

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.10.2017

Delivered on : 01.11.2017

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A No.209 of 2015 and
M.P.No.1 of 2015

- 1.The Chief Engineer,
Distribution, Tamil Nadu Electricity Board,
Tiruchirapalli.
- 2.The Executive Engineer,
TANGEDCO, Electricity Distribution Circle,
Perambalur. ...Appellants

Vs

- 1.R.K.M.Devamsam
- 2.R.Manickkarajan
- 3.The State of Tamilnadu,
Rep. by its Secretary to Government,
Public Works Department,
Fort St.George, Chennai - 600 009.
- 4.The District Collector,
Perambalur District, Perambalur.
- 5.District Revenue Officer,
Perambalur.
- 6.The Revenue Divisional Officer,
Land Acquisition Officer, Ariyalur,
Perambalur District.
- 7.The Tahsildar,
Perambalur, Perambalur Taluk,
Perambalur District. ...Respondents

Prayer:- Writ Appeal filed under clause 15 of the Letter Patent against the order dated 05.01.2015 made in W.P.No.5624 of 2013.

WP.NO.5624/13 Petition praying to issue a writ of declaration to declare the acquisition proceedings in G.O.Ms.No.1013, Public Works Department, dated 12.5.1983, issued under Section 4(1) and

in G.O.Ms.No.1089, Public Works Department, dated 29.5.1984, issued under Section 6 of the Land Acquisition Act, 1894 on the file of the 1st respondent and the consequential award passed in R.C. A4/5847/ 81 dated 30.4.1985 on the file of the 4th respondent, in so far as the petitioner are concerned in respect of the lands in Survey No.362/2D and 362/2 in Elambalur Village and Survey No.141/4 of Thoramangalam Village of Perambalur Taluk and District measuring 3.10 acres is null and void.

For Appellants : Mr.C.Manishankar
Additional Advocate General
Assisted by Mr.P.Gunaraj

For Respondents: Mr.R.Bharanidharan for R1 and R2
Ms.A.Srijayanthi, Special Govt.Pleader
for R3 to R7

J U D G M E N T

K.K. SASIDHARAN,J.

Introduction

The land owners, in the subject case were well aware even in 1982 about the initiation of land acquisition proceedings to acquire their land. The Award was passed in 1985. Even though in the affidavit filed in the writ petition, the respondents 1 and 2 admitted that they were in the know of things with respect to the acquisition in 1982 itself and culmination of proceedings in the year 2000, the writ petition filed by them in 2013, more particularly, 28 years after the Award to quash the land acquisition was allowed by the learned single Judge, notwithstanding the dismissal of the earlier writ petitions in W.P.Nos.12284 of 2010 and 16369 of 2012 filed for declaration and re-conveyance on 8 August, 2011 and 19 July, 2012 respectively.

The Facts

2. The respondents 1 and 2 filed the instant writ petition in W.P.No.5624 of 2013 for a declaration that the acquisition proceedings initiated by the State Government by issuing Section 4(1) Notification in G.O.Ms.No.1013, Public Works Department, dated 12 May, 1983, the declaration under Section 6 of the Land Acquisition Act, 1894, dated 29 May, 1984 and the Award dated 30 April 1985 are null and void and not binding on them.

3. Before the writ court, the respondents 1 and 2 contended that they were not aware of the land acquisition proceedings. According to the respondents 1 and 2, notices were not issued before conducting enquiry under Section 5-A of the Land Acquisition Act. Similarly, notices were not issued before

passing the Award. The respondents 1 and 2 therefore, contended that the statutory notifications and the Award are not binding on them. In short, the respondents 1 and 2 contended that the acquisition is null and void on account of non-adherence to the provisions of the Land Acquisition Act.

4. The appellants on the other hand contended that the land was acquired after issuing notice to the land owners, whose name were recorded in the revenue records. The appellants further contended that the Land Acquisition Officer took possession of the land and it was handed over to the Tamil Nadu Generation and Distribution Corporation Limited (hereinafter referred to as "TANGEDCO"). The land was utilised for the purpose for which it was acquired. It was further contended that the earlier writ petitions in W.P.Nos.12284 of 2010 and 16369 of 2012 filed by the first respondent were dismissed. The appellants therefore submitted that the writ petition deserves to be dismissed also on the ground of delay and laches.

