

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S. SIVAGNANAM

W.P.No.22034 of 2012

Mrs. Kochu Seetha Jayaraman

.. Petitioner

Vs

1. The State of Tamilnadu,
represented by the Commissioner
and Secretary to Government,
Housing and Urban Development
Department,
Fort St. George,
Chennai 600 009.
2. The Special Officer - Land Acquisition,
Tamilnadu Housing Board,
Sivananda Colony,
Coimbatore 641 018.
3. The Managing Director,
Tamilnadu Housing Board,
Nandanam,
Chennai 600 035.

.. Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of declaration declaring that the entire land acquisition proceedings initiated under the Land Acquisition Act, 1894 in respect of lands to the extent of 5-52 Acres comprised in S.F.No.130/2 at No.27, Veerakeralam Village, Coimbatore Taluk and District have become lapsed in view of the Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (Central Act 30 of 2013)".

For Petitioner : Mr.A. Muthukumar

For Respondents : Mr.R. Rajeswaran
Spl. Govt. Pleader (R1)
Mr.B.Vivekavanam (R2 and R3)

ORDER

With the consent of both parties, this Writ Petition is taken up for final disposal.

2. Heard Mr.A.Muthukumar, learned counsel appearing for petitioner and Mr.R.Rajeswaran, learned Special Government Pleader appearing for 1st respondent and Mr.B.Vivekavanam, learned counsel appearing for respondents 2 and 3.

3. Initially, the petitioner was represented by her Power of Attorney K. Manikandan and the prayer sought for was to issue a Writ of Mandamus to direct the respondents to reconvey to the petitioner, the lands in S.F.No.130/2, measuring 5.52 acres in No.27, Veerakeralam Village, Coimbatore Taluk and District by considering her representations dated 27.10.2010 and 21.5.2012.

4. When the Writ Petition was pending, the petitioner filed M.P.No.1 of 2013 praying for a direction to permit her to prosecute the Writ Petition without the assistance of the Power of Attorney and to consequently amend the cause title. For the said petition, the respondent Housing Board has objected to the same by filing a counter and the Court, after considering the submissions on either side, ordered the petition as prayed for by an order dated 3.3.2015. Thus the petitioner has been permitted to prosecute the Writ Petition in her own capacity by discharging her Power of Attorney agent.

5. Though initially, the petitioner sought for issuance of Writ of Mandamus to reconvey the property, subsequently, during the pendency of the Writ Petition, the petitioner has filed two petitions to amend the prayer in the Writ Petition into one of Writ of Declaration to declare that the entire land acquisition proceedings initiated under the Act in respect of the lands in question have lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013). Another petition was filed by the petitioner in M.P.No.2 of 2014 to raise additional grounds. Both these miscellaneous petitions have been allowed by an order dated 18.3.2015. Thus the prayer which has to be considered in this Writ Petition is as to whether the land acquisition proceedings initiated by the Government has lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013).

7. To decide this question, it may not be necessary to narrate all the factual details and it would suffice to taken

out of the following facts.

8. The petitioner challenged the land acquisition proceedings by filing a Writ Petition in W.P.No.1901 of 1992 dated 20.7.1999. In the said Writ Petition, the petitioner challenged the Notification issued under Section 4(1) of the Act in G.O.Ms.No.1174 dated 29.12.1981 and the declaration under Section 6 of the Act in G.O.Ms.No.131 dated 30.1.1985. In so far as the said notifications relates to the petitioner's lands situate in S.F.No.130/2, No.27, Veerakeralam Village, Coimbatore Taluk and Coimbatore District, measuring 5.52 acres.

9. The said writ Petition was dismissed by an order dated 20.7.1999. Aggrieved by the same, the petitioner preferred an appeal before the Honourable Division Bench in W.A.No.1098 of 2002. The Honourable Division Bench, by its judgment dated 6.1.2010, dismissed the Writ Appeal and granted liberty to the petitioner/appellant to approach the Government seeking release of the land, if the petitioner so desires.

