

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.19568 of 2014
and
M.P.Nos.1 and 2 of 2014

Order Reserved on 15.12.2014 Judgment Pronounced on 20.08.2015

1.C.Govindarajan
2.C.Murugesan
3.K.Sundaram
4.K.Murugan

...Petitioners

Vs.

1.State of Tamil Nadu, rep. by its
Secretary to Government,
Housing and Urban Development Dept.,
Fort St. George, Chennai - 600 009.

2.The Tamil Nadu Housing Board,
rep. by its Managing Director,
Anna Salai, Nandanam,
Chennai - 600 035.

3.The Superintending Engineer,
Tamil Nadu Housing Board,
Salem Housing Unit, Salem.

4.The Special Tahsildar,
(Land Acquisition)
Salem Town, Salem District.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the entire records relating to the Impugned

Order passed by the first respondent vide Lr. No.8529/LA42/2010-09, dated 30.12.2013 and quash the same and consequently direct the first respondent to pass orders for the exclusion of petitioners' land comprised in S.No.197/6 measuring an extent of 0.26 cents, S.No.197/7 measuring an extent of 0.61 cents, S.No.197/11 measuring an extent of 0.08 cents, S.No.197/12 measuring an extent of 0.33 cents, S.No.197/13 measuring an extent of 0.11 cents, S.No.197/14 measuring an extent of 0.02 cents, totalling to Acre 1.41 cents, situated at Alagapuram Pudur Village, Salem Taluk and District, from the Land Acquisition proceedings within a time fixed by this Court.

For Petitioners : Mr.S.Doraisamy

For Respondents : Mr.M.S.Ramesh (for R1 and R4)
Additional Government Pleader
Mr.R.V.Babu (for R2 and R3)

O R D E R

The fourth petitioner submits that the father of the first and second petitioner namely P.Chinnathambi Gounder and the father of the petitioners 3 and 4 namely Kullappa Gounder were the owners of the agricultural lands comprised in

Survey Nos.	Extent
197/6	0.26
197/7	0.61
197/11	0.08
197/12	0.33
197/13	0.11
197/14	0.02

Total Acre 1.41 cents

and the above lands are situated at Alagapuram Pudur Village, Salem Taluk and District (hereinafter called "the said property" in short). He states that their fathers were in absolute possession, enjoyment and occupation of the said property till their life time and after that they are in possession and enjoyment of the same. He states that the Government of Tamil Nadu initiated the Land Acquisition Proceedings under the Provisions of Land Acquisition Act (Act 1 of 1894) in respect of lands comprised in various survey numbers situated at Alagapuram Pudur Village, Salem Taluk and District for public purpose to "wait for construction of Houses by the Tamil Nadu Housing Board" and issued Notice under Section 4(1) Notification in G.O.Ms.No.1058 Housing and Urban Development Department dated

06.07.1978 and published in Tamil Nadu Government Gazette No.29-A dated 26.07.1988. Subsequently the Section 6 Declaration was issued in G.O.Ms.No.715, Housing and Urban Development Department dated 03.06.1980 and published in Tamil Nadu Government Gazette No.24-A dated 25.06.1980.

2.He states that in the said Land Acquisition Proceedings, the lands of the petitioners described in Para-2 supra are also included and acquired by the respondents. He states that the Award No.10/86-87 under Section 11 of the Act was passed on 19.09.1986 in respect of petitioners' property. He states that though the acquisition proceedings were culminated into an Award on 19.09.1986, but till date may have not received the Award amount and possession of the said property still with them and the respondents did not take steps to take possession of the said property from the petitioners herein. He states that number of Land Owners' approached the first respondent Government with the request to withdraw and exclude their lands from the Acquisition proceedings and the same were considered favourably by the respondents, the details of which are given below:-

(A)The Government excluded several lands covered in the said Land Acquisition proceedings from the land acquisition proceedings as per Govt. letter No.8726/G2/81-82 Housing and Urban Development Department dt. 05.08.1981 vide G.O.No.(2)/HOU/3809/81 and the Withdrawal Notification U/Sec.48 was published in Tamil Nadu Government Gazette dt. 09.09.1981 in accordance with G.O.Ms.No.2135 dt. 24.09.1979;

