

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.03.2015

Coram :-

THE HON'BLE MR.JUSTICE V.DHANAPALAN
and
THE HON'BLE MR.JUSTICE G.CHOCKALINGAM

W.A.Nos.1557 and 1558 of 2012
and
M.P.Nos.1 and 2 of 2012 & 1 and 1 of 2014

1. The District Collector,
Kancheepuram District.
2. The Special District Revenue Officer (LA),
SIPCOT - Oragadam & Irungattukottai
Expansion Schemes,
Egmore, Chennai - 8. ... Appellants
in both W.As.

Vs.

1. S.Rajasekaran
2. The Chairman & Managing Director,
SIPCOT,
No.19-A, Rukmani Lakshmipathi Road,
Egmore, Chennai - 600 008. ... Respondents in W.A.No.1557/2012

1. S.Mythili
2. The Chairman & Managing Director,
SIPCOT,
No.19-A, Rukmani Lakshmipathi Road,
Egmore, Chennai - 600 008. ... Respondents in W.A.No.1558/2012

Writ Appeals under Clause 15 of Letters Patent against the common order dated 16.02.2012 made in W.P.Nos.24460 and 24461 of 2011 respectively.

Writ Petitions are preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorari to call for the records pertaining to RCA.No.54/10 dt.2.11.2010 of the Second Respondent and quash the same.

In both W.As.

For Appellants : Mr.T.N.Rajagopalan,
Special Government Pleader
For R-1 : Mr.R.Thiyagarajan, Senior Counsel
for Mr.S.Rameshkumar
For R-2 : Mr.Sudharsana Sundar
For R-3 : Mr.R.Ravichandran
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Date of Reserving the Judgment : 25.02.2015
Date of Pronouncement : 31.03.2015

COMMON JUDGMENT

G.CHOCKALINGAM, J.

Both the above writ appeals are directed against the common order dated 16.02.2012, made in W.P.Nos.24460 and 24461 of 2011 respectively, wherein the relief sought for was to quash the proceedings of the second respondent in RCA 54/2010, dated 02.11.2010, rejecting the request of the writ petitioners for payment of compensation to the lands in survey numbers which have been allotted for the public utility such as Road, Park and Children's Playground.

2. The case of the writ petitioners / first respondent in both the writ appeals is that their lands were acquired by the Government of Tamil Nadu for SIPCOT, Oragadam & Irunkattukottai Expansion Scheme vide Government Gazettee dated 10.03.2008. Subsequently, the said lands were handed over by SIPCOT to M/s.Ashok Leyland for valuable consideration, for the purpose of starting an Industry under Special Economic Zone and compensation was fixed at Rs.150/- per sq. ft. It is the further case of the writ petitioners that they have made efforts to receive the compensation for their lands vide their letter dated 03.12.2010 and prior to that on 05.04.2010 they have requested the second respondent to issue them an offer letter. As there was no response from the second respondent, the writ petitioners were constrained to file a writ petition in W.P.No.16675 of 2010 seeking a direction to dispose of their representation and the said writ petition was disposed of by this Court on 29.07.2010. It is the further case of the writ petitioners that the second respondent gave an oral hearing on 15.09.2010 and recorded their statements and on 02.11.2010, the second respondent, by his proceedings in R.C.A.54/2010, declined their request for letter of offer for part of their lands on the ground that such of the lands ought to have been earmarked for public purposes viz., road, park, OSR etc., and the same ought to have been gifted to Local Authorities and compensation will be paid not to the land owners but only to the Local Bodies.

3. It is the further case of the writ petitioners that the second respondent had failed to appreciate that the lands, which were earmarked for public purpose, were not handed over to Local

Authorities nor any gift deed was executed by the previous owner transferring or conveying the right and title to the Local Bodies. The further case of the writ petitioners is that the second respondent ought to have issued an offer letter fixing the rate of compensation to the writ petitioners instead of giving a presumptive reply stating that there is no scope for granting compensation for the lands earmarked for public purpose. Aggrieved by the decision of the second respondent denying to pay compensation to the writ petitioners for their lands acquired by the Government, the writ petitioners have filed writ petitions in W.P.No.24460 and 24461 of 2011 before this Court praying to quash the proceedings of the second respondent dated 02.11.2010.

4. Learned Single Judge, after hearing both sides, had allowed the said writ petitions filed by the writ petitioners by holding as under:

"18. In the present case, the lands before acquisition itself were in approved layout and certain areas have been shown as open space for public use. But, however when the acquisition of land took place for industrial scheme conceived by the SIPCOT, the purpose of use of the land got completely changed and even the areas which were reserved for open space is no longer relevant. The SIPCOT sold the lands to the private party in respect of the entire extent. Those lands were no longer kept as open space meant for a park or a street. After obtaining the land cost from the private companies, necessary compensation will have to be paid to the real owners.

