

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.04.2016

Coram

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

Writ Petitions Nos.8071 to 8074 of 2015

&

M.P.Nos.1,1,1 and 1 of 2015

R.Palani ...Petitioner in W.P.No.8071 of 2015

R.Govindasamy ...Petitioner in W.P.No.8072 of 2015

R.Vinayagam ...Petitioner in W.P.No.8073 of 2015

R.Subramani ...Petitioner in W.P.No.8074 of 2015

Vs.

- 1 The State of Tamil Nadu
Rep by its Secretary Harijan Welfare
Department, Fort St. George, Madras 9
- 2 The District Collector
Office of District Collector
Thiruvannamalai, Thiruvannamalai District
- 3 The Special Thahsildar
Adi Dravidar Welfare, Polur,
Thiruvannamalai District ...Respondents in all the writ
petitions

Common prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus calling for the entire records of the 3rd respondent notice dated 2.3.2015 Na. Ka. A/1565/1995 quash the same and consequently directing the respondents 1 to 3 to re-convey the properties to petitioner in S.No.91/6 91/7 and 91/8 - 0.79.5 Hectres Agarapalayam Village Arani Taluk.

For Petitioners : Mr.C.Venkatesan

For Respondents : Mr.R.Rajeswaran, Spl.G.P

C O M M O N O R D E R

In all these writ petitions, the petitioners are the sons of Ranganatha Udayar and they have sought for issuance of writ of Certiorarified Mandamus to quash the notice issued by the Special Thasildar, Adi Dravidar Welfare directing the petitioners to vacate the encroachment of the lands in question, stating that they have unauthorisedly cultivated paddy in the said lands.

2. The case has had a chequered history and the present attempt by the sons of Ranganatha Udayar is somehow to get back the lands which had already been acquired. Proceedings were initiated under Tamilnadu Act, 31/1978, by the third respondent acquiring the lands comprised in Survey Nos.91/6,91/7 and 91/8 measuring total extent of 1.96 acres for the purpose of providing house sites to Adi Dravidar families at Agrapalayam Village, Arni Taluk, Tiruvannamalai District. The other details pertaining to land acquisition proceedings need not be gone into, for the reason that the land owner i.e the petitioners father filed a writ petition challenging the acquisition proceedings in W.P.No.1906 of 1996, the said writ petition was dismissed as with drawn by order dated 27.06.1996. Subsequently, the land owner filed another writ petition in W.P.No.3884/1996 which was dismissed by order dated 03.01.2003. The petitioner in the said writ petition was the petitioners father and he contended that the land is a wet land and he has grown crops such as paddy, coconut etc and therefore he should not be disturbed. The Court observed that the authorities under the Act are the ones who are required to form an opinion about the suitability of the land to be acquired for the purpose for which it is being acquired. If the authorities are satisfied that notwithstanding the fact that burial ground is fairly close, the persons for whom the land is to be given are willing to put up houses on that land, that view of the authorities, unless demonstrably incorrect, has to be accepted.

3. Further, the Court noted that so far as the procedure for holding an enquiry there is no serious complaint. Thus in the absence of any legal infirmity, the acquisition was not interfered and the writ petition was dismissed. Challenging the said order, the petitioners father filed a appeal in W.A.No.4134 of 2004, the Hon'ble I bench of this Court by judgment dated 15.12.2004, dismissed the appeal. Thereafter, the petitioners father filed another writ petition in W.P.No.10270 of 2006, challenging the acquisition notification issued in the year 1995. The grounds of challenge was that the objection given was not considered and by then the lands have been partitioned between the land owner and the sons and the sons have to be heard in the matter before finalizing the acquisition

proceedings. The Court elaborately considered the submissions and taking note of the provisions of the Act and in particular Section 4(3)(b) dismissed the writ petition by order dated 17.06.2008. The petitioners father filed a Review Application No.77 of 2008, stating that the order passed in the writ petition requires to be reviewed as it suffers from an error apparent on the face of the record. The issue raised in the review application was that the possession was not taken over from the petitioner and it is not handed over to the beneficiaries. The court after taking into consideration the submission on either side by order dated 19.09.2008 dismissed the review application holding that the file indicates that the possession has been handed over to the beneficiaries. At this stage it is beneficial to refer to the operative portion of the said order:

