

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE N.SESHASAYEE
W.A.No.539 of 2014
and
M.P.No.1 of 2014

Syed Yacub Appellant /Petitioner

...Vs...

1. The Special Tahsildar,
Adi-Dravidhar Welfare
Gudiyatham Taluk,
Gudiyatham.
2. The State of Tamil Nadu,
Rep. by its Secretary,
Adi Dravidar & Tribal Welfare Department,
Chennai-600 009 Respondents/Respondents

Prayer:- Writ Appeal filed under Clause 15 of the Letters Patent against the order made in W.P.No.33202 of 2003 dated 24.09.2013.

WP.No.33202 of 2003:-Writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus for hearing the first respondent herein from entering into the petitioner's land bearing S.No.36/05 of an extent of Hectre 0-80-0 situate in Jaffarpet Village, Gudiyatham Taluk and disturbing his peaceful possession and enjoyment of the same.

For Appellant : Mr.Sharath Chandran
for Mr.V.Raghavachari
For Respondents : Mr.A.N.Thambidurai
Special Government Pleader

JUDGMENT

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

The writ petitioner, aggrieved by the dismissal of the writ petition in WP.No.33202 of 2003 dated 24.09.2013, has filed the present writ appeal.

2. The Writ Petitioner filed a Writ Petition in W.P.No.33202 of 2003, against the respondents herein praying for issuance of a Writ of Mandamus forbearing the first respondent from entering into the petitioner's land bearing S.No.36/5 of an extent of Hectre 0.80.0 situated in Jafferpet Village, Gudiyatham Taluk and disturbing his peaceful possession and enjoyment of the same. The said Writ Petition, after contest came to be dismissed on 24.09.2013. Challenging the legality of the same, this Writ Appeal has been filed.

3. The petitioner/appellant in the affidavit filed in support of the writ petition, would aver among other things that he is the owner of the land comprised in Survey No.36/5 measuring an extent of 0.80.0 hectare situated in Jaffarpet Village, Gudiyatham Taluk. The said lands are cultivable lands and he had raised a Mango Garden and other fruit bearing trees. The Special Tahsildhar, Adi Dravidhar Welfare, Gudiyatham Taluk, issued a notification dated 09.09.1991 in G.O.3 D.No.814, Adi-Dravidar and Tribal Welfare Department under Section 4(1) of the Land Acquisition Act, 1894 to acquire 0.80.0 hectares of the petitioner's land for the purpose of providing house sites to the Arundathiars. In spite of the objections raised by the petitioner for the proposed acquisition, a Notification under Section 6 of the Land Acquisition Act was issued on 16.09.1992 and the same was published in the Local Area on 21.09.1992. However, the petitioner preferred a Writ Petition in W.P.No.18661 of 1993, challenging the legality of the notification issued by the first respondent under Section 4 (1) of the Land Acquisition Act on 09.09.1991, which was entertained and interim stay of dispossession was granted on 13.10.1993. The petitioner/appellant further states that in the interregnum period, award was passed on 20.01.1994 and the compensation was deposited by the respondents in a revenue deposit.

4. The Writ Petition filed by the petitioner in W.P.No.18661 of 1993 was dismissed on 08.08.2000, by the learned single Judge of this Court.

5. Though a Notification under Section 6 of the Land Acquisition Act was issued on 16.09.1992 itself, the appellant/Writ Petitioner did not challenge the Section 4(1) Notification dated 30.10.1991 and therefore it was dismissed as not maintainable. The petitioner did not made further challenge to the order dismissing the Writ Petition and it had become final. Thereafter, the petitioner had challenged the same in W.A.No.999 of 2001 and it was dismissed on 21.06.2001.

6. Again, the petitioner filed the Writ Petition in W.P.No.33202 of 2003 and this Court, on 19.11.2003 has granted an order of interim injunction restraining the respondents from dispossessing the petitioner from the land in question. On 01.03.2004, the interim order was also made absolute.

7. At the time of final disposal of the Writ Petition, the learned counsel for the appellant/writ petitioner advanced his arguments to the effect that the award was not passed within two years from the date of dismissal of the earlier Writ Petition. However, learned Judge after going through the counter affidavit held that the award was passed on 20.01.1994 well within two years, as required under Section 11 (A) of the said Act. Section 6 declaration came to be issued on 24.08.1992 and gist of such publication was effected in the locality on 21.09.1992. Furthermore, even if the gist of such publication is taken as a crucial date when the award was passed on 20.01.1994, the same is well within the time of two years. The learned Judge, after citing the said reasons dismissed the Writ Petition, vide order dated 24.09.2013. Challenging the legality of the same, this Writ Appeal has been filed.

8. Mr. Sharat Chandran, learned counsel appearing for the appellant would submit that the reasons assigned in the order, dismissing the Writ Petition is per se unsustainable. He would further submit that Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 came into being on 01.01.2014 and furthermore the possession of the land continues to be with the petitioner and that compensation is also kept in revenue deposit and the same has not been paid.

9. Mr. A. N. Thambidurai, learned Special Government Pleader appearing for the respondent would submit that the learned Judge, taking of the averments in the counter affidavit, rightly came to the conclusion that the award was passed well within two years and no ground has been made to interfere with the same. In so far as the submission of the learned counsel for the petitioner/appellant that invoking of the above said Act, it is the submission of the learned Special Government Pleader that the said claim is hit by delay and lapse.

10. This Court has carefully considered the rival submissions and perused the materials available on record.

11. The learned Judge, in paragraph 6 of the order has recorded the factual finding and came to the conclusion that the award was passed on 20.01.1994, well within two years, as required under Section 11 (A) of the said Act and even if gist of publication of Section 6 declaration is taken as a crucial date, the award passed on 20.01.1992 is well within two years.

12. There are no tenable materials produced before this Court to take a different view. The learned Judge has recorded the finding based upon the factual aspects and rightly reached the conclusion to dismiss the writ petition. This Court, on an independent application of mind to the entire materials, is of the considered view that there is no error or infirmity or reasons assigned to reach the said conclusion and finds no

merits in this writ appeal.

13.In the result, the writ appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Special Tahsildar,
Adi-Dravidhar Welfare
Gudiyatham Taluk,
Gudiyatham.
2. The Secretary,
Adi Dravidar & Tribal Welfare Department,
Chennai-600 009

+1cc to Mr.V.Raghuvachari, Advocate, S.R.No.64263
+1cc to the Government Pleader, S.R.No.64916

WA.No.539/2014

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