

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 12.09.2018

Judgment Delivered on : 04.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

W.A.No.177 of 2013

and

M.P.No.1 of 2013

The General Manager,
Civil Land Acquisition,
R & R Department,
Neyveli Lignite Corporation Limited,
Neyveli-7,
Cuddalore District. ... Appellant

Vs.

1. C.Veeramani
2. The Special Thasildar,
Land Acquisition No.4,
Neyveli-2, Cuddalore District. ... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 31.10.2012 passed by the learned Single Judge in W.P.No.9643 of 2011 on the file of this Court

WP.NO.9643/2011:

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus Directing the respondents to allot alternative house site to the petitioner for his acquired dwelling housing Survey No.347/7 Patta No.6 Kilpathi Village Chidambaram Taluk Cuddalore district.

For appellant : Mr.N.Nithianandam

For respondent: Mr.P.R.Thiruneelakandan for R-1
Mr.N.Manikandan, Govt. Advocate for R-2

JUDGMENT

R.SUBBIAH, J

This Writ Appeal has been filed by the Neyveli Lignite Corporation Limited (NLC) challenging the order dated 31.10.2012 passed by the learned Single Judge in W.P.No.9643 of 2011 on the file of this Court, directing the appellant-NLC to give an alternative house-site to the first respondent-writ petitioner, in accordance with the relevant scheme framed by the NLC.

2. The second respondent-NLC before the Writ Court is the appellant herein. The writ petitioner is the first respondent herein. The first respondent before the Writ Court is the second respondent herein.

3. Brief facts of the case are as follows:

(a) In the year 2005, the appellant-NLC decided to acquire the land at Kilpathi Village, Chidambaram Taluk, for the purpose of extension of second mine in the NLC. Accordingly, the second respondent-Special Tahsildar acquired the land and house built thereon under the Tamil Nadu Acquisition of Land for Industrial Purposes Act.

(b) On 10.08.2007, the second respondent-Special Tahsildar has issued notice under Section 4(2) of the said Act in Form-E and required the writ petitioner to deliver and surrender the possession of his house bearing Survey No.347/7 to the hands of the District Collector within 30 days of service of the said notice. Form-E notice was issued to the writ petitioner along with the name of his elder brother Arulmani in respect of S.No.347/7 with an extent of 00171 Sq.Mtr. The said site consists of two houses, one of them being thatched house, which belongs to the writ petitioner and the other house which is built in Cement Mortar, belongs to the elder brother of the writ petitioner, i.e. Arulmani. In the thatched house, the petitioner and his wife and two children had lived together and the house tax receipts were issued in the name of the writ petitioner and separate Family Card was also issued to the writ petitioner in the address specified in Form E-notice and the petitioner surrendered his possession of the house and on his authorisation, the compensation amount was received by the writ petitioner's elder brother Arulmani.

(c) The second respondent-Special Tahsildar provided alternative house-site to the families which were affected under the land acquisition proceedings. Though the writ petitioner's dwelling house was acquired for the purpose of extension of second mine in NLC, the second respondent-Special Tahsildar and the appellant/NLC had not allotted the alternative house-site to the writ petitioner. On 29.01.2008, the writ petitioner made a request to the second respondent-Special Tahsildar to provide the alternative house-site for his acquired dwelling house. Considering the said representation, the second respondent-

Special Tahsildar, by letter dated 07.02.2008, requested the NLC to provide alternative house-site for the writ petitioner's acquired dwelling house.

(d) Thereafter, the writ petitioner made a written request to the District Revenue Officer, who in turn by letter dated 10.08.2009, requested the appellant/NLC to provide alternative house-site to him. It is stated that thereafter, no action was taken by the appellant-NLC and the second respondent-Special Tahsildar. Hence, by letter dated 26.07.2007, the writ petitioner sought for details about the alternative house site, for which, the second respondent-Special Tahsildar replied by letter dated 23.08.2010 under the Right to Information Act (RTI Act) that they had recommended the appellant/NLC to provide alternative house-site for the writ petitioner's acquired land.

(e) Despite the above recommendation, the appellant/NLC and the second respondent-Special Tahsildar have not considered the case of the writ petitioner for alternative house-site. Again on 14.09.2010, the writ petitioner sought for details about the alternative house-site, for which the appellant/NLC replied by letter dated 21.10.2010 stating that the writ petitioner being the owner of the thatched house and not being the owner of the ground and that also, on his request, the compensation amount was paid to the writ petitioner's brother Arulmani, and he being not an awardee, is not entitled to any alternative house-site. Hence, the first respondent-writ petitioner filed the Writ Petition in W.P.No.9643 of 2011 praying for issuance of a Writ of Mandamus to direct the respondents therein to allot alternative house-site to the writ petitioner for his acquired dwelling house in Survey No.347/7, Patta No.6, Kilpathi Village, Chidambaram Taluk, Cuddalore District.

