

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2017

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

Writ Petition No.30627 of 2004

and W.M.P.Nos.5398 and 5399 of 2017

Varadappa Gounder (deceased)

2.V.Krishnan

3.V.Subramanian

... Petitioners

(P.2 and P.3 were substituted as
LRs of deceased Varadappa Gounder
as per order dated 3.2.2017 made
W.M.P.No.2552 of 2017 in WP.No.30627/04)

Vs.

1.The State of Tamil Nadu,
rep. by Secretary to Government,
Department of Adi Dravidar &
Tribal Welfare,
Fort. St. George, Chennai-9.

2.The District Collector,
Salem District.

3.The Special Tahsildar,
Adi Dravidar Welfare,
Sankari, Salem District.

4.The Tahsildar,
Sankari.

... Respondents

(Cause title amended as per order
dated 8.12.2005 made in WPMP.No.39748 of 2004 in
WP.No.30627/04)

Writ petition has been filed under Article 226 of the
Constitution of India, praying for a Writ of mandamus
forbearing the respondents from evicting the petitioner and
interfering with the petitioner's peaceful possession and
enjoyment of the properties situate in S.Nos.26/4A, 4B and 4C
of an extent of 6.0, 18.0 and 11.0 ares in the Village of
Pullagoundanpatti, Sankari Taluk.

For Petitioners : Mr.V.Raghavachari,
for Mr.Ma.P.Thangavel

For Respondents : Mr.V.Jayaprakash Narayanan,
Spl. Govt. Pleader

ORDER

The land in S.Nos.26/4A, 4B and 4C belongs to Varadappa Gounder. The Government sought to acquire the lands in S.Nos.26/3, 26/4, 26/5 and 26/6 part in the Village of Pullagoundanpatti, Sankari Taluk, Salem District, under Section 4(1) of the Land Acquisition Act. In the 4(1) Notification dated 29.1.1984, the owners of the aforesaid lands were shown as Palani Gounder and Varadappa Gounder, sons of Perumal Gounder. This 4(1) Notification was not challenged by Varadappa Gounder. Therefore, the authorities proceeded with the acquisition proceedings and issued Section 6 declaration on 27.2.1985. Thereafter, award enquiry was scheduled to be conducted on 27.3.1985. The award enquiry report dated 27.3.1985 states as follows with regard to the objections that was raised on behalf of Varadappa Gounder:-

" 6. Objections: The land owners did not attend the Award Enquiry. One Krishna S/o.Varadappa Gounder presented a petition signed by his father stating that he has to be in Hospital for 7 days on accounts of chest pain and requesting adjournment of Award enquiry for 7 days. He has enclosed a Medical Certificate with his petition one Periannan, S/o.Perumal attended the award enquiry and has given a statement to the effect that he owns 1/3 share in S.Nos.26/3, 26/5 and 26/6 and that he is not willing to part with the lands and requested to drop the acquisition. He has also stated that the patta of the lands is not in his name. He presented a petition enclosing the photosted copy of the documents but did not produce the original document."

From the above, it is apparent that one Krishna, S/o. Varadappa Gounder has appeared before the Special Tahsildar and has sought adjournment on the ground that his father Varadappa Gounder has been hospitalized. In all fairness, the authorities could have given one more opportunity by adjourning the award enquiry. However, for the reason best known to the Special Tahsildar, he proceeded and passed the award on 27.3.1985. While so, Perianna Gounder, challenging the said 4 (1) Notification, filed W.P.No.2901 of 1985 contending that his name figures in the revenue records in respect of the land in

S.Nos.26/3 and 26/6 part, but, his name has been left out and the names of Palani Gounder and Varadappa Gounder, sons of Perumal Gounder have been wrongly included in the 4(1) Notification. This Court admitted W.P.No.2901 of 1985 and granted interim stay of all further acquisition proceedings on 28.3.1985. During the pendency of W.P.No.2901 of 1985, the Special Tahsildar deposited the entire award amount in respect of the land acquisition proceedings on 3.7.1985 in the revenue account - Head of Account 843, Civil deposit / Revenue deposit. Now reverting to W.P.No.2901 of 1985, the matter came up for final disposal before this Court in the year 1993 and a learned Single Judge of this Court called for the revenue records and found that the name of Perianna Gounder appears in the revenue records relating to S.Nos.26/3 and 26/6 part, but, whereas, his name was not included in the 4(1) Notification dated 29.1.1984 and therefore, W.P.No.2901 of 1985 was allowed by this Court on 17.12.1993 quashing the acquisition proceedings. Thereafter, Varadappa Gounder has filed the present writ petition No.30627 of 2004 on 18.10.2004 making a weird prayer which reads as follows:-