(B) The lands comprised in S.F.No.195/1 measuring 1.04 acres belonging to Mr.K.Kandasamy notified for acquisition has also been excluded by the Government vide their Lr.No.12415/S2/88-1 dt. 15.06.1988 of Housing and Urban Development Department and the land acquisition proceedings were withdrawn by the respondents;

(C) The lands comprised in S.F.No.197/2,3,4,5,8,15 and 16 measuring 1.98 acres belonging to Thiru. S.S.Elumalai Gounder were excluded from the land acquisition proceedings by the Government vide their Lr.No.43362 A/82/87-2 on payment of Development Charges;

(D) The lands comprised in S.F.No.199/1A and 1C to an extent of 3.74 acres of Alagapuram Pudur Village belonged to Thiru.R.Thiagarajan have also been excluded by the Government from the acquisition proceedings pursuant to the Judgment of this Hon'ble Court delivered in W.P.No.15093 of 1990 dt. 27.02.1991;

(E) The Lands comprised in Survey No.199/2, 3 and 4 measuring 2.59 acres, belonging to Dr.Sundaram and Kamala Sundaram have also been excluded from Land acquisition proceedings pursuant to the Judgment of this Hon'ble Court delivered in W.P.Nos.11975 and 11976 of 1986

dt. 15.07.1991 and subsequently confirmed by the Hon'ble Supreme Court of India in the year 2010.

(F) Further the surrounding lands of 22 acres belongs to Thiru.S.K.Karunanithi and their family members were acquired by and as per the Tamil nadu Government Gazette No.142/Housing/ Dt.25.03.77 but the land owners moved this Hon'ble Court for exclusion of their lands from the acquisition proceedings and the writ petition filed by the land owners were rejected and subsequently they made a plea to the Government which in turn excluded these lands too by Government Letter No.45907/G2/79-22 dt. 14.02.1981;

3.He states that on 01.12.1999 itself, the third respondent herein has recommended to the second respondent stating that there is no approach road to reach the petitioners' property and there is no possibility of utilizing the petitioners' lands for any of the Neighbourhood Schemes. He states that on 20.06.2013, the Executive Engineer, Tamil Nadu Housing Board Salem, again recommended that the acquired lands may be excluded from the acquisition proceedings because of the impossibility of its utilization for any Schemes. He states that they have also submitted several representations to the respondents and others right from the year 2001 onwards, requesting them to withdraw their lands from the acquisition proceedings and their last representation dated 07.11.2013 was submitted to the first respondent herein and the first respondent rejected the said request, vide Lr.No.8529/LA42/2010-09, dated 30.12.2013 stating that the said property is very much required for the purpose of "Integrated Housing Scheme" proposed by the second respondent herein. He states that the respondents herein have already dropped the acquisition proceedings in respect of major portions of the acquired lands and admittedly the possession of the said property is yet to be taken over by the respondents herein from the petitioners and hence the entire actions of the respondents are illegal, arbitrary, discriminatory and in violation of the constitutional rights of the petitioners herein.

4.The fourth respondent namely the Special Tahsildar (Land Acquisition) has filed a counter statement and resisted the above writ petition. It is submitted that the Executive Engineer and Administrative Officer, Salem Housing Unit, Salem has applied for acquisition of lands for an extent of 17.67 Acres in Alagapuram and Alagapurampudur Villages in Salem Taluk and District. In this case Draft Notification under Section 4(1) of the Land Acquisition Act was approved in G.O.Ms.No.1058 Housing and Urban Development Department dated 06.07.1978 and published as item II(2) Housing 3636/78 at Pages 6 & 7 of supplement to Part-II Section 2 of the Tamil Nadu Government Gazette dated 26.07.1978 5.A enquiry was conducted on 25.09.1978 after service of notices on the interested persons and proper publication in the Village. The objections received during 5A enquiry were referred to the Executive Engineer and Administrative

Officer, Salem Housing Unit, Salem for remarks on 12.10.1978. The remarks received from the Executive Engineer and Administrative Officer, Salem Housing Unit, Salem were communicated to the objectors concerned on 21.2.1979. The 3(b) enquiry was posted to 12.3.1979 for filing further objections, if any. The 3(b) enquiry was conducted in the manner prescribed and proceedings were issued over ruling the objections by the Land Acquisition Officer on 11.4.1979 D.D. under Section 6 and D.D. under Section 7 was approved in G.O.Ms.No.715 Housing and Urban Development Department dated 03.06.1980 and published at pages 6 to 9 of supplement to Part-II Section-2 of the Tamil Nadu Government Gazettee No.24A dated 25.06.1980. Award enquiry notices were issued on 22.08.1986 and Award enquiry was conducted on 09.09.1986 excluding the cases covered by High Court stay. Award was passed for an extent of 10.22 acres in Award No.10/86-87 dated 23.09.1986 and the compensation amount was deposited in the Sub-Court, Salem by making reference to Court under Section 31 of the Land Acquisition Act.

