

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	27/11/2017
PRONOUNCED ON	15/02/2018

Coram

THE HONOURABLE Mr. JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE Mr. JUSTICE P.VELMURUGAN

W.A.No.543 of 2015

Parasurama Vaidyanathan ... Appellant/Petitioner

Vs.

1.State of Tamil Nadu rep. by its
Secretary, Housing & Urban Development,
Fort St.George, Chennai-600 009.

2.The Special Tahsildar,
Land Acquisition-VI,
TNHB Schemes, 7th Avenue,
Anna Nagar, Chennai-600 101.

3.The Executive Engineer & Administrative Officer,
Tamil Nadu Housing Board,
Besant Nagar Division,
No.42, Muthulakshmi Salai, Adyar,
Chennai-600 020. ... Respondents/Respondents

Prayer : Writ Appeal filed under Clause 15 of Letters Patent to
set-aside the order dated 06.06.2013 made in W.P.No.6469 of
2005, on the file of this Court.

PRAYER IN WP.6469 OF 2005:

Petition under Article 226 of the constitution of India, praying
for the issue of a writ of mandamus directing the respondents to
handover possession and allot the 11cents of lands that was
subjected to acquisition proceeding and comprised in S.No.390-A
measuring 5 cents and in S.No. 390-2A1 measuring 6 cents
totaling to 11 cents situate at Shollinganallur Village and
execute necessary documents towards assigning or handing over
possession of the same lands or alternatively directing the
respondents to give to the petitioner any other piece of land
situate with in the same vicinity and value

For Appellant : Mr.J.Ram

For Respondents : Mr.V.Anandhamoorthy
Additional Government Pleader

J U D G M E N T

P.VELMURUGAN, J.

The writ appeal challenges the judgment dated 06.06.2013 made in W.P.No.6469 of 2005.

2. The aforementioned Writ Petition has been preferred by the appellant for issuance of a Writ of Mandamus, directing the respondents to handover possession and allot the 11 cents of lands that was subjected to acquisition proceeding and comprised in S.No.390-A measuring 5 cents and in S.No.390-2A1 measuring 6 cents totalling to 11 cents situate at Sholinganallur Village and execute necessary documents for assigning or handing over possession of the same lands or alternatively directing the respondents to give to him any other piece of land situate within the same vicinity and value.

3. The case of the appellant before the writ Court is as follows:-

The appellant being an employee of Coal India Limited, at the end of his carrier, purchased two grounds of land at Shollinganallur Village in July 1986 and subsequently patta was also obtained in his name. While so, the State Government initiated acquisition proceedings for the benefit of Tamil Nadu Housing Board and questioning the same, a Writ Petition in W.P.No.3400 of 1992 was filed before this Court. The said Writ Petition was dismissed, holding that the acquisition proceedings were valid. Thereafter, Writ Appeals filed by the appellant and other landowners also met with the same fate. Even after the dismissal of W.A.Nos.228 to 230 of 1996, dated 07.03.1996, the respondents had not passed the award. The prescribed time for making the award under Section 11-A is only two years from the date of declaration and if award is not made within the said time, the acquisition proceedings would lapse. Even excluding the period of stay that was in force during the pendency of the Writ petition, the award since not passed so far, the entire acquisition proceedings is lapsed. Hence, the appellant sent a registered letter to the second respondent dated 09.02.2002 and demanded not to take possession of the property. However, there was no reply. Even as early as on 01.08.1996, the appellant personally handed over a letter to the Housing Board and requested allotment of his own land to him as he had purchased the said 2 grounds only for his personal occupation by raising a building thereon. However, none of the Government Officials realized his plight. Having been in the Government service, what little money the appellant could save, was invested in

purchasing the said two grounds of property to put up a residence. Due to passage of time, the entire acquisition proceeding has lapsed by the intervention of Section 11-A of the Land Acquisition Act. Hence, the appellant has filed the Writ Petition.

