

In the High Court of Judicature at Madras

Dated: 21.09.2015

Coram:

The Honourable Mr.Justice SATISH K. AGNIHOTRI
AND
The Honourable Mr.Justice K.K.SASIDHARAN

W.P.No.5522 of 2015
& CRP (NPD) No.2445 of 2014
& connected MPs

W.P.No.5522 of 2015

M.G.Hanif

...Petitioner

-Vs.-

1. The Secretary to Government
Housing and Urban Development Department
Fort St. George
Chennai-600 009.
2. The Managing Director
Tamil Nadu Housing Board
Nandanam
Chennai-600 035.
3. The Executive Engineer
& Administrative Officer
Besant Nagar Division
Tamil Nadu Housing Board
Adyar, Chennai-600 020.

..Respondents

CRP (NPD) No.2445 of 2014

The Competent Authority and
Executive Engineer and Administrative Officer
Tamil Nadu Housing Board
Shastri Nagar Complex
Adyar
Chennai-600 020.

..Petitioner/ Defendant

-Vs.-

M.G.Haneef

..Respondent/ Plaintiff

Prayer in W.P.No.5522 of 2015:

Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records comprised in letter No.HS/0787/2013 dated 1 July 2013 on the file of the third respondent as confirmed in Letter No.522/LA4 (1)/2014-16 dated 28.1.2015 on the file of the first respondent, quash the same and consequently direct the third respondent to restore the petitioner in possession of the land in T.S.No.18/3, Block No.16, Kalikundram Village, presently Door No.70, 2nd Avenue, Indra Nagar, Chennai-20.

Prayer in CRP (NPD) No.2445 of 2014:

Civil Revision Petition filed under Article 227 of the Constitution of India to struck off the Execution Petition in E.P.No.705 of 2014 in O.S.No.3371 of 1988 on the file of IX Assistant Judge, City Civil Court, Chennai.

For Petitioner
in W.P.No.5522/2015 : Mr. R. Karthikeyan
For Respondent
No.1 in
W.P.No.5522/2015 : Mr.P.S. Sivashanmugasundaram
Spl. Govt. Pleader

For Respondents 2 and 3
in W.P.No.5522/2015
and for Petitioner in
CRP No.2445/2014 : Mr.S. Gomathi Nayagam
Additional Advocate General
Assisted by
Mr.V. Anandhamurthy

For Respondent in
CRP No.2445/2014 : Mr.R. Vivekananthan

सत्यमेव जयते
ORDER

(Order of the Court was made by K.K.SASIDHARAN, J)

This is the case of a petitioner making conflicting claims originally by taking a position that the subject property was given on lease to his predecessor-in-interest by the Government and thereafter when action was taken to remove the encroachment, taking up a contrary stand that the property belonged to his grandfather absolutely and without initiating process of acquisition, the Tamil Nadu Housing Board is trying to dispossess him in a high handed manner.

The facts:

W.P.No.5522 of 2015:

2. The Tamil Nadu Housing Board acquired vast extent of land for formation of South Madras Neighbourhood Scheme. The subject land was part of the property so acquired. The petitioner was found in unauthorised occupation of the land. The Tamil Nadu Housing Board therefore by notice dated 20 January 1982 called upon the petitioner to remove the encroachment. The notice was challenged in W.P.No.1239 of 1982. Thereafter the petitioner filed a suit in O.S.No.3371 of 1988 before the City Civil Court, Madras. The suit filed for a decree of permanent injunction was decreed as prayed for. The Tamil Nadu Housing Board by notice dated 12 September 2009 called upon the petitioner to produce his title deeds so as to examine the claim that the subject property in T.S.No.18/3 absolutely belongs to him. It was followed by another notice dated 28 May 2013 issued under Section 84(2) of the Tamil Nadu Housing Board Act 1961. The petitioner challenged the said notice in W.P.No.25315 of 2013. The writ petition was disposed of with a direction to the first respondent to consider the statutory appeal on merits. Thereafter the first respondent passed the impugned order rejecting the claim made by the petitioner.

