

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON 31/07/2014

DATED: 17/06/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.27871 of 2004

Smt.Chandra Soundarapandian ... Petitioner

Vs.

1.State of Tamil Nadu represented
by Secretary, Housing and
Urban Development Department,
Fort St. George, Chennai - 600 009.

2.The Special Tahsildar (L.A.),
Neighbourhood Scheme,
Tuticorin Taluk, Tuticorin District. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for a Writ of Certiorari, to call for the records of the first respondent pertaining to the Notification under Section 4(1) of the Land Acquisition Act in G.O.Ms.No.631, dated 26.06.1985, Housing and Urban Development Department and the Declaration under Section 6 of the Land Acquisition Act in G.O.Ms.No.1173, Housing and Urban Development, dated 29.07.1986 in so far as the petitioner's lands are concerned in S.No.124/1B1 measuring an extent of 1.52 acres in Sankaraperi Village, Tuticorin Taluk, Tuticorin District and quash the same.

For Petitioner : Ms.Auxlia Peter

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

O R D E R

The petitioner submits that the agricultural lands measuring 5.79 acres in S.No.124 in Sankaraperi Village, Tuticorin Taluk, Tuticorin District out of a total extent of 14.95 acres originally belonged to R.Rathinasamy Nadar S/o.Ramasamy Nadar and R.Soundarapandian Nadar, S/o.Ramasamy Nadar under the joint patta No.76 originally standing in the name of Muthiah Nadar and three others. The petitioner further submits that the Registered Partition

Deed dated 20.01.1965 between R.Rathinasamy S/o.Ramasamy Nadar and R.Soundarapandian Nadar, S/o.Ramasamy Nadar, Rathinasamy was allotted 4.27 acres out of 5.79 acres in S.No.124/1B/1 within the stated boundaries and R.Soundarapandian, S/o.Ramasamy Nadar was allotted the lands in S.No.124/1B/1 measuring 1.52 acres out of 5.79 acres within the stated boundaries. The petitioner further submits that the divided brothers Rathinasamy Nadar and Soundarapandian Nadar have been enjoying the respective shares ever since then individually. The petitioner further submits that kists have been paid for patta No.76 all along. The petitioner further submits that her husband Soundarapandian Nadar died intestate on 01.03.1988 leaving behind her and one son and three daughter as the only heirs at law.

2. The petitioner further submits that she has come to understand that a Notification under Section 4 (1) under Land Acquisition Act was made in G.O.Ms.No.631, dated 26.06.1985 published in the Tamil Nadu Government Gazette on 10.07.1985 and she understands that the said notification mentions the property as "Government Dry S.No.124/1B1A2 belonging to Thiruvallargal Manoharan, Rathinasamy Nadar, sons of Chinna Thurai Nadar, Soundarapandian Nadar S/o.Ponniah Nadar, Smt.Deisi Nallammal W/o.Dhanaseelan Joseph, Soundarapandian, S/o.Chelliah Nadar bounded on the North S.No.124/1A2, 1A3, 1A4, 1A5, 1B1A2, 1B1A3, 1B1A4, 1B1A5, 1B1A6, East by S.No.124/1B1A2, 1B1B, 1B1C, 125/1, South by 124/B/2 and to West by 133 extent 2-00-01 Hectare."

3. The petitioner understands that neither her husband's name nor the name of her husband's brother has been shown in the said 4(1) Notification as persons interested in the land. She submits neither her husband nor she has been served with notice in respect of acquisition at any stage of acquisition proceedings. She further submits that they had no opportunity to object to the acquisition since the lands belonging to them have not been shown either separately in the notification nor her husband's name is shown in the notification. She further submits the valuable right to object to the acquisition is therefore totally denied and she submits the statutory right under Section 5(A) has been totally deprived to them and their property cannot be acquired without any kind of notice to them. The petitioner further submits that the natural justice requires that when the property is acquired, notice would be issued to the true owner and in the absence of his legal representatives and the concerned person heard before the acquisition can be proceeded with. The petitioner further submits that the only opportunity to object to the acquisition is before the issue of declaration under Section 6 and after issue of notification under Section 4(1). The petitioner further submits that there was no sub-division as regards to 1.52 acres allotted to her husband and as absentee land lord, she had no knowledge of acquisition proceedings at all. The petitioner further understands that immediately after partition in 1965 her husband's brother seems to have alienated the properties allotted to him. There had been no

award notice under Section 5(A) or thereafter under Sections 9 and 10 of the Land Acquisition Act or even for any award proceeding or after the passing of the award. The petitioner further submits that the Declaration under Section (6) has been made in G.O.Ms.No.1173 HSg. & Urban Development Department dated 29.07.1986 and published in the Tamil Nadu Government Gazette dated 30.07.1986.

