

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.02.2018

Coram: The Honourable Mr. Justice N. SESHASAYEE

W.P.No.9566 of 1986

1. A.Kannammal
2. Rajam
3. Subbulakshmi
4. Mythili
5. Manickam

...Petitioners

Versus

1. State of Tamil Nadu represented
by the Commissioner and Secretary,
to Government, Housing and Urban
Development Department, Fort St.
George, Madras-9.
2. Special Tahsildar (Land Acquisition),
Neighbourhood Scheme, Namakkal,
Salem District.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a issuance of a Writ of Certiorari calling for the records of the respondents connected with G.O.Ms.No.755, Housing and Urban Development dated 04.09.1981 containing 4(1) Notification and the consequential declaration made under Section 6 of the Land Acquisition Act in G.O.Ms.No.608, Housing and Urban Development dated 03.08.1984 and quash the same in respect of the petitioners' land in S.No.94/4 Ayyemperumalpatti Village, Salem Taluk, Salem District.

For Petitioners

:

Mr.Madhan Babu

For Respondents

:

Mr.M.Karthikeyan,
Additional Government Pleader

ORDER

1.1. The case of the petitioners is that they are the joint purchasers of 2.08 acres out of 3.999 acres of land in Survey No.94/4 of Iyenperumalpatti Village, Salem Taluk under two sale deeds dated 12.08.1980 and 18.06.1981, executed by certain, Poongavanam, Natarajan, Arumugam, Manickam and Rajarathinam, all of who are heirs of a certain Muthusamy Gounder. The fifth

petitioner has purchased another 55 cents in the same survey number. After the aforesaid purchase, the petitioners have also effected necessary mutation in the Revenue Records and Patta was also issued in the name of the petitioners. The petitioners were in joint possession of the entire property and have been cultivating the same.

1.2. While so, a notification under Section 4(1) of the Land Acquisition Act vide G.O.Ms.No.755 Housing and Urban Development dated 04.09.1981, was issued whereunder the Government proposed to acquire the entire land in Survey No.94/4 for formation of a neighbourhood scheme by the Housing Board. The said notification was issued well after the petitioners had purchased the property. In the said notification the aforesaid Muthusamy Gounder, i.e., the father of petitioners' vendors, was shown as the owner of the property proposed to be acquired. Muthusamy Gounder however, was stated to have died some time in 1979 or thereabout, long prior to the publication of 4(1) Notification. This notification per se is therefore bad in law and it does not conform to the requirements of the Statute.

1.3. Thereafter, the second respondent/Land Acquisition Officer had issued a Notice under Section 5A for an enquiry, which notice was addressed to Poongavanam, one of the vendors of the petitioners. The petitioners were later given to understand that on 18.01.1982, Poongavanam had filed his objections before the second respondent, bringing to the latter's notice about the sales he and his siblings had made in favour of the petitioners. That however, did not improve the situation, vis-a-vis, the right and interest of the petitioners in the proposed acquisition as could be ascertained from the fact that when the Government issued a subsequent notification declaring its intention to acquire the land under Section 6 of the Land Acquisition Act vide G.O.Ms.No.608 Housing and Urban Development dated 03.08.1984, it again omitted to name the petitioners as owners of the land in Survey No.94/4. Plainly, the Government has been travelling along the track which the statute has not provided for it to travel. Hence, both the notifications issued under Section 4(1) and the declaration made under Section 6 are illegal and contrary to the provisions of the Land Acquisition Act, 1894 and are liable to be quashed.

1.4. Hence the petitioners have come forward with the present petition. This Writ Petition was disposed of with the batch of other Petitions, Vide an earlier order dated 16.11.1996, and that this Court has allowed the Petition and quashed the said Notifications. The Government preferred Appeals challenging this Order in W.A.No.33 of 2003. This was heard along with two other Writ Appeals and were disposed of by a Division Bench of this Court on 16.06.2006. By its order, the Division Bench has

set aside the order of the learned Single Judge and remanded the matter back to the learned Single Judge for pointed consideration of the matter, based on particular facts available in each of the case. That is how this case happened to come before this Court today.

2. In the meantime, the Land Acquisition Act, 1894, was replaced by its successor Act namely, 'The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013', (Central Act 30 of 2013), and Section 24(2) thereof provides that in all cases where awards have been passed five years next prior to the commencement of the Act 30/2013, where compensation was not paid, or possession of the property acquired was not taken, the acquisition itself would lapse. The petitioners with an intention to leave no stone unturned, came up with additional set of grounds seeking to declare that the acquisition itself has lapsed.

3. Mr.M.Karthikeyan, the learned Additional Government Pleader appears for the respondents and submitted that the Government has not responded to the Writ Petition in its original form at any time before and as regards the additional grounds, it is yet to respond.

4. In the absence of any material to negate the contentions of the petitioners, this Court is left with the materials provided by the petitioners. The petitioners have produced three material documents: (a) The first one is the Notification published under Section 4(1) of the Land Acquisition Act, 1894, which was issued in the name of Muthusamy Gounder, who as earlier indicated, was the father of the petitioners' vendors; (b) The declaration of the Government under Section 6 which was seen issued in the names of Muthusamy Gounder's children. Again the petitioners' names are seen omitted; and the objection filed by Poongavanam, one of the vendors of the petitioners, during the enquiry under Sec.5-A of the Act before the Land Acquisition Authority informing the latter about the sales that they had made in favour of the petitioners was ignored.

5. The files are produced and it discloses the correctness of facts that the petitioners have presented. It is unfortunate that notwithstanding the fact that the petitioners' vendors had informed the Authority concerned that they did not have any subsisting interest in the property, the authorities preferred to stay in their zone of ineptitude and refused to correct their own errors. They therefore, with all consciousness, have walked into serious lapses in acquiring the property.

6. What is disappointing in the whole exercise is not even the initial failure on the part of the Government to do its homework

completely before issuing the notification under Sec.4(1) of the Act, but its continued indifference not to correct its initial mistake when it came up with a declaration under Sec.6. Does it not display the abject indifference with which the authorities in the instant case have approached an enquiry under Sec.5-A of the Act, and their willingness to reduce the same to a farcical exercise? Doctrine of res ipso loquitur, that finds general and frequent application essentially in law of negligence now finds its way for describing administrative action.

7. And who has suffered? Not the Authorities, but the citizens of this country. So far as the interest of the petitioners goes, for them there was no enquiry under Sec. 5-A of the Act, nor was there any notice of an enquiry before the award was passed. It is now too frivolous a proposition to require any elaborate statement that an enquiry under Section 5A of the Land Acquisition Act, 1894 is indispensable and mandatory, and any violence there to cannot be rectified except by resorting to a fresh acquisition proceedings.

8. As to the additional grounds raised under Sec.24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013, it is fairly conceded that the petitioners are still in possession.

9. In conclusion, this Writ Petition is allowed and G.O.Ms.No.755, Housing and Urban Development dated 04.09.1981 containing 4(1) Notification and the consequential declaration made under Section 6 of the Land Acquisition Act in G.O.Ms.No.608, Housing and Urban Development dated 03.08.1984 is hereby quashed. This order will not be a bar to the Government initiating any fresh proceedings for acquisition. No costs.

Sd/-

सत्यमेव जयते
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

mrr

To

1. The Commissioner and Secretary,
to Government, Housing and Urban
Development Department, Fort St.
George, Madras-9.

2. The Special Tahsildar (Land Acquisition),
Neighbourhood Scheme, Namakkal,
Salem District.

+1cc to the Government Pleader, S.R.No.14071

W.P.No.9566 of 1986

SKV(CO)
CS/08/06/18



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