

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.12.2017

PRONOUNCED ON : 20.02.2018

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.No.1635 of 2015
and M.P.No.1 of 2015

Tamil Nadu Housing Board,
Rep. by its Managing Director,
Nandanam,
Chennai-600 035. ... Appellant/3rd respondent

versus

1.D.Sumathi,
W/o K.Duraisingam,
Plot No.B9/A2, First Avenue,
Thiruvalluvar Nagar, Thiruvanniyur,
Chennai-600 041. ... 1st Respondent/Petitioner

2.State of Tamil Nadu,
Rep. by Secretary to Government
Housing and Urban Development Department,
Fort St. George,
Chennai 600 009. ... 2nd Respondent/1st Respondent

3.The District Collector,
Collectorate, Kanchipuram,
Kanchipuram District. ... 3rd Respondents/2nd Respondent

Prayer: The Writ Appeal has been filed under Clause 15
of the Letters Patent to set aside the order passed in
W.P.No.30994 of 2014 dated 08.04.2015.

WP.30994 of 2014: Writ petition is filed under Article 226 of
the Constitution of India for a Writ of mandamus to direct the
respondents to release unutilized land bearing Survey Nos.
337/1 337/2B 337/3 337/4b 337/7A1 337/7A2 337/7B 337/7C
337/7B 337/7B1 337/7B2 337/7B5 337/6 337/8 337/8B 340
341 343/8A2 343/8A 343/8B 334/2 344 345/3 345/3A 337/2B2

325/2 and 337/5B 344/3 344/5 and 402 an extent of 5 Acres 71 cents in Sholingnanallur Village Tambaram Taluk Kanchipuram District as per New Act Section 24(2) to right fair compensation transparency Act in Land Acquisition Recapitalization Re-settlement Act in 2013.

For Appellant : Mr.V.Anandamurthy,
Standing counsel (TNHB)

For Respondents : Mr.AR.L.Sundaresan
Sr. Counsel for Mr.G.Ranganathan for R1

Ms.A.Srijayanthi
Spl. G.P. for R2 & 3

J U D G M E N T

P.VELMURUGAN, J.

The erstwhile landowner challenged the land acquisition in W.P.No.15410 of 1993. The order quashing the acquisition was set aside by the Division Bench in W.A.No.485 of 2001. The landowner filed S.L.P.(C) No.5372 of 2008, which was dismissed by the Supreme Court on 4 March 2011. Thereafter, he filed a writ petition in W.P.No.25961 of 2011 for re-conveyance of land. The writ petition was dismissed. The landowner transferred the land to his wife, who in turn initiated proceedings afresh for re-conveyance originally and for a declaration of statutory lapse under Section 24(2) of the New Act, later. The issue raised in this appeal is covered by the judgment of the Hon'ble Supreme Court in Indore Development Authority vs. Shailendra (dead) through LRS. & ors., (judgment dated 8 February 2018, in Civil Appeal No.20982/2017) .

2. The 1st respondent, who is a subsequent purchaser, has filed the writ petition stating that she is the absolute owner of the property bearing Survey Nos.337/1, 337/2B, 337/3, 337/4b 337/7A1, 337/7A2, 337/7B, 337/7C, 337/7B, 337/B1, 337/B2, 337/7B5, 337/6, 337/8, 337/8B, 340, 341, 343/8A2, 343/8A, 343/8B, 334/2, 344, 345/3, 345/3A, 337/2B2, 325/2 and 337/5B, 344/3, 344/5, 344/5, 402 in Sholingnanallur Village, Kanchipuram District to an extent of 5 acres 71 cents. The said property originally belonged to various owners. The original owners executed a power of attorney in favour of her husband, one Duraisingam. The said Duraisingam was in possession and enjoyment of the property continuously without any interference. In the meanwhile, the 2nd and 3rd respondents herein initiated the land acquisition proceedings for the purpose of Sholingnanallur Neighbourhood Housing Scheme, Phase III.

3. The 1st respondent's husband challenged the acquisition proceedings before this Court in W.P.No.15410 of 1993. The writ petition was allowed on 31.01.2000 against which writ appeal was filed in W.A.No.485 of 2001. During the pendency of the writ appeal, her husband sold the property under document No.7666 of 2006 to 7674 of 2006 on the file of Sub-Registrar Office, Neelankarai to the first respondent. From the date of sale deed, the 1st respondent has been in possession and enjoyment of the property continuously without any interference. The W.A.No.485 of 2001 was allowed in the year 2008 against which the husband of the 1st respondent filed a Special Leave Petition before the Hon'ble Supreme Court in the year 2008. Initially the S.L.P. was admitted and a stay was granted. Subsequently, in the year 2011 the appeal was dismissed. Even after that the 1st respondent continued to possess the land.

4. It is the case of the first respondent that the Land Acquisition Officer has never taken the possession of the properties. The compensation was also not paid. In view of the factual position, the proceedings would lapse under Section 24 (2) of the Right to Fair Compensation and Transparency Act in Land Acquisition Rehabilitation and Resettlement Act 2013 (hereinafter referred to as New Act). As per the new Act, the 2nd and 3rd respondents have to release the land and re-convey it to the 1st respondent.

