

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 06 - 01 - 2016

JUDGMENT DELIVERED ON : 27 - 01 - 2016

CORAM:

THE HON'BLE MR. SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA

Writ Appeal No. 2572 of 2001
and
W.P. No. 2885 of 2011

Writ Appeal No. 2572 of 2001

T.N. Natarajan Appellant

Vs.

1. The State of Tamil Nadu
Rep. by its Commissioner and Secretary
Housing and Urban Development Department
Fort St. George
Madras - 9
2. Madras Metropolitan Development Authority
Rep. by its Member Secretary
Gandhi Irwin Road
Egmore,
Madras - 8
3. The Special Deputy Collector, LA-III
Madras Metropolitan Development Authority
Gandhi Irwin Road
Egmore
Madras - 8

... Respondents

Writ Petition No. 2885 of 2011

1. N. Shanmugavalli
2. Dr. T.N. Sashikala
3. Miss. N. Prathima
4. V. Umamaheswari
5. E. Mahalakshmi

... Petitioners

Vs.

1. The Government of Tamil Nadu
Rep. by Secretary
Planning, Development and Special Initiatives
(S.1) Department
Madras - 9
 2. Chennai Metro Rail Limited
(a Joint Venture of Govt. of India
& Govt. of Tamil Nadu)
Rep. by its Managing Director
No. 11/6 Seethammal Road
Alwarpet
Chennai - 18
 3. Madras Metropolitan Development Authority
Rep. by its Member Secretary
Gandhi Irwin Road
Egmore, Madras - 8
 4. The Special Tahsildar (Land Acquisition)
CMDA Complex
Koyambedu
Chennai - 2
- Respondents

Prayer:-

W.A. No. 2572 of 2001:- Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 19.10.2001 made in W.P. No. 20286 of 1993.

W.P. No. 20286 of 1993 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling and examine the entire records that are in proceedings relating to 4(1) notification published under Section 6 of the Act on 21.10.1992 published in the Government Gazette at part II, Section I by the 1st respondent and in respect of the acquisition proceedings of the Petitioner's lands situated in survey Nos.52, 53, 56, 57, 62, 63 and 6 of Nerkundram Village, Saidapet Taluk, Chengai MGR District admeasuring about 4 acres and quash the same as illegal, vitiated and ultravires.

W.P. No. 2885 of 2011:- Petition filed under Article 226 of the Constitution of India seeking for issuance of Writ of Certiorarified Mandamus calling for the records of the respondents ending with the order of first respondent in G.O.

Ms. No. 62, Planning, Development and Special Initiatives dated 24.6.2009 and the communication of the fourth respondent in Lr. No. RTI 28/2010 dated 22.12.2010 and quash the same in so far as the lands of the petitioners in Survey Nos. 62/1, 63, 57, 64, 52 and 53/1C situated in Nerkundram Village are concerned and forbear the respondents from in any manner depriving the petitioners of their above mentioned lands without due process of law including payment of compensation at prevailing market rate as on date.

For Appellant in W.A. : Mr. K. Doraisami, SC
& Petitioners in W.P. for Mr. Kandan Doraisami

For R1 in W.A. : Mr. V.R. Kamalanathan,
& RR 1 & 4 in W.P. Additional Government Pleader

For RR 2 & 3 in W.A. : Mr. K. Raja Srinivas
& R 3 in W.P.

For R 2 in W.P. : Mr. Jayesh B. Dolia

COMMON JUDGMENT

PUSHPA SATHYANARAYANA, J.

Since the issue involved in both the Writ Appeal and the Writ Petition is one and the same, they are taken up for common hearing and are being disposed of by this common judgment.

2. The petitioners in the Writ Petition are none other than the legal heirs of the appellant in the Writ Appeal. Therefore, for the sake of convenience, they are referred to as the 'Appellants'.

3. The present Writ Appeal and the Writ Petition reveal a very sorry state of affair and make it evident that the litigants are eager to abuse the process of the Court, having no idea for the law of limitation/delay and laches.

4. For better assessment of the entire gamut, we feel it appropriate to narrate the facts in short.

5. Pursuant to the Notification dated 16.10.1991 issued under Section 4(1) of the Land Acquisition Act [for short, 'Act'], followed by 5-A enquiry and Declaration under Section 6 of the Act, an extent of 4 acres of land comprised in S. Nos. 52, 53/1-B, 53/1-C, 56/1, 56/2, 57/1, 57/2, 62/1, 62/2, 63 and

64 in Nerkundram Village, was sought to be acquired for the purpose of organising Truck Terminal and Koyambedu Wholesale Market Complex by the Madras Metropolitan Development Authority. Challenging the same, a Writ Petition in W.P. No. 20286 of 1993 was filed by one T.N. Natarajan, one of the land owners / appellant in W.A. No. 2572 of 2001. During the pendency of the Writ Petition, an Award was passed in Award No. 3 of 1994 dated 21.10.1994 by the Special Deputy Collector, LA - III, fixing the total compensation as Rs.20,03,722/-. Subsequently, the prayer in the Writ Petition was amended challenging the Award along with the proceedings. The learned single Judge, by order dated 19.10.2001, dismissed the Writ Petition as devoid of merits.

