

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:21.03.2017

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THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.No.28005 of 2012
and
M.P.Nos.1 and 2 of 2012

G.Ramalingam

.. Petitioner

/versus/

- 1.The State of Tamil Nadu,
Rep.by the Commissioner & Secretary to Government,
Housing and Urban Development Department,
Fort St.George, Chennai 600 009.
- 2.The Special Tahsildar (LA),
Tamil Nadu Housing Board,
Nandanam, Chennai 600 035.
- 3.The Tamil Nadu Housing Board,
Rep.by its Chief Revenue Officer,
Nandanam, Chennai 600 035.
- 4.The Tahsildar,
Ambattur Taluk,
Ambattur, Thiruvallur District. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the 3rd respondent Letter No.Ne.A.3(1)/43525/08, dated 27.04.2007 and quash the same and consequently, direct the 4th respondent to issue patta on the petitioner's application dated 26.06.2007, without insisting 'No Objection Certificate' from the 3rd respondent.

For Petitioner :Mr.V.Sakthivel

For Respondents:Mr.A.Zakir Hussain, GA
for R1,2,3 &4

O R D E R

The prayer in the writ petition is for issuance of a Writ of Certiorarified Mandamus, calling for records relating to the 3rd respondent in his Letter No.Ne.A.3(1)/43525/08, dated 27.04.2007 and quash the same and consequently, direct the 4th respondent to issue patta based on the petitioner's application dated 26.06.2007, without insisting 'No Objection Certificate' from the 3rd respondent.

2. The case of the petitioner is that the petitioner has purchased a land comprised in S.No.39 of Porur Village measuring to an extent of 0.9 cents from the daughters of one S.Chokkalinga Naicker, by way of sale deed, dated 01.10.1990 registered as Doc.No.3039/1990, on the file of the Sub Registrar Office, Alandur and thereafter, the said land had been in possession and enjoyment of the petitioner. In the year 2007, when the petitioner applied for grant of patta to the fourth respondent, the fourth respondent, in turn, directed the petitioner to get 'No Objection Certificate' from the third respondent i.e. Tamil Nadu Housing Board. When the petitioner approached the third respondent for getting 'No Objection Certificate', his request was turned out by the third respondent by passing the impugned order, dated 27.04.2007. In the said impugned order, the third respondent has rejected the claim of the petitioner to get 'No Objection Certificate' on the ground that the said land was already acquired and an award has also been given to the owner, therefore, No Objection Certificate sought for by the petitioner cannot be granted. Challenging the said order, the petitioner has approached this Court with the present writ petition for the aforesaid prayer.

3. Mr.V.Sakthivel, learned counsel appearing for the petitioner would submit that as against the land acquisition proceedings, the writ petition in W.P.No.3991 of 1986 etc. batch was filed by the original owner and the same were allowed on 08.10.1991. Subsequently, the third respondent-Housing Board preferred writ appeals in W.A.Nos.8 to 16 and 18 to 21 of 1994 etc., batch and the same were allowed on 16.11.1996. Therefore, the land acquisition proceedings, in so far as the petitioner's vendor is concerned, has reached finality. However, in view of the stand now taken by the third respondent through his counter affidavit, the learned counsel appearing for the petitioner submits that the award amount has not been given either to the petitioner or the erstwhile owner nor the possession has been taken by the 3rd respondent. Therefore, the learned

counsel appearing for the petitioner would submit that in alternative, this writ petition can be disposed of with a liberty to the petitioner to workout his remedy before the appropriate forum in the manner known to law, in view of the new Land Acquisition Act 2013 namely, The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

4. In this regard, the learned counsel appearing for the petitioner would further submit that the averments contained in paras 4 and 5 of the counter affidavit would disclose that there is no definite stand on the part of the third respondent to state that the award amount has been paid to the owner of the land and also there is no definite proof to show that the acquired land has been taken possession by the third respondent. In this regard, the learned counsel appearing for the petitioner would rely upon the following averments at paras 4 and 5 of the counter affidavit filed by the third respondent, which reads as follows:-

"4.....The possession of the lands in S.No.39/1 for an extent of 0.46 Acres is covered by structures by way of encroachments. Action is being taken by the Land Acquisition officer, Tamil Nadu Housing Board Schemes to evict the encroachments under Section 47 of the Land Acquisition Act.

