

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.35618 of 2002

D.Selvakumar
S/o.Durairajan

... Petitioner

Vs.

1. The District Collector,
Villupuram District,
Villupuram.

2. The Special Tahsildar
Harijan Welfare,
Villupuram.

... Respondents

Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the entire records in connection with the impugned notification under section 4(2) of Act 31/78 in Na.Ka.No.17/99 dated 02.03.1999 of the second respondent, declaration u/s.4(1) of the Act 31/78 in Na.Ka.No.10/4944/99 dated 05.04.1999 of the first respondent published in Villupuram District Gazette extraordinary No.16 dated 09.04.1999 and the Award proceedings Na.Ka.No.17/99 dated 24.10.2000 of the second respondent, quash the same and consequently forbear the respondents, their men, agents, servants, subordinates, or anyone claiming under them, from in anyway interfering with the petitioner's peaceful possession and enjoyment of the lands in S.No.118 of Panankuppam Village, Valavanur Post, Villupuram District to an extent of 0.20.0 hectares pursuant to the impugned proceedings of the respondents.

For Petitioner : Mr.R.Venkatachalapathy,
Senior Counsel
for Mr.Ramesh Venkatachalapathy

For Respondents : Mr.R.Rajeswaran,
Special Government Pleader

O R D E R

The petitioner has sought for issuance of a writ of certiorarified mandamus to quash the notification issued by the respondent u/s.4(2) of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1978 (Tamil Nadu Act 31 of 1978) dated 02.03.1999 and the declaration u/s.4(1) of the said Act dated 05.04.1999 and the award dated 24.10.2000 and to forbear the respondents from interfering with the petitioner's possession and enjoyment of the lands in question.

2. The petitioner has challenged the land acquisition proceedings on the ground that without notice to the petitioner and without affording an opportunity, the matter has been proceeded with and the so called enquiry conducted by the second respondent was an empty formality and the declaration has been passed without affording an opportunity to the petitioner which amounts to violation of principles of natural justice. The petitioner is in possession of the lands and there are standing Casurina trees and the award alleged to have been passed on 24.10.2000 is an ex parte award and the petitioner having not been dispossessed is entitled to continue in possession of the same.

3. The second respondent has filed counter affidavits justifying the action taken by the respondents. The second respondent would state that possession of the land was taken over and handed over to the Koliyanur Panchayat Union on 12.07.2000 itself for its maintenance.

4. During the pendency of the writ petition, the petitioner filed W.P.M.P.No.115 of 2015 seeking permission to raise additional grounds. The said petition having not been opposed, was ordered by order dated 27.01.2016 and an additional counter affidavit has also been filed by the respondents to the additional grounds raised.

5. Heard Mr.R.Venkatachalapathy, the learned senior counsel, assisted by Mr.Ramesh Venkatachalapathy, learned counsel appearing for the petitioner and Mr.R.Rajeswaran, the learned Special Government Pleader appearing for the respondents.

6. The learned senior counsel for the petitioner submitted that in terms of Section 24 (2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, where an award under section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the

said proceedings shall be deemed to have lapsed. By relying on the said provision, the learned senior counsel submitted that though the award is stated to have been passed on 24.10.2000, the possession has not been taken out and as on date, the petitioner is in possession of the lands. When an attempt was made by the second respondent to interfere with the petitioner's possession, a contempt petition in Contempt No.109 of 2003 was filed and the same was closed after accepting the apology. Further, by referring to the counter affidavit, the learned senior counsel submitted that the compensation has not been deposited into the civil Court but has been deposited in the State Bank of India, Villupuram, which is admitted in the counter affidavit and therefore, the entire land acquisition proceedings are lapsed. In terms of Section 16(2) of the Repealed Act which deals with the procedure contemplated for taking possession of the land to be acquired, the Government would have to pass an order directing any person who may be in possession of the land to surrender or deliver possession to the Collector and if the land owner refuses to hand over possession, the Collector will have to take forcible possession. Therefore, it is submitted that the petitioner being in possession of the land and he having not been dispossessed in the manner provided under the statute, the entire land acquisition proceedings stand lapsed. Further, the learned senior counsel also urged the grounds raised in the writ petition challenging the acquisition proceedings under the said Act stating that the entire proceedings is an outcome of total non-application of mind since the subjective satisfaction of the District Collect is required in the matter which has not been met as the petitioner has objected to the acquisition proceedings stating that the employees of the State Transport Corporation have developed housing colonies and there are houses constructed in the area and there is no scope for extending the existing burial ground.

