

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :: 06.11.2017

Delivered on : 23.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.Nos.776 to 778 and 806 of 2016

1.S.Kalidass

2.K.Vijayalakshmi ... Appellant/Petitioner
in W.A.No.776/2016

Rethnavalli Nurichan ... Appellant/Petitioner
in W.A.No.777/2016

S.Madalai Mary ... Appellant/Petitioner
in W.A.No.778/2016

N.Rajamani ... Appellant/Petitioner
in W.A.No.806/2016

versus

1. The Collector,
Villianur District
Puducherry

2.The Sub Collector (Revenue) Cum
Land Acquisition Officer,
Villianur District
Puducherry

3.The Executive Engineer,
National Highways Department,
Public Works Department,
Puducherry

4.The Government of Puducherry
Puducherry

... Respondents

Writ Appeals filed against the order passed by this Court dated 28.1.2016 passed in W.P.No.36586 of 2015, W.P.No.36731 of 2015, W.P.No.38427 of 2015 and order dated 1.6.2016 in W.P.No.17411/2016.

Prayer in WP.No.36586,36731 & 38427/2015:

Petitions filed under Article 226 of the Constitution of India praying to issue writ of certiorari to call for the entire record of the 2nd respondent in No. 616/DCRS/LA/U/2004/B1 in Award No. 5/2009 dated 16.11.2009 and QUASH the same since the entire land acquisition proceedings of the petitioners land has lapsed in view of not adhering to the conditions stipulated in Sec.11(A) and Sec.17(3A) of the Land Acquisition Act 1894

For appellant : Mrs.Radha Gopalan

For Respondents : Mrs.V.Usha,
Additional Government Pleader (Puducherry)

COMMON JUDGMENT

K.K.SASIDHARAN, J.

The appellants, long after the conclusion of the land acquisition proceedings initiated by the Union Territory of Puducherry to acquire their lands, filed Writ Petitions, taking inspiration from the writ petition filed by another land owner in W.P.No.7070 of 2010. The learned Single Judge, taking into account the delay and laches, dismissed the Writ Petitions, even while granting relief to the land owners who approached the Court immediately after the initiation of land acquisition. Feeling aggrieved by the order dated 28 January 2016 and 1 June 2016, the unsuccessful writ petitioners are before this Court.

The facts :-

2. The Government of Union Territory of Puducherry initiated land acquisition proceedings to form a link road South of Puducherry-Villupuram Railway line, with a view to ease traffic congestion. The total length of the bye-pass road is 4.45 k.m.s, with the width of 22 meters. The proposed bye pass road starts from Natesan Nagar at the junction of NH 45A and joins the Villupuram arm of National Highway NH 45A. The total extent of land acquired for formation of bypass road is 10.41.03 Hectares, which includes wet land to an extent of 08.64.18 hectares in the four Revenue Villages viz., Odiampet, Reediarpalayam, Kurumbapet and Olandai.

3. The Government of Union Territory of Puducherry invoked the urgency provision under Section 17 of the Land Acquisition Act. Since there was no valid objection from the land owners, the Land Acquisition Officer proceeded with the land acquisition. While so, a Writ Petition was filed before this Court in W.P.No.7070 of 2010 on the ground that award was not passed within two years from the date of publication of the declaration. The Writ Petition was entertained by this Court and a limited interim order was granted. Subsequently the interim order was modified at the instance of the Government. The writ court modified the interim order in and by which, stay was made

operative only in relation to nine land owners. The writ court made it clear that there was no interim order in respect of the remaining 53 land owners and it would be open to the Government to go ahead with the project. Thereafter, the appellants filed Writ Petitions challenging the land acquisition. The learned Single Judge while partly allowing the Writ Petition in W.P.No.7070 of 2010, dismissed the Writ Petitions filed by the appellants on the ground of delay and laches.

Rival submissions :-

4. The learned counsel for the appellants contended that the benefit of quashing the land acquisition proceedings must enure to the benefits of the appellants also as they are also similarly placed. According to the learned counsel, the appellants are prepared to part with their land, provided reasonable compensation is given to them, taking into account the compensation to be fixed in the case of petitioners in W.P.No.7070 of 2010.

