

IN THE HIGH COURT OF JUDICATURE AT MADRAS

C.A.V. dated 23.12.2014

DATED: 17.02.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.34967 of 2014

1.A.Unnikrishnan

2.Sabitha Unnikrishnan

... Petitioners

Vs.

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

2. The Chairman and Managing Director,
Tamil Nadu Housing Board,
Nandanam,
Chennai - 600 035.

3. The Executive Engineer and
Administrative Officer,
Coimbatore Housing Unit,
Coimbatore.

4. The Special Tahsildar, (L.A.),
Housing Scheme Unit-I,
Coimbatore - 641 018.

5. The Tahsildar,
Coimbatore North Taluk,
Coimbatore.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the Respondents 2 and 3 to issue No Objection Certificate in respect of the lands comprised in Survey No.517/2 measuring an extent of 2.88 Acres with right of pathway in 2.8 metres wide South to North common

Cart Track measuring 14 Cents and another property in Survey No.501/2 measuring an extent of 3.51 Acres with right of pathway in 2.8 metres wide South to North common Cart Track measuring 14 Cents in Vellaikinar Village, Coimbatore (North), Coimbatore District to the Petitioners based on the order passed by this Court in W.P.Nos.9241 and 9259 of 1998 dated 03.06.2008.

For Petitioners : Mr.N.Sureshkumar

For Respondents : Mr.M.S.Ramesh (for R1, R3 to R5)
Additional Government Pleader

Mr.B.Vivekavanan (for R2)

O R D E R

The short facts of the case are as follows:

The first petitioner filed the above writ petition on behalf of his wife the second petitioner herein and himself. He submits that they are the absolute owners of lands comprised in Survey No.517/2 measuring an extent of 2.88 acres with right of pathway in 2.8 metres wide South to North common Cart Track measuring 14 cents and another property in Survey No.501/2 measuring an extent of 3.51 acres with right of pathway in 2.8 metres wide South to North common Track measuring 14 Cents in Vellaikinar Village, Coimbatore (North) Taluk, Coimbatore District and the revenue records have been mutated in their names and are in possession and enjoyment of the same since 1993.

2.He submits that they have obtained loan from the Tamil Nadu Industrial Investment Corporation, Hosur and purchased machineries worth about Rs.8.3 lakhs for manufacturing agricultural pesticide containers. He submits that in these circumstances, to their shock and surprise, they received a notice on 08.06.1998 dated 03.06.1998 from the fourth respondent that the lands owned by him have been taken under Sections 9(3) and 10 of the Land Acquisition Act. He submits that the fourth respondent called upon them to appear for an enquiry on 22.06.1998, for the purpose of passing the Award. He submits that thereafter, they came to know that 4(1) Notification has been published on 14.06.1995 in the Tamil Nadu Government Gazette in G.O.Ms.No.508, Housing and Urban Development Department dated 17.05.1995 and Section 6 Declaration has been published on 01.07.1996.

3.He submits that hence, they have challenged the Section 4(1) Notification and Section 6 Declaration on various grounds by filing

the Writ Petition in W.P.No.9241 of 1998 and W.P.No.9259 of 1998 before this Court. The Section 4(1) Notification was not published in the locality publication as contemplated under the Act and therefore, the Section 4(1) Notification and Section 6 Declaration are liable to be quashed. That no opportunity was given to them to participate in Section 5(A) enquiry. That apart, the gap between Section 4(1) Notification and Section 6 Declaration is more than one year and therefore, it is liable to be set aside. That the second respondent therein is aware of the fact that the petitioners are the owners, since the revenue records have been transferred in their names. That the Award should be passed within two years from the date of Section 6 Declaration and in this case, Section 6 Declaration was published on 01.07.1996 and Award Notice itself was given on 03.06.1998 and in as much as the Award has not been passed till date even beyond two years and that some of the lands in the same area similar to that of the petitioners has been excluded from the acquisition and therefore, taking away of his properties violates Article 14 of the Constitution of India and moreover, approval from the Government has not been obtained for the purpose of Housing Board Scheme as required under Section 3(f)(vi) of the Central Act 1 of 1894.

4.He submits that upon a detailed consideration of hearing all the parties concerned, this Court was pleased to render a common judgment dated 03.06.2008 by allowing the Writ Petitions and the operative portion of the order is extracted hereunder:-

"19.In view of the requirements of prior approval by the Government before initiating land acquisition proceeding having not been complied with, the general principle that no writ petition would be entertained after passing of the Award is not applicable. In view of the same, the writ petition stands allowed and Sec.4(1) notification dated 14.06.1995 and Sec.6 Declaration dated 01.07.1996 stands quashed. Consequently, the connected Miscellaneous Petition Nos.31 and 32 of 2008 are allowed. No costs".

