

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2017

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.27597 of 2003

1.K.Kannan (Deceased)

2. **Vasanth**

3. **Santhi**

4. **Sakthivel**

5. **Jayalakshmi**

6. **Rajalakshmi**

7. **Dhanalakshmi**

8. **Manjula**

...Petitioners

(Petitioner's 2 to 8 are substituted as
LRS of deceased Mr.K. Kannan
as per order dated 20.04.2017
in W.M.P.No.11015/2016 in
W.P.No.27597 of 2003.

vs.

1. The State of Tamil Nadu,
rep. by its Secretary,
Revenue Department,
Fort St. George,
Chennai 600 009.

2. The District Collector,
Thiruvannamalai District,
Thiruvannamalai.

3. The Special Tahsildar,
Land Acquisition,
Thiruvannamalai.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of certiorari, calling for the records of the 2nd respondent in No.M.1/26355/97(4), dated 27.05.2003 and quash the same insofar as it relates to the land of the petitioner in Survey Nos.99/6 and 100/6 of an extent of 1.50 acres situated in Venkikal Village, Thiruvannamalai, Thiruvannamalai District.

For Petitioner : Mr.Sankar Ramasamy
For Respondents : Mr.Akhil Akbar Ali,
Government Advocate

O R D E R

The petitioner has come up with this Writ Petition seeking to quash the proceedings of the 2nd respondent in No.M.1/26355/97(4), dated 27.05.2003, insofar as it relates to his land in Survey Nos.99/6 and 100/6 of an extent of 1.50 acres situated in Venkikal Village, Thiruvannamalai, Thiruvannamalai District.

2. According to the petitioner, he is a farmer, cultivating paddy, ragi, vegetables, groundnuts and other crops in the land owned by him in Survey Nos.99/6 and 100/6 of an extent of 1.50 acres situated in Venkikal Village, Thiruvannamalai. It is his case that the respondents took steps to acquire his land for the purpose of construction of a building for the Office of the District Collector, by invoking Section 17 of the Land Acquisition Act. Objecting to the same, the petitioner made a detailed representation dated 17.07.1998 to the respondents. Since his representation was not fruitful, the petitioner filed W.P.No.8585 of 2000 before this Court seeking to quash the 4(1) Notification of the 1st respondent in G.O.Ms.No.454, Revenue, dated 03.06.1998 and Section 6 Declaration dated 13.07.1998 and this Court granted an order of interim stay on 24.05.2000.

3. Pursuant thereto, the petitioner sent a detailed representation dated 19.05.2003 to all the respondents herein along with a copy of the order passed in W.P.No.8585 of 2000, but, the same was rejected by the 2nd respondent on 27.05.2003, on the ground that the petitioner's land is used as a pathway to reach all other lands. Hence, challenging the same, the petitioner is before this Court.

4. Denying the averments of the petitioner, the 2nd respondent/District Collector has filed counter affidavit stating that the acquisition of the petitioner's land is not arbitrary and that all proceedings have been strictly followed under the Land Acquisition Act without any deviation. According to the 2nd respondent, based on the direction of the Government vide Letter No.40741/RA.I(2)/99-4, dated 07.09.2000, an Award has been passed by the Thiruvannamalai Revenue Divisional Officer in A1/17/97, dated 08.09.2000 including the land bearing S.No.99/6, for which, this Court granted interim stay in W.M.P.No.12666 of 2000 in W.P.No.8585 of 2000, vide order dated

06.03.2002 and dismissed the main Writ Petition on 17.04.2003 with a direction to pass orders on the petitioner's representation dated 17.07.1998. Thus, according to the 2nd respondent, the order of this Court has been complied with vide Collector's proceedings No.M1/26355/97-(4), dated 27.05.2003.

