

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.11.2018

DELIVERED ON : 14.12.2018

CORAM:

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

W.A.No.1666 of 2018
and
C.M.P.No.13401 of 2018

- 1.The State of Tamil Nadu,
represented by its
Secretary to Government,
Public Works Department,
Secretariat,
Chennai - 600 009.
- 2.The Commissioner of Land Administration,
Ezhilagam,
Chepauk,
Chennai - 600 005.
- 3.The District Collector,
Tiruvallur District,
Tiruvallur.
- 4.The District Revenue Officer,
Tiruvallur District,
Tiruvallur.
- 5.The Special Tahsildar (Land Acquisition) Unit-II,
Kannankottai-Thervoykandigai Reservoir Scheme,
Gummidipoondi Taluk @
Kavaraipettai,
Tiruvallur District.

... Appellants/
Respondents

Vs.

- 1.Adhikesavan
- 2.Pathammal
- 3.Chandra
- 4.Muniyammal
- 5.Pappammal
- 6.Archanadevi
- 7.Kasthuri

8.Sengammal
9.Anandammal

... Respondents/
Writ Petitioners

PRAYER: Appeal filed under clause 15 of the Letters Patent Act, against the order dated 09.01.2018 passed in W.P.No.33736 of 2016.

WP.No. 33736/16 dated 09/01/2018: Writ petition filed under Article 226 of the constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records in Na. Ka. 006 of 2016 dt 27.6.2016 on the file of the 5th respondent and quash the same as illegal arbitrary and discriminatory and direct the 5th respondent to dispersal the award to the petitioners.

For Appellants : Mr.S.R.Rajagopal
Additional Advocate General - IX
assisted by
Mr.C.Thirumaran
Special Government Pleader

For Respondents: Mr.N.Nithiyanandan

JUDGMENT

R.SUBBIAH, J.

This writ appeal is directed against the order dated 09.01.2018 passed in W.P.No.33736 of 2016, by the learned Single Judge allowing the writ petition filed by the respondents herein and quashing the impugned order dated 27.06.2016 passed by the fifth respondent in the writ petition and consequently, directing the fifth respondent therein, who is the fifth appellant herein, to disburse the compensation amount to the writ petitioners.

2. Facts as culled out from the typed set of papers filed in support of the writ petition, leading to the filing of the present writ appeal, briefly stated, are as follows:

2.1. According to the respondents/writ petitioners, they are landless poor persons and they were assigned with certain lands free of cost in terms of G.O.Ms.No.396, Revenue Department, dated 23.06.2006 and G.O.Ms.No.555, Revenue Department, dated 26.08.2006 as per Revenue Standing Order No.15. Subsequent thereto, the revenue records, viz., patta, chitta and adangal of the said lands were mutated in their names and they are in possession and enjoyment of their respective lands absolutely.

2.2. Meanwhile, the Government of Tamil Nadu framed a scheme for foundation of reservoir in Kannankottai - Thervai Kandigai

and sought to acquire 1252.47 acres of land for public purpose and thereby, allotted Rs.330 Crores for the said project. In that process, the Government issued a notification under Section 4(1) of the Land Acquisition Act, 1894 [hereinafter referred to as '1894 Act'] and published the same in Tamil Nadu Government Gazette Extraordinary in G.O.Ms.No.206, dated 15.07.2013. Aggrieved by the same, various land owners filed writ petitions before this Court in W.P.No.27592 of 2014, etc., batch and this Court, by order dated 05.11.2014, dismissed the same. Thereafter, the respondents/writ petitioners submitted the representations to the fifth respondent, who rejected the same stating that the said lands have been allotted in favour of the respondents/writ petitioners in terms of G.O.Ms.No.555, Revenue Department, dated 26.08.2006 and in the event of acquisition of said lands, no compensation will be paid and thus, the impugned orders dated 27.06.2016 came to be passed. Challenging the same, the respondents/writ petitioners filed W.P.No.33736 of 2016 before this Court.