"For all the reasons stated in the accompanying affidavit, the petitioner herein prays that this Hon'ble Court may be pleased to issue a Writ of mandamus or any other appropriate writ or direction, forbearing the respondents from evicting the petitioner and interfering with the petitioner's peaceful possession and enjoyment of the properties situate in S.Nos.26/4A, 4B and 4C of an extent of 6.0, 18.0 and 11.0 Ares in the Village of Pullagoundanpatti, Sankari Taluk and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice."

Strangely, he has not even challenged the 4(1) Notification or Section 6 Declaration. But, it is his contention that since the entire land acquisition proceedings have been quashed in W.P.No.2901 of 1985 on 17.12.1993, that was filed by Perianna Gounder, he believed that he need not separately challenge the acquisition proceedings. I am unable to agree with his contention for the simple reason that it was Perianna Gounder's contention that the land in S.Nos.26/3 and 26/6 part, belongs to him and that his name should have been included in the 4(1) Notification. This Court conducted enquiry only on this aspect while dealing with W.P.No.2901 of 1985 and found that the revenue records show that the land in S.Nos.26/3 and 26/6 part stands in his name and therefore, non-inclusion of his name in the 4(1) Notification would be fatal. This order will by no stretch of imagination enure to the advantage of Varadappa

Gounder in whose name S.No.26/4 stands and whose name finds place in the 4(1) Notification dated 29.1.1984. Therefore, Varadappa Gounder cannot take shelter under the order passed by this Court in W.P.No.2901 of 1985 that was filed by Perianna Gounder. On this short ground alone, this writ petition deserves to be dismissed. But, however, during the pendency of the writ petition, much water has flown under the bridge inasmuch as the Land Acquisition Act, 1984 has been repealed and Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, has been passed, which came into force on 1.1.2014.

2. But, Mr.V.Raghavachari, learned counsel representing the counsel on record appearing for the petitioners strenuously contended that in view of Section 24(2) of the new Act, the entire acquisition proceedings lapses. This was strongly refuted by the Mr.V.Jayaprakash Narayanan, learned Special Government Pleader by contending that when there has not been any proper challenge either as against 4(1) Notification or Section 6 Declaration by Varadappa Gounder, he cannot take advantage of the provisions of the new enactment and claim any relief. He has also contended that this writ petition should be dismissed on the ground of delay and laches. The Government has also filed a counter, wherein, it is clearly stated that physical possession of the land was taken on 28.9.2004. Therefore, he contended that when once physical possession has been taken, the only remedy available to Varadappa Gounder is to collect the compensation amount and nothing else.

3. This Court gave its anxious consideration to the rival submissions.

4. Mr.S.Matheswaran, Special Tahsildar (ADW), Sankari Taluk, Salem District is present before this Court with the files. At this juncture, it is necessary to state that Varadappa Gounder died and his legal heirs have stepped into the shoes by virtue of the order dated 3.2.2017 passed by this Court in W.M.P.No.2552 of 2017.

5. To counter the contention of Mr.V.Jayaprakash Narayanan, the petitioners have filed two petitions in W.M.P.No.5398 of 2017 for amendment of the prayer and W.M.P.No.5399 of 2017 to dispense with the production of G.O.Ms.No.477, Social Welfare Department, dated 27.2.1985. It is true that the High Court under Article 226 of the Constitution of India can mould the relief in a given case, if the facts and circumstances so warrant. In this case, it is admitted by the State that after W.P.No.2901 of 1985 was allowed on 17.12.1993, the acquisition proceedings with regard to Perianna Gounder in respect of the lands in S.No.26/3 and 26/6 part, have been dropped. Of

course, that itself cannot be a reason for extending the benefits of the said judgment to the case of the present petitioner, because, as stated above, the ground on which Perianna Gounder's writ petition was allowed, was entirely different. However, this Court cannot remain oblivious to the development of law in the recent enactment and Section 24(2) of the new enactment reads as follows:-