19. In the present case, the local authorities for whose cause the respondent SIPCOT is pleading, have not become owners of the land either by way of gift deed or by way of any operation of law. On the other hand, admittedly no gift deed has been executed in favour of the local body. Even otherwise, as held by the Supreme Court in catena of decisions referred to above, the local body does not become the owner of the land and it is merely a custodian. Further the Town and Country Planning Act is not an Act providing for land acquisition. Hence, the contentions raised by the respondents cannot be countenanced by this Court.

20. In view of the above, both writ petitions will stand allowed and the impugned communication will stand set aside. The respondents are hereby directed to provide appropriate compensation to the two petitioners in respect of the lands owned by them in various survey numbers which were acquired by the respondents in favour of SIPCOT whether or not it is house site or land meant for public open

space. This exercise shall be carried out within a period of 12 (twelve) weeks from the date of receipt of copy of this order".

As against the said order passed by the learned Single Judge allowing the writ petitions, the District Collector and the Special District Revenue Officer (LA) / respondents 1 and 2 in the writ petitions are before this Court by way of the above two writ appeals.

5. Heard Mr.T.N.Rajagopalan, learned Special Government Pleader appearing for the appellants, Mr.R.Thiyagarajan, learned Senior Counsel for Mr.S.Rameshkumar, learned counsel appearing for the first respondent, Mr.Sudharsana Sundar, learned counsel appearing for the second respondent and Mr.R.Ravichandran, learned counsel appearing for the third respondent.

6. Learned Special Government Pleader appearing for the appellants in both these writ appeals would contend that the order of the learned Single Judge is contrary to law, weight of evidence and probabilities of this case. It is the further contention of the learned Special Government Pleader that the learned Single Judge ought to have seen that in G.O.Ms.No.141, Industries, SIPCOT, dated 14.07.2008, it has been clearly stated that in respect of the approved layouts, the lands reserved for public purpose if they were handed over to the local bodies, the compensation will have to be given only to the local bodies. Further, the learned Single Judge ought to have seen that as per the approved layout, the first respondent did not hand over the lands set apart for public purpose to the local panchayat by executing gift deeds etc., as required. The learned Special Government Pleader further contended that the learned Single Judge ought to have seen that since the lands set apart for the public purpose became vest with the local panchayat, the writ petitioners are not entitled for any compensation. It is further contended that the learned Single Judge has failed to consider the fact that non-execution of gift deed in favour of the local authority and non-handing over of the lands set apart for public purposes in the approved layout do not mean that the local body is not entitled for any compensation for the said lands. The learned Special Government Pleader also would contend that the learned Single Judge ought to have held that since the writ petitioners are not fulfilling the conditions of the approved layout to hand over the lands to the local authority through gift deed, they are not entitled for any compensation. In view of the above facts and circumstances, the learned Single Judge ought to have dismissed the writ petitions filed by the writ petitioners. But contrary to that, the learned Single Judge had allowed the writ petitions. Therefore, the learned Special Government Pleader prayed for setting aside the common order passed by the learned Single Judge in W.P.Nos.24460 and 24461 of 2011, dated 16.02.2012, by allowing the writ appeals.

7. Learned Special Government Pleader appearing for the appellants would further contend that after the approval of layout,

the land set apart for public purpose vest with the local body and the local body became the owner of the property and whatever the compensation, it is due to the local body. Since the local body is necessary party, the petitions in M.P.Nos.1 and 1 of 2014 filed by the appellants to implead the Commissioner, Sriperumbudur Panchayat Union, Sriperumbudur, Kancheepuram District, as one of the parties in these writ appeals have to be allowed and the Commissioner of Sriperumbudur Panchayat Union has to be impleaded as third respondent in both the writ appeals.

8. Learned Senior Counsel appearing for the writ petitioners / first respondent in both the writ appeals would vehemently contend that the learned Single Judge, after going through the entire records and after analysing all the material documents placed before this Court, came to a correct conclusion that since there was no transfer of title effected and no gift deed was executed in favour of the local body, the writ petitioners are the owners of the land and they are only entitled to receive compensation in terms of Article 300-A of the Constitution of India and without their consent, their lands cannot be acquired.

