

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2018

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

W.P.No.31811 of 2014
and WMP.No.14664 of 2016

R.M.Sundaram

... Petitioner

Vs

1.The State of Tamil Nadu

Rep by its Secretary to Government
School Education Department
Fort St.George
Chennai - 600 001.

2.The Revenue Divisional Officer
Nagapattinam.

3.The National Elementary School,
Nagapattinam
Rep. by its Secretary-cum-Correspondent
Mr.K.S.Kumaravelu
S/o.K.S.Sankaran
Neela South Street,
Nagapattinam - 611 001.

... Respondents

(R3 impleaded as per order dated 13.3.2015
in MP.No.2 of 2015 in WP.No.31811 of 2014)

Prayer :- Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Declaration, declaring the land acquisition proceedings initiated under Section 4(1) Notification issued in G.O.Ms.No.396 Education Department dated 11.03.1987, Section 6 Declaration issued in G.O.Ms.No.1223 Education (MUI (2) Department dated 08.09.1989 against the petitioner lands and buildings measuring to an extent of 10849 sq.ft. out of 11943 sq.ft. comprised in Survey No.435/1, and measuring an extent of 2912 sq.ft. out of 4884 sq.ft. of Nagapattinam Municipality and District shall be deemed to have been lapsed by virtue of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

For Petitioner : Mr.R.Ganesan

For Respondents : Mr.Akhil Akbar Ali
Government Advocate [for R1 & R2]
Mr.Ravichandran Sundaresan [for R3]

ORDER

1.1 The petitioner contends that he owns plot of land and a building measuring an extent of 1,052.5 sq.mtrs comprised in Old T.S.No.435/1, New T.S.No.435/A and another plot of 454 sq.mtrs. in Survey No.435/2 of Block No.6, Ward No.3 of Nagapattinam Municipality. The said building and land was leased out to a certain Society for the purpose of running an Elementary School. The said Society has been running a school and the School is arrayed as the third respondent herein. While so, the first respondent took steps to acquire the lands where the school is situated, and issued a notification under Section 4(1) of the Land Acquisition Act, 1894 dated 11.03.1987. After complying with the requirements of Section 5A of the said Act, the first respondent came up with a declaration under Section 6 of the said Act on 08.09.1989. Thereafter, the petitioner moved the Government under Section 15-A of the Act to call for the records of the Land Acquisition Officer/the District Collector for the purpose of satisfying itself about the legality or propriety of the land acquisition proceedings. The issue of legality which the petitioner has raised for invoking Section 15A of the Act appears to rest on a certain perceived procedural lapses in issuing paper publication under Section 4(1) of the Act, followed by an enquiry under Section 5(A) of the Act and then to the declaration made under Section 6 of the Act.

1.2. As the first respondent did not respond to the same, the petitioner moved this Court with W.P.No.14393 of 1991, and this petition was disposed of on 09.12.1998 with a direction to the authorities to hold an enquiry on the petitioner's representation filed under Section 15A of the Land Acquisition Act, 1894 coupled with a direction to the petitioner to file a fresh representation to the first respondent. This representation was given on 23.02.1999, on which the respondent conducted an enquiry on 22.09.2000, and ultimately an award in the acquisition proceedings came to be passed on 09.09.1991.

1.3. Be that as it may, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30/2013) came into force on 01.01.2014. Alleging that the Land Acquisition Authority has not deposited the compensation amount in Court in the manner that law requires and therefore, the petitioner is entitled to the benefit under Section 24(2) of the Central Act 30/2013. Consequently, the petitioner has come forward with the present petition seeking a declaration that the entire acquisition proceedings has lapsed within the meaning of Section 24(2) of the Central Act 30/2013.

2. Heard Mr.R.Ganesan, learned counsel for the petitioner and

Mr.Akhil Akbar Ali, learned Government Advocate for respondents 1 and 2 and Mr.Ravichandran Sundaresan for the third respondent.

3. In the counter affidavit filed by the second respondent/Revenue Divisional Officer, Nagapattinam, the dates of various proceedings of the acquisition commencing from notification issued under Section 4(1) of the Land Acquisition Act and culminating the passing of the award were have been admitted. It is further averred that as per the land acquisition proceedings, the land owner of the property has been identified as "Neelatchiamman Temple Nandhavana Pushpam Panividai Dharmam" by its trustee Kunajammal and Meenachisundarathammal, both were wives of certain Rajamanickam Chettiar and the interested persons are R.M.Ganapathy and R.M.Sundaram. As there was some dispute in apportioning the compensation, a reference was ordered to be made to Sub Court, Nagapattinam under Section 30 and 31(2) of the Land Acquisition Act, 1894. The entire compensation amount of Rs,59,231.20 has been remitted in the Civil Deposit Vide Challan No.17 dated 13.09.1988 and another sum of Rs.1,27,473/- was remitted on 12.08.1991. The other facts narrated in the affidavit filed in support of the petition is not very germane to the present proceedings.

4.1 In the counter affidavit filed by the Secretary-cum-Correspondent of National Elementary School/the third respondent, it is alleged that the property acquired originally belonged to one Muthu Kayarohanam Chettiyar, who had endowed the property for public religious and charitable activities attached to various temples and institutions more than a century back and the previous owners of the property had created a lease in the property to for running the school under a lease deed dated 30.08.1913. It is recited therein that the said property was endowed "Kayarohanaswamy Neelayathatchi Amman Temple", for maintaining a garden. After the demise of Muthu Kayarohana Chettiyar, his two sons Muthu Dhandapani Chettiyar and Rajamanickam Chettiyar became the trustees and performed the duties required and discharged their responsibilities as such. After their demise, their respective widows executed a registered agreement between them Vide registered document dated 26.10.1969, wherein they admitted to the character of the property as one in Trust for public religious charity.

