

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.12.2017

CORAM:

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN

and

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

W.A.No.945 of 2016

and

W.M.P.No.12211 of 2016

Prema

....Appellant

Vs

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

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

3.The Land Acquisition Officer/
Special Tahsildhar (Land Acquisition)
Housing Scheme,
Cuddalore, Cuddalore District.

4.The Executive Engineer,
Villupuram Housing Unit,
Tamilnadu Housing Board
Power House Road,
Villupuram.

...Respondents

Writ Appeal has been filed under clause 15 of Letters Patent against the order of this Court dated 21.03.2016 made in W.P.No.25584 of 2015.

PRAYER IN W.P.No.25584 of 2015.

Petition Under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari, to call for the records relating to the impugned Award passed by the 3rd respondent dated 30-06-1995 made in Award No. 12 of 1995, in so far as the petitioner herein is concerned in respect of the property comprised in Survey No. 46/1, situated at Salamedu

Village, Villupuram to and Extent of 2,400 Sq. ft. within the limits of Koliyanur Panchayat Union, to quash the same as lapsed in view of section 24 (2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

For Petitioners : Mr.C.Prabakaran
For Respondents : Mr.V.Anandhamurthy
Additional Government Pleader

JUDGEMENT

(Judgment of the Court was delivered by P.VELMURUGAN, J.)

This writ appeal has been filed challenging the order of this Court dated 21.03.2016, made in W.P.No.25584 of 2015.

2.The case of the appellant is that she has purchased the property in Survey No.446/1 at Salamedu Village, Villupuram Town to an extent of 2400 sq.ft from one Ahsiya Begum under a sale deed dated 24.02.1989 and the possession was also taken. The said land was acquired along with other lands for development of Housing Board. Section 4(1) notification was issued on 03.03.1993 and the appellant was not aware of the same. The 3rd respondent has passed the award under Section 11 of the old Act quantifying the compensation for the land owners including the appellant on 30.06.1995, but no notice was served on the appellant. But the possession of the land was continued to be with the appellant. While so, the 4th respondent has caused disturbance of the appellant and the appellant filed a suit in O.S.No.186 of 2013, before the Principal District Munsif, Villupuram, seeking for a relief of injunction not to interfere with the peaceful possession and enjoyment of the property by the appellant. The appellant has paid the electricity charges for the electricity connection in the said land. When the suit was pending, the 4th respondent had filed an application in I.A.No.990 of 2013 in O.S.No.186 of 2017 before the Principal District Munsif, Villupuram seeking rejection of the plaint under Order VII Rule 11 of CPC. The said application was allowed and the suit was rejected. Even though, the subject matter of the land was acquired and award was passed, still possession is with the appellant. Since possession has not been taken, the acquisition is lapsed in view of Section 24(2) of the New Act (Central Act 30 of 2013). Hence, the appellant has filed a writ petition before this Court in W.P.No.25584 of 2015. After hearing both sides, the learned single Judge has dismissed the writ petition. Aggrieved against the same, the appellant has preferred this Writ Appeal.

3.Heard the learned counsel appearing on both sides.

4.The learned counsel for the appellant would submit that the appellant is the absolute owner of the property to an extent of 2400 sq.ft in Survey No.446/1 at Salamedu Village, Villupuram Town, who purchased the property under a registered sale deed dated 24.02.1989 and was in continuous possession and enjoyment of the property and no acquisition proceedings was initiated against her and no notice was served on her and the possession was with her. Therefore, as per Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013) (herein after referred to as 'Act'), the entire proceedings are lapsed and the impugned award is liable to be no longer in force.

5.The learned counsel for the respondents/department would submit that the land acquisition proceedings was initiated as early as on 03.03.1993 and 4(1) notification was also issued on 03.03.1993 and a 5(a) notice to attend the enquiry was also issued. Meanwhile, the appellant filed a suit in O.S.No.186 of 2013 before the Principal District Munsif Court, Villupuram and got ex-parte injunction and subsequently, the respondents appeared before the Civil Court and also filed an application for rejection of plaint. After considering the rival submissions on both sides, the Civil Court allowed the I.A.No.990 of 2013 in O.S.No.186 of 2017 and rejected the plaint. The possession was taken already and the award amount has also been deposited in the bank. Therefore, as the new Act was not applicable and since the possession has already been taken and the award amount was also deposited, the petitioner's prayer on the ground of new Act would not stand.

6.Considering the rival submissions made by the counsel on either side and on perusal of the records submitted by the Additional Government Pleader, the lands have been full utilized and residential plots were developed in the Salamedu Village Development Housing Scheme as Phase-I to an extent of 20.45.72 hectares including the land of the petitioner. The land acquisition proceedings was being initiated and completed between the year 1996-97 and acquired lands were converted as residential plots by the Housing Board during the year 1997. The total extent of land, which are acquired were developed into 638 residential plots and layouts were approved. The appellant's land in the said layout was allotted to one Smt.Sutha Selvakumar on 31.10.2007 and the said plot was handed over to the allottee on 23.06.2008 itself. The above said allottee has also paid a cost of Rs.2,06,400/- for the land and a sale deed was also executed in her favour. The above said facts shows that the appellant is not in possession of the land after 31.10.2007. A patta was also granted in the name of Tamil Nadu Housing Board

on 20.03.1997. Therefore, after 1997, the above said lands were encroached by the appellant and filed a suit. The first contention of the appellant that she is still remaining the possession of the land is not acceptable and the same is rejected for the reasons stated above. The second contention raised by the appellant that notice was not served on her in the acquisition proceedings. She came to know about the proceedings only after she filed the suit against the Housing Board. However, the appellant has not challenged the land acquisition proceedings, even though the Patta was transferred in the name of Housing Board and the Housing Board took possession, transferred the land to residential plots and allotted to various persons and particularly, the land as claimed by the appellant was allotted to one Smt. Sudha Selvakumar and she has also paid the cost and a sale deed was also executed in her favour. Therefore, at a belated stage, no relief can be granted. It is relevant to extract few lines in the case of Chairman and Managing Director, Tamil Nadu Housing Board and another Vs. S. Saraswathy and others, 2015(8)SCC 723, held by the Hon'ble Supreme Court, which reads as follows:

"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."

7. Since possession was taken long back even in the year 1997 itself. Housing Board also transferred the land to residential plots and allotted to various persons particularly, the appellant's land was allotted to one Sudha Selvakumar on 31.10.2017 itself, and the plot was handed over to her on 23.06.2008. Under the said circumstances, Section 24(2) of the Central Act 30 of 2013 will not apply to the present case on hand.

8. Therefore, we do not find any reason to interfere with the order passed by the Single Judge. Accordingly, the Writ Appeal is disposed of with a liberty to the appellant to approach the Civil Court for any other legal remedy in accordance with law. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

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To

- 1.The Secretary to Government,
Government of Tamil Nadu,
Housing and Urban Development Department,
Fort St.George, Chennai-600 009.
- 2.The Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai-600 035.
- 3.The Land Acquisition Officer/
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Housing Scheme,
Cuddalore, Cuddalore District.
- 4.The Executive Engineer,
Villupuram Housing Unit,
Tamilnadu Housing Board
Power House Road,
Villupuram.

+1cc to the Government Pleader, S.R.No.89053
+1cc to Mr.C.PRABAKARAN, Advocate, S.R.No. 88571
+1cc to Mr.V.ANANDAMURTHY, Advocate, S.R.No. 88352

W.A.No.945 of 2016
and
W.M.P.No.12211 of 2016

NRK(CO)
TR(22/01/2018)

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