

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 05-04-2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.14430 OF 2015

V.Prabhakar Reddy

...

Petitioner

-vs-

1.The Government of Tamilnadu,
rep.by its Secretary to Government,
Highways Department,
Fort St.George,
Chennai-600 009.

2.The Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
Tambaram,
Kancheepuram District.

3.V.Lohith Kumar

4.Radhika Lohith

5.L.Manoj Kumar

6.L.Haritha

...

Respondents

Petition under Article 226 of the Constitution of India, praying for issuance of a writ of Declaration, declaring that the land acquisition proceedings initiated by first and second respondents under the Land Acquisition Act,1894, in respect of the lands originally comprised in Survey No.2/2B and 3/2, and Survey No.3/481 (Part) currently comprised in Survey No.3/481A1A2 in Uthandi Village, Tambaram Taluk, Chengalpattu District (formerly Saidapet Taluk, Chinglepet District) belonging to the petitioner herein as lapsed in so far as the petitioner is concerned, in view of Section 24 (2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act,2013 (Act 30 of 2013).

For petitioner : Mr.T.V.Ramanujun,
Senior Counsel,
for Mr.C.Jagadish.

For respondents 1 and 2 : Mr.R.Rajeswaran,
Special Govt.Pleader.

For respondents 3 to 6 : Mr.P.K.Sivasubramaniam

O R D E R

Heard Mr.T.V.Ramanujun, learned Senior Counsel, assisted by Mr.C.Jagadish, learned counsel for the petitioner; Mr.R.Rajeswaran, learned Special Government Pleader, appearing for respondents 1 and 2; and Mr.P.K.Sivasubramaniam, learned counsel for respondents 3 to 6.

2. Petitioner has filed this Writ Petition, praying for a writ of Declaration, declaring that the land acquisition proceedings initiated by first and second respondents under the Land Acquisition Act, 1894, in respect of the lands originally comprised in Survey No.2/2B and 3/2, and Survey No.3/481 (Part) currently comprised in Survey No.3/481A1A2 in Uthandi Village, Tambaram Taluk, Chengalpattu District (formerly Saidapet Taluk, Chinglepet District) belonging to the petitioner herein as lapsed in so far as the petitioner is concerned, in view of Section 24 (2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013).

3. Petitioner is a subsequent purchaser, having purchased the property from respondents 3 to 6 herein, by a sale deed, dated 05.10.2005, registered as Document No.5763 of 2005 on the file of Sub-Registrar, Neelankarai. The other facts, which have been set out in the affidavit filed in support of the Writ Petition with regard to the title of the petitioner to the land in question need not be gone into for deciding the legal issue raised in this Writ Petition.

4. Petitioner's case is that the land acquisition proceedings stand lapsed, in view of the fact that the petitioner or his vendors have not been dispossessed from the land in question and no compensation has been awarded. In the counter affidavit filed by respondents 3 to 6, three contentions have been raised; firstly, stating that the petitioner is the subsequent purchaser and, therefore, he cannot maintain the present Writ Petition and seek for declaring the land acquisition proceedings as having lapsed, when the original land owners did not do so. With regard to second aspect, namely, possession, it is stated that urgency clause was invoked under Section 17 of the Land Acquisition Act, 1894, and possession was taken immediately, and after twenty years of passing of the award, the petitioner belatedly claimed compensation. The third contention is that compensation has been deposited before the Civil Court i.e., Sub-Court, Tambaram, on 24.11.2015.

5. The law on the subject is well settled and in a recent decision of the Hon'ble Division Bench of this Court in the case of Tamil Nadu Housing Board v. Igate Global Solutions and Others, 2016 (2) MLJ 385, the Hon'ble Division Bench

considered all the issues, including the issue with regard to the case of subsequent purchaser, like that of the petitioner herein. In fact, the lead case in the batch was W.A.No.1101 of 2014, which was a case of subsequent purchaser of the land. The Court, after taking into consideration all the factors and the decisions of the Hon'ble Supreme Court on the point, culled out the ratio, as under :

"60. The ratio deducible from the aforestated judicial pronouncements is that for taking over of possession of the land under Section 16 of the Old Act, 1894, the revenue authorities must establish by producing some evidence, i.e., either preparation of panchanama in the presence of the witnesses or some other documents. The transfer certificates subsequently prepared by the revenue authorities for delivering possession of the land in question to the Housing Board in absence of a witness or land owner, will not be sufficient to establish that possession of the lands was taken over from the land owners. In the case on hand, it is strongly pleaded by the learned counsel appearing for the private respondents that the land owners or their successors are continuing in possession till date. Thus, it is held that the possession of the lands in question were not taken over after passing of the Award.