7. The learned Special Government Pleader, by referring to the counter affidavits filed by the second respondent dated 24.03.2003 and 05.01.2016, submitted that the entire acquisition proceedings have been properly conducted and the Special Thasildar has proceeded further after observing the formalities and pronounced the award. It is further submitted that since the petitioner refused to receive the compensation the amount has been deposited into the State Bank of India, Villupuram. Thereafter, necessary changes were carried out in the Village and Taluk Accounts on 30.06.2000 and the entire land has been handed over to the Panchayat Union Commissioner on 12.07.2000 for its maintenance. The said contentions which were urged by the learned Special Government Pleader has been reiterated in the counter affidavit dated 24.03.2000 in more than three places. By referring to the recent counter affidavit dated

05.01.2016, the learned Special Government Pleader submitted that the possession of the land was also taken on 12.07.2000 and handed over to Panchayat Union Commissioner who has to maintain the burial ground and the delay to use the acquired land for the purpose is by reason of the stay order passed by this Court in this writ petition. It is further contended that the proceedings are pending with regard to issuance of notification to keep in force the provisions of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1978 (Tamil Nadu Act 31 of 1978).

8. In reply, the learned senior counsel for the petitioner submitted that the State of Tamil Nadu has introduced amendment to the Central Enactment by way of Tamil Nadu Act No.1 of 2015 amending the provisions of Section 105-A so as to include the State Act by adding it to the fifth schedule in the Central Act and the amendment requires the State Government to make enactment u/s.105-A (2) providing determination of compensation in accordance with the first schedule of the Central Act and this notification should be made within one year from the date of coming into force of the amending Act i.e. 01.01.2014 and the notification should be placed before the Assembly for its approval and as on date, approval has not been granted by the Assembly and the proposed amendment has become obsolete in view of the fact that no notification has been made within one year therefrom i.e., 01.01.2014.

9. The submissions of the learned Special Government Pleader by placing reliance on the Tamil Nadu Act 1 of 2015 is of little avail as it is an admitted case that as on date no approval has been granted by the Assembly. Therefore, the objection raised by the learned Special Government Pleader in that regard does not merit acceptance. This leaves us with only two issues to be considered as to whether the petitioner has been dispossessed of the land in question and whether the award has been made five years or more prior to the commencement of the Land Acquisition Act. The Honourable Division Bench of this Court in a recent decision in The Tamil Nadu Housing Board and another v. iGate Global Solutions Limited [2016 (2) MLJ 385] has elaborately considered all issues in which these two issues have also been taken up for consideration. The Honourable Division Bench, after examining all the issues and taking note of the various propositions, laid down the legal principle with regard to the manner in which the possession has to be taken out. In paragraph No.60 of such decision, it has been held thus:

"60 The ratio deducible from the aforesaid judicial pronouncements is that for taking over of possession of the land under Section 16 of the Old Act, 1894, the revenue authorities must establish by producing some evidence, i.e., either preparation of

panchanama in the presence of the witnesses or some other documents. The transfer certificates subsequently prepared by the revenue authorities for delivering possession of the land in question to the Housing Board in absence of a witness or land owner, will not be sufficient to establish that possession of the lands was taken over from the land owners. In the case on hand, it is strongly pleaded by the learned counsel appearing for the private respondents that the land owners or their successors are continuing in possession till date. Thus, it is held that the possession of the lands in question were not taken over after passing of the Award."

10. In the instant case, the above procedure has not been followed and it has been admitted by the respondents in the counter affidavit that possession could not be taken over. The Honourable Division Bench has also considered the other issues in yet another decision in R.Rajaram and five others vs. The Secretary to Government and two others [W.A.No.1100 of 2014 dated 26.02.2016]. In such decision, it has been held thus:

25. Coming to the second contention of the respondents that the possession of the land could not be taken over on account of the order of interim stay granted by the Courts, indisputably, the award was passed on 20 July 1994. Thereafter, stay of dispossession was granted, which continued till 17 August 2001. Again, stay was granted on 10 December 2004 and on account of the stay of dispossession granted by the Courts, possession, according to the respondents, could not be taken over.

