

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

W.P. No.25720 of 2016
and WMP No.22069 of 2016

S.Sathyana rayanan

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Petitioner

Vs.

1.The Govt. of Tamil Nadu,
Rep.by its Secretary,
Housing & Urban Development,
Fort St. George,
Chennai - 600 009.

2.The District Collector,
Kanchipuram District,
Kanchipuram.

3.The Special Tahsildar (Land Acquisition)
Maraimalai Nagar Scheme,
Kattankolathur, Chengalpet Circle,
Kanchipuram District.

4.The Member Secretary,
CMDA,
No.8, Thalamuthu Natarajan Maligai,
Egmore, Chennai - 600 008.

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Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India for issue of writ of mandamus directing the respondents to re-convey / release the lands of the petitioner situate at 74, Thirukatchur Village, Chengalpet Taluk, Kanchipuram District, comprised in Survey Nos.540/3A & 540/3B measuring an extent of 48 cents and 46 cents respectively as the land acquisition proceedings in Award No.13 of 1986 in respect of the said lands has lapsed.

For Petitioner : Mr.M.K.Kabir,
Senior Counsel for
M/s.T.Jayaraman

For R-1 to R-3 : Mr.V.Jayaprakash Narayanan
Special Govt. Pleader

For R-4 : Mr.P.Tamilmani

O R D E R

By consent, this Writ Petition is taken up for final disposal at the admission stage itself.

2. The petitioner's father purchased the property comprised in Survey Nos.540/3A to an extent of 48 cents and 540/3B to an extent of 46 cents situated at Thirukatchur Village, Chengalpet Taluk, Kanchipuram District (formerly Chengalpet District) by virtue of sale deed dated 03.12.2007. The said property was settled in favour of the petitioner by virtue of settlement deed dated 22.06.2010 and as on date, he is the owner of the property. The petitioner has come before this Court challenging G.O.Ms.No.134 Housing & Urban Development dated 23.04.1998 withdrawing the exemption granted under G.O.Ms.No.497 dated 23.03.1987 from the land acquisition proceedings initiated by the authorities.

3. An extent of 94.27 acres of land was acquired by the Government, by issuance of 4 (1) notification dated 22.11.1979 for the purpose of development of new satellite town known as Maraimalai Nagar Scheme. The petitioner's land was also acquired for the said purpose. Section 6 notification was issued on 28.08.1982 by the Government and the Special Tahsildar (Land Acquisition) passed an award on 19.09.1986 bearing No.13 of 1986, under Section 11 of the Land Acquisition Act for acquiring an extent of 94.27 acres notified under Section 4 & 6 of the Land Acquisition Act. The Government of Tamil Nadu, by G.O.Ms.No.497 Housing & Urban Development Department dated 23.03.1987, recommended exclusion of various survey numbers as they were agricultural lands and Survey Nos.540/3A & 540/3B, now belonging to the petitioner was also included in the said exclusion. However, for the reasons best known to the respondents, by virtue of issuance of G.O.Ms.No.134 Housing & Urban Development Department dated 23.04.1998, the order passed in G.O.Ms.No.497 Housing & Urban Development Department dated 23.03.1987 excluding 25.92 acres of land from the land acquisition proceedings was cancelled.

4. The cancellation of exclusion order was challenged by Udayashankar & two others in WP No.9531 of 1998 and a Single Judge of this Court, by order dated 26.04.2007, allowed the writ petition holding that only by resorting to fresh land acquisition proceedings in accordance with land acquisition act, the lands could be acquired and it is not open to the Government to re-open the order of withdrawal after more than a decade. Thereafter only, i.e. on 03.12.2007, the petitioner's father had purchased the property and subsequently settled the same in favour of the petitioner on 22.06.2010.

5. Taking note of the earlier writ petition filed by the neighbours, viz. WP No.9531 of 1998 which was allowed on 26.04.2007 and another petition in WP No.17210 of 2008 which was also allowed on 16.09.2009 filed by one Rajendran, the petitioner now has given a representation to the respondents on 18.05.2016 to release the properties viz., 48 cents and 46 cents comprised in Survey Nos.540/3A & 540/3B respectively at Thirukatchur Village from the land acquisition proceedings. After rejection of the petitioner's request by the 4th respondent, he has come before this Court by way of this writ petition seeking writ of mandamus to direct the respondents to re-convey / release the lands.

