

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HONOURABLE DR.JUSTICE P.DEVADASS

W.A.No.1695 of 2015
and
M.P.No.1 of 2015

1.T.Dharmalingam
T.Kamalaammal (deceased)
2.T.Aaron
3.T.Elumalai
4.T.Sankar ... Appellants

Vs.

1.The Government of Tamil Nadu,
rep by its Secretary,
Highways Department,
Secretariat,
Chennai-9.

2.The District Collector,
Land Acquisition Officer (Highways),
Collectorate of Chennai,
Chennai-1.

3.The Divisional Manager,
Office of Division Engineer (H),
Chennai City Roads,
No.394/4, Anna Salai,
Chennai-600 015.

4.The Assistant Divisional Engineer,
Office of the Assistant Divisional Engineer (H),
Contraction and Maintenance,
Tambaram Sub-Division,
Chennai-600 100.

5.The Revenue Divisional Officer,
Chengalpet.
(R-5 suo-motu impleaded as per order
dated 16.9.2015) .. Respondents

Appeal filed under Clause 15 of the Letters Patent against the order passed by this Court dated 16.09.2015 passed in W.P.No.28110 of 2015.

Prayer in WP.No.28110/15:-

Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorari to call for the records on the file of the 4th Respondent herein in Notice No.27/2014-03/Kanathur/EHA/Dated 05.02.2014 issued under Section 28(2)(ii) of the Tamil Nadu Highways Act, 2001 and quash the same in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013.

For appellants : Mr.V.Paramveer
For Respondents : Mr.N.Sakthivel, GA

JUDGMENT

(Judgment of the Court was made by SATISH K. AGNIHOTRI, J.)

The instant intra-court appeal arises from the order dated 16th September, 2015 passed in W.P.No.28110 of 2015.

2 The appellants / writ petitioners filed a writ petition, seeking to quash the notice, dated 5th February, 2014, whereunder the petitioners were called upon to hand over the possession to the Highways Department, failing which the enforcement action was contemplated, to which a representation was made by the petitioners.

3 The learned Single Judge, examining all facts of the case, recorded as under :

"6.After hearing both the parties, it is evident that the petitioners have produced only the patta in respect of S.No. 56/4B2B whereas the fact that the land comprised in S.No. 56/4B2B has been acquired is proved by the respondents by production of the award proceedings passed by the Special Tahsildar (LA) Unit-I, East Coast Road Project, Chengalpattu, dated 30.03.1995. Further, the land was also allotted to the Highways Department for the purpose of widening of road. Though the petitioners claim that they are in possession of the property in question, they have not produced any document to show that they are in possession of the property comprised in S.No. 56/4B2B. In such circumstances, as stated by the learned Special Government Pleader, since the amount of compensation had already been

deposited, it is for the petitioners to approach the appropriate authority with relevant documents to prove that they are the legal heirs of Thulakanam to get the compensation amount. Therefore, the contention of the petitioners is negatived and the writ petition is dismissed. No costs."

4 It was noticed that acquisition proceedings was initiated way back in 1993, which concluded on 30th March, 1995. The father of the petitioners had participated in the enquiry and compensation, as determined to the tune of Rs.1,33,500/-, was deposited and kept in the Revenue deposit to enable the claimants to get the compensation amount on production of necessary documents. Accordingly, the writ petition was dismissed, giving liberty to the petitioners to approach the Revenue Divisional Officer, Chengalpet for receiving of Award amount on the basis of relevant documents, such as legal heirship certificate, etc.

5 The appellants relied on the subsequent provisions of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "the Act, 2013"). Section 24(2) of the Act, 2013 provides that if compensation has not been paid, proceedings shall be deemed to have lapsed. The learned counsel for the appellant relies on the said provision on the premise that the possession continues with the appellants and the compensation has not been paid. Thus, the acquisition proceedings, which had taken place in 1995, stands lapsed.

6 We have examined the documents and the pleadings appended thereto.

7 Incontrovertibly, the land in question was acquired under the Award dated 30th March, 1995. It is also not in dispute that the father of the appellants /petitioners participated in the enquiry. It is not the case where compensation was not paid by the acquisition officer. The Award was quantified and time was given to the land owners at that point of time to take the compensation amount, which was with the revenue department. The father of the appellants, who was the owner at that point of time, did not take any steps to get the compensation amount and as such, the appellants cannot claim the benefit under the provisions of Section 24(2) of the Act, 2013. Insofar as the possession of the appellants is concerned, it is the case of the respondents that the possession was taken over. However, subsequently the appellants have occupied the land as encroachers. The appellants have failed to produce any material to indicate that possession was never parted with and they have continued in possession. In such view of the matter, we do not find any merit in the appeal.

8 Accordingly, the writ appeal 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 Secretary,
The Government of Tamil Nadu,
Highways Department,
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Chennai-9.
- 2.The District Collector,
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Chennai-600 100.
- 5.The Revenue Divisional Officer,
Chengalpet.

+1 CC to MR.V.Paramveer Advocate. SR.NO.2824
+1 CC to Govt.Pleader. SR.NO. 2731

W.A.No.1695 of 2015

CO-SKV
JD 22/01/2016