

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2016

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

W.P. No. 27477 of 2016

&

W.M.P. Nos. 23672 & 23673 of 2016

1. B. Sridharan
2. L. Gnanambigai
3. L. Chandrasekaran
4. R. Madhavi
5. R. Chemmana Selvi
6. J. Ramani
7. J. Devendran
8. T. Suganya
9. M. Shanmugapriya ..Petitioners

Vs.

1. The Union of India,
rep. by its Joint Secretary,
Ministry of Tourism,
No.119, Transport Bhawan,
1, Parliament Street,
New Delhi - 110 001.
2. The Government of Tamil Nadu,
rep. by its Joint Secretary,
Public (Tourism 1) Department,
Fort St. George,
Chennai - 600 009. सत्यमेव जयते
3. India Tourism Development
Corporation Ltd.,
rep. by its Chairman and Managing
Director,
Scope Complex,
Core 8, 6th Floor,
No.7, Lodi Road,
New Delhi - 110 003.

4. The District Collector,
Kancheepuram.
5. The Revenue Divisional Officer,
Chengalpattu.
6. The Tahsildar,
LA Office,
LA Department (Land Acquisition),
GST Road, Chengalpattu.
7. G.R. Thangamalligai (P) Ltd.,
rep. by its Managing Director,
Usman Road, T. Nagar,
Chennai - 600 017. ..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorarified Mandamus to call for the records relating to the proceedings of the 2nd respondent, vide, G.O.Ms. No.1573 Public (Tourism -I) culminating in its order dated 27.07.1979, as published in the Tamil Nadu Government Gazette Extraordinary, Part II, Section 2 dated 30.07.1979, in respect of our land, comprised in S.No. 99/3A at No.162, Mamallapuram Village, Chengalpattu District (Now Kancheepuram District) measuring an extent of 55 cents, quash the same and consequently, declare all the subsequent proceedings including the sale of the said land, in the name of the 7th respondent, as null and void and direct the respondents herein to restore the possession of the said land above referred to, to the petitioners.

For Petitioners :: Mr.R. Singgaravelan,
Senior Counsel for
Mr.R. Annamalai

For Respondents :: Mr.V.Jayaprakash
Narayanan,
Special Govt. Pleader for
R2 to R6

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O R D E R

The petitioners are the legal heirs of one late A. Thiruvengada Mudaliar, who, during his lifetime, along with his three sons, late T. Balaraman, late T. Lakshmanan and late T. Jagannathan, jointly purchased a property, comprised in S.No. 99/3, at No. 162, Mahabalipuram Village, Chengalpattu District, measuring to an extent of 10 Grounds (55 cents), from one Mrs. Amathulla Saleem, represented by her husband M.M. Saleem, as

power of attorney, by way of sale deed dated 14.07.1964, registered as Document No. 2809/1964, on the file of the Registrar, Madras - Chengalpattu. The 3rd petitioner's father, namely, T. Lakshmanan, died on 10.05.1983, leaving behind petitioners 2 to 5, who are his wife, son and daughters respectively. T. Balaraman died on 02.08.1988, leaving behind his wife B. Andal, his sons, by name, B. Giridharan, B. Sridharan, the 1st petitioner herein and B. Mahendran, as his legal heirs. B. Giridharan is missing since 1980 and his whereabouts are not known. B. Mahendran died on 21.05.2003 and Mrs. B. Andal, wife of T. Balaraman, died on 30.01.2011, with the result that the 1st petitioner herein is the only surviving legal heir of late T. Balaraman. The other son of A. Thiruvengada Mudaliar, namely, T. Jagannathan, died on 20.03.1995, leaving behind his widow J. Ramani, the 6th petitioner herein, two daughters, 8th and 9th petitioners herein and the 7th petitioner as his legal heirs. A. Thiruvengada Mudaliar died on 24.11.1972 leaving behind three sons, including the father of the 3rd petitioner and two daughters by name, S. Ambika and T. Mallika. The daughters of Thiruvengada Mudaliar jointly executed a release deed dated 19.07.1973 releasing their share in the property of their father, in the name of their 3 brothers and thereafter, the petitioners herein have become absolute owners of the property.

