

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.29859 of 2015 and
M.P.No.1 of 2015

1.Babyammal
2.G.Jothilingam
3.G.Basker
4.G.Thenarasu
5.G.Narendharan
6.G.Manivannan ... Petitioners

V.

1.The Land Reforms Commissioner,
Chepauk, Chennai - 600 005.
2.The Assistant Commissioner,
Urban Land Ceiling,
No.5, Sugandhi Street, Ponnammallee,
Chennai - 600 055. .. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records on the file of the second respondent relating to the letter dated 05.08.2015 in N.K.No.371/2015/C by quashing the same and to disburse the compensation to the petitioners under section 12 of the Tamil Nadu Urban Land Ceiling Act, 1978 as amended relating to Survey No.68/2 measuring an extent of 3800 sq.mtrs (0.38.8 hectare), S.No.68/3A 500 sq.mtrs (0.05.0 hectare) S.No.68/3B 700 sq.mtrs (0.12.0 hectare) and S.No.69/1 3500 sq. mtrs (0.35.0 hectare) of a total extent of land measuring 8500 sq.mtrs excluding 500 sq.mtrs measuring an total extent of 8000 sq. mtrs under the urban land ceiling proceedings at No.16, Karunakaracheri Village, Thiruvallur District.

For Petitioner .. Mr.David Tyagaraj
For Respondents .. Mr.R.Rajeswaran
Special Government Pleader

ORDER

The petitioners in this writ petition seek for issuance of writ of certiorarified mandamus to quash the proceedings of the

second respondent dated 05.08.2015 and disburse the compensation to the petitioners under Section 12 of the Tamil Nadu Urban Land Ceiling Act relating to the properties mentioned by the petitioner which have been taken over under the provisions of the said Act.

2.The case of the petitioners is that an extent of 8000 sq. mtrs. was acquired under the provisions of the Act from the first petitioner's husband M.Ganesan who was cultivating the said lands. The first petitioner's husband died on 14.04.1976 leaving behind the legal heirs who are the petitioners hererin.

3.It is the petitioners' further case that the notice under Section 9(5) of the Act was issued on 12.05.1997 in the name of the dead person. However, the petitioners primary grievance is that till date the compensation has not been fixed and not disbursed. Since there was stalemate in the matter, the petitioners have approached this Court and filed a writ petition in W.P.No.10574 of 2015 wherein prayer was made to direct the second respondent to dispose of the representation for the purpose of payment of compensation. The said writ petition was disposed by order dated 13.04.2015 with a direction to the second respondent to consider the representation. Pursuant to which the impugned order has been passed only intimating that the proposal is being recommended to the Government and after the Government finalizes the compensation will be paid.

4.Counter affidavit has been filed by the second respondent on behalf of the respondents in which it has been accepted that the zonal value has not yet been determined and that 8000 sq. mtrs. was declared as a surplus land and possession was handed over to the Revenue authorities on 03.05.1999 . Further, in the counter affidavit in paragraph 7, it is admitted that the amount payable under Section 12 of the Act was not fixed by the Government and only after the earlier writ petition was filed by the petitioners, action has been initiated and proposal has been submitted on 26.11.2015. Thus, it is evident that though the land was taken over in 1999, the respondents did not take any steps to pay the compensation to the land owners.

5.The Hon'ble Supreme Court in the case of Tukaram Kana Joshi V. Maharashtra Industrial Development Corporation reported in (2013) 1 SCC 353, while considering the aspect relating to right to property held that right to property is now considered to be not only constitutional or statutory right but also a

human right though it has not a basic feature of the Constitution or a fundamental right. The said decision arose out of the judgment of the High Court of Bombay by which, the High Court rejected the claim of the appellants for compensation due to them for the land taken over by the respondent authorities without resorting to any procedure prescribed by law. Though the facts are slightly different from the case on hand, the Hon'ble Supreme Court examined the aspect with regard to right to property and held that it is not permissible for any welfare State to uproot a person and deprive him of his fundamental/constitutional/human rights, under the garb of industrial development. Further, while testing the correctness of the findings of the High Court of Bombay holding that the appellants have approached the authorities for compensation belatedly, it was held that it is contrary to the evidence available on record and cannot be accepted and excused as it remains a slur on the system of governance and justice alike and an anathema to the doctrine of equality, which is the soul of our Constitution. Further, it was pointed out that even under valid acquisition proceedings, there is a legal obligation on the part of the authorities to complete such acquisition proceedings at the earliest, and to make payment of requisite compensation. Further, reliance was placed on the decision in the case of K.Krishna Reddy V. Collector reported in (1988) 4 SCC 163 wherein the Hon'ble Supreme Court pointed out that the enhanced compensation must be determined without loss of time.

6.The learned Special Government Pleader appearing for the Respondents submitted that the decisions arose out of compulsory acquisition of land under the Land Acquisition Act but whereas in the instant case, the lands have been declared as surplus under Urban Land Ceiling proceedings as the land owner was holding more land than the prescribed limit.

7.Though at the first blush the argument appears to be convincing, on a closer scrutiny, it does not merit acceptance. The purpose of the urban land ceiling may be different, but nevertheless it is akin to land acquisition proceedings where the land owner is divested of the land he owns on the ground that the Government has fixed a ceiling limit. Section 12 of the Act states that he is entitled to payment of compensation and when the land were acquired and taken over in 1999, no appreciable steps were taken by the respondents till 2015, though the petitioner may be partially guilty of not having approached the authorities in time. However, the action was initiated in 1997 against a dead person, the first petitioner's husband, this would vitiate the entire proceedings. However, the petitioners do not propose to challenge the acquisition proceedings but they seek for compensation.

8. In the light of the above, the Writ Petition is allowed and the impugned order is set aside and the respondents are directed to submit appropriate proposal to the Government computing the compensation based on the land value which was prevailing as on 13.04.2015, the date on which the earlier Writ Petition was disposed by this Court. The above proposal shall be submitted within a period of three months from the date of receipt of copy of this order, after which the appropriate approval shall be obtained and the amount disbursed at the earliest. No costs. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1. The Land Reforms Commissioner,
Chepauk, Chennai - 600 005.
2. The Assistant Commissioner,
Urban Land Ceiling,
No.5, Sugandhi Street, Ponnammallee,
Chennai - 600 055.

+2cc to Mr. David Tyagaraj, Advocate Sr.65459

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W.P.No.29859 of 2015

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srg 14/12/2015

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