

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON 16/12/2014

DATED: 28/01/2016

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.18645 of 2012 &
M.P.No.1 of 2012

Mr.S.Balasundaram

... Petitioner

Vs.

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

2.The Land Acquisition Officer and
The Special Tahsildar,
Land Acquisition VII Unit II,
Tamil Nadu Housing Board Scheme,
Arignar Anna Shopping Complex,
VII Avenue, Thirumangalam,
Anna Nagar, Chennai-600 101.

3.The Chairman,
Tamil Nadu Housing Board,
Nandanam, Chennai-600 035.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for a Writ of declaration, to declare that the Land Acquisition Proceedings in respect of Survey No.87/2B, Alapakkam Village, Chengalpet Taluk, Kancheepuram Town to an extent of 2.27 acres stands lapsed since the Award No.1 of 2001, dated 12.10.2001 is beyond the period of limitation as prescribed in Section 11-A of the Land Acquisition Act, 1894.

For Petitioner : Mr.R.Muthukumarasami, Senior
Counsel for Mr.S.Saravanan

For Respondents: Mr.M.S.Ramesh
Addl. Govt. Pleader for R1 and R2

Mr.B.Vivekavanan TNHB for R3

O R D E R

The petitioner has submitted that he was working in Atomic Thermal Power Station, Kalpakkam. He has purchased the land comprised in Survey No.87/2B3 an extent of 1,800 sq.ft. bearing Plot No.21 in Sri Govindarajulu Nagar, situated in Alapakkam Village, Chengalpattu Taluk, Kancheepuram District by way of sale deed dated 03.11.1988 bearing document No.791/1988 registered on the file of SRO, Chengalpattu from G.Balasubramanian S/o.M.E.Govindarajulu Chettiar. The said plot forms part of the whole layout approved by the Deputy Director of Town and Country Planning at Chengalpattu vide No.CSAR/DTCP-M-27-174/LP-129 and he availed a housing loan by mortgaging the said land to the Chief Superintendent's Office at his office at Chennai and also obtained building plan permission from the Commissioner, Panchayat Union, Kattankolatur vide D.Dis.3005/89, dated 06.06.1989 and constructed a house therein. The petitioner has further submitted that as per the conditions stipulated in the order of approval of the above said layout, the land earmarked for common road, other public purpose were handed over to the local authority by executing gift deed dated 11.06.1987 bearing document No.95/1997 registered on the file of SRO, Chengalpattu and thereby the land earmarked for common roads were handed over to the local authority viz., Alapakkam Panchayat comprised in Kattankolathur Panchayat Union. The petitioner has further submitted that he has applied to the revenue authorities to subdivide his plot No.21 and accordingly his plot was subdivided as Survey No.87/9 of Alapakkam Village and also patta No.243 issued in his name for the said land vide Ref.No.T.K.8A/320/98, dated 20.03.1989 by the Additional Head Quarters Deputy Tahsildar, Chengalpattu.

2. The petitioner has further submitted that the Land Acquisition Proceeding was initiated by issuing notification under G.O.Ms.No.680, Housing and Urban Development Department, dated 17.07.1989 for an extent of 36.04 acres in respect of lands in various survey numbers including the aforementioned property and the notification under Section 4(1) of the Land Acquisition Act, 1894 has been issued on 16.08.1989. The notification under Section 4(1) states that the lands are required for the formation of new housing scheme at Alapakkam by Tamil Nadu Housing Board. Declaration under Section 6 was published in Tamil Nadu Government Gazette on 29.08.1990 and the same was published in Murasoli and Dinakaran on 30.08.1990. The petitioner has further submitted that out of an extent of 36.04 acres, land acquisition award was passed for an extent of 21.43 acres in Award No.3 of 1990, dated 27.08.1992 and for an extent of 10.20 acres in Award No.4 of 1992, dated 27.08.1992.

