

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.8896 of 2007

and

M.P.No.2 of 2007

Order Reserved on 30.07.2014 Judgment Pronounced on
24.11.2015

V.Manoharan

... Petitioner

Vs.

The Government of Tamil Nadu,
represented by its Secretary to Government,
Housing and Urban Department,
Fort St. George,
Chennai 600 009.

... Respondent

Prayer: Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records of the respondent pertaining to 4(1) notification issued by Housing and Urban Development Department under the Land Acquisition Act 1894 in G.O.Ms.No.978 dated 17.08.1990 and the consequential declaration under Section 6 of the Act in G.O.Ms.No.1306 dated 28.09.1991 and quash the same.

For Petitioner : Mr.Murali Kumaran
for M/s.McGan Law Firm

For Respondent : Mr.M.S.Ramesh
Additional Government Pleader

O R D E R

The short facts of the case are as follows:

The petitioner submits that he is a co-owner of the property bearing Survey Nos.298/10A2, 301/2, 300/8, 300/5, 300/6, 300/7, 300/9, 300/10, 300/11, 303/11, 299/8, 299/9, 306/2, 301/7A-1 and 304/2 in Keelkattalai Village, Kanchipuram District. He submits that he is filing this writ petition seeking for a writ of Certiorari to call for the records of the respondent pertaining to 4(1) Notification issued by Housing and Urban Development Department under the Land Acquisition Act 1894 in G.O.Ms.No.978 dated 17.08.1990 and the consequential declaration under Section-6 of the Act in G.O.Ms.No.1306 dated 28.09.1991 and quash the same so far as the petitioner is concerned relating to the Survey Numbers and extent as detailed below:

Survey Nos.	Extent (Acres)
298/10A2	0.35
301/2	0.40
301/7A1	0.15
300/5	0.07
300/6	0.23
300/7	0.12
300/8	0.18
300/9	0.10
300/10	0.13
300/11	0.14
303/11	0.22
299/8	0.08
299/9	0.14
304/2	0.08
306/2	0.20
Total	2.59

in Keelkattalai Village, Kanchipuram District and consequentially forbear the respondent from in any manner interfering with the peaceful possession and enjoyment of the petitioner of the said lands in view of the said notifications having already been quashed for one of the joint owners, namely Mrs.M.Ayyammal, sister of the petitioner by order dated 11.06.1999 in W.P.No.20300 of 1994 passed by this Court.

2.He submits that the present writ petition was required to be filed only in view of the technicalities raised by the officials of the Tamil Nadu Housing Board as to the applicability of the earlier orders of this Court dated 11.06.1999 in W.P.No.20300 of 1994 to the petitioner. He submits that the lands in the following survey numbers were purchased by the petitioner's father late Velusamy by registered sale deeds in the Sub Registrar's Office at Pallavaram, the

details of which are as follows:

Survey Number	Document No.	Date	Extent (in Acre)
298/10A2	335/66	01.03.1966	0.35
300/8	2691/64	05.10.1964	0.18

3.He submits that the lands in the following survey numbers were purchased by the petitioner's late mother Shanmugavadivammal registered sale deeds in the S.R.O., Pallavaram, the details of which are as follows:

Survey Number	Document No.	Date	Extent (in Acre)
301/2	1732/68	05.09.1968	0.40
301/7A1	1539/67	04.09.1967	0.15
300/5	1732/68	05.09.1968	0.07
300/6	1739/67	07.10.1967	0.23
300/7	1732/68	05.09.1968	0.12
300/9	1732/68	05.09.1968	0.10
300/10	1732/68	05.09.1968	0.13
300/11	1732/68	05.09.1968	0.14
303/11	1739/67	07.10.1967	0.22
299/8	1732/68	05.09.1968	0.08
Survey Number	Document No.	Date	Extent (in Acre)
299/9	1732/68	05.09.1968	0.14
304/2	1732/68	05.09.1968	0.08
306/2	1099/64	05.05.1964	0.10
306/2	1057/64	29.04.1964	0.10

