

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2017

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THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
And
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.No.379 of 2016
And
C.M.P.No.5576 of 2016

K.Dharaniperumal Appellant/Petitioner
Vs.

1.The Secretary to Government,
Housing and Urban
Development Department,
Secretariat, Chennai - 600 009.

2.The Managing Director,
Tamil Nadu Housing Board,
Anna Salai, Nandanam,
Chennai - 600 035.

3.The Executive Engineer/
Administrative Officer,
Salem Housing Unit,
Salem - 8.

... Respondents

Prayer:

Writ appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 29.01.2016 in W.P.No.3307 of 2016. Petition filed under Article 226 of the constitution of India praying to issue a writ of Mandamus directing the respondents to reconvey the petitioners land situated in S.Nos.203/2 203/3 203/4 and 203/6 Narasingapuram Village Attur Taluk Salem District Since the petitioner is entitled to get back the said land as per U/s.24(2) of Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act 2013 (30 of 2013) since the entire acquisition proceedings become lapsed.

For Appellant : Mr.C.Prakasam

For Respondents: Mr.V.Anandhamurthy
Additional Government Pleader

J U D G M E N T

(Judgment of the Court was delivered by K.K.SASIDHARAN,J.)

This intra court appeal is directed against the order dated 29.01.2016 in W.P.No.3307 of 2016 dismissing the writ petition filed by the appellant for issuance of a Writ of Mandamus directing the respondents to re-convey his land taking into account the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (hereinafter referred as 'Act 30 of 2013').

2.The Government of Tamil Nadu acquired 3.74 acres of the land owned by the appellant in S.Nos.203/2, 203/3, 203/4 and 203/6 in Narasingapuram Village, Attur Taluk, Salem District, at the instance of the Tamil Nadu Housing Board. The Land Acquisition Officer passed the award determining the amount payable to the appellant. The land owned by the neighbouring land owners were also the subject matter of the very same acquisition. The Land Acquisition Officer re-determined the compensation payable to the appellant under Section 28 - A of the Land Acquisition Act pursuant to the award passed by the Sub Court, Attur.

3.The appellant thereafter challenged the action taken by the Tamil Nadu Housing Board to sell the individual housing plots before this Court in W.P.No.28969 of 2012 on the ground that approval was not obtained from the Statutory Authority. The writ petition was ultimately disposed of.

4.The appellant after the introduction of Act 30 of 2013 filed a fresh writ petition in W.P.No.3307 of 2016 for re-conveyance on the ground that possession was not taken from him and as such, he is entitled to the benefits conferred on land owners under Section 24(2) of Act 30 of 2013. The learned Single Judge dismissed the writ petition taking into account the earlier proceedings initiated by the appellant. Feeling aggrieved, the appellant is before this Court.

5.The learned counsel for the appellant submitted that the possession of land has not been taken by the Tamil Nadu Housing Board in the manner known to law and as such, the appellant was justified in filing the application for re-conveyance. According to the learned counsel, there was no opportunity to the appellant to challenge the proceedings earlier on the ground

of failure to take possession. It was further contended that it is for the Government to prove that possession was taken in the manner known to law. Since this aspect was not considered by the learned Single Judge, the learned counsel seeks an order setting aside the order passed by the writ Court.

6. We have also heard the learned Additional Government Pleader on behalf of the respondents.

7. The factual matrix indicates that the land owned by the appellant was acquired along with the neighbouring lands at Narasingapuram Village, Attur Taluk, Salem District, for a Housing Scheme floated by the Tamil Nadu Housing Board. The Tamil Nadu Housing Board after finalising the acquisition of the land prepared a layout and applications were called for allotment. The appellant immediately filed a writ petition in W.P.No.28969 of 2012 challenging the Notification calling for applications for allotment. The appellant himself made an application for allotment on 03.07.2012. The interim stay granted by the Court in W.P.No.7588 of 2016 restraining the respondents from proceeding with the allotment was subsequently vacated. The writ petition in W.P.No.7588 of 2016 was disposed of taking into account the plea made by the appellant that he intend to challenge the proceedings by invoking Section 24 (2) of Act 30 of 2013.

8. The appellant never challenged the land acquisition proceedings on the ground that possession has not been taken by the Tamil Nadu Housing Board. It was not his case earlier that neither the Land Acquisition Officer nor the Requisitioning body took possession of the land and that he is still in possession of the acquired land. The case of the appellant throughout was that the Tamil Nadu Housing Board has no right to allot the house-sites without obtaining planning permission from the Statutory Authority. In fact the appellant himself made an application for allotment. This fact clearly shows that the Requisitioning body took possession of the land and it was ordered for public sale.

9. It was only after the introduction of Act 30 of 2013, the appellant has come up with a new case that possession has not been taken and as such, he is entitled to the benefits of Section 24 (2) of the said Act. There is absolutely no merits in the said contention in view of the earlier proceedings and the dismissal of the writ petition in W.P.No.28969 of 2012. The learned Single Judge considered the background facts and rightly dismissed the writ petition. We do not find any ground made out by the appellant to take a different view in the matter.

10.In the upshot, we dismiss the intra court appeal. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

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+ 1 cc to Mr. C. Prakasam, Advocate SR.77727

+ 1 cc to Mr. V. Anandhamurthy, Advocate Sr.77832

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GJ(CO)
EU(04/12/2017)

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