

IN THE HIGH COURT OF JUDICATURE OF MADRAS
DATED: 04.11.2016
CORAM:
THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

W.A.No.1090 of 2016 &
C.M.P.No.14121 of 2016

Chandra Soundarapandian

... Appellant/Petitioner

-vs-

1.State of Tamil Nadu,
Represented by Secretary,
Housing and Urban Development Department,
Fort St. George, Chennai - 600 009.

2.The Special Tahsildar,
Neighbourhood Scheme,
Tuticorin Taluk,
Tuticorin District.

... Respondents

Prayer: Writ Appeal has been filed under Clause 15 of the Letters Patent, against the order of the learned Single Judge dated 17.06.2015 made in W.P.No.27871 of 2004.

WP.No.27871 of 2004:Writ Petition is filed under Article 226 of the Consitution of India for a Writ of Certiorari, to call for the records of the first respondent pertaining to the notification under section 4(1) of the Land Acquisition Act in GO.MS.No.631, dated 26.06.1985, housing and urban Development Department and the Declaration under section 6 of the Land Acquisition Act dated 29.07.1986 in so far as the Petitioner's Lands are concerned in S.No.124/1B1 measuring an extent of 1.52 acres in Sankaraperi Village, Tuticorin Taluk, Tuticorin District and quash the same.

For Appellant : Mrs.Auxilia Peter

For Respondents : Mr.K.V.Dhanapalan
Special Government Pleader

J U D G M E N T

[Judgment of the Court was made by N.AUTHINATHAN, J.]

The Executive Engineer and the Administrative Officer, Tamil Nadu Housing Unit, Tirunelveli, has sent the land plan and schedule for acquisition of an extent of 120.07 acres of dry lands in S.No.122/1A etc. in Block No.II of Sankaraperi Village, Tuticorin Taluk, Tuticorin District, for the construction of houses for the Economically Weaker Section, Lower Income Group, Middle Income Group and Higher Income Group under Neighbourhood Scheme. The total extent of land applied by the Department has been divided into 3 convenient Blocks. In this case, we are concerned with the Block No.II, an extent of 61.15 acres comprised in S.No.122/1A etc.

2.The Draft Notification under Section 4(1) of the Land Acquisition Act for Block II, Sankaraperi Village, was approved in G.O.Ms.No.631, Housing and Urban Development Department, dated 26.06.1985 and published in Tamil Nadu Government Gazette Part II, Section 2, dated 10.07.1985. The Notification was also published in "The Hindu" (English) dated 23.07.1985 and in "Dinamalar" (Tamil) dated 17.07.1985. The substance of the Gazette Notification was widely published in the locality on 01.08.1985.

3.The 5(A) enquiry was conducted on 30.09.1985, in accordance with the provisions of the Land Acquisition Act. The Draft Declaration proposals under Section 6 of the Land Acquisition Act was also submitted to the Government through the District Revenue Officer, Tirunelveli. Subsequently, the Draft Declaration was approved by the Government in G.O.Ms.No.1173, Housing and Urban Development Department dated 29.07.1986. It was published in Tamil Nadu Government Gazette Part II, Section 2, dated 30.07.1986. The substance of Gazette Notification of the Draft Declaration under Section 6 of the Land Acquisition Act was published in the locality on 31.07.1986.

4.Subsequently, the Draft Direction under Section 7 of the Land Acquisition Act was approved by the Government in Letter No.32801/A1/86-3, Housing and Urban Development Department, dated 20.11.1986 and published on 17.12.1986. Then "Award Enquiry" was conducted by the Land Acquisition Officer on 29.07.1988 after observing the usual formalities in accordance with the provision of the Land Acquisition Act and Award No.2/88, Ref.No.A.54/84, dated 29.07.1988 was passed.

5.The appellant is the wife of late Soundarapandian. According to her, originally an extent of the land measuring

5.79 acres in Survey No.124, Sankaraperi Village, belongs to R.Rathinasamy Nadar, S/o.Ramasamy Nadar and R.Soundarapandian Nadar, S/o.Ramasamy Nadar, under joint Patta No.76, which stood in the name of Muthiah Nadar and 3 others. Under a Registered Partition Deed dated 20.01.1965, 1.52 acres out of 5.79 acres in Old S.No.124/1B/1 (New S.No.124/1B1/A1) was allotted to her husband.

6.R.Soundarapandian Nadar died intestate on 01.03.1988 leaving behind his wife (appellant), one son and three daughters as legal heirs. She claimed right under her husband. According to her, the land belonging to them under the said Partition Deed was acquired by the Government without putting them on notice. On that ground, she has filed the Writ Petition.