9. Further, the learned Senior Counsel appearing for the writ petitioners / first respondent in both writ appeals would contend that in this case, the learned Single Judge of this Court suo moto impleaded the Chairman and Managing Director, SIPCOT, Chennai - 600 008 as third respondent in both the writ petitions. After passing the above order in favour of the writ petitioners alone, the appellants have filed M.P.Nos.1 and 1 of 2014 to implead the Commissioner of Sriperumbudur Panchayat Union as necessary party in these two writ appeals. Already there is a chance to file petition for impleadment in writ petition stage, but the appellants have failed to do so. It is the contention of the learned Senior Counsel appearing for the writ petitioners that the Commissioner of Sriperumbudur Panchayat Union is not a necessary party and hence the learned counsel prayed for dismissal of the petitions filed for impleadment. Further, since there is no illegality or infirmity in the common order passed by the learned Single Judge, the learned Senior Counsel prayed for dismissal of the writ appeals filed by the appellants.

10. Learned counsel appearing for the third respondent / Commissioner of Sriperumbudur Panchayat Union has filed a counter and contended that if layout is approved by the competent authority, in that layout some of the public places like Road, Poonga, Children's Park and other public places automatically the right goes to the local body irrespective of the facts that owner executed the gift deed or not, the owner has relinquished his right automatically as soon as the layout is approved by the competent authority. The settled legal proposition of law is that since the writ petitioners have not executed any gift deed in favour of the local body, they cannot take advantage of their own wrong and they cannot claim the entire compensation for the acquired lands including the lands which were set apart for the public purpose. In G.O.Ms.No.141, Industries Department, dated 14.07.2008, it has been

clearly stated that in respect of the approved layout and the lands reserved for public purpose, compensation will have to be given only to the local bodies. Therefore, the learned counsel for the third respondent contended that without challenging the above said Government Order, the writ petitioners are not entitled to any compensation amount and the writ petitions are not maintainable. Hence, the learned counsel for the third respondent / Commissioner of Sriperumbudur Panchayat Union prayed for allowing of the writ appeals by dismissing the writ petitions.

11. We have considered the rival submissions made by the learned counsel on either side and we have also carefully perused the entire files produced before us and the common order of the learned Single Judge made in W.P.Nos.24460 and 24461 of 2011, dated 16.02.2012.

12. It is admitted by both sides that the sites in question in the writ appeals form part of the layout which was approved by the Government. The writ petitioners, who are the promoters, are the owners of the lands. Now, the main question involved in this case is, for the lands allotted specifically for Road, Children's Park and other public purpose who is the owner and who is entitled to receive compensation?. In this case, before the learned Single Judge, the learned counsel for the writ petitioners has produced the following judgments of the Hon'ble Apex Court:-

[i] Pt. Chet Ram Vashist Vs. Municipal Corpn. of Delhi reported in [(1995) 1 SCC 47]

[ii] Bombay Dyeing & Mfg. Co. Ltd., (3) Vs. Bombay Environmental Action Group, reported in [(2006) 3 SCC 434]

[iii] Chairman, Indore Vikas Pradhikaran Vs. Pure Industrial Coke & Chemicals Ltd., reported in [(2007) 8 SCC 705] and

[iv] Babulal Badriprasad Varma Vs. Surat Municipal Corporation reported in [(2008) 12 SCC 401].

13. On a perusal of the above judgments of the Hon'ble Apex Court, it is very clear that even though the lands were set apart for public purpose like Road and Children's Park, the person, who is the promoter and who got approval of the layout is deemed to be the owner of the lands, unless and otherwise he transfers the lands to the local body. As per the approval, one of the condition is, the party, who got approval, has to transfer the lands to the local body by way of a gift deed. Even then one of the condition laid down for the approval of the layout cannot be mandate to execute the gift deed. As per Section 47 of the Tamil Nadu Town and Country Planning Act, 1971, after coming into operation of any development plan in any area, no person other than any State Government or the Central Government or any local authority shall be or cause to be

sell any land or carry out any development in that area otherwise than in conformity with such development plan. It is necessary to refer to Section 47 of the Tamil Nadu Town and Country Planning Act, 1971, which reads as follows:-

"47. Use and development of land to be in conformity with development plan.- After the coming into operation of any development plan in any area, no person other than any State Government or the Central Government, or any local authority shall use or cause to be used, any land or carry out any development in that area otherwise than in conformity with such development plan:

Provided that the continuance of the use of any land for the purpose and to the extent for, and to which it is being used on the date on which such development plan comes into operation, may be allowed for such period and upon such terms and conditions as may be specified in such development plan."

14. Reading of the above Section, the learned Special Government Pleader appearing for the appellants would argue that the land in question, which is set apart for public purpose like Road, Poonga and Children's Park etc., vest with the local bodies. It cannot be presumed that because Section 47 of the Tamil Nadu Town and Country Planning Act, 1971 is in force, the land automatically vest with the Government without following any procedure for transfer of title from the land owners. Hence, Section 47 of the Tamil Nadu Town and Country Planning Act, 1971 will not in any way help to the appellants and therefore, the argument of the learned Special Government Pleader that the land automatically vest with the local body is not acceptable one.