CRP (NPD) No.2445 of 2014

3. The writ petitioner filed an Execution Petition in E.P.No.705 of 2014 to punish the petitioner in CRP No.2445 of 2014 on account of his wilful disobedience of the decree dated 11 April 1989 in O.S.No.3371 of 1988.

4. The judgment debtor/Competent Authority, Tamil Nadu Housing Board by invoking the provisions of Article 227 of the Constitution of India filed the Civil Revision Petition to strike off the Execution Petition in E.P.No.705 of 2014.

Submissions:

5. The learned counsel for the petitioner in W.P.No.5522 of 2015 contended that the property originally belonged to the predecessor-in-interest of the petitioner. The Tamil Nadu Housing Board took action several times to evict the petitioner without following due process of law. According to the learned counsel, the property in T.S.No.18/3 owned by the petitioner was not the subject matter of acquisition. Since this property was not acquired by the Government, the petitioner is having every right to keep possession. The learned counsel while opposing the prayer in CRP No.2445 of 2014 contended that the decree in O.S.No.3371 of 1988 has become final and as such, the officials of the Tamil Nadu Housing Board committed contempt by issuing notice to the petitioner to surrender vacant possession.

6. The learned Additional Advocate General supported the impugned order dated 28 January 2015 and contended that the property in T.S.No.18/3 has already been acquired by the Government

on behalf of Tamil Nadu Housing Board. According to the learned Additional Advocate General the petitioner has been making attempts to grab the public property knowing very well that it was acquired by following the provisions of Land Acquisition Act. The learned Additional Advocate General with reference to the relief claimed in the Civil Revision Petition contended that the decree passed in O.S.No.3371 of 1988 is unexecutable for the simple reason that civil suit would not lie to declare the award as null and void. According to the learned Additional Advocate General by filing the suit for injunction, the petitioner, in fact, challenged only the land acquisition proceedings. The learned trial Judge without adverting to the facts of the case passed a brief judgment without reasons. The decree is unexecutable also on account of the fact that the Tamil Nadu Housing Board has already taken possession of the land before the date of decree and that too by following the provisions of Land Acquisition Act, 1894.

Analysis:

7. The subject writ petition has got a chequered history. The very same petitioner earlier filed a writ petition in W.P.No.1239 of 1982. The prayer in the said writ petition was to quash the notice dated 20 January 1982 on the file of Executive Engineer, Tamil Nadu Housing Board. The notice issued to the petitioner called upon him to remove the encroachment within 30 days. The petitioner in his affidavit filed in support of the writ petition in W.P.No.1239 of 1982 contended that the property which is the subject matter of this litigation was given on lease by the Collector of Madras to his predecessor-in-interest on a monthly rent of Rs.40/- by proceedings dated 14 October 1960. The petitioner contended that his father died in the year 1968 and thereafter the property was enjoyed by him along with his brother. The petitioner in the said writ petition has taken up a further contention that he has prescribed his title by adverse possession. Therefore it is very clear that the case of the petitioner all along was that the property belonged to the Government and it was given to his predecessor in interest on lease and on account of the continuous possession of the property, he prescribed his title by adverse possession. When proceedings were taken subsequently against the petitioner to remove the encroachment, he took a "U" turn and started contending that the property originally belonged to his grandfather and it ultimately devolved on him. The petitioner has also taken up a contention that his property was not the subject matter of acquisition.