4. The case of the first respondent-writ petitioner was resisted by the appellant/NLC by filing counter affidavit before the Writ Court, in which, inter-alia, it is stated that the writ petition proceeds on the erroneous basis as if the writ petitioner is the owner of the land in S.No.347/7 in Kilpathy Village, in which there is a dwelling unit. But the fact remains that the land in S.No.347/7, together with the structure(s) thereon, was acquired under the provisions of the Tamil Nadu Acquisition of Land for Industrial Purposes Act, and the said piece of land and the structure(s) thereon did not belong to the writ petitioner, but belonged to the said Arulmani, who is the brother of the writ petitioner. On acquisition, the compensation as determined under the said Act, had been paid to the said Arulmani and the enhanced compensation for the said property was also paid to him through Lok Adalat on 28.06.2008. Apart from the statutory compensation, as per the applicable Rehabilitation Scheme, the said Arulmani has been provided with an alternative site. It is further stated in the counter affidavit that with respect to the same land and structure(s) in S.No.347/7 in Kilpathy Village, there can be no entitlement for a second

alternative site or other re-settlement measures. It is not admitted that the writ petitioner was residing in the said land, and even if he was living thereon with his brother, the compensation and other re-settlement benefits having been given to the owner of the property, namely Arulmani, the claim of the writ petitioner for alternative site is without merit. It is also stated by the appellant/NLC in the counter before the Writ Court that suppressing the above facts, the Writ Petition was filed as if the writ petitioner is the owner of the subject land, which is false and incorrect.

5. It is further averred in the counter affidavit that by communication, dated 11.10.2010, the appellant/NLC informed the District Revenue Officer, Land Acquisition, Neyveli-2, stating that the writ petitioner is not an awardee and he was accordingly not considered for providing the alternative site. Similarly, in response to the information sought for by the writ petitioner under the provisions of the Right to Information Act, the second respondent-Special Tahsildar, by proceedings dated 21.10.2010, rejected the claim of the writ petitioner on the ground that he is ineligible for the alternative site and the said proceedings were duly served on the writ petitioner in October 2010. Hence, the appellant/NLC prayed for dismissal of the Writ Petition.

6. The writ petitioner has also filed reply to the counter and reiterated the facts.

7. Considering the above pleadings and the submissions made by the learned counsel on either side, the learned Single Judge allowed the Writ Petition holding that as per the scheme, the writ petitioner is entitled to the benefit of providing alternative site, since he had produced the documents and correspondences to show that he has been living in S.No.347/7 along with his family and he had constructed separate house, which was acquired by the appellant/NLC. Thus, the learned Single Judge directed the appellant/NLC to give an alternative house-site to the writ petitioner in accordance with the relevant scheme. Aggrieved by the above direction of the learned Single Judge, the present Writ Appeal is preferred by the NLC.

8. The learned counsel appearing for the appellant/NLC submitted that the NLC, for the purpose of extension of second mine, acquired the land in question along with the built-up house, under the provisions of the said Act. Apart from paying the compensation to the owner of the land from whom the land was acquired, outside the purview of the Act, the NLC is also providing alternative house-site under the Rehabilitation Action Plan (Scheme). The Scheme was formulated in the year 1998. As per the Scheme, the Project Affected Persons (PAP) had to produce the documents in proof of their residency, five years prior to the Notification issued under Section 4(1) of the Act, in the form of Voters list enumeration under separate door number, ration card, house tax receipts, electricity bills, service connection, postal correspondences with postal seal,

Government records etc., and hence, the land owners are entitled for alternative site.

