



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 18.07.2016

DELIVERED ON : 23.08.2016

CORAM:

**THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
AND
THE HONOURABLE MR.JUSTICE S.S.SUNDAR**

W.P (MD) No.11665 of 2016

and

W.M.P (MD) No.8939 of 2016

Gnanamary

... Petitioner

Vs.

1.The Tamilnadu Small Industries
Development Corporation,
represented by its
Managing Director,
Chennai.

2.The Tamilnadu Small Industries
Development Corporation,
represented by its
Branch Manager,
Tiruchirappalli.

3.The Inspector of Police,
Thuvakudi Police Station,
Thuvakudi,
Thiruchirappalli.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, restraining the respondents, their men and agents from dispossessing the petitioner from the property comprised in S.F.No.180/6 admeasuring two acres situated at Thuvakudi Village, Thiruchirappalli District, except by due process of law.

For Petitioner

: Ms.J.Maria Roseline

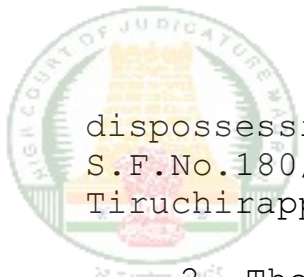
For Respondents

: Mr.S.Chandrasekar
Government Advocate

ORDER

NOOTY.RAMAMOHANA RAO, J.

<https://hcservices.courts.gov.in/hcservices/>
The petitioner has sought for a writ of Mandamus for
restraining the respondents, their men and agents from



dispossessing the petitioner from the property comprised in S.F.No.180/6, admeasuring 2 acres situated at Thuvakudi Village, Tiruchirappalli District, except by due process of law.

2. The case of the petitioner is that her family owns land of an extent of 2 acres 47 cents lying in S.F.No.180/6, Thuvakudi Village, Tiruchirappalli District. It is her case that the names of her ancestors, i.e, Anthony Muthu and Maria Selvam, have been entered in respect of the property in the Re-Settlement Register. They are in continuous and uninterrupted possession of the land over a long period of time and that there is an attempt made in the past unsuccessfully to acquire the land in question, for establishing Regional Engineering College at Tiruchirappalli. But however, the said proposal has not materialised.

3. It is averred that on 18.06.2016, the second respondent - the Branch Manager of the Tamilnadu Small Industries Development Corporation, Tiruchirappalli, had tried to dispossess the petitioner and the petitioner has, however, resisted that attempt. On 23.06.2016, once again, the second respondent - the Branch Manager of the Corporation appeared and served a hand-written note proposing to dispossess the petitioner from the land in question on 29.06.2016. Hence, the present writ petition.

4. Heard Ms.Maria Roseline, learned Counsel for the petitioner at length and Mr.S.Chandrasekar, learned Government Advocate who has accepted notice on behalf of the respondents.

5. At the very outset, it should be pointed out that along with the writ petition, certain material papers have been enclosed. When we went through the paper book, we have noticed that on copies of some of those documents, the seal of the District Munsif Court, Tiruchirappalli, bearing date of 21.06.2016 was found affixed. Since the writ petitioner has not disclosed in the affidavit filed in support of this writ petition that the civil Court has been approached by the writ petitioner, we tried to find out from the learned Counsel for the petitioner as to whether there was any civil suit pending on the subject.

6. The learned Counsel for the petitioner has, hence, taken time and filed an additional affidavit sworn to by the writ petitioner. In paragraph 4 of the said additional affidavit, it was disclosed that the writ petitioner has approached the civil Court, but however, the civil Court has returned the plaint seeking certain clarifications in respect of the description of the suit schedule property. Further, as the lawyers are boycotting the Court and as the petitioner's lawyer was reluctant to appear before the Court and as none of the lawyers are willing to appear before the trial Court, the petitioner approached the present Counsel on record in order to file the writ petition before this Court. The petitioner was facing immediate threat of dispossession of the property at the hands of the second respondent.



7. It is, thereafterwards, averred as under:

"4. It is respectfully submitted that the petitioner did not want to blame her lawyer for not appearing for her and therefore she chose not to plead about her attempt to institute civil suit before the trial court. If this Hon'ble Court holds that the petitioner ought to have disclosed about her attempts to fight the case before the trial Court, the petitioner herein tender her unconditional apology for her mistake."

