

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2016

CORAM:

THE HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI
and
THE HON'BLE MR. JUSTICE M. VENUGOPAL

W.A.Nos.1687, 2506, 2507, 2381 and 2382 of 2013
and
M.P.No.1,1,1,1,1 and 2 of 2013

W.A.No.1687 of 2013 :

- 1.P.Vagtavarmal Pandya
- 2.Kamala Devi
- 3.R.Krishore Kumar,
Power of Attorney of Petitioners 1 and 2
No.55, Nattupillaiyar Koil Street,
Chennai-600 079.
(3rd petitioner is the Power of Attorney
of petitioners 1 and 2 and representing
by petitioners 1 and 2 as their power agent)... Appellant

Vs.

- 1.The Government of Tamilnadu,
represented by its Secretary,
Adi Dravidar and Tribal Welfare Department,
Fort St. George,
Chennai-600 009.
- 2.The District Collector,
Chennai-600 001.
- 3.The Land Acquisition Officer and
Special Deputy Collector,
Land Acquisition Work,
Chennai-600 005.
- 4.Desikanandapuram Adi-Dravidar
Cooperative House Site Society Ltd.
for Adi Dravidar,
Desikanandapuram Cooperative House Site Society,
Old No.140, New No.25,
Dr.Ambedkar College Road,
Vyasarpadi, Chennai-600 039. .. Respondents

W.A.Nos.2506 and 2507 of 2013 :

1.P.Vagtavarmal Pandya
2.Kamala Devi

.. Appellants in
both writ appeals

Vs.

1.K.P.Velayutham
2.The Government of Tamil Nadu,
rep by its Secretary,
Adi Dravidar and Tribal Welfare Department,
Fort St. George, Chennai-600 009.

3.The Collector,
Chennai District, Chennai.

4.The Tahsildar,
Purasavalkam Perambur Taluk,
Chennai-600 011.

5.The Special Officer,
Desikanandapuram Housing Site Society
for Adi Dravidar,
Desikanandapuram Co-operative House Site Society,
Old No.140, Dr.Ambedkar College Road,
Vyasarpadi, Chennai-600 030. .. Respondents in
W.A.No.2506 of 2013

1.Desikanandapuram Adi Dravidar
Cooperative House Site Society Ltd.,
represented by its Special Officer,
having office at
Old No.140, New No.25,
Dr.Ambedkar College Road,
Vysarpadi, Chennai-600 039.

2.The Government of Tamil Nadu,
rep by its Secretary,
Adi Dravidar and Tribal Welfare Department,
Fort St. George, Chennai-600 009.

3.The Collector,
Chennai District, Chennai.

4.The Tahsildar,
Purasavalkam Perambur Taluk,
Chennai-600 011. .. Respondents in
W.A.No.2507 of 2013

W.A.Nos.2381 and 2382 of 2013 :

1.The Government of Tamil Nadu,
rep by its Secretary,
Adi Dravidar & Tribal Welfare Department,
Fort St. George, Chennai-600 009.

2.The Collector of Chennai,
Chennai District, Chennai-600 001.

3.The Tahsildar,
Purasawakkam-Perambur Taluk,
Chennai-600 011.

... Appellants in both appeals

Vs.

Desikanandapuram Adi Dravidar
Cooperative House Site Society Ltd.,
represented by its Special Officer,
having office at Old No.140, New No.25,
Dr.Ambedkar College Road,
Vysarpadi, Chennai-600 039. ... Respondent in WA.2381/13

1.K.P.Velayutham

2.The Special Officer,
Desikanandapuram Housing Site Society
for Adi Dravidar,
Desikanandapuram Cooperative House
Site Society,
140, Dr.Ambedkar College Road,
Vysarpadi, Chennai-600 039.
(R-2 given up) ... Respondents in WA.2382/13

W.A.Nos.1687, 2506, 2507, 2381 and 2382 of 2013 are preferred
under Clause 15 of Letters Patent against the order dated
18.7.2013 made in W.P.Nos.34154 of 2012, 5118 of 2012 and 30854
of 2012.

Prayer in W.P.No.30854 of 2012 (W.A.No.2507 of 2013)

Writ Petition praying to writ of 2381 of 2013 Mandamus
directing the respondents to handover the land acquired as per
the award No.3/92 dated 26.6.92 passed by the third respondent
to Desikanandapuram Adi dravidar Cooperative house site Society
to enable the Special Officer to allot the same to its members,
who are suffering without any house sites for the past 5 decades.

Prayer in W.P.No.5118 of 2012(W.A.No.2382 of 2013)
W.A.No.2506 of 2013

Writ petition praying to calling for the records relating to the impugned order made in Lr.No.J9/659/3 dated 28.10.2010 on the file of the 2nd respondent herein and quash the same and consequently hand over the lands to the Adi Dravidars comprised in S.No.506/2, Perambur Village, Purasawalkam-Perambur Taluk, Chennai District and quash the same.