26. In this context, it is pertinent to point out that the period of 5 years stipulated in the 2013 Act is relevant only for the purpose of passing of the award under Section 16 of the Old Act, 1894, i.e., any award which has been passed 5 years or more, prior to the commencement of the 2013 Act, that shall stand lapsed, if, either possession of the land is not taken over or compensation has not been paid.

27. The contention of the learned Additional Advocate General that the period of interim stay of dispossession be excluded from the period of 5 years, is misplaced. There is no prescription of 5 years for taking over of the possession or making payment of compensation. The Supreme Court, in Sree Balaji Nagar Residential Association (supra), has observed as under:

"9. However, this issue need not be pursued any further because admittedly physical possession of the land involved in these appeals

has not been taken over by the State and on that account alone, the land acquisition proceedings under challenge will have to be treated or declared as lapsed unless we find merit in the contention raised on behalf of the State that this plea cannot be used against the State because it was prevented from taking physical possession of the lands on account of interim orders passed by the High Court and this Court.

10. There is no dispute that the writ petitions were filed even before the making of award and interim orders have operated against the State of Tamil Nadu and, therefore, the State was not at fault in not taking physical possession of the lands concerned under acquisition. But the intention of the legislature in enacting Section 24(2) of the 2013 Act will have to be culled out from its wordings and on the basis of other relevant provisions of this Act and the relevant case law for deciding whether the period of stay/injunction is required to be excluded in computing the five years' period or not.

11. From a plain reading of Section 24 of the 2013 Act it is clear that Section 24(2) of the 2013 Act does not exclude any period during which the land acquisition proceeding might have remained stayed on account of stay or injunction granted by any court. In the same Act, the proviso to Section 19(7) in the context of limitation for publication of declaration under Section 19(1) and the Explanation to Section 69 (2) for working out the market value of the land in the context of delay between preliminary notification under Section 11 and the date of the award, specifically provide that the period or periods during which the acquisition proceedings were held up on account of any stay or injunction by the order of any court be excluded in computing the relevant period. In that view of the matter it can be safely concluded that the legislature has consciously omitted to extend the period of five years indicated in Section 24(2) even if the proceedings had been delayed on account of an order of stay or injunction granted by a court of law or for any reason. Such casus omissus cannot be supplied by the court in view of law on the subject elaborately discussed by this Court in Padma Sundara Rao v. State of T.N."

28 In yet another decision in Rajiv Chowdhrie HUF (supra), wherein, the question of exclusion of any period during which land acquisition proceedings was stayed, came into consideration, the Supreme Court observed as under:

"16. Further, with regard to the legal contention that physical possession of the land could not have been taken by the respondents in view of the interim order of "status quo" passed by this Court. This Court in Sree Balaji Nagar Residential Assn. v. State of T.N., held that Section 24(2) of the 2013 Act does not exclude any period during which the land acquisition proceedings might have remained stayed on account of stay or injunction granted by any court. It was conclusively held that the legislature has consciously omitted to extend the period of five years indicated in Section 24(2) of the 2013 Act for grant of relief in favour of landowners even if the proceedings had been delayed on account of an order of stay or injunction granted by a court of law or for any reason. Thus, the said period has to be excluded as provided under the amended proviso to Section 6 of the LA Act by way of an amendment by the legislature to the above Section 6 through Amendment Act 68 of 1984, to add Explanation 1 to the Act, for the purpose of excluding the period, when the proceedings suffered stay by an order of the court, in the context of limitation provided for publishing the declaration notification under Section 6(1) of the Act. The Explanation to Section 11-A, which was added by Amendment Act 68 of 1984 was to a similar effect. This Court in the above case has examined this legal contention and held that the legislature in its wisdom made the period of five years under Section 24(2) of the Resettlement Act, 2013, absolute and unaffected by any delay in the proceedings on account of any order of stay by a court of law. The plain wordings used by the legislature under the provisions of Section 24(2) are made very clear and do not create any ambiguity or conflict. In such a situation, the Court is not required to depart from the literal rule of interpretation, as held by this Court in CIT v. Indo-Mercantile Bank Ltd. as under: (AIR p. 718, para 10)

"10. Lord Macmillan in Madras & Southern Mahratta Railway Co. Ltd. v. Bezwada

Municipality laid down the sphere of a proviso as follows: (IA p. 122)

'... The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case. Where, as in the present case, the language of the main enactment is clear and unambiguous, a proviso can have no repercussion on the interpretation of the main enactment, so as to exclude from it, by implication what clearly falls within its express terms.'

