

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.04.2016

Coram

The Hon'ble Mr.Justice T.S.SIVAGNANAM

Writ Petition No.5456 of 2015

&

M.P.Nos.1 and 2 of 2015

1.E.Chinnathambi

2.T.Kandasamy

...Petitioners

Vs.

1 The State of Tamil Nadu
rep. by its Secretary to
Government Housing
and Urban Development
Department Fort St.
George Chennai 600 009.

2 The Chairman
Tamil Nadu Housing Board
Nandanam Chennai
600 035.

3 The Special Tahsildar
Land Acquisition
Neighbourhood Scheme
Salem Housing board Colony
Salem 636 008.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus calling for the records relating to the orders of the 1st respondent in Notification under Section 4(1) of the Land Acquisition Act in G.O.Ms. No.755 Housing and Urban Development Department dt 4.9.1981 published in Tamil Nadu Government Gazette dt 23.9.1981 and Section 6 Declaration in G.O.Ms.No.636 Housing and Urban Development dt 17.8.1984 published in Tamilnadu Government Gazette dt 12.9.1984 and the award passed by the 3rd respondent in Award No.12/86-87 dt 19.9.1986 and quash the same in so far as the petitioners lands are concerned and consequently direct the respondents to exclude the petitioners land measuring an extent of 32 cents in S. No.125/2 in Mitta Iyyamperumalpatty Village, Salem Taluk and District from the acquisition proceedings.

For Petitioners : Mr.K.K.Senthilvelan
For Respondents : Mr.R.M.Muthukumar, Govt.Advocate
for R1
Mr.R.V.Babu for R2 and 3

O R D E R

Heard learned counsel for the petitioner and the learned counsel for the respondents.

2. The petitioners in this writ petition seek for issuance of a writ of Certiorarified Mandamus to quash the notification issued u/s. 4(1) of the Land Acquisition Act, 1894 in G.O.Ms.No.755 Housing and Urban Development Department, dated 04.09.1981, published in Tamil Nadu Government Gazette dated 23.9.1981 and Section 6 Declaration in G.O.Ms.No.636 Housing and Urban Development dt 17.8.1984 published in Tamilnadu Government Gazette dt 12.9.1984 and the award passed by the 3rd respondent in Award No.12/86-87 dated 19.9.1986 and quash the same in so far as the lands of the petitioners are concerned on the ground that the acquisition proceedings have lapsed in terms of Section 29(2) of the Right to Fair Compensation on 30.08.2013 and consequently exclude the lands of the petitioners from the acquisition proceedings.

3. Petitioners though has not specifically referred to Section 24(2) of the Central Act 30 (2013) in the prayer in the writ petition, the petitioners have raised the same as one of the grounds of challenge in ground (F) of the grounds raised in the affidavit filed in support of the writ petition. The petitioners had purchased the lands in question from the legal heirs of Tmt. Palaniammal by sale deed dated 13.09.2007 registered as document No.3449/07. After the petitioners had purchased the property, the patta in respect of the property had been transferred in the names of the petitioners, as it could be seen from the proceedings of the Deputy Thasildar -II, Salem, dated 26.02.2009. Thereafter, the petitioners have been paying taxes and they have also produced copies of the tax receipts paid to the Salem Corporation. Further, it is submitted that the petitioners had purchased the property after verifying the details and after obtaining a letter from the 3rd respondent dated 28.04.2012 stating that there are no land acquisition proceedings in respect of the lands purchased them. Subsequently, when the petitioners wanted to sell the property and entered into an registered sale agreement dated 17.12.2013, they were directed to produce a no objection certificate from the Housing Board and when they approached the office of the Board they came to know that there is a land acquisition proceeding initiated by the Government for a project to be developed by the Tamilnadu Housing Board. With these facts, the petitioners are before this Court.

