

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.12.2017
Delivered on : 31.01.2018

CORAM:

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

W.A No.902 of 2017 and
CMP No.21237 of 2017

Tamil Nadu Housing Board
Rep. by its Executive Engineer and
Administrative Officer,
Coimbatore Housing Unit,
Tatabad, Sivanandha Colony,
Coimbatore - 641 012.

...Appellant

Vs

1.R.Rajendran

2.R.Ravindran

3.R.Santhanagopal

4.The State of Tamil Nadu
Rep. by Secretary to Government of Tamil Nadu,
Housing and Urban Development Department,
Fort St.George, Chennai - 600 009.

5.The Special Tahsildar (Land Acquisition)
Housing Scheme Unit No.1
Coimbatore.

...Respondents

Prayer:- Writ Appeal filed under clause 15 of the Letter Patent
to set aside the order dated 13.04.2009 in W.P.No.18326 of 2008.

W.P.No.18326 of 2008:

Writ Petition praying for Writ of declaration declaring the
entire acquisition proceedings commencing from the notification
issued by the first respondent under Section 4(1) of the Land
Acquisition Act 1894 in G.O. Ms. No 196 Housing and urban
development dated 02.03.1988 and the declaration made by the 1st
Respondent under Section (6) of the Act in G.O. MS No 287
Housing and urban Development department on 23.03.1989lapsed in
view of section 11-A of the Land Acquisition Act in so far as

the Lands belonging to the petitioners comprised in S.F.Nos. 54,55/2, 63/2, 70,71,75, 80/1 and 80/2 situated at Sowripalayam Village, Coimbatore District.

For Appellant : Mr.V.Anandhamurthy
Standing Counsel

For Respondents: Mr.G.Sankaran for R1 to R3
Mrs.A.SriJayanthi
Special Govt.Pleader
for R4 and R5

J U D G M E N T
K.K. SASIDHARAN, J.

Introductory

The land acquisition proceedings initiated to acquire the land owned by the respondents 1 to 3 was quashed by the Writ Court for want of prior approval under Section 3(f)(vi) of the Land Acquisition Act, 1894 and failure to pass the Award within a period of two years and the same resulted in filing this intra court appeal by the Tamil Nadu Housing Board. The land owners are now taking advantage of Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "Act 30 of 2013") and their contention is supported by the information furnished by the District Court, Coimbatore that the Award amount was not deposited into the Civil Court designated as the Reference Court under the Land Acquisition Act. Similarly, there are no documents evidencing the factum of taking possession from the land owners except a photocopy of a Possession Certificate inserted in the middle of the Award file without continuity, indicating transfer of possession by the Revenue Inspector to the Housing Board.

Background facts:-

2. The land owned by the respondents 1 to 3 (hereinafter referred to as the "Land Owners") in Sowripalayam Village, Coimbatore, was acquired by the State for and on behalf of the Tamil Nadu Housing Board. The legal proceedings initiated by the land owners initially, challenging the acquisition were all dismissed. Subsequently, the land owners filed a fresh writ petition in W.P.No.18326 of 2008, challenging the statutory proceedings, including the award, on certain legal grounds and more particularly for want of sanction under Section 3(f)(vi) and violation of Section 11-A of the Land Acquisition Act. The writ petition in W.P.No.18326 of 2008 was allowed by order dated 13 April, 2009. The order is challenged by the requisitioning body in this appeal.

3. The land owners in the intra court appeal filed by the Tamil Nadu Housing Board, filed a miscellaneous petition in CMP No.21237 of 2107 claiming the benefits of Section 24(2) of Act 30 of 2013. The appellant though not filed its response to the application, produced the file and opposed the application.

4. We have heard the learned counsel for the respective parties.

5. Since the learned counsel for the respondents 1 to 3 confined his arguments on the question of lapse of acquisition, the only issue that arises for consideration is whether the land owners are entitled to the benefits of Section 24(2) of Act 30 of 2013.

Discussion and conclusion:-

6. The land owners in the application in CMP No.21237 of 2017 contended that possession was not taken and that the compensation amount was deposited in the personal account of the Tahsildar. In order to verify the correctness of the contentions, we have summoned the original records.

7. The Award file produced by the learned Standing Counsel for the appellant indicated that Award No.1 of 1991 was passed on 22 March 1991. The Award is found at page No.1642 of the Award file. There are no documents to show that possession was taken by the Land Acquisition Officer from the land owners. However, it is found that a photocopy of a document in the name and style of "Possession Certificate", dated 10 June 2004 was inserted inside the file and it was numbered as Page No.1484(A). The document on the previous page is dated 14 February 1991 and the document found after the Possession Certificate is dated 5 September 1990. It is clear that possession Certificate dated 10 June 2004 was inserted to make it appear that it was part of the Award file. Therefore, in the absence of a document evidencing the act of taking over possession from the land owners, no reliance could be placed on the Possession Certificate, which is in the nature of transfer of land from Revenue Department to the Housing Board, to prove the factum of taking possession from the land owners.

8. The learned single Judge in the order under appeal rendered a factual finding on the basis of revenue records that the land owners are still in possession of the land and that there were no records produced to prove that possession was taken from the land owners as provided under Section 16 of the Land Acquisition Act. Even then, the appellant has not produced any valid document to prove the factum of taking possession from the landowners.

9. The land owners along with the application in CMP No.21237 of 2017 produced the Kist receipts for the period from 12 September 2011 to 3 March 2016, copy of the Town Survey Land Register obtained on 7 June 2017 and Adangal Extract for the period from 12 February 2011 to 23 November 2017 to demonstrate that they are still in possession of the acquired land. Even then, the appellant has not produced any material document to prove its contention regarding possession. We have therefore no other alternative than to hold that possession has not been taken from the land owners.

