

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON 12/09/2015

DATED: 05/01/2016

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.7057 of 2014

and

M.P.No.2 of 2014

Sethuraman

.... Petitioner

Vs.

1.The Chief Engineer,
National Highways, Chennai - 5.

2.The Assistant Divisional Engineer
(Highways) C & M,
Chengalpattu.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for a Writ of Certiorarified Mandamus, to call for the records in proceedings No.nil, dated 27.12.2013, on the file of the second respondent and quash the same as illegal, incompetent and unconstitutional and further direct the respondents, their men, agents and any other person not to interfere with the property bearing S.No.82/1A3A, measuring 0.19.5 Ares, situate at Mamallapuram Village, Thirukalukundram Taluk, Kancheepuram District.

For Petitioner : Mr.V.Raghavachari

For Respondents: Mr.M.S.Ramesh

Additional Government Pleader

O R D E R

The short facts of the case are as follows:-

The petitioner has submitted that the property bearing S.No.82/1A3A measuring 0.19.5 Ares situated at Mamallapuram Village, Thirukalukundram Taluk, Kancheepuram District, originally belonged to his mother, who acquired the property as per sale deed dated 17.10.1978. She bequeathed the said lands to him as per will dated 24.05.2007. the testator expired on 18.09.2010. The testament came into effect immediately after the date of death of testator. Therefore, he is the absolute owner of the aforesaid land. From the date of purchase by his mother in 1978, along with

his mother, they are in possession and enjoyment of the property by running a restaurant in the name and style of "Hotel of Mamalla". Till date no notice was issued either for acquisition of his holdings or any enquiry conducted. He is in same place for more than four decades, however, he has not received any notice for acquisition till date. He and his predecessor have no knowledge about the alleged acquisition proceedings. To his shock and surprise, on 27.12.2012, he was served with the impugned notice calling upon him to vacate the premises alleging that the land had been already acquired for extension of National Highways IV. Although, he was not issued with any notice in acquisition proceedings. The impugned order does not speak about the survey number, boundaries and extent of property. It was further silent about how the property had been acquired by the respondent. The said notice has been issued under Section 27(2)(ii) of Tamilnadu Highways Act, 2001 alleging his property had been notified for land acquisition for the purpose of widening of National Highways from two lane to four lane from Akkarai Village to Pooncheri Village. However, the notice is silent about when and where acquisition had been initiated and when the enquiry was conducted by him. The impugned notice has been distributed without any identification of property just like a circular. This notice does not even specify the name of the petitioner / landowner. Without any prior notice and enquiry, the respondents had classified his legal possession over his holdings as "encroachment" and directed him to vacate the premises within 7 days from the date of receipt of the notice.

2.He has further submitted that the respondent has no authority to acquire his holdings contrary to the Land Acquisition Act. The Hon'ble Supreme Court as well observed in *Tukaram Kana Joshi v. MIDC*, (2013) 1 SCC 353, that the taking of possession or acquiring the property of a citizen most certainly tantamount to deprivation and such deprivation can take place only in accordance with the law, as the said word has specifically been used in Article 300-A of the Constitution. Such deprivation can be only restored to through a procedure prescribed by a statute. The same cannot be done by way of executive fiat or order or administration caprice. In *Jilubhai Nanbhai Khachar v. State of Gujarat*, Air 1995 SC 142 it has been held as follows:"-

"48.In other words, Article 300-A only limits the powers of the State that no person shall be deprived of his property save by authority of law. There [is] no deprivation [due] sanction of law. Deprivation by any other mode is not acquisition or taking possession under Article 300-A. In other words, if there is no law, there is no deprivation."

3.He has further submitted that Article 300-A of the Constitution has guaranteed the right to property as a constitutional right. To the knowledge of the petitioner,

there has been no acquisition in respect of his property. The respondent has no authority to deprive him of his property without adhering to procedure prescribed by law. When there is no acquisition as per law, the state has no authority over the petitioner's land. Therefore, the respondents have no authority to classify his holdings and the property acquired by him and his possession over his legal holdings as encroachment. The notice directing the petitioner to vacate his own private land and threatening of coercive action for dispossession in his absence is absolutely illegal and exceeding his jurisdiction. When there is no acquisition, the respondents have no right over the petitioner's land, therefore, the notice itself is unwarranted. He has further submitted that immediately after the receipt of the impugned notice, on 13.01.2014, he had made representation to the respondent clearly informing that there is no acquisition earlier in point of time to the knowledge of this petitioner and the property cannot be acquired without following the procedure laid down by law. However, the respondents have taken steps to dispossess him from his legal holding contrary to law. Hence, this writ petition is filed