4. After considering the facts and circumstances of the case, the learned Single Judge dismissed the Writ Petition.

5. Aggrieved by the order of the learned Single Judge, the appellant has filed the present Writ Appeal.

6. The learned counsel for the appellant would submit that no award was passed under Section 11-A of the Land Acquisition Act in the name of the appellant and therefore, the acquisition proceedings is vitiated. The learned Single Judge ought to have noted that no notice was issued to the appellant in the Award Proceedings. The Government had no proof of service of notice on the appellant for the award enquiry. He would further submit that the learned Judge ought to have noted that the Award was not passed in favour of the appellant, viz., Parasurama Vaidyanathan but it was passed in the name of a non-existent person, viz., Tmt.Prashanti Vaidyanathan, who is neither the appellant's wife nor related to him. The learned counsel would submit that the learned Single Judge dismissed the Writ Petition for the simple reason of delay and laches. He would submit that no acquisition can be made without paying the compensation, in this case, no award was passed and no compensation was paid and therefore, the award is not valid. He would further submit that the learned Single Judge ought to have noted that a citizen's valuable right of property cannot be taken away by the State without proper procedure of law being followed and hence, the learned counsel prayed for allowing the Writ Appeal.

7. The learned Additional Government Pleader appearing for the respondents would submit that the Land Acquisition Officer had properly followed all the Rules and Regulations of the Land Acquisition Act. He would further submit that section 4(1) notification was issued in the name of the appellant correctly and even 6(1) declaration was also issued in his name and only in the Award Proceedings, the name was wrongly mentioned as Tmt.Prashanti Vaidyanathan instead of Parasurama Vaidyanathan. Even before passing the Award, the appellant filed a Writ Petition W.P.No.3400 of 1992 and the same was dismissed on 26.09.1995, against which, Writ Appeal in W.A.No.230 of 1996 was filed, which was also dismissed on 03.07.1996. Though the award was passed during the pendency of the Writ Petition, the appellant has not brought to the notice of the Writ Court that

it was not passed in his name. If at all any mistake is found in the Award, he ought to have brought to the notice of the Official concerned or to the Court and the same might have been rectified and knowing very well, he kept quiet. Subsequently, after a long time, he has filed the Writ Petition in W.P.No.6469 of 2005 and therefore, the stand taken by the appellant is an afterthought and belated. The learned Single Judge, after elaborately considering all these aspects, has rightly dismissed the Writ Petition. Hence, the learned Additional Government Pleader prays for dismissal of the Writ Appeal.

8. We have perused the original files produced by the learned Additional Government Pleader.

9. It is not in dispute that the respondents issued G.O.Ms.No.474, Housing and Urban Development Department dated 30.05.1990 approving the draft notification under Section 4(1) of the Act for acquisition of 82.84.0 hectares of land in Sholinganallur Village, Tambaram Taluk, Kancheepuram District for the implementation of Sholinganallur Neighbourhood Scheme by the Tamil Nadu Housing Board. The appellant's land comprised in S.No.390-1A and 2A1 were part of the land acquired. Section 9(3) and 10 of the Land Acquisition Act were served on the appellant, but he did not attend the award enquiry. The appellant obtained an order of stay from this Court in W.P.No.3400 of 1992, dated 09.03.1992. Subsequently, while passing the award, the name of the appellant was mentioned as Tmt.Prashanti Vaidyanathan instead of Vaidyanathan. On a perusal of the original file, it is found that in the Award enquiry, the appellant has not participated and he refused to receive the notice of the award enquiry. During the pendency of the Award enquiry, he filed a Writ Petition in W.P.No.3400 of 1992. The Award was passed on 28.03.1993 and subsequently, the Writ Petition in W.P.No.3400 of 1992 was dismissed on 26.09.1995. Against which, he filed a Writ Appeal in W.A.No.230 of 1996 and the same was dismissed on 07.03.1996. The fact remains that till Section 6 Declaration, name of the appellant was found correctly in the records as Vaidyanathan and only in the award, his name was wrongly mentioned as Tmt.Prashanti Vaidyanathan. It was only a mistake committed at the time of making entry in the award proceedings. It is not the case of the appellant that if he was not aware of the Acquisition proceedings. It is clear from the typed-set of papers, that he was very well aware of the earlier proceedings. For better appreciation, the two representations dated 01.08.1996 and 09.02.2002 sent by the appellant to the Managing Director and to the Special Tahsildar, are extracted hereunder:-

(i) Letter dated 01.08.1996

"I request you kindly to consider the following few lines and pass favourable orders.

The above land was purchased by me in 1986 on the eve of my retirement from service, for construction of house. Meanwhile, I had urgent matters like marriage of daughters and also that of sons and I could not start construction.