2. In the year 2009, the petitioners came to know through information provided under the Right to Information Act that the aforesaid land was acquired under the Land Acquisition Act, 1894, by issuance of Section 4(1) notification for the purpose of expansion of Temple Bay and Shore Cottages at Mamallapuram Village, Chengalpattu Taluk, by India Tourism Development Corporation, the 3rd respondent herein, at the instance of Union of India, the 1st respondent herein. Section 6 declaration was made on 30.07.1979 and an award was passed on 23.09.1986. Further, the compensation amount is said to have been deposited before the Civil Court. After coming to know about all these details, the petitioners have come before this Court questioning the land acquisition proceedings, which were initiated about 40 years back.

3. Mr. R. Singaravelan, learned Senior Counsel appearing for the petitioners, made the following submissions:

(i) After a lapse of 10 years, from the date of 4(1) notification and after a period of 7 years, from the date of Section 6 declaration, the award was passed on 23.09.1986, without any notice to the owners for the award enquiry.

(ii) Wrong details have been given in the award itself stating that Thiruvengada Mudaliar died in the year 1964 whereas he died

in 1972. Further, the purchase of the property is said to have been made only on 20.07.1973 whereas Thiruvengada Mudaliar and his sons are said to have purchased the property on 14.07.1964 and on 19.07.1973, the release deed was executed by the daughters of Thiruvengada Mudaliar in favour of their brothers.

(iii) Though the compensation is said to have been deposited before the Civil Court, no details have been given.

(iv) Though the compensation amount is said to have been quantified, the authorities concerned should have taken serious steps to pay the amount to the owners. In this regard, he relied on paragraph Nos.5 and 6 of the judgment of the Honourable Supreme Court in Uddar Gagan Properties Ltd V. Sant Singh and Others reported in (2016) 5 MLJ 82(SC).

"5. Under Section 24(2) of the 2013 Act, where an Award under Section 11 of the 1894 Act has been passed and in case, compensation has not been paid to the land owner or deposited before the Court in terms of the requirements under the 1894 Act, the acquisition proceedings get lapsed. In case compensation has not been paid, the land acquisition proceedings in respect of that acquisition will stand lapsed, as if there is no acquisition.

6. The contention of the learned counsel appearing for the respondents is that whoever approached the Haryana Urban Development Authority or the competent authority has been paid compensation and since the appellants failed to approach the quarters concerned for the compensation, they cannot be granted any relief. We find this contention difficult to appreciate. When a land is compulsorily acquired, it is for the Requisitioning Authority to make the payment and does not require the land owner to come and receive the payment."

(v) The intention of acquisition was for expansion of Temple Bay and Shore Cottages by India Tourism Development Corporation whereas, now, it has been transferred to a private hotelier namely, the 7th respondent herein and therefore, the public purpose for which the acquisition was made, has been given a complete go-by.

Making the above submissions, learned Senior Counsel for the petitioners would submit that, as on date, the compensation amount, a meagre amount of Rs.8000/-, has not been paid by the petitioners, and therefore, the petitioners are entitled to compensation under the new Act.

4. On the other hand, Mr.V. Jayaprakash Narayanan, learned Special Government Pleader appearing for respondents 2 to 6 opposed the above contentions of the learned counsel for the petitioners.

5. It is not as if, yesterday or a year ago, that the property was acquired. About 4 decades have elapsed since the property was acquired. The 4(1) notification was issued as early as on 23.07.1976 and Section 6 declaration was made on 27.07.1979 and the award was passed on 23.09.1986 and the award amount is also said to have been deposited before the Civil Court under Sections 30 and 31 of the Land Acquisition Act. Therefore, it is very clear that the Government has followed due process of law in acquiring the property. Further, admittedly, the possession is not with the petitioners, as the petitioners have also sought the relief of restoration of property.

6. The petitioners' contentions are based on surmises and conjectures. The petitioners do not know anything directly as it is stated in paragraph No.5 of the affidavit filed in support of the writ petition that details regarding Land Acquisition Proceedings have been obtained by them under the Right to Information Act. They are not aware as to what transpired at the relevant point of time between the owners and the authorities. When the ancestors of the petitioners have not questioned the land acquisition proceedings and when the said proceedings have attained finality and possession has also been taken long back, the petitioners, who are the legal heirs of erstwhile owners, have no locus standi to question the same, at this distance of time, on a mere presumption that notice regarding the award enquiry would not have been duly served and proper enquiry would not have been conducted.