10. In the light of the said observation, the petitioner submitted a representation to the Government to release her lands from acquisition by a representation dated 7.5.2012. This was followed by another representation dated 21.5.2012, wherein, the petitioner stated that though her request for reconveyance was rejected earlier by orders dated 23.3.2005 and 30.7.2007, since the Writ Appeal was pending which was filed challenging the writ Petition which was dismissed, wherein, the acquisition proceedings was called in question and after the Writ Appeal was dismissed by judgment dated 6.1.2010, wherein liberty was given to the petitioner to approach the Government for release of the land if she so desires, the representation is being made. The petitioner pointed out in the representation that the vast extent of lands in Veerakeralam and Kalapatti Villages have been released from acquisition proceedings pursuant to various orders passed by the Government as well as orders passed in various Writ petitions and Writ Appeals. The petitioner referred to the case of Tmt.K.Palaniammal, who purchased lands from the heirs of Ex-owner without knowledge of acquisition proceedings and her lands were reconveyed after considering her case by a High Level Committee. Therefore, the petitioner stated that her case is also covered on the same lines as that of the case of Tmt.Palaniammal and therefore, her lands may be excluded from land acquisition proceedings. Since the representation for re-conveyance was pending, the petitioner approached this Court and filed this Writ Petition initially for the relief to reconvey the lands. Subsequently, the prayer has been amended to hold that the land acquisition proceedings are abated.

11. The above factual position has not been disputed by the respondents in counter affidavit. More particularly, the facts relating to the orders passed in earlier round of litigation challenging the acquisition proceedings, nor the respondents disputed the fact that the Honourable Division Bench granted liberty to the petitioner to seek for release of her lands. Thus all that is required to be seen in this Writ Petition is as to whether the acquisition proceedings are lapsed in terms of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013). The benefit of various decisions of the Honourable Supreme Court on the said subject has been threadbare analysed by the Honourable Division Bench of this Court in R. Rajaram and others Vs. the Secretary to Government, Housing and Urban Development Department and two others in W.A.No.1100 of 2014. The Honourable Division Bench, after taking note of the contentions raised by either side, held as follows;

"23 The ratio deducible from the aforesaid judicial pronouncements is that when a provision is clear and unambiguous, leaving no room or scope for vagueness, the word "or" cannot be understood and interpreted as "and". The intention of the Legislature must be given full effect to, unless it creates anomaly. In the case on hand, the word "or" used in two places in the passage in Rule 24(2) of the 2013 Act, viz., "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" clearly indicates that after the award is passed 5 years or more, prior to the commencement of the 2013 Act, the proceedings initiated under the Old Act, 1894, shall be deemed to have lapsed. Thus, in any eventuality, either if the compensation is not paid or possession of the land is not taken over, the provisions of Section 24(2) would be attracted. Thus, the word "or" employed in Section 24(2) of the 2013 Act in the aforesaid two places, has to be read disjunctively and not conjunctively, as pleaded by the learned Additional Advocate General.

24 The manifest intention of the Legislature can be derived from the Statement of Objects and Reasons, read with the plain language of Section 24(2) of the 2013 Act.

Clause 18 of the Statement of Objects and Reasons clearly stipulates that the benefits under the new law would be available in all the cases of land acquisition under the Old Act, 1894, where, award has not been made or possession of land has not been taken. In line with the objective of the enactment, Section 24 (2) of the 2013 Act plainly reads that where an award under Section 11 has been made 5 years or more prior to the commencement of the 2013 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. Thus, it is eloquent that the word "or" employed in two places in the passage "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" is disjunctive and not conjunctive. On happening of one event, the land owner would be entitled to the benefit under the provisions of Section 24(2) of the 2013 Act.

.....
.....
27 The contention of the learned Additional Advocate General that the period of interim stay of dispossession be excluded from the period of 5 years, is misplaced. There is no prescription of 5 years for taking over of the possession or making payment of compensation. The Supreme Court, in Sree Balaji Nagar Residential Association (supra), has observed as under:

"9. However, this issue need not be pursued any further because admittedly physical possession of the land involved in these appeals has not been taken over by the State and on that account alone, the land acquisition proceedings under challenge will have to be treated or declared as lapsed unless we find merit in the contention raised on behalf of the State that this plea cannot be used against the State because it was prevented from taking physical possession of the lands on account of interim orders passed by the High Court and this Court.

