

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON 19/12/2014

DATED: 19 / 01 /2016

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.29419 of 2014 &
M.P.No.1 of 2014

1.K.Ponnammal
2.V.Rajeswari
3.P.Vasantha
4.K.Sivasubramaniam
5.K.Kumar
6.M.Jayashree
7.Ravi K.Viswanathan,
S/o.Late.Kasi Viswanathan,
5th & 6th petitioners are rep. by
Power of Attorney,
Mr.Ravi.K.Viswanathan
All are residing at
No.7, Damodhara Street,
Kilpauk, Chennai-10. Petitioners

Vs.

- 1.The State of Tamil Nadu,
Rep. by Secretary to Government,
Housing and Urban Development (UD-III(1) Department,
Fort St.George, Chennai-600 009.
- 2.The Member Secretary,
Chennai Metropolitan Development Authority,
No.8, Gandhi Irwin Road,
Egmore, Chennai - 600 008.
3. The Special Deputy Collector,
(Land Acquisition), M.M.D.A. Schemes,
No.8, Gandhi Irwin Road,
Egmore, Chennai - 600 008. ... Respondents

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PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for a Writ of declaration, to declare that the Land Acquisition Proceedings initiated under the Land Acquisition Act, 1894 in respect of the petitioners lands comprised in Survey No.27/4 measuring an extent of 80 cents of No.83, Nerkundram Village, Saidapet Taluk, Chengai MGR District, Now Tiruvallur District as lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-Settlement Act, 2013.

For Petitioners : Mr.M.Venkatachalapathy, Senior
Counsel For Mr.M.Sriram

For Respondents : Mr.M.S.Ramesh
Addl. Govt. Pleader for R1 & R3
Mr.A.Kumar (CMDA) for R2

O R D E R

The first petitioner submits that an extent of about 80 cents (0.32.5 Hecs.) was owned by her husband N.Kasi Viswanathan in No.83, Nerkundram Village, Saidapet Taluk, Chengai MGR District, now Thiruvallur District. The lands in question were subject matter of acquisition as early as 07.04.1995 when the Government by G.O.Ms.No.441 HUD issued notification under Section 4(1) and proposed to acquire a total extent of 1.42 acres (0.57.5 hecs) comprised in S.Nos.27/2, 27/3 and 27/4 of Nerkundram Village. The purpose of acquisition was to have an approach road from Poonamallee High Road to the proposed food grain market at Koyambedu Wholesale Market complex. Despite their earnest objections, without proper appreciation and without following the principles of natural justice and the law governing the issue, the Government proceeded with the acquisition and made a declaration under Section 6 on 05.06.1996 in G.O.Ms.No.286 HUD. The said acquisition was the subject matter of challenge in W.P.Nos.11070 of 1996 and 11071 of 1996 before this Court. On 27.08.1996, this Court has granted stay of dispossession in both the writ petitions. Ultimately, by a common order dated 04.08.2005, this Court was pleased to quash the Land Acquisition Proceedings as there was no proper paper publication of the notice and consequently set-aside the proceedings. The petitioners further submit that at this stage though this was done as early as 04.08.2005, the State Government filed Writ Appeals in W.A.Nos.261 and 262 of 2006. The third respondents also filed Writ Appeals in W.A.Nos.319 and 320 of 2006. The petitioners

further submit that there was no stay of operation of order of the learned Single Judge, however, the Hon'ble Division Bench was pleased to allow the Writ Appeals by an order dated 24.03.2006. The petitioners further submit that the proceedings of Section 6 which prohibits any move after expiry of one year from the date of 4(1) notifications. The 4(1) notification is dated 07.04.1995 and the last date of publication was on 08.06.1995 after quash of this 4(1) notification on 04.08.2005, the Government had only two days to complete the proceedings. This having not been done, the entire proceedings should have lapsed and is contrary to Section 6 of the Act.

