

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.3.2018

CORAM:

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

W.A.No.903 of 2017

TAMIL NADU HOUSING BOARD
REP BY ITS EXECUTIVE ENGINEER &
ADMN OFFICER COIMBATORE HOUSING UNIT
TATABAD SIVANANDHA COLONY
COIMBATORE 641 012. Appellant/3rd Party

versus

1. S. RANGASWAMY
2. THE STATE OF TAMIL NADU
REP BY SECRETARY TO GOVERNMENT
OF TAMILNADU HOUSING AND URBAN
DEVELOPMENT DEPARTMENT
FORT ST GEORGE CHENNAI 600 009
3. THE SPECIAL TAHSILDAR
(LAND ACQUISITION HOUSING)
SCHEME UNIT NO 1
COIMBATORE respondents No.2 & 3/
Respondents 1&2

Prayer: Appeal filed for setting aside the order made in W.P. No. 23492 of 2008 dated 13/04/2009. Writ Petition is filed under Article 226 of the constitution of India, for issuance of writ of declaration, declaring the entire Acquisition proceedings initiated by the first respondent commencing from the notification issued under section 4(1) of the Land Acquisition Act in G.O. Ms.No. 4 dated 02.01.1998 (Housing & Urban Development DEpartment) and the declaration made under section 6 of the Land Acquisition Act in G.O.Ms.No. 53 dated 18.02.1999 (Housing & Urban Development Department) lapsed in view of section 11-A of the Land Acquisition Act 1894 in respect of the lands belonging to the petitioner, situated in Survey filed Nos.1, 2, 11/1 and 11/2 Vellaikinaru village, Coimbatore.

For appellant : Mr.V.Anandha Moorthy, Standing Counsel
for Tamil Nadu Housing Board

For Respondents : Mrs.A.Srijayanthi, Spl.G.P.,
<https://hcservices.ecourts.gov.in/hcservices/> for respondents 2 and 3

No appearance for R-1

J U D G M E N T
(made by K.K.SASIDHARAN, J.)

The Writ Petition filed by the 1st respondent challenging the land acquisition proceedings in W.P.No.12250 of 1999 was dismissed by the writ court by order dated 27 December 2004. The land acquisition has become final. Thereafter, the respondent initiated a fresh Writ Petition challenging the award dated 19 February 2001 on a different ground, which was very much available to him in the earlier Writ Petition in W.P.No.12250 of 1999. The learned single Judge allowed the Writ Petition and quashed the land acquisition proceedings. Feeling aggrieved, the Tamil Nadu Housing Board is before this Court.

2. We have heard the learned counsel for the appellant. We have also heard the learned Special Government Pleader for respondents 2 and 3. None appeared on behalf of the first respondent.

3. The State initiated acquisition of large extent of land for and on behalf of the Tamil Nadu Housing Board (hereinafter referred to as "the Housing Board"). The notification under Section 4(1) of the Land Acquisition Act was issued on 2 January 1998. The statutory declaration under Section 6 of the Land Acquisition Act was made on 18 February 1999. The respondent filed a Writ Petition in W.P.No.12250 of 1999 challenging the declaration under Section 6 of the Act. The Land Acquisition Officer in the meantime, passed the award on 19 February 2001. The award was passed only during the currency of the Writ Petition in W.P.No.12250 of 1999. Though the first respondent was having an opportunity to challenge the award by raising additional grounds subsequently in W.P.No.23492 of 2008, the fact remains that there was no challenge made to the award. The Writ Petition was dismissed on merits by order dated 27 December 2004. The order has become final.

4. The first respondent, four years after the dismissal of the earlier Writ Petition and seven years after passing the award, filed a fresh Writ Petition in W.P.No.23492 of 2008 challenging the award on the ground that it was bad on account of non compliance of Section 11(A) of the Act.

5. The learned single Judge quashed the award on the ground that there was no approval under Section 3(f)(vi) of the Act.

6. The memorandum of grounds of appeal filed by the appellants clearly indicate that the award was passed only after following the mandatory provisions of law.

7. The core question is whether the subsequent Writ Petition in W.P.No.23492 of 2008 challenging the award is maintainable on account of the dismissal of the Writ Petition in W.P.No.12250 of 1999, long after passing the award.

8. The contentions regarding failure to take approval under Section 3(f)(vi) of the Land Acquisition Act or non compliance of Section 11(1) of the Act were all available to the first respondent in the earlier Writ Petition in W.P.No.12250 of 1999. The award was passed on 9 February 2001. The Writ Petition in W.P.No.12250 of 1999 was dismissed only on 27 December 2004. Nothing prevented the first respondent from amending the prayer in the Writ Petition to take up a plea with regard to the nullity of the award. However, for reasons best known, no such effort was taken by the first respondent. The subsequent Writ Petition in W.P.No.23492 of 2008 is barred by the principles of constructive res judicata. The plea ought to have taken in the earlier round of litigation is deemed to have been taken and rejected.

9. The learned Single Judge notwithstanding the fact that the award was passed long before the dismissal of the earlier Writ Petition in W.P.No.12250 of 1999, entertained the Writ Petition and quashed the award. The order is factually and legally sustainable.

10. The order dated 13 April 2009 is set aside. The Writ Petition in W.P.No.23492 of 2008 is dismissed. This intra court appeal is allowed. No costs. Consequently, C.M.P.No.12597 of 2017 is closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. THE SECRETARY TO GOVERNMENT
HOUSING AND URBAN DEVELOPMENT DEPARTMENT
FORT ST GEORGE CHENNAI 600 009

2. THE SPECIAL TAHSILDAR
LAND ACQUISITION HOUSING SCHEME UNIT NO 1
COIMBATORE

3. The EXECUTIVE ENGINEER & ADMN OFFICER
COIMBATORE HOUSING UNIT
TATABAD
SIVANANDHA COLONY
COIMBATORE 641 012.

+ 1 cc to Mr. V. Anandhamurthy, Advocate Sr.19591

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