W.P.No.34154 of 2012 (W.A.No.1687 of 2013)

Writ Petition praying to calling for the entire records of the 1st respondent's Notification issued under Section 6 Declaration, Land Acquisition Act, 1894 in G.O.Ms.No.1110 Adi Dravidar and Tribal Welfare Department, dated 27.6.1990 followed by Award Passed by the 3rd respondent in Award No.3 of 1992 in R2-2270/83, dated 26.06.1992, insofar as it relates to the 1st petitioner's land comprised in S.No.506/2 (Part F) for an extent of 9 Grounds and 270 sq.ft. and 2nd petitioner's land comprised in S.No.506/2(Part F) for an extent of 5 grounds and 1200 sq.ft. situated in Purasawalkam, Perambur Taluk, Perambur Village, Chennai District and quash the same.

For Appellants : Mr.AR.L.Sundaresan, SC
for M/s.AL.Gandhimathi and L.Palanimuthu
in W.A.Nos.1687, 2506, 2507 of 2013

Mr.P.H.Arvind Pandian,
Additional Advocate General
assisted by Mrs.A.Srijayanthi, Spl.G.P.
In W.A.Nos.2381 and 2382 of 2013

For Respondents: Mr.P.H.Aravindpandian,
Additional Advocate General
assisted by Mrs.A.Srijayanthi, Spl.G.P.
For RR1 to 3 in W.A.No.1687 of 2013
for RR2 to 4 in W.A.Nos.2506, 2507 of
2013

Mr.V.Chandrakanthan for R-4 in
W.A.No.1687 of 2013
for R-1 in W.A.Nos.2506, 2507 of 2013
for respondent in W.A.No.2381 of 2013
for R-1 in W.A.No.2382 of 2013

Notice served for R-5 - no appearance
in W.A.No.2506 of 2013

COMMON JUDGMENT

(delivered by SATISH K. AGNIHOTRI, J.)

All appeals involve common question of law and also there is commonality of facts as the acquisition proceedings were initiated and an Award was passed on 26th June, 1992 and as such, all appeals are taken up together for consideration and decided by this common judgment.

2 The facts in nutshell are that the lands in question are situated in Perambur Village, Purasawalkam-Perambur Taluk, Chennai District. The respondents in W.A.No.1687 of 2013 / State initiated land acquisition proceedings by publishing a notice dated 27th April, 1989 under Section 4(1) of the Land Acquisition Act, 1894 (for short "the Act, 1894") for the purpose of allotting the same to the 4th respondent Society. Thereafter, declaration under Section 6 of the Act, 1894 was published on 27th June, 1990.

3 According to the learned Additional Advocate General appearing for the State, possession was taken over from the land owners, however, payment of compensation could not be made as the respondent society, the beneficiary, for whom the lands were acquired, did not deposit the total compensation and as such, till date, no compensation was paid to the appellants / land owners.

4 According to the learned counsel appearing for the Society, the total compensation could not be paid as the Government did not determine the final amount for making payment.

5 From the aforesaid stand of the respondent Society, it is luculent that an Award was passed and also it is stated that possession of the land was taken over from the land owners, but compensation was not paid to them, to which they are entitled to at the earliest.

6 An identical question came up for consideration before this Bench in Tamil Nadu Housing Board Vs. iGate Global Solutions Limited¹. This Bench examined all facets of the case and held as under :

1 (2016) 2 MLJ 385

"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 aforestated. 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."

7 In the case on hand, there is no dispute in respect of non payment of compensation to the land owners and also taking over of possession in accordance with the procedure. The issue involved herein is squarely covered by the aforestated decision.

8 Further, the society contest only on the ground that the appellants in W.A.No.1687 of 2013 are subsequent purchasers. This very issue was considered in R.Rajaram and others Vs. Secretary to Government, Housing and Urban Development Department, Fort St. George, Chennai and others², wherein it was held as under :

"30.In view of the aforestated analysis, we are of the considered view that after passing of the award on 20 July 1994, the possession of the land remained with the land owners, which had passed on subsequently to the successors-in-interest and as such, the provisions of Section 24(2) of the 2013 Act would be attracted and consequently, the entire land acquisition proceedings shall stand lapsed."

Thus, particularly, when the payment is not made to the land owners, the successors cannot be thrown out on the ground that they have purchased the property subsequently.

9 Resultantly, the writ appeal Nos.1687, 2506 and 2507 of 2013 filed by the land owners are allowed and the land acquisition proceedings initiated in respect of the appellants' land shall stand lapsed. In view of the above, the Writ Appeal Nos.2381 and 2382 of 2013 filed by the State are disposed of in terms of the decision in iGate Global Solutions Limited (supra). Cost made easy. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

To

- 1.The Secretary,
The Government of Tamilnadu,
Adi Dravidar and Tribal Welfare Department,
Fort St. George,
Chennai-600 009.

2.The District Collector,
Chennai-600 001.

3.The Land Acquisition Officer and
Special Deputy Collector,
Land Acquisition Work,
Chennai-600 005.

4.The Tahsildar,
Purasavalkam Perambur Taluk,
Chennai-600 011.

+5cc to Mr.V.Chandrakanthan, Advocate Sr.21447,21446,21445,21444
&21443
+3ccs to M/S.A.L.Ganthimathi, Advocate Sr.21939,219404,21941
+1cc to the Government Pleader Sr.22164

W.A.Nos.1687, 2506, 2507,
2381 and 2382 of 2013

mg[co]
srg 27/04/2016



WEB COPY