5. Heard both sides and perused the original files.

6. It is the contention of the 1st respondent before the writ court that she had purchased the property even prior to the acquisition proceedings. She was in possession of the property ever since her purchase. The award amount was also not paid and the Housing Board has not utilised the acquired land. The land is kept vacant and therefore she is entitled to get back the land. The learned single judge had also considered the same and granted the relief.

7. On a perusal of the record, it is found that the land was acquired for the purpose of Sholingallur Neighbourhood Housing Scheme Phase III. Section 4(1) notification was issued on 30.05.1990. Section 6 declaration was made on 21.06.1991. The alleged purchase was made under document No.7666 of 2006 to 7674 of 2006, which was in the year 2006. Therefore, it is clear that only after the culmination of acquisition proceedings and more particularly after passing the award, the land was transferred to the first respondent. According to the land acquisition officer, the compensation amount was deposited before the Civil Court, immediately after passing the award.

8. The appellant had filed a counter affidavit before the

writ court, stating that the amount was deposited before the Civil Court and even the land was transferred to the Housing Board on 27.03.2008.

9. A perusal of the original file shows that the Special Tahsildar (Land Acquisition) Tamil Nadu Housing Board, Nandanam, Chennai, handed over possession of all the lands through certificate dated 27.03.2008. The acquisition was in respect of large extent. The lands were delivered to the Housing Board. The Housing Board has taken over the lands along with the adjacent land and started to implement the scheme. The file further shows that the original owners of the land handed over the land to the Revenue Officers in the month of July 1993. Subsequently the appellant has taken possession in the year 1993, which was even prior to the sale deed in favour of the 1st respondent. It is therefore clear that as on the date of the execution of sale deed the possession was not with the husband of the 1st respondent. Therefore he could not have given possession to the 1st respondent.

10. The husband of the 1st respondent filed the writ petition for re-conveying the land. This would show that possession was not either with him or with the 1st respondent. The landowners have not produced any materials in support of their claim or to show after 1993 or at any point of time, they were in possession of the lands.

11. The learned single judge made an observation in W.P.No.30994 of 2014 as follows:

(i). The respondents had issued a G.O.Ms.No.474, dated 30.05.1990 for acquiring the petitioner's lands for the Neighbourhood Scheme. After acquiring the said land under the old Act, the entire acquired lands of the petitioner / interested persons have not been utilised. However, the Housing Board had utilised a portion of the acquired land for the said purpose. The remaining lands have not been utilised and still vacant as per the statement of the petitioner. Therefore, the petitioner is entitled to receive back the unutilised lands since the respondents have not utilised the same for the Neighbourhood Scheme after a lapse of 24 years.

(ii). The respondents have not produced any documentary proof that they have paid the compensation amount for the said lands.

(iii). The respondents have also not produced any documentary proof that they have utilized the entire acquired lands of the petitioner. Therefore, this Court accepts the statement of the petitioner that some portion of the

acquired lands are unutilised. If this Court directs the respondents to release the unutilised lands to and in favour of the petitioner herein, the respondents will not be prejudiced since they had not taken any steps to implement the Neighbourhood Scheme even after a lapse of around 24 years. It clearly establishes that the unutilised lands are not required by the respondents.

12. The land stood vested in the Housing Board. The Board utilised a portion of the land and only the remaining portions were kept unutilised. The scheme is being implemented stage by stage. The portion of the acquired land has already been utilised. The vast area cannot be utilised overnight.

13. Section 24(2) of the New Act does not say anything about the release of the land. It deals with the lapse of the acquisition proceedings.

14. Section 24 of the New Act reads as follows:

"24. Land acquisition process under Act No. 1 of 1994 shall be deemed to have lapsed in certain cases - (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, in any case of land - acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894).

(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where no award under said section 11 has been made, then such proceedings shall continue under the provision of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of the Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act.

Provided that where an award has been made

and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of the Act."

15. In this case, as already stated, possession of the acquired land has been taken over and compensation amount was deposited before the Civil Court, well before the New Act. Therefore, Section 24(2) would not help the first respondent in any manner.

16. The Hon'ble Supreme Court in Meera Sahni V. Lieutenant Government of Delhi and others [(2008) 9 SCC 177] held that transfer of land in respect of which land acquisition proceedings have been initiated is void and it would not bind the Government.

17. The Hon'ble Supreme Court in U.P.Jal Nigam V. Kalra Properties (P) Ltd., [(1996) 3 SCC 124] observed that the property purchased after notification would not give any title to the purchaser.