3. The petitioner has further submitted that his vendor G.Balasubramaniam owned larger extent of land in Survey No.87/2B and he plotted out the same by obtaining layout approval and sold it to various persons after retaining a portion of it. The petitioner has purchased an extent of 1800 sq.ft in Plot No.21 in Survey No.87/2B3. The petitioner has further submitted that his vendor G.Balasubramaniam challenged the aforesaid acquisition proceedings in respect of 2.50 acres in Survey No.87/2B in W.P.No.11689 of 1982 before this Court and obtained an order of interim stay. Since there is an order of interim stay, no award has been passed in respect of the aforementioned extent. The said writ petition in W.P.No.11689 of 1992 filed by his vendor was dismissed on 13.10.1999 in respect of Survey No.87/2B. The petitioner has filed a writ petition in W.P.No.9858 of 1991 along with the other plot owners challenging the 4(1) notification and in the W.M.P.No.14959 of 1999 filed in the said writ petition, this Court on 17.07.1991 was pleased to grant an interim stay of dispossession with specific direction that other proceedings shall go on and the main writ petition was disposed by this Court on 14.06.1999 with the direction to consider the representation to be made by the writ petitioner in the light of the letter given by the TNHB about dropping of the proposed scheme, but the respondents had not complied with the direction till date.

4. The petitioner has further submitted that from the neighbouring plot owner, he came to know that there is a reference about some award said to have been passed on 12.10.2001 in respect of Survey No.87/2B to an extent of 2.27 acres in Alapakkam Village, Kancheepuram District. Immediately, the petitioner verified the matter with the officials of the second respondents and came to understand that Award No.1 of 2001, dated 12.10.2001 was passed by the second respondent herein subsequent to the dismissal of W.P.No.11689 of 1992. Neither notice was issued to him nor to his vendor G.Balasubramaniam who is the writ petitioner in W.P.No.11689 of 1992 before passing the impugned award and no enquiry was conducted as alleged in the award. The petitioner has further submitted that the impugned award in Award No.1 of 2001, dated 12.10.2001 is wholly without jurisdiction and beyond the period of limitation as prescribed in Section 11-A of Land Acquisition Act. Even as seen from the impugned award dated 12.10.2001, draft declaration under Section 6 of Land Acquisition Act was approved on 28.08.1990 and the declaration under Section 6 was published in Tamil Nadu Government Gazette on 29.08.1990 and the notification was published in daily news papers on 30.08.1990. Under Section 11-A of Land Acquisition Act, the award under Section 11 has to be made within a period of two years from the date of the publication of declaration and if no award is made within that period, the entire proceedings for acquisition of land shall lapse. The explanation to Section 11-A says that in

computing the period of two years, the period during which any action or proceedings taken in pursuant of the said declaration is stayed by an order of Court shall be excluded.

5. The petitioner has further submitted that the impugned award dated 12.10.2001 has been passed after the period of two years from the date of publication under Section 6 on 30.08.1990. Even after excluding the period on which the stay was in operation in W.P.No.11689 of 1992, the impugned award was passed beyond the period of limitation and the entire acquisition proceedings in respect of 2.27 acres in Survey No.87/2B is lapsed in view of Section 11-A of the Land Acquisition Act. The relevant Section 11 A of the Land Acquisition Act is extracted as follows:-

"In view of Section 11A an award has to be made within two years from the date of publication of the declaration under Section 6. Failure to adhere to this time frame is fatal to the award, as the provision is mandatory."

The petitioner has further submitted that W.P.No.11689 of 1992 was filed on 10.08.1992 and interim stay would have been obtained in a day or two. In computing period of two years from 31.08.1990, on the date of filing of W.P.No.11689 of 1992 only 20 days were left for passing award. So after the dismissal of W.P.No.11689 of 1992 on 13.10.1999, the second respondent ought to have passed the award at lest within a period of 20 days. But, the impugned award passed only on 12.10.2001.