5. Mr.M.K.Kabir, learned Senior Counsel appearing for the petitioner would submit that the petitioner is the owner of the property and similarly placed persons were granted exemption as the cancellation of exclusion order passed in G.O.Ms.No.134 Housing & Urban Development Department dated 23.04.1998 was already quashed by this Court in W.P.No.9531 of 1998. The Government has got every power to withdraw the exclusion order or release the extent of 25.92 acres which includes the petitioner's property also. He would also rely upon the judgment of this Court passed on 26.04.2007 in WP No.9531 of 1998 and another order dated 16.09.2009 passed in WP No.17210 of 2008 wherein the cancellation of exclusion order has been quashed. Therefore, as on date, there is no impediment for the respondents to release the properties from the acquisition, in view of the order passed by this Court.

6. The learned Senior Counsel would also rely upon a communication issued by the Special Tahsildar (Land Acquisition) dated 23.02.2004 written to the Tahsildar, Chengalpet Taluk wherein it is advised that one T.G.Veeraraghavan's property measuring about 0.47.5 hectares comprised in Survey No.542/2 and 0.66.5 hectares comprised in Survey No.543/2 are not coming under the land acquisition proceedings and therefore patta can be issued to T.G.Veeraraghavan. Relying upon the said communication, the learned Senior Counsel would submit that when neighbours of the petitioner have been granted No Objection certificate for issuance of patta, similar treatment should be given to the petitioner. Therefore, he seeks to allow the writ petition.

7. Per contra, Mr.V.Jayaprakash Narayanan, learned Special Government Pleader would submit that the petitioner has got no locus standi and he is only a subsequent purchaser and therefore he is not entitled to maintain the writ petition.

8. Heard the parties and perused the records.

9. It is an admitted fact that the land was acquired as early as on 21.11.1979 and the award was passed on

19.09.1986. No doubt, G.O.Ms.No.497 Housing & Urban Development Department dated 23.03.1987 was issued excluding an extent of 25.92 acres of land for acquisition in which the petitioner's property is also included. However, by virtue of G.O.Ms.No.134 Housing & Urban Development Department dated 23.04.1998, G.O.Ms.No.497 Housing & Urban Development Department dated 23.03.1987 has been superseded. To put it in other words, exemption has been cancelled on 23.04.1998.

10. It is seen from the records, especially G.O.Ms.No.497 Housing & Urban Development Department dated 23.03.1987 that based on the recommendations of the Chief Executive Officer, Madras Metropolitan Development Authority, the Government, after careful consideration, decided to accept the recommendation to exclude the properties to an extent of 25.92 acres for land acquisition. In the said G.O, the District Revenue Officer has been directed to send necessary draft of withdrawal notification in respect of the excluded lands. The said fact has been taken note of by the learned Single Judge of this Court in WP Nos.10236 of 1998, 7110 of 1999 and 9437 of 2006, by order dated 17.10.2008. The relevant paragraph Nos.8 and 9 are usefully extracted as follows -

" 8. It is at this stage the second respondent being the requisitioning department wrote to the Government on 21.9.1989 objecting to the withdrawal notification as the lands which are claimed by the original owners are no longer agricultural lands and they are not fit for cultivation and it is only for the purpose of urban use, the lands are required. Since the land which is sought to be excluded will destroy the development activities of the second respondent, the Government was requested to drop the proceedings. A resolution was also passed by the second respondent - CMDA, on 30.8.1994 requesting the Government to cancel the earlier decision. In anticipation of the Government's order, the second respondent also passed another resolution, dated 14.3.1997 and decided to go ahead with the development activities in the land, which was originally acquired.