18. The Supreme Court in Sneh Prabha v. State of Uttar Pradesh [(1996) 7 SCC 426] made it clear that any alienation of the land after the publication of notification under Section 4 (1) would not bind the Government. The observation reads thus:

"5..... It is settled law that any person who purchases land after publication of the notification under Section 4(1), does so at his/her own peril. The object of publication of the notification under Section 4(1) is notice to everyone that the land is needed or is likely to be needed for public purpose and the acquisition proceedings point out an impediment to anyone to encumber the land acquired thereunder. It authorises the designated officer to enter upon the land to do preliminaries, etc. Therefore, any alienation of the land after the publication of the notification under Section 4(1) does not bind the Government or the beneficiary under the acquisition. On taking possession of the land, all rights, title and interests in land stand vested in the State, under Section 16 of the Act, free from all encumbrances and thereby absolute title in the land is acquired thereunder".

19. The Hon'ble Supreme Court in Jaipur Development Authority v. Mahesh Sharma and another [2010 (10) Scale 84] observed that sub-awardees and subsequent purchasers do not possess right against the State Government, as the purchases were subsequent to passing of the Award.

20. The first respondent is admittedly a subsequent purchaser. The learned Judge invoked Section 24(2) of the New Act and a declaration of lapse of land acquisition was given in her favour, without any factual or legal basis.

21. The claim under Section 24(2) of the New Act is liable to be rejected on the ground of maintainability of such prayer at the instance of the subsequent purchaser and on account of non-fulfilment of conditions of such statutory lapse.

22. The Hon'ble Supreme Court in Indore Development Authority vs. Shailendra (dead) through LRS. & ors., (judgment dated 8 February 2018, in Civil Appeal No.20982/2017), observed that purchasers of land after Section 4(1) notification are not entitled to contend that acquisition has lapsed under Section 24 (2) of the New Act. This is so because the sale after Section 4 is illegal and void. Therefore, the first respondent is not entitled to invoke Section 24(2) of the New Act.

23. Since possession was taken long back and the compensation amount was duly deposited, the twin conditions of Section 24(2) are not attracted in the subject case.

24. In the light of the above, the order passed by the learned single judge is set aside. The writ appeal is allowed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS VI)

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To

1.The Secretary to Government
Housing and Urban Development Department,
Fort St. George,
Chennai 600 009.

2.The District Collector,
Collectorate, Kanchipuram,
Kanchipuram District.

3.The Managing Director,
Tamilnadu Housing Board,
Nandanam, Chennai-35.

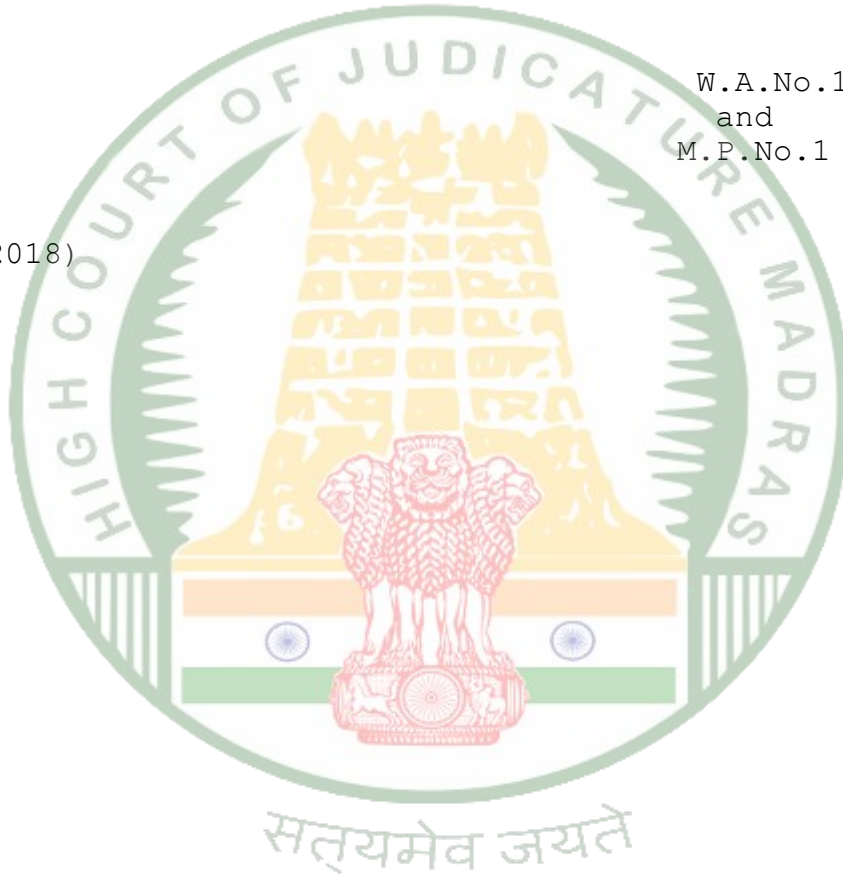
+1cc to Mr.V.Anandhamoorthy, Advocate SR.No.12778

+1cc to Mr.G.Ranganathan, Advocate SR.No.13409

+1cc to Mr.G.Ranganathan, Advocate SR.No. 12697 (20/03/2018)

W.A.No.1635 of 2015
and
M.P.No.1 of 2015

VGII (CO)
GN (02/03/2018)



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