2.3. The appellants/respondents 1 to 5 filed their detailed counter affidavit stating that the lands in question were assigned to the respondents/writ petitioners and they have been acquired for formation of a new reservoir near Kannankottai - Thervoykandigai villages after observing all usual formalities under the relevant provisions of 1894 Act as per the respective awards passed in respect of the said lands, the details of which, are given hereunder:

Sl. No.	Name of the Petitioner	Details of Acquisition			Award No. and Dated
		S.No.	Total Extent (In Hectare)	Extent Acquired (In Hectare)	
1	R.Athikesavan S/o.Raman	160/1 1 160/7 160/9	0.06.5 0.09.0 0.03.5 ----- 0.19.0	0.06.5 0.09.0 0.03.5 ----- 0.19.0	6/2014 dated 05.03.2014 (Rc.No.12/2013/A1/ Unit-II, Block-I)
2	Pattammal W/o.Arjunan	175/1 1 175/1 2	0.08.0 0.05.0 0.13.0	0.08.0 0.05.0 0.13.0	1/2014 dated 04.03.2014 (Rc.No.7/2013/A1/U nit-II, Block-II)
3	Chandra W/o.Munichandran	168/4	0.23.0	0.23.0	3/2014 dated 03.03.2014 (Rc.No.6/2013/A1/U nit-II, Block-IV)

4	Muniammal W/o.Venkatesa n	178/5	0.20.0	0.20.0	4/2014 dated 04.03.2014 (Rc.No.5/2013/A1/U nit-II, Block-IV)
5	Pappammal W/o.Krishnan	160/2 160/1 2	0.11.0 0.33.0 ----- 0.44.0	0.11.0 0.33.0 ----- 0.44.0	6/2014, dated 05.03.2014 (Rc.No.5/2013/A1/U nit-II, Block-I)
6	Anjanadevi W/o.Mageshwar an	205/6 205/7	0.21.5 0.13.5 ----- 0.35.0	0.21.5 0.13.5 ----- 0.35.0	5/2014, dated 05.03.2014 (Rc.No.2/2012/A1/U nit-II, Block-VII)
7	Kasthuri W/o.Krishnan	160/1 9 160/2 0	0.13.0 0.06.5 ----- 0.19.5	0.13.0 0.06.5 ----- 0.19.5	6/2014, dated 05.03.2014 (Rc.No.12/2013/A1/ Unit-II, Block-I)
8	Sengammal W/o.Ponnuswam y	160/1 0 160/8	0.01.5 0.11.0 ----- 0.12.5	0.01.5 0.11.0 ----- 0.12.5	6/2014, dated 05.03.2014 (Rc.No.12/2013/A1/ Unit-II, Block-I)
9	Anandammal W/o.Kattan	143/8 145/1	0.11.0 0.19.0 ----- 0.30.0	0.11.0 0.19.0 ----- 0.30.0	6/2014, dated 05.03.2014 (Rc.No.12/2013/A1/ Unit-II, Block-I)

Though the compensation amount has been determined and apportioned to the respondents/writ petitioners in respect of the lands acquired under the aforesaid awards, the same has not been paid to them in view of the condition No.6 imposed in the respective assignment proceedings passed by the Tahsildar, Gummidipoondi. While so, the respondents/writ petitioners filed W.P.No.16240 of 2016 before this Court and this Court, by order dated 28.04.2016, directed the respondents/writ petitioners to submit individual representations along with the copies of documents, such as, patta, sale deed, etc, and present the same before the fourth respondent therein - Unit Special Tahsildar (LA1), Gummidipoondi Taluk, Thiruvallur District, who shall, after verifying the contents, consider their representations and pass appropriate orders on merits and in accordance with law within a period of six weeks from the date of receipt of the individual representation. Pursuant to the said order, the respondents/writ petitioners submitted their representations to the fifth appellant herein on 03.06.2016 along with the copy of the order of this Court and thereafter, they were called upon to attend the enquiry before the fifth respondent on 20.06.2016 and they attended the enquiry on 20.06.2016. After considering the request of the respondents/writ petitioners for payment of

compensation for the acquisition of their assigned lands, in the light of the condition No.6 imposed in the assignment proceedings of the Tahsildar, Gummidipoondi Taluk, their request for payment of compensation came to be rejected by the fifth respondent vide order dated 27.06.2016.

2.4. The learned Single Judge, after considering the rival submissions, has allowed the writ petition and held that the contention of the fifth appellant herein that even though the compensation amount has been determined for the respondents/writ petitioners, the same cannot be disbursed to the respondents/writ petitioners in view of the condition pertaining to resumption provided to in the order of assignment in their favour, cannot stand scrutiny and accordingly, quashed the order impugned therein and consequently, directed the fifth respondent therein to disburse the compensation amount to the respondents/writ petitioners within twelve weeks from the date of receipt of a copy of the order.

