

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 07.12.2017
Delivered on : 21.12.2017

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.12695 of 2006
& WPMP 14300 of 2006

V.Sathyannarayana Reddy ... Petitioner

versus

1. The Competent Authority &
Special District Revenue Officer (LA),
National Highways Schemes,
Kanchipuram & Thiruvallur Districts,
Kanchipuram.

2. Special Tahsildar (LA),
National Highways,
II Floor, Taluk Office, Poonamallee,
Chennai-600 056.

3. Arwin Investments & Foundations Ltd.,
rep. by its Managing Director Mrs. Padmaja Sasi,
AJ-97, 9th Main Road, Annanagar,
Chennai-600 040. ... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records on the file of the 1st respondent authority, pertaining to the award R.C.No.16/2005/A/NH/TVR dated 08.3.2006, quash the same, directing the 1st respondent, to pass appropriate award in the name of the petitioner herein or in alternative, as per mandatory provision of Sub Section 4 of Section 3H of National Highways Act, 1956, refer the dispute to the Principal Judge, Civil Court, (Principal District Judge at Chinglepet) of or original jurisdiction, within whose jurisdiction the property is situate as per Sub Section 4 of Section 3-H of National Highways Act, 1956.

For Petitioner : Mr.G.Rajan

For Respondents: Mr.S.Gunasekaran, AGP-R1&R2
Mr.M.R.Murali for R3

ORDER

The petitioner has approached this Court, seeking the following relief:

"To issue Writ of Certiorarified Mandamus, to call for the records on the file of the 1st respondent authority, pertaining to the award R.C.No.16/2005/A/NH/TVR dated 08.3.2006, quash the same, directing the 1st respondent, to pass appropriate award in the name of the petitioner herein or in alternative, as per mandatory provision of Sub Section 4 of Section 3H of National Highways Act, 1956, refer the dispute to the Principal Judge, Civil Court, (Principal District Judge at Chinglepet) of or original jurisdiction, within whose jurisdiction the property is situate as per Sub Section 4 of Section 3-H of National Highways Act, 1956.

2. The facts and circumstances necessitating to filing of the writ petition are stated as under:

2.1 The petitioner purchased a property in S.Nos.304/1A and 306/1B measuring about 35 cents situate at M.T.H.Road, Padi, Chennai-50 from one N.Krishnammal vide sale deed dated 21.12.1972 on the file of J.S.R.O., Chennai-North. After purchase of the property, the petitioner had applied for M.M.D.A.sanction for construction of a hotel. However, the proposal was changed subsequently and in the said property, a huge Kalyana mandapam cum commercial complex was put up on the basis of revised plan in the year 1998. The said Kalyana mandapam and shopping complex is known as Srinivasa Complex-cum-Srinivasa Kalayana mandapam and the same was inaugurated in February 2002. The entire property was owned by the petitioner and their family members and there was no rival claim whatsoever against the same.

2.2 While so, the first respondent had issued notice on 5.10.2005, seeking to acquire a portion of the land under Section 3-G of the National Highways Act, 1956 (in short, 'the Act'), measuring about 67 square meters lying in front of the said Kalyana mandapam adjoining M.T.H.Road, for widening the road etc. An enquiry was fixed on 24.10.2005 in order to verify the objections and ownership of the property in question. According to the petitioner, a similar notice was also issued to the 3rd respondent herein.

2.3 In response to the notice, the petitioner appeared before the second respondent authority and submitted all

materials to establish his ownership. He had also stated in the enquiry that the 3rd respondent had nothing to do with the property. According to the petitioner, none appeared on behalf of the 3rd respondent in the enquiry. In the meanwhile, the 3rd respondent who was claiming ownership on the basis of their purchase of the subject property from their original vendors, managed to approach the revenue authorities and obtained a transfer of patta in their name after getting cancelled the patta which stood in the name of the petitioner, without notice to the petitioner. On learning about the same, the petitioner had filed a writ petition in W.P.No.5101 of 1995 before this Court, assailing the transfer of patta in the name of the 3rd respondent. This Court, after hearing the parties, ultimately, quashed the action of the revenue officials cancelling the patta in favour of the 3rd respondent by order dated 29.2.1996. Thereafter, the 3rd respondent had preferred a writ appeal in W.A.No.387 of 1996 which was disposed of by a Division Bench of this Court, stating that the revenue authority cannot determine any mutation proceedings, when the title suit filed by the 3rd respondent was pending. The order passed by the learned Division Bench as read in para 2, is extracted below:

"2. It is well settled by catena of judgments of this Court that once title suits are pending before Civil Courts, the revenue authorities cannot determine any mutation proceedings to decide the title of the parties one way or the other. Consequently, the impugned order is modified to the extent that the revenue authorities will not take any further steps till the final disposal of the civil suit pending before the civil court and mutation proceedings would be decided in terms of the final orders of the civil Court. It is made clear that the civil Court will decide the question of title and possession independently irrespective of the mutation proceedings."

2.4 Earlier, the 3rd respondent's vendor one V.T.Narayana Pather filed a suit in O.S.No.695 of 1994 before the District Munsif Court, Poonamallee, which was subsequently transferred to Sub Court, Poonamallee and renumbered as O.S.No.33 of 2000, for permanent injunction against the petitioner for the same property. But the suit was dismissed for default on 12.7.2002 and thereafter, the same was not restored. The 3rd respondent having failed in his attempt to disturb the possession of the petitioner through his vendor, filed another suit in O.S.No.406 of 1996 on the file of the Sub Court, Poonamallee, which was later renumbered as O.S.No.725 of 2004 and transferred to the file of Principal District Judge, Tiruvallur, which was again transferred and renumbered as O.S.No.27 of 2006 on the file of the Addl.District and Sessions Judge, Poonamallee, against the

petitioner for declaration of his title and permanent injunction. The said suit has been heard in detail and finally, came to be dismissed on 29.4.2011. The Court which dealt with the suit, negatived all the contentions raised on behalf of the 3rd respondent and finally held that there was no proof that the 3rd respondent and others who are the plaintiffs in the suit, had any title to the suit property. The Court also held that the vendors of the plaintiff therein, the 3rd respondent herein, had no title whatsoever to the subject property and therefore, there was no valid transfer of title to the 3rd respondent. As against the dismissal of the above suit, no appeal has been preferred and hence, the judgment and decree passed in the suit in O.S.No.27 of 2006 have become final.

2.5 On the other hand, the petitioner herein, filed a suit in O.S.No.764 of 1994 on the file of the District Munsif Court, Poonamallee, which was transferred and renumbered as O.S.No.404 of 2001 on the file of the Sub Court, Poonamallee, seeking for permanent injunction against the 3rd respondent's vendors and others in respect of the very same subject property and the said suit was decreed as prayed for vide judgment and decree dated 2.12.2003.

2.6 While matters stood thus, the first respondent passed impugned award dated 8.3.2006 insofar as the subject property is concerned, assessing the compensation for acquisition for a sum of Rs.9,31,612/- which was payable to the 3rd respondent. The said award insofar as the petitioner's property is concerned, is put to challenge in the present writ petition.

3. Mr.G.Rajan, learned counsel appearing for the petitioner would submit that the award passed in favour of the 3rd respondent cannot be sustained both in law and on facts for more than one reason. The first respondent authority had not referred to the legitimate and valid objections made by the petitioner in his representation, raised during the course of enquiry conducted before the award came to be passed. No reference at all to the objections raised by the petitioner and consideration of the same in the award. Therefore, the award suffers from the vice of non-application of mind and the same is liable to be interfered with on that ground alone. He would further submit that in view of the aforesaid civil proceedings, the petitioner's title to the subject property had been confirmed and as against the 3rd respondent and therefore, passing the award in favour of the 3rd respondent is contrary to the findings of the Civil Courts and also contrary to the orders passed by the learned single Judge in W.P.No.5101 of 1995, dated 29.2.1996 which was also confirmed by the learned Division Bench of this Court in W.A.No.387 of 1996 dated 7.9.1998. He would also submit that after the culmination of all the proceedings in the

Civil Court, necessary mutation had been carried out by incorporating the petitioner's name in Town Survey Field Register dated 11.7.2011 as certified by the Deputy Tahsildar, Ambattur taluk under whose jurisdiction, the subject property was located. That being the case, the first respondent had completely overlooked all the crucial factors in favour of the petitioner and awarded the compensation to the 3rd respondent who has no title or ownership whatsoever to the subject property.