8. In paragraph 5 of the additional affidavit, it is further averred as under:

"5. It is further respectfully submitted that the petitioner's son and son-in-law contacted the counsel on record on 26.06.2016 to file the writ petition. As the petitioners contacted the lawyer at the last minute, there was not much time for the lawyer to do consultation with the petitioner's family members. The petitioner's counsel had prepared the writ affidavit seeing the copy of the plaint that was filed before the lower court. As the earlier suit did not find place in the plaint, the same did not come to the notice of the lawyer."

9. The contents of paragraphs 4 and 5 of the additional affidavit are plainly contradictory in terms. On one hand, it is accepted that the present writ petition is prepared after perusing the copy of the plaint that is filed before the lower Court. This statement presupposes that the writ petitioner and all those concerned are in the know of the approach made by the writ petitioner earlier by instituting a civil suit. But yet, they have not made any attempt to disclose the said fact, at the time the writ petition is instituted.

10. This apart, it was brought to our notice on the previous occasion by the learned Government Advocate appearing for the respondents that yet another suit was also filed earlier in O.S.No.1750 of 2011 for the same relief and the same was dismissed and confronted with this fact, in paragraphs 6 and 7 of the additional affidavit, the explanation offered is as under:

"6. It is respectfully submitted that the omission to speak about the earlier dismissal of suit in O.S.No.1750/2011 in the main writ affidavit was only an inadvertent error and there was no willful omission. The petitioner herein tenders her sincere and unconditional apologies for non-disclosure of the civil suit filed by her in O.S.No.1750/2011 before the First Additional District Judge, Tiruchirappalli."

7. It is respectfully submitted that the suit in O.S.No.1750/2011 was filed for a relief of injunction



against the respondents 1 & 2 and in the said suit the respondents 1 & 2 were set ex-parte. However the trial court proceeded to decide the suit on merits and dismiss the suit for injunction filed by the petitioner herein, on the ground that the petitioner had failed to prove their possession in respect of the suit property."

11. The conduct of the writ petitioner in not faithfully disclosing her approaching the civil Court on two different occasions earlier, is certainly blameworthy. No litigant should approach a Court resorting to unfair tactics, by withholding information about previous litigation between the same parties.

12. In paragraph 7 of the additional affidavit, it is disclosed that the civil suit in O.S.No.1750 of 2011 was dismissed on the ground that the petitioner had failed to prove her possession in respect of the suit property. But yet, the petitioner kept on asserting that she is in continuous and uninterrupted possession of the very same land.

13. During the course of hearing, it has transpired that the land in question, has been acquired for the purpose of establishing the Regional Engineering College at Tiruchirappalli and in fact, the writ petitioner herein, who is the plaintiff in O.S.No.1750 of 2011 on the file of the I Additional District Munsif Court, Tiruchirappalli, examined herself as P.W.1 therein. Ex.A.1 marked by her in that suit is the notice received by her father-in-law - the predecessor-in-interest and title of the writ petitioner from the District Collector (Land Acquisition) in the month of April, 1964.

14. It has now emerged that pursuant to the compulsory acquisition in 1963, an award was made and the compensation amount as payable for this very piece of land was also deposited before the Sub Court and the same was also withdrawn by the predecessor-in-interest and title of the writ petitioner.

15. The learned Counsel for the petitioner then turned around and contended that the land was acquired for the purpose of establishing the Regional Engineering College (now, renamed as National Institute of Technology, Tiruchirappalli), but the said land has not been utilised for the said purpose. Therefore, the respondents 1 and 2 could not have taken possession of the land in question.

16. It appears that though the lands in question, among others, were acquired in the year 1963 for establishing the Regional Engineering College, but however, only certain extent of lands were utilised for establishing the Regional Engineering College, while the remaining lands are utilised for establishing an industrial estate at Thuvakudi. The learned Government Advocate



appearing for the respondents has placed before us a copy of the order of the State Government contained in G.O.Ms.No.785, Industries (SIE-I) Department, dated 07.06.1988, transferring the lands and buildings in the industrial estates shown in the annexures to the said Government Order in favour of Tamilnadu Small Industries Development Corporation Limited, the first respondent herein, subject to certain terms and conditions contained therein.

