

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:

CAV ON : 31.07.2014
DATED : 26.11.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.38016 of 2002
and
W.P.M.P.No.56982 of 2002

S.Ganga .. Petitioner
Vs. ..

1.The State of Tamil Nadu,
Rep. by its Commissioner and
Secretary to Government,
Housing and Urban Development Department,
Fort St.George,
Chennai - 600 009.

2.The Special Tahsildar
(Land Acquisition),
Tamil Nadu Housing Board,
Unit III, Anna Salai,
Chennai - 600 035. ... Respondents

Prayer: The Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari or any other appropriate writ, order or direction in the nature of a writ, calling for the records on the file of the 2nd respondent herein in relation to Award No.8/1984, dated 01.10.1984 in respect of lands situated in S.Nos.557/1 and 557/2 admeasuring an extent of 1.3 Acres in Mugappair Village, Ambattur Taluk, Tiruvallur District of the petitioner.

For Petitioner : Mr.V.Balakrishnan

For Respondents: Mr.M.S.Ramesh
(Additional Govt. Pleader)

O R D E R

The petitioner states that the petitioner is the absolute owner of the property comprised in Survey Nos.557/1 and 557/2 admeasuring 1.3 acres at Mogappair Village, Ambattur Taluk, Tiruvallur District. The above said land has been acquired by the respondents for the purpose of Ambattur Neighbourhood Scheme of the Tamil Nadu Housing Board.

2. The petitioner further states that Notification under Section 4(1) of the Land Acquisition Act, 1894 was published under G.O.Rt.No.261, Housing Department dated 23.10.1975 in Tamil Nadu Government Gazette 12.11.1975. He further states that declaration under section 6 of the Act has been published by the Tamil Nadu Government Gazette dated 10.11.1978 under G.O.Ms.No.1515, Housing and Urban Development dated 09.11.1978. He further states that subsequently under section 4(1) of the Notification was published on 23.10.1975 and an Award No.8 of 1984 dated 01.10.1984 has been passed. He states that the notice contemplated under section 5-A Enquiry of the Land Acquisition Act has been issued to the petitioner. He states that from and out of the above said Notification of the Tamil Nadu Housing Board has excluded the land over to an extent of 4.81 Acres as per meeting convened on 04.07.1978 and he states that on 17.12.1981, the Government of Tamil Nadu as per letter dated 17.12.1981 in No.3082/A2/76-2 to an extent of 81.81 acres have been excluded.

3. The petitioner further states that one Smt.Rubi Ammal has given petition on 05.02.1981 for exclusion of her land in S.No.557/3 to an extent of 0.62 Acres and the same has been acquired by the same notification, the Government of Tamil Nadu by letter dated 17.12.1981 vide letter No.7673/A2/81-4 has been withdrawn from the Notification, for the reason the lands are situated on the fringe of the scheme area and adjacent to the village site which was already excluded from the scheme under the acquisition may cause heavy loss to the petitioner. He states that the Survey No.557/3 which is adjacent to this land on the eastern side. He states that the land in question situated at the fringe of the scheme and Southern portion of the land which is penetrated in this land is a village site which was already excluded from the acquisition. He further submits that the petitioner is similarly placed the above said Smt.Ruby Ammal and he further states that the land of the petitioner was included in the scheme, she does not have any other land except this piece of land which for her livelihood. He further states that the petitioner has not availed any of the privileges from the Tamil Nadu Housing Board in getting Plots/Flat as ex-owner. He further states that the petitioner has given various representations and the last one being on 01.09.2002 for exclusion.

4. The petitioner further states that the entire acquisition proceedings are lapsed since the Award has been passed more than the prescribed period of two years from the date of publication of the 6 Declaration. He further states that the petitioner went and enquired about the passing of the Award, Petitioner came to know that the 6 Declaration has been passed on 09.11.1978. The Award said to have been passed on 01.10.1984 in Award No.8/1894. He further states that the respondents have not followed the procedure and the Mandatory

requirement as contemplated under Section 11-A of the Land Acquisition Act, 1894 while passing the said Award. He states that the 2nd respondent has passed the Award even without issuing the Notice. He further states that the said Award has been passed beyond the statutory period as contemplated under the Land Acquisition Act, 1894 and hence the entire proceedings are vitiated. He states that the Award said to have been passed is void, non-est in law and liable to be set aside in view of the beyond prescribed period i.e., within two years in between 6 declaration and Award. He further states that even inspite of repeated representation of exclusion there is no possible reply from the respondents. He further submits that ever since from the date of acquisition of the land of the petitioner they have not utilized it for the purpose for which the land was acquired.

5. The petitioner further states that the petitioner is landless poor lady and she is purely depending on the said land for livelihood and in view of the said acquisition the petitioner will be seriously prejudiced and put to irreparable loss and hardship. Hence, this writ petition is filed.

6. The learned counsel appearing for the petitioner has submitted that the respondents had acquired the subject land, measuring about 01.30 Acres, at Mogappair, for the purpose of Ambattur Neighbourhood Scheme. Initially, a notification, under Section 4(1) of the old Act, was published during 1975 and subsequently a declaration, under Section 6 of the Act, was published during 1978. The respondents had passed the impugned Award, dated 01.10.1984, without conducting enquiry under Section 5(A) of the Act.

7. Further, the learned counsel has submitted that out of the acquired land, the respondents had excluded the land, measuring about 81.81 Acres. Likewise, an extent of 00.62 Acres had been discharged from the notification to and in favour of the land owner Rubiammal. The petitioner made several representations and pointed out the irregularities having been committed by the Land Acquisition Officer in acquiring the lands. The impugned Award had also been passed after a lapse of six years from the date of declaration. The date of declaration is 09.11.1978 and the date of Award is 01.10.1984 and hence the award and other proceedings for acquiring the petitioner's land is not sustainable under law. Therefore, the learned counsel has prayed this Court to set aside the impugned Award, dated 01.10.1984.

8. The learned Additional Government Pleader appearing for the respondents has submitted that the land acquisition proceedings had been initiated during 1975 and subsequently an enquiry, under Section 5(A) of the Act, was conducted. Thereafter, a declaration dated 10.11.1978, under Section 6 of the Act, was published. The Tamil Nadu Housing Board notified the subject land for the purpose of Ambattur Neighbourhood

Scheme. The petitioner has filed the writ petition after a lapse of around 20 years. Since the acquired land had been distributed to the needy public in general after following the terms and conditions, the relief sought for by the petitioner has become infructuous. Therefore, the learned Additional Government Pleader has prayed this Court to dismiss the writ petition.

9. Considering the facts and circumstance of the case, arguments advanced by the learned counsel on either side and on perusing the typed set of papers, this Court is of the view that the impugned Award has been passed during 1984 and the possession was taken over by the Housing Board, who inturn distributed the land to the general public in order to implement Ambattur Neighbourhood Scheme, after observing necessary formalities. As such, the subject land is under the occupation of the third parties as allottees / owners. In such circumstances, this Court is not inclined to set aside the impugned Award.

10. In the result, the writ petition fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ub /krk

To:

- 1.The Commissioner and Secretary to Government,
State of Tamil Nadu,
Housing and Urban Development Department,
Fort St.George, Chennai - 600 009.
- 2.The Special Tahsildar (Land Acquisition),
Tamil Nadu Housing Board,
Unit III, Anna Salai,
Chennai - 600 035.

W.P.No.38016 of 2002
and
W.P.M.P.No.56982 of 2002

MSM(CO)
EU 15.12.15