On the death of Shanmuga Vadivu on 26.03.1969, the petitioner along with his father Velusamy, brother, Doraipandian and the elder sister Mrs.Iyyammal became the joint owner of the properties that stood in the name of Shanmuga Vadivu and after the demise of Velusamy on 12.06.1970, the petitioner became the joint owner of the property in Survey numbers detailed above along with his brother Doraipandian. He submits that the land acquisition proceedings initiated by the respondent seeking to acquire the said lands which are the subject matter of this writ petition was challenged by Mrs.Ayyammal, the elder sister of the petitioner and this Court quashed the land acquisition proceedings by order dated 11.09.1999 in W.P.No.20300 of 1994.

4.He submits before and after the order of this Court quashing the land acquisition proceedings relating to the lands owned and possessed by Mrs.Ayyammal and the lands which were owned and possessed by Mrs.Ayyammal individually and jointly along with the petitioner and his brother, Doraipandian and continued to be in possession of the properties along with his brother Doraipandian and sister Mrs.Ayyammal respectively as the case may be. He submits that while so, the officials of the Housing Board on 27.02.2007 raising technicalities for objections tried to interfere with the development activities done by the petitioner in the lands mentioned above even though the land acquisition proceedings was quashed in the writ petition filed by Mrs.Ayyammal, by contending that the petitioner is a joint owner of the property is not a party to the writ petition. Hence, the petitioner is compelled to file this writ petition.

5.The respondent has filed counter affidavit and stated that the Chairman and Managing Director, Tamil Nadu Housing Board, Chennai-35 in his letter No.17470/LA1(1)/85, dated 02.05.1990 has sent a requisition to acquire an extent of 23.43.5 Hectares of land in Survey No.297/1 etc. in No.123, Madipakkam-II (Keelkattalai) Village to form a New Housing Scheme namely Pallavaram Neighbourhood Scheme. Accordingly, the Government in G.O.(Ms).No.978, Housing and Urban Development Department dated 17.08.1990 have approved the Notification under Section 4(1) of the Land Acquisition Act, 1894 (Central Act I of 1894) (hereinafter referred to as the said Act) and the same was published in the Tamil Nadu Government Gazette dated 05.09.1990. The gist of the notification was published in the locality on 01.10.1990 besides publishing the same in Taluk Office, Saidapet, Municipal Office, Pallavaram, Sub-Registrar's Office, Pallavaram and Police Station, Pallavaram on 01.10.1990. The gist of 4(1) Notification was also published in the Tamil dailies viz. 'Dinakaran' and 'Malaimalar' on 26.09.1990. The enquiry under Section 5(A) of the said Act was conducted from 03.12.1990 to 07.12.1990 in the village after serving the notices prescribed under Land Acquisition Rules on the land owners and interested persons. During 5A enquiry the land owners and other interested persons have filed their objections to the said notification. The gist of objections and the objection petitions in original were sent to the requisition body i.e. Chairman and Managing Director, Tamil Nadu Housing Board, in this office R.C.No.7993/78/M1, dated 15.03.1991 for their opinion and remarks. The Chairman and Managing Director, Tamil Nadu Housing Board, Chennai-35 in his letter No.17470/LA-1/85, dated 20.05.1991 has offered his remarks to over rule the objections raised by the land owners and to proceed with Land Acquisition Proceedings to submit the draft declaration under Section 6 of the said Act to Government. The opinion of the Tamil Nadu Housing Board was communicated to the objectors, and

