

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2017

CORAM

THE HONOURABLE MR.JUSTICE M. SATHYANARAYANAN
AND
THE HONOURABLE MR.JUSTICE SATRUGHANA PUJAHARI

W.P.No.29023/2016 & WMP.Nos.35573 & 35574/2017

Tmt.P.K.Suguna Kumari ... Petitioner

Vs.

- 1.The Government of Tamil Nadu,
Rep by its commissioner & Secretary,
Housing & Urban Development Department,
St.George Fort, Chennai - 600 009.
2. The Chennai Metropolitan Development Authority,
Rep. by its Member Secretary,
No.1, Gandhi Irwin Road, Egmore,
Chennai- 600 008.
3. Chennai Metrorail Limited,
Rep. By its Managing Director,
Administrative Building, CMRL Depot,
Poonamallee High Road, Koyambedu,
Chennai - 600 107.
4. The Corporation of Chennai,
Rep. by its Commissioner,
Rippon Building, Chennai.
5. The District Collector,
Thiruvallur District,
Thiruvallur.
6. The Commissioner,
Villivakkam Panchayat Union,
Villivakkam at Ambattur. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, directing the 2nd respondent herein to issue the necessary planning permit for the petitioner's plot bearing No.35 V.S.P.Nagar in S.No.45 part of

an extent of 1 ground and 400 Sq.ft. in Nerkundram Village, Saidapet Taluk formerly Chengai Anna District.

For Petitioner : Mr.M.Ramalingam
For R-1 and R-5 : Mrs.M.E.Rani Selvam,
Additional Government Pleader
For R-2 : Mr.C.Johnson
For R-3 : Mr.Jeyesh 'B' Dolia
For R-4 and R-6 : Mr.A.Nagarajan

O R D E R

(Order of the Court was made by M. SATHYANARAYANAN, J.)

By consent, the writ petition is taken up for final disposal.

2. Mrs.R.E.Rani Selvam, learned Additional Government Pleader appears for the 1st respondent, Mr.C.Johnson, learned counsel appears for the 2nd respondent and Mr.Jayesh B Dolia, learned counsel appears for the 3rd respondent and Mr.A.N.Thambidurai, learned Special Government Pleader appears for the respondents 4 and 6.

3. The petitioner would state that she had purchased the plot No.35, VSP Nagar from one M.Vengatapathy, through a registered Sale Deed dated 14.02.1992 bearing document No.492 of 1992 on the file of Sub-Registrar Office, Virugambakkam and ever since from the date of purchase, she claims to be in possession and enjoyment of the property. The petitioner would further aver that apart from the above landed property purchased by her which forms part of the larger extent in Survey No.45, originally belongs to one Mr.V.Perumal Naidu and Ayyavoo Naidu who had purchased same from Krishnasamy under a registered Sale Deed bearing document No.2313 of 1945 dated 27.04.1945 registered on the file of Sub-Registrar Office, North and traced the title of the said property in Paragraph No.2 of the affidavit filed in support of this writ petition.

4. The petitioner would further aver that in respect of the lands comprised in above said Survey No.45, the land acquisition proceedings were initiated against the original owner namely Mr.V.Perumal Naidu and Mr.V.P.Santhanakrishnan, S/o.V.Perumal Naidu had filed WP.No.3751 of 1984 to quash the impugned Award No.3/83 dated 28.03.1983 on the file of the Special Deputy Collector, Land Acquisition, Tamil Nadu Housing Board Scheme, Shopping Centre, Ashok Nagar, Chennai 600 083 and three others and a Division Bench of this Court vide order dated 29.01.1988, has allowed the writ petition in the light of the order dated 08.01.1988 in WP.No.10351 of 1982 etc., batch (M.N.Venkatesan and others Vs.State of Tamil Nadu).

5. The petitioner would further aver that in the light of the fact the land occupied by the petitioner forms part of Survey No.45 in respect of which the land acquisition proceeding has been quashed as per the above order, the purpose for which acquisition made, is no longer in subsistence and therefore, approached the Corporation officials for sanction / planning permit to put up superstructure and it was placed before the 2nd respondent who rejected the planning permit on the ground that the draft 4(1) notification was sent to the Government for the acquisition of the petitioner's lands for Koyambedu Wholesale Market Complex Committee Project for approval. The other land owners also faced similar problem and they along with the petitioner had filed WP No.1634 to 1642 of 2004, wherein they also undertook that in the event of Government declaring any acquisition proposal at a future point of time, they would not resist the move and they are willing to receive the fair and reasonable compensation as per the guidelines and based on which, this Court vide order dated 17.04.2004 had quashed the impugned orders and directed the 2nd respondent to grant planning permission, if all legal requirements are satisfactory.

6. It is a specific case of the petitioner that however, the Tamil Nadu Housing Board had filed Writ appeal with a delay of 560 days against the said order and the said condone delay application has been dismissed by this Court, thereby, the order dated 17.04.2004 has reached finality.

