

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.11.2017

Delivered on : 11.12.2017

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A No.1022 of 2016 and

C.M.P.Nos.13321 and 14306 of 2016

The Tamilnadu Housing Board,
Rep. by its Executive Engineer and
Admn.Officer,
Coimbatore Housing Unit,
Tatabad, Sivanandha Colony,
Coimbatore 641 012.

...Appellant

Vs

1.R.Panneerselvam
2.R.Kulandaivelu
3.R.Marudhachalam

4.The State of Tamil Nadu
Rep. by its Secretary to Government of Tamil Nadu,
Housing and Urban Development Department
Fort St.George, Chennai - 600 009.

5.The Special Tahsildar (Land Acquisition),
Housing Scheme Unit No. I,
Coimbatore, Coimbatore District.

...
Respondents

Prayer:- Writ Appeal filed under clause 15 of the Letter Patent
against the order dated 12.06.2009 made in W.P.No.5210 of 2008.

WP.5210 OF 2000:

PRAYER: Petition Under Article 226 of the Constitution of India
for issuance of writ of Declartion for the relief as stated
therein.

For Appellant : Mr.V.Anandhamurthy
Standing Counsel

For Respondents: Mr.AL.Somayaji
Senior Counsel for
Mr.V.P.Sengottuvel for R1 to R3
Mrs.A.Srijayanthi,
Spl.Govt.Pleader for R4 and R5

J U D G M E N T

K.K. SASIDHARAN, J.

The writ petition initiated by the respondents 1 to 3 challenging the land acquisition was dismissed by the Writ Court by order dated 3 November, 2000. The order was upheld by the Division Bench on 2 July, 2001. The related Special Leave Petition filed by the respondents 1 to 3 in SLP (Civil) Nos.19434 to 19436 of 2001 was dismissed by the Hon'ble Supreme Court on 26 November, 2001. The land owners after culmination of the proceedings and taking possession of the land by the Land Acquisition Officer and handing over it to the Tamil Nadu Housing Board initiated second round of litigation on a ground which was available to them when the earlier writ petition was filed. The learned single Judge without reference to the earlier proceedings allowed the writ petition on the ground that there was no approval of the Scheme and as such, the acquisition proceedings is legally unsustainable. Before this Court, in this intra court appeal, the land owners have given up the grounds taken before the writ court and have come up with a new case on the basis of Section 24(2) of Act 30 of 2013. This case is covered by the order of the Hon'ble Supreme Court in Mahavir and Others vs. Union of India and another (SLP No.24781 of 2017 dated 8 September 2017), wherein, the Supreme Court has made it clear that Section 24 of Act 30 of 2013 does not invalidate courts judgments/orders in which right have been finally lost or due to inaction is barred and that the law does not permit examination of barred or totally fraudulent claims and that Section 24(2) cannot be invoked in such cases.

The Facts

2. The land owned by the respondents 1 to 3 in S.No.134/1A etc., situated at Saravanampatti Village, Coimbatore was acquired by the Government of Tamil Nadu on behalf of the Tamil Nadu Housing Board. The Notification under Section 4(1) of the Land Acquisition Act was issued on 26 February, 1991. It was followed by a Declaration under Section 6 of the Land Acquisition Act, issued on 16 March 1992.

3. The respondents 1 to 3 challenged the land acquisition

in W.P.No.4625 of 1994. The writ petition was dismissed by the learned single Judge by order dated 3 November, 2000. The order was unsuccessfully challenged before the Division Bench in W.A.No.1102 of 2001. The judgment dated 2 July 2001 dismissing the writ appeal was challenged in SLP (Civil) Nos.19434 to 19436 of 2001. The Special Leave Petition was dismissed on 26 November, 2001.

4. The respondents 1 to 3, seven years after the dismissal of the Special Leave Petition filed a fresh writ petition in W.P.No.5210 of 2008 challenging the very same acquisition on the ground that prior approval was not obtained by the competent authority and as such, the Award is bad in law. The land owners in the said writ petition prayed for a writ of Declaration that the entire land acquisition proceedings lapsed in view of the Section 11-A of the Land Acquisition Act.

5. The learned single Judge without adverting to the earlier proceedings quashed the land acquisition on the ground that prior approval was not taken.

Submissions

6. The learned Standing Counsel for the Tamil Nadu Housing Board by placing reliance on the earlier proceedings contended that the writ petition filed by the respondents 1 to 3 ought to have been dismissed on the ground of res judicata, delay and laches. According to the learned Standing Counsel, the Award was passed only after taking prior approval and as such, even the said ground was not available to the respondents 1 to 3. The learned Standing Counsel contended that the Award was passed on 18 March, 1994 and the earlier writ petition was dismissed only thereafter. Since Award was passed even before the dismissal of the writ petition, the subsequent writ petition is not legally maintainable.

