

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	:: 29.11.2017
Delivered on	:: 14.12.2017

CORAM:

THE HONOURABLE MR. **JUSTICE K.K.SASIDHARAN**

AND

THE HONOURABLE MR. **JUSTICE P.VELMURUGAN**

W.A.No.1300 OF 2017

- 1 THE MANAGING DIRECTOR
TAMIL NADU HOUSING BOARD
NANDANAM ANNA SALAI
CHENNAI-600 035. ... appellant
- versus
- 1 KOCHU SEETHA JAYARAMAN
- 2 THE STATE OF TAMIL NADU
REP BY COMMISSIONER AND SECRETARY TO
GOVERNMENT HOUSING AND URBAN DEVELOPMENT
DEPARTMENT FORT ST GEORGE CHENNAI-600 009.
- 3 THE SPECIAL OFFICER -LAND ACQUISITION
TAMIL NADU HOUSING BOARD
SIVANANDACOLONY
COIMBATORE DISTRICT-641 018.
- 4 K.MANIKANDAN
- 5 V.GUNASHANKARAN
- 6 R.PUNITHAVATHI ... respondents

Appeal filed against the order passed by this Court dated 14/03/2016
passed in W.P.No.22034 of 2012

For Respondents : Mr.A.Muthukumar,
for respondents 1, 4 to 6

Mrs.A.Srijayanthi, Spl.G.P.
For respondents 2 and 3

J U D G M E N T

K.K.SASIDHARAN, J.

Introductory:-

The land owner unsuccessfully challenged the land acquisition proceedings and accepted the verdict. Thereafter, the subsequent purchaser once again challenged the initiation of land acquisition. The Writ Petition was dismissed as withdrawn without liberty. The subsequent purchaser thereafter made an application for reference to the civil court for enhancement of compensation under Section 18 of the Land Acquisition Act. The subsequent purchaser filed another Writ Petition in W.P.No.1901 of 1992, which was dismissed by order dated 20 July 1999. The writ appeal filed against the said order was dismissed on 6 January 2010 in W.A.No.1098 of 2002. The third purchaser on the strength of a power of attorney given by the second purchaser filed a fresh Writ Petition invoking Section 48B of the Land Acquisition Act for reconveyance. Thereafter, a miscellaneous petition was filed in the Writ Petition claiming the benefit of section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The Writ Petition was allowed without considering the earlier proceedings and the factum of taking physical possession by the Tamil Nadu Housing Board.

2. The Tamil Nadu Housing Board therefore filed the writ appeal with substantial contentions. The third party purchasers who have purchased the lands from the subsequent purchaser have come on record in the place of the subsequent purchaser with a contention that they are the present owners, entitled to the benefits of Section 24(2) of the new Act. This case is covered by the Judgment in ***Mahavir and another vs. Union of India and another (order dated 8 September 2017 in SLP No.24781 of 2017)*** wherein the Hon'ble Supreme Court held that section 24 of Act 30 of 2013 does not invalidate Court judgments / orders in which rights have been finally lost or due to inaction is barred and that the law does not permit examination of barred or totally fraudulent claim and that section 24(2) cannot be invoked in such cases.

Facts :-

3. The land owned by Thiru.Venkatara Subramaniyan, having an extent of 5.52 acres in S.No.130/2, Veerakeralam Village, Coimbatore, was acquired along with large extent for and on behalf of the Tamil Nadu Housing Board. The first respondent after issuance of notification under Section 4(1) of the Land Acquisition Act dated 3 February 1982, filed a Writ Petition in W.P.No.11962 of 1987, challenging the land acquisition. The Writ Petition was dismissed as withdrawn, by order dated 23 April 1990. The first respondent filed another Writ Petition in W.P.No.1901 of 1992 which was also dismissed. The order dated 20 July 1999 was

unsuccessfully challenged in W.A.No.1098 of 2002. Thereafter, she filed another Writ Petition in W.P.No.3927 of 2007, which was disposed of without interfering in the land acquisition proceedings.

