

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.06.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.10558 of 2003

Order Reserved on 22.12.2014 Judgment Pronounced on 09.06.2015

1.Arunachalam

2.Chellakutti

... Petitioners

Vs.

1. The State of Tamil Nadu,
rep. by its Secretary to Government,
Housing & Urban Development Department,
Fort St. George, Chennai - 9.

2. The Spl. Tahsildar / Land Acquisition Officer,
Housing Scheme No.2,
Coimbatore - 18.

... 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 records of the 1st respondent pertaining to Notification under Sec.4(1) as published in Tamil Nadu Government Gazette dated 21.10.1992 in Part-II, Section 2 in G.O.Ms.No.650 Tamil Nadu Housing and Urban Development Department (LA-III) dated 22.9.1992 which was followed by issuance of declaration made under Sec.(6) in G.O.Ms.No.939 Tamil Nadu Housing and Development Department dated 15.11.1993 as published in Part-II Section 2 of Tamil Nadu Government Gazette extra-ordinary dated 18.11.1993 and the same is culminated into passing of an award No.3/1995 on the file of the 2nd Respondent dated 20.11.1995 and quash the same and consequently forbear the Respondents from initiating land acquisition proceedings in respect of the lands of the petitioners comprised in S.Nos.222/2, 222/3, 223/2 and 226/2 situated in Vilankurichi Village of Coimbatore North Taluk, Coimbatore District.

For Petitioners : Mr.V.Ayyadurai

For Respondents : Mr.M.S.Ramesh
Additional Government Pleader

O R D E R

The short facts of the case are as follows:

The first petitioner and the second petitioner are blood brothers, as such both petitioners have jointly filed the writ petition. The first petitioner submits that the petitioners and others are owners of the lands comprised in Survey Nos.222/2, 222/3, 223/2 and 226/2 measuring to an extent of 10.24.0 hectares situated in Vilankurichi Village, Coimbatore North Taluk. The Respondents had initiated land acquisition proceedings to acquire the vast extent of land measuring about 874.64.0 hectares including the above said lands of the petitioners for formation of Ganapathy Neighbourhood Scheme, Phase-II. It is submitted that Section 4(1) Notification has been issued in G.O.Ms.No.650 Tamil Nadu Housing and Urban Development Department dated 22.9.1992 and the same was gazetted on 21.10.2002 which was followed by publishing the substance of Government Notification in the Newspapers "Makkalkural" and "Pirpakal" such of those papers have no circulation in the locality where the subject lands are situated. It is stated that the substance of Section 4(1) Notification has been published in the locality on 27.11.1992. It is submitted that the substance of Section 4(1) Notification has not been published in the manner as required under Section 4(1) of the Land Acquisition Act and the Rules made thereunder.

2.It is submitted that the second respondent called upon the owners of the lands to appear for the enquiry under Section 5(A) of the Land Acquisition Act which was scheduled to have been conducted on 4.5.1993. There were valid objections raised by the petitioners and others contending that the acquisition was an unwarranted one in as much as the houses constructed in Phase-I were not fully sold nor are there any need of housing colony at the cost of public revenue and in deprivation of livelihood of the petitioners who have been cultivating the above said lands from time immemorial. The valid objections of the owners have been over-ruled on an unjust grounds of exclusion of any portion would defeat the implementation of the housing scheme and that the owners will be provided with adequate compensation and accordingly the second Respondent recommended for issuing declaration under Section 6 of the Act without following the procedure under Rule 3(B) which is corresponding to Rule 4 of the