9. In terms of the request made by the second respondent, the State Government issued G.O.Ms.No.134, Housing and Urban Development Department, dated 23.04.1998 and cancelled the earlier exclusion of the land to an extent of 25.92 acres. In that order,

it was stated that out of 35.92 acres, only 16.47 acres were published in the Government Gazette as withdrawal notification on 11.11.1997. In the balance of 19.45 acres, only 16.47 acres were already handed over to the requisitioning authority, namely, CMDA (second respondent). The balance of 13.79 acres was not handed over to them. It is only when remarks were sought for from the District Revenue Officer by the Commissioner for Land Administration, they were informed that there is no legal objection in cancelling the provisional exclusion made under Section 48 (1) of the Act. The Government was also informed that even if the second respondent - CMDA does not put to use the land as per law, it could be utilised for other public purposes.

11. It is clear that the Government has only expressed its intention by virtue of G.O.Ms.No.497 Housing & Urban Development Department dated 23.03.1987 and no proposal was given by the District Revenue Officer so that it could be published in the gazettee. Unless it is gazetted, the Government Order is of no use. The very same Single Judge of this Court took note of the said position and discussed about the applicability of Section 48 of the land acquisition act and held as follows -

13. Since reliance is placed upon Section 48 of the Land Acquisition Act, 1894, the said provision may be usefully extracted below:

"48. Completion of acquisition not compulsory, but compensation to be awarded when not completed- (1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section."

14. Though Section 48(1) gives power to the State to withdraw from the acquisition proceedings, it does not specify any particular procedure for making the exclusion. In the present case, G.O.Ms.No.497, dated 23.3.1987 only expresses the Government's intention and the said decision is not published in the government gazette. Further, the said order itself shows that the District Revenue Officer has been asked to send proposals for denotification. It is an admitted case that no such proposal has been sent to the Government and no such notification has ever been published in the gazette. But, however, taking advantage of Section 48(1) of the Act, the learned counsel pointed out that Section 48(1) does not contemplate any procedure and G.O.Ms.No.497, dated 23.3.1987 is sufficient compliance of Section 48(1) of the Act.

15. The Supreme Court in the decision reported in (1998) 4 SCC 387 (Larsen & Toubro Ltd. -vs- State of Gujarat) dealt with the scope of Section 48 of the Act. Para 30 from the said judgment may be quoted:-

"30. It was submitted by Mr Salve that Section 48 of the Act did not contemplate issue of any notification and withdrawal from the acquisition could be by order simpliciter. He said that Sections 4 and 6 talked of notifications being issued under those provisions but there was no such mandate in Section 48. It was thus contended that when the statute did not require to issue any notification for withdrawal from the acquisition, reference to Section 21 of the General Clauses Act was not correct. Section 21 of the General Clauses Act is as under:

"21. Power to issue, to include power to add to, amend, vary or rescind, notifications, orders, rules or bye-laws.-

Where by any Central Act, or Regulation, a power to issue notifications, orders, rules, or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any) to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued."

Mr Salve said that Section 21 expressly referred to the powers being given to issue notifications etc. under an Act or Regulation and under this that power included power to withdraw or rescind any notification in a similar fashion. It was therefore submitted that when Section 48 did not empower the State Government to issue any notification and it could not be read into that provision that withdrawal had to be issued by a notification. His argument, therefore, appeared to be that on correct interpretation of Section 21 of the General Clauses Act before reaching the stage of Section 48, the State Government could withdraw notifications under Sections 4 and 6 of the Act by issuing notifications withdrawing or rescinding earlier notifications and that would be the end to the acquisition proceedings. We do not think that Mr Salve is quite right in his submissions. When Sections 4 and 6 notifications are issued, much has been done towards the acquisition process and that process cannot be reversed merely by rescinding those notifications. Rather it is Section 48 under which, after withdrawal from acquisition is made, compensation due for any damage suffered by the owner during the course of acquisition proceedings is determined and given to him. It is, therefore, implicit that withdrawal from acquisition has to be notified."

(Emphasis added)

12. From the above, it is clear that when Section 4 and 6 of the notification are issued, much has been done towards acquisition process and that the process cannot be reversed merely by rescinding those notifications and it is implicit that the withdrawal from the acquisition has to be notified, as held by the Hon'ble Supreme Court in *Larsen & Turbo Limited vs. State of Gujarat* in 1998 4 SCC 387.