5.He submits that based on the common judgment passed by this Court, themselves and other persons made representations to the Tahsildar, Coimbatore North Taluk, Coimbatore, seeking to transfer the patta in respect of their lands in their names as the same were mutated in favour of the Housing Board. Based on the representations, the Tahsildar, Coimbatore North Taluk, Coimbatore has passed the proceedings on 20.10.2014 in Na.Ka.No.10688/2014/A5 and the patta was effected in their names in respect of the above said property. Accordingly, the Tahsildar has duly implemented the

order passed by this Court. He submits that based on the order passed by this Court in W.P.Nos.9241 and 9259 of 1998 and the Revenue Order passed by the Tahsildar, Coimbatore North Taluk, Coimbatore, the respondent Housing Board have not vested right, title or interest with them or the Government for the property under acquisition when the notification and declarations are quashed. In consequence of which, the subsisting right over the property, the rights of the land owners are restored and thereby the Respondent Housing Board ought to have issues No Objection Certificate as that of the no lien over the property attracts on them. He submits that the non-issuance of No Objection Certificate issued by the Housing Board is amounting to attract the provisions of Contempt of Courts Act, specifically when the order passed by this Court has attained finality.

6.He submits that the land acquired by the Government has been vested absolutely free from all encumbrances, under Sections 15 and 17 of the Act, without any condition or limitations either as to title or possession. The legislature has made it clear that the vesting of the property is not for any limited purpose or limited duration. It would thus appear the vest has not got a fixed connotation, meaning in all the cases that the property is owned by the person or the authority in whom it vests. It may vest in title or it may vest in possession or it may vest in a limited sense as indicated in the context in which it may have been used in a particular piece of legislation. He submits that in respect of their lands, the right and interests with the Government has extinguished when the declaration conferring the right has been quashed by this Court. Therefore, the respondents have no subsisting right over the property. Under such circumstances, they are entitled to get No Objection Certificate from the Respondent Housing Board in respect of their properties enabling them to develop the same, for proper perspective and for all purposes. He submits that despite of such a declaration and mutation of revenue records in their names, the Respondent Housing Board in refusing to issue a No Objection Certificate, would deprive their valuable constitutional right which was granted by the Constitution Court in the Writ Petition and the same amounts to abuse of process of power and amount to violation of the order passed by this Court in the Writ Petitions referred to above. Hence, this writ petition is filed.

7.On the side of the respondents, no counter statement has been filed.

8.The highly competent counsel Mr.N.Sureshkumar appearing for the petitioners submits that the respondents had initiated Land Acquisition proceedings in the year 1995 for acquiring the subject

matter of the land for a neighbourhood scheme. Both the petitioners had filed a separate Writ Petitions viz. W.P.Nos.9241 and 9259 of 1998 respectively before this Court and challenged the Land Acquisition proceedings. After contest, the said Writ Petitions were allowed by a Common Order dated 03.06.2008.

9.The very competent counsel further submits that the petitioners are carrying out agricultural operations in the said land for which they have purchased machineries worth about 8.3 lakhs for manufacturing agricultural pesticide containers for agricultural purpose. These machineries have been purchased after obtaining loan from the Tamil Nadu Industrial Investment Corporation, Hosur. Under the circumstances, the fourth respondent had initiated Land Acquisition proceedings and acquired the said land without following the provision of the Act. For acquiring the said land, the land acquisition officer had not published the notification in the local publication media and not given an opportunity to participate in the enquiry as per Section 5-A of the Act. Besides after declaration under Section 6, the award has not been passed within two years as per the provisions.

10.The very competent counsel further submits that some of the lands were excluded from the acquisition proceedings, likewise the petitioners are also entitled to receive similar relief. However, this Court was pleased to quash the Land Acquisition proceedings pertaining to the petitioners land in a common order. Against the common order passed in W.P.Nos.9241 and 9259 of 1998 dated 03.06.2008 passed by the learned Single Judge. Against this order, the respondents have not preferred any appeal or revision or review as such the common order passed in the said writ petitions have become final. On the strength of this order, the petitioners are entitled to secure No Objection Certificate from the respondents for which the petitioners made representations to the respondents to issue No Objection Certificates in order to bring the title deeds in the name of the petitioners for enjoying their lands freely and without encumbrance. The petitioners as of now are carrying out cultivation, the same has been proved by Adangal records maintained by the Village Administrative Officer concerned besides patta also stands in the name of the petitioners and they are remitting land tax regularly to the statutory authorities namely the Revenue Department. Hence, the learned counsel makes deep request to allow the writ petition since the petitioners representation dated 16.09.2014 is not considered.

11.The very competent Additional Government Pleader appearing for the respondents 1, 3, 4 and 5 submits that the first respondent had issued G.O. in the year 1995 for acquiring the petitioners land

and adjacent land belonging to the private individual for Neighbourhood Scheme. Accordingly, the fourth respondent / Land Acquisition Officer had initiated land acquisition proceedings under the old Act and acquired the entire land including the petitioners land for the said purpose in turn the said lands handed over to the second respondent herein for implementing the said scheme. Further, the fourth respondent had strictly adhered to the Land Acquisition Act for acquiring the said land. The very competent counsel further submits that the learned Single Judge was pleased to quash the 4(1) notification and Section 6 declaration. However, the respondents had passed awards in the name of land owners. As such, the respondents are at liberty to initiate fresh acquisition proceedings for acquiring the said lands for the same purpose. Therefore, the petitioners are not entitled to obtain no objection certificate from the respondents. Therefore, the above writ petition is not maintainable. Hence, the Additional Government Pleader entreats the Court to dismiss the above writ petition.

