

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.11.2017

Delivered on : 10.01.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A No.763 of 2011 and
MP No.1 of 2011

M/s.Lakshmipaty Brick Works
No.1, Perumal Agaram Village,
Chennai - 600 077
Rep. by its Partner, P.Srinivasan

...Appellant

Vs

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

2.The Tamil Nadu Housing Board,
Rep. by its Managing Director,
331, Anna Salai, Nandanam,
Chennai - 600 035.

...Respondents

Prayer:- Writ Appeal filed under clause 15 of the Letter Patent against the order dated 19.03.2010 made in W.P.No.26386 of 2007.

Prayer in WP.26386/07: Petition filed under Article 226 of the Consitution of India praying for the issuance of Writ of Certirarified mandamus calling for the records relating to the proceedings of the 1st respondent in Government Letter No.27961/Ni.A.1(1)/ 2003-38 dated 08.06.2007 quash the same and direct the 1st respondent to reconvey the alnd situated in Nolambur Village S.No.102/4 to the extent of 0.79 acre to the petitioner.

For Appellant : Mr.R.Muthukumarasamy
Senior Counsel for
Mr.A.Jenasenan

For Respondents : Mrs.A.Srijayanthi
Special Govt.Pleader for R1
Mr.V.Anandhamurthy for R2

J U D G M E N T

K.K. SASIDHARAN, J.

The representation submitted by the appellant, who is a subsequent purchaser of the land, for re-conveyance under Section 48-B of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") was negatived by the Government. The writ petition challenging the order rejecting the request for re-conveyance was dismissed by the learned single Judge. The order passed by the Writ Court is under challenge in this intra court appeal.

Background

2. The Government of Tamil Nadu issued a Notification under Section 4(1) of the Act for acquiring 539.98 acres of land in Nolambur Village for and on behalf of the Tamil Nadu Housing Board. The land owned by the predecessor-in-interest of the appellant in S.No.102/4 was part of the land acquired for the Housing Scheme. The Notification under Section 4(1) of the Act was issued on 11 December, 1975. The Declaration under Section 6 of the Act was issued on 30 December, 1978. The Award in respect of the land owned by the predecessor-in-interest of the appellant was passed on 5 September, 1986. The possession of the land having an extent of 79 cents in S.No.102/4 was taken over by the Housing Board on 6 November, 1986.

3. The appellant purchased the land after initiation of the land acquisition proceedings. The appellant filed a writ petition in W.P.No.3085 of 2005 for a direction to the Government to consider his representation for re-conveyance. The learned single Judge directed the Government to consider the representation of the appellant for re-conveyance. However, the Government rejected the request for re-conveyance on the ground that the land is required for the public purpose for which it was acquired. The related writ petition was dismissed by the Writ Court.

Submissions

4. The learned Senior Counsel for the appellant contended that major portion of the land has already been re-conveyed by the Housing Board. According to the learned Senior Counsel, the land was acquired 35 years ago. However, it was not put to use and as such, the appellant was justified in seeking re-

conveyance. The learned Senior Counsel by placing reliance on Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Tamil Nadu) Amendment Act, 2013 (Act 30 of 2013) contended that the appellant is in possession of the property and as such, the entire proceedings would lapse.

5. The learned Additional Government Pleader submitted that the land acquisition proceedings have become final by passing the Award. The possession of the land was taken by the Land Acquisition Officer and it was handed over to the Housing Board. The land is part of a Scheme. The Housing Board obtained planning permission and developed major portion of the land. With regard to the claim made on the basis of Section 24 (2) of Act 30 of 2013, the learned Additional Government Pleader contended that none of the ingredients of the said provision is attracted inasmuch as the possession has already been delivered and the compensation amount was deposited before the Civil Court.

Discussion

6. The appellant purchased the land after initiation of land acquisition. The Notification under Section 4(1) of the Act was issued on 11 December, 1975. The appellant purchased the land on 22 December, 1975. The Award was passed on 5 September, 1986. The land owned by the appellant in S.No.102/4 measuring an extent of 79 cents is part of the Award No.9/86 dated 5 September, 1986. The possession of the land was taken on 6 November, 1986. It was handed over to the Tamil Nadu Housing Board. The compensation amount was deposited before the Civil Court on 18 December, 1986.

7. There was no challenge to the land acquisition at the instance of the land owner or the appellant at any point of time. The appellant accepted the factual position regarding the possession of the land by the Housing Board with effect from 6 November, 1986. It is evident by the fact that the appellant made a request for re-conveying the land through a representation dated 28 July, 2004.

8. The representation submitted by the appellant for re-conveyance was considered by the Government on merits and it was rejected. The order dated 8 June, 2007, which was challenged in W.P.No.26386 of 2007 indicates that the subject land is part of larger extent in respect of which a comprehensive Scheme was framed by the Housing Board. The plots were developed by the Housing Board.