5. The learned Additional Government Pleader while justifying the order passed by the learned Single Judge, contended that the land acquisition has become final insofar as the appellants are concerned. According to the learned Additional Government Pleader, the Land Acquisition Officer deposited the compensation amount payable to the appellants before the Civil Court and thereafter, took possession. The appellants were sitting on the fence and only after five years, filed Writ Petitions, which was rightly dismissed by the learned Single Judge.

Discussion:-

6. The Government of Union Territory of Puducherry issued a notification in G.O.Ms.No.86, Revenue and Disaster Management dated 29 September 2006 acquiring larger extent of land for formation of bypass road connecting National Highway 45A. Since acquisition was for the purpose of avoiding congestion and to ease traffic, the Government invoked the urgency provision under Section 17 of the Land Acquisition Act.

7. The notification was in relation to the land owned by 62 land owners. The initial challenge to the land acquisition was made only by 9 land owners, by filing a Writ Petition in W.P.No.7070 of 2010. The remaining 53 land owners have not challenged the land acquisition at the earliest point of time. The High Court, at the instance of the petitioners in W.A.No.7070 of 2010, granted limited interim stay of the acquisition proceedings. The stay was modified subsequently by making it clear that there would not be any interim order in respect of the remaining 53 land owners and it is open to the respondents to go ahead with the project. It was only after modifying the interim order, the appellants have filed the Writ Petitions challenging the land acquisition proceedings.

8. The appellants are now placing reliance on the order in W.P.No.7070 of 2010 in support of their contention that they are also entitled to compensation which would be paid to the other land owners.

9. The petitioners in W.P.No.7070 of 2010 filed the Writ Petition at the earliest point of time and obtained an interim order. It is not as if the appellants were not aware of the land acquisition or the initiation of proceedings by the neighbouring land owners. The appellants were sitting on the fence and silently watching the proceedings and only during the fog end, they have filed the Writ Petitions.

10. We have perused the award file produced by the learned Additional Government Pleader in its entirety. It is found that the Land Acquisition Officer has deposited the compensation amount payable to the appellants before the Civil Court. The Land Acquisition Officer thereafter took possession of the land. The subsequent act of setting aside the proceedings in relation to 9 land owners would not be a ground to hold that the entire land acquisition proceedings in respect of other land owners would also be lapsed. The proceedings which have attained finality cannot be reopened on the ground that the notification was quashed in respect of other land owners. The appellants ought to have filed Writ Petitions at the earliest point of time.

11. 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.

12. 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.

13. 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.

14. 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."

15. 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.

16. 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.

17. 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.

18. 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.

19. The land acquisition was initiated for a larger public purpose. The file produced before us shows the immediate necessity to form the bypass road. There is heavy traffic congestion on the Puducherry-Villupuram Sector and the same made the Government to invoke the urgency provision for acquisition. The notification was issued on 29 September 2006. The award was passed on 16 November 2009. The Writ Petition was filed only in 2015 and that too after modifying the interim order and permitting the Land Acquisition Officer to proceed with the scheme. We are therefore of the view that the learned Single Judge was correct in dismissing the Writ Petitions.

20. We make it clear that the other land owners who have challenged the land acquisition in question belatedly and more particularly after modifying the interim order in W.P.No.7070 of 2010 are not entitled to the benefits of the order in the said Writ Petition, quashing the land acquisition proceedings.

21. In the upshot, we dismiss the intra court appeals. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Collector,
Villianur District
Puducherry

2.The Sub Collector (Revenue) Cum
Land Acquisition Officer,
Villianur District
Puducherry

3.The Executive Engineer,
National Highways Department,
Public Works Department,
Puducherry

4.The Government of Puducherry,
Puducherry.

+1cc to Government Pleader, Puducherry SR.No.83462

+4cc to Mr.S.Radha Gopalan, Advocate Sr.No.83147,83148,
83146, 83145

NMI (CO)
sm:14.12.2017

W.A.Nos.776 to 778 & 806/2016