6. In this backdrop, the land owner filed the present Writ Appeal No. 2572 of 2001 contending that the mandatory provisions contained in Sections 4(1) and 6 of the Act were not complied with and that the publication of the same in the newspapers will not satisfy the requirement of the statutory provisions. The Division Bench of this Court, by judgment dated 20.02.2002, allowed the appeal holding that one of the newspaper publication should be in English and the other in vernacular language, however, with a liberty to the Government to re-initiate the land acquisition proceedings by following the provisions of the Act. Aggrieved by the said judgment, the authorities approached the Hon'ble Supreme Court in Civil Appeal No. 360 of 2003. The Hon'ble Supreme Court, vide order dated 23.09.2010, held that the issue raised by the writ petitioner has not been addressed by the High Court properly. Observing so, the Hon'ble Apex Court has set aside the impugned order of the High Court and remitted the matter to the High Court for fresh adjudication. Accordingly, W.A. No. 2572 of 2001 is posted before this Court.

7. It is seen that during the pendency of the proceedings, the sole appellant died and hence, the present appeal is prosecuted by his legal heirs.

8. The legal heirs of T.N.Natarajan, since deceased, appellant in W.A. No. 2572 of 2001, filed the instant writ petition seeking to quash the order dated 24.6.2009 passed by the Secretary, Government of Tamil Nadu, Planning, Development and Special Initiatives (S.1) Department, and the communication of the Special Tahsildar (Land Acquisition) / fourth respondent in Lr. No. RTI 28/2010 dated 22.12.2010 insofar as their lands in S. Nos. 62/1, 63, 57, 64, 52 and 53/1C situated in Nerkundram Village are concerned and to forbear the respondents from in any manner depriving them of the lands without due process of law including payment of compensation at prevailing market rate.

9. The main contention of the learned Senior counsel appearing for the appellant is that the newspapers Namadhu M.G.R., Dhina Thoodhu and Vetri Maalai in which publication with regard to the acquisition of the lands in question, was effected, are not at all in circulation in the locality where the appellant was residing. He also contended that the special provisions contained in the Town and Country Planning Act were not complied with and hence, the acquisition proceedings are liable to be quashed. The further contention of the learned Senior counsel is that the transfer of the lands in question, in favour of the Chennai Metro Rail Project is illegal since the initial acquisition itself is under challenge as it is without notice to the owners.

10. From the materials available on record, it is seen that Draft Notification under Section 4(1) of the Act was published in the Tamil Nadu Government Gazette dated 16.10.1991. Publication with regard to the same was also effected in the Tamil Dailies "Namadhu MGR" and "Dinathoodhu" followed by the publication of gist of the notification in the locality on 24.10.1991 and 25.10.1991. It is also seen that after the publication of 4(1) Notification, notice in Form 3 was published in Form 3 A and served on the land owner for enquiry under Section 5 A of the Act which was conducted on various dates. The appellant / land owner besides participating in the 5A enquiry, also filed his objections. The authorities, after considering the objections, published Declaration under Section 6 of the Act which was also published in Tamil Dailies "Vetri Maalai" and "Dhinathoodhu" on 22.10.1992. Indisputably, a Notice under Section 9(3) and 10 of the Act was served on the land owner fixing the date of Award enquiry on 22.02.1993 and 23.02.1993 for which the appellant sent a written objection and requested for compensation of Rs. Ten Lakhs per ground but without producing any documentary evidence in support of his claim.

11. In view of the above factual matrix, it cannot be said that the mandatory provisions contained in Sections 4(1) and 6 of the Act were not complied with. It is not the case of the appellants that they had not been aware of acquisition proceedings as the main ground taken in the Writ Appeal has been that substance of the notification under Section 4(1) and declaration under Section 6 of Act 1894 had been published in the newspapers having no wide circulation. Even if, the submission made by the appellants is accepted, it cannot be presumed that they could not be aware of acquisition proceedings for the reason that very huge chunk of land belonging to large

number of land holders had been notified for acquisition. Therefore, it should have been a talk of the town. Thus, the contention of the learned Senior Counsel that appellants could not have knowledge of the acquisition proceedings, cannot be sustained.