5. Learned counsel for the petitioner contended that the 2nd respondent failed to see that Survey No.99/6 is already excluded from the land acquisition proceedings and he simply neglected the grievance of the petitioner without any valid reasons. He further contended that in the light of Section 24 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the entire proceedings of acquisition is redundant and that the respondents may be directed to proceed afresh, if they want to do so by paying appropriate compensation to the petitioner in terms of the new enactment.

6. On the other hand, learned Government Advocate appearing for the respondents submitted that the land acquisition proceedings in the case on hand was initiated in 1998 and a decision was taken on 24.03.2000 and not as stated by the petitioner that a decision was taken only in 2003 after a period of five years from the date of initiation of land acquisition proceedings. According to the learned Government Advocate, land acquisition proceedings was over and possession of the land in question was taken and in view of the interim order obtained by the petitioner on 24.05.2000, the property in S.No.99/6 was not taken.

7. It is further contended by the learned Government Advocate that as the petitioner did not accept the compensation, the entire compensation amount has been remitted in the Sub Court, Thiruvannamalai. According to him, continuance of possession of the property by the petitioner pursuant to the interim order of this Court will not give any right to him to contend that the entire acquisition proceedings itself is illegal.

8. Heard the learned counsel on either side and perused the material documents available on record.

9. It is not in dispute that the petitioner is the owner of the property in S.Nos.99/6 and 100/6 to the extent of 1.50 acres of land and that there was a Notification under Section 4 (1) of the Act regarding acquisition of the said land and subsequently, a notice under Section 6 of the Act was issued, which was published in the Government Gazette, dated 13.07.1998. The petitioner has also contended before this Court in W.P.No.8585 of 2000, that the physical possession of the

property with regard to S.No.100/6 was taken and that he has made a representation for re-conveying the same and that the property in S.No.99/6 has been excluded from the land acquisition proceedings.

10. For the sake of convenience, paragraphs 4 to 6 of the order dated 17.04.2003 passed in W.P.No.8585 of 2000, are extracted below:

"4. This factual possession has been refuted by the respondents and the Deputy Secretary to the Government filed counter affidavit in which it is clearly stated that the possession has been taken by the Tahsildar on 29.03.2000. S.No.99/6 has been totally excluded from the land acquisition proceedings. Hence, the petitioner's prayer so far as S.No.99/6 is concerned has become redundant.

5. So far as the other area namely, S.No.100/6 is concerned, as submitted by the Deputy Secretary to Government, the possession has already been taken and award has also been made and the entire compensation amount has been remitted into Sub-Court, Tiruvannamalai. In view of the clear averment made by the Deputy Secretary, I am not able to accept the argument of the learned counsel that possession has not been taken by the respondent and the petitioner is well in possession. If taking over the possession as contemplated under the provisions of the Land Acquisition has been done, then the petitioner cannot be physically in possession. The possession of the petitioner even after taking over the land cannot by itself prove that the respondents have not taken over the land under the provisions of the Act. Hence, I am of the view that the petitioner has not made out any valid ground to quash Section 4(1) notification. Hence, the writ petition is dismissed.

6. Learned counsel for the petitioner submitted that notwithstanding the technicalities as to taking over possession, the facts remains is that the petitioner is in physical possession of the property and the property has not been put in use by the respondents. Hence, the petitioner made a request before the second respondent on 17.07.1998 to exclude that portion of the property of the petitioner in S.No.100/6, and therefore the second respondent may be directed

to consider the representation of the petitioner with reference to the stand taken by him as to his possession and also taking into consideration the plea made by him that the land of the petitioner in S.No.100/6 has not been put in use for the purpose of Master Plan Complex. There cannot be any impediment for granting such a relief directing the second respondent to pass appropriate orders taking into consideration of the above mentioned averment. Hence, the second respondent is directed to pass orders on the representation of the petitioner dated 17.07.1998 one way or other, within a period of six weeks from the date of receipt of copy of this order. ..."

