

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON:23/12/2014

DATED: 17/02/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.34968 of 2014

- 1.Venkatesan
- 2.Santhamani
- 3.Savithri
- 4.Jayamani
- 5.Narasimman
- 6.Kavithamani

...

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,
Tamil Nadu Housing Board Unit, Coimbatore,
Tatabad, Coimbatore.
- 4.The District Collector,
Collectorate Complex,
Coimbatore District, सत्यमेव जयते
Coimbatore.
- 5.The Special Tahsildar (L.A),
housing Scheme Unit,
Tatabad, Coimbatore - 641 012.
- 6.The Tahsildar,
Coimbatore North Taluk,
Coimbatore.

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Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Mandamus or any other appropriate Writ, Order or Direction in the nature of a writ, directing the respondents 2 and 3 to issue No Objection Certificate in respect of the lands comprised in Survey No.486 situated measuring an extent of 3.06 Acres situated at Vellaikinaru Village, Coimbatore (North) Taluk, Coimbatore District to the petitioners based on the order passed by this Court in W.P.No.9006 of 2014 dated 07.05.2014.

For Petitioner : Mr.N.Suresh kumar
For Respondents : Mr.M.S.Ramesh
(Additional Government Pleader)
for R1, R3 to R5
Mr.B.Vivekavanan
(Housing Board Counsel)
for R2
- - -

O R D E R

The short facts of the case are as follows:-

The 1st petitioner herein has filed the above writ petition on behalf of other petitioners in 2 to 6 who are legal heirs of late Kuppammal as they are absolute owners of the lands comprised in Survey No.486 measuring to an extent of 3.06 acres situated at Vellaikinaru Village, Coimbatore (North) Taluk, Coimbatore District and the Revenue records have been mutated in their names and they are in physical possession and enjoyment of the same since the death of the said Kuppammal.

2. He humbly submits that the petitioners came to know that their lands have been acquired under the Land Acquisition Act through local newspapers only and no notification or award had been issued to them. Hence they have filed a writ petition in W.P.No.9006 of 2014 challenging the acquisition made by the 5th respondent on the following grounds.

3. He submits that the Notification under Section 4(1) of the Act came to be issued in G.O.Ms.No.508, Housing and Urban Development Department dated 17.05.1995. The declaration under Section 5 of the Act came to be made in G.O.Ms.No.296 Housing and Urban Development Department dated 28.06.1996. The said Acquisition Proceedings culminated in passing of an Award in Award No.3 of 1998 dated 01.07.1986 though the award came to be passed on 01.07.1996, they were neither intimated about the passing of the award nor served with any notice under section 12(2) of the Old Act, so as to enable the petitioners to know about the award and to receive the compensation payable to them. Infact, the compensation was neither paid to them nor deposited before any competent Civil Court.

4. He submits that even though the award was passed in the year of 1996 and the respondents 4 and 5 never took possession of the lands from them. Through a petition under the Right to Information Act, 2005, they got information from the Public Information Officer of the 5th respondent's letter dated 20.01.2014 that there are no records for taking possession of the land from the petitioners by the Land Acquisition Officer. Further, it was replied that there are no documents for handing over of possession to the Housing Board and there are no documents to prove that the compensation amount in the Civil Court or for payment of compensation to the petitioners.

5. He humbly submits that as per the New Act i.e., the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 (Act 30 of 2013) and the same came into effect from 01.01.2014, if the physical possession of the lands are not taken or the compensation is not paid, in respect of the proceedings initiated under the Old Act, the entire proceedings initiated under the Old Act shall be deemed to have been lapsed in view of Section 24 (2) of the Act 30 of 2013.

Section 24 of the New Act reads as follows:-

"24. Land Acquisition process under Act No.1 of 1894 shall be deemed to have lapsed in certain cases:

(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 section 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 Section 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-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 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 holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in

the notification for acquisition under Section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act."

