

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 09.10.2017

PRONOUNCED ON: 11.10.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No. 222 of 2001

- 1.Thimmaraya Gounder (deceased)
- 2.T.Narayanasami
- 3.T.Rajagopalan
- 4.T.Natarajan
- 5.T.Ragunathan
- 6.T.Krishnamurthy
- 7.Mythili
- 8.Mechaniammal

(Appellants 3 to 8 brought on records as Lrs of the deceased 1st appellant vide as per order of Court dt.12.02.2002 made in CMP.No.17288 of 2001) ... Appellants

Vs.

- 1.The State of Tamil Nadu
rep.by The Collector,
Dharmapuri District.

2. The Special Tahsildar,
Harijan Welfare,
Krishnagiri.

Respondents

Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and decree dated 23-02-1995 made in A.S.No.40 of 1981 on the file of the District Judge, Krishnagiri reversing the judgment and decree dated 26.08.1990 made in O.S.No.936/1978 on the file of the District Munsif, Krishnagiri.

For Appellants

: Mr.Muruganandam
for Mr.V.Raghavachari

For Respondents

: Mr.T.Jayaramaraj
Government Advocate (CS)

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 23.02.1995 passed in A.S.No.40/1981 on the file of the District Court, Krishnagiri, reversing the judgment and decree dated 26.08.1990 passed in O.S.No.936 of 1978 on the file of the District Munsif Court, Krishnagiri.

2. Parties are referred to as per their ranking in the trial Court.

3. The suit for declaration and permanent injunction.

4. The case of the plaintiffs in brief is that the property described in the plaint schedule was sought to be acquired by the Government of Tamil Nadu under G.O.No.1176, Social Welfare, dated 07.07.1972 and the plaintiffs had made several representations both to the Government of Tamil Nadu as well as to the Special Tahsildar, Land Acquisition Officer, at the time of enquiry, objecting to the intending acquisition of the property and notice issued for the acquisition under Section 4 of the Act did not describe the locality, where the property is situated correctly and the declaration issued under Section 6 of the Act has also been made without following the proper procedure and the description that the property as situated in the village of Paiyur instead of Sappanipatty village is wrong and vitiates the notification and declaration issued under the Act. Even the notifications issued under Sections 9 & 10 of the Act have not been properly made and served on the concerned department viz., the Social Welfare Department, for which, the property is sought to be acquired and had not been heard and enquired at the time of Section 5 (A) enquiry and thereby, the entire proceedings are void and the acquisition proceedings were initiated without obtaining the opinion of the District Health Officer so as to satisfy as regards the suitability or otherwise of the site proposed to be acquired for the purpose of habitation and the Collector has not satisfied himself that the site is suitable for the purpose, for which the property is sought to be acquired and the approval of the Director of Town Planning as required under the relevant rules has not been obtained and even though there are other poromboke and dry lands very near to the property, those lands were not acquired for the purpose of habitation and the acquisition of the suit property had been made at the instance of the Village headman, who had acted out of spite and illwill towards the plaintiffs and thereby, had misled the Special Tahsildar in taking the initiative to acquire the suit property. The plaintiffs had not been served with proper notice to vacate the property and hence, the plaintiffs left with no other alternative have been constrained to lay the suit for appropriate reliefs.

5. The case of the defendants in brief is that the suit is not maintainable either in law or on facts. The suit property had been acquired by the Government validly, after observing all the procedure correctly and it is false to state that the locality of the suit property had not been properly given in the notification and declaration as claimed by the plaintiffs. The suit property is situated in the local village of Paiyur in Krishnagiri Taluk and Sappanipatty is a Hamlet of Paiyur village and there is no separate revenue village in the name of Sappanipatty and hence, the contention that the locality of the suit property has not been properly described in the concerned notification and declaration as such cannot be accepted. The property has been acquired only for the Social Welfare Department and accordingly, notification and declaration issued by the said department and hence, there was no need to give any separate notice to the said department and the enquiry under Section 5 (A) of the Act had been properly conducted as per rules and before the property was sought to be acquired, the same had been inspected by the District Harijan Welfare Officer to find out its suitability for the proposed acquisition for the provision of the house sites and only after being satisfied about the suitability of the site, further proceedings were initiated under the Act for acquisition of the property concerned. The presence of a rice mill would not in any manner affect the health of inhabitants of the locality and the approval of the Deputy Director of Town and Country Planning had been obtained for the lay out and it is false to state that there are other suitable poramboke lands near the property acquired for the purpose of providing house sites to the harijans and it is false to state that out of spite and ill-will of the village headman towards the plaintiffs, the property had been acquired illegally and the said allegations are made without any basis and there is no intention on the part of the officials to harass the plaintiffs and due notice was given to the plaintiffs to vacate the property and the rights of the plaintiffs over the property under reference had got extinguished by passing of the award dated 17.03.1978 by the Special Tahsildar, Harijan Welfare, Krishnagiri and the plaintiffs are not entitled to question the acquisition proceedings by way of civil action and the Court has no jurisdiction to try the suit and the same has been specifically barred under the Act. The suit is also barred on the ground of being opposed to public policy and also barred by time and also barred by res-judicata in view of the decision of the High Court in W.P.No.3421/1972 dated 01.11.1976 and the plaintiffs have no cause of action to lay the suit and hence, the suit is liable to be dismissed.