4. The first respondent in the meantime sold the land to the respondents 4 to 6 and filed another Writ Petition in W.P.No.22034 of 2012 by giving power of attorney to the fourth respondent, one of the subsequent purchasers. The prayer was to issue a Mandamus to direct the State and Tamil Nadu Housing Board to reconvey the land under Section 48B of the Land Acquisition Act.

5. While the Writ Petition was pending, the new Land Acquisition Act came into force, resulting in filing a miscellaneous petition for claiming the benefit of Section 24(2) of the Act.

6. The learned Single Judge without reference to the earlier litigations and the documents available on file regarding the possession taken by the Tamil Nadu Housing Board, allowed the Writ Petition in terms of Section 24(2) of the Act.

Submissions:-

7. The learned Additional Government Pleader submitted that possession was taken as early as on 10 February 1987 and the said fact

was admitted by the first respondent in her proceedings for reconveyance. According to the learned Additional Government Pleader, in view of the earlier litigations which have attained finality, coupled with the factum of possession with the Tamil Nadu Housing Board, the learned Single Judge was not correct in extending the benefit of Section 24(2) of the Act to the respondents 1 and 4 to 6.

8. The learned counsel for respondents 1 and 4 to 6 submitted that the subsequent purchaser viz., respondents 4 to 6 are now in possession of the property, they having purchased from first respondent. The learned counsel contended that in spite of the earlier proceedings, possession continues with the land owner and as such, section 24(2) is attracted.

Analysis :-

9. The State acquired 566.69 acres of land situated at Veerakeralam Village, Coimbatore for construction of Anna Nagar Housing Scheme. The land owned by Thiru.Venkata Subramaniyam in S.No.130/2, having an extent of 5.52 acres was part of the acquired land, covered by the notification under Section 4(1) of the Land Acquisition Act dated 29 December 1981. The first respondent purchased the land subsequently. However, there was no mutation of revenue records. The Land Acquisition Officer on the basis of the information collected from the Sub Registrar's Office, included the name of the first respondent in the subsequent

proceedings.

10. The first respondent filed a Writ petition in W.P.No.11962 of 1987, challenging the land acquisition proceedings. The Writ Petition was dismissed as withdrawn by order dated 23 April 1990. There was no liberty given to her for filing a fresh Writ Petition.

11. The first respondent through her letter dated 11 May 1990, addressed to the Land Acquisition Officer, accepted the land acquisition proceedings and decided to receive the compensation without prejudice to her claim for enhancement of compensation before the competent forum.

12. Thereafter, by representation dated 5 April 1991, the first respondent requested the Land Acquisition Officer to refer the matter to the civil court under Section 18 for enhancement of compensation. The landowner received the entire compensation from the Land Acquisition Officer.

13. It is to be mentioned here that the letter dated 11 May 1990 and representation dated 5 April 1991 were given only after taking possession of the land by the Tamil Nadu Housing Board on 10 February 1987.

14. The first respondent notwithstanding the acceptance of the award and reference to civil court under Section 18 of the Land Acquisition Act, filed a Writ Petition in W.P.No.1901 of 1992 which was dismissed on 20 July 1999. The related appeal was dismissed by judgment dated 6 January 2010 in W.A.No.1098 of 2002. Another Writ Petition filed by the first respondent in W.P.No.3947 of 2007 was disposed of.

15. The first respondent through her power agent, who is the fourth respondent in this appeal, filed another Writ Petition in W.P.No.22034 of 2012 for reconveyance. The first respondent suppressed the earlier proceedings and claimed the benefits of Section 24(2) of the new Act.

16. The learned single Judge allowed the Writ Petition primarily on the ground that there was no specific denial in the counter statement about the claim made by the respondent that she is in possession of the land.

17. We have perused the award file in its entirety. The file contain documents evidencing possession of land taken over by the Land Acquisition Officer and handing over the same to the Tamil Nadu Housing Board. The statement made in the counter affidavit with regard to the difficulty to take possession is incorrect on account of the voluminous documents relating to possession found in the file.

18. The first respondent initially challenged the land acquisition proceedings and lost the litigation. Thereafter, she submitted to the jurisdiction of Land Acquisition Officer and confirmed the proceedings by agreeing to accept the compensation and making a request for reference under Section 18 of the Land Acquisition Act. Knowing fully well that the ownership and possession is with the Tamil Nadu Housing Board, the first respondent and 4th respondent filed a Writ Petition for reconveyance. Since possession has already been taken and the compensation amount was received by the landowner, no relief could be granted to her under Section 24(2) of the new Act.