5. The learned single Judge perused the photographs produced by the respondents 1 and 2 and observed that only a portion of the land was utilised by the appellants for construction of Electricity sub-station. The learned single Judge observed that the appellants have not deposited the compensation amount and as such, the respondents 1 and 2 are entitled to the benefit of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Tamil Nadu) Amendment Act, 2013, (hereinafter referred to as "Act 30 of 2013"). The learned single Judge finally held that the land was not utilised inspite of the expiry of 30 years and as such, it should be re-conveyed to the erstwhile land owners. The writ petition was accordingly allowed. Feeling aggrieved, the appellants are before us.

Submissions

6. The learned Additional Advocate General appearing on behalf of the appellants contended that the land was acquired after issuing notices to the persons whose name were recorded in the revenue register. According to the learned Additional Advocate General, the respondents 1 and 2 were aware of the land acquisition proceedings even in the year 1982 and the same is clearly admitted in the affidavit filed in support of the writ petition. The learned Additional Advocate General contended that the land was utilised by the TANGEDCO by constructing Sub-station, Staff quarters for the employees and Central Office Buildings. It was further contended that the learned single Judge was not correct in directing re-conveyance of the land to the respondents 1 and 2, in view of the subsequent events relating to the utilisation of the land for a public purpose.

7. The learned counsel for the respondents 1 and 2 contended that the notices were not issued to the respondents 1 and 2. According to the learned counsel, the earlier writ petition for re-conveyance was dismissed on account of certain technicalities and the same would not be a ground to dismiss the present writ petition challenging the very land acquisition proceedings. The learned counsel further submitted that a portion of the acquired land is still lying vacant. The learned Judge was therefore correct in directing reconveyance.

Analysis

8. The Government of Tamil Nadu initiated proceedings for acquisition of 3.10 acres of land owned by the respondents 1 and 2 in S.No.362/2D, 362/2 and S.No.141/4 of Elambalur and Thoramagalam Villages in the district of Perambalur. The notification under Section 4(1) was issued in G.O.Ms.No.1013, Public Works Department, dated 12 May, 1983. Even before the issuance of notification under Section 4(1), the jurisdictional Tahsildar issued notice to the respondents 1 and 2 intimating the proposal for acquisition and called upon them to appear before him at the taluk office for a discussion. The notice dated 8 March, 1982 is available on record. The Land Acquisition Officer, after conducting enquiry issued a declaration under Section 6 of the Land Acquisition Act, dated 29 May, 1984. It was followed by the Award dated 30 April, 1985. The land was taken possession by the Land Acquisition Officer and it was handed over to TANGEDCO. The TANGEDCO, after taking possession of the land erected a 230/110 K.V. Auto Sub-station and commissioned the same.

9. The first respondent earlier filed a writ petition for re-conveying the property. The writ petition was dismissed by order dated 8 August, 2011 in W.P.No.12284 of 2010 accepting the case pleaded by the appellants that the land has already been utilised for putting up the Sub-station. Subsequently, another writ petition was filed by the first respondent in W.P.No.16369 of 2012 for a writ of declaration to declare that the acquisition is a nullity and for re-conveyance of the land. The writ petition was dismissed by order dated 19 July, 2012.

10. The present writ petition challenging the land acquisition was filed 28 years after the conclusion of the land acquisition proceedings. The respondents 1 and 2 contended that there was no delay in initiating proceedings, as according to them, statutory notices were not issued to the land owners by the Land Acquisition Officer. There is absolutely no merit in the said contention for more than one reason.

