

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.4733 of 2016

V.S.Natarajhan
S/o.M.Subbaiah,
6/1, Old No.38-H3,
Periyapatti Road,
S.P.Pudur,
Namakkal.

Rep. by his Power Agent N.Ramasamy,
S/o.Nachimuthu,
6/25, Maniyaran Street,
Muthukapatty Village,
Namakkal District. Petitioner

Vs.

- 1.The Chief Engineer,
Tamil Nadu Housing Board,
493, Anna Salai,
Nanthanam, Chennai.
- 2.The Executive Engineer and Managing Officer,
Coimbatore Housing Division,
Tatabad, Coimbatore.
- 3.The Special Tahsildar (Land Acquisition),
Tamil Nadu Housing Board,
Coimbatore.

- 4.The Managing Director,
Tamil Nadu Housing Board,
493, Anna Salai, Nanthanam,
Chennai. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, to direct the 1st respondent to consider the petitioner's representation dated 21.08.2014 seeking no Objection Certificate with regard to the land situated in R.S.No.799/2, 2A, 2B and 4A and in 800/13 in Kalapatty Village, Coimbatore District to the extent of 10882 sq.ft, within the time fixed by this Court.

For Petitioner : Mr.I.C.Vasudevan

For respondents : Mr.B.Viveka Vana

ORDER

This writ petition has been filed by the petitioner, praying for issuance of a Writ of Mandamus, to direct the 1st respondent to consider the petitioner's representation dated 21.08.2014 seeking issuance of No Objection Certificate with regard to the land measuring to an extent of 10882 sq.ft situated in R.S.No.799/2, 2A, 2B and 4A and in 800/13 in Kalapatty Village, Coimbatore District, within a time frame.

2.In the affidavit filed in support of the writ petition, it has been averred by the petitioner as follows:-

2-1.The petitioner purchased the land measuring to an extent of 10882 sq.ft in R.S.No.799/2, 2A, 2B and 4A and in 800/13 in Kalapatty Village, Coimbatore District vides Sale Deed dated 15.11.2012, for a valuable sale consideration and he has been in possession and enjoyment of the same.

2-2.Recently, on enquiry, the petitioner came to know that in fact, notification under Section 4(1) of the Land Acquisition Act had been published in the Gazette on 17.09.1991 for acquisition of 757.15 acres for Kalapatti Neighborhood Scheme, Coimbatore, and the declaration under Section 6 of the said Act was published on 31.12.1992 for acquisition of 757.15 acres. Further, the award enquiry was held and award was passed on 5.1.1995 in Award No.1/1995 with regard to 671.10 acres. According to the petitioner, though the award was passed, the respondents did not pay the award amount either to the then land owners or deposited the same into the Court. In fact, even though the Government had initiated land acquisition proceedings in respect of the above said lands, subsequently the same was dropped and the entire extent of land acquired for the said Neighborhood Scheme was not utilized and proceeded. Hence, the respondents did not take possession of 546.12 acres. The remaining 86.05 acres are concerned, the acquisition proceedings were lapsed.

2-3.It is further stated by the petitioner that as far as the petitioner's land is concerned, the respondents did not pay any award amount to the then land owners and the possession of the said land was also not taken by the respondents. Hence, the above said acquisition proceedings dated 17.09.1991 initiated by the respondents became lapsed. In fact, after implementation of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (also Land Acquisition Act, 2013), which came into force on 01.01.2014, the Land Acquisition Act, 1894 has been repealed. Apart from that, as per Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, if the award passed under Section 11 of the Land Acquisition Act, 1894 is made more than five years

prior to the commencement of the later Act and in the event of no compensation being paid to the owners or the compensation amount has not been deposited in Court, the proceedings under the Land Acquisition Act, 1894 lapses. Further, in the instant case, in terms of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the land acquisition proceedings initiated against the predecessors-in-title, has lapsed on the ground that though the award was passed on 05.01.1995, till date the compensation amount has not been deposited in the Court.

2-4. The petitioner has also come to know that the respondents issued No Objection Certificate to most of the nearby similarly placed land owners. Hence, on 21.08.2014 the petitioner made a representation to the 3rd respondent for issuance of No Objection Certificate for change of Patta with regard to the subject property and also paid the necessary charges of Rs.4,000/- to the 3rd respondent. While so, it was informed by the 3rd respondent that the said application was forwarded to the 1st respondent and the same is pending consideration so far. In spite of the repeated request made to the 1st respondent by the petitioner, the 1st respondent did not pass any order so far. Hence, the petitioner has come forward with the present writ petition before this Court for the relief as stated supra.

3. The respondents filed a counter contending that the petitioner is only a subsequent purchaser of the property and he purchased the subject property only in the year 2012. The petitioner is claiming the right for the extent of 10,882 sq.ft (0.25 acres) in Survey No.799/2A, 2B and 4A, 800/13 in Kalapatty Village, Coimbatore. However, the said lands are essentially required by the Tamil Nadu Housing Board for implementing the Kalapatty Neighborhood Scheme for general public. The Tamil Nadu Housing Board has proposed to acquire lands in Kalapatty Village, Coimbatore North Taluk, Coimbatore District for the implementation of the Housing Scheme. In this regard, the lands to be acquired in Kalapatty village have been formed into various blocks for quick and proper action and submission of proposals. The subject land in this writ petition falls in Block No.69.