The question regarding re-conveyance

9. Section 48-B of the Act was inserted by State amendment in the Land Acquisition Act, for re-conveyance of the property. The provision reads thus:-

"48-B Transfer of land to original owner in certain cases- Where the Government are satisfied that the land vested in the Government under this Act is not required for the purpose for which it was acquired, or for any other public purpose, the Government may transfer such land to the original owner who is willing to repay the amount paid to him under this Act for the acquisition of such land inclusive of the amount referred to in sub-section (1-A) and (2) of Section 23, if any, paid under this Act."

10. The question of re-conveyance in terms of Section 48-B would arise only in case the Government is of the view that the land is not required for the purpose for which it was acquired or for any other public purpose. Before taking a decision for re-conveyance, the Government must be convinced that the land is not required not only for the purpose for which it was acquired, but for any other public purpose also.

11. As observed by the Hon'ble Supreme Court in Tamil Nadu Housing Board v. Keeravani Ammal and others [(2007) 9 SCC 255], Section 48-B introduced into the Land Acquisition Act in the State of Tamilnadu is an exception to the general rule that the land on acquisition become the property of the State and it could be used by the Government for any public purpose or in case, it is not needed for such public purpose, the same can also be sold by public auction. The provision like 48-B must therefore requires a strict construction, meaning thereby, satisfaction of the Government with regard to the non-utilisation of the land must be arrived at on the basis of relevant materials.

12. There is no right to compel the Government or the requisitioning body to re-convey the land either to the erstwhile land owner or to the subsequent purchaser. The issue is no longer res integra in view of the string of decisions on the point.

13. The Supreme Court in Keeravani Ammal (cited supra) considered the scope and ambit of Section 48-B of the Land Acquisition Act. The Supreme Court made it very clear that there is no vested right to the land owner to claim re-conveyance. The Supreme Court, in the said decision, by quoting an earlier judgment in State of Kerala v. M.Bhaskaran Pillai [(1997) 5 SCC 432] indicated that in case the land is not required for the purpose for which it was acquired, it should be sold through

public auction and the provision like Section 48-B is an exception to the said rule and as such, it should be construed very strictly and the Court must insist upon strict compliance with its terms.

14. The Hon'ble Supreme Court in Tamil Nadu Housing Board v. L.Chandrasekaran (dead) by Lrs. and others [(2010) 2 SCC 786] once again considered the right claimed by the erstwhile land owners under Section 48-B for re-conveyance and made the legal position very clear that there is no question of re-conveyance by the Government, in case, the land had already been transferred to the requisitioning body and the latter had utilised substantial portion thereof for execution of the Scheme and for other public purpose. The following observation would make the position clear:-

"28. It need no emphasis that in exercise of power under Section 48-B of the Act, the Government can release the acquired land only till the same continues to vest in it and that too if it is satisfied that the acquired land is not needed for the purpose for which it was acquired or for any other public purpose. To put it differently, if the acquired land has already been transferred to other agency, the Government cannot exercise power under Section 48-B of the Act and reconvey the same to the original owner. In any case, the Government cannot be compelled to reconvey the land to the original owner if the same can be utilised for any public purpose other than the one for which it was acquired."

15. The question before the Supreme Court in Rajasthan State Industrial Development and Investment Corporation v. Subhash Sindhi Cooperative Housing Society, Jaipur and others [(2013) 5 SCC 427], was as to whether transferee of land after issuance of Section 4(1) notification is entitled to claim release of land from acquiring authorities on the basis of similar release of land. The Hon'ble Supreme Court, by placing reliance on the earlier judgments indicated that the sale subsequent to Section 4(1) notification is void and there would be no need for an order for quashing as it would be automatically null and void without more ado. The question regarding discrimination was answered by the Supreme Court by observing that if the land of other similarly situated persons have been released, the Court must be satisfied that it is similarly situated in all respects, and has an independent right to get the land released. It was further observed that Article 14 of the Constitution does not envisage negative equality and it cannot be used to perpetuate any illegality. The Supreme Court set aside the order passed by the High Court directing re-

conveyance and held that there was no right to claim release on the ground that others were given the benefit of such release.

16. The appellant claimed the benefits in terms of Section 24(2) of Act 30 of 2013 and for the said purpose filed an additional affidavit dated 25 August, 2015.

17. We have perused the original file produced by the Housing Board. The possession of the land was taken over by the Land Acquisition Officer and physical possession was handed over to the Housing Board on 6 November, 1986. It is not as if the appellant was not aware of the then factual position. The appellant filed a writ petition for re-conveyance knowing fully well that the Housing Board is in ownership and possession of the land, after conclusion of the land acquisition proceedings.

18. The Hon'ble Supreme Court in Mahavir and Others vs. Union of India and another (SLP No.24781 of 2017 dated 8 September 2017), has made it clear that Section 24 of Act 30 of 2013 does not invalidate courts judgments/orders in which right have been finally lost or due to inaction is barred and that the law does not permit examination of barred or totally fraudulent claims and that Section 24(2) cannot be invoked in such cases.