11. The respondents 1 and 2 were aware of the initiation

of land acquisition proceedings even before issuance of Section 4(1) notification on account of the notice dated 8 March, 1982 issued by the Tahsildar, Perambalur. The respondents 1 and 2 were also aware of the possession of land taken over by the Land Acquisition Officer. The first respondent filed a writ petition in W.P.No.12284 of 2010 for re-conveying the land having an extent of 3.63 acres in S.No.362/2D and 363/2 at Thoramangalam Village. Before the writ court, the appellants contended that acquisition was for establishing a separate electricity distribution circle for Perambalur and after obtaining the administrative approval, new Sub-station and the related buildings were constructed by spending a sum of Rs.1,81,40,000/-. In short, the appellants contended that the land was used for the purpose for which it was acquired. The learned single Judge taking into account the utilisation of the land dismissed the writ petition. The order has become final.

12. The first respondent taking advantage of an error committed by the Land Acquisition Officer in the counter affidavit filed in W.P.No.12284 of 2010 initiated another writ petition in W.P.No.16369 of 2012 for a declaration that the land acquisition is illegal besides null and void and for re-conveyance of the land. The writ petition was dismissed on verification of the revenue records. The said order has also become final.

13. The respondents 1 and 2 without disclosing the dismissal of the writ petitions filed earlier filed a fresh writ petition in W.P.No.5624 of 2013 for the very same relief viz., declaration that the land acquisition is null and void. The respondents 1 and 2 pretended as if they were not aware of the initiation of land acquisition proceedings. The affidavit filed in support of the earlier writ petition contained information with regard to the knowledge of the land owners about the land acquisition. The notice issued by the Tahsildar in 1982 is admitted in the writ petition. Similarly, the respondent No.1 contended that he came to know of the acquisition in the year 2000. Even after collecting information with regard to the acquisition way back in 2000, the writ petition was not filed within a reasonable time to challenge the land acquisition. The first writ petition in W.P.No.12284 of 2010 was for reconveyance. Even the said writ petition was filed only after a period of 10 years. The subsequent writ petition was filed in 2012. The said writ petition was filed for a declaration that the land acquisition is null and void and for re-conveyance. The subject writ petition is the third one and once again, the challenge is to the land acquisition on the ground that notice was not issued and as such, the proceedings is null and void.

14. The learned single Judge without dealing with the

contentions taken by the appellants in the counter affidavit, which includes the dismissal of the earlier writ proceedings and the finality attached to the issue, proceeded as if the land was not utilised for the purpose for which it was acquired. The appellants have produced string of documents to prove that the land was fully utilised for the purpose for which it was acquired. The learned single Judge perused the photographs produced by the respondents 1 and 2 and made an observation that the land was not used fully and as such, the unutilised land should be re-conveyed. The respondents 1 and 2 have not made any claim under Section 24(2) of Act 30 of 2013. The learned single Judge, even then, made an observation that the respondents 1 and 2 are entitled to the relief under Section 24 (2) of Act 30 of 2013. The land owners are not entitled to the benefits of Section 24(2) of Act 30 of 2013, in view of the factum of taking possession after depositing the land cost well before the introduction of Act 30 of 2013.

15. The writ petition was filed 28 years after the culmination of the land acquisition proceedings. Besides delay and laches, the writ petition is also barred by the principles of res judicata in view of the dismissal of the earlier writ petitions for the very same prayer. The fact that the respondent No.1 initiated proceedings for re-conveyance itself shows that the beneficiary has taken possession of the land after the culmination of the land acquisition proceedings. The third writ petition, which is the subject matter of this appeal is clearly an abuse of process of court.

16. The Supreme Court in A.P.Industrial Infrastructure Corporation Limited v. Chinthamaneni Narasimha Rao and Others [2011 (10) Scale 460] considered the issue relating to delay in challenging the acquisition proceedings and observed that if the land owners had been really aggrieved, they ought to have challenged the proceedings immediately after declaration made under Section 6 of the Act. The Supreme Court referred to the earlier judgment in Swaika Properties (P) Limited and another v. State of Rajasthan and Others [(2008) 4 SCC 695], wherein, it was held that a writ petition challenging the notification for acquisition of land, if filed after possession had been taken is not maintainable and further observed thus:

"11. This Court has held in several judgments that if the land owners are aggrieved by the acquisition proceedings, they must challenge the same atleast before an award is made and the possession of the land in question is taken by the government authorities."

