceedings is in violation of the principles of natural justice, as well as the provisions of the Tamil Nadu Acquisition of Land for Harijan Welfare Act, 1978.

At this stage of the hearing of the writ petition, the learned counsel appearing for the first and second respondents have submitted that the writ petition filed by the third

respondent, in WP.No.29439 of 2003, has been dismissed by this Court, on 21.10.2003.

It has also been pointed out that in paragraph-6 of the counter affidavit filed on behalf of the second respondent, it has been stated that the second respondent has passed the Award No.10/98-99, dated 08.03.1999, holding that the third respondent, T.S.Ravi, is the owner of the land in question as found from the Revenue Records. The award amount of Rs.2,21,020/- is kept in Revenue Deposit. It has also been stated that the petitioner is at liberty to make an appropriate claim. With regard to the award amount, by placing all the relevant records before the second respondent enabling him to conduct a proper enquiry and to pass necessary orders.

The petitioner had submitted that it would suffice if the petitioner is permitted to make necessary claims before the second respondent, with regard to the amount of compensation lying in Revenue Deposit in respect of the land in question.

It is further submitted that, in view of the submission made by the learned counsels appearing on behalf of the petitioner, as well as the respondents 1 and 2, the petitioner is permitted to make a necessary representation along with the relevant records, if any, before the second respondent, with regard to her claim of her share in the award amount in relation to the land in question, within a period of 15 days from to day and on receipt of such presentation, the second respondent is to conduct an enquiry and to pass orders thereon, on merits and in accordance with law, after giving necessary opportunity to all the persons concerned, within a period of 12 weeks thereafter."

7. Accordingly the Notice, was issued to Tmt.T.S.Sumathi and T.S.Ravi in this office Notice bearing No.A/1052/98, dated 28.10.2011, regarding apportionment of award amount to them. T.S.Sumathi appeared before the Special Tahsildar (ADW) on 10.11.2011 and presented a letter and requested two weeks time to produce original document. Thiru.T.S.Ravi did not respond to the notice. But he filed a writ petition in W.P.No.5355 of 2012 before this Court. This Court has given direction in its order in W.P.No.5355 of 2012 and MP.No.1 and 4 of 2012, as follows:

"It is the case of the petitioner that the land measuring above 1.25.0 hectares of land in Survey No.652/1, 2, 3 and 5 situated in Thanigaipolur Village in Vellore District was acquired under the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme. He

made a representation to the respondents to reconvey the lands. However, the same was not considered and hence, the petitioner has come up with the present writ petition.

Considering the limited scope of the matter, the petitioner is directed to send the representation to the third respondent seeking reconveyance of the land referred to above within a period of two weeks from the date of receipt of a copy of the order and on receipt of the same, the third respondent is directed to consider and pass appropriate orders, within a period of eight weeks thereafter. The writ petition is ordered accordingly."

8. Accordingly the awardee and writ petitioner T.S.Ravi has given a petition dated 17.04.2012 to the respondent requesting to reconvey the lands acquired from him. In this case, after observing all the formalities, house site pattas were issued to 81 house less Adi-Dravidar people on 10.11.2011. The land is not under enjoyment and possession of the writ petitioner. He is not depending upon the income from dry land. The lands were waste for many years. As per the award proceedings No.10/98-99, dated 08.03.1999, the possession of the said land has been already taken by the Special Tahsildar (ADW), Walajah on 02.11.1999. Accordingly compensation amount for the said Land Acquisition for a sum of Rs.2,21,020/- (Rupees Two lakh twenty one thousand and twenty only) has been deposited in the Sub-Treasury, Walajapet in the Revenue Deposit. Once the Lands were acquired and possession was taken by the Land Acquisition Officer (i.e.) Special Tahsildar (ADW), Walajahpet, Subsequently the compensation amount was deposited in the treasury. If the petitioner has desired to claim enhanced compensation for the said lands he had only opportunity to move the appropriate court (i.e.) Sub Court, Ranipet by way of filing Land Acquisition original petition before the said court. But till date no LAOP has been filed by the petitioner. The District Adi Dravidar and Tribal Welfare Officer vide their proceedings Na.Ka.No.K11/55971/1998, dated 09.11.2011 had approved the name of the 81 number of landless poor people who were residing at Thanigaipolur Village for issuing patta in favour of them (Copy enclosed). Hence the compensation conditions stipulated in Section 24(2) of Right to fair compensation and transparency in land acquisition, rehabilitation and resettlement Act 2013 (i.e.) Fixation of compensation for 4 times value of market rate for the Agriculture Lands acquired in Rural Areas is not applicable for the said lands already acquired on 1999, onwards. The prayer of the writ petitioner for fixation of enhanced compensation as per Section 24(2) of Right

to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act 2013 (30 of 2013) does not arise now.

