

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2017

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THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

And

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.No.1261 of 2017

And

C.M.P.No.17489 of 2017

Tamil Nadu Housing Board,
Rep. by its Managing Director,
No.331, Anna Salai,
Nandanam, Chennai - 600 035.

... Appellant

Vs.

1. G.Karthic Kannan

2. State of Tamil Nadu,
Rep. by its Secretary to Government,
Housing and Urban Development Department,
Fort St.George,
Chennai - 9.

3. The District Revenue Officer,
Tiruppur District at Tiruppur - 1.

... Respondents

Prayer:

Writ appeal filed under Clause 15 of Letters Patent praying to set aside the order passed by the learned Judge in W.P.No.23492 of 2014 dated 05.04.2016.

W.P.No.23492 of 2014, seeking for a Writ of Declaration, to declare the entire land acquisition proceedings vide Notification issued under Sec.4(1) of the said Act in G.O.(Ms) No.740, Housing and Urban Development Department dated 30.07.1982 and published in the Tamil Nadu Government Gazette Part.II Section.2 on 11.08.1982 followed by Sec.6 declaration published in the Tamil Nadu Government Gazette dated 10.07.1985 in G.O.Ms.No.625 dated 25.06.1985 and the consequential Order of the 1st respondent in Letter No. 26222/LA 3(1)/2011-9 dated 15.11.2012 as null and void and unlawful in so far as the petitioner's lands are concerned and consequently direct the 2nd respondent to transfer the patta in favour of the petitioner in respect of his lands comprised in S.No.359/2, 369 & 372/1,

situated at Chithrauthanpalayam Village, Dharapuram Town & Taluk, Erode District, now Tirupur District, measuring to an extent of 2.64.0 hectares, 3.53.5 hectares and 2.12.0 hectares respectively.

For Appellant : Mr.V.Anandhamurthy

For Respondents : Mr.R.Krishnamoorthy for R1
Mr.A.Zakir Hussain for R2 and R3
Government Advocate

J U D G M E N T

(Judgment of the Court was delivered by K.K.SASIDHARAN,J.)

This intra Court appeal is directed against the order dated 05.04.2016 in W.P.No.23492 of 2014 whereby and whereunder, the learned Single Judge declared that the acquisition in question has lapsed on account of the fulfilment of conditions provided under the proviso to sub-section (2) to Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (hereinafter referred as 'Act 30 of 2013').

2.The land owned by the first respondent was the subject matter of acquisition at the instance of the Tamil Nadu Housing Board. The Notification under Section 4(1) of the Land Acquisition Act was issued on 11.08.1992. Thereafter, declaration under Section 6 of the Land Acquisition Act was published in the Tamil Nadu Government Gazette on 10.07.1985. There were litigations initiated by the father of the first respondent and ultimately his request to release the land was negatived by the Tamil Nadu Housing Board.

3.The first respondent thereafter filed the writ petition in W.P.No.23492 of 2014 primarily on two grounds, the first being the failure to deposit the compensation amount and the other being the possession of land with him. According to the first respondent, he retained the possession of the land and that the compensation amount has not been paid or deposited before the Civil Court.

4.The learned Single Judge having found that the case of the first respondent would come within the four corners of the proviso to Section 24 (2) of Act 30 of 2013 allowed the writ petition. Feeling aggrieved, the Requisitioning body has come up with this intra Court appeal.

5.The learned counsel for the appellant submitted that the actual possession could not be taken as the predecessor in

interest of the first respondent failed to respond to the notice issued for payment of the compensation amount. According to the learned counsel, Reference made before the Civil Court was not numbered and that was the reason for failure to deposit the compensation amount. We have also heard the learned counsel for the first respondent, and the learned Government Advocate appearing on behalf of the respondents 2 and 3.

6.The factual matrix indicates that the Notification for acquisition of the land under Section 4(1) of the Land Acquisition Act was issued on 11.08.1982. The Land Acquisition Officer after conducting the statutory enquiry issued a declaration under Section 6 of the Land Acquisition Act. The Declaration was published on 10.07.1985. The land owner died in the meantime. The legal representatives initially filed a writ petition in W.P.No.8583 of 1985 challenging the declaration under Section 6 of the Land Acquisition Act. The writ petition was disposed of by the learned Single Judge giving liberty to the first respondent and the other legal representatives to approach the Government for exemption of the land from the land acquisition proceedings. The plea made by the legal representatives was rejected by the Government. The order rejecting the request to exempt the land from the land acquisition proceedings was challenged in W.P.No.11494 of 2000. The writ petition was allowed by order dated 03.08.2010. The Government was directed to consider the matter afresh under Section 48 B of the Land Acquisition Act. It is a matter of record that the legal representatives once again filed a writ petition in W.P.No.28905 of 2011 directing the Government to take a fresh decision in the matter. The Government considered the issue once again pursuant to the order passed by the learned Single Judge dated 17.07.2012 in W.P.No.28905 of 2011. The Government rejected the request once again by giving certain reasons.

7.While the matter stood thus, Act 30 of 2013 was notified. The first respondent taking advantage of Section 24(2) of the new Act, filed a fresh writ petition in W.P.No.23492 of 2014 with a prayer to issue a writ of declaration that the entire proceedings lapsed on account of the introduction of the new Act. The plea was accepted by the learned Single Judge.

8.The documents available on record and the pleadings would indicate that there was no attempt made to take possession of the land after paying the compensation. The communication sent by the Land Acquisition Officer to the first respondent calling upon him to surrender possession itself shows that possession has not been taken. Similarly, the learned Single Judge referred to the notice issued by the Land Acquisition Officer calling upon the land owner to receive the compensation. Therefore it is clear that neither payment was made to the

claimants nor possession was taken by the Land Acquisition Officer or by the Requisitioning body in the manner known to law. All these facts are admitted. And as such, there is no factual adjudication necessary to ascertain, whether possession was taken by the acquisition body or payment was made to the claimants. The case of the first respondent would come within the proviso to Section 24(2) of Act 30 of 2013. This aspect was considered by the learned Single Judge and the writ petition was rightly allowed. We do not find any error or illegality warranting interference in the order passed by the learned Single Judge.

9. In the upshot, we dismiss the intra Court appeal. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Housing and Urban Development Department,
Fort St.George, Chennai - 9.
2. The District Revenue Officer,
Tiruppur District at Tirupur - 1.

+1cc to Mr.V.Anandhamurthy, Advocate, S.R.No.73565
+2cc's to Mr.R.Krishnamoorthy, Advocate, S.R.No.73658
+1cc to the Government Pleader, S.R.No.73708

W.A.No.1261 of 2017

and

C.M.P.No.17489 of 2017

NRI (CO)
CA(10/11/2017)

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