

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved ON:02/12/2014

Delivered ON:09/04/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.25201 of 2014

C.Ponnurangam ... Petitioner

Vs.

1.The Secretary to Government,  
Housing and Urban Department,  
Fort St.George,  
Chennai-09.

2.The Chairman,  
Tamil Nadu Housing Board,  
Nandanam, Chennai-02.

3.The Executive Engineer,  
Vellore Housing Board Section,  
Tamil Nadu Housing Board,  
Sathuvachari, Vellore.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for a Writ of Declaration, to declare that the entire Land Acquisition Proceedings initiated under the Land Acquisition Act, 1894, in respect of the lands belonging to the petitioner measuring 6.8 acres comprised in S.No.59 of Pallipattu Village and S.No.170 of Thirupattur Village, Vellore District as lapsed in view of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

For Petitioner : Mr.G.Ilamurugu

For Respondents: Mr.S.Gomathinayagam

Additional Advocate General

Assisted by Mr.M.S.Ramesh

Additional Government Pleader for R1 &

Mr.S.Vanchinathan, Housing Board

for R2 and R3

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## O R D E R

The petitioner submits that he belongs to "Kuravan" Community, which comes under Scheduled Caste category and hails from a very poor background. The petitioner further submits that his father had purchased the property to an extent of 6.8 acres of lands comprised in Survey No.59, situated at Pallipattu Village and comprised in Survey No.170 situated at Thirupattur Village, Vellore District, on 27.07.1959. After the purchase of the said lands, his father was in possession and enjoyment of the property. Thereafter, his father expired in the year 1972, subsequently, the petitioner and the other legal-heirs are in possession and enjoyment of the property and the above said lands are agricultural lands in nature. While such being the case, the respondents issued another notification on 02.04.1986 for S.No.170 and on 26.06.1987, issued notification for S.No.59 for acquisition of lands for formation of Neighbourhood Scheme at Thirupattur.

2. The petitioner further submits that the entire land acquisition was done in a manner unknown to law and the third respondent passed award vide Award No.03/87-88A1/83, dated 05.02.1988 in respect of S.No.59 and passed an award No.05/88-89A1/16955/83, dated 25.11.1988 in respect of S.No.170 and no compensation has been paid to the petitioner so far. Moreover, the land in acquisition belongs to the downtrodden community and the same is protected by the Government Order and there is no specific bar for acquisition of land belonging to SC community. Followed by the order in G.O.(Ms) No.6300, dated 06.05.1977, another order was passed by the Government to protect the interest of the downtrodden community vide G.O.563, dated 28.04.1995, wherein, it was stated that the "Lands belonging to Harijans should not be acquired except where it becomes absolutely inevitable. In such case, the Collector should obtain the prior permission of the Government for including such lands in the acquisition proposal." Here, it is a case that no such permission or any relaxation whatsoever has been obtained prior to the acquisition of land or till the date of award. Further, to safeguard the property, the petitioner and his family members approached various authorities / civil forum and the petitioner has also filed a petition in W.P.No.11250 of 2010, which is pending on the file of this Court, since this is the only land available to the petitioner family and they are residing in the said land through which they derive their livelihood for the entire family.

3. The petitioner further submits that the petitioner's request for re-conveyance was negatived by the respondents and they directed the petitioner to vacate the land and to hand over the possession of the property within a period of seven days, failing which, without any notice they would forcibly evict them from the land. Under such circumstances, the petitioner filed a writ petition

in W.P.No.11250 of 2010 since the possession is with the petitioner and no compensation was paid as contemplated under the Act and this Court granted interim stay on 05.07.2010 and the same is pending. Further, the respondents filed the counter affidavit in the above W.P.No.11250 of 2010 and admitted that the petitioner is in possession and compensation has not been paid to him and the same is under "Revenue deposit". Hence, in view of the admitted position, the petitioner is entitled to avail the benefits of the Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (Central Act 30 of 2013) and as per the decisions of the Hon'ble Apex Court reported in 2014 (1) SCC 183 in this regard. After the commencement of the New Act, the landowners are getting absolute right to maintain their possession and title to the property, as the physical possession of the lands were not taken from the landowners and the compensation was not paid under the Old Act. Accordingly, the petitioner is getting absolute right over the property. Hence, the petitioner entreats the Court to allow the above writ petition.

