

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.10.2017

Delivered on: 7.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND

THE HONOURABLE MR.JUSTICE P.VELMURUGAN
W.A.Nos.1414 to 1416 of 2014

The Executive Engineer
cum Administrative Officer,
Tamil Nadu Housing Board,
Coimbatore Housing Unit,
Coimbatore.

... Appellant/3rd Respondent in
all Wps.

versus

1. G.Chitra 1st Respondent/Petitioner in WPs

2. The Government of Tamil Nadu,
rep. by Secretary to Government,
Housing and Urban Development Department,
Fort St. George, Chennai 600 009.

3. The Special Tahsildar,
Land Acquisition,
Housing Scheme No.3,
Coimbatore. Respondents/Respondents in all WPS

Appeal filed against the order passed by this Court dated 21.2.2014 passed in W.P.Nos.27738,27739 & 27740 of 2012.

Petitions presented to this Court to issue a Writs of certiorari to calling for the records of the 1st respondent in Tamilnadu Government Gazette Supplement Part II Section 2 dated 20.3.1991 in issuing the Notification under section 4(1) of the Land Acquisition Act 1894 and the consequential Declaration under section 6 of the said Act in the Tamilnadu Government Gazette Supplement Part II Section 2 dated 26.5.1992 culminating in an Award in No.2/94 passed by the 1st respondent dated 23.5.1994 and quash the same as illegal non est in law.

(2) dated 26.02.1992 and Tamil Nadu Government Gazette Supplement, part II Section 2 dated 16.04.1993, culminating in Award NO.1/95 passed by the first respondent dated 18.04.1995 in respect of the petitioners lands and quash the same as illegal, non est in law.

(3) issue to 15 A dated 20.04.1994 and Tamil Nadu Government Gazette Supplement, Part II, Section of issue No.299, dated 07.06.1995, culminating in Award No.5/97, passed by the

first respondent dated 19.05.1997 in respect of the petitioners lands and quash the same as illegal, non est in law.

For appellant : Mr.V.Anandhamoorthy,
Additional Government Pleader in all WAS

For Respondents : Mr.R.Muthukumarasamy, Senior Counsel
for Mr.A.Jenasenan, for R-1

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

COMMON JUDGMENT

K.K.SASIDHARAN, J.

Introductory :-

The land acquisition proceedings that commenced with the notification issued under Section 4(1) of the Land Acquisition Act, dated 20 March 1991, 26 February 1992 and 20 April 1994, and culminated by award dated 23 May 1994, 18 April 1995 and 19 May 1997, was challenged by the first respondent belatedly in 2012, on the ground that the notification was issued in the name of a dead person and as such, the acquisition is a nullity. The learned Single Judge though initially agreed with the State that the land owner whose name was recorded in the Revenue Register, was issued with notice and there was no need to issue notice to the others whose names were not recorded in the revenue documents, finally quashed the proceedings on the ground that possession was not taken and that the notifications were issued in the name of a dead person, notwithstanding the factual finding recorded in the earlier paragraphs of the order that the name of the first respondent was not recorded in the revenue register and that the possession has already been handed over to the Tamil Nadu Housing Board, the appellant herein. Feeling aggrieved by the common order, quashing the land acquisition proceedings, Tamil Nadu Housing Board is before this Court.

The relevant facts:-

2. The Government of Tamil Nadu, at the instance of the Tamil Nadu Housing Board, initiated proceedings for acquisition of land in Vilankurichi Village, Coimbatore, for construction of residential houses under the Ganapathy Neighbourhood Scheme, Phase -2. Notification under Section 4(1) was issued on 20 March 1991 and 26 February 1992. It was followed by statutory declaration under Section 6 of the Act, issued on 26 May 1992 and 16 April 1993. The land in S.F.No.410/1 was registered in the name of M/s.PSG Ganga Naidu and Sons Trust and Thiru.Krishnan Naidu. The Trust was represented by Mr.Ramachandran, before the Land Acquisition Officer. There was no representation on behalf of Thiru.Krishnan Naidu. The Land

Acquisition Officer therefore made an award on 23 May 1994 which was challenged in W.P.No.27738/2012.

3. The land in S.No.407/1, 407/2 and 408, admeasuring 7.07 acres, was registered in the name of PSG Ganga Naidu and Sons Trust. The trust was represented by Thiru.P.V. Gurusamy before the Land Acquisition Officer. The Land Acquisition Officer passed the award on 18 April 1995. The award was challenged in W.P.No.27739 of 2012.

