

IN THE HIGH COURT OF JUDICATURE AT MADRAS

C.A.V. dated 24.09.2014

DATED: 15.06.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.13955 of 2003

and

W.P.M.P.No.17469 of 2003

1.Jeyalakshmi  
2.Jeejababy

...Petitioners

Vs.

1.The State of Tamil Nadu  
represented by the Secretary to the Government,  
Housing and Urban Development Department,  
Fort St.George, Madras - 600 009.

2.The Special Tahsildar,  
Land Acquisition, (Housing Scheme),  
Hosur, Dharmapuri District.

...Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India to direct the issue of writ of declaration or any other appropriate writ or direction to declare that the acquisition proceedings initiated in G.O.Ms.No.788 (Housing and Urban Development) and dated 17.06.1980 and the consequent declaration in G.O.Ms.No.647 (Housing and Urban Development Department) and dated 24.03.1983 as non est and void.

For Petitioners : Mr.Sarath Chandran  
and Mr.V.Raghavachari

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

## O R D E R

The petitioner submits that the property situated at Survey No.31 and to an extent of 2.15 acres of Hosur Village, Dharmapuri District is the ancestral property to the writ petitioners. They have also been given a joint patta in patta No.126. This property was sought to be acquired by the respondents for a housing scheme of the Tamil Nadu Housing Board. To that end, the 2nd respondent is said to have initiated acquisition proceedings under the provisions of the Land Acquisition Act, 1894.

2. The petitioner states that the petitioners have not been served with any notice as contemplated under the Act. No enquiry as contemplated under Section 5A was conducted. The petitioners have challenged the acquisition on several grounds before this Court in W.P.No.3391 of 1998. The respondents have taken a defense that the service of notice was by affixture and hence, the writ petition was dismissed by this Court. He states that the action of the respondents in not adhering the service of notice has reached finality. However, there are in existence fundamental errors which render the very proceeding as void. It is on these grounds that the petitioners have the present writ petition.

3. The petitioner states that the acquisition proceedings have been initiated under section 4(1) of the Act in G.O.Ms.No.788 (Housing and Urban Development) and dated 17.06.1980. This was published in Tamil Nadu Government Gazette on 09.03.1980. The proceedings under section 6 of the Act is said to have been published on 24.03.1983 and was published in the Tamil Nadu Government Gazette on 20.04.1983. These particulars had been furnished by the respondents in the previous writ proceedings. He is advised to state that the Land Acquisition Act suffered an amendment by Act LXVIII of 1984. By this amendment, Section 11 of the Act was amended. This provision demands that the acquiring authority should pass an award only after the previous approval of the appropriate authority or of such officer as the appropriate Government may authorize in this behalf.

4. The petitioner is advised to state that the statute has also the power to the Government to delegate the power of approval of the award. In exercise of the powers conferred under the proviso, the 1st respondent had issued in G.O.Ms.No.2003 (Revenue) and dated 13.12.1984. As per this gazette, in case the value of the award exceeds Rs.10,00,000/- (Rupees Ten Lakhs) then the award has to be approved by the Commissioner of Land Administration. In case, the

total compensation in the award does not exceed Rs.10,00,000/-, then it must be approved by the District Collector.

5. The petitioner states that the 1st respondent had further made it clear to all the Collectors/Additional Collectors/District Revenue Officers that for any award passed on or after 24.09.1983, it should be in accordance with the amended act. In fine, it was made mandatory that for any award passed on or after 24.09.1984, the previous approval of the appropriate officer as authorized should be obtained. The petitioner is advised to state that this provision had been interpreted by this Court and by the Hon'ble Supreme Court. It has been held that in case an award is passed without the prior approval, goes to the very jurisdiction of the authority who passes the award and renders the same non est. In other words, in case the respondents have passed an award without the approval of the Commissioner of Land Administration or the District Collector. The award is void and non est in the eye of law as if the award does not exist. Consequently, the proceedings will attract the provisions of Section 11-A of the Act and render the entire proceedings as lapsed. Hence, this writ petition is filed.