19. The land acquisition proceedings have become final long back. The land was given to the Tamil Nadu Housing Board along with the adjacent land after completion of the land acquisition proceedings. The first respondent with all humility, accepted the award, received the compensation and even got the matter referred to the civil court under Section 18 of the Land Acquisition Act.

20. The following representation dated 11 May 1990 submitted by the first respondent to the Land Acquisition Officer falsified her claim in the present Writ Petition that possession was not taken by the Tamil Nadu Housing Board.

“With reference to the above I would state that my lands purchased under sale deed dated 27.07.86 and measuring 5.52 acres in S.F.No.130/2-27, Veerakeralam Village, Coimbatore had been acquired by the State.

Since there has been non compliance of the provisions of the land acquisition Act during the acquisition proceedings and for other reasons, I filed Writ Petition before the High Court of Madras in W.P.No.11962 of 1987, to quash the entire proceedings as nullity.

The High Court of Madras was pleased to order interim stay in C.M.P.No.17542/87 to the extent of taking possession of the acquired land alone and granting liberty to the departments to further proceed in the matter while admitting the Writ Petition.

I understand that the acquisition officer has since passed the award in respect of the land sought to be acquired which fact has not yet been duly notified to me.

In view of the said fact and to avoid further delay in the matter I have decided to receive the

compensation amount passed in the award which however is without prejudice to agitate and prefer my claim in respect of the quantum awarded and to ask for enhancement before the competent forum.

To enable me to do so, I have since withdrawn the Writ Petition No.11962/87 to which you are the party. The xerox copy of the said order is produced herewith for reference.

In view of the same, there is no order of stay and only proceedings pending in the High Court.

Hence the compensation amount awarded in respect of my land acquired be paid over to me at the earliest, which I am receiving under protest and without prejudice to my rights to agitate for proper payments of compensaiton and for asking enhancement before the competent forum. I further request that the matter be referred to civil court under Section 18 of the Land Acquisition Act.”

21. This representation was given only after taking possession. Nowhere, the first respondent contended in her representation that possession was still with her.

22. The sale of land in favour of the respondents 4 to 6 notwithstanding the finality attached to the land acquisition, made the purchaser to initiate a fresh round of litigation. The sale in favour of the respondents 4 to 6 is not legal and would not bind the Tamil Nadu Housing Board. No title would pass on to the respondents 4 to 6 on account of such illegal sale, made long after taking possession of the land by the Tamil Nadu Housing Board.

23. The land owners received a sum of Rs.1,41,707.60 towards compensation and parted with possession. The receipt for payment of compensation is found in the file. In spite of all these back ground facts and by suppressing the material particulars, the first respondent through her power agent cum purchaser, made a false claim that possession was not taken. The learned Single Judge was not having the benefit of the award file and therefore, the case pleaded by the first respondent was accepted without any kind of corroboration. Since the land is under the ownership and possession of the Tamil Nadu Housing Board. Respondents 1 and 4 to 6 have no justifiable claim in the matter.

24. Similar issue regarding the claim based on Section 24(2) of the Act 30 of 2013 after the disposal of the earlier writ proceedings came up for consideration before the Hon'ble Supreme Court in Mahavir case (cited supra). The Supreme Court while negating the claim made by the land owners and upholding the judgment of the High Court made the following observation:-

19. The court is duty bound to prevent the abuse of the process of law in the cases which have been concluded several decades before, in our considered opinion, the provisions of Section 24(2) of the 2013 Act cannot be invoked in such cases of dead claims or stale claims. There are several numbers of cases coming to this court in which matters had been contested up to this court questioning the acquisition and the petitions have been dismissed by this court, and acquisition has attained finality, possession was taken, the award passed. Notice had been issued under Section 12(2) of the Act tendering the awarded amount but it has not been collected by the claimants/land owners deliberately or they had refused to collect it and are not ready and willing to accept it and, thereafter, it has been deposited in the name and account of the owners in the treasury which is also deposited as per the State Governments instructions issued time to time relating to how Government money is to be dealt with. The act of failure to deposit money under section 31 after possession is taken only imposes liability to pay

higher interest under section 34. The acquisition would not lapse under the Act.