7. The grievance expressed by the petitioner is that despite the quashing of the land acquisition proceedings, when she approached the 6th respondent for granting planning permission, the 6th respondent, vide order dated 16.06.2016 has rejected on the very same ground that the land has been required for Koyambedu Vegetable Market committee project.

8. Mr.Ramalingam, the learned counsel appearing for the petitioner would submit that in the light of the order dated 29.01.2008 made in WP No.3751 of 1984 coupled with the order dated 17.04.2004 in WP.16342 of 2004 there cannot be any impediment on the part of the 6th respondent to accord the planning permission to put up superstructure and prays for appropriate orders.

9. Mr.Johnson, the learned counsel appearing for the 2nd respondent has drawn the attention of this Court to the Counter affidavit and would submit that CMDA had allotted 30 acres as per GO MS.No.62, P&D and S&I Department, dated 24.06.2009 to CMRL for formation of Depot and other projects and to provide "A" road was recommended and accordingly, fresh 4(1)

notification for land acquisition in certain survey numbers including Survey No.45 (part) was sent to the Government, who vide letter No.25180/UD-3(1)/2012/1 dated 27.12.2012 had requested CMDA to furnish the source of funding for the purpose of land acquisition, with regard to the tentative land cost for land acquisition proceedings and it was also submitted to the Housing and Urban Development Department, Government of Tamil Nadu vide GO Ms.No.288 dated 29.11.2013 had accorded Administrative sanction for land acquisition at an approximate cost of Rs.34 Crores for extension of A road and link road proposal and also for Survey No.24/1 part of Nerkundram Village to relieve traffic congestion in wholesale Market complex and as such, the request sought for by the petitioner for granting No Objection Certificate to put up superstructure on the land purchased by her which forms part of the land in Survey No.45 is not feasible and prays for dismissal of this writ petition.

10. This Court carefully considered the rival submission and also perused the materials placed before it.

11. It is not in dispute that the land acquisition proceedings initiated in respect of the land in Survey No.45 came be quashed by this Court, in two orders dated 08.01.1988 in WP No.10351 of 1982 and WP No.3751 of 1984 filed by V.Santhanakrishnan S/o, Perumal Naidu and the said orders have reached the finality. The writ petition in WP.No.1640 of 2004 along with connected matters filed by others for issuance of writ of mandamus were also disposed of vide common order dated 17.04.2004 in and by which, the 2nd respondent namely the CMDA was directed to grant planning permission as applied for, if all legal requirements are satisfied. The Tamil Nadu Housing Board made a challenge to the said order by filing WA.No.358 to 360 of 2008 and it was also dismissed by a common judgment dated 13.03.2008 and the 4th respondent / CMDA was directed to implement the order within eight weeks that day.

12. The only point urged by the learned standing counsel appearing for CMDA is that since the Government had accorded final sanction in GO Ms.No.288 dated 29.11.2013, the land owned by the petitioner is also required for extension of A road and link road.

13. It is also pointed out at this juncture that Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013 (Central Act 30 of 2013) had received the assent of the President on 26.09.2013 and was published in Gazette of India on 27.09.2013.

14. As per Section 24(1) of the Central Act 30 of 2013, notwithstanding anything contained in this Act, in any

case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894) (a) where no award under said section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply or (b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed. The proceedings were initiated under the old Act and admittedly, financial sanction itself was granted by the Government of Tamil Nadu after the notification of the present Act dated 27.09.2013 and in the light of the earlier legal proceedings as pointed out by this Court in paragraph cited supra coupled with Section 24 (1) of the Central Act, 2013, the submission made by the learned standing counsel appearing for Chennai Metropolitan Development Corporation that they are going to acquire the land of the petitioner for also providing for extension of A road and Link Road, cannot be countenanced. It is pertinent to pointed out at this juncture, the Division Bench of this Court Order in W.P.Nos.358 to 360 of 2008 by the judgment dated 13.03.2008 has directed the CMDA to implement the order within in a period of eight weeks from that date ; but the fact remains it is yet to be implemented.

15. In the result, the writ petition stands disposed of accordingly and the 2nd respondent as well as the Corporation of Chennai are directed to accord No Objection Certificate, with regard to the request for planning permission submitted by the petitioner, if the papers are otherwise in order and such an exercise is to be carried out within a period of four weeks from the date of receipt of a copy of this order and necessary action taken in this regard, shall also be communicated to the petitioner. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Government of Tamil Nadu,
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6. The Commissioner,
Villivakkam Panchayat Union,
Villivakkam at Ambattur.

+2cc to Mr.M.RAMALINGAM Advocate, S.R.No.88288
+1cc to Mr.C.JOHNSON Advocate, S.R.No. 88356
+1cc to the Government Pleader, S.R.No. 89030

WP.No.29023/2016

TR(21/12/2017)

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