4. The second respondent has filed a counter affidavit on behalf of them and the first respondent has submitted that the Government decided to "The Strengthening and Widening of the East Coast Road from Thiruvannamiyur to Cuddalore (S.A.Dist)" As part of it, an extent 5.60.0 hectares or 14.04 acres dry lands in Mamallapuram village, formerly Chengalpattu Taluk and now Thirukazhukundram Taluk, Kancheepuram District. The draft notification under Section 4 (i) read with Section 17(3) of urgency clause of Land Acquisition Act (Central Act 1 of 1894) for an extent of 5.60.0 hectares equivalent to 14.04 acres of dry lands was approved in G.O.Ms.No.852 (Public Work (HS 2) Department dated 16.06.1992.

It was published as detailed below:-

- | | | |
|--------------------------------------|---|------------|
| 1.T.N.G.G. | : | 24.06.1992 |
| 2.Tamil Nadu News Papers Thinathoodu | : | 26.06.1992 |
| 3.Tamil Nadu News Papers Namadu MGR | : | 04.07.1992 |
| 4.In the locality | : | 20.07.1992 |

The Draft declaration under Section 6 of the Land Acquisition Act (Central Act 1 of 1894) for the above extent of 5.60.0 hectares (or) 14.04 acres of dry lands was approved in G.O.Ms.No.642/PW (HS-2) Department dated 27.04.1993 and published in the TNGG issue No.223 Extra ordinary Part-II Section 2 dated 29.04.1993 at pages 1 to 7.

It was published as detailed below:

- | | | |
|-----------------------------|---|------------|
| 1.TNGG | : | 29.04.1993 |
| 2.Tamil Nadu News Papers | | |
| Vetrimalai and Makkal Kural | : | 30.04.1993 |
| 3.In the locality | : | 20.05.1993 |

5. The draft direction under Section 7 of the Land Acquisition Act 1894 was approved by the Government in their letter No.61641/ (HS-2)/93-1 Public Works (Highways) Department dated 03.08.1993 and published in the supplement to part II Section 2 issue No.32 dated 18.08.1993. The Special Tahsildar (Land Acquisition) unit II East Coast Road Project, Big Melamaiyur, Chengalpattu has been authorized to perform the function of the Collector under provision of Urgency clause under Sub Section (i) of Section 17 of the Land Acquisition Act 1894. The lands notified for acquisition has been duly demarcated, surveyed, measured and mapped under Section 8 of the Act. The area shown in this award is true and correct area of the land. The notice under Section 9(i) and 10 of the Land Acquisition Act 1894 was also published in the locality. The individual notices under Section 9(3) and 10 of the Act were also issued to the land owners calling for them to attend Award enquiry. The acquired lands were taken over and possession handed over to the Highways Authority on 20.05.1995. The files relating to Chengalpattu Taluk were handed over to the office of the Revenue Divisional Officer, Chengalpattu, after the disbandment of the post of Special Tahsildar (Land Acquisition) Unit II, Chengalpattu. The East Coast Road has been formed already and is being maintained by the Tamil Nadu Road Development Company Limited.

6. At the time of passing of awards the lands stands registered in the name of petitioner's mother Tmt.Saraladevi W/o Janarthanan Mudaliar under patta No.201 in the village accounts. The draft notification under Section 4(i), draft declaration under Section 6 and draft declaration under Section 7 has been published in her name. The lands notified for acquisition has been duly demarcated, surveyed, measured and mapped under Section 8 of the Land Acquisition Act 1894. The area shown in this award is true and correct area of the land. The notice under Section 9(3) and 10 of the Land Acquisition Act 1894 was also issued to the petitioner's mother, calling her to attend the award enquiry. The petitioner's mother Tmt.Saraladevi has appeared for the award enquiry. She has stated that she has acquired this property through Doc.No.2186 registered at Sub-Registrars Office, Thirukazhukundram on 20.10.1978. The land has been acquired for East Coast Road as follows.