2.5. Aggrieved by the same, the present writ appeal has been filed.

3. The learned Additional Advocate General appearing for the appellants submitted that the respondents/writ petitioners are the beneficiaries under the scheme of distribution of 2 acres of waste land to landless/poor agriculture labour families, vide G.O.Ms.No.396, dated 23.06.2006 and the assignments were also made in accordance with Revenue Standing Order - 15 and the said lands were conditionally assigned to them under the said scheme. The primary condition was that as per clause 4, the lands assigned could not be alienated for a period of 30 years and thereafter, if there would be any alienation, the same could be done only with the prior written permission of the Tahsildar or Revenue Divisional Officer concerned. The said condition also stipulated that the lands ought to be under direct cultivation by the assignment holder throughout the period till that time. The terms of assignment also had a resumption clause for resuming the lands without payment of any compensation in a situation where the lands are required by the Government for any public purpose. Pursuant to the same, assignment patta was given by way of computer patta, however, owing to certain errors, in the computerisation, the word 'assignment' was not mentioned and thus, the assignees were bound by the terms of assignment order. While so, the Government had formulated a scheme for formation of new reservoir near Kannankottai - Thervoirkandigai villages and the lands assigned to the respondents/writ petitioners were acquired for the said purpose under the provisions of the 1894 Act. Meanwhile, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 [hereinafter referred to as '2013 Act'] came into force on 01.01.2014 and thereafter, an interim award determining the compensation came to be passed on 03.03.2014. Though interim

compensation amount has been determined, the compensation amount has not been paid to the respondents/writ petitioners in view of the terms of the respective assignment orders. In the meantime, the respondents/writ petitioners filed W.P.No.16240 of 2016 before this Court and this Court, by order dated 28.04.2016, directed the respondents/writ petitioners to submit individual representations along with the copies of the documents to the fourth respondent therein, who shall verify the contents and consider the representations and pass appropriate orders on merits and in accordance with law within six weeks from the date of receipt of a copy of the individual representations. Pursuant to the said order, the respondents/writ petitioners submitted their individual representations and after enquiry, their claim for compensation was rejected by the orders impugned in the present writ petition. Aggrieved thereby, the respondents/writ petitioners filed W.P.No.33736 of 2016 and this Court, by order dated 09.01.2018 while disposing of the writ petition, directed the fifth respondent therein to disburse the compensation amount within twelve weeks from the date of receipt of a copy of the order.

4. It is the further submission of the learned Additional Advocate General appearing for the appellants that the said lands belonged to the Government and they were conditionally assigned to the respondents/writ petitioners under the two acres scheme and the ownership of the said lands still vests with the Government. As per the terms of the assignment, no transferable right is bestowed on the assignees and the Government have got the right to resume the said lands without payment of compensation to the assignees. In support of the said submission, he relied on the judgment of the Honourable Supreme Court in Hajee S.V.M.Mohamed Jamaludeen v. Government of Tamil Nadu reported in 1997 (3) Supreme Court Cases 466, wherein it is held as follows:

"10. The combined effect of the above two sections of the Grants Act is that terms of any grant or terms of any transfer of land made by a Government would stand insulated from the tentacles of any statutory law. Section 3 places the terms of such grant beyond the reach of any restrictive provision contained in any enacted law or even the equitable principles of justice, equity and good conscience adumbrated by common law if such principles are inconsistent with such terms. The two provisions are so framed as to confer unfettered discretion on the Government to enforce any condition or limitation or restriction in all types of grants made by the Government to any person. In other words, the rights, privileges and obligations of any grantee of the Government would be completely regulated by the terms

of the grant, even if such terms are inconsistent with the provisions of any other law.

11. The above legal position was recognised by the courts in India before the Constitution of India came into being. (Surja Kanta Roy Choudhury v. Secy., of State [AIR 1938 Cal 229 : 42 CWN 239] and Raza Husain Khan v. Saiyid Mohd., [AIR 1938 Oudh 175 : ILR 14 Luck 22]). The position continued to be so even after the Constitution came into force (State of U.P., v. Zahoor Ahmad [(1973) 2 SCC 547 : (1974) 1 SCR 344])."

5. He further contended that when clause 17 of the terms of assignment provides for resumption of the lands by the Government without payment of any compensation, the respondents/writ petitioners are not entitled to any compensation.

6. With regard to the claim of the respondents/writ petitioners that since the appellants have invoked the provisions of the 1894 Act, it would amount to recognising their ownership and the Government is under an obligation to pay the compensation in accordance with law, it is submitted by the learned Additional Advocate General appearing for the appellants that mere act of invoking the 1894 Act would not amount to recognising the ownership of the assignees and when some private rights have been created or encumbrances in the property have been created, the acquisition of lands under the 1894 Act is permissible. In the event of acquisition of lands belonging to the Government, which was under lease or assigned, the lessee/assignee cannot claim the entire amount of compensation suggesting that the same was towards interest held by him. To strengthen the said contention, he placed reliance on the judgment of the Honourable Supreme Court in Inder Parshad v. Union of India and others reported in (1994) 5 Supreme Court Cases 239.