Hence, in view of the New Act, the petitioners are getting absolute right over the property.

6. He submits that further the Adangal issued by the Village Administrative Officer that the lands are in possession and enjoyment of the petitioners only and they are cultivating the same and he submits that upon a detailed consideration of hearing all the parties concerned, this Court was pleased to render a judgment dated 07.05.2014 by allowing the Writ Petition and the operative portion of the order is extracted hereunder:

"On considering the facts and current position of the case and arguments advanced by the learned counsel on all sides and on perusing the records produced by the respondents and this Court's view listed above as (i) to (v), this Court allows the above writ petition and declares that the land acquisition proceedings initiated under the Land Acquisition Act, 1894, in respect of lands belonging to the petitioners comprised in lands of an extent of 3.06 Acres comprised in S.F.No.486 situated at Vellaikinaru Village, Coimbatore, has lapsed in view of the "Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 (Act 30 of 2013). Accordingly ordered. There is no order as to costs".

7. He submits that based on the judgment passed by this Court, ourselves and other persons made representations to the Tahsildar, Coimbatore North Taluk, Coimbatore, seeking to transfer the patta in respect of our lands in our names as the same were mutated in favour of the Housing Board. Based on the representation, 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.

8. He submits that based on the order passed by this Court in W.P.No.9006 of 2014 and the Revenue Order passed by the Tahsildar, Coimbatore North Taluk, Coimbatore, the Respondent Housing Board have not vested in 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 issued No Objection Certificate as that of the no lien over the property to attract 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.

9. He submits that the land acquired by the Government has been vested absolutely free from all encumbrances, under Section 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 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 rights 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 our properties enabling them to develop the same, for proper perspective and for all purpose.

10. He submits that despite of such a declaration and mutation of Revenue Records in our names, the respondent Housing Board in refusing to issue a No Objection Certificate, would deprive our 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. On the side of the respondents no counter statement have been filed.

11. The highly competent counsel Mr.N.Suresh Kumar, appearing for the petitioner submits that the landed property comprised in Survey No.486 to an extent of 3.06 acres situated at Vellaikinaru Village, North Coimbatore, was originally belonging to one Kuppammal and after her death the petitioner's have succeeded the lands as sole legal heirs of the late Kuppammal. The 1st respondent who is attached to the Housing and Urban Development Department as Secretary had issued a G.O.Ms.No.508 dated 17.05.1995 for acquiring the petitioners land. Pursuant to the said Government Order the 5th respondent/Land Acquisition Officer had initiated land acquisition proceedings for acquiring the said lands. The 5th respondent had not strictly followed the land acquisition proceedings under the Act and acquired the lands. However, the petitioners are still in possession and enjoying the same by way of carrying out cultivation without 3rd party interference, besides compensation amount had not been paid to the land owners. The same was established before this Court after filing writ petition No.9006 of 2014 and obtained order from this Court under section 24(2) of the New Act 30 of 2013. This Court

considering the physical possession of the petitioner and compensation had not been paid to the land owners besides this Court assigned five valid reasons and allowed the writ petition No.9006 of 2014, dated 07.05.2014. This order has become final since the respondents have not challenged the learned Single Judge order by way of writ appeal or any revision or review. The very competent counsel further submits that the 6th respondent had issued patta in the name of the petitioners. On the basis of this Court's order and the 5th respondent/Taluk Tahsildar's patta proceedings the petitioners are entitled to obtain No Objection Certificate from the 2nd and 3rd respondents herein in order to bring the landed property as nil encumbrance. Further the petitioners as of now are doing cultivation, the same being recorded by the Village Administrative Officer in his Adangal Register. Besides, the petitioners are remitting the usual land tax to the Revenue Department. Hence, the highly competent counsel makes a deep request to allow the above writ petition.