9. Learned counsel appearing for the appellant/NLC further submitted that so far as the present case is concerned, the land in question, i.e. the house-site and the dwelling house thereon comprised in R.S.No.347/7 in Block No.13, situated at Valayamadevi Kilpathi Village, Chidambaram Taluk, Cuddalore District, measuring about an extent of 00171 Sq.Mts., came to be acquired under the provisions of the said Act, along with adjacent land(s) for the purpose of NLC's mining process. The subject land was registered in the name of Arulmani, son of Chezhan in Patta No.6 and in all the Revenue Records. As such, the said Arulmani is the absolute owner in possession of the property. Hence, a notice under Section 3(2) of the said Act came to be issued calling upon the owners/other persons interested in the subject land to submit their objections, if any, in writing. Form-A and Form-B public notice, dated 19.11.2005 under the said Act for the said land, had been issued to the said Arulmani as the owner/interested person of the property. A public notice as contemplated under the said Act was also issued, wherein only the name of the said Arulmani had been shown as owner and no one except the said Arulmani appeared at the public hearing or filed objections, and in particular, the writ petitioner did not raise any objections or claims with respect to the said property in S.No.347/7 in Kilpathy Village. Eventually, the final Notification in terms of Section 3(1) of the Act was published in Form-C in the name of the said Arulmani for the said land. Thereupon, an Award came to be passed in respect of the said land in Award No.27/2007, dated 08.06.2007 in the name of Arulmani. Subsequent to the Award, the amount of compensation as determined by the Land Acquisition Officer under the said Act, was disbursed to the land owner, namely Arulmani. Being not satisfied with the amount determined under the said Act, the land owner Arulmani sought for enhanced compensation and the same was paid to him through Lok Adalat on 28.06.2008. At no point of time, the writ petitioner challenged the proceedings initiated under the said Act. The possession of the subject land was taken on 13.09.2008. Since the said land owner fulfilled the conditions mentioned in the Rehabilitation Scheme, the alternative site was also provided to him. So far as the present writ petitioner is concerned, he has not produced any proof to show that he was residing in the land in question for a period of five years prior to the notice issued under Section 3 (2), dated 11.11.2005. Moreover, the brother of the writ petitioner was provided with the alternative site, i.e. for the same family members, and now by creating some documents, the writ petitioner is also claiming the alternative site, but he is not entitled to the same. Hence, learned counsel appearing for the appellant/NLC prayed for setting aside the impugned order passed by the learned Single Judge.

10. Countering the above submissions of the learned counsel

for the appellant/NLC, learned counsel for the first respondent/writ petitioner submitted that the writ petitioner was residing with his wife and two children in a separate thatched house with mud wall and he was required to hand over the possession of the house by the second respondent-Special Tahsildar, vide Form-E notice, dated 10.08.2007. In the notice itself, the first respondent-writ petitioner's name was shown as owner/person interested. Further, the letter of the Special Deputy Collector (LA), Neyveli-2, dated 13.07.2006 addressed to the Special Deputy Tahsildar, Neyveli and the letter of the second respondent-Special Tahsildar, dated 07.02.2008 addressed to the Deputy General Manager of the NLC, clearly show that the first respondent's house was acquired for NLC mining purpose and they have sent a proposal to the second respondent to provide alternative house-site to the first respondent/writ petitioner. While acquiring the first respondent's house, the Public Works Department (PWD) separately assessed the value of the first respondent's house at Rs.14,588/- and the first respondent's brother Arulmani's house at Rs.1,38,964/-. Furthermore, in the letter of the second respondent-Special Tahsildar, dated 07.02.2008, addressed to the Deputy General Manager, Land Acquisition, R and R, NLC, Neyveli, it has been clearly stated that at the request of the first respondent-writ petitioner, the compensation for the writ petitioner's acquired house was given to his brother Arulmani and the award was passed in his name and in the said letter itself, it was requested to provide the alternative house-site to the writ petitioner. Therefore, it is evident that the writ petitioner's family was in separate possession and enjoyment of the thatched house with mud wall, which was acquired by the second respondent-Special Tahsildar for NLC mining purpose. Therefore, according to the learned counsel for the first respondent-writ petitioner, the writ petitioner has produced ample proof to show that he was residing in the property for five years prior to publication of Section 3 (1) notice dated 05.05.2006 and he had produced Government records, i.e. Electoral form, house tax receipts, Family Ration Card, valuation report of the PWD, etc. Hence, the learned counsel for the first respondent/writ petitioner prayed to dismiss the Writ Appeal.

11. By way of reply, learned counsel for the appellant/NLC submitted that just because the writ petitioner's name is found in Form-E notice, it will not confer any right on the writ petitioner in the property in question and what was required is that he has to produce proper proof that he is residing in the property five years prior to the issuance of Section 3(1) notice and the documents produced by the writ petitioner are not fulfilling the requirements under the said Act. Hence, the learned counsel for the appellant/NLC prayed for allowing the Writ Appeal.

12. Heard the learned Government Advocate appearing for the second respondent-Special Tahsildar on the above submissions

made by the learned counsel for the appellant/NLC and the learned counsel appearing for the first respondent-writ petitioner.