4. Learned counsel for the petitioners submitted that the compensation amount has not been paid to the land owners nor deposited before the Civil Court and the possession of the property still continues to be with the petitioners. When the matter was heard on the last occasion, the learned counsel for the Housing Board submitted that they have taken over possession and the compensation amount has been deposited before the Civil Court. Therefore, the case was adjourned to enable the learned counsel for the respondents to produce the records to substantiate the said contention. Today, when the matter was heard, the officials of the 3rd respondent department are present with the original files and the counsel for the 2nd respondent Board has also produced photostat copies of certain documents.

5. Before I venture into the facts it is necessary to note the law on the subject which has been lucidly brought out in a recent decision of the Hon'ble Division Bench of this Court in the case of Tamilnadu Housing Board vs Igate Global solutions Limited, 2016 (2) MLJ 385. The Hon'ble Division Bench after referring to the decisions of the Hon'ble Supreme Court has culled out the legal principle enunciated on the point and under what circumstances the land acquisition proceedings can be held to be lapsed in terms of Section 24(2) of Act 30 of 2013. At this juncture it is beneficial to refer to certain paragraphs of the judgment of the Hon'ble Division Bench.

60. The ratio deducible from the aforesaid 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, 39 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 aforesaid, 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."

In terms of the above decision, if the compensation amount has not been tendered or paid to the land owners nor deposited before the Civil Court or if possession has not been taken out then the land owners are entitled to benefit of Section 24(2) of the Act. The Hon'ble Division Bench pointed out that it is not necessary that both conditions should be satisfied and it is sufficient if one of the twin conditions are satisfied.

6. With regard to payment of compensation is concerned the learned counsel for the respondents have produced before this Court a copy of the Register of Original petitions maintained in

the Additional Sub Court, Salem to show that the compensation amount of Rs.13,831.30 has been deposited to the credit of LAOP.No.14/1987 on 15.06.1987 and the petition has been allowed on 10.09.1987 and the Court has permitted the claimant to withdraw the compensation amount less process fee. Therefore, the compensation amount having been deposited before the Civil Court, the petitioners has not made out a case on that score.

7. The second issue as to whether the possession has been taken over from the petitioners and if it has been taken whether it is in the manner as held in the case of TNHB vs. Igate Global Solutions Ltd (supra). The Hon'ble Division Bench in the afore mentioned decision pointed out that for taking over possession of the land under Section 60 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.

8. In the instant case on perusal of the files which were placed for the consideration of the Court, it is clear that it is the Revenue Authorities have prepared the possession certificate where they have signed as "handed over" and "taken over" and there is no witness nor the signature of the land owners in the said document and therefore it is not sufficient compliance of the statutory provision for taking over possession as pointed by the Hon'ble Division Bench. Therefore, on that ground the petitioners are entitled to succeed. That apart merely because the petitioners are a subsequent purchaser will not disentitle them to the relief. This is more so because the very same notification issued u/s. 4(1) of the Act dated 23.03.1980 was subject matter of challenge by the neighboring land owners in W.P.No.15743 of 1997 and W.P.No.19481 of 1997 and both the writ petitions were allowed by separate orders dated 12.11.1998 and 29.11.2000. It is not in dispute that those orders have become final and no appeals were preferred by the Tamilnadu Housing Board.

9. In the light of the above, the respondents having not established of taking over possession the lands as required under law and the lands still continue to remain in possession of the land owners which has passed on subsequently to the successors in interest viz., the petitioners the provisions of Section 24(2) of the Act 30 of 2013 would be attracted and

consequently entire land acquisition proceedings shall stand lapsed. It is needless to state that it is always open to the respondents to issue fresh notification under the Act 30 of 2013 if so advised.

10. Writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(VI)

//True Copy//

Sub Assistant Registrar

To

- 1 The Secretary to Government
State of Tamil Nadu
Housing and Urban Development Department
Fort St. George Chennai 600 009.
- 2 The Chairman
Tamil Nadu Housing Board
Nandanam Chennai - 600 035
- 3 The Special Tahsildar
Land Acquisition Neighbourhood Scheme
Salem Housing Board Colony
Salem 636 008.

+1cc to Mr.K.K. Senthilvelan, Advocate, S.R.No.24405

RSY(CO)
EU(05/05/2016)

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