5.It is submitted that the land in S.No.197/6, 197/7, 197/11 and 197/13 of Alagapurampudur Village, Extent 0.26, 0.61, 0.08 and 0.11 acres stand registered in the names of (1)Chinnathambi (2)Kamala (3) Sasikala (4)Vijaya (5)Govindarajan (6)Murugesan (7)Chidambara gounder (8)Saroja (9)Sakthivel (10)Andavan (11)Rajeswari (12)Mani (13)Sri Ramar (14)Alagaperumal (15)Un named child (16)Kullappa gounder (17) Sundararajan (18)Murugesan (19)Anjalai Devi D/o. Rangasamy and Sundari at the time of Notification under Section 6 and 7 of the Land Acquisition Act. It is submitted that the notification under Section 4(1) of the Land Acquisition Act and declaration under Section 6 of the Land Acquisition Act was approved and published and Award was also passed on 19.09.1986. But the possession of the land was not taken due to stay orders in W.P.No.9980/86, dated 23.09.1986 filed by Chinnathambi and three others. The writ petition was dismissed on 20.11.1996 and the Writ Appeal filed by the writ petitioner against the orders in W.P.No.9990/86 was also dismissed on 22.08.1997 in W.A.No.1043 of 1997. Again the writ petitioner filed W.P.No.19062 of 1999 and the same was disposed off with a direction to consider the request of the petitioner to exclude his lands from acquisition proceedings within a period of six months from the date of receipt of production of copy of the order of the writ petition dated 06.01.2000. This Court was also directed that till the representations are disposed off, the possession will continue. Hence, the possession of the land relating to this writ petition was not yet taken. The Government in Lr.No.26677/LA.4(2)/99-4 dated 29.11.2000 has rejected the request of the writ petitioner on merits.

6.It is submitted that the contention of the writ petition is not correct. This Court has disposed off the writ petitions only on merits. The writ petition and Writ Appeal filed by the land owner was dismissed in W.P.No.9980 of 1986 dated 20.11.1996 and the

W.A.No.1043 of 1997 was dismissed on 22.08.1997 respectively. If the land owner has got any valid grounds to challenge the Land Acquisition proceedings, he could have sought remedy in the Supreme Court of India by filing Special Leave Petition. It is submitted that the W.P.No.15093 of 1990 was allowed on the ground that the lands in S.No.199/1 are wet lands and the Government has been addressed to waive G.O.Ms.No.2135 Revenue Department dated 24.09.1979 and the orders of the Government is awaited. With regard to W.P.No.11975 and 11976 of 1988, the writ and writ appeals were allowed by this Court and the Managing Director, Tamil Nadu Housing Board has filed Special Leave Petition in the Supreme Court of India in G.O.Ms.No.6674/99 and 6675/99 which is pending.

7.The W.P.No.862 of 2001 filed by K.Sampoornam and others against the acquisition proceeding for S.No.197/6,7,11,13 was dismissed by this Court on 23.10.2008. It is submitted that the Land Acquisition proceedings were initiated in the year 1978 and it was published in the locality in the manner prescribed in the Land Acquisition Act. The writ petitioner, who is a subsequent purchaser has purchased the land under acquisition on knowing that the lands are under acquisition. It is also submitted that the Award has been passed for the lands covered in the writ petition and possession was due except S.No.197/11. The possession of the land in S.No.197/11 was taken on 21.11.1997 and handed over to the Tamil Nadu Housing Board. It is prayed that this Court may be pleased to dismiss the writ petition.