7. The award, in respect of the land acquisition proceedings in question, was passed on 23.09.1986 and paragraph No.16(1) of the said award, which has been extracted by the petitioners, at paragraph No.7 of the affidavit, reads as follows:

"This land stands registered in the names of (1) Thiruvengada Mudhaliar, (2) T. Balaraman, (3) T. Lakshmanan and (4) T. Jagannathan in the village accounts under P.No. 427 Encumbrance Certificate verification reveals that they have purchased the land in Document No. 4393/73 dated 20.07.73. Tv.T. Balaraman (3) Laxmanan and Jaganathan residing at

Madras -8 have filed a typed statement claiming ownership of the land. The land in question was purchased by his father (1) A. Thiruvengada Mudliar, in the year 1964. He died in the year 1964. The interested persons have not produced clear title and enjoyment of the land inspite of repeated notices. Since the interested persons have not appeared for enquiry, their respective shares over the land could not be arrived at and therefore, the apportionment of compensation could not be decided. The entire compensation of the land is ordered to be deposited in the Sub Court, Chengalpattu under Section -30 and 31 (2) of the Land Acquisition Act. There are no trees, wells or streams on the lands."

From the above, it is seen that Mr.T. Balaraman, Mr.T. Lakshmanan and Mr.T. Jaganathan, who are the sons of Thiruvengada Mudaliar and owners, as on the date of acquisition of the property, claimed ownership over the land by filing a typed statement. Therefore, it is very clear that notices were, infact, issued to the owners, at that point of time, and the owners also made a claim. Since the interested persons did not produce clear title, the compensation amount was deposited before the Sub Court, Chengalpattu under Sections 30 and 31(2) of the Land Acquisition Act, 1894.

8. Once an award has been passed and the compensation amount has been deposited before the Civil Court, the owners themselves are strangers to the property. That being so, the petitioners, who are the legal heirs of erstwhile owners, are equally strangers to the property and they have no right over the property.

9. As far as the judgment of the Honourable Apex Court, relied on by Mr.R. Singaravelan, learned Senior Counsel for the petitioners, rendered in Uddar Gagan Properties Ltd V. Sant Singh and Others reported in 2016 (5) MLJ 82 (SC) to contend that the compensation amount has to be paid to the owner of the land and the authorities cannot expect the owner to come and receive the payment, is concerned, in that case, though the award was passed, the compensation amount was neither paid to the owner nor deposited before the Court, in terms of the requirements under the Land Acquisition Act, 1894 and therefore, the Honourable Apex Court held that the acquisition proceedings got lapsed whereas in this case, the award was passed and the compensation amount was also deposited before the Civil Court. Therefore, even as per the dictum laid down by the Honourable Apex Court, in the aforesaid judgment, relied on by the learned

Senior Counsel, the land acquisition proceedings, in the present case, cannot be said to be vitiated.

10. Though the purpose of acquisition is said to be for public purpose, ie., for expansion of Temple Bay and Shore Cottages at Mamallapuram by the India Tourism Development Corporation, which is a Government of India undertaking, according to the learned Senior Counsel for the petitioners, now the land is sought to be given to the 7th respondent, namely, G.R. Thangamaligai Private Limited, which is a private concern, and therefore, the purpose of acquisition of the land can, no longer, be said to be for public purpose.

11. However, from the facts, it is very clear that it was only for the sake of the 3rd respondent herein, that the land was acquired. Thereafter, as per the policy decision taken by the 1st respondent, as part of its programme called "Disinvestment Programme", the 1st respondent decided to restructure the India Tourism Development Corporation, the 3rd respondent herein, by disinvesting its 89.97 equity share, in favour of established hotel owners. In pursuance of the said programme, the 3rd respondent handed over, its Hotel properties to certain established Hotel Chain for either operating on a long term structured contract on lease-cum-Management basis or by the sale of the properties, as separate entities. The disinvestment of 89.97% equity shares in the 3rd respondent Corporation was effected along with 10% equity shares in the Indian Hotels Company Limited and 0.03% equity shares of the residual share holders of the ITDC, by way of transfer in favour of Mamallapuram Hotels Private Ltd., in pursuance of a scheme of demerger, as per the Share Purchase Agreement -A dated 01.02.2002, entered between the Joint Secretary, Ministry of Tourism, Government of India, and a purchaser, by name G.R. Thanga Maligai (P) Ltd., the 7th respondent herein. By virtue of the said agreement, the total shares of the 3rd respondent Corporation, with regard to its unit at Mamallapuram, transferred to Mamallapuram Hotels Private Limited, were sold by the latter to the 7th respondent. Therefore, it is only pursuant to the policy decision taken by the Central Government, as part of its "Disinvestment Programme", that the land acquired was sold to the 7th respondent. At the time of acquisition, there was no such agenda and these are subsequent events, which no one could have foreseen and therefore, it cannot be said that it was only for private purpose, the land was acquired. Nearly 40 years have gone by and so many changes have taken place and the subsequent events cannot vitiate the acquisition proceedings, done as per law, and therefore, the writ petition is liable to be dismissed.