7.The appellant prayed for a writ of certiorari, to call for the records of the first respondent pertaining to the Notification under Section 4(1) of the Land Acquisition Act in G.O.Ms.No.631, dated 26.06.1985, Housing and Urban Development Department and the Declaration under Section 6 of the Land Acquisition Act in G.O.Ms.No.1173, Housing and Urban Development, dated 29.07.1986 in so far as her lands are concerned in S.No.124/1B1 measuring an extent of 1.52 acres in Sankaraperi Village, Tuticorin Taluk, Tuticorin District and quash the same.

8.The learned Single Judge of this Court dismissed the Writ Petition.

9.Aggrieved by the order dated 17.06.2015 passed by the learned Single Judge in W.P.No.27871 of 2004, the present Writ Appeal has been filed.

10.The learned counsel appearing for the appellant would submit that the name of the appellant's husband was omitted to be mentioned in 4(1) Notification and Declaration under Section 6 of the Land Acquisition Act and therefore, there was denial of opportunity to the appellant's husband and to the appellant to put forth their objections to the acquisition. It is also urged that the award has been passed behind the back of the appellant. It is their grievance that in the entirety of the proceedings they could not make any representation or participate in the enquiry under Section 5(A) of the Land Acquisition Act since their name was omitted to be mentioned in the Publication under Section 4(1) of the Land Acquisition Act.

11.A large area of land including the land in question in S.No.124/1B1/A1 was acquired by the Government. The respondents clarified that the procedure that is followed is to include in 4(1) Notification only the names of the persons, as found in the Revenue Records and in the case at hand, the

Revenue Records do not contain the name of the appellant's husband and as such, the name of the appellant's husband was not mentioned in Notification and Declaration.

12. In *Ghousia Begum vs. The Union Territory of Pondicherry* [AIR 1975 Mad 345], this Court has held that "Section 4(1), 5A and 6(1) do not require service of the Notification under Section 4(1) and any notice personally on the person interested in the land acquired for holding an enquiry under Section 5A and the making of declaration that the land is needed for public purpose".

13. No Revenue Record evidencing the appellant's husband's entitlement prior in point of time to the Notification under Section 4(1) of the Land Acquisition Act has been produced by the appellant before this Court. The only document produced into this Court is a copy of a Patta granted in favour of the appellant but significantly the Patta has been issued on 26.09.1989, after the passing of the award and as such, the document will not enure to the benefit of the appellant so far as this case is concerned.

14. It is no doubt true that the appellant's husband's name did not find a place in 4(1) Notification and Publication but still description of the properties would be available and nothing prevented appellant's family from putting forth their objections to the acquisition claiming to be persons interested in the property. A large area of land belonging to several persons has been acquired. In these circumstances, it is highly impossible to believe that the appellant's husband and her family were unaware of the acquisition in question. Therefore, the contention of the appellant that they were denied an opportunity to put forth their objections to the acquisition could hardly be countenanced.

15. The purpose of Publication of Notification is to give notice to all persons interested in the land. In the case at hand, it is not in dispute that the Publications have been made in terms of Sections 4 and 6 of the Land Acquisition Act. Therefore, knowledge could be attributed to the appellant and her family. Admittedly, 4(1) Notification has been published in the year 1985; the Declaration was published in the year 1986 and the Award was passed way back in the year 1988. The materials on record would reveal that on account of acquisition, Patta has been granted in favour of Tamil Nadu Housing Board. This would be a circumstance that the award has been acted upon and possession has been handed over to the Housing Board. The appellant has approached this Court after a lapse of nearly 15 years after the passing of the Award. In *Swaika Properties (P) Ltd. and another vs. State of Rajasthan and others* [(2008) 4 SCC 695], the Supreme Court has held that "writ petition having been

filed after taking over of possession and award having become final, the same deserves to be dismissed on the ground of delay and laches." In the light of the dictum laid down in the above said decision, the writ petition is liable to be dismissed on the ground of delay and laches.

16.The learned Single Judge on consideration of materials on record arrived at a correct conclusion warranting no interference. It is informed by the respondents that the award amount payable for the land in question has been deposited into the Subordinate Court, Tuticorin, in terms of Section 30 of Land Acquisition Act. It is for the appellant to approach the Sub Court to work out her remedy in accordance with Land Acquisition Act.

17.In the result, the Writ Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Secretary,

State of Tamil Nadu,
Housing and Urban Development Department,
Fort St. George, Chennai - 600 009.

2.The Special Tahsildar,
Neighbourhood Scheme,
Tuticorin Taluk,
Turicorin District.

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W.A.No.1090 of 2016

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