11. A reading of the above order makes it clear that there was acquisition of land only with regard to S.No.100/6 and not with regard to S.No.99/6. In the said Writ Petition, the learned Single Judge has not observed that S.No.99/6 could not be possessed by the Government pursuant to the interim order of this Court. It is not the contention of the respondents as observed by the learned Single Judge that S.No.99/6 has been excluded from the land acquisition proceedings. The averment of the petitioner is very clear that there was acquisition proceedings with regard to S.Nos.99/6 and 100/6. Only in view of the interim order passed by this Court, the respondents were prevented from acquiring the land in S.No.99/6 and not otherwise. But for the interim order, the petitioner's land in S.No.99/6 would have been acquired.

Merely because, this Court has granted an interim order, the petitioner cannot contend that the property in S.No.99/6 has been excluded from land acquisition proceedings and that is not the case of the respondents in W.P.No.8585 of 2000 as also in the present Writ Petition. That apart, as the petitioner has refused to receive compensation, the compensation has been remitted in the Sub Court, Thiruvannamalai. It is on account of the act of the petitioner, the further proceedings for which acquisition has been made, has been stalled.

12. For better appreciation of the case, Section 17(4) of the Land Acquisition Act, 1894 and Section 24 of the of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, are extracted below:

"17. Special powers in cases of urgency:

[(4) In the case of any land to which, in the opinion of the 53 [appropriate Government], the provisions of sub-section (1) or sub-section (2) are applicable, the 53 [appropriate Government] may

direct that the provisions of section 5A shall not apply, and, if it does so direct, a declaration may be made under section 6 in respect of the land at any time 54 [after the date of the publication of the notification] under section 4, sub-section (1).]

24. Enquiry and land acquisition award by Collector.

On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under section 22, to the measurements made under section 21, and into the value of the land at the date of the publication of the notification, and into the respective interests of the persons claiming the compensation and rehabilitation and resettlement, shall make an award under his hand of—

- a. the true area of the land;
- b. the compensation as determined under section 28 along with Rehabilitation and Resettlement award as determined under section 32 and which in his opinion should be allowed for the land; and
- c. the apportionment of the said compensation among all the persons known or believed to be interested in the land, or whom, or of whose claims, he has information, whether or not they have respectively appeared before him.

13. It is the contention of the respondents that the lands of the petitioner have been acquired by the respondents for a public purpose, which has been prevented by the petitioner by means of an interim order. Once the interim order is vacated and the Writ Petition is dismissed, the parties will have to be put back to the original position and in the case on hand, as there were acquisition proceedings and compensation for the acquired land has been deposited before the Sub-Court, Thiruvannamalai, this Court finds no merit in the present Writ Petition and accordingly, the same is dismissed.

14. It is made clear that continuation of occupation of the land in question by the petitioner at this stage is illegal and the petitioner is directed to vacate the premises within a

period of one week from the date of receipt of a copy of this order, failing which, it is open to the respondents to take possession of the acquired land. Further, it is open to the petitioner to withdraw the compensation deposited before the Sub-Court, Thiruvannamalai, along with accrued interest, on production of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS IV)
Dated: 13.10.2017

*Corrected as per order dated
20.11.2017 and made herein.
Sd/- Assistant Registrar(CS IV)
Dated: 28.11.2017.

//True Copy//

Sub Assistant Registrar

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To:

- 1.The Sub court,
Thiruvannamalai. To be substituted to the order
already despatched on
17.11.2017.
2. The Secretary,
State of Tamil Nadu,
Revenue Department,
Fort St. George,
Chennai 600 009.
3. The District Collector,
Thiruvannamalai District,
Thiruvannamalai.
4. The Special Tahsildar,
Land Acquisition,
Thiruvannamalai.

+1cc to Mr.Sankar Ramasamy, Advocate, S.R.No.82156
+1cc to the Government Pleader, S.R.No.82904

W.P.No.27597 of 2003

GN(24/10/2017)
SP(28/11/2017)