8. The order passed by the first respondent very clearly shows that the subject property was acquired by the Government on behalf of the Tamil Nadu Housing Board. The Government have passed an award bearing No.5/63 dated 11 April 1963 with respect to the property in Survey No.2/1. The award No.35/65 was passed on 30 October 1965 in respect of the property in Survey No.2/2. Similarly Award No.6/60 was passed on 30 March 1960 in respect of the property in Survey No.2/3. The statement recorded by the Land

Acquisition Officer in his award bearing No.5/63 dated 11 April 1963 supports the case of the petitioner in W.P.No.1239 of 1982. with respect to the lease in favour of his predecessor-in-interest. According to the Land Acquisition Officer, the lessee (the father of the petitioner) was given lease of Government land for a period of five years. Though the father of the petitioner was a party to the Land Acquisition proceedings he has not made any claim. Therefore, the Land Acquisition Officer arrived at a conclusion that the lessee is not entitled to compensation for the loss of his leasehold right. It is therefore very clear that the predecessor-in-interest of the petitioner was having only a leasehold right and the property belonged to the Government. The petitioner made a false claim that the subject property belongs to him at a later point of time only with a view to retain larger extent of land situated in a prominent locality within the limits of Chennai Corporation.

9. The first respondent considered the entire background facts and passed the impugned order with supporting reasons. It is not open to this Court to sit in appeal over the decision taken by the statutory authority under the provisions of the Tamil Nadu Housing Board Act. The judicial review in a matter of this nature is very limited. The Court is concerned only with the decision making process. The first respondent considered the claim made by the petitioner and rejected it by giving cogent reasons. We are therefore of the view that no interference is called for in the order passed by the first respondent.

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10. The petitioner obtained a decree by filing a Civil Suit before the XIII Assistant Judge, City Civil Court, Chennai. It is true that the Tamil Nadu Housing Board was a party to the Civil Suit. The award in respect of the subject property was passed as early as on 11 April 1963. The suit in question was filed long after the award. The decree was passed on 11 April 1989. The petitioner projected a case as if he was the owner of the property and there was a threat to his possession. The trial Court appears to have passed a judgment and decree without considering the merits of the matter. The trial Court in a matter of this nature should have considered the basic question as to whether the petitioner is having right in respect of the property.

11. The Civil Court has no jurisdiction to entertain a suit in respect of a matter covered by the provisions of Land Acquisition Act. Even the jurisdiction under Section 18 of the Land Acquisition Act is only by way of reference made by the Land Acquisition Officer. In the subject case though the prayer was only to grant a decree of injunction, the fact remains that it was in respect of a matter covered by the acquisition proceedings. The Civil Court has no jurisdiction to grant a decree which would amount to interference in land acquisition proceedings.

12. The Supreme Court in Gaon Sabha & Anr. v. Nathi & Ors.¹ held that there cannot be even a slightest doubt that the Civil Court has no jurisdiction to entertain the suit which was filed seeking a declaration that the order of vesting of land covered by Land Acquisition Proceedings is illegal.

13. The legality of a decree passed by a Court without jurisdiction and as to whether its invalidity could be set up when the decree is sought to be enforced or relied upon, came up for consideration before the Supreme Court in Kiran Singh v. Chaman Paswan². The Supreme Court made it very clear that a decree passed by a Court without jurisdiction can be challenged at the stage of execution and even in collateral proceedings. The Supreme Court said:

"6. The answer to these contentions must depend on what the position in law is when a court entertains a suit or an appeal over which it has no jurisdiction, and what the effect of Section 11 of the Suits Valuation Act is on that position. It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties."

14. The petitioner took a circuitous route to set aside the land acquisition proceedings. It is not as if the petitioner was not aware of the Land Acquisition Proceedings and the award passed by the Land Acquisition Officer on 11 November 1963. The petitioner without divulging the land acquisition proceedings filed the suit in O.S.No.3371 of 1988. Since symbolic possession has already been taken by the Tamil Nadu Housing Board pursuant to the award, we are of the view that the suit itself was not maintainable.

15. The decree is silent with respect to the identity of the property. The Government have acquired large extent of property on behalf of Tami Nadu Housing Board. The property shown in the decree in O.S.No.3371 of 1998 is part of the acquired land. Its

1 (2004) 12 SCC 555

2 AIR 1954 SC 340

four boundaries are not correctly described. The Tamil Nadu Housing Board is perfectly correct in its contention that an incorrect schedule was shown in the schedule to the decree. When the identity of the property itself was in doubt, the trial court should have taken little care while granting the relief. In any case the decree as it stands now is unexecutable. We are therefore of the view that the revision petitioner must succeed.