17. It is not in dispute that out of several developed industrial estates, Thuvakudi, is one such estate which was transferred by the State Government to the said first respondent Corporation. Therefore, the action of the respondents 1 and 2 in dealing with the land in question cannot be described as wholly unauthorised.

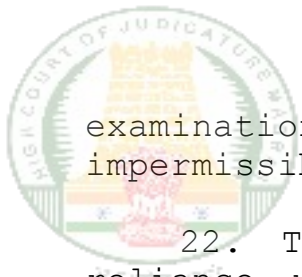
18. The learned Counsel for the petitioner would then urge that the land having been acquired for the purpose of establishing the Regional Engineering College could not have been transferred later on in favour of a Corporation owned by the State Government.

19. We do not wish to burden this judgment heavily except noticing the legal principles enunciated by the Honourable Supreme Court in *Government of A.P. and another v. Syed Akbar* [(2005) 1 Supreme Court Cases 558]. In paragraph 14, it is held as under:

"14. From the position of law made clear in the aforementioned decisions, it follows that (1) under Section 16 of the Land Acquisition Act, the land acquired vests in the Government absolutely free from all encumbrances; (2) the land acquired for a public purpose could be utilised for any other public purpose; and (3) the acquired land which is vested in the Government free from all encumbrances cannot be reassigned or reconveyed to the original owner merely on the basis of an executive order."

20. Therefore, it is no longer open to the petitioner to impugn the action of the State Government firstly in acquiring the land in question and later on in transferring the land which now forms part of the industrial estate at Thuvakudi, Tiruchirappalli District, to the first respondent Corporation.

21. The land was acquired in 1963/1964. The compensation was also paid to the true owner. The land stood vested in the State Government free from all encumbrances. More than 50 years later on, the writ petitioner is seeking to agitate her proprietary rights in the land in question, which is wholly impermissible. All ~~the parties~~ ^{the parties} available at one point of time or the other in the land in question, should be treated to have been extinguished pursuant to the acquisition of these lands. Any



examination of legality or validity of such an exercise is impermissible after expiry of more than 50 year period.

22. The learned Counsel for the petitioner, then, placed reliance upon the judgment rendered by the Honourable Supreme Court in *Rame Gowda v. M.Varadappa Naidu* reported in (2004) 1 Supreme Court Cases 769 in support of her plea that the petitioner cannot be dispossessed now from the land in question.

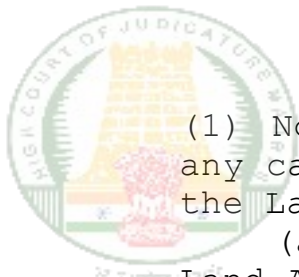
23. It is apt to recall that the petitioner has failed to establish her possession of the land in question when she filed the suit in O.S.No.1750 of 2011 and that suit was dismissed precisely for her failure to establish her possession. It is, therefore, futile for the writ petitioner to still contend that she is continuously in possession of the land in question and then seek a finding of fact about possession from us. This apart, Section 16 of the Land Acquisition Act, 1894, [in short '1894 Act'] empowers the District Collector to take possession of the land upon making an award under Section 11 and thereupon, the land shall vest absolutely in the Government free from all encumbrances and taking possession of such acquired land by preparation of a Memorandum or Panchnama is an accepted mode. [*State of T.N. and another v. Mahalakshmi Ammal and others* (1996) 7 Supreme Court Cases 269]. It is safe, hence, to infer, that upon making an award and depositing the amount of compensation before the Sub Court, Tiruchirappalli, the possession of the land in question might have been taken over by following such a procedure, nearly 50 years back.

24. The 1894 Act, empowers the State Government to acquire lands compulsorily, upon fixation of the market value by passing an award and then, paying the compensation amount to the true owner, enables the State Government to take possession of the land in question. Such an attempt cannot be described as an illegal or unauthorised or unilateral attempt to dispossess a party from out of possession of the land. We, therefore, have no hesitation to reject the contention of the writ petitioner in this regard. Any dispossession of land carried out pursuant to Section 16 of the 1894 Act, is a wholly legitimate exercise and the principle enunciated in *Rame Gowda's* case does not get attracted in such cases.

25. The last submission of the learned Counsel for the writ petitioner was that as per Section 24 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, [in short '2013 Act'] the earlier land acquisition proceedings shall be deemed to have lapsed.