12. Besides, on the ground of delay and laches, the writ petition is liable to be dismissed. In this regard, it would be useful to extract the following paragraphs of the judgment of the Honourable Apex Court rendered in Tamil Nadu Housing Board, Chennai V.M. Meiyappan and Others reported in 2011(1) CTC 714, rightly brought to the notice of this Court by Mr.V. Jayaprakash Narayanan, learned Special Government Pleader appearing for respondents 2 to 6, wherein, after 15 years, from the date of passing of the award, the land owners approached the Court, challenging the acquisition proceedings and the writ petition was dismissed on the ground of delay and laches:

"14. At the outset, we must state that on the facts of this case, the High Court was not justified in entertaining the writ petition. In our opinion, the writ petition must fail on the short ground that the writ petition had been filed years after the award was announced by the Collector. It is trite law that delay and laches is one of the important factors which the High Court must bear in mind while exercising discretionary power under Article 226 of the Constitution. If there is such negligence or omission on the part of the petitioner to assert his right which, taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party, the High Court must refuse to invoke its extraordinary jurisdiction and grant relief to the writ petitioner.

15. In Durga Prasad V. Chief Controller of Imports and Exports, 1969 (1) SCC 185, this Court had held that it is well-settled that the relief under Article 226 is discretionary, and one ground for refusing relief under Article 226 is that the petitioner has filed the petition after delay for which there is no satisfactory explanation. It was noted that:

"4. Gajendragadkar, C.J., speaking for the Constitution Bench, in Smt. Narayani Devi Khaitan V. The State of Bihar, C.A. No. 140 of 1964, Judgment dated 22nd September, 1964, observed:

"It is well-settled that under Article 226, the power of the High Court to issue an appropriate Writ is discretionary. There can be no doubt that if a citizen moves the High Court under Article 226 and contends that his fundamental rights have been contravened by any executive action, the High Court would naturally like to give relief to him; but even in such a case, if the petitioner has been guilty of laches, and there are other relevant

circumstances which indicate that it would be inappropriate for the High Court to exercise its high prerogative jurisdiction in favour of the petitioner, ends of justice may require that the High Court should refuse to issue a Writ. There can be little doubt that if it is shown that a party moving the High Court under Article 226 for a Writ is, in substance, claiming a relief which under the law of limitation was barred at the time when the writ petition was filed, the High Court would refuse to grant any relief in its writ jurisdiction. No hard and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. That is a matter which must be left to the discretion of the High Court and like all matters left to the discretion of the Court, in this matter too discretion must be exercised judiciously and reasonably".

16. In *Rabindranath Bose & Ors. V. The Union of India & Ors.*, 1970 (1) SCC 84, a Constitution Bench of this Court, dealing with the same issue in relation to Article 32 of the Constitution, had observed that:

"We are of the view that no relief should be given to Petitioners who, without any reasonable explanation, approach this Court under Article 32 of the Constitution after inordinate delay. The highest Court in this land has been given original jurisdiction to entertain petitions under Article 32 of the Constitution. It could not have been the intention that this Court would go into stale demands after a lapse of years. It is said that Article 32 is itself a guaranteed right. So it is, but it does not follow from this that it was the intention of the Constitution - makers that this Court should discard all principles and grant relief in Petitions filed after inordinate delay."

The said judgment squarely applies to the facts of the present case. Therefore, for the reasons aforesaid, the writ petition stands dismissed. No costs. Connected W.M.Ps are closed.

-s/d-
Assistant Registrar

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Sub-Assistant Registrar

To

1. The Joint Secretary,
Ministry of Tourism,
No.119, Transport Bhawan,
1, Parliament Street,
New Delhi - 110 001.
2. The Joint Secretary,
The Government of Tamil Nadu,
Public (Tourism 1) Department,
Fort St. George,
Chennai - 600 009.
3. The Chairman and Managing
India Tourism Development Corporation Ltd.,
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LA Department (Land Acquisition),
GST Road, Chengalpattu.
7. The Managing Director
G.R. Thangamalligai (P) Ltd.,
Usman Road, T. Nagar,
Chennai - 600 017.

+2 ccs to M/s.R.Annamalai Advocate sr.45735
+1 cc to Government Pleader High Court Madras
sr 45905

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