Disposition:

16. In the result, the order passed by the first respondent is confirmed. The execution petition in E.P.No.705 of 2014 is struck off from file.

17. In the upshot, we dismiss the writ petition in W.P.No.5522 of 2015 and allow the Civil Revision Petition in C.R.P (NPD) No.2445 of 2014. Consequently the connected MP is closed. No costs.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

Tr/

To

1. The IX Assistant Judge
City Civil Court, Chennai
2. The Secretary to Government
Housing and Urban Development Department
Fort St. George, Chennai-600 009.
3. The Managing Director
Tamil Nadu Housing Board
Nandanam, Chennai-600 035.
4. The Executive Engineer
& Administrative Officer
Besant Nagar Division
Tamil Nadu Housing Board
Adyar, Chennai-600 020.
5. The Competent Authority and
Executive Engineer and Administrative Officer
Tamil Nadu Housing Board
Shastri Nagar Complex
Adyar, Chennai-600 020.

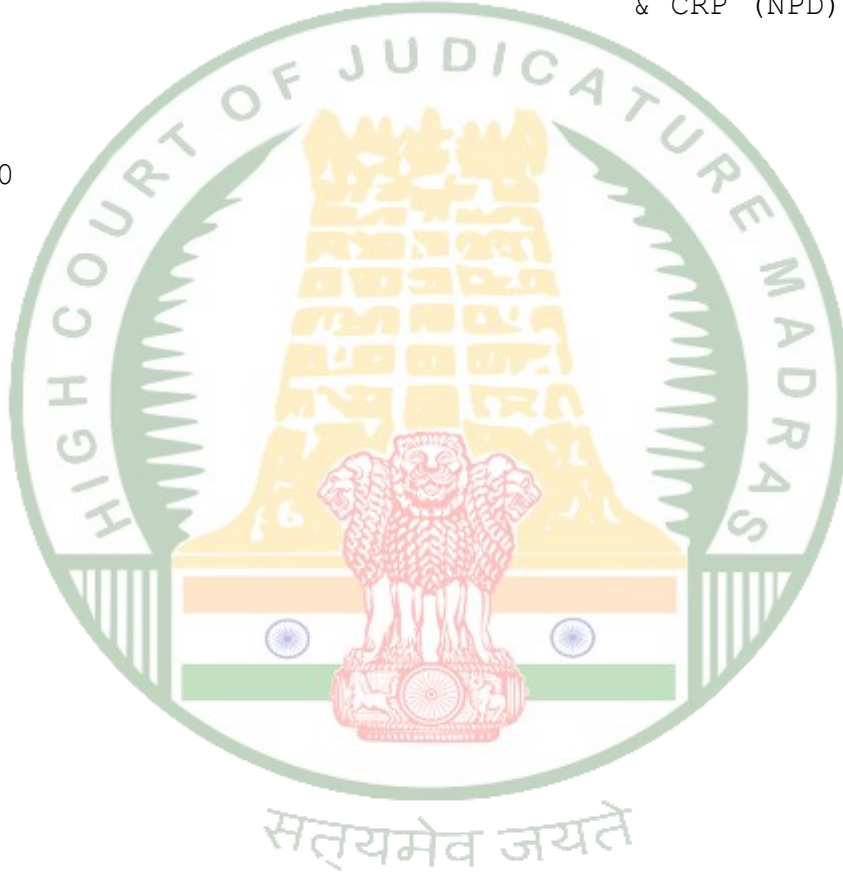
Copy to

The Section Officer
VR Section,
High Court, Madras

2 ccs to Mr.V. Anandhamurthy, Advocate, Sr. 51263, 51262
2 cc to Mr.R. Karthikeyan, Advocate, Sr. 51231, 51232
1 cc to Government Pleader, Sr. 51383

W.P.No.5522 of 2015
& CRP (NPD) No.2445 of 2014

KV (CO)
kk 19/10



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