

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :: 24.10.2017

Delivered on: 6.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.No.1676 of 2015

The Chairman,
Tamil Nadu Housing Board,
Nandanam, Anna Salai,
Chennai 35

... Appellant

versus

1.M.D.Venkatesan

2.The Secretary,
Housing and Urban Development Department,
Fort St.George,
Chennai 5

3.The Special Commissioner,
Land Administration,
Chepauk, Chennai 5

4.The Special Tahsildar (LA)
Housing Scheme, Hosur

... Respondents

Appeal filed against the order passed by this Court dated 16.12.2014 passed in W.P.No.1376 of 2012.

WP.No.1376/12 dated: 16/12/2014: Writ petition filed under Article 226 of the Constitution of India for a Writ of Declaration Declaring that the draft Award No.18/1994 in Na.Ka.663/1990 dated 19.08.1994 was not approved/signed by the third respondent as required U/s.11(i)(iii) of the Land Acquisition Act 1894 and in pursuance thereof no final Award No.18/1994 dated 19.08.1994 was made by the fourth respondent as per Section 11(A) of the Land Acquisition Act therefore entire proceedings stands lapsed as there is no Award made within a period of two years from Section (6) Declaration issued in G.O.Ms.No.537 dated 18.08.1992 in the eye of law in so far as the petitioner land is concerned pertaining to S.No.644 and 645/1 measuring an extent of 0.05.5 Hectares (0.14 Cents) and 0.26.5 hectare (0.65 1/2 cents) respectively at Hosur Village.

For appellant : Mr.V.Anandhamurthy, Addl. Govt Pleader

For Respondents: Mr.T.R.Rajagopalan, Senior counsel,
for Mr.R.Gowthaman, for R-1
Mr.A.Zakir Hussan, Gov. Advocate,
for respondents 2 to 4

J U D G M E N T

K.K.SASIDHARAN, J.

The first respondent challenged the land acquisition proceedings before the writ Court in W.P.No.19709 of 2006. The Writ Petition was dismissed by the learned Single Judge by order dated 30 September 2008. The intra court appeal in W.A.No.677 of 2010 was dismissed by the Division Bench by judgment dated 8 June 2010. The related Special Leave Petition was dismissed by the Hon'ble Supreme Court by order dated 11 November 2010 in SLP No.28279 of 2010. The first respondent, thereafter, filed a Writ Petition in W.P.No.1376 of 2012 with a new ground that draft award was not signed by the Competent Authority. The learned Single Judge without discussing the issue regarding res judicata and in fact, without even referring to the earlier proceedings, allowed the Writ Petition on totally new grounds and quashed the entire proceedings. Feeling aggrieved, the Tamil Nadu Housing Board is before this Court.

The facts :-

2. The Government of Tamil Nadu pursuant to the request made by the Tamil Nadu Housing Board, the appellant herein, initiated proceedings for acquisition of the land owned by the first respondent in S.No.644 and 645/1, Hosur Village. The notification under Section 4(1) of the Land Acquisition Act, 1894, was issued on 21 May 1991. The declaration under section 6 of the Act was published on 18 August 1992. The land Acquisition Officer passed the award on 20 August 1994. The appellant took possession of the acquired land on 12 December 1994. The first respondent, long after the culmination of the land acquisition proceedings, filed a Writ Petition in W.P.No.19709 of 2006, challenging the legality of the proceedings. The Hon'ble Mrs.Justice R.Banumathi, (as Her Lordship then was), dismissed the Writ Petition by way of a well considered order. The order dated 30 September 2008 was put in issue before the Division Bench in W.A.No.677 of 2010. The writ appeal was dismissed by judgment dated 8 June 2010. The matter was unsuccessfully challenged before the Hon'ble Supreme court. The order passed by the writ court has therefore become final.

3. The first respondent long after dismissal of all the legal proceedings initiated by him, filed a fresh Writ Petition in W.P.No.1376 of 2012 on the ground that draft award was not

approved by the Competent Authority within the statutory period, and as such, the award would lapse under section 11(A) of the Land Acquisition Act.

4. Before the Writ Court, the appellant contended that the award was duly approved by the Competent Authority. The appellant further contended that after taking possession of the land, residential houses were constructed and it was allotted to general public.

5. The learned Single Judge without considering the grounds taken by the first respondent, proceeded as if the compensation amount was not deposited and the scheme was not implemented. Both these two grounds were not agitated by the first respondent before the writ Court. Even then, the Writ Petition was allowed. The order allowing the Writ Petition is under challenge at the instance of the requisitioning body.