Tamil Nadu Land Acquisition Amended Rules. Ultimately, declaration under Section 6 came to be passed on 15.11.1993 in G.O.Ms.No.939 Housing and Urban Development Department and the same was published in the Extraordinary Issue of Tamil Nadu Government Gazette dated 18.11.1993 in Part II Section 2. It may be relevant to state that a few of the owners of portion of lands of the subject acquisition have approached this Court by filing Writ Petitions in W.P.No.918 of 1994 and W.P.No.1880 of 1995 and obtained stay of dispossession. It is submitted that the substance of declaration made under Section 6 had not been published in the locality, but published in the paper in "Dina Thudhu" and "Viduthalai" on 20.11.1993. The petitioner submits that those newspapers have no circulation in the locality. But notification under Section 4(1) and Declaration under Section 6 appeared to have been published in different papers with a view to mislead the owners merely for the sake of compliance of the requirements of the statutes. The respondents had issued award notice dated 19.09.1995 calling upon the owners to appear for the award enquiry scheduled to be held on 17.10.1995. Another set of owners have filed writ petitions No.1201 to 1208 of 1997 seeking to quash the Section 4(1) Notification as issued in G.O.Ms.No.650 dated 22.09.1992 and the declaration made under Section 6 in G.O.Ms.No.939 dated 15.11.1993 on the grounds of non observance of the mandatory requirements as provided under Sections 4(1); 6; and Rule 3(B) corresponding to new Rule 4 etc. in respect of lands in S.No.222/2 and 223/2, a portion of which is the subject matter of this writ proceedings.

3.This Court on an elaborate consideration of the various contentions raised on behalf of the owners, was pleased to allow the WPs 1201 to 1209 of 1997 in respect of the lands in S.Nos.222/2 and 223/2 measuring an extent of 1.93.0 hectare out of the total extent of 10.24.0 hectares by its order dated 16.11.2001. It is submitted that the said order of quashing the acquisition by this Court becomes final as there is no appeal as on date. The lands of the petitioners which are the subject matter of present writ proceedings are also covered under the same Notification under Section 4(1) and declaration made under Section 6 which were quashed by the Court on 16.11.2001. As such, the respondents are bound by the said decision and that the dictum laid down therein is applicable to subject lands of this proceeding and hence the same is liable to be quashed as held by the Division Bench of this Court in a case reported in ILR 1997 Madras 78. The petitioners submit that the award enquiry was adjourned on 17.10.1995 on the score that some of the owners have challenged the acquisition proceedings. Thereafter no notice of award enquiry had been served upon the petitioners. In those circumstances, the petitioners are under the bonafide impression that

the acquisition proceeding has been dropped especially in the light of the fact that there were unsold houses in Phase I and that the Tamil Nadu Housing Board was facing financial crunches. The petitioners further submit that they have been in continuous possession and enjoyment of the above said lands till date.

4.While so, the petitioners approached the officials of the second respondent for obtaining No Objection Certificate for applying planning permission to construct houses in a portion of the subject lands during February 2003. At that time, the officials of the respondents orally informed that unless the petitioners challenge the land acquisition proceedings independently such certificates cannot be granted in view of the impugned land acquisition proceedings. Hence, the petitioners approach this Court at this juncture. The petitioners respectfully submits that the impugned land acquisition proceedings is illegal, void and non-est in law in view of the fact that this Court was pleased to pass the acquisition proceedings in respect of the same Survey Number covered under the same Notification 4(1) and Declaration in WPs 1201 to 1208 of 1997 on 16.11.2001 and the same is reported in 2002 (1) CTC 28 besides being lapsed. Hence, this writ petition is filed.

5.The highly competent counsel Mr.V.Ayyadurai appearing for the petitioners submit that the respondents herein had initiated land acquisition proceedings to acquire the lands measuring to an extent of 874.64 hectares including the petitioners land for formation of Ganapathy Neighbourhood Scheme, under the old Act. The first respondent had issued G.O.Ms.No.650 dated 21.10.1992. Following the said G.O. the second respondent herein had issued notification under Section 4(1), the same was published in the Gazette as well as the local media namely "Makkalkural" and "Pirpakal" these newspapers have not been circulated in the local region, as such the public region / notification have become ineffective. However, the second respondent had conducted an enquiry under Section 5(A) of the Land Acquisition Act on 04.05.1993 wherein the petitioners had raised valid reasons and objected to the same. One of the reasons was, the Housing Board had constructed houses in Phase-I of Ganapathy Neighbourhood Scheme wherein the constructed houses were not sold entirely. The petitioners cultivating the subject lands from time immemorial. Thereafter, the second respondent recommended for declaration under Section 6 of the Act.