13. Keeping in mind the above submissions made by the learned counsel appearing for the parties, we have perused the records carefully.

14. It is the case of the first respondent/writ petitioner that he and his brother Arulmani have built up a separate house in S.No.347/7 and the total area under occupation is 00171 Sq.Mtr. According to the petitioner, his brother has constructed house with Cement Mortar, whereas the writ petitioner has constructed a thatched roof (house). It is the further case of the writ petitioner that the second respondent-Special Tahsildar has issued notice under Section 4(2) of the Tamil Nadu Acquisition of Lands for Industrial Purposes Act. The second respondent-Special Tahsildar required the petitioner to surrender the possession and hence, Form-E notice was issued along with the name of the writ petitioner's elder brother Arulmani, for the purpose of NLC's second mine. While the writ petitioner's brother Arulmani was provided with an alternative house-site as per the Rehabilitation Action Plan/Scheme, the writ petitioner was not provided with the alternative house-site.

15. It is the reply of the appellant-NLC that the writ petitioner's brother alone was the owner of the patta land in S.No.347/7 and he alone was the awardee and statutory compensation was paid only to him, and hence, his brother was provided with an alternative house-site on satisfying the conditions of the said Scheme. That apart, the writ petitioner's mother was also provided with an alternative house-site under the same Scheme. In respect of patta lands, the owner of the lands/patta-holder who is the awardee in respect of the lands alone, are entitled to the benefits of the Scheme and no other person is entitled to the benefits under the Scheme. It is also the further submission of the appellant/NLC that though the first respondent/writ petitioner was in occupation of the patta land, he did not satisfy the conditions under the Scheme, more particularly, he had not produced any proof/documents to show that he was residing in the property five years prior to the acquisition. But this submission of the learned counsel for the appellant/NLC was denied by the writ petitioner stating that he was residing five years prior to issuance of Notification under Section 3(2) of the Act. In order to substantiate the same, the writ petitioner has produced the house tax receipts for the year 2002-2003, 2003-2004 and 2004-2005, Family Ration Card for the year 2005 to 2009, valuation report of the PWD, dated 30.03.2006 and Form-E notice dated 10.08.2007 issued to him by the second respondent-Tahsildar, whereas according to the appellant/NLC, the above documents were created only for the purpose of getting the benefits. Further, the learned counsel for the appellant/NLC submitted that the house tax receipts would not be taken as tangible evidence to come to the conclusion that the writ

petitioner was residing in the property in question five years prior to the acquisition proceedings. However, the learned counsel for the first respondent/writ petitioner submitted that the Voter's list pertain to the year 2001, which would reflect his name and he was residing there from the year 2001 onwards. On a perusal of the documents, we find that as contended by the learned counsel for the appellant/NLC, it is not the Voter's list, but it is only an application for enclosure of Voter's list. Furthermore, the writ petitioner was unmarried as per the documents. From the year 2001 Voter's list, we cannot come to the conclusion that the writ petitioner was residing by constructing separate house along with his family. Another document, namely Ration Card was produced, which was issued only in the year 2005. Therefore, the documents produced on the side of the writ petitioner, are not sufficient enough to come to the conclusion that the writ petitioner has fulfilled the requirements under the said Act.

16. Above all, we find that the claim of the writ petitioner was already rejected by the second respondent-Tahsildar as early as in 2010 itself and the same was not challenged till date. Moreover, in the same family, the writ petitioner's brother was awardee and he was provided with alternative house-site, which cannot be lost sight of by this Court. Therefore, the Writ Appeal is liable to be allowed.

17. To substantiate his contentions, learned counsel for the appellant/NLC had relied on the following judgments:

(i) — 2005 (2) SCC 122 (Satluj Jal Vidyut Nigam Ltd. Vs. Dila Ram and others):

"8. The learned counsel for the appellant took through the details of the resettlement and rehabilitation scheme dated 27.11.91 as amended by the Resolution dated 5.11.1998 and submitted that the corporation had discharged its obligations under the resettlement and rehabilitation scheme way back in 1996 when Durga Singh, admittedly a member of the family, had applied for and had been granted the benefits thereunder. He contended that once such benefits were made available to one member of the family which was jointly holding the land acquired, there was no further obligation to give such benefits to any other member of the family.

