

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON:15.12.2014

DATED:19.08.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.26899 of 2014

and

M.P.Nos.1,2 of 2014

Mr.A.R.Gulam Dasthagir

... Petitioner

Vs.

1.The Secretary to Government,
Public Works Department (Highways),
Fort St.George, Chennai - 600 009.

2.The Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
Chengalpattu.

3.The Special Deputy Collector (Land Acquisition).
Poonamallee, Chennai.

4.The Divisional Engineer,
Highways Department,
Chengalpattu,
Tamil Nadu - 603 001.

5.The Chief Executive Officer,
Tamil Nadu Road Development Company Limited,
No.346, Sindu Pantheon Plaza,
Pantheon Road, Egmore,
Chennai - 600 008.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India to issue a writ of declaration declaring that the Land acquisition proceedings initiated under Land Acquisition Act 1894, in respect of the lands of an extent of 3559 sq.ft, comprised in S.No.99/7 & 99/8, belonging of the petitioner pursuant to G.O.Ms.No.752, dated 18.05.1993 situated at Muttukadu Village at Kancheepuram District as lapsed in view of 24(2) of Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act 2013 (Act 30 2013).

For Petitioner : Mr.Sairam
for M/s.Waraon

For Respondents: Mr.M.S.Ramesh
(Additional Government Pleader
for R1 to R4)
Mr.M.Sivavarthanam for R5

O R D E R

The petitioner further submits that he is the owner of the land to an extent of about 3359 Sq.ft, comprised in Survey No.99/7 at No.36, Muttukadu Village. He had inherited the property from his father Mr.Abdul Rahim in and by a Settlement Deed dated 31.08.1994, registered as Document No.2201 of 1994. He had also purchased the land, comprised in Survey No.99/8, admeasuring an extent of 4 cents in and by a sale deed dated 29.01.1973 from Mr.M.A.V.Narayana Rao, registered as Document No.66 of 1973, before the Sub-Registrar of Tirupporur and he had been in possession and enjoyment of the said properties. He submit that the patta in respect of the property has been transferred in his name and the transfer has been entered into all the revenue records and eversince from the date of purchase and he had been in continuous possession and enjoyment of the said property.

2. The petitioner further submits that the 1st respondent issued in G.O.Ms.No.752 P.W (Highways) (HS-2), dated 18.05.1993 under section 4(1) of the Land Acquisition Act, 1894 for acquisition of lands owned by various land owners situated in Muttukadu Village, for the acquisition of an extent of approximately 4 cents in Survey No.99/7 and approximately an extent of 2 cents in Survey No.99/8 for the purpose of widening the East Coast Road. The petitioner submits that the Special powers in case of urgency was invoked by the respondents for acquisition of lands while issuing the notice under section 4 of the Land Acquisition Act, 1894. The very purpose of invoking the said provision of compulsory acquisition is the urgent requirement of the land proposed to be acquired by the authority for the use of public purposes. The power of eminent domain being inherent in the Government exercisable in the public interest, general welfare and for public purpose without the owner's consent provided that assertion is on account of public exigency and for public good. Therefore, in cases where the state intends to appropriate the private property without the owner's consent by acting under the statutory provisions of compulsory acquisition the procedure authorized by law has to be mandatorily and compulsorily followed. Such power of urgency which takes away the right to file objections can only be exercised by the State Government for such public purposes of real urgency which cannot brook delay of few weeks or few months. The Supreme Court of India categorically held in various cases that the right to file objections under Section 5-A is

a substantial right when a person's property is being threatened with the acquisition. Therefore, such right cannot be taken away as if by a side wind. Section 5-A embodies a very just and wholesome principle that a person whose property is being or is intended to be acquired should have a proper and reasonable opportunity of persuading the authorities concerned. Sub Section (2) of Section 5-A makes it very clear that it is obligatory on the Collector to give an opportunity to the Objector for a fair and open hearing. After hearing all the objections and making further enquiries, he shall file a report to the appropriate Government containing his recommendations on the objections. The declaration under Section 6 has to be issued only after the appropriate Government is satisfied on a consideration of the report made by the Collector under section 5-A(2). Therefore, from the above said provisions of the act, it would make clear that the intention of the legislator while enacting the provisions of the Land Acquisition Act made, complete provisions for the persons interested to file objections against the proposed land acquisition and for the disposal of such objections. In cases of real urgency, the special powers have been conferred on the appropriate to dispense with the provisions of Section 5-A.