12. A perusal of the records would also show that earlier, the original owner filed two writ petitions challenging the acquisition proceedings which ended in dismissal. Again, for the third time, he filed W.P. No. 20286 of 1993 which has come up to the stage of Writ Appeal for re-hearing, after remand from the Hon'ble Supreme Court. Admittedly, the land owner T.N. Natarajan appeared for enquiries on the respective dates during which time, he did not raise the ground of publication in local dailies. Significantly, Writ petition No. 20286 of 1993 was filed only on 05.11.1993, ie., after the Declaration under Section 6 of the Act was notified on 21.10.1992. Therefore, it is clear that after the publication, the appellant appeared in the enquiry and submitted his objections even at the stage of 5A enquiry as well as Award enquiry and the appellant waited for the outcome of the proceedings and filed the Writ Petition. Having participated in the 5A enquiry and filed his statement for enhancement of compensation and having failed to raise any objection during the enquiry proceedings, the appellant is estopped from challenging the acquisition proceedings as he is not prejudiced in any manner for the alleged ineffective publication. The technical objections regarding the publication in dailies are unfounded.

13. At this juncture, it is pertinent to point out that similar Writ Petitions filed by the other land owners in respect of the very same notification were dismissed by this Court. In such view of the matter, the contention of the learned Senior Counsel with regard to publication in local dailies, has no legs to stand.

14. Above all, the land in question, was acquired for public purpose, viz., for setting up the CMRL Depot for housing all the trains and coaches of Chennai Metro Rail. As the entire development has taken place over the land, the same cannot be set at naught on technical pleas raised by the appellants and as such, no direction could be issued in favour of the appellants. We have, in view of the above discussion, not been persuaded to take a different view from the one taken by the learned single Judge.

15. Coming to the Writ Petition, the law on the point of maintainability of a writ petition, after passing of the Award

is very well settled by now. Right from the case in PT.GIRDHARAN PRASAD MISSIR AND ANOTHER vs. STATE OF BIHAR AND ANOTHER [(1980) 2 SCC 83], it has been consistently held by the Hon'ble Apex Court that 'after the Award is passed, no writ petition can be filed challenging the acquisition notice or against any proceedings thereunder and such writ petition is liable to be dismissed for laches'. This view of the Honourable Apex Court has been followed by this Court also in many cases. In fact, in BANDA DEVELOPMENT AUTHORITY vs. MOTILAL AGARWAL [(2011) 5 SCC 394], the Hon'ble Apex Court has categorically held that writ petitions filed after long years of acquisition should not be entertained and such claimants should be denied equitable relief as during this period, third party rights have been created. Exactly, this is what had happened in the case on hand also.

16. It is settled legal proposition that once the land is vested in the State, free from all encumbrances, it cannot be divested. In the instant case, it is seen that the land in question, was initially acquired by the Madras Metropolitan Development Authority in 1991 for a public purpose, viz., for Koyambedu Wholesale Market Complex and Organization of Truck Terminal. Subsequently, out of the land originally proposed for the projects of Food Grain and Textile Markets under the project of Koyambedu Wholesale Market Complex, the Government, by G.O. Ms. No. 62, Planning Development and Special Initiatives (S.1) Department, dated 24.6.2009, allotted an extent of 30 hectares, to Chennai Metro Rail Limited for establishing a full-fledged depot with stabling and workshop facilities at Koyambedu for the Chennai Metro Rail Project. In line with the said G.O., the CMDA, by its letter dated 27.9.2010, has accorded sanction for handing over the lands in the Survey Numbers in question, to Chennai Metro Rail Limited. Therefore, it is clear that the lands were allotted to the Chennai Metro Rail Project for public purpose and sanction was also granted accordingly.

17. In this regard, the Hon'ble Supreme Court has, time and again, held that the proceedings regarding land acquisition for public purpose cannot be challenged. It has also been observed in a catena of decisions that "public purpose" is bound to vary with the times and the prevailing conditions in a given locality and, therefore, it would not be a practical proposition even to attempt a comprehensive definition of it and it is only because of this, the legislature has left it to the Government to say what is a public purpose and also to declare the need of a given land for a public purpose.

18. In *Daulat Singh Surana vs. First Land Acquisition Collector* [(2007) 1 SCC 641] where the land was sought to be acquired for construction of Office of the Deputy Commissioner of Police (Security Control), was challenged contending that there was no element of public purpose. Negating the contention, Their Lordships upheld the acquisition holding that the expression "public purpose" includes a public purpose in which greatest interest of community as opposed to a particular interest of an individual is directly concerned. It was also observed that the concept is not static but changes with the passage of time and power of eminent domain can, therefore, be exercised by the State in public interest.

19. In *SOORARAM PRATAP REDDY AND OTHERS VS. DISTRICT COLLECTOR, RANGA REDDY DISTRICT AND OTHERS* [(2008) 9 SCC 552], the Hon'ble Apex Court, in paragraphs 50 and 56 has observed as under:-

Para 50 : "Willis in his well known work 'Constitutional Law' discusses two view points as to exercise of power of eminent domain. The older and stricter view was that unless the property was dedicated for user by the public at large or a considerable section thereof, it would not be for public use or for public purpose. The modern and more liberal view, however, is that it is not an essential condition of public use that the property should be transferred to public ownership or for public user and it is sufficient that the public derives advantage from the scheme.