"3. Based on the above statements made by the second respondent, this Court dismissed the writ petition. However, the learned counsel for the petitioner, while arguing the writ petition contended that possession was not taken and it was still in the hands of the petitioner. This Court after considering the rival contentions had observed as follows: "since a responsible officer has made such an emphatic statement in the counter, I hardly find any reason to disbelieve such statement. Therefore, going by the counter affidavit filed by the second respondent, I have no hesitation to conclude that possession has been handed over to the beneficiaries. In view of the same, the impugned order is quashed on the ground stated above, at this length of time the beneficiaries would be very much affected. So, at this stage, after the lands have been handed over to the beneficiaries, in my considered opinion, it is not proper to quash the impugned order."

4. Seeking to review the said order, the petitioner has come forward with this petition. In the petition, the petitioner has stated that possession was not actually taken and the affidavit filed by the second respondent is false. The fact that the possession is in the hands of the petitioner would come to light if an Advocate commissioner is appointed, it is contended.

5. Today, the second respondent is present along with file. The learned Additional Government Pleader on perusing the file would submit that the possession was

taken and pattas were issued to the beneficiaries and the beneficiaries are in possession of the property. I also perused the file, which indicates that possession has been handed over to the beneficiaries.

6. In the light of the above factual position, I do not find any reason to review the earlier order of this Court dated 17.06.2008 made in W.P.No.10270 of 2008.

After all these proceedings are concluded, now the present petitioners who are the sons of Ranganatha Udayar have commenced the third round of litigation by filing these writ petitions, contending that petitioners have not been dispossessed from the property in question and the compensation has not been paid or deposited into Court.

4. Learned counsel for the petitioners after reiterating the contentions and referring to certain photographs of a property, alleged to be that of the subject property submitted that petitioners are in possession of the lands and they cannot be termed as encroachers. Further, it is contended that the possession is still with the petitioners and compensation has not been paid, the land acquisition proceedings are deemed to have been lapsed in terms of Section 24(2) of Central Act 2013. In support of such contention reliance has been placed on the decision of the Hon'ble Supreme Court in 2014, (5) CTC 857, Sree Balaji Nagar Residential Association vs. State of Tamil Nadu & Ors, 2014-2-L.W.430, Pune Municipal Corporation and another vs. Harakchand Misirimal solanki and others .

5. This Court heard the learned Special Government Pleader on the above submissions.

6. Before going into the aspect as to whether the petitioners can raise a plea that they are entitled to seek umbrage u/s. 24(2) of Central Act 30 (2013) it has to be seen as to whether at all the petitioners could raise such a plea. Admittedly, the plea regarding possession of land was raised by the petitioners father and rejected by the Court and the operative portion of the order passed in Review application No.77/2008 has been referred to in the preceding paragraph, which will clearly show that the possession was taken over by the authorities and handed over to the beneficiaries.

7. This order had become final and therefore the petitioners at this point of time cannot resurrect the matter and state that possession has not been taken over. The second aspect of the matter is with regard to non payment of compensation. Admittedly, the land owner was the petitioners father and he contested the acquisition proceedings which had attained finality after all the cases were dismissed as on

19.08.2008. Therefore, at this juncture taking advantage of Act (30 of 2013). the petitioners cannot now raise a plea that after the demise of their father they have inherited the property when the fact remains that the property has already vested with the Government and there was no semblance of right vested with the petitioners over the property in question, since the petitioners father was unsuccessful in the challenge to the land acquisition proceedings. Therefore, the petitioners have no locus standi to file these writ petitions claiming relief under the Act (30 of 2013) and the plea raised by the petitioners is misconceived.

8. Hence, this Court find no reasons to interfere with impugned order, writ petitions fail and are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar

True copy

Sub-Assistant Registrar

To

- 1 The State of Tamil Nadu
Rep by its Secretary Harijan Welfare
Department, Fort St. George, Madras 9
- 2 The District Collector
Office of District Collector
Thiruvannamalai, Thiruvannamalai District
- 3 The Special Tahsildar
Adi Dravidar Welfare, Polur,
Thiruvannamalai District

+4 ccs to M/s.C.Venkatesan Advocate sr.21870

+1 cc to Government Pleader sr.22143

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