6.The very competent counsel further submits that some of the land owners who are aggrieved by the said land proceedings had approached this Court by way of writ proceedings and obtained stay order not to bestow the said land. The notification under Section 6

had not been published in the local region but the publication had been effected in the "Dina Thudhu and Viduthalai", these newspapers have no circulation in the local region, such a kind of publication is in affix. Thereafter, the respondents had issued an award notice and asked the petitioners to appear for the award enquiry scheduled to be held on 17.10.1995 and at this stage some of the land owners have filed a writ petition and challenged the entire land acquisition proceedings. The said writ petitions were allowed and a portion of the land was discharged from the acquisition proceedings. Against the said order the respondents have not filed any appeal. As such the order passed by this Court has become final, accordingly the petitioners are entitled to obtain a similar remedy before this Court.

7.The highly competent counsel vehemently pointed out that the award enquiry was adjourned to 17.10.1995, thereafter no notice was served on the petitioners regarding award enquiry any further. Under the situation the petitioners had approached the second respondent for obtaining no objection certificate for applying planning permission to construct houses in a portion of the subject land during the month of February 2003, when the second respondent replied orally that unless the petitioners challenged the land acquisition proceedings independently such certificate cannot be granted in view of the land acquisition proceedings. The learned counsel had submitted patta proceedings. The learned counsel had submitted patta proceedings which are still standing in the name of the original owners of the property including the petitioners herein. Further some of the vacant house sites are available at the Phase-I Neighbourhood Scheme at Ganapathy Nagar. Further, the petitioners are remitting land tax to the Statutory authority as of now and the electricity service connections are standing in the name of the petitioners, besides the village administrative officer who had issued certificate and chitta dated 21.12.2002 stating that the petitioners are in possession and enjoying the said property, hence the highly competent counsel entreats the Court to allow the above writ petition.

8.The second respondent has filed counter statement and he submits that the Executive Engineer and Administrative Officer, Tamil Nadu Housing Board, Coimbatore was requested for the acquisition of 874.64.0 Hectares in Vilankurichi village of Coimbatore North Taluk for the construction of houses under Ganapathy Neighbourhood Scheme, Phase-II. The lands owned by Tvl.Arunachalam and Chellakutty are situated in S.F.Nos.222/1, 222/2, 222/3, 223/2 and 226/2 measuring an extent of 10.24.0 Hectares of Vilankurichi village, Coimbatore North Taluk. The Draft Notification under Section 4(1) of the Land Acquisition Act has approved in G.O.Ms.No.650 Housing and Urban

Development Department dated 22.09.1992 and published at page-3 Part-II Section-2 of Tamil Nadu Government Gazette dated 21.10.1992. The substance of the Notification was published in two Tamil dailies circulating in the locality viz. "Makkalkural" and "Pirpagal" on 22.10.1992 and in the locality on 27.11.1992.

9.It is submitted that the enquiry under Section 5(A) of the Land Acquisition Act was conducted by th Special Tahsildar (LA), Housing Scheme, Coimbatore on 04.05.1993 after observing the usual formalities and also after due publication and service of the notices as contemplated under the rules framed under Section 55(1) of the Land Acquisition Act. During the course of enquiry under Section 5 (A) of the Land Acquisition Act the land owners raised their objections for the acquisition of their portion of land for the reasons that they are having only a small piece of land which is covered under the acquisition and that they have no other lands for cultivation and also for construction of houses for their living. Their objections were communicated to the Requisitioning body viz., the Executive Engineer and Administrative Officer, Tamil Nadu Housing Board, Coimbatore, the Requisitioning body did not accept their objections on the ground that the lands now sought to be acquired are situated at the vantage point of their proposed Ganapathy Neighbourhood Scheme, Phase-II and the exclusion of these lands will adversely affect the comprehensive nature of the scheme. The remarks of the Requisitioning body was communicated to the land owners and interested persons. The objections raised by the land owners have been over ruled by the Government and the proceedings under Section 5A(2) were drawn by the Special Tahsildar (L.A.), Housing Scheme Unit-III, Coimbatore in his reference No.LA 16/88 dated 28.05.1993.

