

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2017

CORAM :

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

S.A.No.450 of 2017

1. Jeejababy Jayaramiah
2. Jeyaramiah ... Appellants/Appellants/Defendants 2 & 4

Vs.

1. The Tamilnadu Housing Board,
Hosur Unit, Rep.by its,
Administrative Officer cum Executive Engineer, C.Ethiraj,
Hosur Housing Board Building, Bangalur Salai,
Hosur - 635 109.
2. Jayalakshmi ... Respondents/1st&2nd respondents/Plaintiff

Second Appeal filed under Section 100 of the Civil Procedure Code to set aside the decree and judgment made in A.S.No.35 of 2003 dated 24.03.2017 on the file of the learned Additional District Judge, Hosur confirming the decree and judgment passed by the Subordinate Court, Hosur in O.S.No.24 of 1997, dated 04.04.2003

For Appellants : Ms. P. Subba Reddy

JUDGMENT

This Second Appeal has been filed against the judgment and decree dated 24.03.2017 passed in A.S. No. 35 of 2003 on the file of Additional District Judge, Hosur, confirming the judgment and decree of the Subordinate Court, Hosur dated 04.04.2003 made in O.S. No.24 of 1997.

2. The brief facts of the case as follows :

The first respondent herein initiated land acquisition proceedings under Section 4(1) of the Land Acquisition Act, dated 24.04.1990 for the total extent of 67.19 acres in Hosur Village and 26.12 acres in Chennathur Village and land measuring 2.15 acres situated in S.No.31, Hosur Village belonged to the appellants as ancestral property. According to the first respondent, under Section 4(1) notification of the Land Acquisition Act, dated 09.07.1980, Land Acquisition proceedings

has been initiated and the possession of the properties has also been taken by the authorities concerned on 25.11.1985 and thereafter, an award was passed by the Special Tahsildar, Tamil Nadu Housing Board. In pursuant to the proceedings, the Housing Board received the schedule of properties and applied for construction. The Land Acquisition Officer has also deposited the compensation amount of Rs.20,416.50/- into the credit of Sub Court, Krishnagiri. In the meantime, the appellants and the second respondent herein have filed W.P.No.3391/1989 before this Court, challenging the land acquisition notification. In the said writ proceedings, the 1st respondent herein was not a party. Subsequently, the appellants and the second respondent herein have filed WMP.No.4976 of 1989 for interim stay and obtained an order of interim stay. However, the aforesaid writ petition was dismissed on 08.09.1993 against which, the appellants have not filed any appeal. In view of the same, the 1st respondent started construction in the above said properties. On 12.09.1996, the appellants tried to trespass into the suit schedule property and thereafter, the second respondent has put up a construction in a portion of the property.

3. The suit was resisted by the appellants/defendants 2 and 4 by filing a written statement, wherein it is stated that the first respondent /plaintiff has not taken possession of the suit scheduled property. At this juncture, it was brought to the notice of the first respondent that the appellants and the second respondent have already filed a partition suit in O.S.No.117/91 and the same was decreed on 27.01.1991 in their favour. The second respondent has started their construction only after obtaining No objection Certificate and permission from the Hosur Panchayat Board. It is further stated that the District Collector, Dharmapuri, inspected the suit properties and sent his recommendation letter to exempt the properties in question from the land acquisition proceedings.

4. The trial Court, after hearing the arguments of both the parties and upon perusal of Ex.P1-possession receipt of the suit property and Ex.P2-tax receipts and the other documents, has come to the conclusion that the first respondent/plaintiff has taken possession and has been in enjoyment of the properties and the appellants and the second respondent herein have encroached the properties. Accordingly, the issues were answered against the appellants herein and the suit for permanent injunction was decreed in favour of the first respondent herein. Against the said Judgment and Decree passed by the trial Court, the appellants herein filed A.S.No.35 of 2003 before the Addl. District Court, Hosur. The lower appellate court, after duly appreciating the evidence, accepted the findings of the trial court and confirmed the decree granted by the trial court.