12. The highly competent Additional Government Pleader Mr.M.S.Ramesh appearing for the respondents 1,3,4 and 5 submits that the 2nd respondent is the requesting body and on their request the petitioners lands and adjacent lands were acquired for forming a Neighbourhood Housing Scheme for public purpose. Therefore, the 1st respondent had issued a Government Order in the year of 1995, following the G.O.Ms.No.508, dated 15.07.1995 the 5th respondent/Land Acquisition Officer had initiated Land Acquisition Proceedings under the old Act and after strictly following the provision of the said Act the petitioners lands and other neighbours lands were acquired by the 5th respondent who in turn handed over the said acquired lands to the 2nd and 3rd respondents herein for implementing the said neighbourhood scheme. Compensation amount had been assessed and award had been passed in favour of the petitioner, as per section 6 of the Act a declaration was published. Further, the respondents can initiate proceedings for acquiring the land even though this Court quashed the Land Acquisition Proceedings that have reached finality.

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

(i) The petitioners are in physical possession and in enjoyment of the same by way of carrying out cultivation of the lands, the same has been confirmed as per the Adangal records which are being maintained by the Village Administrative Officer. In addition to that the 5th respondent namely land Acquisition Officer had furnished information to the petitioners in his letter dated 20.01.2014 addressed to the petitioners under the Right to Information Act stating that there are no records for taking possession of the land from the petitioners by the Land Acquisition Officer, further there are no documents for handing over the possession of the land to the housing board, besides there is no documentary fact regarding quantum of compensation and mode of compensation to the petitioners who are in the dark to these matters;

(ii) This Court granted relief to the petitioners in W.P.No.9006 of 2014 and discharged the petitioners lands from the Acquisition proceedings under section 24(2) of the Act 30 of 2013 dated 07.05.2014. Against this order no writ appeal or any other proceedings have been offered challenging the same, as such the earlier order passed in W.P.No.9006 of 2014 in favour of the petitioners which have become final.

(iii) As per the representation dated 16.09.2014 made by the petitioners to the 2nd respondents herein which narrated that the petitioners are regularly doing Agricultural Operations in the subject matter of the lands and patta and Adangal stands in the name of the petitioners, the same had not been refuted by the 2nd respondent herein even after a lapse of around four months. It clearly proves that the respondents have not utilized the said lands but the petitioners are carrying out agricultural operations, regularly;

(iv) The Land Acquisition Proceedings had been, initiated in the year of 1995, after a lapse of 19 years, the respondents have not initiated any steps for the implementation of the Neighbourhood Scheme due to the inordinate delay, taking the envisaged plan into oblivion.

(v) Taking into account the current position, the petitioners are entitled to obtain No Objection Certificate from the respondents in order to bring their entitlements to the original position and recognizing their lands as nil encouragements which is essential and recognizable.

14. Considering the facts and circumstances of the case and arguments advanced by the learned counsel on all sides and on perusing the typed set of papers, the views of this Court as in (i) to (v), the above writ petition is allowed. Consequently, this Court directs the respondents 2 and 3 to issue No Objection Certificate in respect of the land comprised in Survey No.486 measuring to an extent of 03.06 acres situated at Vellaikinaru Village, Coimbatore (North) Taluk, Coimbatore District to the petitioners based on the order passed by this Court in W.P.No.9006 of 2014, dated 07.05.2014, within a period of two months from the date of receipt of a copy of this order.

15. In the result, the writ petition is allowed. There is no order as to costs.

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-s/d-
Assistant Registrar(CS-III)
Dt:3/3/2015

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 and Managing Director,
Tamil Nadu Housing Board,
Nandanam,
Chennai - 600 035.
- 3.The Executive Engineer and Administrative Officer,
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housing Scheme Unit,
Tatabad, Coimbatore - 641 012.
- 6.The Tahsildar,
Coimbatore North Taluk,
Coimbatore.

+ 1 cc to Mr.N.SureshKumar, Advocate 8923

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Order made in
W.P.No.34968 of 2014