8.The highly competent counsel Mr.S.Doraisamy appearing for the petitioners submits that the father of the first and second petitioners namely P.Chinnathambi Gounder and the father of the petitioners 3 and 4 namely Kullappa Gounder were originally the owners of the agricultural lands comprised in various survey numbers to an extent of 1.41 cents situated at Alagapuram Pudur Village, Salem Taluk and District. The petitioners respective fathers wherein absolute possession and enjoyment by way of pursuing cultivation during their life time. Under these circumstances, the respondents herein had initiated land acquisition proceedings under the old Act to acquire the land situated at Alagapuram Pudur Village, Salem District including the petitioners' lands. Hence, the fourth respondent herein had issued notification under Section 4(1) dated 06.07.1978. Thereafter, the respondents had given a declaration under Section 6 of the Act dated 03.06.1980.

9.The very competent counsel Mr.S.Doraisamy further submits that the respondents have passed an award No.10/86-87 under Section 11 of the Act dated 19.09.1986 in respect of the lands pertaining to the petitioners. As such, the award had not been passed within the specific period as per the Land Acquisition Act 1894. However, the petitioners have not received the said award and they are in

possession cultivating the said land without any interference especially from the respondents. Therefore, the petitioners are entitled to receive relief under Section 24(2) of the New Act 30 of 2013 since the petitioners are in possession and compensation amount had not been received by them, as such in the instant case, the new Act is squarely applicable. Many land owners have made their representations with the first respondent namely the Secretary to Government, who are attached to the Housing and Urban Development Department with the request to withdraw the land acquisition proceedings and exclude their lands from acquisition, the same was considered favourably by the respondents and the lands were discharged from the acquisition proceedings.

10.The learned counsel further submits that the Government had issued G.O.Ms.No.(2) dated 05.08.1981 and withdrew the notification under Section 48, the same was published in the Government Gazette dated 09.09.1981 in accordance with G.O.Ms.No.2135 dated 24.09.1979. Accordingly, one Mr.K.Kandaswamy's land comprised in Survey field No.195/1, measuring to an extent of 1.04 acre had been discharged through communication issued by the respondents dated 15.06.1988, similarly one Mr.S.S.Elumalai Gounder also received similar relief to an extent of 1.98 acres comprised in Survey field No.197/2, 3, 4, 5, 8, 15 and 16 of the Alagapuram Pudur Village, likewise one Mr.R.Thiagarajan had also been excluded by the Government from the acquisition proceedings to an extent of 3.74 acres comprised in Survey No.199/1A and 1C to an extent of 3.74 acres, another person namely Dr.Sundaram and Mrs.Sundaram have also been excluded from the Land Acquisition Proceedings pursuant to the judgment of this Court pronounced in W.P.Nos.11975 and 11976 of 1986 dated 15.07.1991. The said judgments have been upheld by the Hon'ble Top Court. One Mr.S.K.Karunanithi also received similar remedy from the Government and released the lands to an extent of 22 acres belonging to him and his family members.

11.The highly competent counsel further submits that the petitioners have submitted their representations through the respondents and sought similar remedy i.e. discharge of their lands from the acquisition proceedings, the same was recommended by the third respondent to the second respondent but the same was rejected by the first respondent on the grounds that the petitioners property is very much required for the purpose of an integrated housing scheme. Hence, the first respondent rejected the petitioners claim for relief which is discriminatory and against the principles of natural justice since the respondents have not treated the petitioners on par. The very competent counsel vehemently argued that the petitioners and their family members are involved in agricultural operations over the said lands and they are dependent on these lands for their livelihood, hence, the highly competent counsel entreats the Court to release the petitioners lands from the

acquisition proceedings who are poor agriculturalists.

12.The very competent Additional Government Pleader Mr.M.S.Ramesh, appearing for the first and fourth respondents submits that the first respondent had issued a G.O.Ms.No.1058 for acquiring the petitioners land and the lands so acquired for forming a neighbourhood scheme at Salem, hence, the fourth respondent had issued 4(1) notification dated 26.07.1978. Subsequently, an enquiry was conducted on 25.09.1978 under Section 5A of the Act. After receiving the remarks from the land owners a declaration was published, thereafter an award was passed to an extent of 10.22 acres and the said compensation amount was deposited with the Sub-Court, Salem. The very competent counsel further submits that the subject lands are standing in the names of 19 persons, the possession of the land was not taken after the completion of the acquisition since the stay order of this Court was in force. Subsequently, the writ petition was dismissed and the writ appeal also dismissed. This Court has directed the respondents to consider the petitioners representations to exclude their lands, accordingly the petitioners representations were well considered and the same was rejected on merits, since the petitioners lands are absolutely necessary wherein an approach road is to be formed, otherwise the entire scheme will go contrary for being integral. Hence, the learned counsel makes deep request to dismiss the above writ petition.