Rival contentions :-

6. The learned Additional Government Pleader contended that the present Writ Petition is barred by the principles of res judicata. According to the learned Additional Government Pleader, the ground now taken by the first respondent ought to have been taken in the earlier Writ Petition. The first respondent having not taken such a contention earlier, is estopped from taking up the said contention at a later point of time. The learned Additional Government Pleader contended that the learned Single Judge proceeded as if the grounds taken in the Writ Petition were non deposit of amount and the failure to implement the scheme and the same resulted in quashing the land acquisition which has attained finality long back.

7. The learned Senior counsel for the first respondent submitted that only after the dismissal of the earlier proceedings, the first respondent came to know that award was not approved by the Competent Authority within the statutory period. According to the learned Senior Counsel, there was no specific denial to the statement made by the first respondent in the affidavit filed in support of the Writ Petition with regard to the violation of the mandatory provisions regarding approval of the award within the statutory period. The learned Senior Counsel further submitted that the award amount was not deposited and as such, the case of the first respondent would attract Section 24(2) of the new Act.

Analysis:-

8. The Writ Petition filed by the first respondent in W.P.No1376 of 2012 is a clear abuse of process of law. The first respondent was a party to the entire land acquisition proceedings. The notification under Section 4 of the Land Acquisition Act was issued on 21 May 1991. The award was passed on 20 August 1994. The appellant took possession of the land on 12 December 1994. It was fourteen years thereafter, the first respondent initially filed a Writ Petition in W.P.No.19709 of 2006. The learned Judge elaborately discussed the various steps taken by the Land Acquisition Officer and the participation of the first respondent in all the stages of proceedings. The learned Single Judge dismissed the Writ Petition also on the ground of delay and laches. The order in W.P.No.19709 of 2006 has attained finality on account of the dismissal of the related Special Leave Petition by the Hon'ble Supreme Court. The first respondent after the conclusion of earlier proceedings, filed the present Writ Petition in W.P.No.1376 of 2012 on the ground that the draft award was not approved by the competent authority and as such, the award is void, in view of Section 11(A) of the Act.

9. The learned Single Judge proceeded under the premise that there was no deposit of the award amount before the Civil Court. Form "D" and the notice issued by the Reference Court to the claimant clearly show that the award amount was deposited before the Subordinate Court, Hosur. The Civil Court has issued notice to the first respondent. Even the document produced by the first respondent supports the case pleaded by the appellant. The proceedings initiated before the Subordinate Court in LAOP No.1 of 2012 was closed by the Subordinate Judge only on 30 September 2015 and that too on account of the submission made by the first respondent that the learned single Judge allowed the Writ Petition and quashed the land acquisition proceedings by order dated 16 December 2014 in W.P.No1376 of 2012. Therefore, it is very clear that the Land Acquisition Officer deposited the award amount before the Civil Court. The learned Single Judge was therefore not correct in the observation that the award amount was not deposited before the civil court. The materials placed before this Court by the appellant clearly prove that the award was approved by the competent authority within the statutory period. The first respondent appears to have invented a cause of action for filing a fresh Writ Petition and the institution of W.P.No.1376 of 2012 was the result of such calculated decision.

10. The contentions now taken in W.P.No1376 of 2012 ought to have been taken by the first respondent in the earlier Writ Petition in W.P.No.19709 of 2006. The provisions of the Civil

Procedure Code and more particularly Section 11 is a clear bar for filing a subsequent Writ Petition for the very same cause.

11. The learned Single Judge made certain observations with regard to the implementation of the scheme, which was not the subject matter in the Writ Petition in W.P.No1376 of 2012. The land acquisition which has become final by passing the award on 20 August 1994 was quashed by the learned Single Judge by order dated 16 December 2014 on grounds which were not even taken by the first respondent in the Writ Petition. We are therefore of the view that the impugned order is liable to be set aside.

12. In the result, the order dated 16 December 2014 is set aside. The Writ Petition in W.P.No1376 of 2012 is dismissed.

13. In the upshot, we allow the intra court appeal. No costs. Consequently, M.P.No.1 of 2015 and C.M.P.No.312 of 2016 are closed.

Sd/-

Assistant Registrar(CS VIII)

// True Copy//

Sub Assistant Registrar

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To

1.The Secretary,
Housing and Urban Development Department,
Fort St.George,
Chennai 5

2.The Special Commissioner,
Land Administration,
Chepauk, Chennai 5

3.The Special Tahsildar (LA)
Housing Scheme, Hosur.

+1cc to Mr.V.Ananthamurthy, Advocate SR.No.78542
+1cc to Mr.R.Gowthaman, Advocate SR.No.78197

P.D. Judgment in
W.A.No.1676 of 2015

AD(CO)
GN(27/11/2017)