4. The petitioner submits that on an exceptional and extraordinary power taking away the enquiry under Section 5-A in a case where the possession of the land is required urgently or in an unforeseen emergency is provided under the Act, such power is not a routine power and saving circumstances warranting immediate possession it should not be lightly invoked. The guideline for exercising such exceptional power on dispensing with enquiry under Section 5-A is clearly provided under section 5-A whether the urgency is of such a nature that justifies elimination of summary enquiry under section 5-A. In the instant case, 4(1) Notification was issued along with the dispensation of Section 5-A enquiry that prominent intention of the appropriate Government to acquire the land in an emergency as it requires immediate possession of the land proposed to be acquired. In cases where the appropriate Government exercised the power to take away the right under section 5-A it is mandatory to pay 80% of the compensation within one month from such notification and the project should be completed within two years. Such mandatory requirements had not been complied by the appropriate Government in the instant case. The actual possession of the land acquired under the notification issued in the year 1992 had not been taken till today and the land was not used for the purpose for which it was acquired. Similarly, no compensation was paid to the land owners as on date. Therefore, the appropriate Government miserably failed to apply its mind before dispensing the enquiry under Section 5-A while issuing the notification under section 4(1) of the Act, which vitiates the entire proceedings and the land acquisition proceedings under G.O.Ms.No.752, dated 18.05.1993 and the subsequent declaration under section 6 of the Act are null and void and have no legs to stand and is liable to be set aside on this ground alone.

5. The petitioner further submits that the extraordinary provisions of dispensation of enquiry under section 5-A can be invoked only when the purposes of acquisition cannot be delayed and the authority concerned must be fully satisfied that time of few weeks or months likely to be taken in conducting enquiry under Section 5-A in all probability, frustrate the public purpose for which land is proposed to be acquired. The satisfaction of the Government on the issue of urgency is subjective but a condition precedent to the exercise of power under section 17(1) and exercise of such power is vitiated due to malafide or that the authorities concerned did not apply their mind to the relevant factors and cases where there is an enormous delay in utilizing the land acquired for the purpose for which it was acquired. In the instant case as of now the land acquired were not utilized for the purpose for which it was acquired in the year of 1992. Therefore, the dispensation of Section 5-A by invoking the special and extraordinary powers is vitiated and eliminates the entire object of the acquisition proceedings and the acquisition is illegal and has to be set aside on this ground. He submits that he has purchased the above property in the year of 1973 and he has been continuously in possession of the said property. However, the respondents failed to provide the information and kept him in the dark with reference to the acquisition proceedings. He has not received any notice of acquisition and the appropriate Government failed to pay the compensation as contemplated under the provisions of the Land acquisition Act, 1894. While this is so, the respondents are continuously giving threat that they will take possession of his property without giving any opportunity to place his objections stating that in the year 1992 itself the land in question had been acquired and the entire proceedings were completed. It is in fact, the respondents who have failed to serve any notice and the award passed in the matter of land acquisition as per the above Government Orders.

6. The petitioner further submits that the earlier notification issued by the Government in the year of 1993 by invoking the Special Power of urgency and dispensation of Section 5 of the Act is unsustainable for the simple reason that though the 1st respondent invoked the power of urgency and issued notice under the Land Acquisition Act, 1894, the respondents have failed to take possession of the land acquired under the said proceedings by paying the compensation to the owners till date. Similarly, the lands acquired by the respondents as per the Government Order issued in the year of 1993 had not been utilised for the purpose for which it was acquired so far. In fact the preliminary notification under section 4(1) was issued by invoking the urgency dispensation Section 5 of the Act 1894 for the purpose of widening the East Coast Road. However, the respondents miserably failed to complete the proceedings by taking the actual physical possession and depositing the compensation before this Court. He submits that the Central Government had enacted the Right to Fair Compensation and Transparency in Land Acquisition

Rehabilitation and Resettlement Act, 2013 and the same came into effect from 01.01.2014. He submits that as per Section 24(2) of the said Act, the entire Land Acquisition proceedings initiated under the Land Acquisition Act, 1894 is said to have been lapsed. As a matter of fact he understands that the award under section 11 of the Act, passed in the year 1995 more than 18 years before the commencement to the land owners nor the amount was deposited in the Court by the Special Land Acquisition Officer. Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act 2013.

7. The petitioner further submits that Section 24(2) clearly emphasis that in case of Land Acquisition Proceedings initiated under the Land Acquisition Act 1894, where award under 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 compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government if it so chooses to acquire the land shall initiate proceedings of such land acquisition afresh in accordance with the provisions of this Act and therefore in any case, the land acquisition proceedings initiated by the respondents in the year of 1993, shall be deemed to have lapsed, in view of the fact that the award has been passed in the year of 1995 more than 18 years before the commencement of the new act and the compensation was not paid to the land owners so far. Therefore, the land acquisition proceedings initiated by the respondents under G.O.Ms.No.752, dated 18.05.1993 and the subsequent declaration under Section 6 of the Act have to be declared as invalid and liable to be set aside.