13. When the Hon'ble Supreme Court, in *Larsen & Tourbo Limited vs. State of Gujarat* has categorically stated that the withdrawal of notification has to be notified, in the absence of any notification by the Government pursuant to G.O.Ms.No.497 Housing & Urban Development Department dated 23.03.1987, it cannot be said that the Government Order has taken effect. The very same learned Single Judge of this Court has dismissed the Writ Petitions challenging the cancellation of withdrawal exemption in WP Nos.10236 of 1998, 7110 of 1999 and 9437 of 2006 by virtue of order dated 17.10.2008. Though the learned Senior Counsel appearing for the petitioner would rely upon the judgment of another Single Judge in WP No.9531 of 1998 dated 26.04.2007 and yet another Single Judge order dated 16.09.2009 in WP No.17210 of 2008, it is evident that the said judgments are per incuriam in view of the judgment reported in 1998 4 SCC 387, cited supra which was rightly followed by the learned Single Judge in WP No.10236 of 1998 & batch dated 17.10.2008. Therefore, the prayer sought for by the petitioner cannot be granted.

14. The petitioner is only a subsequent purchaser. A subsequent purchaser cannot have any locus standi to question either acquisition or the cancellation of exemption. Even on that score also, the writ petition is liable to be dismissed.

15. The learned Senior Counsel for the petitioner relied upon a communication issued by the Tahsildar (Land Acquisition) dated 23.02.2004 addressed to the Tahsildar, Chengalpet saying no objection for grant of patta in respect of the properties of T.G.Veeraraghavan was given. The said document should have been cooked up or fabricated for the purpose of this case due to the following reasons :

- (1) 21.11.1979 : Lands were acquired by virtue of 4
(1) Notification.
- (2) 23.03.1987 : Lands were granted exemption
from acquisition proceedings.
- (3) 23.04.1998 : The exemption notification was cancelled.

16. As on 23.02.2004, the acquisition proceedings are in force till it was allegedly cancelled or quashed by virtue of order passed by this Court in WP No.9531 of 1998 on 26.04.2007. It is seen that even before cancellation of the order of withdrawal on 26.04.2007, the above said communication dated 23.02.2004 is said to have been issued. The said communication is contrary to the facts and that cannot be acted upon. There is no equality enshrined under Article 14 in the matter of illegality.

17. In view of the above, the second respondent is directed to enquire into the matter with regard to the letter x/K/ 38/2004 dated 23.02.2004 issued by Special Tahsildar (Land Acquisition), Maraimalai Nagar Scheme to the Tahsildar, Chengalpet and take appropriate action against the Tahsildar, on or before 31.12.2016 and file a report before this Court. Similarly, action has to be taken against the Member Secretary, CMDA, Chennai, on or before 31.12.2016 and file a report before this Court for writing letter on 19.08.2004 stating that the land acquisition has been excluded, especially when the exclusion was already cancelled as early as on 23.04.1998. Therefore, viewing from any angle, the writ petition is not maintainable and the same is liable to be dismissed.

18. In the result, this writ petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

19. Post the matter for compliance on 19-01-2017.

Sd/-
Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

To

1.The Secretary,
Govt. of Tamil Nadu,
Housing & Urban Development,
Fort St. George,
Chennai - 600 009.

2.The District Collector,
Kanchipuram District,
Kanchipuram.

3.The Special Tahsildar (Land Acquisition)
Maraimalai Nagar Scheme,
Kattankolathur, Chengalpet Circle,
Kanchipuram District.

4.The Member Secretary,
CMDA,
No.8, Thalamuthu Natarajan Maligai,
Egmore, Chennai - 600 008.

Copy to:
The Section Officer,
Writ Section, High Court, Madras.

+1 cc to Mr.T.Jayakumar, advocate,sr.42202

+1 cc to Govt.pleader,sr.42424

+1 cc to Mr.P.Tamilmani,advocate,sr.42343

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krd 30/8

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