further enquiry to hear further objections if any so on the opinion of the Tamil Nadu Housing Board as provided under Rule 3 (b) of the Land Acquisition (Tamil Nadu) Rules (hereinafter referred to as the said Rules) framed under the said Act was conducted on 30.07.1991 and 01.08.1991. During the enquiry under Rule 3(b) of the said Rules, the land owners and the interested persons filed their objection on the remarks of the Tamil Nadu Housing Board. The 3(b) enquiry proceedings was issued in this office Rc.No.7993/78/M1, dated 02.08.1991 and the same was served on the land owners and the interested persons and Draft Declaration proposals were submitted to Government. The Government have approved the draft declaration under Section 6 of the said Act in G.O.(Ms).No.1306, Housing and Urban Development Department, dated 28.09.1991 and published in the Tamil Nadu Government Gazette dated 28.09.1991. The notification under Section 6 of the said Act was published in Two Tamil Dailies namely, Thinathudhu and Makkalkural on 30.09.1991 and in the locality on 01.10.1991. After completion of 3 (b) enquiry, the petitioner filed a writ petition in W.P.No.13182 of 1991 and got dispossession stay order. This Court has dismissed the W.P.No.13182 of 1991 on 24.01.1992. The petitioner is suppressing the above fact and misleading this Court by filing again this writ petition. Notices under Sections 9(3) and 10 were served on the Pattadar and interested persons and Award was passed in respect of the petitioner land on 30.09.1993 in Award No.2/1993.

6.It is submitted that the contention of the petitioner is incorrect. As per the Revenue records, the survey numbers mentioned by the petitioner, Survey Nos.298/10A2 and 11B stands registered under patta No.1958 in the name of Tmt.Ayyammal, wife of Madasamy. The lands in Survey Nos.299/5B, 8, 9, 300/5, 6, 7, 9, 10, 11, 301/2, 303/11, 305/12, 13, 306/2 stands under patta No.1161 in the name of Tmt.Ayyammal. The land in Survey No.300/8 stands registered under patta No.812 in the name of Thiru.Velusamy on 05.10.1964. Therefore, the contention of the petitioner, that he is co-owner of the above said property is not correct.

7.It is submitted that 4 (1) notification issued by the Government in G.O.(Ms).No.978, Housing and Urban Development Department, dated 17.08.1990 and the draft declaration in G.O.(Ms).No.1306, Housing and Urban Development Department, dated 28.09.1991 for the mentioned survey numbers are correct. The petitioner is not a joint owner of the above said land. However, the petitioner was filed a writ petition before this Court in W.P.No.13182 of 1991 after completion of draft declaration under Section 6 of the Land Acquisition Act duly conducted all Land Acquisition formalities. This Court has dismissed the above writ petition on 24.01.1992. After the dismissal of the petitioner's writ, the Land Acquisition

Proceedings were continued and rest of the Land Acquisition Proceedings were completed as per the Land Acquisition Act, 1894 and passed the Award vide Award No.2 of 1993.

8.It is submitted that no technicalities raised by the officials in this Land Acquisition proceedings as mentioned by the petitioners. The W.P.No.20300 of 1994 mentioned by the petitioners is not connected with the petitioners. The W.P.No.20300 of 1994 was allowed on 11.06.1999 by this Court, based on its earlier order dated 27.11.1991 in W.P.No.18458 of 1990. However, the Division Bench of this Court allowed the batch cases on similar issues (including the W.A.No.744 of 1994) filed against the orders in W.P.No.18548 of 1990, filed by the respondents (i.e) the Government, Housing and Urban Development Department, Chennai-9 and others. The petitioner is not a owner of the survey numbers mentioned in the affidavit. The name stands in the Revenue record for the above survey number is Tmt.Ayyammal wife of Madasamy. Hence, it is revealed that the petitioner is not a joint pattadar in the above said survey numbers. Therefore, the order mentioned in the W.P.No.20300 of 1994 is not applicable to them. Hence, the contention of the petitioner is not sustainable.

9.It is submitted that survey numbers mentioned by the petitioner i.e. S.F.No.298/10A2 stands in the name of Tmt.Ayyammal wife of Madasamy as per revenue records. But the survey No.300/8 stands registered under patta No.812 in the name of Thiru.Velusamy. It is submitted that as per revenue records the land in Survey No.298/10A2 and 11B stands registered under patta No.1958 in the name of Tmt.Ayyammal, wife of Madasamy. The lands in Survey No.299/5B, 8, 9, 300/5, 6, 7, 9, 10, 11, 301/2, 303/11, 305/12, 13, 306/2 stands under patta No.1161 in the name of Tmt.Ayyammal. The land in survey No.300/8 stands registered under patta No.812 in the name of Thiru.Velusamy. As the above lands stands in the name of Tmt.Ayyammal, the contention that they are the joint owner of the above said lands are incorrect. Hence, they cannot claim the right over the above said property and challenge the Land Acquisition proceedings.

