

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 16.02.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.29125 of 2015

Alphonse Abichegaradjou

... Petitioner

Versus

1. The Secretary to Government
(Revenue Department),
Government of Puducherry,
Pondicherry - 605 001.

2. The Sub/Deputy Collector,
(Revenue Department),
Government of Puducherry,
Pondicherry - 605 001.

... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a writ of declaration, declaring that the Notification dated 28.07.1995 in G.O.Ms.No.65 under Section 4(1) of The Land Acquisition Act 1984 and published in Government Gazette No.34 dated 22.08.1995 and Declaration dated 27.09.1995 in G.O.Ms.No.74 under Section 6 of the Land Acquisition Act 1894 and published in the Government Gazette No.42 dated 17.10.1995 on the file of the first respondent as null and void and consequently direct the first respondent to commence the land acquisition proceedings and pay compensation in respect to the lands bearing Survey Nos.258/2A/1C to an extent of 0.03.25 Hectares in Thattanchavady Village, Puducherry, belonging to the petitioner, under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act No.30 of 2013, within a time frame.

[Prayer amended as per order dated 27.01.2016 by TSSJ in M.P.No.1 of 2015 in W.P.No.29125 of 2015].

For Petitioner : Mr.S.Subbiah

For Respondents : Mr.A.Tamilvanan
Government Advocate (Pondy)

O R D E R

By consent of the learned counsel on either side, the writ petition is taken up for final disposal.

2. The prayer in the writ petition as amended vide order dated 27.01.2016, is for issuance of a writ of declaration, declaring that the Notification dated 28.07.1995 in G.O.Ms.No.65, issued under Section 4(1) of The Land Acquisition Act, 1984 and Declaration issued under Section 6 of the Act dated 27.09.1995 in G.O.Ms.No.74, on the file of the first respondent as null and void and consequently direct the first respondent to commence the land acquisition proceedings and pay compensation in respect to the lands bearing Survey Nos.258/2A/1C to an extent of 0.03.25 Hectares in Thattanchavady Village, Puducherry, belonging to the petitioner, under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act No.30 of 2013, (hereinafter referred to as Act 30 of 2013).

3. The petitioner's lands were acquired under the provisions of the Land Acquisition Act, 1894 and the challenge to the land acquisition proceedings ended in failure as the writ petition filed by the petitioner in W.P.No.13974 of 1995 was dismissed by order dated 18.08.2000. In fact, it was a common order in two other writ petitions as well. After the dismissal of the writ petition, within a period of three days, the petitioner was dispossessed from the lands in question.

4. It is admitted that the award was passed on 26.12.2000. The petitioner preferred an appeal as against the order dismissing the writ petition, which was registered as W.A.No.1597 of 2002. The said Writ Appeal along with other connected matters were dismissed by a common judgment dated 16.03.2004. The petitioner preferred SLP before the Hon'ble Supreme Court in Special Leave to Appeal (C) No.789 of 2015, which was dismissed by order dated 20.04.2015. Thereafter, the petitioner has filed this writ petition stating that the award amount has not been paid to the petitioner and therefore, the acquisition proceedings has lapsed in terms of Section 24(2) of Act 30 of 2013.

5. During the pendency of this writ petition, the respondents have deposited the award amount on 24.11.2015. Therefore, the petitioner has challenged the acquisition proceedings on the ground that the compensation amount has not been deposited as per the award, more so, when the writ petition challenging the acquisition proceedings was dismissed on 18.08.2000 and there was no order of stay granted by the Division Bench and the petitioner was dispossessed as early as in August 2000.

6. The petitioner would contend that Act 30 of 2013, came into effect from 01.04.2014 and the said award having been passed prior to five years, from the date of the said award and the compensation amount, having not been paid or deposited, the provisions of Section 24 of Act 30 of 2013, would stand attracted and the acquisition proceedings stand lapsed.

7. The factual details with regard to the acquisition proceedings as well as the date on which the writ petition was dismissed, the date on which possession has been taken and the date on which the award has been passed are not in dispute. The respondents would admit that on and after August 2000, i.e., after the writ petition was dismissed, there was no interim order restraining the respondents from proceeding with the acquisition proceedings. Further it is not in dispute that the award was passed on 26.12.2000 and the award amount has been deposited only on 24.11.2015. This Court has rendered such finding in the light of the candid admission made by the 2nd respondent in the counter affidavit at Paragraph No.12. Thus, there can be no further resistance made by the respondents to the case of the petitioner, as admittedly, the case is covered in terms of Section 24(2) of the Act 30 of 2013.