4. The land in S.F.No.444 was registered in the name of Thiru.G.Govindasami Naidu. The notification under Section 4(1) of the Act was issued on 20 April 1994. Before the Land Acquisition Officer, Thiru.G.Govindasami Naidu appeared and submitted his objections. The Land Acquisition Officer passed the award on 19 May 1997. The award was challenged in W.P.No.27740 of 2012 on the ground that it was made in the name of a dead person.

5. The first respondent initiated Writ Petitions in W.P.Nos. 27738, 27739 & 27740 of 2012 on the ground that award was passed in the name of a dead person and that there was no local publication. The learned Single Judge initially rejected the contentions taken by the first respondent with regard to the award passed in the name of a dead person. The learned Single Judge after concluding that the Tamil Nadu Housing Board has taken possession and that the land owner died only after the issuance of notification under Section 4(1), considered the further question from paragraph 15 onwards as to whether the land was utilized for the purpose for which it was acquired. The learned Single Judge observed that on account of the stay, allotment could not be made by the Housing Board. The learned Judge therefore, quashed the award passed in the respective land acquisition proceedings and remitted the matter for issuance of fresh notification for acquisition.

Rival contentions:-

6. The learned Additional Government Pleader contended that notice was issued to the person whose name was shown in the revenue records. The land was registered in the name of a Trust and as such, notice was issued to the Trust. The representatives of the Trust appeared before the Land Acquisition Officer and submitted objections. The father of the first respondent also appeared before the Land Acquisition Officer. It was only thereafter, he died. According to the learned Additional Government Pleader, the learned Single Judge was not correct in

allowing the Writ Petitions on a totally different grounds, which have no factual basis.

7. The learned Senior Counsel for the first respondent while justifying the impugned order, submitted that the notification was issued in the name of a dead person and as such, the proceedings was rightly declared as void. The learned Senior Counsel contended that the authorities failed to follow the mandatory provisions of the Land Acquisition Act. The award was therefore rightly quashed by the learned Single Judge.

Discussion:-

8. The first respondent filed Writ Petitions to quash the notifications issued under Section 4 of the Land Acquisition Act, declarations under Section 6 and the final award.

9. The State issued three notifications under Section 4(1) of the Act. The initial notification was on 20 March 1991 and it was followed by notifications dated 26 February 1992 and 20 April 1994. The related declaration under Section 6 of the Land Acquisition Act was issued on 26 May 1992, 16 April 1993 and 7 June 1995.

10. The learned Single Judge quashed the land acquisition on the ground that the notification was issued in the name of a dead person and that the land was not used for the purpose for which it was acquired. We are therefore constrained to deal with the facts relating to the issuance of the statutory notification, the declaration, the award and the subsequent events relating to the utilization of the land for the purpose for which it was acquired.

4(1) notification which is the subject matter in W.P.No.27738 of 2012.

11. The notification under Section 4(1) of the Act in respect of the landed property in S.No.410/1 was approved on 5 March 1991 and it was published in the Gazette on 20 March 1991. The names of M/s.PSG Ganga Naidu and Songs Trust and Mr.Krishnan Naidu were shown as persons interested. It is a matter of record that Thiru.Ramachandran s/o, Govindasami Naidu appeared before the Land Acquisition Officer and he even took part in the award enquiry. The Land Acquisition Officer considered the objections and finally passed the award bearing No.2/1994 on 23 May 1994. Since the notification was issued in the name of the land owner well before his death, the learned Single Judge was not correct

in observing that it was issued in the name of a dead person.

4(1) notification which is the subject matter in W.P.No.27739 of 2012 :-

12. Notification under Section 4(1) of the Act, which is the subject matter in W.P.No.27739 of 2012 was approved on 5 February 1992 and it was published in the Tamil Nadu gazette on 26 February 1992. The land was registered in the name of M/s.PSG Ganga Naidu and sons Trust. The Trust was represented by Thiru.P.V.Gurusamy before the Land Acquisition Officer and even a written statement was filed by him. The Land Acquisition Officer considered the written statement and passed the award bearing no.1/1995 dated 18 April 1995. Since the land was registered in the name of a Trust and it was represented by Mr.P.V.Gurusamy, authorized agent of the Trust, the learned Single Judge was incorrect in the observation that the notification, declaration and award were issued in the name of a dead person.