10.It is submitted that the writ petitioner Tmt.Ayyammal, challenged the Land Acquisition Proceedings in S.Nos.323/2B & 9-C, 323/9/A2 & 323/6 which was allowed by this Court on 11.06.1999 along with some other writ petitioner on the ground that the Rule 3(b) of the said Rules was not complied with. But the Survey Numbers mentioned by the present petitioner is different with the Survey Numbers in W.P.No.20300 of 1994 filed by Tmt.Ayyammal. Hence, the petitioners have no locus standi to relief the order in W.P.No.20300 of 1994. The W.P.No.20300 of 1994 was allowed on 11.06.1999 by this Court, based on its earlier order dated 27.11.1991 in W.P.No.18458 of 1990.

However, the Division Bench of this Court allowed the batch cases on similar issues (including the W.A.No.744 of 1994) filed against the orders in W.P.No.18458 of 1990 filed by the respondents (i.e.) the Government, Housing and Urban Development Department, Chennai-9 and others. Therefore, the contention raised by the petitioners that Tmt.Ayyammal has succeeded in W.P.No.20300 of 1994 is applicable to him is not correct and not sustainable. Hence, the respondent prays to dismiss the writ petition.

11.The learned counsel appearing for the petitioner submits that he is the co-owner of the subject matter of the property. The respondent had issued notification to the petitioner and the co-owners under the old Act for acquiring the said properties. One of the co-owners i.e., sister of the petitioner had challenged the same and the said notification was quashed by this Court. The subject matter of the property had been purchased by the father of the petitioner under various registered sale deeds. After his death, the petitioner, his brothers and sisters succeeded the property. The co-owner Iyyammal challenged the said notification and the same was quashed by this Court. As such, the petitioner also is entitled to receive similar remedy.

12.The highly competent counsel further submits that the declaration under Section 6 was published after a lapse of one year, as such the respondent had committed a shortcoming in the said acquisition proceedings. Further, the petitioner is still in physical possession and enjoying the said property without any interference as of now. Therefore, the very competent counsel entreats the Court to quash the 4(1) notification and declaration under Section 6 of the Act, dated 17.08.1990 and 28.09.1991 respectively.

13.The learned counsel Mr.M.S.Ramesh has submitted that on the request of the Tamilnadu Housing Board, the petitioner's land and neighbours lands had been acquired for Pallavaram Neighbourhood Scheme. The highly competent counsel further submitted that the respondent had observed all legal formalities and acquired the said property. The land owner had also participated in the enquiry as per Section 5A of the Act. Thereafter, a declaration was published as per Section 6 of the Act. The same writ petitioner had filed an earlier writ petition in W.P.No.13182 of 1991 before this Court and the same was dismissed. Therefore, the present writ petition is not maintainable. Further, the petitioner is not the owner of the property or joint Pattador. The said Iyyammal filed W.P.No.20300 of 1994 and the same was allowed. The said order is not applicable to the present case. However, the Government had preferred an appeal and the same was allowed by this Court. Hence, the very competent counsel entreats the Court to dismiss

the writ petition.

14.Considering the facts and circumstances of the case, arguments advanced by the learned counsel on either side and on perusing the typed set of papers, this Court does not find sufficient force in the writ petition. Further, the petitioner had filed a similar writ petition before this Court and the same was dismissed besides the declaration was passed on 28.09.1991 under Section 6 of the Old Act. As such, after a lapse of around 50 years the writ petition has been filed. Hence, the same is liable to be dismissed.

15.In the result, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

vs / krk

To:

The Secretary to Government,
Housing and Urban Department,
Government of Tamil Nadu,
Fort St. George,
Chennai 600 009.

W.P.No.8896 of 2007
and
M.P.No.2 of 2007

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