7. The learned Senior Counsel for respondents 1 to 3 submitted that his argument is confined to Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Tamil Nadu) Amendment Act, 2013 (for short "Act 30 of 2013) and he is not pressing the relief claimed in the writ petition originally. The learned Senior Counsel contended that possession is still with the respondents 1 to 3. It was further contended that the appellant has not deposited the compensation amount before the Civil Court and it was made in revenue deposit. The learned Senior Counsel therefore submitted that the respondents 1 to 3 are entitled to the benefit of Section 24(2) of Act 30 of 2013.

Analysis

8. The respondents 1 to 3 earlier challenged the

notification under Section 4(1) and Declaration under Section 6 of the Land Acquisition Act in W.P.No.4625 of 1994. Even before filing the writ petition, the Land Acquisition Officer passed the Award on 18 March, 1994. The Award was not challenged in the writ petition.

9. The respondents 1 to 3 notwithstanding the Award No.1 of 1994 dated 18 March, 1994 in relation to the subject property challenged only the Notification under Section 4(1) and Declaration under Section 6 of the Land Acquisition Act. The writ petition was dismissed on 3 November, 2000. The appeal filed against the said order was dismissed by the Division Bench by judgment dated 2 July, 2001 in W.A.No.1102 of 2001. The Special Leave petition preferred against the judgment in the writ appeal was dismissed on 26 November, 2001.

10. The respondents 1 to 3 would be justified in challenging the Award at a later point of time in case, the Award was passed after the initiation of the earlier writ petition. The writ petition in W.P.No.4625 of 1994 was filed only after passing the Award. The writ petition was pending before the learned single Judge till 3 November, 2000. The respondents 1 to 3 have not taken any action to challenge the Award. Even when the appeal was pending before the Appellate Court, the Award was not challenged. The Award has therefore become final. The subsequent writ petition filed in W.P.No.5210 of 2008 is clearly not maintainable and the same is liable to be dismissed on the ground of constructive res judicata.

11. The grounds which the respondents 1 to 3 ought to have taken in the earlier litigation is deemed to have been taken and rejected. There is no question of initiating a fresh writ petition on the basis of a ground which was available even when the earlier proceedings were initiated. This aspect was not considered by the learned single Judge.

12. The Hon'ble Supreme Court in State of Rajasthan vs. D.R.Laxmi, 1996(6) SCC 445, held that even a void proceedings need not be set at naught if the party has not approached the Court within a reasonable time, as judicial review is not permissible at a belated stage.

"9. Recently, another Bench of this Court in Municipal Corpn. of Greater Bombay v. Industrial Development & Investment Co. (P) Ltd. [CA No. 286 of 1989, decided on 6-9-1996 (see infra)] re-examined the entire case law and had held that once the land was vested in the State, the Court was not justified in interfering with the notification published under appropriate provisions of the Act. Delay in challenging the

notification was fatal and writ petition entails with dismissal on grounds of laches. It is thus, well-settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loathe to quash the notifications. The High Court has, no doubt, discretionary powers under Article 226 of the Constitution to quash the notification under Section 4(1) and declaration under Section 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third party rights were created in the case, is hardly a ground for interference.

10. The order or action, if ultra vires the power, becomes void and it does not confer any right. But the action need not necessarily be set at naught in all events. Though the order may be void, if the party does not approach the Court within reasonable time, which is always a question of fact and have the order invalidated or acquiesced or waived, the discretion of the Court has to be exercised in a reasonable manner. When the discretion has been conferred on the Court, the Court may in appropriate case decline to grant the relief, even if it holds that the order was void. The net result is that extraordinary jurisdiction of the Court may not be exercised in such circumstances. It is seen that the acquisition has become final and not only possession had already been taken but reference was also sought for; the award of the Court under Section 26 enhancing the compensation was also accepted. The order of the appellate court had also become final. Under those circumstances, the acquisition proceedings having become final and the compensation determined also having become final, the High Court was highly unjustified in interfering with and in quashing the notification under Section 4(1) and declaration under Section 6."

13. The Supreme Court in *Municipal Corporation of Greater Bombay vs. Industrial Development Investment Co.(P) Ltd.*, 1996

(11) SCC 501, observed that when there is inordinate delay in filing the Writ Petition and when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the notification.