9. The learned counsel for the respondents supported the findings of the High Court and urged that, as evidenced by the Panchayat Pariwar register, Durga Singh was residing separately for the last 11 years and, therefore, was in a separate family. Consequently, he urged that the respondents

belonged to a different family even on the date of notification under Section 4 of the Act, and therefore, the benefit of the scheme had to be provided separately to the respondents.

10. In our view, the High Court erred in accepting the contention of the respondents that since Durga Singh was residing separately for the last 11 years he could not be treated as a part of the family and his holding had to be reckoned as if it was a holding of a separate family. The High Court relied on some judgments referred with reference to the concept of family under Section 4 of the Partition Act, 1893. In our view, it was wholly unnecessary to refer to the statutory definition of family given under the Partition Act. As far as the benefit under the scheme is concerned, the only question which the High Court had to determine was whether the respondents were eligible to any benefits in terms of the scheme. The scheme is made applicable to "each family which is rendered landless". The revenue records indicate that the land was held jointly by Sunder Singh, Dila Ram and other members of the family. Whether Durga Singh was residing separately or not is wholly irrelevant and besides the issue. The test to be adopted under the scheme was whether there was joint holding and relationship as a family. The High Court seems to have understood that the scheme was intended to give benefits to each member of the landless family. If this interpretation were to be accepted, then the corporation would have to provide more land for distribution to each member of the landless family than, perhaps, even the total land acquired. In the instant case, the corporation would have to provide 35 bighas of land, 7 houses and employment to 7 members of the family, for acquiring only 28 bighas of land and one house. The High Court seems to have fallen into an error in adopting the meaning of 'family' from judgments, which were rendered in relation to Section 4 of the Partition Act and under the Rent Control Acts.

11. The scheme emphasizes joint holding and family relationship. As long as these

existed, the fact that any particular person was residing separately, is of no consequence. Adjudged by this test, Durga Singh was a part of the landless family whose land has been acquired. Consequently, he having been first to apply, was given the benefit under the resettlement and rehabilitation scheme. There was no further obligation on the part of the corporation to provide any more benefits thereunder.

12. The learned counsel for the Respondents contended that, Durga Singh being a step brother, he had taken all the benefits under the resettlement and rehabilitation scheme and deprived the other members of the family. That is a matter of dispute inter se within the family with which the appellant corporation is not concerned in any way, nor could the High Court grant any relief based thereupon. It is open to the other members of the family to take appropriate legal action as they may be advised to seek a share in the benefits of the resettlement and rehabilitation scheme which were made available by the appellant to Durga Singh.

In the result, we find that the appellant is entitled to succeed. The appeals are hereby allowed and the impugned judgments of the High Court are set aside, but without costs."

(ii) Writ Appeal No.2446 of 2010, dated 03.11.2017, (Division Bench of Madras High Court) (The Chief Manager (Land Acquisition) (earlier known as Deputy General Manager LA), NLC Vs. M.Kaliyaperumal (deceased) and 4 others):

"15. The right of the land owner is only to receive compensation. The alternate site is a concession given by the Corporation. Such a Scheme must require strict construction. While interpreting a Scheme like this, the object should also be taken note of. Since the provision made it clear that alternate site is only for persons, who are actually residing, the writ petitioner has no right to claim allotment of alternate site. We are therefore of the view that the

learned single Judge was not correct in directing the appellant to provide alternate site to the writ petitioner notwithstanding the payment of compensation amount."

18. The principles laid down in the above judgments are applicable to the facts of the present case, from which it is clear that the actual owner in this case is only the brother of the writ petitioner, and hence he alone is entitled for alternative site, which is being provided as concession to the land owners, apart from payment of compensation, coupled with the fact that the Scheme in question speaks only of the real land owner, and furthermore, the Project Affected Persons (PAP) who are without any legal title to house or land and who are not covered under the Awards in the land acquisition proceedings, are not entitled to get the alternative site, and in particular, when the Scheme provides proof of residency five years prior to the start of the acquisition proceedings. Having failed to show the proof of residency, despite the fact that the writ petitioner was residing separately in the same property, and there being no proof of separate ownership, and that the writ petitioner has not produced reliable document to show that he was in possession of the property in question five years prior to the acquisition proceedings, the writ petitioner is not entitled for the relief sought for in the Writ Petition.

19. Consequently, the Writ Appeal filed by the NLC is allowed. The impugned order of the learned Single Judge is set aside. No costs. Consequently, the Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

CS
To

The Special Thasildar,
Land Acquisition No.4,
Neyveli-2, Cuddalore District.

+lcc to Mr.N.Nithianandam, Advocate sr.no.69244

nr 31/10/2018

W.A.No.177 of 2013