10. There is no dispute that the writ petitions were filed even before the making of award and interim orders have operated against the State of Tamil Nadu and, therefore, the State was not at fault in not taking physical possession of the lands concerned under acquisition. But the intention of the legislature in enacting Section 24(2) of the 2013 Act will have to be culled out from its wordings and on the basis of other relevant provisions of this Act and the relevant case law for deciding whether the period of stay/injunction is required to be excluded in computing the five years' period or not.

11. From a plain reading of Section 24 of the 2013 Act it is clear that Section 24(2) of the 2013 Act does not exclude any period during which the land acquisition proceeding might have remained stayed on account of stay or injunction granted by any court. In the same Act, the proviso to Section 19(7) in the context of limitation for publication of declaration under Section 19(1) and the Explanation to Section 69 (2) for working out the market value of the land in the context of delay between preliminary notification under Section 11 and the date of the award, specifically provide that the period or periods during which the acquisition proceedings were held up on account of any stay or injunction by the order of any court be excluded in computing the relevant period. In that view of the matter it can be safely concluded that the legislature has consciously omitted to extend the period of five years indicated in Section 24(2) even if the proceedings had been delayed on account of an order of stay or injunction granted by a court of law or for any reason. Such casus omissus cannot be supplied by the court in view of law on the subject elaborately discussed by this Court in Padma Sundara Rao v. State of T.N."

28 In yet another decision in Rajiv Chowdhrie HUF (supra), wherein, the question of exclusion of any period during which land acquisition proceedings was stayed, came into consideration, the Supreme Court observed as

under:

"16. Further, with regard to the legal contention that physical possession of the land could not have been taken by the respondents in view of the interim order of "status quo" passed by this Court. This Court in Sree Balaji Nagar Residential Assn. v. State of T.N., held that Section 24(2) of the 2013 Act does not exclude any period during which the land acquisition proceedings might have remained stayed on account of stay or injunction granted by any court. It was conclusively held that the legislature has consciously omitted to extend the period of five years indicated in Section 24 (2) of the 2013 Act for grant of relief in favour of landowners even if the proceedings had been delayed on account of an order of stay or injunction granted by a court of law or for any reason. Thus, the said period has to be excluded as provided under the amended proviso to Section 6 of the LA Act by way of an amendment by the legislature to the above Section 6 through Amendment Act 68 of 1984, to add Explanation 1 to the Act, for the purpose of excluding the period, when the proceedings suffered stay by an order of the court, in the context of limitation provided for publishing the declaration notification under Section 6(1) of the Act. The Explanation to Section 11-A, which was added by Amendment Act 68 of 1984 was to a similar effect. This Court in the above case has examined this legal contention and held that the legislature in its wisdom made the period of five years under Section 24(2) of the Resettlement Act, 2013, absolute and unaffected by any delay in the proceedings on account of any order of stay by a court of law. The plain wordings used by the legislature under the provisions of Section 24(2) are made very clear and do not create any ambiguity or conflict. In such a situation, the Court is not required to depart from the literal rule of interpretation, as held by this Court in CIT v. Indo-Mercantile Bank Ltd. as under: (AIR p. 718, para 10)

"10. Lord Macmillan in Madras & Southern Mahratta Railway Co. Ltd. v. Bezwada Municipality laid down the sphere of a proviso as follows: (IA p. 122)

'... The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case. Where, as in the present case, the language of the main enactment is clear and unambiguous, a proviso can have no repercussion on the interpretation of the main enactment, so as to exclude from it, by implication what clearly falls within its express terms.'

The territory of a proviso therefore is to carve out an exception to the main enactment and exclude something which otherwise would have been within the section. It has to operate in the same field and if the language of the main enactment is clear it cannot be used for the purpose of interpreting the main enactment or to exclude by implication what the enactment clearly says unless the words of the proviso are such that that is its necessary effect."

29 As observed herein above, applying the well settled principle of law to the facts of this case, the respondents are not entitled to claim any exclusion of the period of stay of dispossession, inasmuch as the time for taking over possession of the land or making payment of compensation is not prescribed in the provisions of Section 24(2) of the 2013 Act.

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 to be entitled to the benefit of the above decision, it has to be seen as to whether the petitioner has been disposed from the land in question or in other words, whether the possession has been taken over from the petitioner. This could be ascertained from the records placed before this Court.