14. The Hon'ble Supreme Court in Swaran Lata vs. State of Haryana, 2010(4) SCC 532, while confirming the order passed by the High Court, dismissing the Writ Petition on the ground of delay and laches, observed that it cannot be presumed that the land owners could not be aware of the acquisition proceedings for the reason that a very huge chunk of land belonging to a large number of tenure holders had been notified for acquisition and therefore, it should have been the talk of the town. The Supreme Court said :-

11. In the instant case, it is not the case of the petitioners that they had not been aware of the acquisition proceedings as the only ground taken in the writ petition has been that substance of the notification under Section 4 and declaration under Section 6 of the 1894 Act had been published in the newspapers having no wide circulation. Even if the submission made by the petitioners is accepted, it cannot be presumed that they could not be aware of the acquisition proceedings for the reason that a very huge chunk of land belonging to a large number of tenure-holders had been notified for acquisition. Therefore, it should have been the talk of the town. Thus, it cannot be presumed that the petitioners could not have knowledge of the acquisition proceedings."

15. The Hon'ble Supreme Court in A.P.Industrial Infrastructure Corporation Limited v. Chinthamaneni Narasimha Rao & Ors. [2011 (10) Scale 460] considered the issue relating to delay in challenging the acquisition proceedings and observed that if the land owners had been really aggrieved, they ought to have challenged the proceedings immediately after declaration made under Section 6 of the Act. The Supreme Court referred to the earlier judgment in Swaika Properties (P) Limited and another v. State of Rajasthan and Others [(2008) 4 SCC 695], wherein, it was held that a writ petition challenging the notification for acquisition of land, if filed after possession had been taken is not maintainable and further observed thus:

"11. This Court has held in several judgments that if the land owners are aggrieved by the acquisition proceedings, they must challenge the same atleast before an award is made and the possession of the land in question is taken by the government authorities."

16. The Supreme Court in Chairman and Managing Director, Tamil Nadu Housing Board and another vs. S.Saraswathy and others, 2015(8) SCC 723, indicated that unless the declaration under Section 6 or the notification under Section 4 of the Act is not explicitly quashed in its entirety by Court, the benefits of the relief granted by the Court would be effective only qua the parties before it.

17. The Supreme Court in S.Saraswathy, cited supra, referred to the earlier judgment in Shyam Nandan Prasad vs. State of Bihar, 1993(4) SCC 255 and held that the Court has been consistently taken a view that quashing of acquisition proceedings at the instance of one or two land owners does not have the effect of quashing the entire land acquisition.

18. The Supreme Court in Paragraph 12 of the judgment in S.Saraswathy, indicated that the Court should not encourage litigants who are sitting on the fence. The Supreme Court said :-

"12. It has been repeatedly reiterated by this Court that those who have missed the boat in challenging the acquisition proceedings, who sat idle and have let the grass grow under their feet cannot, thereafter, be permitted to jump on the bandwagon of others who entered the portals of the Court at the appropriate time and thereafter obtained favourable orders. "

19. The Hon'ble Supreme Court in Jasveer Singh and another [(2017) 6 SCC 787] considered a similar case and held that even if there is an observation by the Apex Court earlier giving liberty to initiate proceedings under Act 30 of 2013, still no relief could be granted to the land owners in case there is delay and laches.

20. The Award passed on 18 March, 1994 was challenged only in 2008. This delay of 14 years was omitted to be taken note of by the learned single Judge. The writ petition initiated 14 years after passing the Award and that too after the dismissal of the earlier legal proceedings challenging the very same land acquisition ought to have been rejected on the ground of delay and laches.

21. The respondents 1 to 3 have taken up a contention that possession is still with them and that the amount is in revenue deposit. There is absolutely no merit in the said contention in view of the file produced by the Tamil Nadu Housing Board.

22. The acquired land was taken possession by the

Government and it was handed over to the Tamil Nadu Housing Board on 21 September, 2007. Since it was a vacant land, the Land Acquisition Officer followed the prescribed procedure for taking possession. The Land Acquisition Officer deposited the amount before the Civil Court. The Reference Court registered the proceedings under Section 30 of the Land Acquisition Act. Therefore, none of the two grounds raised by the respondents 1 to 3 would confer them the benefit of Section 24(2) of Act 30 of 2013.

23. Similar issue regarding the claim based on Section 24 (2) of the Act 30 of 2013 after the disposal of the earlier writ proceedings came up for consideration before the Hon'ble Supreme Court in Mahavir case (cited supra). The Supreme Court while negating the claim made by the land owners and upholding the judgment of the High Court made the following observation:-

19. The court is duty bound to prevent the abuse of the process of law in the cases which have been concluded several decades before, in our considered opinion, the provisions of Section 24(2) of the 2013 Act cannot be invoked in such cases of dead claims or stale claims. There are several numbers of cases coming to this court in which matters had been contested up to this court questioning the acquisition and the petitions have been dismissed by this court, and acquisition has attained finality, possession was taken, the award passed. Notice had been issued under Section 12(2) of the Act tendering the awarded amount but it has not been collected by the claimants/land owners deliberately or they had refused to collect it and are not ready and willing to accept it and, thereafter, it has been deposited in the name and account of the owners in the treasury which is also deposited as per the State Governments instructions issued time to time relating to how Government money is to be dealt with. The act of failure to deposit money under section 31 after possession is taken only imposes liability to pay higher interest under section 34. The acquisition would not lapse under the Act.