7. Insofar as the contention of the respondents/writ petitioners that since the acquisition of the lands was made after 01.01.2014, the provisions of the 2013 Act would apply as the new Act brings within its purview persons to whom lands are assigned by the Government, the learned Additional Advocate General appearing for the appellants submitted that since the respondents/writ petitioners do not have any legally enforceable right, the 2013 Act also will not have any application in this case. In this regard, he relied on the judgment of this Court in Mrs. Jayalakshmi and others v. The Government of Tamil Nadu represented by its Secretary to Industries Department reported in (2009) 8 MLJ 300. Therefore, the learned Additional Advocate General appearing for the appellants prayed for allowing the writ appeal.

8. Countering the said submissions, the learned Counsel for the respondents/writ petitioners submitted that the lands assigned to the respondents/writ petitioners along with a large extent of lands in the village and adjacent village were notified for the formation of a new reservoir, namely, Kannankottai - Thervoykandigai Reservoir Scheme under the provisions of the 1894 Act and the notices under Section 4(1) of the 1894 Act were issued on 26.08.2013. The assigned lands were admittedly acquired under the relevant provisions of the 1894 Act and all the formalities under the 1894 Act were followed treating the lands as patta lands of the respondents/writ petitioners. In the meanwhile, the 2013 Act came into force with effect from 01.01.2014 and the acquisition was treated and continued under the provisions of the 2013 Act. In view of the change of law, the interim awards were passed in respect of the lands of the respondents/writ petitioners indicating that the acquisition would be under the provisions of the 2013 Act and the interim awards came to be passed only after the 2013 Act came into force. However, the appellants have refused to pay the compensation relying upon clause 6 of the assignment order.

9. The learned Counsel for the respondents/writ petitioners further submitted that once the appellants have chosen to invoke the acquisition proceedings, they cannot turn around and say that the respondents/writ petitioners are not entitled for any compensation stating that the said lands are assigned lands. He also invited the attention of this Court to Section 3(r)(iii) of the 2013 Act, which defines 'land owner' which specifically recognised the rights off the assignees as absolute owners of the assigned lands for all purposes including payment of compensation for the lands and thus, submitted that the respondents/writ petitioners are entitled for compensation.

10. We have carefully considered the submissions of the learned Counsel for the parties and perused the materials available on record.

11. The main contention of the appellants is that the respondents/writ petitioners are the beneficiaries of 2 acres of waste land to landless/poor agricultural families as per G.O.Ms.No.396, dated 23.06.2006 and the assignments were also made under Revenue Standing Order 15. According to the learned Additional Advocate General appearing for the appellants, as per clause 4, the lands assigned could not be alienated for a period of 30 years and thereafter, the same could be done only with the prior written permission of the Tahsildar or the Revenue Divisional Officer concerned. As per clause 6, the appellants are having the right to resume the lands and when that being the position, since the appellants have invoked the provisions of the 1894 Act, it would not amount to recognising the ownership

of the assignees and therefore, they are not entitled for any compensation.

12. Whereas it is the submission of the learned Counsel for the respondents/writ petitioners that once the appellants have chosen to invoke the provisions of the 1894 Act to initiate the land acquisition proceedings, then, they cannot deny the compensation to the respondents/writ petitioners.

13. Before considering these submissions, it would be appropriate to extract hereunder certain provisions of the 2013 Act:

Section 3(r)(iii):

"3(r). "land owner" includes any person:

(iii) who is entitled to be granted Patta rights on the land under any law of the State including assigned lands;"

Therefore, any condition imposed with the assignment by the appellants have extinguished automatically and the said Section mandates that the assignees of the said lands are to be treated as absolute owners of the said assigned lands and they are entitled for full compensation as payable to other land owners.

Section 3(c)(v):

"3(c). "affected family" includes:

(v) a member of the family who has been assigned land by the State Government or the Central Government under any of its schemes and such land is under acquisition;"

By virtue of Section 3(c)(v) of the 2013 Act, the assignees who are treated to be the affected family, are entitled for all the benefits under the provisions of the 2013 Act. Therefore, when the Government initiate proceedings for compulsory acquisitions under the provisions of the 1894 Act, treating such lands as not belonging to itself, but to others, it is under an obligation to pay compensation as provided in the applicable Land Acquisition Act. Moreover, it is trite law that the Government cannot acquire its own land and the Government was not competent in the proceedings under the Land Acquisition Act to put forward its own title for the properties sought to be acquired, denying compensation to the persons entitled to, having issued notifications/awards specifying the lands and the names of the owners/occupiers/persons interested.