61 On plain reading of the provisions of Section 24(2) of the Act, 2013, which is non-obstante clause, it is evident that in all cases, where an Award under Section 11 of the Old Act, 1894 has been made five years or more prior to the commencement of the Act, 2013, there is no period prescribed for taking over physical possession of the land or payment of compensation. Indisputably, in all the cases, the Award under Section 11 of the Old Act, 1894 was passed much more than five years before the commencement of the Act, 2013. As aforestated, compensation was paid, excepting in W.A.Nos.164 and 329 of 2015. The appellants have failed to produce any material to establish that possession of land in question was

taken over from the land owners or their successors in accordance with the provisions of law, as aforesaid. Purported transfer of the land under transfer certificate from the State Government to the Housing Board in absence of a witness or the land owner is of no significance. Thus, it cannot be held that possession of the land has been taken over after passing of the Award.

62. In W.A.No.329 of 2015, as per the pleadings of the Housing Board, compensation amount of Rs.300.15 was kept under the work deposit on 9th April, 1983, which could not be made over to the land owner. Except the bald statement that the physical possession of the land in question was taken over by the land acquisition officer on 13th December, 1984, no material has been produced to establish the factum of taking over of possession. Likewise, in W.A.No.164 of 2015, no material has been produced to establish the factum of taking over possession of the land. Thus these appeals stand on the same footing. In the cases on hand, even transfer certificate delivering the land from the State Government to the Housing Board has not been produced.

63. The case of the appellants-Housing Board and the State Government is that once the Award is passed, the property vests in the Government and no further action is necessary. This contention is misplaced and deserves to be rejected. Section 11 of the Old Act, 1894 contemplates passing of the Award followed by taking over of possession under Section 16 of the Old Act, 1894. Only after possession is taken over, the land shall vest in the Government as it is established that the possession of the land was never taken over and as such, it never vested in the State Government. Thus, in the facts of the case, though compensation has been made in all the cases, except in W.A.Nos.164 and 329 of 2015, possession of the lands

in question, were not taken over. Therefore, the provisions of Section 24 (2) of the Act, 2013 would be attracted and the land acquisition proceedings stand lapsed."

6. Thus, by applying the decision of the Hon'ble Division Bench, which has been rendered following the decision of the Hon'ble Supreme Court, the petitioner cannot be non-suited on the ground that he is the subsequent purchaser. The petitioner's vendors, namely, respondents 3 to 6 have also been impleaded in this Writ Petition and they have supported the stand taken by the writ petitioner. Having steered clear of this issue, two other issues to be considered are : (i) whether possession has been taken and (ii) whether compensation has been paid so as to escape from the rigor of Section 24 (2) of Act 30 of 2013.

7. In the counter affidavit filed by second respondent, there is no specific averment as to the manner in which the possession has been taken over and it has not been stated as to whether Panchanama has been recorded and whether any procedure was followed, before possession was taken over, since it has been the case of the petitioner that the entire property is fully covered with compound wall. Photographs of the property covered with compound wall have been filed in the typed set of papers. Therefore, the counter should have specifically stated that possession was taken in a particular manner and that procedure should be clearly spelt out and it has to stand the test, laid down by the Hon'ble Division Bench, referred to supra. The vague averment in the counter affidavit does not advance the case of second respondent in any manner and, on facts, it has been established that the possession has not been taken over, especially, the actual physical possession has not been taken over from the petitioner, as required under law.

8. The last issue, which is to be considered is, whether compensation amount has been paid ? In this context, it is to be stated that the original land owners, vendors of the petitioner, have filed an affidavit, stating that neither their father nor any of their family members has received any notice under Section 4 (1) of the Land Acquisition Act nor a copy of the award, dated 16.08.1995, was communicated and that they are in physical possession of the land along with the compound wall till-date, and none of the family members of V.Lohith Kumar received any compensation, based on the Award No.1 of 1995, dated 16.08.1995. Thus, the vendors of the petitioner, having sold a portion of the land, continue to be in possession of the remaining extent. This is also one more factor to establish the case of the petitioner that possession has not been taken over. With regard to compensation, counter

affidavit does not state that compensation was paid immediately after the award was passed, but, an averment has been made that compensation was deposited before Sub-Court, Tambaram, on 24.11.2015 i.e., after the Writ Petition was admitted by this Court on 13.05.2015, and presumably after the respondents received notice in the Writ Petition.

9. In the light of the above facts, this Court is of the considered view, that possession has remained with the land owners and compensation amount has not been paid and hence the provisions of Section 24 (2) of Act 30 of 2013 would be attracted. Consequently, the entire land acquisition proceedings shall stand lapsed. Considering the purpose for which the land was acquired, respondents 1 and 2 are granted liberty to issue fresh notification under the provisions of Act 30 of 2013.

10. Writ Petition is allowed accordingly. No costs. Consequently, the connected M.P.No.1 of 2015 is closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
Government of Tamilnadu,
Highways Department,
Fort St.George,
Chennai-600 009.

2.The Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
Tambaram,
Kancheepuram District.

+1 cc to Mr.P.K.Sivasubramaniam, Advocate, sr.22318
+1 cc to Government Pleader, sr.21877
+1 cc to C.Jagadish, Advocate, sr.21668

W.P.No.14430 OF 2015

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