20. In our opinion, the cases in which there is deliberate action of the owners for not collecting the compensation and they do not want to receive it, section 24(2) of the 2013 Act does not come to their rescue as provisions are to help those persons who are deprived of compensation but not for those who deliberately had not received it and litigated for decades for quashing of proceedings avoiding to receive compensation by willful act. The failure to deposit in court under section 31(1) in such cases would attract only interest as envisaged under section 34 of the Act and the provisions of section 24 cannot be so invoked in such cases.

21. In the instant case, the claim has been made not only belatedly, but neither the petitioners nor their previous three generations had ever approached any of the authorities in writing for claiming compensation. No representation had ever been filed with any authority, none has been annexed and there is no averment made in the petition that any such representation had ever been filed. The claim appears not only stale and dead but extremely clouded. This we are mentioning as additional reasons, as such claims not only suffer from delay and laches but courts are not supposed to entertain such claims. Besides such claims become doubtful, cannot be received for

consideration being barred due to delay and laches.

22. The High Court has rightly observed that such claims cannot be permitted to be raised in the court, and cannot be adjudicated as they are barred. The High Court has rightly observed that such claims cannot be a subject matter of inquiry after the lapse of a reasonable period of time and beneficial provisions of Section 24 of the 2013 Act are not available to such incumbents. In our opinion, Section 24 cannot revive those claims that are dead and stale.

23. The High Court has observed that Raisina is a part of the Lutyens zone of Delhi. It is prime of New Delhi and Government offices etc. are located. The petitioners asked the High Court to infer and conclude that in the absence of some indication of the record being made available by them that their ancestors have not ever received any compensation. How the petitioners came to know that their ancestors had not received compensation has not been disclosed in the petition. The High Court has rightly declined to entertain such claims. The protective umbrella of section 24 is not available to barred claims. If such claims are entertained under section 24, it would be very-very difficult to distinguish with the frivolous claim that may be made even after tampering the records etc. or due to non-availability of such record after so much lapse of time. Once right had been lost due to delay and

laches or otherwise, it cannot be revived under provisions of section 24 of the Act of 2013. The intendment of Act 2013 is not to revive stale and dead claims and in the concluded case when rights have been finally lost. If there is delay and laches or claim is otherwise barred, it is not revived under section 24(2) of the 2013 Act. The provision does not operate to revive legally barred claims. The provision of Section 24 does not invalidate courts judgments/orders in which right have been finally lost or due to inaction is barred. Law does not permit examination of barred or totally fraudulent claims. The provisions of the law cannot be permitted to be defrauded or misused. Section 24(2) of the 2013 Act cannot be invoked in such cases. The High Court has rightly declined to entertain the writ petitions filed by the petitioners. It is not conceivable how the petitioners could file such a petition in a laconic manner relating to the prime locality at New Delhi that too for hundreds of acres with the delay of more than 100 years.

25. The facts of this case are identical to the case decided by the Hon'ble Supreme Court in Mahavir case (cited supra). Here also, the land acquisition proceedings have become final. The compensation amount was paid to the landowner. The Tamil Nadu Housing Board has taken possession long back. The subsequent purchasers have now projected a false case to give life to a dead litigation by misusing Section 24(2) of Act

30 of 2013. We are therefore of the view that the respondents 1 and 4 to 6 are not entitled to the benefits of Section 24(2) of Act 30 of 2013. The order passed by the learned single Judge is factually and legally unsustainable. We are therefore of the view that the appellant must succeed.

26. In the result, the order dated 14 March 2016 is set aside. The writ petition in W.P.No.22034 of 2012 is dismissed.

27. In the up shot, we allow the intra court appeal. No costs. Consequently, connected miscellaneous petitions are closed.

(K.K.SASIDHARAN, J.) (P.VELMURUGAN, J.)

14.12.2017

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To

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P.VELMURUGAN, J.

(tar)



P.D. Judgment in
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