4. The highly competent counsel Mr.G.Ilamurugu appearing for the petitioner submits that the petitioner and his blood relatives are absolute owners of the subject matter of the lands comprised in Survey No.59 situated at S.Pallipattu Village and lands comprised in Survey No.170 situated at Thirupattur Village, Vellore District. The respondents had acquired the said lands to an extent of 6.8 acres and also passed an award in the year 1988. However, the compensation was not paid to the petitioner so far. The petitioner and his family members are involved in the agricultural operations and they are depending upon the tilling of lands for their sustenance, besides the petitioner belongs to a Scheduled Caste community and is living under the poverty line. As per G.O.Ms.No.563, dated 28.04.1995, it states that the lands belonging to the Scheduled Caste should not be acquired except when it becomes absolutely inevitable. In such case, the collector should obtain the prior permission of the Government for including such lands in the acquisition proposal. In the instant case, no such permission had been obtained for acquiring the said land.

5. The highly competent counsel appearing for the petitioner further submits that the petitioner and his family members are residing on the lands from time immemorial and looking after the cultivation for their survival. The petitioner made a representation to the respondents and the same was rejected, consequently, the respondents directed the petitioner to vacate the subject land and to hand over the physical possession forthwith. Further, the petitioner has filed a writ petition in W.P.No.11250 of 2010 and challenged the acquisition before this Court. This Court had granted an interim stay in the miscellaneous petition, which had been filed along with the main writ petition, wherein, the respondents had filed a counter

statement and in this statement, they admitted that the petitioner is in possession and compensation has not been paid to the petitioner. However, the respondent stated that the compensation amount had been deposited under the head of revenue deposit. Now, the factual position of the case is that the petitioner is in physical possession and enjoying the same without any interference. Besides the petitioner has not been paid compensation amount for the acquired lands belonging to the petitioner. As such, the petitioner is entitled to secure a remedy under Section 24(2) of the New Act.

6. The highly competent counsel appearing for the petitioner further submits that the petitioner has been remitting mandatory land tax to the statutory authorities. The electricity service connection is standing in the name of the petitioner. In order to prove the same, the highly competent counsel had attached an electricity bill dated 11.08.2014. The highly competent counsel also produced land tax receipt. The highly competent counsel cited a judgment reported in 2014 (3) SCC, wherein it was held that mere deposit of the compensation amount in the Government Revenue and the paper possession is impermissible in law and the entire acquisition is deemed to have lapsed. Accordingly, the Land Acquisition Proceedings which had been initiated by the respondents is not sustainable under law. The acquisition proceedings had been completed in the year 1988, however, the physical possession has not been taken by the Land Acquisition Officer. Further, as of now, the petitioner is cultivating the said land and there is standing crops on the lands. The highly competent counsel appearing for the petitioner further submits that the Sub Registrar Office, Tirupattur had issued an encumbrance certificate which reveals that the property is still standing in the name of the petitioner. Hence, the highly competent counsel entreats the court to allow the above writ petition.

7. The highly competent Additional Advocate General Mr.S.Gomathinayagam appearing for the first respondent submits that the respondent had issued a G.O. for acquiring the petitioner's lands and the lands of other for forming a Neighbourhood Scheme. Accordingly, the Land Acquisition Officer had initiated Land Acquisition Proceedings under the Old Act. The award had been passed in the year 1988, subsequently, the possession had been taken by the Land Acquisition Officer, who in turn, handed over the said acquired lands to the Tamil Nadu Housing Board. The same petitioner had filed a writ petition in W.P.No.7748 of 1991, for the same property and challenged the acquisition proceedings before this Court and the same was dismissed and therefore, the present writ petition is not maintainable. Now, the Tamil Nadu Housing Board proposed to conduct 92 Middle Income Group houses in order to implement the Neighbourhood Scheme. The same petitioner had challenged the Land Acquisition Proceedings before the civil Forum at Thirupattur and the same was dismissed. Further, the same petitioner and his sister have filed two separate writ petitions and challenged the acquisition proceedings,

which were dismissed. The petitioner made a representation to the respondents to re-convey the said lands and the same was rejected on merits. Hence, the highly competent Additional Advocate General entreats the court to dismiss the above writ petition.

8. The highly competent counsel Mr.S.Vanchinathan appearing for the second and third respondents submits that the petitioner's lands had been acquired for implementation of a Neighbourhood Scheme at Thirupattur. After acquiring the said lands, an award had been passed in the year 1988 itself. After acquiring the said lands, the property has been taken over by the Land Acquisition Officer, who in turn, handed over the same to the Tamil Nadu Housing Board. The petitioner had submitted a representation to the Government for re-conveyance of the said lands and the same was rejected after duly considering the same. At the time of acquiring the said lands, two huts, one well and 19 trees were standing on the said lands, for which, an adequate compensation had been assessed and awarded to the petitioner. The same notification for acquiring the lands had been challenged by one Alameluammal before this Court and the same was dismissed on merits.