8. Somewhat identical circumstances arose before the Hon'ble Supreme Court in Soorajmull Nagarmull Vs. State of Bihar and Others, reported in (2015) 10 SCC 270 and the Hon'ble Supreme Court pointed out that the State cannot take advantage of its own wrong. However, since the lands were already acquired and utilised, the Hon'ble Supreme Court did not direct restoration of possession to the landowner, but, directed that fresh acquisition proceedings be initiated so that the landowner can be entitled to compensation in accordance with Act 30 of 2013.

9. In the instant writ petition, the petitioner has clearly stated that he does not seek for restoration of possession of land as the land has been fully utilised for a public purpose. In fact, there is such a specific averments in 'Ground No.J' of the affidavit filed in support of the writ petition. Thus in the absence of any dispute, with regard to the factual position, the law laid down by the Hon'ble Supreme Court in the decision cited supra, can be squarely made applicable to the instant case.

10. At this stage, it would be beneficial to refer to the operative portion of the decision of the Hon'ble Supreme Court, which is as follows:

"10. In this situation the current acquisition law needs to be analysed. We have already concluded

that the 1981 acquisition had lapsed because of the failure of the Respondent State to pass an Award and secondly because it had launched upon a fresh acquisition in 1996. Section 24 of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereafter 2013 Act) deserves to be placed here

24. Land acquisition process under Act No.1 of 1894 shall be deemed to have lapsed in certain cases. (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), -

(a) Where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) Where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.

11. At first perusal, there seems to be an unexplained inconsistency between Section 24(1)(a),

which allows an acquisition to stand despite a failure to pass an award while only requiring the compensation to be determined under the 2013 Act, and Section 24(2), which deems the acquisition to have lapsed for a failure to pay compensation or take physical possession of the land where an award has been passed over five years prior to the commencement of the 2013 Act. It appears that the State is in a better position in situations where it has been remiss in taking any action, towards publication of an award than in situations where it has taken partial steps towards the completion of the acquisition proceedings. However, it is possible that the reason behind this differentiation is that Section 24(2) gives the State the option to initiate fresh proceedings, as opposed to placing an obligation upon it to do so. To give the State the discretion to set aside an acquisition for its own error in not passing an award would be in the face of the decision in *Satendra Prasad Jain Vs. State of U.P.*, [(1993) 4 SCC 369]. The Parliament has therefore sought to give the erstwhile landowner the benefit of enhanced compensation under the 2013 Act, while restraining the State from taking advantage of its own wrong. Section 24(2), on the other hand, seeks to allow the land to be returned to the landowner party in situations where there is genuinely no need for it, thus benefiting both the dispossessed landowner and the State. There still remains an incongruity, but which presently we are not burdened to unravel. Which provision in the 2013 Act governs a situation where the State has not progressed beyond making a Declaration under Section 6; where possession of the land has not assumed by the State; where neither part nor whole of the compensation has been paid or tendered! However, since in this Appeal we do not have to traverse this legal labyrinth, we shall refrain from indulging in a more detailed discussion of it.

12. In conclusion we declare that acquisition proceedings with regard to the subject lands have lapsed. The Respondent State is directed to initiate fresh acquisition proceedings or take any other action available to it in accordance with law within six weeks from today. The Appeals are allowed in these terms.

11. Thus, by applying the law laid down by the Hon'ble Supreme Court to the facts and circumstances of the present case, it is to be held that the acquisition proceedings have lapsed. However, this Court is not inclined to issue any

direction to restore possession of the lands to the petitioner nor the petitioner has made such a request and he would concede that the land has been fully utilised for a public purpose. Thus, to enable the petitioner to get fair compensation under the provisions of Act 30 of 2013, the respondents have to issue a fresh declaration.

12. In the result, the writ petition is allowed and the impugned acquisition proceedings in so far as the petitioner's property is concerned is held to have lapsed. However, the respondents need not restore possession to the petitioner, but, they are directed to initiate fresh acquisition proceedings so as to enable the petitioner to receive fair compensation under the provisions of Act 30 of 2013. The above direction shall be complied with by the respondents within a period of three months from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government
(Revenue Department),
Government of Puducherry,
Pondicherry - 605 001.

2. The Sub/Deputy Collector,
(Revenue Department),
Government of Puducherry,
Pondicherry - 605 001.

+1cc to Mr.S.Subbiah, Advocate, S.R.No.9923
+1cc to the Government Pleader cum PP(pondy), S.R.No.10011

W.P.No.29125 of 2015

SAI (CO)
CA(23/02/2016)