Para 56 : The concept of the public welfare is broad and inclusive. The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the Legislature to determine that the community should be beautiful as also healthy, spacious as also clean, well-balanced as also carefully patrolled...."

20. In the case on hand, indisputably, Chennai Metro Rail Project, to which land, in question, was allotted, is a public welfare scheme. More over, since the orders impugned in the instant Writ Petition are only consequential orders, the same cannot be challenged at this length of time. As such, we find no merits in the Writ Petition.

21. Good public transport systems are an essential part of safe, clean and affordable transport for development. From a

social perspective, public transport is often the only means of transport for the poor as well as middle class. Though the appellants are raising hue and cry as if much injustice has been caused to them, the materials on record compel us to observe that the appellants have preferred the present Writ Appeal and Writ Petition solely with a view to thwart the acquisition proceedings. We are, therefore, not impressed by any of the submissions made on behalf of the appellants.

In the result, both the Writ Appeal and the Writ Petition are dismissed. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

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To

1. The Commissioner and Secretary
State of Tamil Nadu
Housing and Urban Development Department
Fort St. George,
Madras - 9
2. Member Secretary
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Gandhi Irwin Road
Egmore, Madras - 8
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5. Chennai Metro Rail Limited

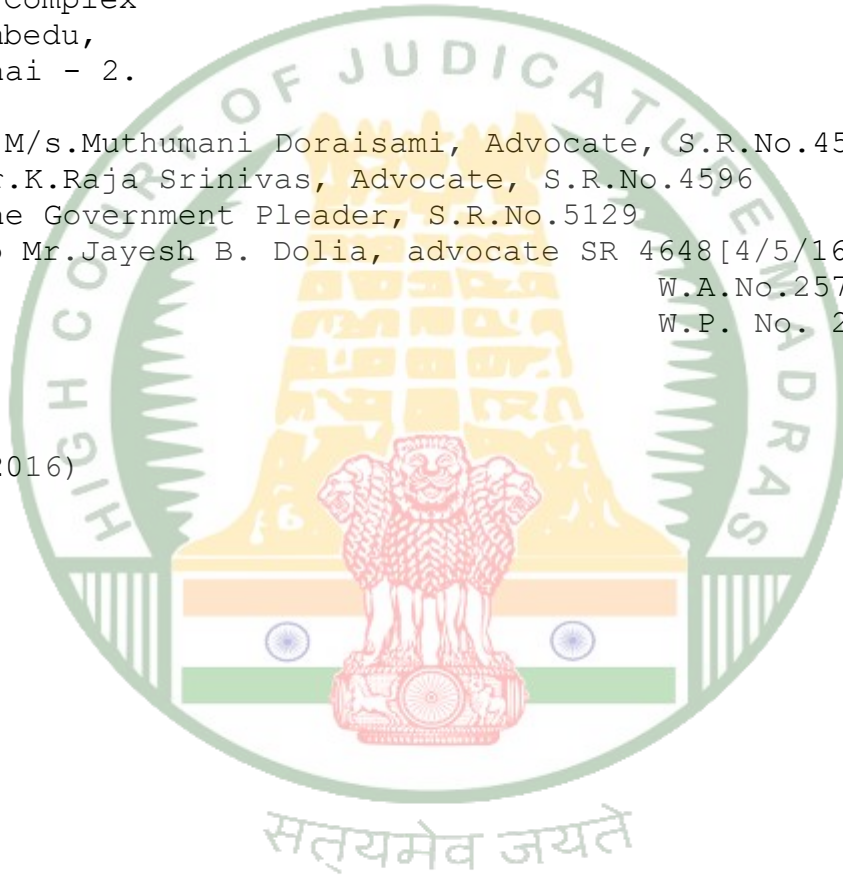
(a Joint Venture of Govt. of India
& Govt. of Tamil Nadu)
Rep. by its Managing Director
No. 11/6 Seethammal Road
Alwarpet,
Chennai - 18

6. The Special Tahsildar (Land Acquisition)
CMDA Complex
Koyambedu,
Chennai - 2.

+2cc's to M/s.Muthumani Doraisami, Advocate, S.R.No.4556 & 5231
+1cc to Mr.K.Raja Srinivas, Advocate, S.R.No.4596
+1cc to the Government Pleader, S.R.No.5129
+ 1 cc to Mr.Jayesh B. Dolia, advocate SR 4648[4/5/16]

W.A.No.2572 of 2001 &
W.P. No. 2885 of 2011

KGK(CO)
CA(11/02/2016)



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