"24 (2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under Section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act. "

The expression 'paid' in Section 24(2) has been interpreted by the Hon'ble Supreme Court in *Pune Municipal Corporation and another v. Harkchand Misirimal Solanki and others* reported in (2014) 3 Supreme Court Cases 183 and has been consistently followed by the subsequent judgments of the Hon'ble Supreme Court. The law laid down by the Hon'ble Supreme Court can be summarized as follows:-

(a) New Act came into force on 1.1.2014;

(b) The award under Section 11 of the Old Act should have been passed five years or more prior to 1.1.2014;

(c) Possession must not have been taken by the Government;

(or)

(d) Compensation has not been paid to the land owner.

6. In this case, award enquiry was passed on 27.3.1985 and the compensation amount was deposited in the treasury on 3.7.1985. In the back ground of the above facts, it should be seen, whether possession was lost or compensation was not paid. The records unambiguously show that the possession of the lands was taken by the Government on 28.9.2004 as asserted in the counter. Therefore, this course is not available to the petitioner. However, the records show that the compensation amount has not been paid to the land owners in terms of Section 31 of the Act. The expression 'paid' has been interpreted in the case of Pune Municipal Corporation, which means that the authorities must have offered the amount to the land owners and in the event of the contingencies mentioned in Section 31, the authorities should have deposited the amount in the Court so that the Court can pass appropriate orders for re-deposit of the amount in a Nationalised Bank so that it accrues interest. The Hon'ble Supreme Court has clearly held that deposit of the amount in the revenue account of the Government will not satisfy the mandates of the expression 'paid' used in Section 24(2) of the Act. It may be profitable to quote para 19 of the judgment in the case of Pune Municipal Corporation which reads as under:-

" 19. Now, this is admitted position that award was made on 31.1.2008. Notices were issued to the landowners to receive the compensation and since they did not receive the compensation, the amount (Rs.27 crores) was deposited in the Government treasury. Can it be said that deposit of the amount of compensation in the Government treasury is equivalent to the amount of compensation paid to the landowners / persons interested ? We do not think so. In a comparatively recent decision, this Court in Agnello Santimano Fernandes v. State of Goa reported in (2011) 11 SCC 506, relying upon the earlier decision in Prem Nath Kapur v. National Fertilizers Corpn. of India Ltd., reported in (1996) 2 SCC 71, has held that the deposit of the amount of the compensation in the State's revenue account is of no avail and the liability of the State to pay interest subsists till the amount has not been deposited in court. "

7. Mr. V. Jayaprakash Narayanan contended that the judgment in the case of Pune Municipal Corporation will not apply to the facts of this case, since an attempt was made to pay the compensation amount to the land owners and on their refusal, the authorities made an attempt to deposit the amount into Court, but on account of the stay granted by this Court in W.P.No.2901 of 1985, they had to deposit the same in the

revenue accounts. I am unable to agree with the said submission, because W.P.No.2901 of 1985 related to the acquisition of land of Perianna Gounder in S.Nos.26/3 and 26/6 part. That apart, W.P.No.2901 of 1985 was disposed of on 17.12.1993, but, whereas, the deposit in the revenue account was made in the year 1985. After the disposal, the State did not take any steps to re-deposit the amount in the Court. Under such circumstances, this Court is constrained to hold that the acquisition proceedings in respect of the lands of Varadappa Gounder in S.Nos.26/4A, 4B and 4C stood lapsed and therefore, the same cannot be acquired under the old Act. Therefore, the writ petition is ordered accordingly by moulding the relief. However, it is always open to the Government to initiate fresh acquisition proceedings in accordance with law. No costs. Consequently, connected miscellaneous petitions are dismissed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

sbi

To

1.The Secretary to Government,
Department of Adi Dravidar &
Tribal Welfare,
Fort. St. George, Chennai-9.

2.The District Collector,
Salem District.

3.The Special Tahsildar,
Adi Dravidar Welfare,
Sankari, Salem District.

4.The Tahsildar,
Sankari.

+1 CC to Mr.Ma.P.Thangavel, Advocate Sr.No.12934

+1 CC to Government Pleader, High Court, Chennai Sr.No.13159

W.P.No.30627 of 2004

KP(14.03.2017)