9. The highly competent counsel Mr.S.Vanchinathan appearing for the second and third respondents further submits that the petitioner and others have constructed a house with pucca RCC roof and the same was removed by the respondents. The petitioner and others have filed a civil suit before the Thirupattur District Munsif Court, for restraining the respondents from eviction and the same was dismissed. Further, the Tamil Nadu Housing Board had allotted house sites to the public. The petitioner's land is absolutely required for implementing the Neighbourhood Scheme. Hence, the highly competent counsel makes a deep request to dismiss the above writ petition.

10. From the above discussion, this Court is of the view that:-

(i) As per the records, the award had been passed in the year 1988 and possession was taken over by the Land Acquisition officer, for implementation of Neighbourhood Scheme. The same was not carried out after a lapse of 23 years, leaving the scheme in oblivion.

(ii) There is no specific records in order to prove that the compensation had been paid to the petitioner / landowner.

(iii) As per the encumbrance certificate, electricity service connection bills and land tax receipts clearly shows that the petitioner is in physical possession and enjoyment of the same.

(iv) As per the respondents statements itself it is evident that at the time of acquiring the said lands there existed 2 huts, 1 well and 19 trees, which clearly indicates that the petitioner and other family members are all put up on the said land and obtaining their livelihood through cultivation. The said cultivation is of paramount importance for the sustenance of the petitioner. The location of the Neighbourhood Scheme could be positioned anywhere else, but could the residents of the said land with all their local infrastructure be moved to somewhere else?

11. 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 and this Court's views mentioned above as (i) to (iv), this Court allows the above writ petition. Consequently, this Court declares that the entire Land Acquisition Proceedings initiated under the Land Acquisition Act, 1894, in respect of the lands belonging to the petitioner measuring to an extent of 6.8 acres comprised in S.No.59 of Pallipattu Village and S.No.170 of Thirupattur Village, Vellore District has lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

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

-s/d-  
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Secretary to Government,  
Housing and Urban Department,  
Fort St. George,  
Chennai-09.

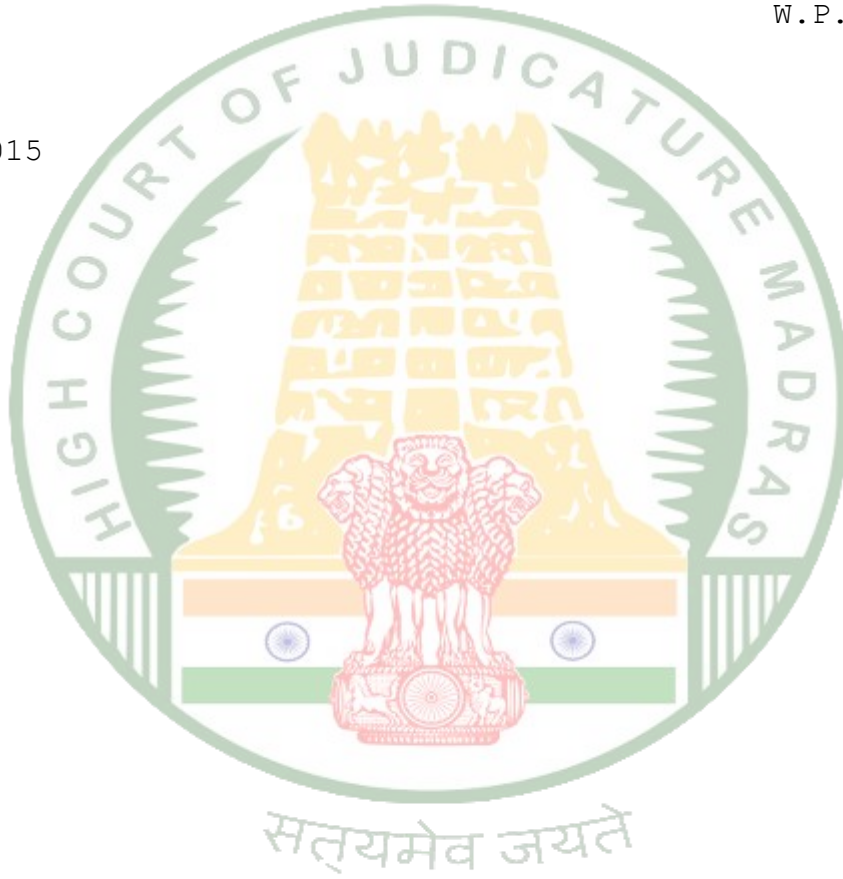
2. The Chairman,  
Tamil Nadu Housing Board,  
Nandanam, Chennai-02.

3.The Executive Engineer,  
Vellore Housing Board Section,  
Tamil Nadu Housing Board,  
Sathuvachari, Vellore.

+1 cc to the Government Pleader High court sr.19839

Order made in  
W.P.No.25201 of 2014

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