4. The petitioner further submits that she has been issued a patta on 26.09.1989 for patta No.76 for the lands in S.No.124/1B/1A measuring 2.00.00 Hectares being equal to 4.0 acres and she has been all long under the impression that their land is not acquired and that it still continues in their holding. The petitioner further submits that the lands in Survey No.124/1B/1 measuring 1.52 acres out of 5.79 acres continues to be in their possession and enjoyment and possession of land has not been taken so far and the land has not vested with the first respondent as such. The petitioner further submits that she has not received any Award Notice under Section 12(2) of Land Acquisition Act nor any notice from the Court under reference of Section 30 of the Land Acquisition Act. The petitioner further submits that she has obtained encumbrance certificate on 25.05.2004 for the said land in S.No.124/1B/1 in Sankaraperi Village for the period of 9 years from 01.08.1996 to 24.05.2004 as well as for the period 01.01.1991 to 31.07.1996 and these encumbrance certificates do not show any encumbrance over the property. The petitioner further submits that under the scheme for updating revenue patta some mistake must have crept in and the land in their holding have not been taken into consideration at all and neither her husband during his life time nor his heirs after his demise on 01.03.1988 have alienated any portion of the property that is fallen to his share in 1965 partition and the entire land still continues in their holding. The petitioner further submits that she came to know that some of the neighbouring land owners have filed writ petitions and had the acquisition proceedings quashed by the High Court and there upon, she made enquiry and came to know of the notification under Section 4(1) in G.O.M.S.No.631, dated 26.06.1985, the declaration under Section 6 in G.O.Ms.No.1173, Housing and Urban Development Department dated 29.07.1986 and an award was passed in Award No.2/88, dated 23.07.1988.

5. The petitioner further submits that on verification of the same it is not known whether the lands belonging to them in S.No.124/1B/1 measuring 1.52 acres allotted to her husband in the partition of 1965 had been acquired at all and any award having been passed in respect of the same. In the notification under Section 4 (1) nor in the declaration under Section 6 nor in the award is there any mention of 1.52 acres in S.No.124/1B/1 as belonging to either Soundarapandian, her husband or his predecessors. The petitioner further submits the lands in S.No.124/1B/1 belonging to her husband measuring 1.52 acres in Sankaraperi Village is also the subject of acquisition, but, she was not able to get any particulars. The petitioner's husband Soundarapandian was the owner all along ever

since 1965 partition and he has not been issued any notice and any acquisition of the land belonging to him without hearing him is opposed to all canons of law and also opposed to natural justice. The petitioner further submits that even after the declaration under Section 6 there was no notice under Section 9 and 10 of the Land Acquisition Act. The petitioner submits that the Land Acquisition Officer, the second respondent would have come to know about the interest of her husband in the land, had the Land Acquisition Officer verified the records properly and made a thorough enquiry. The petitioner further submits that the records would clearly show the non-application of mind by the acquiring authority who has without strictly complying with the provisions of the Land Acquisition Act and the rules framed thereunder as well as the guidelines has proceeded with the acquisition. The petitioner further submits that her husband Soundarapandian died on 01.03.1988 and the Award No.2/88 seems to have been passed on 23.07.1988. The petitioner further submits that her husband had no notice for the Award enquiry at any earlier point of time. The petitioner further submits that the award does not consider her husband's interest in the said lands.

6. The petitioner further submits that the power to acquire is coupled with a duty to show cause notice to the true owners and hear their objections if any. Any acquisition without giving an opportunity to the true owner is arbitrary and unconstitutional. The petitioner further submits that on any reasonable enquiry the authorities especially the second respondent would have known that the land measuring 1.52 acres in S.No.124/1B/1 is owned by her husband. The petitioner further submits that the failure of the second respondent to make any such enquiry vitiates the entire acquisition proceedings. The petitioner further submits that the Declaration under Section 6 was made neither in her husband's name nor his holding shown separately. Hence, the petitioner entreats the Court to allow the above writ petition.

7. The highly competent counsel Ms.Aulia Peter appearing for the petitioner submits that the agricultural lands measuring to an extent of 5.79 acres in Survey No.124/1B/1, at Sankaraperi Village, Tuticorin Taluk was originally a joint family property. Subsequently, the said property had been divided and the petitioner's husband was allotted 1.52 acres. The petitioner and her family members are in physical possession and enjoying the same by way of cultivation. The respondents had issued notification under Section 4(1) for acquiring the petitioner's land and other lands for neighbourhood Scheme. The respondents had not served any notice under Section 4(1) or under Section 5(A) or under Section 6 of the Old Act. As of now, the petitioner is in possession. The highly competent counsel further submits that the petitioner had obtained encumbrance certificate from the concerned Sub-Registrar Office which reveals that there is no encumbrance over the said property. Hence, the highly competent counsel entreats the Court to allow the

above writ petition and quash the respondent's acquisition proceedings.

8. The highly competent Special Government Pleader Mr.M.S.Ramesh appearing for the respondents submits that the first respondent had issued G.O. for acquiring the petitioner's land and other lands for forming Neighbourhood Scheme. On the basis of the G.O., the second respondent adopted all legal formalities as per the Act and acquired the said land. The petitioner had been issued notices but she did not appear for enquiry. The award enquiry notice had been served on the petitioner on 03.07.1988. Subsequently the award was passed on 23.07.1988. The possession was handed over to the Tamil Nadu Housing Board on 13.09.1988. Now, the property is vested under the control of Tamil Nadu Housing Board. Therefore, the highly competent counsel requests this Court to dismiss the above writ petition.

9. On considering the facts and circumstances of the case and arguments advanced by the highly competent counsels on either side and on perusing the typed-set of papers, this Court is of the view that the petitioner has not produced any current documents pertaining to the subject matter of the land viz., patta, chitta, adangal and a certificate from the Village Administrative Officer to prove that she is in physical possession and enjoying the said property. As such, this Court does not find sufficient force in the writ petition to allow it.

10. In the result, the above writ petition is dismissed. There is no order as to costs.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

1. The Secretary, Housing and
Urban Development Department,
Government of Tamil Nadu,
Fort St. George, Chennai - 600 009.
- 2.The Special Tahsildar (L.A.),
Neighbourhood Scheme,
Tuticorin Taluk, Tuticorin District.

1 cc to Government Pleader, Sr. 30067

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