The territory of a proviso therefore is to carve out an exception to the main enactment and exclude something which otherwise would have been within the section. It has to operate in the same field and if the language of the main enactment is clear it cannot be used for the purpose of interpreting the main enactment or to exclude by implication what the enactment clearly says unless the words of the proviso are such that that is its necessary effect."

29 As observed hereinabove, applying the well settled principle of law to the facts of this case, the respondents are not entitled to claim any exclusion of the period of stay of dispossession, inasmuch as the time for taking over possession of the land or making payment of compensation is not prescribed in the provisions of Section 24(2) of the 2013 Act."

11. Thus, by applying the law laid down by the Honourable Division Bench in the above referred decisions and in the light of undisputed fact that after passing of the award the possession of the land still remains with the petitioner/land owner, the provisions of Section 24(2) of 2013 Act would stand attracted and consequently, the entire land acquisition proceedings shall stand lapsed.

In the result, the Writ Petition is allowed and the impugned proceedings are set aside. No costs.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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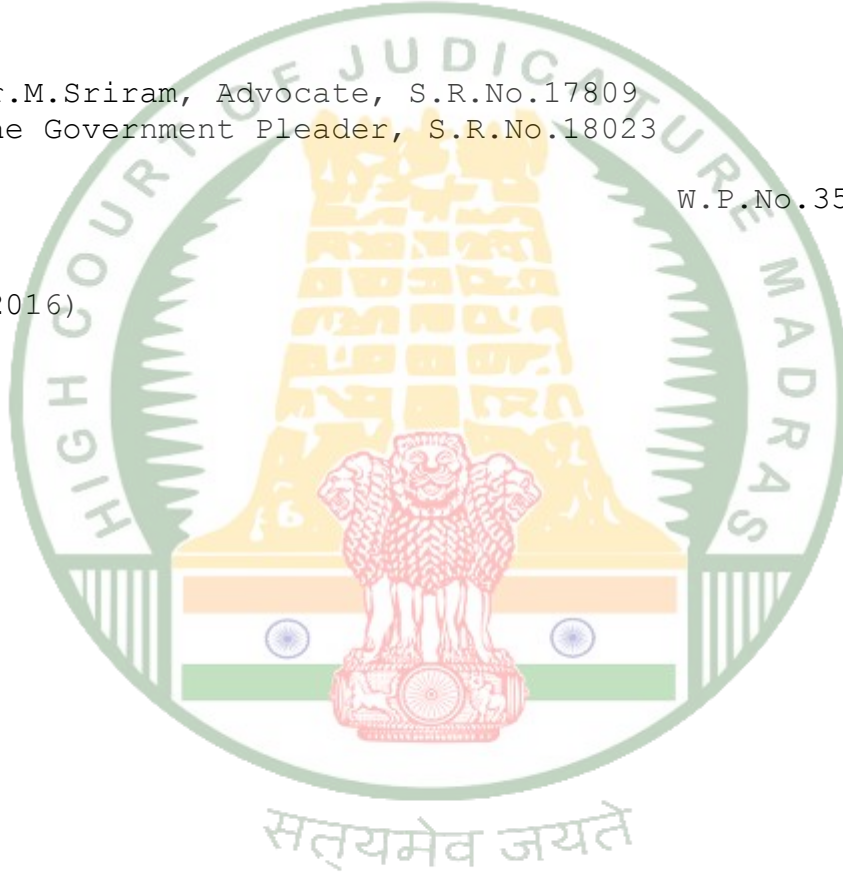
1. The District Collector,
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2. The Special Tahsildar
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Villupuram.

+1cc to Mr.M.Sriram, Advocate, S.R.No.17809
+1cc to the Government Pleader, S.R.No.18023

W.P.No.35618 of 2002

SCD(CO)
CA(31/03/2016)



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