

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.10.2017
Delivered on : 25.10.2017

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A No.9 of 2016
and
CMP No.140 of 2016

The Member Secretary
Chennai Metropolitan Development Authority
No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 008. ... Appellant/2nd Respondent

Vs

- 1.S.Jayakumar
- 2.The Secretary to Government of Tamil Nadu,
Housing and Urban Development Department,
Fort St.George, Chennai - 600 009.
- 3.The Chief Executive Officer,
Tamil Nadu Housing Board,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 008.
- 4.The Special Tahsildar (Land Acquisition)
M.M.Nagar Schemes, Maraimalai Nagar,
Kancheepuram District. ... Respondents/Petitioner and
Respondents 1, 3 & 4

Prayer:- Writ Appeal filed under clause 15 of the Letter Patent against the order dated 23.12.2014 made in W.P.No.16159 of 2011.

W.P.No.16159 of 2011 : Petition presented to this Court to issue a Writ of Certiorarified Mandamus, Calling for the records pertaining to the Letter No.NT1/9596/2008 dated 23.11.2010 issued by the Chief Executive Officer, Chennai Metropolitan Development Authority, the 3rd respondent herein, quash the same and further directing the respondents particularly the Chief Executive Officer, Chennai Metropolitan Development Authority the 3rd respondent herein to re-convey the vacant land, measuring an extend of 0.92 cents, comprised in Survey No.233/2 in Sengundram Village, Chengalpattu Taluk, Kancheepuram District to the petitioner and to execute the re-conveyance Deed in favour of the petitioner.

For Appellant : Mr.K.Rajasrinivas
For R1 : Mr.G.Vinothkumar
For R2 to R4 : Mr.A.Zakir Hussain
Government Advocate

J U D G M E N T

K.K. SASIDHARAN, J.

Introductory

The direction given by the writ court to re-convey the land to a subsequent purchaser is under challenge at the instance of the requisitioning body on the ground that the subsequent purchaser has no right either to challenge the land acquisition or to claim reconveyance and that too after utilising the land for the purpose for which it was acquired.

Brief Facts

2. The Government of Tamilnadu at the instance of Chennai Metropolitan Development Authority (hereinafter referred to as "CMDA") acquired vast extent of land, which includes 92 cents in Survey No.233/2, Sengundram Village, Chengalpattu Taluk, Kancheepuram District, owned by Tmt.Muniyammal under Patta No.103. The statutory Award was passed on 11 September, 1986. Since the land owner failed to appear before the Land Acquisition Officer, the compensation amount was deposited under civil court deposit. The possession of the land was handed over to CMDA.

3. The first respondent, long after the culmination of acquisition proceedings purchased the acquired land in Survey No.233/2 as per Sale Deed dated 5 May 2008 and it was registered as Document No.3928 of 2008. The first respondent filed a writ petition in W.P.No.12046 of 2009 directing the Government of Tamilnadu to consider his representation for reconveyance of the land. The writ petition was disposed of with a direction to consider the representation on merits. The Government considered his representation and rejected the request for reconveyance. The order was challenged before the writ court in W.P.No.16159 of 2011.

4. The learned single Judge allowed the writ petition on the ground that the land was not utilised for the purpose for which it was acquired. The learned single Judge observed that the land was notified for establishing a satellite town, but later, the proposal was changed for development of institutional zone. The learned single Judge directed the appellant to reconvey the land to the first respondent. Feeling aggrieved, the requisitioning body has come up with this intra court appeal.

5. We have heard the learned counsel for the parties.

Discussion

6. The factual matrix and the documents available on record clearly indicates that the entire 92 cents of land originally owned by Tmt.Muniyammal in S.No.233/2 of Sengundram Village was acquired along with larger extent of property by the Government of Tamilnadu for establishing the Satellite Town in Maraimalai Nagar New Town in the district of Kancheepuram by CMDA. The Land Acquisition Officer after conducting statutory enquiry passed the Award bearing No. 5/86 dated 11 September, 1986. The land was taken over by the Land Acquisition Officer and it was handed over to the appellant on 15 April, 1987. Since the land owner failed to appear before the Land Acquisition Officer for receiving compensation, the amount was deposited before the civil court under Section 31 (2) of the Act. The land acquisition has become final by passing the Award on 11 September, 1986.