Hence, this second appeal is preferred by the appellants, who are the defendants 2 & 4 in the suit.

5. The second appeal is admitted on the following substantial questions of law:

1. Whether the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 having come into force would have a preponderance over Judgment made in A.S.No.35 of 2003 dated 24.03.2017?

2. Whether the Courts below are correct in considering Ex.A1 to be sufficient to prove title over property?

3. Whether the Courts below in not considering the proceedings before the Hon'ble High court, with respect to the suit land, is just and proper?

4. Whether the Courts below are justified in not considering Ex.B1-B20 to prove appellants claim?

6. Heard the learned counsel for the appellants and perused the materials placed before this Court.

7. According to the appellants, no notice was served under Sections 4 & 6 of the Land Acquisition Act to the land owners and no documents have been filed before the Courts below to show that the subject land has been taken possession by the first respondent/plaintiff and Ex.P1-possession receipt was created for the purpose of filing the suit. The compensation amount has been deposited only in the year 1989. Therefore, the appellants have also filed an application in I.A.No.07/2016 in A.S.No.35 of 2003 to receive the additional documents by contending that under Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013, is applicable to them.

8. The case set up by the appellants/defendants before the Appellate Court is that the land has been acquired under the Land Acquisition proceedings for the purpose of construction of the 1st respondent's house and the possession of the same has been handed over to the first respondent/plaintiff on 25.11.1985, as per Ex.P1 possession receipt. After the land was acquired, the commercial complex has been constructed and the temple is in half way and permission was obtained for construction of marriage hall by the 1st respondent. On perusal of documents, it is seen that the appellate Court has recorded a

finding that after conclusion of Land Acquisition proceedings in the year 1985, the appellants/defendants constructed building after obtaining plan approval in the year 1990 in order to evade from the Land Acquisition proceedings. Regarding the additional grounds with regard to applicability of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013, the appellate Court held that the same cannot be agitated before it, as the civil Courts do not have jurisdiction to decide this issue relating to avail the benefit under Section 24(2) of the Land Acquisition proceedings. Therefore, the Appellate Court has dismissed the appeal by confirming the Judgment and decree passed by the trial Court. Challenging the said Judgment, the appellants filed the present second appeal before this court.

9. The learned counsel for the appellants would submit that the appellants have not received the compensation amount for the land acquired and they have been in possession of the suit property, the entire land acquisition proceedings got vitiated. According to the learned counsel for the 1st respondent, subsequent to the Land Acquisition proceedings, the appellants/defendants tried to trespass into the suit property. Therefore, the 1st respondent has filed the suit for direction to pay damages, declaration and for permanent injunction. Further, the learned counsel for the appellants would submit that the first appellant filed W.P.No.31107 of 2014 before this Court for issuance of a writ of declaration, declaring that the proceedings initiated by the respondents under Land Acquisition Act are deemed to be lapsed in view of Sections 24 & 25 of Act 30 of 2013. Therefore, there is no force in the contention of the appellants to raise same ground in the present second appeal. On merits, the Appellate Court has rightly held that the appellants are not entitled to any relief in the present suit.

10. Both the Courts below have concurrently held that the first respondent-Board is entitled for the relief of permanent injunction in the suit.

11. In view of the above fact, the substantial questions of law are answered against the appellants and accordingly, the Second Appeal stands dismissed. There is no order as to costs.

Sd/-

Assistant Registrar (CS-)

//True Copy//

Sub Assistant Registrar

kkd

To

1. The Administrative Officer cum Executive Engineer,
Hosur Housing Board Building, Bangalur Salai,
Hosur - 635 109.
- 2.The Additional District Judge, Hosur.
- 3.The Subordinate Court, Hosur.

+2cc to Mr.P.SUBBAREDDY Advocate, S.R.No. 50532

S.A.No.450 of 2017

SVI (CO)
TR(29/11/2017)



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