9.The highly competent counsel Mr.N.Sureshkumar appearing for the petitioner submits that his father had purchased the subject matter lands under a registered Sale Deed dated 11.03.1992. In turn, he had executed a Will to and in favour of his daughter namely T.S.Sumathi. Under the circumstances, the Special Tahsildar (Land Acquisition) had issued notice to the petitioner for his appearance for enquiry. The said notice had been issued under Section 5(i) of the Special Act, but the third respondent had not issued statutory notice under Section 4(2) of the Special Act. As such, the acquisition proceedings have been lapsed. The petitioner is in physical possession and enjoying the same as of now, he also remitted the appropriate land tax to the statutory authorities. The encumbrance certificate pertaining to the subject land covering the period from 01.01.1987 to 25.9.2003 as nil encumbrance.

10.The very competent counsel further submits that the petitioner had filed a writ petition on an earlier occasion in W.P.No.29439 of 2003 to quash the respondents acquisition proceedings before this Court, the same was dismissed. The petitioner and his sister have not received any compensation till now besides the petitioner is continuously in the physical possession of the land, as such, the petitioner is entitled to secure remedy under Section 24(2) of the New Act 30 of 2013. Further, the petitioner is also entitled to obtain remedy under Section 48 of the Old Act i.e. reconveyance since the properties have not been utilized for the said purpose. The petitioner also made several representations to reconvey the said land, the same was not considered, hence, the highly competent counsel entreats the Court to allow the above writ petition.

11.The very competent Government Advocate Mr.V.Shanmugasundar appearing for the respondents submits that the third respondent had initiated Land Acquisition proceedings to acquire the subject matter of the land from the petitioner and his sister under the Tamil Nadu Special Act. After observing necessary legal formalities as per the Act, the property had been acquired and award has been passed on 08.03.1999. Under the circumstances, the sister of the petitioner had filed a writ petition in W.P.No.394 of 2004 along with a supplementary application and obtained stay order before this Court. The petitioner had also filed a writ petition No.29439 of 2003, it has been dismissed. The compensation amount had been deposited before the Revenue authorities. Thereafter, the District Collector had approved layout for 81 persons by its proceedings dated 31.12.2003. Following the said proceedings, the District Adi

Dravidar Officer had approved the names of the 81 members of the landless poor people for issuing patta in favour of them. Therefore, the petitioner's prayer is not sustainable considering the prevailing present condition. Hence, the highly competent counsel requests this Court to dismiss the above writ petition.

12.Per contra, the very competent counsel Mr.N.Sureshkumar submits that the petitioner is in physical possession and enjoying the said property by way of carrying out cultivation. All the respondents proceedings are in formal paper level and not implemented so far. The initial notification had been issued in the year 1998 as such after a lapse of around 15 years, the scheme had not been implemented. Therefore, the petitioner is entitled to secure reconveyance since the land is not being utilized for the envisaged programme.

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

(1)As of now the subject matter of the land is under occupation and custody of the petitioner, besides the compensation amount had not been paid to the land owners, as such the land owners are entitled to secure a remedy under Section 24(2) of the New Act 30 of 2013;

(2)As per the District Collector's proceedings dated 31.12.2003 and the District Adi Dravidar Welfare Officer's proceedings dated 09.11.2011 so far the subject matter of the lands have not been allotted to the beneficiaries. As such until now the said lands have not been utilized for implementing the said scheme. Therefore, the unutilized lands for the said purpose has to be reconveyed to the land owners as per Section 48-B of the Old Act;