4. The learned counsel for the petitioner would also submit that the failure on the part of the first respondent in not referring the matter to the competent Court for deciding the ownership of the property under the provisions of the Act, has resulted in the negation of valuable and legitimate right of the petitioner for establishing his ownership before the competent Court and for claiming compensation. The first respondent, while granting the compensation to the 3rd respondent, has proceeded only on the sole basis that patta was in the name of the 3rd respondent, without taking note of the fact that the patta which was transferred in the name of the 3rd respondent was eventually quashed by the High Court on 29.2.1996. The order of the first respondent, is therefore, in violation of the ruling of the High Court in the above said writ petition in W.P.No.5101 of 1995. Therefore, he would implore this Court to set aside the order, as the same suffers from colourable exercise of power.

5. Upon notice, Mr.R.Gunasekaran, learned Addl.Government Pleader entered appearance for respondents 1 and 2 and Mr.M.R.Murali, learned counsel for respondent No.3.

6. Mr.M.R.Murali, learned counsel appearing for the 3rd respondent would submit that the judgment and decree of the Civil Court do not reflect the factual position and the same need to be critically examined before any orders to be passed in the present Writ Petition. The learned counsel desperately attempted to enlarge the scope of the litigation by canvassing title issues between the petitioner and himself.

7. As discussed above, the title issues had been engaging the attention of the Civil Courts in three suits referred above, and the same having ended in favour of the petitioner herein ultimately. Having failed in his attempts to secure some protection, the 3rd respondent has been making one more attempt to stifle the right of the petitioner to claim compensation in respect of the subject property. The first respondent passed order in favour of the 3rd respondent only on the basis that the patta was in his name. As rightly contended by the learned counsel for the petitioner that the basis for arriving at the conclusion by the first respondent was not valid and legal in view of the quashment of the patta by this Court in W.P.No.5101

of 1995 on 29.2.1996. The first respondent, therefore, miserably failed to address the inter se rival claims between the petitioner and the 3rd respondent in proper perspective, but mechanically chosen to pass orders in favour of the 3rd respondent as far as the subject property is concerned.

8. From all the submissions made by the learned counsels appearing for the parties, it has to be seen that the first respondent has completely failed in discharging his duties properly as the award passed by him insofar as the petitioner's property is concerned, suffers from vice of misapplication and non-application of mind. The award also does not reflect any enquiry had been conducted into the objections of the petitioner more so, on behalf of the 3rd respondent, no one had appeared in the enquiry and made any submissions. When the first respondent is empowered to deal with the rights of the property of the citizens, the said right cannot be dealt with so casually and mechanically without due application of mind and critical examination of the issue, particularly, right to the property has been recognized as a constitutional right under Article 300 (A) of the Constitution of India, such right has to be recognized and dealt with due application of mind. In the instant case, there appears no such application and therefore, this Court has no hesitation in allowing the writ petition.

9. In view of the above, the first respondent's award dated 8.3.2006 in R.C.No.16/2005/A/NH/TVR dated 08.3.2006 insofar as the petitioner's property is concerned, is set aside and the matter is remitted back to the first respondent to pass fresh orders after taking into all the proceedings before this Court and also before the civil Courts as narrated above and pass a detailed order within a period of four weeks from the date of receipt of a copy of this order. It is also made clear that the petitioner is entitled to seek for enhancement of compensation if he is so advised on the outcome of the fresh orders to be passed by the first respondent.

10. With the above direction, the Writ Petition stands allowed. No costs. Consequently, connected WPMP is closed.

Sd/-
Assistant Registrar (CS-)

//True Copy//

Sub Assistant Registrar

Suk

To

1. The Competent Authority &
Special District Revenue Officer (LA),
National Highways Schemes,
Kanchipuram & Thiruvallur Districts,
Kanchipuram.

2. Special Tahsildar (LA),
National Highways,
II Floor, Taluk Office, Poonamallee,
Chennai-600 056.

3. Arwin Investments & Foundations Ltd.,
the Managing Director Mrs. Padmaja Sasi,
AJ-97, 9th Main Road, Annanagar,
Chennai-600 040.

+1cc to Mr. G. RAJAN Advocate, S.R.No. 91812

+1cc to the Government Pleader, S.R.No. 91967

Pre-delivery order in
W.P.No.12695 of 2006

RK(CO)
TR(05/01/2018)



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