4.2 Muthu Dhandapani Chettiyar's wife is certain Thangathammal and she is the step sister of the petitioner. The petitioner never focused himself as a Trustee of the endowed property and from the very beginning, the petitioner made arrangements to treat the properties as separate properties. In short, the third respondent challenges the petitioner's title to the property.

4.3. As to the point raised by the petitioner for invoking Section 24(2) of the Act is concerned, the third respondent treks along the same line as the second respondent/Revenue Divisional Officer, Nagapattinam had done in his counter and would aver that the amount has been deposited in the Civil Deposit under Sections 30 and 31 of the Land Acquisition Act.

5. The third respondent has filed WMP.No.14664 of 2016 for impleading the A/M.Kayarohanaswamy Neelayathatchi Amman Temple Devasthanam, Rep. by its Executive officer, Nagapattinam as additional respondent, and contends that it is necessary for proper adjudication of the present controversy.

6. The petition is filed on a solitary ground that the compensation payable in terms of the award dated 09.09.1991, has not been deposited in the Court in the manner known to law. Admittedly, this award was passed atleast some 23 years prior to the coming into force of the Central Act 30/2013. If the statements were true, the petitioner reaches ashore with least difficulty. This apart, the petitioner faces resistance on two scores: (a) both the respondents, more particularly the second respondent would contend that the compensation amount is kept in court deposit (b) that the petitioner has no locus standi to maintain the petition inasmuch as the property in question is endowed property of which the petitioner is not a trustee. This resistance comes essentially from the third respondent.

7. As to the first of the two points, the original file pertaining to acquisition were made available before this Court and after going through it, following facts could be ascertained :

a) that the land acquisition authority has treated the property as endowed property and not as the personal property of the petitioner, that his trustees are Meena and Kundammal. But the petitioner [R.M.Sundaram] has also been indicated therein as a person interested. What is the role assigned by the Land Acquisition Authority in the context of the petitioner's title to the property is not amply clear. However, the Land Acquisition Authority has not treated the petitioner as an alien to the property or endowment in question

b) Notwithstanding the assertion of the second respondent that the amount has been deposited in Civil Deposit, what it conveys in real terms is that the amounts are only in revenue deposit and has not been deposited in the civil Court.

c) No notice under Section 12(2) of the Land Acquisition Act has seemed to have been served at any time either on the petitioner or the other trustees or any other persons who were said to have been interest in the endowed property

8.1 Mr.Ravichandran Sundaresan, learned counsel appearing for the third respondent seriously questioned the petitioner's locus standi to maintain present petition as according to him, the petitioner is a stranger to the acquisition proceedings.

8.2 To reiterate, in the entire proceedings of land acquisition, the land acquisition officer has treated the petitioner as a person interested. In other words, he has not been excluded or exempted when the properties were acquired, and hence the argument that the petitioner does not have current locus standi to maintain this petition may not find strength for its sustenance.

9. Turning to the second part, it is now apparent that the compensation has not been deposited in the Court, and at no time before depositing the said amount in the revenue deposit, no notice under Section 12(2) of the Land Acquisition Act was seen to have been served on all or any of those who have title or interest in the property acquired. Apparently if the statement in the award were to be trusted, there appears to be a dispute in apportioning the amount, but yet, despite the order directing the deposit of compensation amount into the Civil Court under Sections 30 and 31(2) of the Land Acquisition Act, the said amount was not so deposited. In the context of Section 24(2) of the Central Act 30/2013, this cannot be considered as deposit within its meaning. More so, no notice under Section 12(2) of the Act was issued/served on any of those. Even if the Land Acquisition Authority were to deposit the amount under Section 30 of the Act, it is an act subsequent to the passing of the award based on its premise about the existence of any dispute regarding apportioning the compensation, it has little relevance in the context of the duty of the Land Acquisition Authority to intimate the owners of the lands about the passing of the award with a notice contemplated under Section 12(2) of the Act.

10. The facts as has been ascertained from the files pertaining to acquisition as already indicated, brings the case within the folds of Section 24(2) of the Act and accordingly, the acquisition must be declared as lapsed. However, it must be said that there is a School running for several years in the said premises and therefore the School cannot be ejected out from the said property and therefore, the respondents 1 and 2

may have to take a fresh decision as to the need to acquire the said lands for the benefit of the School, by coming out with a fresh notification. In the context of the present case and in order to balance the petitioner's right that flows consequent to the decision of this Court in declaring that the Land Acquisition proceedings has lapsed, it must be done within a period of six months.

11. Whatever title pertaining to the property still remains to be resolved that may have to be done independently and the parties are at liberty to move the appropriate Civil Court in this regard. At all times, the petitioner is directed not to resort to any method not sanctioned in law to evict or eject the School from the said property and this includes resorting to police aid.

12. With the above direction, this petition is allowed. No costs. Consequently, connected petitions are closed.

Sd/-

Assistant Registrar(CS V)

//True copy//

Sub Assistant Registrar

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To:

1.The Secretary to Government
State of Tamil Nadu
School Education Department
Fort St.George
Chennai - 600 001.

2.The Revenue Divisional Officer
Nagapattinam.

+1cc to Mr.R.Ganesh, Advocate SR.No.10225

+1cc to Mr.Ravichandran Sundaresan, Advocate SR.No.9866

W.P.No.31811 of 2014

NRL (CO)
GN(17/04/2018)