10.It is submitted that the Draft Declaration proposals under Section 6 of the Land Acquisition Act 1894 was approved in G.O.Ms.No.939 Housing and Urban Development Department dated 15.11.1993 and published at page 2 and 3 Part-II Section 2 of the extra-ordinary issue of the Tamil Nadu Government Gazette dated 18.11.1993. The substance of the Declaration was also published in two Tamil Dailies viz. "Dinathudhu" and "Viduthalai" circulating in the Society on 20.11.1993 and in the locality on 22.11.1993. The Draft Direction under Section 7 of the Land Acquisition Act was approved by the Collector in his proceedings No.F6/170400/91 dated 28.09.1995.

11.He submits that Tvl.Swaminathan and 12 others filed a W.P.No.918 of 1994 before this Court and obtained an Interim Stay in WMP.No.1460 of 1994 dated 19.01.1994. The Award was pronounced in Award No.3 of 1995 dated 20.11.1995 in respect of S.No.222/1 covering

an extent of 1.96.5 Hectares and for the remaining extent of 8.27.5 Hectares covering the S.Nos.222/2, 222/3, 223/2, 226/1 and 2. Subsequently this Court dismissed the W.P.No.918 of 1994 on 16.12.1997 and consequently the WMP No.1459, 1460 of 1994 are also dismissed. Again Tvl.Arunachalam and Chellakutty S/o Urumanda Gounder of Vilankurichi, Coimbatore (North) Taluk filed a W.P. in No.10558 of 2003 before this Court to grant the acquisition proceedings under the Land Acquisition Act. It is submitted that in para-1 the petitioner has stated that the 4(1) Notification approved by the Government on 22.09.1992 was published in the Tamil Nadu Government Gazette on 21.10.2002. This is wrong. The above notification was published in the Tamil Nadu Government Gazette dated 21.10.1992 and in Dailies on 22.10.1992. Hence, the averment is totally wrong.

12.It is submitted that the Ganapathy Neighbourhood Scheme was proposed to construct houses for the benefit of lower and middle class people. In this connection the notification under Section 4(1) of the Land Acquisition Act was approved by the Government in G.O.Ms.No.650 Housing and Urban Development Department dated 22.09.1992 and published in the Tamil Nadu Government Gazette dated 21.10.1992. The substance of the Notification was published in two Tamil dailies circulating in the locality viz. "Makkalkural" and "Pirpagal" dated 22.10.1992 and in the locality on 27.11.1992. There was a real need for cheaper houses in the Ganapathy and Vilankurichi area. Therefore the allegation raised by the petitioner that the acquisition was an unwarranted one, is quite wrong. More over the main objections raised by the land owners are that the acquisition of their portion of land for the reasons that they are having only a small piece of land which are covered under the acquisition and that they have no other lands for cultivation and also for construction of houses for their living. The requisitioning body to whom these objections were sent, were scrutinised and did not accept their objections on the ground that the lands now sought to be acquired are situated at the vantage point of the proposed Ganapathy Neighbourhood Scheme Phase-II and the exclusion of these lands will adversely affect the comprehensive nature of the scheme. The remarks of the requisitioning body was communicated to the land owners and interested persons. The objections raised by the land owners have been overruled by the Government and the proceedings under Section 5A (2) were drawn by the Special Tahsildar (Land Acquisition), Housing Scheme Unit-III, Coimbatore in his reference No.LA16/88 dated 28.05.1993. After that the notification under Section 6 was approved by the Government in its G.O.Ms.No.939 Housing and Urban Development Department dated 15.11.1993 and the same was published in the extra ordinary issue of Tamil Nadu Government Gazette dated

18.11.1993 in Part II Section 2. The same was published in the Tamil Daily viz. "Thinathoothu" and "Viduthalai" on 20.11.1993 and also in the locality on 23.11.1993. The Draft Direction under Section 7 of the Land Acquisition Act was approved by the Collector in Ref.No.170400/91 F6 dated 28.09.1995. The notice under Section 9(3) and 10 were served on the land owners and interested persons. The Notices under Section 9(1) and 10 were published and award enquiry under Section 11 of the Land Acquisition Act was conducted on 17.10.1995 and 18.10.1995. The award was passed on 20.11.1995 in Award No.3/95. It is not true that these Newspapers have no circulation. The publications were made only by the Government not by the Land Acquisition Officer.