Sl.No (1)	No. of Patta and name of the Pattadarar (2)	Survey No. (3)	Extent Acquired (4)	In Acres (5)	Compensation Amount (in Rs.) (6)
1.	Patta No.201 Tmt.Saraladevi W/o	82/1A3 A1B	0.01.0	0.03	1,620.00
2.	Thiru.Janarthana Mudaliar	82/2B	0.01.5	0.04	

The lands are under her enjoyment and she was the rightful owner of the property. So the entire compensation amount of Rs.1620/- has been ordered to be paid to Tmt.Saraladevi wife of Thiru.Janarthana Mudaliar. In the above circumstances, the petitioner Thiru.Sethuraman S/o Thiru.Janarthana Mudaliar was not the absolute owner of the aforesaid land at the time of passing of award. In their respectful submission, whether the compensation amount has been made or not is not mentioned in the award. The files relating to Chengalpattu Taluk were handed over to the office of the Revenue Divisional Officer, Chengalpattu, after the disbandment of the post of Special Tahsildar (LA) Unit-II, Chengalpattu. Regarding compensation, the Revenue Divisional Officer, Chengalpattu is the competent authority, but he has not been made a party to this writ petition. Further, the petitioner has encroached the Highways property and has constructed a compound wall and a watchman shed for the "Hotel Mamalla".

7. It is a fact that the notification under Section 4(i) of the Land Acquisition Act was approved by the Government in their G.O.Ms.No.852 Public Works (HS.2) Department dated 16.06.1992 and the Draft Declaration under Section 6 of the Land Acquisition Act was approved by the Government No.642 Public Works (HS.2) 93-1 dated 27.04.1993. The draft direction under Section 7 of the Land Acquisition Act was approved in Government Lr.No.61641/ (HS-2)/93-1 Public Works (Highways) Department dated 03.08.1993 and published in Government Gazette, Daily Newspaper and in the locality on various dates mentioned in this counter affidavit. In response to the notice issued under Section 9(3) and 10 of the Land Acquisition Act. The petitioner's mother Tmt.Saraladevi has appeared for the award enquiry. She has stated that she has acquired this property through Doc.No.2186 registered at Sub-Registrars Office, Thirukazhukundram on 20.10.1978. Furthermore the compensation amount of Rs.1620/- was ordered to be paid. In the above circumstances, it reveals that the petitioner has given false and frivolous details in his affidavit. In their respectful submission, the petitioner has encroached the Highways property and has constructed a compound wall and a watchman shed for Motel Mamalla. The second respondent in this case is a competent authority to issue notice of eviction under Section 28(2)(ii) of Tamil Nadu Highways Act, 2001. All the procedures mentioned in the Land Acquisition Act 1 of 1894 were observed in the Acquisition and all formalities and procedures laid down in the law are followed and the Land Acquisition Proceedings are over. In the above circumstances, it reveals that he has given false and frivolous details in his affidavit.

8. Under the urgency clause under Section 17(i) after passing award the possession was taken over and handed over to the Highways authority on 20.05.1995. As per the award No.9/95, dated 19.05.1995 the draft notification under Section 4(i), DD under Section 6 and DD under Section 7 of the

Land Acquisition Act 1894 have been published in her name. The extent notified and declared are correct. In response to the notice issued under Section 9(3) and 10 of the Land Acquisition Act, the petitioner's mother Tmt.Saraladevi has appeared for the award enquiry. She has stated that she has acquired this property through Doc.No.2186 registered at Sub-Registrars Office, Thirukazhukundram on 20.10.1978. The above land was acquired for East Coast Road and Subdivided as S.No.82/1A3A1B to an extent of 0.01.5 hectares or 0.03 cents and in S.No.82/2B to an extent of 0.01.5 hectares or 0.04 cents. The possession was taken under Section 17(i) and handed over to Highways Authority earlier after the date of passing award (i.e. Award dated 19.05.1995). The Land Acquisition Proceedings have been conducted as per all formalities and procedures laid down in the law. Hence, the petitioner's prayer deserves no merits and consideration.