12.The very competent counsel Mr.B.Vivekavanan appearing for the second respondent submits that on the request of the second respondent, the first respondent had issued a G.O. for acquiring the petitioners land and others lands to an extent of 8.81.5 acres for implementing the Neighbourhood Schemes. By virtue of the said G.O., the fourth respondent had initiated land acquisition proceedings under the old Act and acquired the entire land for the said purpose. In turn the Land Acquisition Officer had handed over the physical possession to the second respondent herein, the second respondent is also gradually implementing the Scheme for public purpose. Therefore, the petitioners lands is also absolutely required for the Neighbourhood Scheme. Therefore, the respondents can initiate a fresh Land Acquisition proceedings for acquiring the land for the said purpose besides the award passed in the petitioner's name which is existing, as such there is no division between the respondents and petitioners. Therefore, the petitioners request to issue a No Objection Certificate is not a necessary one. Hence, the highly competent counsel prays to dismiss the above writ petition.

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

(1)The Land Acquisition proceedings had been initiated in the year 1995 as per G.O.Ms.No.508 had been issued by the first respondent herein for acquiring the petitioners land for forming a Neighbourhood Housing Scheme. Accordingly, the fourth respondent herein had initiated Land Acquisition proceedings for acquiring the said lands, the same was challenged before this Court by the petitioners herein by filing writ petitions in WP.Nos.9241 and 9259 of 1998 respectively before this Court. This Court quashed the Land

Acquisition proceedings in a common order dated 03.06.2008 since the respondents had not published the land acquisition notification in the local publication media and the award had not been passed within the stipulated period. The learned Single Judge's order had not been challenged by the respondents, after a lapse of around 6 years. As such, the learned Single Judge's common order is fit for proceeding with further. Accordingly, the petitioners are entitled to secure No Objection Certificate from the respondents.

(2) The Land Acquisition proceedings had been initiated in the year 1995, after a lapse of 19 years, the respondents have not taken any steps for acquiring the lands after issuing a fresh Land Acquisition proceedings for the purpose of Neighbourhood Housing Scheme. It clearly shows that the petitioners lands are not required for implementing the said scheme.

(3) The petitioners made a representation to the second respondent herein and disclosed the current position of the land stating that the petitioners are carrying out cultivation over the lands, the same made entries in the Adangal register, which is maintainable by the Village Administrative Officer, who is the competent authority. As such, this Court has come to the conclusion that the petitioners are agriculturists and they are carrying out cultivation as of now without any interference after remitting mandatory land taxes regularly to the revenue authorities.

(4) The petitioners reveal that the patta relating to the said subject matter of the property stands in the name of the petitioners. The same was issued by the fifth respondent herein, who is attached to the Coimbatore North Taluk Office. The patta indicates that the subject matter of the lands are belonging to the petitioners. Therefore, no objection certificate is absolutely necessary for the petitioners in order to avoid encumbrance over the said land and also to bring the title deeds as valid and marketable ones.

14. Considering the facts and circumstances of the case and arguments advanced by the learned counsels on all sides and on perusing the typed set of papers and this Court's view as mentioned in (1) to (4), the above writ petition is allowed and direct the second and third respondents herein to issue No Objection Certificate in respect of the land comprised in Survey No.515/2 measuring an extent of 2.88 acres with the right to a pathway of 2.8 metres wide South to North, Common Cart Track measuring 14 cents and another property in Survey No.501/2 measuring to an extent of 3.51 acres with a right to pathway of 2.8 metre wide South to North, Common Track measuring 14 cents in Vellaikinar Village, Coimbatore (North), Coimbatore District to the petitioners based on the order passed by this Court in W.P.Nos.9241 and 9259 of 1998 dated 03.06.2008, within a period of two months from the date of receipt of this order.

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

Sd/-
Asst. Registrar

/true copy/

Sub Asst. Registrar.

VS

To

1. The Secretary to Government,
The State of Tamil Nadu,
Housing and Urban Development Department,
Fort St. George,
Chennai - 600 009.
2. The Chairman and Managing Director,
Tamil Nadu Housing Board, Nandanam,
Chennai - 600 035.
3. The Executive Engineer and
Administrative Officer,
Coimbatore Housing Unit,
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4. The Special Tahsildar, (L.A.),
Housing Scheme Unit-I,
Coimbatore - 641 018.
5. The Tahsildar,
Coimbatore North Taluk,
Coimbatore.

+1cc to M/s.N.Suresh Kumar, Advocate, S.R.No.8924

RK(CO)
CA(03/03/2015)

W.P.No.34967 of 2014

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