IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:19.12.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

WA.No.1688/2017 & CMP.No.21735/2017

K.Kannan [Died]
1.Vasantha
2.Santhi
3.Sakthivel
4Jayalakshmi
5.Rajalakshmi
6.Dhanalakshmi
7.Manjula .. Appellants / Writ petitioners

Vs

1. The Secretary
State of Tamil Nadu
Revenue Department
Fort St George
Chennai 600 009.

2. The District Collector
Tiruvannamalai District
Tiruvannamalai/

3. The Special Tahsildar
Land Acquisition, Tiruvannamalai. .. Respondents

Prayer:- Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 12.09.2017 made in WP.No.27597/2003 by the learned Single Judge.

W.P. No 27597 of 2003:
Writ Petition filed under Article 226 of constitution of India praying for the issuance of a Writ of Certiorari calling for the records of the 2nd Respondent in No.M.1/26355/97(4) dated 27.05.2003 and quash the same insofar as it relates to the Land of the petitioner in Survey Nos.99/6 and 100/6 of an extent of 1.50 acres situated in Venkikal Village, Thiruvannamalai , Thiruvannamalai District.

For Appellants : Mr.Sankar Ramasamy
For RR 1 to 3 : Mrs.M.E.Rani Selvam, AGP

JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J.]

By consent, the writ appeal is taken up for final disposal. Mrs.M.E.Rani Selvam, learned Additional Government Pleader accepts notice on behalf of the respondents 1 to 3.

2 The appellants / writ petitioners originally made a challenge to section 4 [1] Notification issued by the 1st respondent in G.O.Ms.No.454, Revenue Department dated 03.06.1998 and section 6 Declaration issued in G.O.Ms.No.592, Revenue Department dated 13.07.1998 and to quash the same insofar as it relates to the land in S.NO.99/6 and 100/6 admeasuring to an extent of 1.50 acres of Vengikal Village, Tiruvannamalai District, by filing WP.No.8585/2000. In the counter affidavit filed in the said writ petition, it is relevant to extract paragraph No.13[v]:-

> "13[v]:- In G.O.Ms.No.602, Revenue Department dated 26.06.1997 and in G.O.Ms.No.454, Revenue Department dated 03.06.1998 Government have already stated the reasons for urgency. After passing of Award, compensation amount was remitted in Sub-Court, Tiruvannamalai and possession have been taken by the Tahsildar on 29.03.2000 except S.No.99/6."

3 The writ petition was taken up for final disposal on 17.04.2003 and it was dismissed by this Court on that day. It is also relevant to extract paragraphs No.4 and 5 of the said order:-

> "......
>
> 4 This factual possession has been refuted by the respondents and the Deputy Secretary to the Government filed counter affidavit in which it is clearly stated that the possession has been taken by the Tahsildar on 29.03.2000. S.No.99/6 has been totally excluded from the land acquisition proceedings. Hence, the petitioner's prayer so far as S.No.99/6 is concerned, has become redundant.
>
> 5 So far the other area namely, S.No.100/6 is concerned, as submitted by the Deputy Secretary to Government, the possession

has already been taken and award has also been made and the entire compensation amount has been remitted into Sub Court, Tiruvannamalai. In view of the clear averment made by the Deputy Secretary. I am not able to accept the argument of the learned counsel that possession has not been taken by the respondent and the petitioner is well in possession. If taking over the possession as contemplated under the provisions of the Land Acquisition has been done, then the petitioner cannot be physically in possession. The possession of the petitioner even after taking over the land cannot by itself prove that the respondents have not taken over the land under the provisions of the Act. Hence, I am of the view that the petitioner has not made out any valid ground to quash section 4[1] Notification. Hence, the writ petition is dismissed."

4 In the light of the liberty granted to the petitioner in the said writ petition, the petitioner therein, viz., K.Kannan, has submitted a representation for the release of the land, which came to be rejected on 27.05.2003, stating that the request sought for by the petitioner for release of land in Survey Nos.99/6 and 100/6 cannot be considered for the reason that the said lands are required for the construction of Quarters for the Government Servants and the said order dated 27.05.2003 was put to challenge by the legal heirs of Kannan [since deceased] by filing WP.No.27597/2003 and the said writ petition also came to be dismissed vide impugned order dated 12.09.2017 and challenging the legality of the same, the present writ appeal is filed.