2. The petitioners further submit that this apart, while matters are pending before the Court in writ proceedings, the award seems to have been made on 08.06.1998 which again is barred and the entire proceedings as per Section 11 A is lapsed. Therefore, no right will flow from the order made in W.a.Nos.261 and 262 of 2006. The Hon'ble Division Bench has not considered this aspect of the matter. Aggrieved by the same, an SLP No.12985 of 2006 was preferred before the Hon'ble Supreme Court and the same was also dismissed and the Hon'ble Supreme Court also while dismissing the SLP found that on the ground that such new factors cannot be agitated in the SLP and directed the landowners to seek remedy either by way of review or by way of fresh proceedings. The petitioners have filed a review and the same is pending. The petitioners further submit that while matters stood like this, there was a change in the course of acquisition and the Government gave up the idea of having the wholesale Foodgrain Market at this locations. However, the food grain market is now housed at Koyamedu Market complex itself. As a matter of fact the lands of an extent of 7.62 acres comprised in different Survey No.3, which was acquired from the petitioners for locating the Foodgrain market was itself got released by the CMDA. It is also a matter of record that with all these proceedings, the possession of 80 cents in S.No.27/1 continued with the petitioners in all these years. The petitioners neither have received the compensation amount nor sought for enhancement. The petitioners further submit that the purpose of acquisition got lapsed even though there was acquisition proceedings in respect of the land comprised in S.No.27/2 wherein the petrol bunk is now situated, as no possession was taken. The petrol bunk obstructs the way that abuts the main Poonamallee High Road to an extent of 60 feet out of 75 feet. Therefore, it is crystal clear that the lands are no more required to form an access road.

3. The petitioners further submit that the present land in question being an eyesore to the authorities and as could be seen that the respondents for more than three occasions

proceeded to acquire the lands and the same was successfully prevented by the first petitioner's husband by due process of law. So far as the land of the petitioners are concerned, the entire extent of 80 cents is being acquired. There are seven masonry sheds of about 2300 sq.ft. plinth area with locking arrangements. The roof of the sheds are having rangoon teak wood trusses, A.C. sheet roofing, electricity connection and with brick masonry walls at the rear. There are two residential houses of about 760 sq.ft. and 260 sq.ft. area and a cement compound wall of 360 ft. running in length with a height of 7' is also constructed. There are several huge trees in this land. An extent of about 20 cents in S.No.24/1B has been clubbed with S.Nos.27/2, 27/3 and 27/4 on the western side and there is also a compound wall of about 200' length and 7' height. Under the proposals, the respondents are acquiring nearly 0.57.5 hec. to form an approach road. The petitioners further submit that in the land sought to be acquired, the petitioners' ancestors were carrying on brick kiln under the name and style of Kasi Brick Works. The workmen engaged in the manufacturing of bricks were housed in S.Nos.27/3 and 27/4. As a matter of fact, shelters were built up and they were permitted to stay in the said property. In Survey No.27/4, one Mr.D.Chandran, a watchman was permitted to stay and after his demise, his wife Mrs.C.Neela and his son Mr.C.Velayutham are now occupying the two portions in respect of the said survey numbers. The electricity service connections to the houses are still standing in the name of Kasi Brick Works.

4. The petitioners further submit that the third respondent issued a notice against the tenants of the petitioners under the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975. The occupiers sent an objection and since they are staying under the permissions of the petitioners, the petitioners also gave an objection stating that invocation of Section 4 of the said Act is totally without jurisdiction and lacks bonafides. Since the third respondent attempted to demolish the building which were in existence even prior to the acquisition, the first petitioner filed a writ petition in W.P.No.17537 of 2012 and obtained an order of injunction in M.P.No.1 of 2012 and the said writ petition is still pending. Since the occupiers were threatened with forcible eviction, they were constrained to file CMA before the District Court, Thiruvallur and the said CMAs are pending. The petitioners were constantly requesting the respondents to release the lands since the purpose of constructing the Wholesale Foodgrain Market was given up and consequently, there is no need for laying any approach road but the said representations were not considered. In so far as the owners of Survey No.27/3 is concerned, they have also sent a representation requesting for releasing of the lands and since

representation was not considered, they have filed a writ petition in W.P.No.21039 of 2012 and this Court was pleased to direct the respondents to consider the representation after giving an opportunity of personal hearing to the petitioners. Even then, the respondents without affording a personal hearing, rejected the claim for releasing the land and the said enquiry was conducted without giving a personal hearing which necessitated the other owners to file W.P.No.25620 of 2013 and again this Court was pleased to direct the respondents to give an opportunity of personal hearing before deciding the matter. Even then, the first respondent by his order dated 04.12.2013, rejected the claim to release the lands and other co-owners have filed W.P.No.7545 of 2014 in respect of Survey No.27/3 measuring an extent of 60 cents and this Court was pleased to admit the same and granted interim injunction by order dated 17.03.2014 and the same is still pending. In so far as the petitioners' representation dated 30.08.2011 is concerned, the third respondent has sent a reply stating that the compensation by way of demand draft dated 02.06.1998 has been issued to the Special Deputy Collector (LA) Cell, CMDA, Chennai-8.

