

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2015

CORAM

THE HONOURABLE MR.JUSTICE N. KIRUBAKARAN

W.P.No.30635 of 2015

P. Lingan

...Petitioner

Vs.

1.

1.The Chairman,
Tamilnadu Housing Board,
Nandhanam, Chennai - 35.

2.The Special Tahsildar,
(Land Acquisition) Tamil Nadu Housing
Board, Nandhanam, Chennai - 600 005.

3.The Executive Engineer,
Tamil Nadu Housing Board,
K.K.Nagar, Chennai 600 078.

4.The Tahsildar,
GST Road, Kadapperi,
Tambaram - 600 045.

...Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Declaration declaring that the acquisition of land measuring 14 cents in Survey No.233/5A of Tambaram Village, Kancheepuram district has lapsed in view of sub Section 2 of Section 24 of Act 30/2013 so as to enable the fourth respondent to incorporate the name of the petitioner as owner of the land referred to above in all revenue records like patta, chitta and adangal for its issuance to the petitioner.

For petitioner : Mr.Ramesh for Mr.T.Thiyagarajan

For RR1 & RR3 : Mr.Vivekavanam

For RR2 & RR4 : Mrs.M.E.Raniselvam
Additional Government Pleader

O R D E R

By consent of both parties, this writ petition is taken up for final disposal in the admission stage itself.

2. Writ Petition is filed for issuance of a Writ of Declaration declaring that the acquisition of land measuring 14 cents in Survey No.233/5A of Tambaram Village, Kancheepuram district has lapsed in view of sub Section 2 of Section 24 of Act 30/2013 so as to enable the fourth respondent to incorporate the name of the petitioner as owner of the land referred to above in all revenue records like patta, chitta and adangal for its issuance to the petitioner.

3. The petitioner contends that he is the owner of the property having purchased the property comprised in Survey No.233/5 by virtue of sale deed dated 25.10.2004 bearing documents Nos.7385 and 7386 of 2004 from one Mrs.G.Geeta and Mr.P.Mathivanan respectively. After purchase, they applied to local body for sub division of the land and Member Secretary of CMDA approved sub division by an order dated 29.11.2005. Planning permission to construct a building was granted on 29.03.2006 and on 08.12.2006. Again, the petitioner applied for construction of a commercial building and sanction was granted on 18.11.2009 for construction of stilt plus two floors. After the construction, the building has been assessed to property tax and the petitioner has been paying tax till date and enjoying the property.

4. The petitioner questioned the land acquisition proceedings dated 15.05.1978 in W.P.Nos.24170 and 24171 of 2005 challenging the notification issued under Section 4 (1) and Section 6(1) declaration dated 06.06.1981 and further sought direction to the respondent to convey the land to the petitioners.

5. Two writ petitions have been filed in respect of two plots, viz., W.P.Nos. 24170 and 24171 of 2005. Initially, learned Single Judge of this Court allowed the writ petition on 25.08.2005 and thereafter, the appeal filed by the Government was allowed on 27.06.2008. However, the petitioner continues to be in possession of the property. Meanwhile, the new Act (The Right to Fair Compensation and Transparency in Land Acquisition and Rehabilitation and Resettlement Act, 2013) came into force under Section 24 (2) of the Act. The petitioner seeks a prayer that the acquisition proceedings got lapsed as the petitioner is in physical possession of the property.

6. Heard Mr.Ramesh, learned counsel for the petitioner and Mr.Vivekavanam, learned counsel appearing for respondents 1 and 3 and Mrs.M.E. Raniselvam, learned Additional Government Pleader

appearing for the respondents 2 ad 4.

7. Mr. Ramesh, learned counsel appearing for the petitioner very strenuously argued that the possession of the property remains with the petitioner and order was already granted in favour of the petitioner and approval was granted by the local authorities for construction and consequently, levy of tax on the property has been made and it would only denote that the possession is not taken and therefore, right was approved to the petitioner. However, Mr.Vivekavan, learned counsel appearing for respondents 1 and 3 would state that the possession itself was taken as early as on 21.10.1986 and he has purchased the properties subsequently. In this regard, he would also submit that the petitioner is only a subsequent purchaser.

8. Heard both the parties and perused the records.

9. Admittedly, the acquisition proceedings were started as early as on 15.05.1978 by notification issued under Section 4 (1) and Section 6(1) declaration dated 06.06.1981. On 07.06.1978, in respect of both the properties, after the acquisition proceedings, the petitioner subsequently, purchased the property only on 25.10.2004.

10. It is well settled law that subsequent purchaser cannot have any right to challenge the land acquisition proceedings. Moreover, the petitioner challenged the proceedings in W.P.Nos.24170 and 24171 of 2005 which were dismissed by the Hon'ble Division Bench of this Court by W.A.Nos.1511 and 1512 of 2007 dated 27.06.2008.

Paragraphs 8 and 9 of the Judgment of W.A.Nos.1511 and 1512 of 2007 dated 27.06.2008 are extracted as follows:

8. In a recent case, when similar issue came up for consideration before the Supreme Court in Swaika Properties (P) Ltd., Vs.State of Rajasthan, (2008) 4 SCC 695, the Supreme Court held that the writ petition filed after passing of award deserves to be dismissed without going into the merits of the case. The writ petitioners can be said to have waived by their own inaction their objection to the acquisition on the ground of extinction of public purpose. The court further held that such a writ petition deserve to be dismissed on the ground of delay and laches.

9. In view of the Division Bench decision of this Court and the Supreme Court decision as referred to above and the fact that the learned single judge, without discussion of the case of the respondents/writ petitioners passed a mechanical order, there is no other option, but to set aside the order impugned in the writ appeals. The impugned order dated 25.08.2005 passed in W.P.Nos.24170 and 24171 of 2005 is accordingly set aside. Both the writ appeals are allowed but there shall be no order as to costs. Consequently, M.P.Nos.3 and 4 of 2007 are closed.

11. When the petitioner attempted to challenge the proceedings which were already negatived by this Court, in the guise of invoking new Act, the petitioner cannot file this present petition. Only the persons viz., the owners remain in possession after acquisition proceedings, who are entitled to challenge the proceedings, whereas the petitioners are the subsequent purchasers. That apart, the documents produced by Mr.Vivekavanam, learned counsel appearing for respondents 1 and 3 would show that the property was taken possession as early as on 21.10.1986 itself. Merely because the petitioner obtained approved plan from the authorities and constructed superstructure and the same was levied tax and the petitioner also got subsequent patta in his name, they will not create any right. Hence, these documents cannot be used by the petitioner to assert right over the property. Therefore, the present writ petition filed by the petitioner is nothing but an abuse of cause of law. Therefore, the writ petition is liable to be dismissed and accordingly, it is dismissed. No costs.

gv

सत्यमेव जयते

Sd/-
Asst.Registrar (CS II)

/true copy/

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Sub Asst. Registrar

To
1.The Chairman,
Tamilnadu Housing Board,
Nandhanam, Chennai - 35.

2.The Special Tahsildar,
(Land Acquisition) Tamil Nadu Housing
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Tambaram - 600 045.

+1 cc to The Government Pleader, sr.58759

+1 cc to Mr.T.Thiyagarajan, Advocate, sr.58673

+1 cc to Mr.V.Vivekavanam, Advocate, sr.59100

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kra 23.11.2015



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