(3)The considered view of this Court for utilizing a piece of land for an envisaged programme should be programmed in advance involving the Village Administrative Officer and the Taluk Tahsildar, to consider the programme in its entirety i.e. whether the lands in question is only the available site without any alternative site and should go about the programme in a time bound manner without inconvenience to either side. To this effect the Land Acquisition Officer shall obtain statements from the Taluk Tahsildar concerned and the Village Administrative Officer concerned stating that there is no suitable alternative site along with a field map for the said scheme since both the officers are maintaining revenue records pertaining to

the area under their jurisdiction. In consideration of this view as mentioned above there certainly appears a lapse in service;

(4)The subject matter of the land i.e. to an extent of 3.08 acres is a cultivable land where agriculturists have been pursuing their occupation from time memorial, hence, it is prudent that such a worthy section of Society should not be disturbed, if alternative sites can be arranged for establishing new neighbourhood scheme without disturbing the cultivable area.

14.Considering the facts and circumstances of the case and arguments advanced by the learned counsels on either side, on perusing the typed set of papers and the views of this Court as mentioned in (1) to (4), the above writ petition is allowed. Consequently, the land acquisition proceedings initiated under the New Act in respect of land measuring to an extent of 1.25.0 hectares in Survey Nos.652/1, 2, 3 and 5 situated at Thanigaipolur Village, Vellore District deemed to have lapsed in view of Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-Settlement Act 30 of 2013.

15.In the result, the writ petition is allowed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

सत्यमेव जयते

vs

To

1. The Secretary to Government,
The State of Tamil Nadu,
Adi Dravidar Department,
Fort St. George,
Chennai-600 009.

2.The District Collector,
Vellore District,
Vellore.

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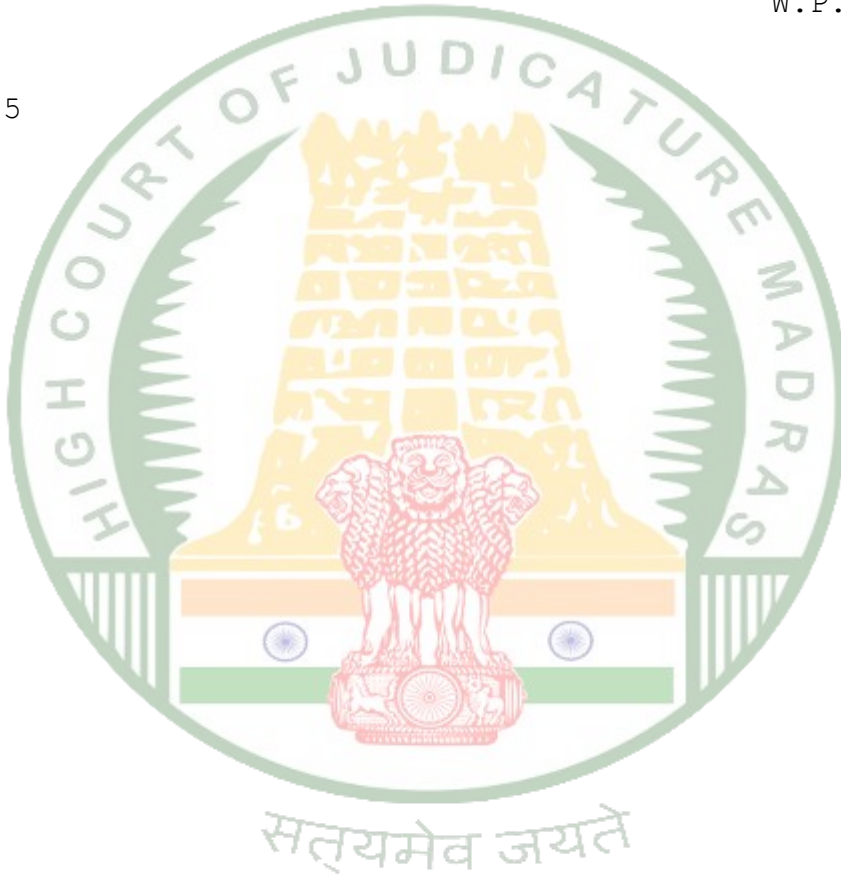
3.The Special Tahsildar (Land Acquisition),
Adi Dravidar Welfare,
Wallajah, Vellore District.

4.The Tahsildar,
Arakkonam Taluk,
Vellore District.

1 cc to Government Pleader,Sr.No.5123

W.P.No.34654 of 2014

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