20. In our opinion, the cases in which there is deliberate action of the owners for not collecting the compensation and they do not want to receive it, section 24(2) of the 2013 Act does not come to their rescue as

provisions are to help those persons who are deprived of compensation but not for those who deliberately had not received it and litigated for decades for quashing of proceedings avoiding to receive compensation by willful act. The failure to deposit in court under section 31(1) in such cases would attract only interest as envisaged under section 34 of the Act and the provisions of section 24 cannot be so invoked in such cases.

21. In the instant case, the claim has been made not only belatedly, but neither the petitioners nor their previous three generations had ever approached any of the authorities in writing for claiming compensation. No representation had ever been filed with any authority, none has been annexed and there is no averment made in the petition that any such representation had ever been filed. The claim appears not only stale and dead but extremely clouded. This we are mentioning as additional reasons, as such claims not only suffer from delay and laches but courts are not supposed to entertain such claims. Besides such claims become doubtful, cannot be received for consideration being barred due to delay and laches.

22. The High Court has rightly observed that such claims cannot be permitted to be raised in the court, and cannot be adjudicated as they are barred. The High Court has rightly observed that such claims cannot be a subject matter of inquiry after the lapse of a reasonable period of time and beneficial provisions of Section 24 of the 2013 Act are not available to such incumbents. In our opinion, Section 24 cannot revive those claims that are dead and stale.

23. The High Court has observed that Raisina is a part of the Lutyens zone of Delhi. It is prime of New Delhi and Government offices etc. are located. The petitioners asked the High Court to infer and conclude that in the absence of some indication of the record being made available by them that their ancestors have not ever received any compensation. How the

petitioners came to know that their ancestors had not received compensation has not been disclosed in the petition. The High Court has rightly declined to entertain such claims. The protective umbrella of section 24 is not available to barred claims. If such claims are entertained under section 24, it would be very-very difficult to distinguish with the frivolous claim that may be made even after tampering the records etc. or due to non-availability of such record after so much lapse of time. Once right had been lost due to delay and laches or otherwise, it cannot be revived under provisions of section 24 of the Act of 2013. The intendment of Act 2013 is not to revive stale and dead claims and in the concluded case when rights have been finally lost. If there is delay and laches or claim is otherwise barred, it is not revived under section 24(2) of the 2013 Act. The provision does not operate to revive legally barred claims. The provision of Section 24 does not invalidate courts judgments/orders in which right have been finally lost or due to inaction is barred. Law does not permit examination of barred or totally fraudulent claims. The provisions of the law cannot be permitted to be defrauded or misused. Section 24(2) of the 2013 Act cannot be invoked in such cases. The High Court has rightly declined to entertain the writ petitions filed by the petitioners. It is not conceivable how the petitioners could file such a petition in a laconic manner relating to the prime locality at New Delhi that too for hundreds of acres with the delay of more than 100 years.

24. The facts of this case are identical to the case decided by the Supreme Court in Mahavir case (cited supra). Here also, the land acquisition proceedings have become final consequent to the dismissal of the Special Leave petition by the Supreme Court. The compensation amount was deposited in Civil Court. The Tamil Nadu Housing Board has taken possession long back. The land owners have now projected a false case to give life to a dead litigation by misusing Section 24(2) of Act 30 of 2013. We are therefore of the view that the respondents 1 to 3 are not entitled to the benefits of Section 24(2) of Act 30 of 2013. The order passed by the learned single Judge is factually

and legally unsustainable. We are therefore of the view that the appellant must succeed.

25. In the result, the order dated 12 June, 2009 is set aside. The writ petition in W.P.No.5210 of 2008 is dismissed.

26. In the up shot, we allow the intra court appeal. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-iii)

//True Copy//

Sub Assistant Registrar

svki
To

1.The Secretary to Government of Tamil Nadu,
The State of Tamil Nadu
Housing and Urban Development Department
Fort St.George, Chennai - 600 009.

2.The Special Tahsildar (Land Acquisition),
Housing Scheme Unit No. I,
Coimbatore, Coimbatore District.

+1cc to Mr.V.ANANDHAMURTHY, Advocate, S.R.No.
+2cc to Mr.VP.SENGOTTUVEL, Advocate, S.R.No. 87654

Pre-Delivery Judgment in
W.A No.1022 of 2016

GMR(CO)
TR(12/01/2018)

सत्यमेव जयते

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