14. In this regard, it is appropriate to refer to the

judgment of the Honourable Supreme Court in The Special Land Acquisition and Rehabilitation Officer, Sagar v. M.S.Seshagiri Rao and another reported in AIR 1968 Supreme Court 1045 and paragraphs 5 to 8 read as under:

"5. We are unable to agree with the High Court of Madras that when land is notified for acquisition, and in the land the State has an interest, or the ownership of the land is subject to a restrictive covenant in favour of the State, the State is estopped from setting up its interest or right in the proceedings for acquisition. The State in a proceeding for acquisition does not acquire its own interest in the land, and the Collector offers and the Civil Court assesses compensation for acquisition of the interest of the private persons which gets extinguished by compulsory acquisition and pays compensation equivalent to the market value of that interest. There is nothing in the Act which prevents the State from claiming in the proceeding for acquisition of land notified for acquisition that the interest proposed to be acquired is a restricted interest.

6. We agree with the observations made by Batchelor, J., in Govt., of Bombay v. Usufali Salebhai, (1910) ILR 84 Bom 618 at p. 636:

"The procedure laid down in the Act is so laid down as being appropriate to the special case which is considered in the Act, i.e., the case where the complete interests are owned privately. But that special case is, as I understand it, singled out by the legislature as the norm or type with the intent that in other cases which only partially conform to the type the procedure should be followed in so far as it is appropriate, nor that such cases should be excluded from the Act because they do not wholly conform to the type. In other words, Government *** are not debarred from acquiring and paying for the only outstanding interest, merely because the Act, which primarily contemplates all interests as held outside Government, directs that the entire compensation based upon the market value of the whole land, must be distributed among the claimants. In such circumstances, as it appears to me, there is no insuperable objection to adapting the procedure to the case on the footing that the outstanding interests,

which are the only things to be acquired,
are the only things to be paid for."

The principle of Usufali Salebhai's case, (1910) ILR 34 Bom 618 was, it may be observed, approved by this Court in Collector of Bombay v. Nusserwanji Rattanji Mistri 1955 SCR 1311 : (AIR 1955 SC 298).

7. But the view expressed by the District Court that the grantees are not entitled to any compensation for the land cannot be sustained. The District Court was bound to determine the market value, at the date of the notification under S.4 of the Land Acquisition Act of the interest of the grantees in the land.

8. The order passed by the High Court is maintained subject to the modification that the market value of the interest of the grantees in the land (of the nature herein before mentioned) at the date of the notification under S.4 of the Land Acquisition Act shall be determined and paid to the grantees in addition to the compensation paid for the improvement in the land. There will be no order as to costs in this appeal."

15. Therefore, from the reading of the above judgment, it is clear that once the provisions of the 1894 Act are invoked and proceeded with waiving their rights over the lands, the appellants cannot legally and factually deny compensation for the acquired lands of the respondents/writ petitioners. Further, the Land Acquisition Officer having issued notices under Sections 4(1), 9(3) and 10 and passed awards under Sections 11 and 12(2) of the Act, in the name of the respondents/writ petitioners treating the lands in question as that of the respondents/writ petitioners, is estopped from denying the interim compensation or compensation for the lands by the impugned proceedings.

16. Thus, we do not find any infirmity or illegality in the order passed by the learned Single Judge and accordingly, this writ appeal fails and the same is dismissed, confirming the order dated 09.01.2018 passed in W.P.No.33736 of 2016. No costs. Consequently, the connected civil miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rsb/cs

TO

- 1.The Secretary to Government,
Public Works Department,
Secretariat,
Chennai - 600 009.
- 2.The Commissioner of Land Administration,
Ezhilagam, Chepauk,
Chennai - 600 005.
- 3.The District Collector,
Tiruvallur District,
Tiruvallur.
- 4.The District Revenue Officer,
Tiruvallur District,
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- 5.The Special Tahsildar (Land Acquisition) Unit-II,
Kannankottai-Thervoykandigai Reservoir Scheme,
Gummidipoondi Taluk @
Kavaraipettai,
Tiruvallur District.

+1cc to Mr.Nithianandam, Advocate, S.R.No. 8694
+1cc to the Government Pleader, S.R.No. 87940

W.A.No.1666 of 2018
and
C.M.P.No.13401 of 2018

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