

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 26.03.2018

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

W.A No.421 of 2018 and
CMP No.3676 of 2018

Valliammai Society
Rep. by its Chairman T.R.Pachamuthu
No.68, Thambaiah Road,
West Mambalam
Chennai - 600 033. Appellant/Petitioner

-Vs-

- 1.The State of Tamil Nadu,
Rep. by its Secretary,
Housing and Urban Development Department,
Fort St.George, Chennai - 600 009.
- 2.The Special Tahsildar (Land Acquisition)
Tamil Nadu Housing Board Scheme
Nandanam, Chennai - 600 035.
- 3.Tamil Nadu Housing Board,
Rep. by its Managing Director/ Chairman
Nandanam, Chennai - 600 035. Respondents/Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent
against the order passed in W.P No.5173 of 2010 dated
25.02.2014.

WP.No.5173 of 2010:Petition presented to this Court to issue a
writ of mandamus, directing the respondents to sell the
property ad measuring 2.28 acres comprised in Survey No.134/1
Ramapuram Village Chennai to the petitioner at the value fixed
by the High Power committee appointed by the Government of
Tamilnadu following the directions of the 1st respondent in
his letter dated 14.3.2006 in Letter No.12281/LA1(1)/ 05-15
and in view of the enured right in favour of the petitioner.

For Appellant : Mr.V.T.Gopalan
Senior Counsel for Ms.B.Saraswathi

For Respondents: Mr.V.Anandhamurthy
Addl.Govt.Pleader

J U D G M E N T

Introductory

This is the case of a leading educational institution purchasing the acquired land after the completion of the entire land acquisition proceedings and taking possession and after the dismissal of the writ petition filed for re-conveyance, filing a fresh writ petition for issuance of a Writ of Mandamus directing the State and the Tamil Nadu Housing Board to sell the land measuring an extent of 2.28 acres in a prime locality in the city of Chennai on reasonable valuation. The learned single Judge dismissed the writ petition by order dated 25 February 2014 in W.P.No.5173 of 2010. The intra court appeal against the said order was filed before this Court only after constructing a multi-storeyed residential complex by the Tamil Nadu Housing Board and allotting the residential apartments to the public after issuing notification. The appellant is still maintaining the prayer for sale of the land notwithstanding the legal position that the very writ petition at the instance of the subsequent purchaser, either for re-conveyance or for a direction to sell the property is not legally maintainable.

Facts in Summary

2. The Government of Tamil Nadu pursuant to the request made by the Tamil Nadu Housing Board (hereinafter referred to as "TNHB") acquired 338.28 acres of land in various survey numbers in Ramapuram Village, Ambattur Taluk, Thiruvallur District. The land subsequently purchased by the appellant admeasuring 2.28 acres in S.No.134/1 was part of the larger extent acquired for the housing project in the name and style of "Ramapuram Neighbourhood Scheme".

3. The notification under Section 4(1) was issued by the Government on 14 May 1975. The Land Acquisition Officer after complying with the statutory formalities passed the Award on 25 November 1994. The Land Acquisition Officer took vacant possession of 2.28 acres of land and it was handed over to the Tamil Nadu Housing Board on 13 March 1995.

4. The erstwhile land owners filed a writ petition in W.P.No.499 of 1986 challenging the land acquisition proceedings. The writ petition was dismissed by order dated 28 March 1994. Subsequently, another writ petition was filed by the land owners in W.P.No.527 of 1995. The writ petition was dismissed as withdrawn by order dated 29 June 1999. The appellant purchased the land after the culmination of the land acquisition proceedings and dismissal of the litigations challenging the acquisition.

5. The appellant filed a writ petition in W.P.No.12550 of 2004 for re-conveyance. The writ petition was dismissed by order dated 11 October 2004 on the ground that subsequent

purchaser has no legal right either to challenge the land acquisition or for directing re-conveyance. The order has become final.

6. The appellant approached the TNHB with a proposal for purchase of the land. The High Level Committee appears to have recommended the proposal. However, it was not approved by the Board of Directors of TNHB. The proposal was therefore rejected. It was only thereafter, the appellant filed a writ petition in W.P.No.5173 of 2010 for a direction to the respondents to sell the land on reasonable valuation.

7. The appellant in the writ petition in W.P.No.5173 of 2010 contended that the Housing Board principally agreed to sell the land to the Society. The appellant therefore invested considerable amount for developing the property. Therefore, a situation has arisen to direct the TNHB and the Government to sell the land admeasuring 2.28 acres in Ramapuram Village.

8. Before the Writ Court, the TNHB filed a detailed counter affidavit and additional counter affidavit disputing the claim made by the appellant.

9. The learned single Judge by way of a detailed order dismissed the writ petition.

10. The appellant challenged the order dated 25 February 2014 made in W.P.No.5173 of 2010 after a considerable period. By the time the writ appeal was filed, the land was developed by the Housing Board and it was allotted to the general public.

Submissions

11. The learned Senior Counsel for the appellant by placing reliance on various correspondences and minutes of the meeting of the TNHB contended that the Housing Board has given a promise that the land would be allotted to the appellant. The appellant spent considerable amount for development of the land under the expectation that it would be ultimately given to the Society. The respondents are therefore obliged to sell the land to the appellant.