6. The highly competent counsel Mr.Sarath Chandran, appearing for the petitioner submits that the petitioners are the owners of the property comprised in Survey No.31, to an extent of 2.15 acres at Hosur Village, Dharmapuri District. The Joint patta had been issued by the Competent Tahsildar. The 2nd respondent herein had initiated Land Acquisition Proceedings for acquiring the petitioner's land under the Old Act. But, the petitioners have not been served any notice as contemplated under the Old Act. Besides, no enquiry was conducted Under Section 5(A) of the Act. The petitioners had challenged the land acquisition proceedings on an earlier occasion before this Court in W.P.No.3391 of 1998. The respondents had stated in the said writ petition that notice was by affixture. Hence, the said writ petition was dismissed.

7. The very competent counsel further submits that the respondents had not served notices on the petitioners as per the Old Act. As such, the entire acquisition proceedings had been lapsed. Further, in the instant case the compensation amount had been fixed below of Rs.10,00,000/-. As such, the District Collector is the Competent Authority to approve the said award and not by the Commissioner of Land Administration. Further the 1st respondent had directed his subordinate to pass any award to the land owners on or after 24.09.1984, it should be in accordance with the amended Act. The same was not followed. Further, as per the Hon'ble Supreme Court's decision, in case an award is passed without the prior

approval, goes to the very jurisdiction of the authority and renders the same honest. In the instant case, the award is void and non est. Consequently, the proceedings will cover Section 11(A) of the Act.

8. The learned counsel had cited a judgment reported in Tikka Sahib Singh and another Vs State of Haryana and Others.

A. Land Acquisition Act, 1894 - Ss.11, 11-A, 48(1), 48(2), 4 & 6 - Lapse of acquisition proceedings under S.11-A of non-grant of approval of proposed award by State Government - Whether amounts to withdrawal from acquisition under S.48(1) - Held, S.11-A and the consequence provided therein is entirely distinct and different from the decision that the Government may take for withdrawal from acquisition under S.48(1), provided possession has not been taken - Statutory lapse proceedings under S.11-A would not tantamount to withdrawal from acquisition as contemplated under S.48(1) - Further held, claim for compensation under S.48(2) can only be made when Government withdraws from acquisition under S.48(1).

B. Land Acquisition Act, - 1894 - Ss.48(1), 4 & 6 - Whether decision of Government to withdraw from acquisition needs to be published in official Gazette - Held, though such a requirement is not explicitly stated in S.48(1), but since the Act provides for the publication of notification and declaration under Ss.4 and 6 of the Act in the Official Gazette obviously withdrawal from land acquisition proceedings by taking resort to S.48(1) also must be done in the like manner.

9. The highly Competent Additional Government Pleader Mr.M.S.Ramesh, appearing for the respondent submits that the 1st respondent had issued in G.O.Ms.No.788 (Housing and Urban Development) dated 17.06.1980. Following the said Government Order, the 2nd respondent herein had issued notification Under Section 4(1) of the Act. The same was published in the Gazette. Besides paper publication was also given in the local region. Apart from this notice was affixed on the door of the petitioners. The highly competent counsel further submits that the same notification had been challenged by the writ petitioner in W.P.No.3391 of 1989 and the same was dismissed on merits on 13.03.1988. As such the present writ petition is the 2nd round of litigation. On the same cause of action, same property and same parties. As such, the writ petition is covered under resjudicata. Therefore, the writ petition is not maintainable. The learned counsel further submits that the petitioners properties and other properties were utilized for neighbourhood scheme. As such the present writ petition has become infructuous. The 2nd respondent had acquired the land after strictly

following the Old Act and assigned the said land to and in favour of Tamil Nadu Housing Board.

10. On considering the facts and circumstances of the case and arguments advanced by the learned counsel on either side and on perusing the typed set of papers, this Court does not find any leverage in the above writ petition to allow it. Further, the petitioner had not produced any current documents especially revenue records to prove that the petitioners are in possession and enjoyment. Hence, the above writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

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To

1.The State of Tamil Nadu  
represented by the Secretary to the Government,  
Housing and Urban Development Department,  
Fort St.George, Madras - 600 009.

2.The Special Tahsildar,  
Land Acquisition, (Housing Scheme),  
Hosur, Dharmapuri District.

1 CC to the Government Pleader, SR.No. 29544

W.P.No.13955 of 2003  
and

W.P.M.P.No.17469 of 2003

KM (CO)  
PSI (02.07.2015)

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