6. In support of the plaintiffs' case, PWs 1 to 3 were examined and Exs. A1 to 16 were marked. On the side of the defendants', Dw1 was examined and Exs. B1 to 16 were marked.

7. On a consideration of the oral and documentary evidence and the rival submissions made by the respective parties, the trial Court was pleased to decree the suit as prayed for by the plaintiffs. Aggrieved over the same, the defendants preferred the first appeal and the First Appellate Court, on a consideration of the materials placed, was pleased to set aside the judgment and decree of the trial Court and by allowing the appeal preferred by the defendants, dismissed the suit laid by the plaintiffs. Challenging the same, the present second appeal has been preferred.

8. The following substantial questions of law were formulated for consideration in this second appeal at the time of admission:

1. Whether the lower appellate Court is right in dismissing the suit as based under section 17 of Tamilnadu Act 31/78 when the proceedings initiated by the respondent is under Land Acquisition Act?

2. Whether the lower appellate Court is right in holding the suit is barred by res judicate and whether the Court below has not failed to note the issues in the writ petition and in the present proceedings are different?

3. Whether the lower appellate Court should not have held that non-compliance with the mandatory provision will vitiate the entire proceedings and in the present case the suit for declaration is on the basis of the respondents non-adherence to the statutory prescriptions and whether its order in dismissing the suit is not illegal and contrary to law?

9. The land belonging to the plaintiffs as described in the plaint schedule was acquired by the Government for providing house sites to Harijans and accordingly, it is seen that necessary proceedings under the Land Acquisition Act had been initiated by the Government and challenging the same, the subject civil suit has been laid by the plaintiffs.

10. According to the plaintiffs, inter alia, the Government has not followed the mandatory requirements as per law for effecting the land acquisition proceedings in respect of the suit property and in this connection, it is alleged that no

notice had been issued to the Social Welfare Department and that, the opinion of the District Health Officer had not been obtained and that, the Government has failed to obtain the permission of the Director of Town and Country Planning Authority as contemplated under the relevant Rules and in such view of the matter, it is alleged on the part of the plaintiffs that there are various infractions of the Rules by the Government in initiating the land acquisition proceedings and hence, according to the plaintiffs, the declaration issued consequent to the land acquisition proceedings under Section 6 of the Act in G.O.No.1176, Social Welfare, dated 07.07.1972 is not valid and hence, according to the plaintiffs, the Government is not entitled to disturb their possession and enjoyment of the suit property and hence, the suit.

11. Per contra, it is the case of the Government that only after observing all the legal formalities, the land belonging to the plaintiffs had been acquired for providing house sites to the Harijans and in such view of the matter, the case of the plaintiffs that the Government has not adhered to the Rules in respect of the same is false and it is further stated that the plaintiffs, impugning the land acquisition proceedings, had preferred the writ petition No.3421/1972 and the same had been dismissed on 01.11.1976 and in such view of the matter, it is contended by the Government that the suit laid by the plaintiffs before the civil Court is not maintainable in law and it is further stated that the Civil Court has no jurisdiction to entertain the suit and in view of the dismissal of the writ petition above stated by the High Court, the present suit laid by the plaintiffs is also hit by the res-judicata and hence, the suit is liable to be dismissed.