13.The very competent counsel Mr.R.V.Babu appearing for the second and third respondents submits that on the request of the second and third respondents to form a neighbourhood scheme at Salem, hence the first respondent approved the same and passed a G.O. Pursuant to the G.O. the fourth respondent had initiated land acquisition proceedings under the old Act and acquired the petitioners land and the lands of others to an extent of 17.67 acres at Alagapuram and Alagapuram Pudur Village at Salem Taluk. The fourth respondent had strictly adhered to the land acquisition proceedings and acquired the subject lands included. An adequate compensation had been assessed after duly completing an enquiry and the said amount had been deposited at the Sub Court, Salem under Section 3 of the Act. The petitioners had challenged the acquisition proceedings by way of filing writ proceedings and writ appeal and both were negatived. As such, the petitioners are not entitled to receive any relief from the respondents since well considered judgments of the Division Bench of this Court is upheld. Hence, the learned counsel prays to dismiss the above writ petition.

14.From the above discussions, this Court is of the view:

(1)The respondents initially prepared to acquire to an extent of 17.67 acres at Alagapuram and at Alagapuram Pudur Village in Salem Taluk for forming a neighbourhood scheme in Salem. The entire lands have not been acquired and some of the lands were excluded from the

acquisition proceedings viz. Survey field No.195/1 to an extent of 1.04 acres, Survey field No.197/2, 3, 4, 5, 8, 15 and 17 measuring to an extent of 1.98 acres, S.F.No.199/1A and 1C to an extent of 3.74 acres, Survey No.99/2, 3 and 4 to an extent of 2.59 acres and to an extent of 22 acres of the surrounding lands of the same village. Similarly, the petitioners are also entitled to receive remedy from the respondents for excluding their lands from the acquisition proceedings on par in order to maintain the right to equality and principles of natural justice.

(2) It is seen that the petitioners are still in possession as per the representations of the petitioners and the petitioners have not received compensation so far. As such, the petitioners are entitled to receive relief under Section 24(2) of the New Act 30 of 2013.

(3) The land acquisition proceedings had been initiated in the year 1978 and the same was completed in the year 1986. However, as on date the petitioners lands have not been utilized for the intended neighbourhood schemes after a lapse of 28 years, as such, the respondents scheme has gone upto oblivion.

(4) The petitioners are poor agriculturalists and they are totally dependent on the subject lands that is to an extent of 1.41 cents for their livelihood. If the said lands are excluded from the acquisition proceedings the Neighbourhood Scheme will not be jeopardised since already about 10 acres were excluded from the land acquisition proceedings.

15. Considering the current factual position of the case and arguments advanced by the highly competent counsels on all sides and on perusing the typed set of papers and the views of this Court expressed above (1) to (4), the above writ petition is allowed. Consequently, the first respondent vide letter No.8529/LA42/2009-2010 dated 30.12.2013 is quashed. Further, this Court directs the first respondent to exclude the petitioners lands comprised in Survey No.197/6 measuring to an extent of 0.26 cents, Survey No.197/7 measuring to an extent of 0.61 cents, Survey No.197/11 measuring to an extent of 0.08 cents, Survey No.197/12 measuring to an extent of 0.33 cents, Survey No.197/13 measuring to an extent of 0.11 cents, Survey No.197/14 measuring to an extent of 0.02 cents, aggregating to 1 acre and 41 cents situated at Alagapuram Pudur Village, Salem Taluk and District within a period of twelve weeks from the date of receipt of the order. If any compensation amount being deposited by the respondents before the Sub-Court, Salem, they are absolutely to withdraw the said amount.

16.In the result, the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

vs

To

- 1.State of Tamil Nadu, rep. by its
Secretary to Government,
Housing and Urban Development Dept.,
Fort St. George, Chennai - 600 009.
 - 2.The Tamil Nadu Housing Board,
rep. by its Managing Director,
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 - 4.The Special Tahsildar,
(Land Acquisition)
Salem Town, Salem District.
- 1 CC to Mr.S.Doraisamy,Advocate (SR.No.44276)
Copy to
Superintent Judge,
Salem.(for information)

Pre-Delivery Order made in
W.P.No.19568 of 2014
and
M.P.Nos.1 and 2 of 2014

ppa(co)
cp 04/09/2015