10. The other contention relates to revenue deposit.

11. The Award file does not contain any document to show that notice under Sub-Section (2) of Section 12 of the Land Acquisition Act was issued to the land owners so as to enable them to appear before the Land Acquisition Officer to collect the compensation amount.

12. Similarly, the appellant has not produced any document to show that the land owners refused to receive the compensation when it was tendered or deposit was made before the Reference Court under Section 30 of the Land Acquisition Act.

13. The land owners have produced the information furnished by the District Court, Coimbatore that compensation amount in Award No.1 of 1991 was not deposited in Court. The District Court, Coimbatore verified the Fixed Deposit register and Ledgers and thereafter, furnished the particulars to the land owners under the Right to Information Act.

14. The appellant has no case that the land owners have received the compensation directly. In view of the information furnished by the District Court, which is part of records, it is clear that the amount has not been deposited in Court. The land owners have therefore satisfied the second condition for invoking Section 24(2) of Act 30 of 2013.

The Law :-

15. The Hon'ble Supreme Court in Delhi Development Authority vs. Sukbir Singh, 2016(6) SCC 258, followed the earlier judgment in Pune Municipal Corporation vs. Harakchand Misirmal Solanki and others, 2014(3) SCC 183, explaining the scope and ambit of Section 24(2) of the New Act and observed thus :

"13. The picture that therefore emerges on a reading of Section 24(2) is that the State has no business to expropriate from a citizen his property if an award has been made and the necessary steps to complete acquisition have not been taken for a period of five years or more.

These steps include the taking of physical possession of land and payment of compensation. What the legislature is in effect telling the executive is that they ought to have put their house in order and completed the acquisition proceedings within a reasonable time after pronouncement of award. Not having done so even after a leeway of five years is given, would cross the limits of legislative tolerance, after which the whole proceeding would be deemed to have lapsed. It is important to notice that the section gets attracted if the acquisition proceeding is not completed within five years after pronouncement of the award. This may happen either because physical possession of the land has not been taken or because compensation has not been paid, within the said period of five years. A faint submission to the effect that "or" should be read as "and" must be turned down for two reasons. The plain natural meaning of the sub-section does not lead to any absurdity for us to replace language advisedly used by the legislature. Secondly, the object of the Act, and Section 24 in particular, is that in case an award has been made for five years or more, possession ought to have been taken within this period, or else it is statutorily presumed that the balance between the citizen's right to retain his own property and the right of the State to expropriate it for a public purpose gets so disturbed as to make the acquisition proceedings lapse. Alternatively, if compensation has not been paid within this period, it is also statutorily presumed that the aforesaid balance gets disturbed so as to free such property from acquisition."

16. In *Shashi Gupta and another vs. State of Haryana and others*, 2016(13) SCC 380, the State contended before the Hon'ble Supreme Court that the High Court proceedings were not in relation to the 2013 Act and it was confined to the provisions of the Land Acquisition Act, 1894 and as such, the matter should be remanded to the High Court to consider the effect of Section 24(2) of the Act. The Hon'ble Supreme Court while rejecting the said contention said:-

"4. We are afraid, we cannot appreciate the above submission of the learned counsel for the State. On the admitted facts, the land acquisition proceedings have lapsed since there is no stay on any count operating in the matter of possession or acquisition of the lands of the

appellants after 12-8-2008. The 2013 Act came into force on 1-1-2014. Therefore, five years prior to the coming into force of the 2013 Act, the appellants have not been dispossessed. It is also a fact that there is no payment of compensation in accordance with law as declared by this Court in Pune Municipal Corpn. v. Harakchand Misirimal Solanki [Pune Municipal Corpn. v. Harakchand Misirimal Solanki, (2014) 3 SCC 183 : (2014) 2 SCC (Civ) 274] .

5. In view of the above admitted position, it is not necessary to remit the matters to the High Court. The land acquisition proceedings have lapsed in the facts of the present cases in view of the operation of Section 24(2) of the 2013 Act. It is declared so and the appeals are allowed. No costs."

17. In P.Jayadevan vs. State, 2014(5) LW 187, the appellant challenged the order, rejecting his request for re-conveyance under Section 48-B of the Land Acquisition Act in the Writ Petition. When the writ appeal was pending, Act 3 of 2013 came into force. The appellant therefore claimed the benefit of Section 24(2) of the new Act. The Division Bench framed an issue whether land acquisition proceedings are deemed to have lapsed taking into account the subsequent events. The Division Bench having found that the award amount was in revenue deposit issued a declaration that the land acquisition proceeding lapsed, without remitting the matter to the writ court for fresh consideration.

18. Similarly, in Tamil Nadu Housing Board vs. K.Meenakshi Achi, 2017(1) MLJ 129, notwithstanding the fact that the subject proceedings was only in relation to section 48-B of the Land Acquisition Act for re-conveyance, the Division Bench speaking through the Hon'ble Chief Justice (as His Lordship then was) issued a declaration that the land acquisition proceedings lapsed under Section 24(2) of the Act on satisfying that possession has not been taken.

19. In view of the factual position and judicial precedents, the landowners are entitled to a declaration in terms of Section 24(2) of Act 30 of 2013 and as indicated in K.Meenakshi Achi (supra) .

20. We therefore declare that the subject acquisition proceedings shall be deemed to have lapsed under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

21. The intra court appeal is disposed of with a declaration under 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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To

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

2.The Special Tahsildar (Land Acquisition)
Housing Scheme Unit No.1
Coimbatore.

+1 CC to Mr. Anandhamurthy, Advocate sr 7291.

+1 CC to Mr.G. Sankaran, advocate sr 7396

W.A No.902 of 2017

MG(CO)
SP(20/02/2018)

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