8. The petitioner submits that the Right to Fair Compensation Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 introduced in an entirely new concept for compulsory acquisition of land and provides new scheme for compensation Rehabilitation and Resettlement with the affected families whose land has been acquired or proposed to be acquired or affected by such acquisition. Therefore, the instant case has to be reviewed in the light of the provisions contained in the new act and the entire scheme should be resettled as per the conditions embodied in Section 24(2) of the Act. The Proviso to Section 24(2) deals that the situation whether in respect of the acquisition initiated under 1894 Act and award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of beneficiaries than all the beneficiaries specified in Section 24 Notification become entitled to compensation under the 2013 Act. Therefore, in any case even if the appropriate Government chooses to acquire the land which was the subject matter of the acquisition under 1894 Act in view of the said lapses it has to initiate proceedings afresh under the 2013 Act and the land owners are entitled to get their compensation as per the provisions of the 2013 Act. It is a well settled principle that as per the clause 31 of the Land Acquisition Act, 1894, the compensation

should be deposited in the Court, the provisions under the Act requires that the Collector should tender the payment of compensation to the persons interested who are entitled to compensation and if the compensation has not been paid due to the reasons as contemplated in Section 31(2) the Collector should deposit the amount of compensation in the Court to which references can be made under section 18. In the instant case, the above said proceedings are vitiated and has to be quashed. Therefore, the notification issued under section 4(1) under the G.O.Ms.No.752, dated 18.05.1993 is null and void and liable to be quashed.

9. The respondent further submits that the Government decided for "Strengthening and Widening of the East Coast Road from Thiruvananthapuram to Cuddalore (S.A.Dist) and consequently an extent of 2.33.0 hectares or 5.80 acres dry lands in 36 Muttukadu Village Block II, formerly Chengalpattu Taluk and now Thirukazhukundram Taluk, Kancheepuram District. It is submitted that the draft notification under section 4 (i) of Land Acquisition Act (Central Act 1 of 1894) for an extent of 2.47.5 hectares equivalent to 6.12 acres of dry lands was approved in G.O.Ms.No.752 (Public Work HS-2) Department, dated 18.05.1993.

It was published as detailed below:

1. Tamil Nadu Government Gazette :23.06.1993
2. Tamil Nadu News papers Thiruvananthapuram :23.06.1993
3. Tamil Nadu News paper Makkal Kural :23.06.1993
4. In the locality :30.06.1993

It is submitted that the draft declaration under section 6 of the Land Acquisition Act (Central Act 1 of 1894) for the above extent of 2.47.5 Hectares (or) 6.12 acres of dry lands was approved in G.O.Ms.No.423/PW(HS-2) Department dated 09.05.1994 and published in the TNGC issue No.247, Extraordinary issue dated 11.05.1994.

It was published as detailed below:

1. Tamil Nadu Government Gazette :11.05.1994
2. Tamil Nadu News papers Athirathur and
and Kumarimuru :13.05.1994
3. In the locality :31.03.1993

10. The draft direction under section 7 of the Land Acquisition Act 1894 was approved by the Government in their letter No.73169/(HS-2)/93-1 Public Works (Highways) Department, dated 04.10.1994 and published in the supplement to part II, section 2, Issue No.45A, dated 23.11.1994. The Special Tahsildar (LA) unit II East Coast Road Project, Big Melamalaiyur, Chengalpattu has been authorized to perform the function of the Collector under provision of urgency clause under sub section (i) of section 17 of the Land Acquisition Act, 1894. The lands notified for acquisition has been duly demarcated, surveyed, measured and mapped Under section 8 of the Act. The area shown in this award is true and correct area of the

land. The notice under section 9(i) and 10 of the Land Acquisition Act 1894 was also published in the locality. The individual notices under section 9(3) and 10 of the Act were also issued to the land owners on 15.04.1996, calling for them to attend Award Enquiry on 23.05.1996. The acquired lands were taken over and possession was handed over to the Highways authority on 13.06.1996. The files relating to Chengalpattu Taluk, were handed over to the Office of the Revenue Divisional Officer, Chengalpattu, after the disbandment of the post of Special Tahsildar (LA) unit II, Chengalpattu. The East Coast Road has been formed already and that it is being maintained by the Tamil Nadu Road Development Company Limited. The land was acquired and sub divided in S.No.99/7A1B and 99/8C1A2 of Mutukkadu Village in the award. According, to the requirement of the land was acquired for East Coast Road widening to four lanes from two lanes.