5. The petitioners further submit that the Parliament has already passed the new enactment, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and Act 30 of 2013 which came into force on 01.01.2014 and by virtue of the new enactment, the proceedings initiated under the Old Act has lapsed. The Section 24 of the New enactment clearly stipulates the circumstances under which the proceedings initiated under the Old Act gets lapsed. The petitioners gave a representation to release the property and the same is pending before the first respondent. In the meanwhile, the new enactment has come into force. It is submitted that the third respondent by his notice of award passed under Section 12(2) of the Old Act informed the said Kasiviswanathan, the husband of the first petitioner and father of the other petitioners as follows:

"He is hereby informed that the said sum of money will be kept in Revenue Deposit and will bear no interest as the High Court has in its Order in W.M.P.Nos.14797 and 14799 of 1996 in W.P.No.11070 and 11071 of 1996, dated 27.08.1996 issued interim stay for dispossession. The above said compensation would be paid after the vacation of the dispossession stay, dated 27.08.1996."

After the said communication, the respondents have neither taken possession nor paid the compensation to the petitioners. Hence, the petitioners entreat the Court to declare that the Land

Acquisition Proceedings initiated under the Old Act deemed to have been lapsed in view of Section 24(2) of the New Act i.e., The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013.

6. The highly competent senior counsel Mr.M.Venkatachalapathy appearing for the petitioners submits that all the petitioners are joint owners of the subject matter of the property. Originally, the property was owned by the first petitioner's husband. The respondents had initiated Land Acquisition Proceedings under the Old Act in the year 1995. The same was challenged before this Court by way of writ proceedings. Further, the award had been passed on 08.06.1998 and declaration was published under Section 6 of the Act. As such, the award had been passed after a lapse of the stipulated period. The same respondents have acquired others lands for the said purpose viz., for approaching the Poonamallee High Road, Food Grain Market at Koyambedu and wholesale market complex. For the same purpose, the respondents have acquired neighbouring lands to an extent of 7.62 acres comprised in different survey numbers, which had been released by the respondents. Even though, the respondents acquired the land, this is only a paper proceeding, but the possession is still with the petitioners. The petitioners have not received any compensation. Further, there was acquisition proceedings in respect of the land comprised in S.No.27/2, wherein the petrol bunk is now functioning.

7. The highly competent senior counsel appearing for the petitioners further submit that the petrol bunk obstructs the way that abuts the main Poonamallee High Road to an extent of 60 feet out of 75 feet. It clearly proves that the lands are no more required to form an access road. The petitioner put up an asbestos concrete shed and also obtained electricity service connection. Besides, two residential houses were constructed and a cement compound wall was put up. This also clearly proves that the petitioners are still in possession and enjoying the property. The workers and watchman are staying in the said houses. Further, the respondents had communicated to the petitioners stating that the compensation amount would be paid after the vacation of the stay order granted in W.M.P.Nos.14797 and 14799 of 1996 in W.P.No.11070 and 11071 of 1996, dated 27.08.1996. This also proved in a crystal clear manner that the petitioners have not received compensation. Therefore, the petitioners are entitled to receive relief under Section 24(2) of the New Act 30 of 2013. Hence, the highly competent senior counsel entreats the Court to allow the above writ petition.