17. The Hon'ble Supreme Court in Jasveer Singh and another [(2017) 6 SCC 787] considered a similar case and held that even

if there is an observation by the Apex Court earlier giving liberty to initiate proceedings under Act 30 of 2013, still no relief could be granted to the land owners in case there is delay and laches.

18. The respondents 1 and 2 were in the know of things and as such, they cannot plead ignorance of the earlier proceedings. The writ petition ought to have been dismissed on the ground of delay, laches and res judicata.

19. The requisitioning body has utilised the entire land for the purpose for which it was acquired. There is no question of reconveying the land to the respondents 1 and 2 after utilising the entire land by the beneficiary. We are therefore of the view that the order passed by the learned single Judge deserves to be set aside.

20. The impugned order dated 5 January, 2015 is set aside. The writ petition in W.P.No.5624 of 2013 is dismissed.

21. In the up shot, we allow the intra court appeal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (Co)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
The State of Tamilnadu,
Public Works Department,
Fort St.George, Chennai - 600 009.

2.The District Collector,
Perambalur District, Perambalur.

3.District Revenue Officer,
Perambalur.

4.The Revenue Divisional Officer,
Land Acquisition Officer, Ariyalur,
Perambalur District.

5.The Tahsildar,
Perambalur, Perambalur Taluk,
Perambalur District.

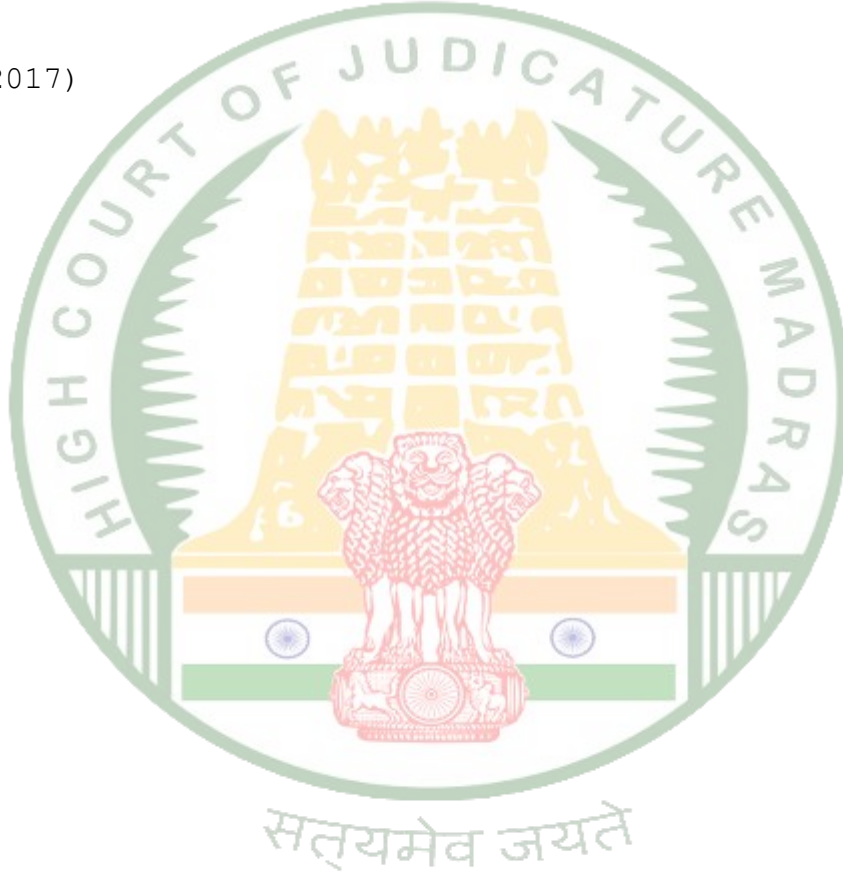
+1cc to Mr.P.GUNARAJ Advocate, S.R.No. 77234

+1cc to Mr.R.KARTHIKEYAN Advocate, S.R.No. 77394

Judgment in

W.A No. 209 of 2015

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