6. The petitioner has further submitted that under Section 11A of the Act, if no award has been made within the period of two years from the date of publication of the declaration, the acquisition proceedings automatically lapses. By virtue of the explanation, the period during which the declaration is stayed by an order of Court, is to be excluded in computing the period of two years. But, once the stay order is vacated, the limitation starts for the period specified in Section 11-A. In the present case, the second respondent after publishing the notification under Section 6 on 30.08.1990 has not passed the award till 10.08.1992. From 10.08.1992 to 13.10.1999 the Land Acquisition Proceeding was stayed. So, from 13.10.1999, the period of limitation prescribed in Section 11-A starts running. It is very apparent that the impugned award passed on 12.10.2001 is in any event beyond the period of limitation as prescribed under Section 11-A of the Act. The petitioner has further submitted that there were proposals to drop the acquisition proceedings. The Tamil Nadu Housing Board has decided to drop the Land Acquisition Proceedings and forwarded their decision to District Revenue Officer, Kancheepuram. The petitioner has further submitted that DRO,

Kancheepuram has written to the first respondent herein for approval by dropping the acquisition proceedings and it is not known what has happened to the proposal for dropping the land acquisition proceedings.

7. The petitioner has further submitted that in the impugned award, the writ petition in W.P.No.11689 of 1992 filed by his vendor has been referred to and the batch of writ petitions filed by himself and others in W.P.Nos.9699 and 9858 of 1991 were not even referred to, which they filed challenging the proceedings and the same was disposed by this Court by an order dated 14.06.1999, by recording the letter given by the Housing Board about dropping of the proposal and further directed the petitioners to give representation and on such receipt of the said representation to the first respondent was directed to consider on the basis of the letter of the TNHB and accordingly the petitioners in the said writ petitions have sent the representations but it was not considered by the first respondent. The petitioner has further submitted that the impugned award was passed by the second respondent recently and also the said neighbouring owner Mr.R.Thangaraj had filed a writ petition in W.P.No.9086 of 2012 and this Court was pleased to pass an interim injunction in the said case. Hence, the petitioner has filed the above writ petition.

8. The highly competent senior counsel Mr.R.Muthukumarasamy appearing for the petitioner submits that the petitioner has purchased the land comprised in Survey No.87/2B3, to an extent of 1800 sq. feet, situated in Alapakkam Village under a registered sale deed dated 03.11.1988 from one Balasubramanian. The subject land is a plot forms part of the old layout approved by the Deputy Director, Town and Country Planning. The petitioner has mortgaged the said property and obtained housing loan from his employer and also obtained building plan permission from the Commissioner, Panchayat Union concerned. The erstwhile owner had allotted lands for common road and other public purpose. The same was handed over to the local authority by way of registered gift deed dated 11.06.1987. Subsequently, the petitioner has obtained patta from the Revenue Tahsildar, Chinglepet. Thereafter, the land acquisition proceedings had been initiated by the respondents for an extent of 36.04 acres including the subject lands.

9. The land acquisition officer, after acquiring the said lands, without giving notice to the petitioner, published the declaration and award was passed to an extent of 31.63 acres. The learned senior counsel further submits that the petitioner's erstwhile owner had possessed marketable title deeds to alienate the said property. Therefore, the sale deed

which has been executed in favour of the petitioner is sustainable under law. Further, the award was passed in the year 1997 i.e. after limitation period from the date of declaration under Section 6. Therefore, the acquisition proceedings is not valid. Further, the State Government has decided to drop the acquisition proceedings and forwarded their decision to District Revenue Officer, who in turn, reconnected the same to the first respondent namely Secretary, attached to the Housing and Urban Development Department. The petitioner is a poor employee and does not have house site. Hence, the highly competent senior counsel entreats the Court to allow the above writ petition.

10. The learned Additional Government Pleader Mr.M.S.Ramesh, appearing for the first and second respondents submits that on the request of the third respondent, the subject land and adjacent lands have been acquired by the second respondent herein on the basis of G.O.Ms.No.680 dated 17.07.1989 issued by the first respondent. The second respondent had acquired land to an extent of 36.04 acres after observing necessary legal formalities under the old Act. The subject land had been acquired including adjacent lands and award had been passed in the year 1992. However, the acquired land had not been handed over to the third respondent herein, since the land is covered under Section 47 of Land Acquisition Act. Hence, the very competent Additional Government Pleader made a deep request to dismiss the above writ petition.