5 The learned counsel appearing for the appellants / writ petitioners would submit that this Court, while dismissing the writ petition in WP.No.8585/2003 has observed that the land in S.No.99/6 has been totally excluded from the Land Acquisition proceedings and as such, the prayer made by the petitioner therein has become redundant and the said portion of the order has not been taken into consideration by the 2nd respondent while rejecting his request on 27.05.2003 and sought to have included S.No.99/6 also and therefore, prays for interference.

6 Per contra, Mrs.M.E.Rani Selvam, learned Additional Government Pleader, who accepts notice on behalf of the respondents would submit that since the lands in both survey numbers are required for public purpose and that compensation in respect of the said lands have already been deposited before the

Court concerned and the said amount is yet to be withdrawn by the appellants / writ petitioners, the stand of the appellants / writ petitioners is wholly unsustainable and prays for dismissal of the writ appeal.

7 The Court has considered the rival submissions and also perused the materials placed before it.

8 It is brought to the knowledge of this Court that the land in S.No.99/6 is admeasuring to an extent of 89 cents and the land in S.No.100/6 is admeasuring to an extent of 1.50 acres. The fact remains that this Court, while dismissing WP.No.8585/2003 on 17.04.2003, made an observation in paragraph No.4 that, after taking into consideration the counter affidavit filed by the official respondents that S.No.99/6 has been totally excluded from the Land Acquisition Proceedings, the prayer of the petitioner has become redundant. As far as the land in S.No.100/6 is concerned, this Court has observed in paragraph No.5 of

the said order by rejecting the request made by the learned counsel for the petitioner therein that the possession has not been taken by the respondents and he is still in possession and observing that the petitioner therein has not made out any valid ground to quash the 4[1] Notification, accordingly, dismissed the writ petition.

9 It is pertinent to point out at this juncture that insofar as the observation made by this Court in respect of the land in S.No.99/6 is concerned, the official respondents had failed to seek any clarification and therefore, the finding recorded by this Court in the said order, has become final and as such, it is not open to the respondents herein to insist that the land in S.No.99/6 is also required for public purpose. Similarly, insofar as the land admeasuring to an extent of 1.50 acres in S.NO.100/6, this Court in paragraph No.5 of the order dated 17.04.2003 in WP.No.8585/2003, has clearly observed that the possession of the land has already been taken by the respondents and it is also not in serious dispute that the compensation for the said lands has also been deposited and it is yet to be withdrawn by the petitioners / appellants herein and it continues to lie in the Court Deposit.

10 This Court, while dismissing WP.No.85858/2003 on 17.04.2003, granted liberty to the petitioner therein to sustain his case that he is in possession and enjoyment of the land in S.No.99/6. A perusal of the representation dated 19.05.2003 submitted by the the petitioner, viz., Kannan, in pursuant to the liberty granted would clearly reveal that no documents whatsoever has been enclosed along with the said representation

to show that despite the stand taken by the official respondents that the land admeasuring to an extent of 1.50 acres in S.NO.100/6 have been taken possession, no documents evidencing that the said Kannan continues to remain in possession and enjoyment of the said land. In the absence of any documents evidencing that the writ petitioner therein / Kannan [since deceased] continues to remain in possession of the land admeasuring to an extent of 1.50 acres in S.No.100/6, the stand of the writ petitioners / appellants herein is wholly unsustainable.

11 In the result, the writ appeal is partly allowed and the order dated 12.09.2017 made in WP.No.27597/2003 as well as the impugned order of the 2nd respondent made in No.M.1/26355/97 [4] dated 27.05.2003 is set aside insofar as the land admeasuring to an extent of 89 cents in S.No.99/6 at Vengikaal Village. The said land is ordered to be released by quashing G.O.No.454, Revenue Department dated 03.06.1998, published in the Government Gazette dated 04.06.1998 and Section 6 Declaration in G.O.Ms.No.592, Revenue Department dated 13.07.1998, published in the Government Gazette on the same day, i.e., 13.07.1998. Insofar as the land admeasuring to the extent of 1.50 acres in S.No.100/6 situate at Vengikaal village, the order dismissing WP.No.27597/2003 stands affirmed and it is open to the respondents to put the said land for public purpose. No costs. Consequently, the connected miscellaneous petition is also dismissed.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

AP
To

1. The Secretary
   State of Tamil Nadu
   Revenue Department
   Fort St George
   Chennai 600 009.

2. The District Collector
   Tiruvannamalai District
   Tiruvannamalai/

3. The Special Tahsildar
   Land Acquisition, Tiruvannamalai.

+1 CC to Mr. Sankar Ramasamy, Advocate sr 90515.
+1 CC to Govt. Pleader sr 91447.

WA.No.1688/2017

GJ(CO)
SP(18/01/2018)