4(1) notification which is the subject matter in W.P.No.27740 of 2012 :-

13. Notification under Section 4(1) of the Act in respect of the land in S.F.No.444, was approved on 28 February 1994 and it was published on 20 April 1994. The land owner was represented by the Trustee of PSG Ganga Naidu and Sons Trust. The authorized representative filed the statement on 10 December 1994 requesting to drop the land acquisition proceedings. The Land Acquisition Officer considered the statement and after overruling the objection, passed the award bearing No.5/1997 dated 19 May 1997.

14. The father of the respondent died on 15 May 1992. The first respondent has no case before the writ court that mutation was effected in the revenue records after the death of the original land owner. Similarly, she has no case that the authorized representative, who represented the Trust, informed the Land Acquisition Officer about the death of the original land owner and names of the legal representatives. The statement filed by the authorized representative on 10 December 1994 does not contain any indication that the land owner is no more. Such being the factual position, the learned Single Judge was not correct in observing that notwithstanding the knowledge with regard to the death of the land owner, notification was issued in his name.

15. The first ground taken by the learned Single Judge for quashing the land acquisition has no factual basis at all. The copy of the award and file produced before us does not contain any material to support the view taken by the learned Single

Judge. The learned single Judge in paragraph 13 of the common order observed that notification under Section 4(1) was issued only when the father of the respondent was alive. The learned Judge correctly recorded the factual position that Section 4(1) notification was approved on 5 March 1991 and the father of the respondent died only on 15 May 1992. The learned Single Judge accepted the case of the appellant that possession was handed over to the Tamil Nadu Housing Board on 9 December 1994 and that the land is in the possession of the Board.

16. There is absolutely no merit in the contention that the land belonged to the father of the first respondent till his death. The statement filed by M/s.PSG Ganga Naidu and Sons Trust before the land acquisition officer and the documents produced by them indicate that G.Govindasami Naidu gifted the land to the Trust. It was only in the said circumstances, the representative of the trust appeared before the Land Acquisition Officer and opposed the acquisition of land. The documents available on file would prove that G.Govindasami Naidu, though continued to be the owner of the property in the revenue records, gifted the entire land to the Trust by name PSG Ganga Naidu and Sons Trust, and he was no longer the owner of the property.

17. The learned Single Judge agreed with the submissions made by the learned counsel for the Tamil Nadu Housing Board that there was no illegality committed in the process of acquisition and that the requisitioning body took possession of the land. The learned Judge thereafter proceeded to consider the question with regard to the actual position of land as on date. Such a step was not necessary in the subject case as it was not the request of the first respondent that the land should be re-conveyed to her on the ground that it was not utilized for the purpose for which it was acquired. The learned single Judge conducted an exercise which was not warranted on the facts of the case. The ultimate finding recorded by the learned Single Judge would run counter to the observation made in various paragraphs up to paragraph 14 of the order.

18. The affidavit filed in support of the respective writ petitions and the documents available on record clearly indicate that though there was a Will, the first respondent got the right in respect of the acquired land declared only by way of the Judgment and Decree dated 26 September 2001 in O.S.No.797 of 2001. The land acquisition has become final long before the decree of declaration in O.S.No.797 of 2001. The Writ Petitions ought to have been dismissed on the ground of delay and laches. The fact that the first respondent established her right by filing a suit in O.S.No.797 of 2001 and that the suit was

decreed on 26 September 2001 would not give her a right to challenge the land acquisition proceedings belatedly.

19. The Supreme Court in A.P.Industrial Infrastructure Corporation Limited v. Chinthamaneni Narasimha Rao & Ors. [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."

20. 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.

21. The learned Single Judge quashed the land acquisition notwithstanding the possession taken by the appellant long back, after the culmination of the proceedings. The Writ Petitions were not for reconveyance under Section 48B of the Land Acquisition Act. The learned Single Judge was therefore not correct in quashing the acquisition on a ground which was not taken by the first respondent. We are therefore of the view that the impugned order is unsustainable in law.

22. In the result, the order dated 21 February 2014 is set aside. The Writ Petitions in W.P.Nos.27738,27739 & 27740 of 2012 are dismissed.

23. In the upshot, we allow the intra court appeals. No costs. Consequently, connected M.P.s, are closed.

/sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

tar
To

1. The Secretary to Government,
Housing and Urban Development Department,
Fort St. George,
Chennai 600 009.

2. The Special Tahsildar,
Land Acquisition,
Housing Scheme No.3,
Coimbatore.

+3 CC to Mr. V. Anandhamurthy , Advocate Sr.No. 78755
+1 CC to Mr. A. Jenasenar , Advocate Sr.No. 79241

W.A.Nos.1414 to 1416/2014

NM (CO)
ths: 27/11/2017

सत्यमेव जयते

WEB COPY