13.It is submitted that it is an admitted fact that one Tvl.Swaminathan and 12 others have filed a writ petition No. WP.918 of 1994 before this Court and obtained interim stay for dispossession. Hence, the award was not passed in respect of S.F.No.222/1 covering an extent of 1.96.5 Hectare and an award was pronounced in the Award No.3 of 1995 dated 20.11.1995 for the remaining extent of 8.27.5 Hectares in respect of Survey Nos.222/2, 222/3, 223/2, 226/1 and 2. Further it is submitted that this Court while disposing the W.P.No.918 of 1994 and WMP Nos.1459, 1460 of 1994 has stated that this Court holds that there is no merits in this writ petition and the following decision of the Apex Courts in 1996 (1) SCC 250 (Supra), this writ petition is dismissed. No costs. Consequently, W.M.P.Nos.1459, 1460 of 1994 are also dismissed. The above judgment was delivered on 16.12.1997.

14.It is submitted that the petitioner has narrated about the another set of owners filed writ petitions in W.P.No.1201 to 1208 of 1997 challenging the notifications published under Section 4(1) and 6 in respect of lands in S.Nos.222/2 and 223/2. This Court has passed an interim order on 31.01.1997 in WMP.Nos.2021, 2023, 2025, 2029, 2031, 2033 and 2035 of 1997 in W.P.Nos.1201 to 1208 of 1997. Interim stay of dispossession if petitioner in each petition are not dispossessed by the respondents. Notice returnable in four weeks. Lastly this Court disposed the W.P.Nos.1201 to 1208 of 1997 on 16.11.2001, stating that "in the result, the Writ petitions succeed and the same are allowed. No costs. However, it is open to the respondents to issue fresh proceedings in the manner known to law. Consequently, all connected WMPs are closed". It is understood that no fresh action was taken in this regard. It is submitted that the petitioner has not mentioned the exact date of application for the issuance of No Objection Certificate from the Special Tahsildar (L.A), Housing Scheme, Coimbatore. Therefore, the averments are wrong. It is submitted that as far as the writ petition Nos.1201 to

1208 of 1997 goes in favour of the writ petitioners and based on the judgment the Government has to issue necessary cancellation notification for deletion of the land from the Land Acquisition Proceedings. No such order was passed by the Government. Hence, this respondent prays to dismiss the Writ Petition.

15.The very competent Additional Government Pleader Mr.M.S.Ramesh appearing for the respondents submits that the first respondent had issued a G.O.Ms.No.650 dated 21.10.1992 for acquiring the petitioners lands and the lands of others to the extent of 874.64 hectares for formation of Neighbourhood Scheme at Ganapathy Nagar. The second respondent had already acquired the lands for the formation of the Neighbourhood Scheme at Phase-I at Ganapathy, the said scheme was completed, hence, the subject lands had been acquired in order for the information of Phase-II which is absolutely required to the general public for acquiring house sites and houses. The second respondent following the G.O. passed by the first respondent for acquiring the lands under the old act had strictly adhered to the acquisition proceedings and acquire the lands. The petitioners had openly admitted that they had participated in the enquiry under Section 5(A) of the Act as well as the award enquiry, therefore, they cannot say that the paper publication in the local region is inadequate. In addition to that the gazette notification was also published, as such the entire land acquisition proceedings are valid. Some of the land owners had approached this Court in W.P.No.918 of 1994 and challenged the 4(1) notification in G.O.Ms.No.650 dated 22.09.1992 and also challenged the declaration under Section 6 in G.O.Ms.No.939 dated 15.11.1993 also challenged, this Court dismissed the said writ petition on merits after following Hon'ble Top most judgments reported in AIR 1996 (1) SCC 250, in State of Tamil Nadu versus Krishnan.