11. The very competent Government Advocate Mr.B.Vivekavanam appearing for the third respondent submits that the land acquisition officer had acquired the lands to an extent of 36.04 acres under the old act after observing all the legal formalities prescribed in the Land Acquisition act, 1894 and award was passed for the said land in Survey Nos.87/2B, part of Alapakkam Village to an extent of 2.27 acres dated 12.10.2001. The said land was handed over to the Tamil Nadu Housing on 05.01.2010. The petitioner had also filed a writ petition before this Court for direction to consider his representation. The same was rejected after careful consideration. Further, the petitioner has not appeared as interested person before the Special Tahsildar during award enquiry. Hence, the learned counsel entreats the Court to dismiss the above writ petition. On various grounds including the ground of chordate delay i.e. filing of writ petition after a lapse of 11 years.

12. Per contra, the learned senior counsel appearing for the petitioner submits that the award has been passed on 12.10.2001 for an extent of 2.27 acres comprised in Survey Nos.87/2B at Alapakkam Village. The acquisition proceedings had been completed in the year 1990. As such, the award has been passed after the limitation period i.e. after two years. The

petitioner is in possession as of now and has not received any compensation and as such the petitioner is entitled to receive relief under Section 24(2) of New Act. The learned counsel has cited the below mentioned judgments.

(1)2014 (5) CTC 282 Karuppathal and others v. The Government of Tamil Nadu, rep. by its Secretary to Government, Housing and Urban Development Department, Fort St. George, Chennai-9. 2.The Tamil Nadu Housing Board, rep. by its Chairman & Managing Director, Nandanam, Anna Salai, Chennai-35. 3.The Executive Engineer/Administrative Officer, Tamil Nadu Housing Board, Coimbatore Unit, Tatabad, Coimbatore-12. 4.The Special Tahsildar (L.A.), Housing Scheme Unit, Tatabad, Coimbatore-12.

"Land Acquisition Act, 1894 (1 of 1894), Sections 4, 6, 11 & 12(2) - Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013), Section 24(2) - Writ of Declaration to declare that Land Acquisition proceedings initiated under Old Act lapses, in so far as Petitioners' lands are concerned, in view of Section 24(2) of New Act - Petitioners' land acquired for implementation of Housing Scheme - Section 4(1) - Notification was issued on 29.12.1981 - Declaration under Section 6 was made on 8.2.1984 - Award was passed on 23.9.1986 - More than three decades have passed, Housing Scheme has not been implemented - It is quite obvious that Petitioners' lands are absolutely not necessary for Scheme - Adangal Extract issued by Village Administrative Officer shows that Petitioners are cultivating land and are in continuous possession - No documentary proof filed by Respondents to show that Compensation amount had been paid to Petitioners - Transfer Certificate filed by Respondent to show that Tahsildar had handed over possession to Surveyor is only a self-serving document - In view of Section 24(2) of New Act, Petitioners are entitled for a relief since they are in physical possession of lands - Furthermore, there is an inordinate delay of more than three decades on part of Respondents for implementing Housing Scheme - Land Acquisition proceedings initiated under old Act lapses - Writ Petition allowed."

(2)2014 (5) CTC 857 Sree Balaji Nagar Residential Association v. State of Tamil Nadu & ors.

"Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013), Section 24 - Land Acquisition Act, 1894 (1 of 1894) - Lapse of Land Acquisition

proceedings initiated under 1894 Act - Computation of 5 years' period - Should period during which Land Acquisition proceedings get stayed by Orders of Court be excluded - New Act stipulates that where an award under Old Act has been made five years or more prior to commencement of New Act and physical possession of lands has not been taken or Compensation has not been paid, in such cases Acquisition proceedings will lapse - Award passed on 30.11.2006 i.e., more than five years earlier and physical possession on account of Orders of Stay - Held, 2013 Act does not exclude any period during which Land Acquisition proceedings might have remained stayed on account of Stay or Injunction granted by any Court - Legislature consciously omitted to extend a period of five years indicated in Section 24(2) even if proceedings had been delayed on account of Order of Stay or Injunction granted by Court of law or for any reason - Acquisition proceedings go lapsed."