7. The first respondent admitted that he purchased the land only on 5 May, 2008 and it was only after taking possession by the appellant. The first respondent, immediately thereafter initiated proceedings for re-conveyance of the land. It is therefore clear that it was only with the knowledge that the land was acquired by the Government, the first respondent had purchased the land.

Transfer a Nullity

8. The basic question is as to whether the first respondent was entitled to make a claim for re-conveyance after purchasing the land with the knowledge of land acquisition, and more particularly after taking possession and using major portion of the acquired land for the purpose for which it was acquired.

The Law

9. The Hon'ble Supreme Court in Meera Sahni V. Lieutenant Governor of Delhi and others[(2008)9 SCC 177] held that transfer of land in respect of which land acquisition proceedings have been initiated is void and it would not bind the Government.

10. The Hon'ble Supreme Court in U.P.Jal Nigam v. Kalra Properties (P) Ltd., [(1996) 3 SCC 124] observed that the property purchased after notification would not give any title to the purchaser.

11. The Supreme Court in Sneh Prabha v. State of Uttar Pradesh [(1996) 7 SCC 426] made it clear that any alienation of the land after the publication of notification under Section 4(1) would not bind the Government. The observation reads thus:

"5.It is settled law that any person who purchases land after publication of the notification

under Section 4(1), does so at his/her own peril. The object of publication of the notification under Section 4(1) is notice to everyone that the land is needed or is likely to be needed for public purpose and the acquisition proceedings point out an impediment to anyone to encumber the land acquired thereunder. It authorises the designated officer to enter upon the land to do preliminaries, etc. Therefore, any alienation of the land after the publication of the notification under Section 4(1) does not bind the Government or the beneficiary under the acquisition. On taking possession of the land, all rights, title and interests in land stand vested in the State, under Section 16 of the Act, free from all encumbrances and thereby absolute title in the land is acquired thereunder".

12. The Supreme Court in Meera Sahni (cited supra) made it clear that the law is settled that the subsequent purchaser is not entitled to challenge the subsequent proceedings and that he is entitled only for compensation.

13. The Hon'ble Supreme Court in Jaipur Development Authority v. Mahesh Sharma and another [2010 (10) Scale 84] observed that sub-awardees and subsequent purchasers do not possess right against the State Government, as the purchases were subsequent to passing of the Award.

The question regarding re-conveyance

14. Section 48-B was inserted by State amendment in the Land Acquisition Act, for re-conveyance of the property. The provision reads thus:-

"48-B Transfer of land to original owner in certain cases- Where the Government are satisfied that the land vested in the Government under this Act is not required for the purpose for which it was acquired, or for any other public purpose, the Government may transfer such land to the original owner who is willing to repay the amount paid to him under this Act for the acquisition of such land inclusive of the amount referred to in sub-section (1-A) and (2) of Section 23, if any, paid under this Act."

15. The question of re-conveyance in terms of Section 48-B would arise only in case the Government is of the view that the land is not required for the purpose for which it was acquired or for any other public purpose. Before taking a decision for reconveyance, the Government must be convinced that the land is not required not only for the purpose for which it was acquired, but for any other public purpose also.

16. As observed by the Hon'ble Supreme Court in Tamil Nadu Housing Board v. Keeravani Ammal and others [(2007) 9 SCC 255], Section 48-B introduced into the Land Acquisition Act in the State of Tamilnadu is an exception to the general rule that the land on acquisition become the property of the State and it could be used by the Government for any public purpose or in case, it is not needed for such public purpose, the same can also be sold by public auction. The provision like 48-B must therefore requires a strict construction, meaning thereby, satisfaction of the Government with regard to the non-utilisation of the land must be arrived at on the basis of relevant materials.

17. There is no right to compel the Government or the requisitioning body to reconvey the land either to the erstwhile land owner or to the subsequent purchaser. The issue is no longer res integra in view of the string of decisions on the point.

18. The Supreme Court in Keeravani Ammal (cited supra) considered the scope and ambit of Section 48-B of the Land Acquisition Act. The Supreme Court made it very clear that there is no vested right to the land owner to claim reconveyance. The Supreme Court, in the said decision, by quoting an earlier judgment in State of Kerala v. M.Bhaskaran Pillai [(1997) 5 SCC 432] indicated that in case the land is not required for the purpose for which it was acquired, it should be sold through public auction and the provision like Section 48-B is an exception to the said rule and as such, it should be construed very strictly and the Court must insist upon strict compliance with its terms.