16.The very competent counsel further submits that the learned counsel for the petitioners had annexed chitta and certificate which had been issued by the Village Administrative Officer on 21.12.2002. Now, the current position where the entire property had been acquired and utilized the same. Further, the Village Administrative Officer in his certificate stated that the award proceedings No.9/1995 dated 20.11.1995 had been passed by the second respondent herein. It clearly proves that the respondents are absolute owners of the property.

17.Considering the facts and circumstances of the case and arguments advanced by the learned counsel on either side and on perusal of the typed set of papers, this Court does not find sufficient force to allow the writ petition. Further, this Court is

of the view that the same notification of the respondents had been challenged by some of the owners in W.P.No.918 of 1994 which was dismissed by this Court on 16.12.1987. Hence, the above writ petition is dismissed. No costs.

Sd/-
Deputy Registrar(J)

//True Copy//

Sub Assistant Registrar

vs

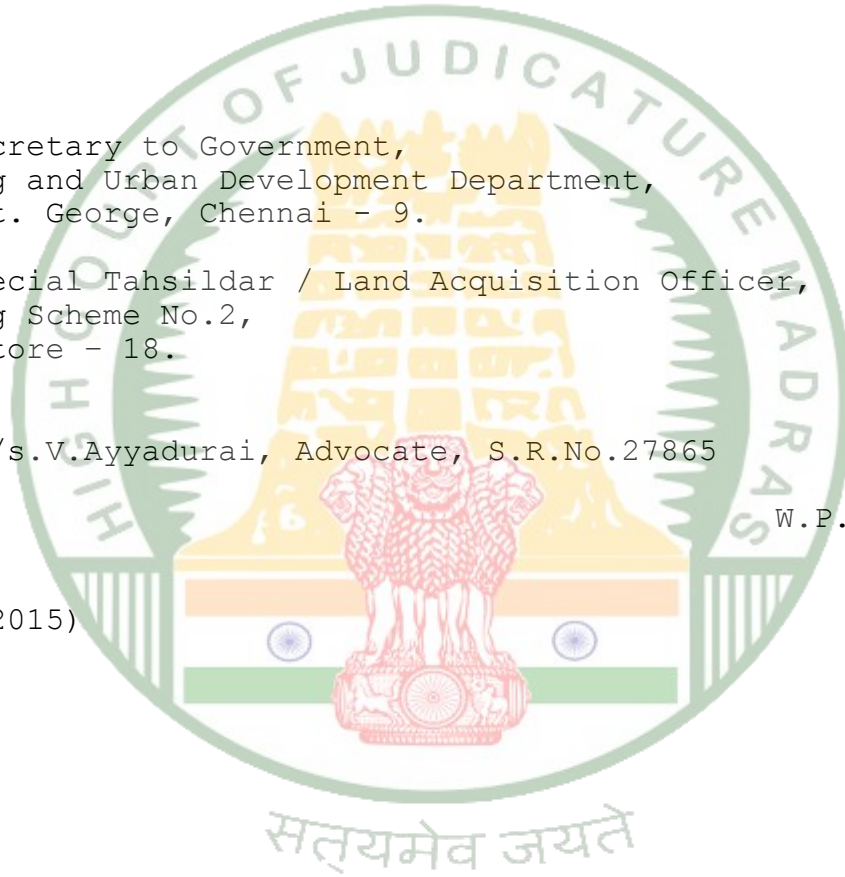
To

1. The Secretary to Government,
Housing and Urban Development Department,
Fort St. George, Chennai - 9.
2. The Special Tahsildar / Land Acquisition Officer,
Housing Scheme No.2,
Coimbatore - 18.

+1cc to M/s.V.Ayyadurai, Advocate, S.R.No.27865

W.P.No.10558 of 2003

MP (CO)
CA(14/07/2015)



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