

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2017

CORAM :

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE

AND

The Hon'ble MR.JUSTICE M.SUNDAR

W.P.No.38285 of 2015

R.Gunasekaran

.. Petitioner

-vs-

1.The Appellate Authority/District Collector,
Erode District,
Erode.

2.The Tashildhar,
Anthiyur Taluk,
Anthiyur Post,
Erode District.

3.The Land Revenue Inspector,
Anthiyur,
Anthiyur Post,
Erode District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari calling for the records relating to the impugned order passed by the first respondent in his Proceedings Na.Ka.71946/1995/Na6 dated 23.11.2015 and to quash the same as illegal and arbitrary.

For Petitioner : Mr.K.M.Vijayan
Senior Counsel
for M/s.B.Saravanan

For Respondents : Mr.T.N.Rajagopalan
Spl. Government Pleader

ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

The present petition under Section 226 of the Constitution of India seeks to assail the order dated 23.11.2015 passed by the District Collector, Erode in respect of the proceedings initiated against the petitioner under the Tamil Nadu Land Encroachment Act, 1905 (hereinafter referred to the "said Act").

2. The subject matter of land is S.F.No.1520/1 to the extent of 3.20 acres in Anthiyur Village and Taluk, Erode District, in respect of which, a notice was issued on 09.09.2015 under Section 7 of the said Act, which was assailed in W.P.No.30723 of 2015, followed by an order under Section 6 of the said Act dated 23.09.2015.

3. The land in question forms subject matter of the acquisition proceedings under Land Acquisition Act, 1894 (hereinafter referred to "the Land Acquisition Act") by issuing of notification under Section 4 of the Land Acquisition Act dated 20.04.1999 and post enquiry, declaration under Section 6 was published on 23.01.1990. An Award was passed on 29.03.1990 and the same was assailed in W.P.No.16391 of 2002. It appears that different sets of writ petitions were filed challenging the Award starting from 1990. There are stated to be in fact nine writ petitions filed from 1990 to 2015 by different parties. The possession is stated to have been taken over on 27.10.2003 and handed over to the Special Revenue Inspector (Adi Dravidar Welfare), Bhavani and even that was sought to be stayed in the proceedings filed against the same. The compensation for the land acquisition is stated to have been deposited under Section 31(2) of the Land Acquisition Act.

4. In sum and substance, the plea of the learned Senior Counsel for the petitioner is that possession was never taken over of the land in accordance with law and thus, in view of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, if either of the two eventualities specified - possession not taken over or compensation not deposited, the land stands released from the acquisition proceedings.

5. The learned Special Government Pleader has however drawn our attention to the earlier writ petition filed by the petitioner herein and two others, being W.P.No.32402 of 2004 seeking re-conveyance of the land under Section 48-B of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 on the ground of the same not having been utilized. The findings recorded while

dismissing W.P.No.32402 of 2004 are that possession was taken over and the said fact has not been disputed. Thus, it was "apparent from the records that the petitioners have once again entered into the land and thereafter obtained an interim injunction on 08.11.2014, thus preventing the respondents from distributing the house sites, to 51 families of barbers and 44 families of washermen." The petitioners were held not entitled to any equitable relief, as they have encroached upon the acquired land.

6. In view of the aforesaid, in our view, the plea sought to be advanced by the learned Senior Counsel for the petitioner herein that the petitioner continued to be in lawful possession of the land cannot be countenanced, as the petitioner herein and two others have encroached on the land and Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is not for the protection of such persons. In fact, in the earlier proceedings also, they endeavoured to obtain stay order by claiming to be in possession - they had been already dispossessed.

7. Now the proceedings consequently arose have resulted in the aforesaid finding - that they were encroachers on the land. Thus, the proceedings have resulted culminating in the impugned order.

8. The learned Senior Counsel for the petitioner on instruction states that against the order in W.P.No.32402 of 2004 dated 03.06.2014, an appeal was filed before the Division Bench being W.A.No.1611 of 2014. But the same was withdrawn on 04.02.2015 with liberty that the appellants therein may be permitted to file a review application qua the order of the learned Single Judge. We are informed that such a review application was filed, being Review Application No. SR 21503 of 2015. But it has not been even numbered (not an unusual practice in this Court to keep the matters pending at SR stage un-numbered).

9. In our view, the findings in the impugned order cannot be faulted on the ground that the petitioner herein is not an encroacher on the land, but that he is the owner, whose land was acquired and possession was not taken over. The possession was taken over and the petitioner has encroached on the land.

10. We are, thus, of the view that this manner of re-occupying the acquired land again and again and then seeking relief in multiple proceedings is gross abuse of process of the Court and there is no reason to interfere with the impugned order under Article 226 of the Constitution of India.

11. The writ petition is dismissed with costs quantified at Rs.15,000/- (Rupees Fifteen Thousand only) payable by the petitioner to the Tamil Nadu Mediation and Conciliation Centre, Madras High Court Campus within a period of fifteen days.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Appellate Authority/District Collector,
Erode District,
Erode.
2. The Tashildhar,
Anthiyur Taluk,
Anthiyur Post,
Erode District.
3. The Land Revenue Inspector,
Anthiyur,
Anthiyur Post,
Erode District.
4. The Tamilnadu Mediation and
Conciliation Centre,
High Court, Madras-104

+1cc to Mr.Saravanan, Advocate, S.R.No.7326

SV(CO)
RS(13/02/2017)

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