19. The Hon'ble Supreme Court in Tamil Nadu Housing Board v. L.Chandrasekaran (dead) by Lrs. and others [(2010) 2 SCC 786] once again considered the right claimed by the erstwhile land owners under Section 48-B for reconveyance and made the legal position very clear that there is no question of reconveyance by the Government, in case, the land had already been transferred to the requisitioning body and the latter had utilised substantial portion thereof for execution of the Scheme and for other public purpose. The following observation would make the position clear:-

"28. It need no emphasis that in exercise of power under Section 48-B of the Act, the Government can release the acquired land only till the same continues to vest in it and that too if it is satisfied that the acquired land is not needed for the purpose for which it was acquired or for any other public purpose. To put it differently, if the acquired land has already been transferred to other agency, the Government cannot exercise power under Section 48-B of the Act and reconvey the same to the original owner. In any case, the Government

cannot be compelled to reconvey the land to the original owner if the same can be utilised for any public purpose other than the one for which it was acquired."

20. The question before the Supreme Court in Rajasthan State Industrial Development and Investment Corporation v. Subhash Sindhi Cooperative Housing Society, Jaipur and others [(2013) 5 SCC 427], was as to whether transferee of land after issuance of Section 4(1) notification is entitled to claim release of land from acquiring authorities on the basis of similar release of land. The Hon'ble Supreme Court, by placing reliance on the earlier judgments indicated that the sale subsequent to Section 4(1) notification is void and there would be no need for an order for quashing as it would be automatically null and void without more ado. The question regarding discrimination was answered by the Supreme Court by observing that if the land of other similarly situated persons have been released, the Court must be satisfied that it is similarly situated in all respects, and has an independent right to get the land released. It was further observed that Article 14 of the Constitution does not envisage negative equality and it cannot be used to perpetuate any illegality. The Supreme Court set aside the order passed by the High Court directing reconveyance and held that there was no right to claim release on the ground that others were given the benefit of such release.

21. The Government in its letter dated 12 November, 2009 made it clear that the request for reconveyance was not feasible for compliance. The records produced by the appellant clearly indicates that possession of the land was taken by the Land Acquisition Officer and it was handed over to the CMDA on 15 April 1987. The land is now in the possession of the appellant.

22. The Government has taken a conscious decision not to release the land to the first respondent. The Government, after acquisition, transferred the land to the appellant. The land is part of larger extent acquired for developing a satellite town. The file produced before us clearly indicates that the appellant had used substantial extent of the land for a larger public purpose and it is in the process of utilising the remaining land for development.

23. The subject case is covered by the judgment of the Hon'ble Supreme Court in L.Chandrasekaran, as substantial part of the land has already been utilised by the appellant.

24. The Government has got only a limited role in a matter like this. The Government must be convinced that the land is not used for the purpose for which it was acquired and handed over to the requisitioning body and therefore, a situation has arisen to pass an order under Section 16-B of

the Land Acquisition (Tamilnadu Amendment) Act, 1996. The Government passed the impugned order taking into account the utilisation of the land by the appellant in larger public interest. The first respondent, who is the subsequent purchaser has no right to compel the Government or CMDA to part with the land acquired from his predecessor-in-interest.

25. The first respondent is not entitled to the benefit of the proviso to Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Tamil Nadu) Amendment Act, 2013, as mandatory conditions of the said proviso are not satisfied in the subject case.

26. We are therefore of the view that the learned single Judge was not correct in allowing the writ petition filed by the first respondents 1 and 2. The impugned order dated 23 December, 2014 is set aside. The writ petition in W.P.No.16159 of 2011 is dismissed.

27. In the up shot, we allow the intra court appeal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

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

2.The Chief Executive Officer,
Tamil Nadu Housing Board,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 008.

3.The Special Tahsildar (Land Acquisition)
M.M.Nagar Schemes,
Maraimalai Nagar,
Kancheepuram District.

+1cc to Mr.K.Raja Shrinivas, Advocate, S.R.No.75403

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