9. The second respondent has further submitted that the Government has acquired the above lands for the public purpose for strengthening and widening the East Coast Road from two laning to four laning to reduce the frequent accidents. The second respondent in this case is a competent authority to issue notice for eviction of encroachment under Section 28(2)(ii) of Tamil Nadu Highways Act, 2001. There are no merits in the prayer of the petitioner. The land has been acquired accordingly after to the Law. There is no violation of his property rights guaranteed under Article 300-A of the Constitution of India. The land in S.No.82/1A3A1B to an extent of 0.01.0 Hectares or 0.03 Cents and also in S.No.82/2B to an extent of 82/2B to an extent of 0.01.5 hectares or 0.04 cents. The lands have been acquired for widening and strengthening of East Coast Road. The acquired land was taken over possession and handed over to the Highways Authority on 20.05.1995. Necessary changes have been carried out in Village accounts and Taluk accounts. The land was acquired according to Law and there is no violation. Hence, the prayer of the petitioner deserves no merits. The petitioner's mother's lands covered under this award were already taken possession of earlier. Hence, there is no substance in the prayer of the petitioner. The above land was acquired and possession was taken and handed over to the Highways Authority on 20.05.1995. The acquired area of the petitioners land became the property of Highways Authority, in which the petitioner has constructed a compound wall and watchman shed for Motel Mamalla and they are treated as encroachments. He is the respondent having legal rights to issue notice to evict the encroachments. The petitioner has no valid grounds for his prayer in this case due to the fact that lands covered in the award has already been taken possession on 20.05.1995. The Government has sanctioned fund of Rs.272/- crores to execute the work by M/s.TNRDC for widening the East Coast Road from Two Lanes to Four Lanes as per the G.O.Ms.No.113 Highways and Minor Ports (HV2) Department, dated 15.07.2013. The

petitioner being an encroacher has no locus standi to challenge the notice.

10. The learned counsel Mr.V.Raghavachari, appearing for the petitioner submits that the subject matter of the land belonging to the petitioner that he had purchased the same in the year 1979, wherein the petitioner had put up a watchman's shed and the watchman is staying there and taking care and securing the land. The respondents had not issued any notices regarding acquisition proceedings. Under these circumstances, the petitioner has received impugned notice dated 27.12.2013 and called upon the petitioner to vacate the premises alleging that the land had been already acquired for the extension of National Highways. The impugned notice does not have adequate particular regarding Survey Number, boundaries and extension of property. Further, the said notice does not reveal the land owner. The respondents had directed the petitioner to hand over the vacant land within a period of 7 days. As per Article 300(A), no person shall be deprived of his property save by the authority of law, the same was observed by the Hon'ble Apex Court of India. Actually, the respondents had not strictly adhered to the acquisition proceedings.

11. The very competent counsel further submits that the respondents have committed lapse, short coming and lack of procedure for acquiring the petitioner's land. The same was informed to the respondents by way of representation. The respondents on receiving the said representation have not passed any orders. The learned counsel further submits that the subject land is not required for the formation of National Highways. Further, the petitioner has not received any compensation from the respondents. Hence, the highly competent counsel entreats the Court to allow the above writ petition.

12. The learned Additional Government Pleader Mr.M.S.Ramesh, appearing for the respondents submits that the Government had decided on widening of the East Coast Road from Thiruvannamiyur to Cuddalore. Hence, the petitioner's land had been acquired under urgency clause of land acquisition act. The respondents had given notification in the Tamilnadu Government Gazette, the same was published in the Newspapers. Thereafter, a draft declaration was published in the year 1993. The acquired land had been duly demarcated, surveyed and measured accordingly. Individual notices had been issued to the respective land owners for attending the award inquiry, compensation amount also assessed and award passed. The land acquisition officer had handed over the subject lands to the Highway Authorities on 20.05.1995.

13. The highly competent counsel further submits that the acquired land had been utilized by the National Highways. The land acquired for the public purpose for

strengthening and widening the East Coast Road from two laning to four laning for the convenience of transportation. Hence, the impugned notice had been issued which is suitable for execution.

14. Considering the facts and circumstances of the case and arguments advanced by the learned counsels on either side and on perusal of the typed set of papers, it is seen that the land acquisition officer had given a publication in the year 1992 for acquiring the subject lands under Section 4 (1) of the old Act after invoking urgency clause of the act an order to bring about the formation of the "four laning road" for public transportation which is of paramount importance. Hence, the impugned notice had been issued as per the Tamilnadu Highways Act, under Section 27 and 28 considered suitable for execution. Therefore, the above writ petition is dismissed.

15. In the result, the above writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vs

To

- 1.The Chief Engineer,
National Highways, Chennai - 5.
 - 2.The Assistant Divisional Engineer (Highways) C & M,
Chengalpattu.
- + 1 cc to M/s. V. Raghavachari, Advocate sR.199

W.P.No.7057 of 2014
and
M.P.No.2 of 2014

ALA(CO)
Eu 7.03.16