8. The highly competent Additional Government Pleader Mr.M.S.Ramesh appearing for the respondents 1 and 3 submits that the first respondent had issued G.O. to acquire the petitioners' lands and others lands for the formation of Foodgrain Market at Koyambedu and also for formation of approach Road. Therefore, the third respondent has initiated acquisition proceedings under the Old Act in the year 1995 and declaration was published under Section 6 of the Act in the year 1996. The petitioners had challenged the acquisition proceedings before this Court by filing writ petition. The same was allowed by the learned Single Judge. Subsequently, the Hon'ble Division Bench set-aside the order of the learned Single Judge. Thereafter, the possession was taken over under Section 47 of the Land Acquisition Act. The respondents had acquired land to an extent of 0.57.5 hectares comprising in various S.Nos. including petitioners lands situated at Nerkundram Village. The compensation amount for the petitioners land had been deposited in the revenue deposit scheme. As such, the acquired lands of the petitioners are now under the care and maintenance of the respondents since the possession was taken over in the year 1996. Besides, compensation has also been made in the name of the petitioners. Therefore, the above writ petition is not maintainable.

9. The highly competent counsel Mr.A.Kumar appearing for the second respondent submits that the third respondent had acquired the said land for the purpose of Foodgrain Wholesale Market at Koyambedu. The third respondent, after acquiring the land under the Old Act, after strictly adhering to legal formalities had acquired the lands and it was handed over to the second respondent. Now, the second respondent is in physical possession and maintaining the same.

10. From the above discussions, the view of this Court is as follows:

- i. Initially, the respondents had acquired an extent of 7.63 Acres of land in different survey numbers from the petitioners for the purpose of locating a food grain wholesale market, but, subsequently, the same had got released by the second respondent. The subject land had also been acquired for the said purpose. Likewise, the land comprised in Survey No.27/2, wherein a petrol bunk is running. The petrol bunk obstructs the way that abuts the main Poonamallee High Road and hence the said purpose had not been executed even after a lapse of twenty years, it clearly proves that the land is not required.

- ii. There is no physical indication that the subject land is under the care and custody of the respondents ie., there is no fencing, name board or watchman at the site.
- iii. The petitioners have raised sheds in the subject land by erecting a roof and obtained electricity service connection in their name for residential building for about 760 sq.ft., and 260 sq.ft., respectively. The same still exists and a watchman along with his family members is staying there. It clearly proves that the subject land is under the occupation of the petitioners.
- iv. There is no specific records to prove that compensation amount had been paid to the petitioners.
- v. As per the records of the respondents 2 and 3, the possession of the subject land had been taken over on 23.05.2006. But, the Chief Executive Officer, who is attached to the second respondent office, had sent a communication to one Rajasekaran directing him to restore the subject land after vacating the building. It clearly proves that the subject land had not been taken over on 23.05.2006 and only a paper transaction was made.
- vi. The same Executive Officer had also sent a similar notice, dated 17.08.2011, to one Shanmugavel directing him to restore the subject land after demolishing the buildings erected on the subject land. Therefore, it is crystal clear that the physical possession of the subject land had not been taken over and compensation had not been paid. Hence, the petitioners are entitled to the remedy under Section 24(2) of the new Act 30 of 2013.
- vii. The Senior Estate Officer attached to the second respondent's office had issued a notice of eviction under the Tamil Nadu Public Premises Act to one Neela, who is the authorized tenant of the subject land. It also clearly proves that the possession of the subject land had not been taken by the respondents till 30.04.2012. Therefore, it

is clear that the respondents have not proved their case that the subject land had been taken and compensation had been paid.

11. Considering the facts and circumstance of the case, arguments advanced by the learned counsel on either side, on perusing the typed set of papers and the views of this Court as expressed above, the writ petition is allowed and consequently this Court declares the land acquisition proceedings initiated under the Land Acquisition Act, 1894 in respect of the petitioners' land comprised in Survey No.27/4, measuring about 80 Cents, of Nerkundram Village, Saidapet Taluk, Thiruvallur District, as lapsed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

To

- 1.The Secretary to Government,
Government of Tamil Nadu,
Housing and Urban Development (UD-III(1) Department,
Fort St.George, Chennai-600 009.
- 2.The Member Secretary,
Chennai Metropolitan Development Authority,
No.8, Gandhi Irwin Road,
Egmore, Chennai - 600 008.
3. The Special Deputy Collector,
(Land Acquisition), M.M.D.A. Schemes,
No.8, Gandhi Irwin Road,
Egmore, Chennai - 600 008.

+1cc to Mr.M.Sriram, Advocate Sr.2940

Pre Delivery Order made in
W.P.No.29419 of 2014 &
M.P.No.1 of 2014

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