5.....The entire compensation amount is ordered to be paid to Tmt.Yamuna Ammal, w/o Thiru.Chokkalinga Naicker."

5. Per contra, the learned Government Advocate appearing for the respondents would submit that in fact, the acquisition was over as early as in the year 1986 and the award was passed on 11.04.1986 vide, award No.2/86 and the land which is in question had been acquired and the land vest with the third respondent herein and therefore, issuance of No Objection Certificate to the petitioner, who claim to be a subsequent purchaser in the year 1990, would not arise at all. Therefore, the third respondent has rightly rejected the claim of the petitioner.

6. In this regard, the learned Government Advocate appearing for the respondents relied upon para 7 of the counter affidavit of the 3rd respondent which reads thus:

"7. With regard to the averments made in para 5, it is submitted that the petitioner has applied for patta to the 4th respondent and subsequently the

4th respondent orally instructed the petitioner to obtain "No Objection Certificate" from the 3rd respondent requesting to issue "No Objection Certificate" in respect of the land in S.No.39 Part of Porur Village to an extent of 9 cents. The Tamil Nadu Housing Board/3rd respondent vide its letter No.L.A.3(1)/43525/08 dated 27.04.2010 after careful consideration rejecting his request for 'No Objection Certificate' for the reasons stated that the lands have already been acquired and compensation also paid to the land owner. The petitioner is a subsequent purchaser since the land purchased in the year of 1990 after the award was passed in Award No.2/86 dated 11.04.1986. The petitioner's contention is against the truth."

7. By relying upon the said averments made by the third respondent, the learned Government Advocate would submit that the compensation amount has already been paid to the original owner of the property and the property has been vested with the third respondent. The possession has already been taken long back and therefore, on that ground no relief can be claimed by the petitioner. Therefore, the writ petition is liable to be dismissed.

8. This Court has considered the said rival submissions made on either side. The present issue raised in the writ petition is only a challenge to the order of rejection refusing to grant "No Objection Certificate" by the third respondent. For such rejection, the third respondent has given plausible reason that the land has been acquired in the year 1986 and the award was also passed on 11.04.1986 and by virtue of that, the land has been vested with the third respondent. Moreover, challenging the land acquisition proceedings even though originally the writ petition was filed by the erstwhile owner and he had succeeded, the same was subsequently challenged by filing intra court appeal as claimed by the parties herein before this Court. The appeal was allowed and by virtue of that, such land acquisition proceeding reached finality. In view of these factors, the denial of "No Objection Certificate" to the petitioner by the third respondent is fully justifiable. Accordingly, this Court does not inclined to interfere with the said impugned order.

9. However, in so far as the claim made by the petitioner that the third respondent has not paid the award money either to the owner i.e. the writ petitioner herein or to the erstwhile owner and the land has not been taken possession by the third respondent, it is for the petitioner to prove the same before the appropriate forum within the meaning of new Land Acquisition Act 2013 i.e. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, if he is advised to do so.

10. In view of the above said factors, this writ petition is dismissed with a liberty to the petitioner to work out his remedy by agitating the issue in the line indicated above, if the petitioner is advised to do so. The observation made in this writ petition is only in the context of refusal of No Objection Certificate by the third respondent through the impugned order, which is challenged under the writ petition. Therefore, such observation shall not stand in the way with regard to the claim to be made by the petitioner by initiating appropriate proceedings as indicated above. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

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To

- 1.The Commissioner & Secretary to Government,
The State of Tamil Nadu,
Housing and Urban Development Department,
Fort St.George, Chennai 600 009.
- 2.The Special Tahsildar (LA),
Tamil Nadu Housing Board,
Nandanam, Chennai 600 035.
- 3.The Chief Revenue Officer,
The Tamil Nadu Housing Board,
Nandanam, Chennai 600 035.

4.The Tahsildar, Ambattur Taluk,
Ambattur, Thiruvallur District.

+1cc to Government Pleader sr.17943

+1cc to Mr.K.Sakthivel,Advocate sr.17686

+1cc to Mr.B.Viveka vanan,Advocate sr.17523

W.P.No.28005 of 2012

kk(co)
ss(24/4/2017)



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