4. It is further stated in the counter that the Draft Notification 4(1) of the Land Acquisition Act was approved by the Government in G.O.Ms.No.1216 Housing and Urban Development Department dated 17.09.1991 and published in the Tamil Nadu Government Gazette No.390, dated 09.10.1991, and also in two Tamil Dailies viz., "Makkal Kural" and Kumari Murasu on 15.10.1991. The enquiry under Section 5-A of the Land Acquisition Act was conducted on 20.04.1992 and 05.05.1992 by the Land Acquisition Officer and Special Tahsildar (LA), Housing Scheme Unit-II, Coimbatore. The Draft Declaration under Section 6 of the Land Acquisition Act, 1894 was approved

by the Government in G.O.Ms.No.934, Housing and Urban Development Department, dated 31.12.1992, and published as Notification No.4 in the Tamil Nadu Government Gazette Extraordinary issue dated 05.01.1993. It was also published in two Tamil dailies viz., Makkal Kural and Vetrimalai on 06.01.1993 and published in locality on 08.01.1993. However, after observing the usual formalities of the Land Acquisition Act, the enquiry under Section 11 of the Land Acquisition Act 1894 was conducted on 22.12.1994. The award was pronounced by the Land Acquisition Officer/Special Tahsildar in Award No.1/95, dated 05.01.1995.

5.The respondents would further stated that the Survey No.799/2A stands and registered in the name of Thiru.Narayansamy Naidu, S/o.Chinnasamy Naidu, who is the notified person as per the revenue record. He appeared for the Award enquiry and objected to the acquisition and he has also pledged the Document for getting loan. Similarly, in respect of the the land in Survey No.799/2B and 4A, one Thiru.Ranganathan and Narayanasamy are the notified persons. They have not produced any documentary evidence. In respect of the land in Survey No.800/13, Thiru.Arumugah Gounder S/o.Velappa Gounder is the notified person. His sons Tvl.Kandasamy and Kaviraj appeared for the Award enquiry and they did not produce any documentary evidence for the aforesaid reasons. The apportionment cannot be decided. As per the Award, the compensations for the above said lands are ordered to be deposited in the Civil Court under Section 30 and 31(2) of the Land Acquisition Act.

6.It is further stated by the respondents in the counter that in respect of the subject land in this writ petition, the original land owner and the interested persons are Thiru.Narayanasamy Naid S/o.Chinnasamy Naidu, Thiru.Ranganathan and Arumugha Gounder. Therefore, the above said Sale Deed has not conveyed any proper rights or title to the petitioner herein. As per the new Act, 2013, once the award is made, then the acquisition proceedings shall continue. Thus, the respondents sought for dismissal of the writ petition.

7.Heard both sides and perused the materials available on record.

8.It is the contention of the learned counsel for the respondents that though the petitioner purchased the subject land from the original owner, title was not passed on in favour of the petitioner. But, in my considered opinion, the respondents-Board has no authority to question the title dispute for issuing No Objection Certificate for the purpose of change of patta in favour of the petitioner. If the land acquisition proceedings are lapsed in respect of the subject land, they are bound to issue No Objection Certificate, particularly when there is no third party charges.

9. In the instant case, it is the specific case of the petitioner that though Award for compensation was passed on 05.01.1995, till day no compensation amount has been paid/deposit; therefore, land acquisition proceedings are lapsed. But, in the counter affidavit, at para 7, the respondents have stated as follows:- "As per the Award, the compensation of the above said lands are ordered to be deposited in the Civil Court under Section 30 & 31(2) of the Land Acquisition Act.".

But, this Court is not conducted any roving enquiry with regard to the disputed questions of fact.

10. Hence, considering the factual background of this case, this Court directs the petitioner to give fresh representation to the 1st respondent with regard to issuance of No Objection Certificate for change patta in the name of the petitioner in respect of the subject land, within a period of one week from the date of receipt of a copy of this order. If no compensation amount in respect of the subject property is deposited so far, then the 1st respondent is directed to pass appropriate orders with regard to issuance of No Objection Certificate, without raising any title dispute, within a period of four weeks thereafter.

With the above terms, the writ petition is disposed of.
No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

(ssv)

To,

1. The Chief Engineer,
Tamil Nadu Housing Board,
493, Anna Salai, Nanthanam, Chennai.
2. The Executive Engineer and Managing Officer,
Coimbatore Housing Division,
Tatabad, Coimbatore.
3. The Special Tahsildar (Land Acquisition),
Tamil Nadu Housing Board, Coimbatore.
4. The Managing Director,
Tamil Nadu Housing Board,
493, Anna Salai, Nanthanam, Chennai.

+1cc to Mr.I.C. Vasudevan, Advocate, S.R.No.27932

+3ccs to Mr.B. Viveka-Vanan, Advocate, S.R.No.27651, 22273,
20233

SV(CO)

EU(17/05/2016)