Meanwhile in 1990, Land Acquisition Proceedings started and upset the whole plan and hence nothing could be done. I had filed a Writ Petition in Madras High Court in W.P.No.3400 of 1992 and it was dismissed in September 1995. Writ Appeal No.230 of 1996 was also dismissed in March 1996. This was a shock to me.

In Sholinganallur Village, I have 11 cents homestead land (5 cents in Survey No.390-A and 6 cents in 390-2A1) in one piece. As I intend to construct the house, I request that I may be allowed to retain the above plot of land for which I shall pay the development charges. My finance does not permit me to purchase plots now at exorbitant prices at this old age (67). I have no housing plot to construct house.

I therefore, humbly request you to issue an allotment letter in my favour as early as possible permitting me to retain the same plot and remove my hardship for which I shall remain grateful."

(ii) Letter dated 09.02.2002

"I am the owner of the following plots of land in Sholinganallur Village.

Survey No.390-1A 6 cents

Survey No.390-2A 5 cents

Even though the above pieces of land were included in Sholinganallur Neighbourhood Scheme Phase III, no legal process was followed thereafter. As no award made in my favour in the prescribed time you cannot take possession of the above land.

I strongly protest the encroachment in the land, again I bring it to your notice that the above lands continue in my possession. You are requested to immediately restrain the T.N.Housing Board from occupying or doing any work in the above land as the entire acquisition proceedings in respect of this land have lapsed."

10. In the first letter dated 01.08.1996, the appellant made a request to the Managing Director, Housing Board, for retention of land and for which, he agreed to pay the development charges. However, in his another letter sent to the Special Tahsildar, dated 09.02.2002. It was contended that as no Award was made in his favour, the authority cannot take possession. From the above stand, it is clear that he was well aware of the proceedings. The appellant should have taken the stand in the first Writ Petition in W.P.No.3400 of 1992, itself. He could have made an representation to the Land Acquisition Officer or in the Writ Appeal in W.A.No.230 of 1996. The appellant being aware of the entire proceedings, cannot take a stand now that the Award was not passed in his name. Further, it is pertinent to note that in the family card, his name is mentioned as Vaidyanathan and his father name is mentioned as Parasuraman. Likewise even in his affidavit filed in the Writ Petition he has mentioned his name as Vaidyanathan and his father name is mentioned as Parasuraman, but only in this cause title to the Writ Petition and Writ Appeal it was mentioned as Parasurama Vaidyanathan.

11. In consideration of the above facts and circumstances of the case, the learned Single Judge correctly held that the appellant, after the dismissal of the Writ Appeal in W.A.No.230 of 1996, dated 03.07.1996, kept quiet for about nine long years, without taking any steps to find out as to what happened to his property. The appellant being aware of the award enquiry, cannot be allowed to challenge the award by filing a Writ Petition in the year 2005 with unexplained delay. Therefore, we are of the considered view that the order passed by the learned Single Judge does not warrant interference.

12. The second respondent is directed to correct the name of the appellant as Vaidyanathan instead of Tmt.Prashanthi Vaidyanathan forthwith. We permit the appellant to withdraw the award deposited in the name of Tmt.Prashanthi Vaidyanathan. Since the Land Acquisition Officer committed a mistake in describing the name of the land owner correctly and on account of the non disbursement of award amount till date, we direct the second respondent to refer the matter to the jurisdictional court for enhancement of compensation under Section 18 of the Land Acquisition Act, immediately after correcting the name of the appellant in the award and related proceedings.

13. The Writ Appeal is disposed of with the above direction. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary,
Government of Tamil Nadu,
Housing & Urban Development,
Fort St.George, Chennai-600 009.

2.The Special Tahsildar,
Land Acquisition-VI,
TNHB Schemes, 7th Avenue,
Anna Nagar, Chennai-600 101.

3.The Executive Engineer & Administrative Officer,
Tamil Nadu Housing Board,
Besant Nagar Division,
No.42, Muthulakshmi Salai, Adyar,
Chennai-600 020.

+1cc to Mr.V.ANANDHAMURTHY, Advocate, S.R.No. 11886

+1cc to Mr.J.RAM, Advocate, S.R.No. 11486

Pre Delivery Order made in
W.A.No.543 of 2015

CNR (CO)
TR(08/03/2018)

WEB COPY