19. Similar issue regarding the claim based on Section 24 (2) of the Act 30 of 2013 after the disposal of the earlier writ proceedings came up for consideration before the Hon'ble Supreme Court in Mahavir case (cited supra). The Supreme Court while negating the claim made by the land owners and upholding the judgment of the High Court made the following observation:-

"19. The court is duty bound to prevent the abuse of the process of law in the cases which have been concluded several decades before, in our considered opinion, the provisions of Section 24(2) of the 2013 Act cannot be invoked in such cases of dead claims or stale claims. There are several numbers of cases coming to this court in which matters had been contested up to this court questioning the acquisition and the petitions have been dismissed by this court, and acquisition has attained finality, possession was taken, the award passed. Notice had been issued under Section 12(2) of the Act tendering the awarded amount but it has not been collected by the claimants/land owners deliberately or they had refused to collect it and are not ready and willing to accept it and, thereafter, it has been deposited in the name and account of the owners in the treasury which is also deposited as per the State Governments instructions issued time to

time relating to how Government money is to be dealt with. The act of failure to deposit money under section 31 after possession is taken only imposes liability to pay higher interest under section 34. The acquisition would not lapse under the Act.

20. In our opinion, the cases in which there is deliberate action of the owners for not collecting the compensation and they do not want to receive it, section 24(2) of the 2013 Act does not come to their rescue as provisions are to help those persons who are deprived of compensation but not for those who deliberately had not received it and litigated for decades for quashing of proceedings avoiding to receive compensation by willful act. The failure to deposit in court under section 31(1) in such cases would attract only interest as envisaged under section 34 of the Act and the provisions of section 24 cannot be so invoked in such cases.

21. In the instant case, the claim has been made not only belatedly, but neither the petitioners nor their previous three generations had ever approached any of the authorities in writing for claiming compensation. No representation had ever been filed with any authority, none has been annexed and there is no averment made in the petition that any such representation had ever been filed. The claim appears not only stale and dead but extremely clouded. This we are mentioning as additional reasons, as such claims not only suffer from delay and laches but courts are not supposed to entertain such claims. Besides such claims become doubtful, cannot be received for consideration being barred due to delay and laches.

22. The High Court has rightly observed that such claims cannot be permitted to be raised in the court, and cannot be adjudicated as they are barred. The High Court has rightly observed that such claims cannot be a subject matter of inquiry after the lapse of a reasonable period of time and beneficial provisions of Section 24 of the 2013 Act are not available to such incumbents. In our opinion, Section 24 cannot revive those claims that are dead and stale.

23. The High Court has observed that Raisina is a part of the Lutyens zone of Delhi. It is

prime of New Delhi and Government offices etc. are located. The petitioners asked the High Court to infer and conclude that in the absence of some indication of the record being made available by them that their ancestors have not ever received any compensation. How the petitioners came to know that their ancestors had not received compensation has not been disclosed in the petition. The High Court has rightly declined to entertain such claims. The protective umbrella of section 24 is not available to barred claims. If such claims are entertained under section 24, it would be very-very difficult to distinguish with the frivolous claim that may be made even after tampering the records etc. or due to non-availability of such record after so much lapse of time. Once right had been lost due to delay and laches or otherwise, it cannot be revived under provisions of section 24 of the Act of 2013. The intendment of Act 2013 is not to revive stale and dead claims and in the concluded case when rights have been finally lost. If there is delay and laches or claim is otherwise barred, it is not revived under section 24(2) of the 2013 Act. The provision does not operate to revive legally barred claims. The provision of Section 24 does not invalidate courts judgments/orders in which right have been finally lost or due to inaction is barred. Law does not permit examination of barred or totally fraudulent claims. The provisions of the law cannot be permitted to be defrauded or misused. Section 24 (2) of the 2013 Act cannot be invoked in such cases. The High Court has rightly declined to entertain the writ petitions filed by the petitioners. It is not conceivable how the petitioners could file such a petition in a laconic manner relating to the prime locality at New Delhi that too for hundreds of acres with the delay of more than 100 years."

20. The facts of this case are identical to the case decided by the Supreme Court in Mahavir case (cited supra). Here also, the land acquisition proceedings have become final. The compensation amount was deposited in the Civil Court. The Tamil Nadu Housing Board has taken possession long back. The appellant has now projected a false case to give life to a dead litigation by taking shelter under Section 24(2) of Act 30 of 2013. We are therefore of the view that the appellant is not entitled to the benefits of Section 24(2) of Act 30 of 2013.

21. In the upshot, we dismiss the intra court appeal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

svki

To

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

2.The Managing Director,
The Tamil Nadu Housing Board,
331, Anna Salai, Nandanam,
Chennai - 600 035.

+1cc to Mr.V.Anandhamurthy, Advocate SR.No.2295

+1cc to Mr.A.Jeenasenar, Advocate SR.No.1923

+1cc to Government Pleader SR.No.2756

SSI (CO)
GN(14/02/2018)

W.A No.763 of 2011

सत्यमेव जयते
WEB COPY