

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2017

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.37473 & 37474 of 2003

1. Ms.T.V.Manimekalai
 2. N.Jamberi
 3. Ms.Yasodha
- ...Petitioners in both WPs

Vs.

1. State of Tamil Nadu,
Rep.by its Secretary to Govt.,
Backward Class & Most Backward
Classes Welfare Department,
Fort St. George,
Chennai-600 009.
 2. The District Collector,
Dharmapuri District at
Dharmapuri-636 705
 3. The Special Tahsildhar,
Adi-Dravidar Welfare,
Dharmapuri-636 701.
- ...Respondents in both WPs

Prayer in W.P.No.37473 of 2003: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent in Section 6 Declaration dated 01.07.1996 issued under the Land Acquisition Act in G.O.(3D) of 47 Backward Classes and Most backward Classes Welfare Department dated 01-07-1996 and quash the same in respect of 0.08.0 Hecters in S.No.400/1 Virupakshipuram Village, Dharmapuri Taluk and consequently forbear the respondents herein from in any way interfering with the peaceful possession and enjoyment of the properties of the petitioners in Survey No. 400/1 comprised in Plot Nos.10 to 14 of an extent of 20 Cents in Survey No.400/1 Virupakshipuram Village, Dharmapuri Taluk & District.

Prayer in W.P.No.37474 of 2003: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent in Award dated 28-01-1998 in Proceedings No.6/B.Na/97-98 Na.Ka.1499/94 Aa and quash the same in respect of 0.08.0 Hectres in S.No.400/1 Virupakshipuram Village,

Dharmapuri Taluk and consequently forbear the respondents herein from in any way interfering with the peaceful possession and enjoyment of the properties of the petitioners in Survey No.400/1 comprised in Plot Nos.10 to 14 of an extent of 20 Cents in Survey No.400/1 Virupakshipuram Village, Dharmapuri Taluk & District.

For Petitioners : M/s.V.R.Anna Gandhi for
M/s.Sarvabhauman Associates

For Respondents : Mr.Akhil Akbar Ali, Govt. Advocate

ORDER

Challenging the land acquisition proceedings and the award dated 23.01.1998, the present Writ petitions have been filed.

2. The case of the petitioners is that the third petitioner has purchased the land by sale deed dated 23.06.1989 from one Palaniammal and it was approved layout in favour of Mr.Yashodha (third petitioner). There is another sale deed dated 26.06.1989 executed in favour of the second petitioner by Palaniammal for approved layout in Plot No.13 and another on 01.09.1989 in favour of the first petitioner, namely Manimekalai. The lands in question are residential properties and house had been constructed and the petitioners are residing there. Under the guise of acquisition, the respondents appear to have issued notice under Section 4 of the Land Acquisition Act and thereafter, Section 6 declaration had also been issued and the lands in question were acquired. Admittedly, the Notification under Section 4(1) was issued only in 1995. Thereafter, a notice for enquiry is said to have been issued and, after hearing the original land owners, a date was fixed for the enquiry and the acquisition proceedings have taken place and the entire lands in question have been taken by the Government. Thereafter, a reference under Section 18 of the said Act was also made by the Special Tahsildar to the Subordinate Judge Dharmapuri.

3. According to the impugned award, the notice is said to have been served on the petitioners, which is incorrect. As none of the notices had been served on the petitioners and that when the tenants of the petitioners have been sought to be vacated, the petitioners came to know about the proceedings initiated by the Government and then the Writ petitions have been filed by the petitioners.

4. The third respondent has filed a counter affidavit stating that the lands have been acquired in S.No.400/1, and objections have been called for. According to the respondents, nearly after 6 years, the present petitioners have come forward

with these Writ Petitions challenging the award, more particularly, after the original owners appeared and received the compensation and a reference has also been made under Section 18 for enhancement of the compensation. As the entire issue attained finality and that the original owners have appeared and collected the compensation and that notice dated 03.08.1995 has been given to the land owners fixing the date of enquiry on 23.08.1995, on which date, the enquiry was also conducted and that one of the property was in the name of the first petitioner, namely, Ms.T.V.Manimekalai as per the revenue records, and the purpose of acquiring the land is for providing pathway to the backward classes and hence, the petitioners cannot shed crocodile tears that no notice had been issued to the petitioners and the entire proceedings are vitiated on technical grounds.

5. Heard both the parties and perused the materials available on record.

6. Admittedly, from the facts narrated supra, it is seen that the acquisition proceedings have been initiated only in 1995, on which date, the land(s) belonging to the petitioners, not only in respect of the sale deed, but also the patta standing in favour of the petitioners, were acquired. Merely because the petitioners have asked the erstwhile owner(s) to appear for the notice and who have collected compensation also under protest, cannot be a ground for taking the land(s) belonging to the petitioners, when the petitioners became owners as early as in 1995 itself. The person who has collected the compensation under protest, appears to have cheated the Government and availed the monitory benefits, and for that, the petitioners cannot be found fault with. The award clearly says the notice had been served on the petitioners, but there is no evidence to that effect. Even going by the counter affidavit, it is clear that the notice had been served only on the erstwhile owner(s) and not the petitioners who have purchased the properties in 1989. As there is perversity in the award, the acceptance of compensation by the erstwhile owner under protest, cannot be a valid ground to uphold the land acquisition proceedings and the award needs to be interfered with.

7. For the reasons mentioned above, the Writ Petitions are allowed and the impugned award is set aside. The acquisition proceedings are declared as nullity insofar as the petitioners are concerned and respondents are directed to re-convey the land (s) to the petitioners within one month from the date of receipt of a copy of this order. No costs.

8. It is to be observed that if the house(s) constructed on the land(s) in question, is/are not in accordance with the plan, it is open for the authorities concerned to initiate action

asking the petitioners to rectify the construction in the building as per the plan within a time frame, and insipte of direction to rectify, if the petitioners have not corrected according to the plan, the authorities are directed to demolish the same on the ground that there is violation of the planning permission.

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

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To

1. The Secretary, State of Tamil Nadu,
Backward Class & Most Backward
Classes Welfare Department,
Fort St. George,
Chennai-600 009.
2. The District Collector,
Dharmapuri District at
Dharmmapuri-636 705
3. The Special Tahsildhar,
Adi-Dravidar Welfare,
Dharmapuri-636 701.

+2 Ccs to Ms.V.R. Annagandhi, Advocate sr 52325,52326.

W.P.No.37473 & 37474 of 2003

GJII (CO)
sp (07/09/2017)

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