15. It is the admitted case of the appellants that for the land in question, which was set apart for the public purpose in the approved layout, the writ petitioners have to execute a gift deed in favour of the local body. Since the writ petitioners are the owners of the entire land even after the approval, they are entitled for compensation. The owners of the lands except the lands set apart for public purpose have sold the plots/lands to individual owners. Hence, even after the approval of the layout, the local body has got some right over the lands set apart for public purpose. So the lands set apart for public purpose in the approved layout can be used by the public and the plot owners and other local body etc., Because of that, we cannot presume that the lands were automatically transferred to the local body or vest with the local body and that is why, the one of the condition laid down in the approved layout is that they are insisting the writ petitioners to execute a gift deed in favour of the local body. In this case, admittedly, even though the layout was approved, there was no gift deed executed in favour of the local body till the

acquisition proceedings is over. Hence, the title to the lands in question is not at all transferred to the local body and the local body cannot be the legal owner of the lands in question.

16. Before the learned Single Judge, the learned counsel for the SIPCOT has stated that the matter cannot be heard without SIPCOT being made as a party as they are the necessary and proper party and sought for time to get themselves impleaded. Hence, the learned Single Judge suo motu impleaded the SIPCOT as one of the party to the writ petitions.

17. In this case, the writ petitioners are having only limited right over the property and therefore they are not entitled to full compensation as like as full owners of the property, but they are entitled to compensation proportionate to the rights in the approved layout. In view of the above facts and circumstances, we are of the considered view that since the property was not transferred to the local body, the local body is not at all entitled for any compensation in the approved layout set apart for public purpose. Further, in Clause 4(v) of G.O.Ms.No.141, Industries (SIPCOT-LA) Department, it is stated as follows:-

4.(v) The District Collector should also ensure that the roads, common space and OSR lands in the approved layout subjected to acquisition are gifted to the concerned local bodies. In case SIPCOT takes over, they should compensate the local bodies.

18. On a careful reading of the Clause 4(v) of G.O.Ms.No.141, it is clear that till the gift deed was executed in favour of the local body, the local body will not acquire any right or title over the approved layout and hence, the local body is not entitled for any compensation. Hence, the above G.O.Ms.No.141 is in favour of the writ petitioners.

19. Further, in this case, on a perusal of the entire files produced before us, it is seen that after the acquisition proceedings, the lands were acquired from the land owners by the Government of Tamil Nadu for SIPCOT, Oragadam & Irunkattukottai Expansion Scheme vide Government Gazettee dated 10.03.2008. Subsequently, the said lands were handed over by SIPCOT to M/s.Ashok Leyland for valuable consideration, for the purpose of starting an Industry under Special Economic Zone and compensation was fixed at Rs.150/- per sq. ft. In view of the above facts and circumstances, the lands were acquired by the Government for public purpose and the writ petitioners have a right and the local body has no right in the above lands. Hence, the argument of the learned Special Government Pleader that the lands in question automatically vest with the local body and the local body alone is entitled for compensation is liable to be rejected.

20. In view of the above facts and circumstances, we are of the considered view that since the lands were not at all transferred or vest with the local body, the local body is not a necessary party in the writ appeals and therefore, M.P.Nos.1 and 1 of 2014 filed by the appellants for impleadment are liable to be dismissed. Further, even though the writ petitioners are having right and title in the said lands, they are not having the full right unlike the other land owners, compensation has to be ascertained for the limited right of the land holders. In view of the above facts and circumstances, we are of the considered view that there is no illegality or infirmity in the order passed by the learned Single Judge and both the writ appeals are liable to be dismissed with the above observation.

21. In the result, both these writ appeals fail and the same are dismissed. However, at the time of approval of layout, if the local body has made it clear that the gift deed should be executed, otherwise the approval is not valid, it is open to the local authority to establish its case that they have a claim/right over the land in question which was earmarked for public purpose. In that event, the appropriate authority shall take into consideration all the materials available before them and determine who would be the right person to claim the compensation. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1. The Chairman & Managing Director,
SIPCOT,
No.19-A, Rukmani Lakshmipathi Road,
Egmore, Chennai - 600 008.

2. The Commissioner,
Sriperumbudur Panchayat Union,
Sriperumbudur,
Kanchipuram District.

+1 cc to Mr.R.Ravichandran, Advocate,sR.18044

+1 cc to M/s.S.Sudharsana sundar, Advocate,SR.18489.

+1 cc to Government Pleader,SR.18343.

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krd 9/4

Judgment made in
W.A.Nos.1557 and 1558 of 2012