26. Section 24 of the 2013 Act, which has provided for two divisions, reads as under:

"24. Land acquisition process under Act No.I of 1894 shall be deemed to have lapsed in certain cases:



(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, -

(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

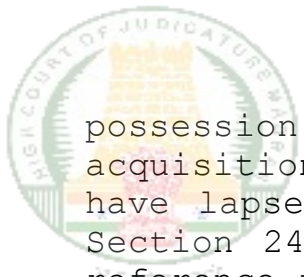
(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act."

In sub-section (1) of Section 24, it was made clear that where the land acquisition proceedings are initiated under the 1894 Act, if no award is made in those proceedings, under Section 11 of 1894 Act, then, all the provisions of 2013 Act, relating to the determination of compensation payable shall apply and in case, the award is already made under Section 11 of 1894 Act, then, in such a case, the further proceedings under 1894 Act, shall continue as if the said Act has not been repealed.

27. Sub-section (2) of Section 24 of the 2013 Act has again provided for another contingent situation where an award under Section 11 of the 1894 Act may have been passed five years or more prior to the commencement of 2013 Act, but the physical possession of the land has not been taken or the compensation has not been paid, then, such proceedings are deemed to have been lapsed and if the appropriate Government, if so, chooses, shall initiate the land acquisition proceedings afresh in accordance with 2013 Act.

28. Therefore, as per sub-section (2) of Section 24 of 2013 Act, where an award may have been made under Section 11 of 1894 Act, five years prior to the commencement of 2013 Act, but, compensation amount may not have been paid or the physical



possession has not been taken, then, in such a scenario, the land acquisition proceedings initiated under 1894 Act are deemed to have lapsed. Thus, before the provision under sub-section (2) of Section 24 of 2013 Act is invoked, it must be established, with reference to adequate material available on record:

(i) that the land acquisition proceedings are initiated 5 years prior to 01.01.2014, the date on and from which 2013 Act was brought into force;

(ii) Award under Section 11 of 1894 Act was also passed prior to 5 years of 01.01.2014;

(iii) the amount of compensation as determined by the award was not paid;

(iv) possession of the land has not been taken.

In the present case, no material, leave aside the basic data in this regard, is available.

29. In the instant case, the award is stated to have been passed in the year 1964 and compensation amount was deposited before the Sub Court and was also paid to the predecessor-in-interest and title of the writ petitioner and possession of the land was taken over under Section 16 of the 1894 Act and an industrial estate is developed and the land in question forms part of such an estate and that the land was also transferred by the State Government through their orders contained in G.O.Ms.No.785, Industries (SIE-I) Department, dated 07.06.1988, in favour of the first respondent Corporation.

30. Therefore, the contention canvassed in this regard by the learned Counsel for the petitioner has no factual basis whatsoever and it cannot be accepted. Otherwise, it would amount to paying a premium to the writ petitioner. What the petitioner could not establish in civil suit in O.S.No.1750 of 2011, she attempts to establish now in this writ petition. Inasmuch as her predecessor-in-interest and title having accepted the compensation as determined by the award passed by the District Collector (Land Acquisition) in 1964, the writ petitioner cannot be permitted to be unjustly enriched.

31. For the aforesaid reasons, we find that there is no merit in this writ petition. Accordingly, this writ petition is dismissed. Consequently, the connected writ miscellaneous petition is also dismissed.

32. Since we have found that the conduct of the writ petitioner is not fair, we impose costs of Rs.1,000/- (Rupees One Thousand only) payable to the Mediation and Conciliation Centre attached to this Bench within two weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(T&P)



1.The Managing Director,
The Tamilnadu Small Industries
Development Corporation,
Chennai.

2.The Branch Manager,
The Tamilnadu Small Industries
Development Corporation,
Tiruchirappalli.

3.The Inspector of Police,
Thuvakudi Police Station,
Thuvakudi,
Thiruchirappalli.

4.The Secretary,
Mediation and Conciliation Centre,
Madurai Bench of Madras High Court,
Madurai

+One cc to The Special Government Pleader, SR.No.46791

+One cc to M/s.J.Maria Roseline, Advocate, SR.No.47034

rsb

RL/7C/9P/CK/6/9/2016

ORDER MADE IN
W.P (MD) No.11665 of 2016
and
W.M.P (MD) No.8939 of 2016
23.08.2016