12. It is not in dispute that the land of the plaintiffs described in the plaint schedule had been acquired by the Government only for providing house sites to the Harijans. It is thus found that the department concerned for the same is Social Welfare Department and it is further found that inasmuch as the land of the plaintiffs was sought to be acquired for the Harijan Welfare Scheme, it is seen that the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1978, Act 31 of 1978 would be applicable to the proceedings in question. The first Appellate Court, considering the defence put forth by the Government and also relying upon the Section 17 of the above said Act finding that the civil Court has no jurisdiction to entertain the suit in respect of the proceedings initiated by the Government in respect of any action taken or to be taken in pursuance of any power conferred by or under the Act, held that the Civil Court has no jurisdiction to entertain the suit. It is mainly contended by the plaintiffs that various mandatory requirements were not complied with by the Government, while

initiating the land acquisition proceedings. However, when such proceedings are not to be called in question in the Civil Court as provided under Section 17 of the above said Act, except as otherwise expressly provided under the said Act, as rightly determined by the First Appellate Court, it is found that civil Court has no jurisdiction to entertain the suit qua the infractions alleged by the plaintiffs as against the land acquisition proceedings aforesaid. In such view of the matter, when the civil Court's jurisdiction has been completely ousted except as otherwise expressly provided under the said Act and when the violations complained of by the plaintiffs are not saved by the said Act expressly, as rightly determined by the First Appellate Court, it is found that the civil Court has no jurisdiction to entertain the suit. In such view of the matter, no exception could be taken to the findings of the First Appellate Court that the civil Court jurisdiction is barred under Section 17 of the above said Act, particularly, for the alleged violations put forth by the plaintiffs qua the land acquisition proceedings.

13. It is further seen that challenging the land acquisition proceedings, the plaintiffs had already preferred the writ petition No.3421 of 1972 in the High Court and in the said writ petition also, it is found that the plaintiffs had sought to quash the proceedings of the land acquisition initiated by the Government in respect of the suit property, thereby, annulling the concern G.O.No.1176 of 1972, Social Welfare Department, dated 07.07.1972. However, the various contentions put forth by the plaintiffs in the above said writ petition were not countenanced by the High Court and accordingly, it was held that the contentions put forth by the plaintiffs are wholly without substance and the High Court came to the above said conclusion on a perusal of the records maintained by the Government produced before the High Court and on a perusal of the said records, it is seen that the High Court had held that the enquiry proceedings had been conducted by the concerned Land Acquisition Officer in the presence of the plaintiffs in the manner known to law. In such view of the matter, it is found that when already the various contentions put forth by the plaintiffs for the present lis had already been considered by the High Court as devoid of any substance on the perusal of the relevant records, as rightly put forth by the Government, it is found that present lis initiated by the plaintiffs is also barred by res-judicata. In such view of the matter, no exception could be taken to the findings of the First Appellate Court that the suit laid by the plaintiffs is also hit by res-judicata in the light of the dismissal of the W.P.No.3421/1972.

14. In the light of the above discussions, it is found that the civil suit laid by the plaintiffs is not at all maintainable as per law. The first appellate court was therefore right in non-suiting of the plaintiffs on the above said ground as also on the ground of res judicata and in such view of the matter, it is seen that there are no merits in this second appeal. In the light of above position, the substantial questions of law formulated for consideration in this second appeal are held against the plaintiffs and in favour of the respondents.

15. The plaintiffs' counsel, in support of his contentions, placed reliance upon the decisions reported in (1977) 4 Supreme Court Cases 590 (State of Gujarat and another Vs. Sankalchand Khodidas Patel (Dead), AIR 1969 SC 78 (Dhulabhai Etc., Vs. State of Madhya Pradesh and Another, AIR 1964 SC 1006 (State of Madhya Pradesh and Bhailal Bhai and 15 others, (1964) 3 SCR 686 (Valjibhai Muljibhai Soneji and another Vs. State of Bombay (Now Gujarat) and others. Similarly, the counsel for the respondents, in support of his contentions, relied upon the decisions reported in (1997) 9 Supreme Court Cases 544 (State of Punjab and others Vs. Sadhu Ram, (2012) 12 Supreme Court Cases 133 (V.Chandrasekaran and Another Vs. Administrative officer and others). The principles of law outlined in the above said decisions are taken into consideration and followed as applicable to the facts and circumstances of the case at hand.

16. In view of the above discussions, the second appeal fails and the same is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar (CS-VII)

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Sub Assistant Registrar

sms

To

1.The District Judge, Krishnagiri.

2. The District Munsif, Krishnagiri.

+1cc to Mr.V.RAGHAVACHARI, Advocate, S.R.No. 72811

+1cc to the Government Pleader, S.R.No. 73085

Judgment made in
S. A.No. 222 of 2001

SS (CO)

TR(04/04/2018)