Sl. No	No.of Patta and name of the Pattadarar	Survey No	Extent Acquired	In Acres	Compensation Amount (in Rs)
1	Thiru.Abdul Rahim and two others	99/7A1B	0.11.0	0.27	75,961.00
2	PattaNo.226,Thiru.Abdul Rahim and T.A.Saleem	99/8C1A2	0.02.5	0.06	16,880.0

In response to the notice issued Under Section 9(3) and 10 of the Land Acquisition Act, neither the land owner nor his representatives have appeared for the award enquiry. The petitioner's father Thiru.Abdul Rahim, is the original Landowner according to the Award No.02/95, dated 13.06.1996. It is respectfully submitted that the averments made by the petitioner in para 2 that they are in continuous possession denied. The possession of the acquired lands was handed over to the Highways Department on 13.10.1996 itself. All the procedures of Land Acquisition Act 1894 were followed in the Village and the lands were acquired and the changes were carried out in the village accounts. The petitioner has subsequently encroached into the acquired lands. The petitioner being an encroacher in the highways property has encroached the Highways land and claims at present that he is enjoying the Highways property alleging his physical possession.

11. Under the urgency clause sub section (1) and (3) of section 17 of the Land Acquisition Act 1 of 1894, the award was passed and the possession was taken immediately. After 19 years from the passing of award, the petitioner belatedly claims the compensation amount. The Revenue Divisional Officer, Chengalpattu is the competent authority for settlement of claims on due verification of records available with him. The land acquisition was completed and possession taken over by the Highways Department and necessary changes have been carried out in the village accounts. Hence, the averments made by the petitioner in Para 2 regarding continuous possession is denied. It is respectfully submitted that the

averments made by the petitioner in Para 3,4,5,6,7,8,9,10,11,12 and 13 are denied. All the procedures according to the Land Acquisition Act of 1894 is followed and the lands in the Village are acquired as per the procedure. All the landowners of the Village are given ample opportunity to represent their cause with relevant documents to the Land Acquisition Officer before the award was passed. Certain landowners have appeared and requested for Higher Compensation. But their request could not be considered by the Land Acquisition Officer since the lands owners have not submitted any valid supporting documents. The land acquisition proceedings were initiated in the year of 1993 and completed on 13.06.1996. The land acquisition proceedings Under Section 4(i),6,7,8,9(i), 9(3) and 10 were followed and the award was passed under section 11, on 13.06.1996 and the possession was taken by Land Acquisition Officer. Subsequently, necessary ownership of land changes are carried out in Village Accounts are carried out as "Kizhakku Kadar Karai Salai". The petitioner in his claim refers that no compensation is made in his name in this Court, whereas according to the Award No.02/95, dated 13.06.1996 the petitioner's father Thiru.Abdul Rahim, has not appeared for the award enquiry conducted on 23.05.1996. The property referred by the petitioner was already taken over by the Government and it was encroached by the petitioner at present. The village records shows the S.No.99/7A1B, 99/8C1A2 as "ECR or Kizhakku Kadar Karai Salai" and the lands are under Highways Possession. In this juncture, the petitioner asks for the compensation under section 24 of Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 is not valid before law. Hence, all the averments made by the petitioner in Para's 3,4,5,6,7,8,9,10,11,12 and 13 are denied as the details are false and frivolous.

12. The highly competent counsel Mr.Sairam, appearing for the petitioner submits that he is the owner of the land to an extent of about 82 cents which had been purchased under a registered sale deed dated 10.04.1985. The patta and other Revenue Records have been mentioned in the name of the petitioner and he is sole possession and in enjoyment of the same. The 1st respondent had issued a Government Order dated 19.10.1992 for acquiring the petitioner's land for the purpose of widening the East Court Road. The respondent had acquired the said land under urgent requirement without the consent of the owner of the land. The learned counsel further submits that the respondents dispenses with the 5A enquiry. Further, the Government exercised the power to take away the right under section 5A which is mandatory to pay 80% of the compensation within one month from such notification and the project should be completed within two years. Such mandatory requirements had not been complied by the respondents in the instant case. Further, the physical position of the land acquired under the notification issued in the year 1992 had not been taken as of now and the land was not used for the said purpose besides no compensation was paid to the land owner till now, as such

the land acquisition proceedings as per the Government Order is vitiated.