12. In the Government letter dated 23.3.2005, wherein, the Government first rejected a request made by the petitioner for reconveyance, which has been specifically observed by the

Government that the possession could not be taken of the petitioner's land at that time. This admission is crucial since up to 2003, the Government authorities admitted that the possession was with the petitioner. The petitioner has produced the certificate issued by the Tamilnadu Agricultural University dated 24.1.2006 to establish that the land is fully a fertile land and purely used for agricultural purposes and the certificate states that there are 411 fully grown yielding coconut trees, 1000 numbers of banana plantains, 35 teak trees, two tamarind yielding trees, other fruit yielding trees and 1500 sq.ft. tiled farm house apart from bore wells with agricultural service connection.

13. The petitioner had made a representation on 11.12.2006 requesting once again to release her lands. This was rejected by the Government by letter dated 30.7.2007, wherein, they have clearly admitted that possession could not be taken. Thus up to 2007, there is a Government record to show that the possession is with the petitioner. That apart from 1992 onwards, the challenge to the land acquisition proceedings was pending before this Court in W.P.No.1901 of 1992. The petitioner had benefited by an interim order of stay, which continued till the dismissal of the Writ Petition on 20.7.1999 and thereafter continued during the pendency of the Writ Appeal and was in force till 20.10.2010. The Writ Appeal was dismissed with liberty to the petitioner to approach the Government. Thus it is established that up to the said date when the Writ Appeal was dismissed during the period till January 2010, the possession remained with the petitioner. In paragraph 9 of the affidavit filed in support of this Writ Petition, the petitioner has specifically stated that the possession has not been taken over and she has not received any compensation. The 1st respondent, in his counter affidavit has not denied the said averment and it is a general denial in paragraph 10 of the counter. Therefore during the pendency of this Writ Petition, possession has not been taken. In such circumstances, one of the parameters required to be fulfilled to be entitled to the benefit of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013) has been satisfied and consequently it has to be held that the acquisition proceedings are lapsed in terms of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013)

14. Learned counsel for the Tamilnadu Housing Board submitted that when the petitioner approached the Government under Section 48 B of the Land Acquisition Act seeking reconveyance, she has accepted that the land vests with the

Government and therefore at this juncture the petitioner cannot state that possession has not been taken over. It has to be seen that though the petitioner made request for reconveyance of the land, the same was during the pendency of the Writ Petition challenging acquisition proceedings. After the Writ Appeal was dismissed, liberty was granted by the Honourable Division Bench and following such liberty, the petitioner once again approached the Court for reconveyance. Therefore, the same cannot be put against the petitioner as an estoppel as it is the duty of the respondents to establish that they have taken over possession. This has not been done by the respondents and admitted by the respondents in the counter affidavit and there cannot be any presumption that the Government has taken over possession when the Government has admitted that possession has not been taken over.

15. One more objection raised by the learned counsel for the Housing Board is that there is no record to show that the petitioner is the subsequent purchaser. However this contention is factually incorrect since in terms of the Award, dated 30.1.1987, the respondents were aware that the petitioner is in possession of the lands since notice was issued to the petitioner and her husband, however, they have not turned up for enquiry. In the light of the above facts, the decision of the Honourable Division Bench squarely applies to the case on hand and the possession of the land having remained with the petitioner, the provisions of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013) would be attracted and consequently, the entire land acquisition proceedings shall stand lapsed. For all the above reasons, the Writ Petition is allowed as prayed for.

16. In the result, the Writ Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

msr

To

1. The Commissioner and Secretary to Government of Tamilnadu, Housing and Urban Development Department, Fort St. George, Chennai 600 009.

2. The Special Officer - Land Acquisition,
Tamilnadu Housing Board,
Sivananda Colony,
Coimbatore 641 018.

3. The Managing Director,
Tamilnadu Housing Board,
Nandanam,
Chennai 600 035.

+1 cc to Government Pleader, sr.16316

+1 cc to B.Vivekavannan, Advocate, sr.16211

+2 ccs to Mr.A.Muthukumar, Advocate, sr.16162

W.P.No.22034 of 2012

kji co
kra 29.03.2016



WEB COPY