13. On considering the facts and circumstances of the case and arguments advanced by the highly competent counsels on all sides and on perusing the typed set of papers, this Court is of the view that the second respondent had initiated acquisition proceedings under the old Act in the year 1989 after observing all the legal formalities under the old act and passed the award in the year 1992. The acquired lands have been handed over to the third respondent herein. Therefore, the above writ petition has been filed after a long lapse of 11 years and hence cannot be entertained.

14. In the result, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary,
Government of Tamil Nadu,
Housing and Urban Development Department,
Fort St. George, Chennai-600 009.

2.The Land Acquisition Officer and
The Special Tahsildar,
Land Acquisition VII Unit II,
Tamil Nadu Housing Board Scheme,
Arignar Anna Shopping Complex,
VII Avenue, Thirumangalam,
Anna Nagar, Chennai-600 101.

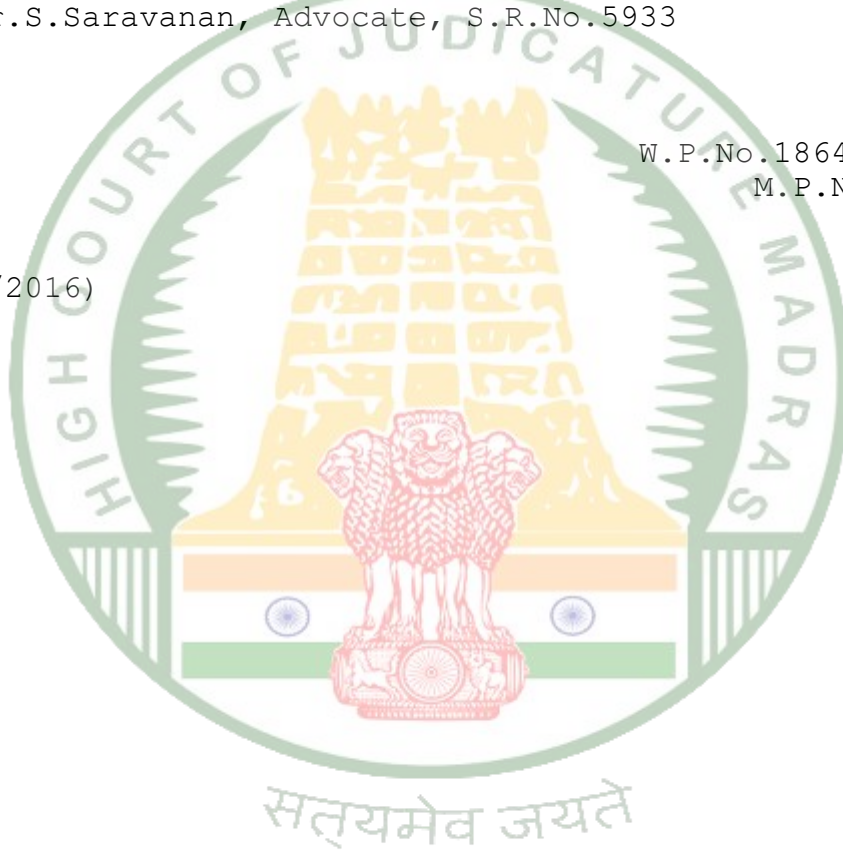
3.The Chairman,
Tamil Nadu Housing Board,
Nandanam, Chennai-600 035.

+lcc to Mr.B.Vivekavanam, Advocate, S.R.No.5429

+lcc to Mr.S.Saravanan, Advocate, S.R.No.5933

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M.P.No.1 of 2012

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