13. The very competent counsel further submits that the petitioner has been in possession from the date of purchase. The petitioner had not received any compensation or not in receipt of any notice. Hence, the very competent counsel entreats the Court to grant relief under section 24(2) of the New Act, which is squarely applicable in the present case considering the current position.

14. The very competent counsel Mr.M.S.Ramesh, appearing for the respondents 1 to 4 submit that the 1st respondent had issued a Government Order for acquiring the petitioner's land and the lands of others for formation of widening the road. Hence, the Special Tahsildar had acquired the said land under the Old Act, after invoking the urgency class. After acquiring the said land, the same had been handed over to the 5th respondent who formed the widening of the road and is maintained by them. Therefore, the possession has not been vested with the petitioner. Now, the road is renamed as East Coast Road.

15. The very competent counsel Mr.M.Sivavarthanam, appearing for the 5th respondents submits that the petitioner had purchased the subject matter of lands in the year of 1985, but the petitioner has become the owner of the property in the year 2004 but the acquisition proceedings had been initiated in the year of 1993 and the same had been served and who also participated in the award enquiry. The compensation amount paid to the erstwhile owner, further the acquired land had been utilized for widening the road and as such the respondents are maintaining the said road and the same is being used by the public. Therefore, the petitioner's prayer is not maintainable under the New Act.

16. Considering the facts and circumstances of the case and arguments advanced by the highly competent counsel on all sides and on perusing the typed set of papers, this Court is of the view that the subject land had been utilized for widening the East Coast Road from two lanes to four lanes. As such the acquired land is under the control and maintenance by the respondents. Hence, the petitioner is not entitled to receive relief under the New Act. Hence, the above writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS V)

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Sub Asst. Registrar

To

1.The Secretary to Government,
Public Works Department (Highways),
Fort St.George, Chennai - 600 009.

2.The Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
Chengalpattu.

3.The Special Deputy Collector (Land Acquisition).
Poonamallee, Chennai.

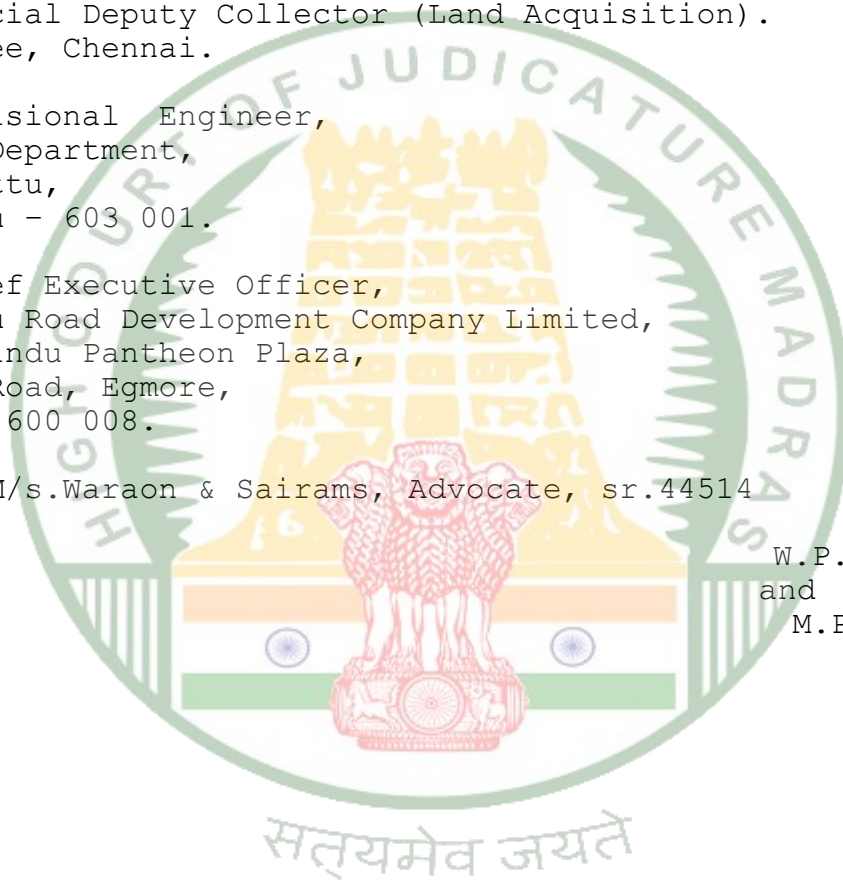
4.The Divisional Engineer,
Highways Department,
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Tamil Nadu - 603 001.

5.The Chief Executive Officer,
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Pantheon Road, Egmore,
Chennai - 600 008.

+1 cc to M/s.Waraon & Sairams, Advocate, sr.44514

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