12. The learned Additional Government Pleader by producing the original file, the documents relating to the allotment of the apartments and the photographs of the building constructed by the TNHB by utilising the acquired land contended that there was no promise at any point of time that the land would be given to the subsequent purchaser. The learned Additional Government Pleader contended that the appellant is a subsequent purchaser and as such, it has no right to claim the land from the Government. The learned Additional Government Pleader further contended that the writ petition in W.P.No.5173 of 2010 deserves to be dismissed for the simple reason that the earlier proceedings challenging the

land acquisition and claiming re-conveyance have become final.

The Issue

13. The core question that arises for consideration is as to whether there is any legal right accrued to the appellant to call upon the respondents to sell the land acquired from third parties to the Society on reasonable valuation.

Discussion

14. The land admeasuring 2.28 acres within the Greater Chennai Corporation was part of the larger extent acquired by the Government for and on behalf of the TNHB. The land was acquired and possession was taken after evicting the land owners. The land acquisition has become final. It was only thereafter the appellant with eyes open purchased the land.

15. There was no promise given by the TNHB either before purchasing the acquired land or thereafter that the land would be sold to the Society. In fact, sale of land after the acquisition itself was a nullity.

16. The documents available on record indicate that the predecessor-in-interest of the appellant challenged the land acquisition. The writ petition was dismissed. The Housing Board found that the appellant having no semblance of right trespassed into the acquired land and therefore initiated proceedings for eviction. The appellant filed a writ petition in W.P.No.12550 of 2004 for issuance of a Writ of Mandamus to restrain the respondents from dispossessing the Society without due process. The writ petition was dismissed by order dated 11 October 2004. While dismissing the writ petition in W.P.No.12250 of 2004, the learned single Judge termed the appellant as a rank trespasser.

17. The appellant challenged the order dated 11 October 2004 in W.P.No.12550 of 2004 before the Division Bench in W.A.No.3682 of 2004. The Division Bench opined that the appellant has not established any right to be in possession of the acquired land. The writ appeal was dismissed by judgment dated 19 October 2004. The judgment has become final.

18. The appellant adopted a novel device of overcoming the earlier proceedings and the legal position that the subsequent purchaser has no right either to challenge the acquisition or re-conveyance, by giving a representation to the TNHB to sell the land to the Society. Some of the officers of the TNHB recommended the proposal for sale on the ground that the appellant is a reputed educational institution and as such, it would be in the fitness of things to sell the land to the Society. The Government therefore directed the TNHB to consider the proposal mooted by the appellant.

19. It is a matter of fact that even before initiation of the proposal by the appellant, the writ petition filed by the land owner in W.P.No.527 of 1995 challenging the land acquisition was dismissed as withdrawn by order dated 29 June 1999.

20. The proposal mooted by the appellant for sale of the land was considered by the TNHB. However, there was no unanimous opinion and as such, the proposal was rejected. It was only thereafter the appellant filed the writ petition.

21. The appellant wanted the TNHB to sell the land by collecting the guideline rate. In case, the Government is of the view that the land is not required for the purpose for which it was acquired, the land should be sold in public auction. There is no short cut method in the matter of disposal of public property.

22. In case, the Government is of the view that the land should be re-conveyed to the land owner, such re-conveyance should be given only to the predecessor-in-interest of the appellant. The appellant has no legal right to claim either re-conveyance or a direction to sell the land.

23. The Hon'ble Supreme Court in Tamil Nadu Housing Board v. Keeravani Ammal and others [(2007) 9 SCC 255] considered the scope and ambit of Section 48-B of the Land Acquisition Act and 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.

24. There was no promise made by the Government that the appellant would be given ownership right. There was no privity of contract between the appellant and the State. Similarly, there was no privity of contract between the appellant and the Housing Board. The appellant purchased the land from the erstwhile land owners inspite of the legal position that the land owners have no right to sell the land after acquisition. The sale in favour of the appellant is neither legal nor binding on the TNHB.

25. The Hon'ble Supreme Court in Meera Sahni V. Lieutenant Governor of Delhi and others [(2008) 9 SCC 177] held that transfer of land in respect of which land acquisition proceedings have been initiated is void and it would not bind the Government.

26. The Hon'ble Supreme Court in U.P.Jal Nigam v. Kalra Properties (P) Ltd., [(1996) 3 SCC 124] observed that the land purchased after the acquisition notification would not give any title to the purchaser.

27. The Supreme Court in *Sneh Prabha v. State of Uttar Pradesh* [(1996) 7 SCC 426] made it clear that any alienation of the land after the publication of notification under Section 4(1) would not bind the Government. The observation reads thus:

"5.It is settled law that any person who purchases land after publication of the notification under Section 4(1), does so at his/her own peril. The object of publication of the notification under Section 4(1) is notice to everyone that the land is needed or is likely to be needed for public purpose and the acquisition proceedings point out an impediment to anyone to encumber the land acquired thereunder. It authorises the designated officer to enter upon the land to do preliminaries, etc. Therefore, any alienation of the land after the publication of the notification under Section 4(1) does not bind the Government or the beneficiary under the acquisition. On taking possession of the land, all rights, title and interests in land stand vested in the State, under Section 16 of the Act, free from all encumbrances and thereby absolute title in the land is acquired thereunder".

28. The Hon'ble Supreme Court in *Jaipur Development Authority v. Mahesh Sharma and another* [2010 (10) Scale 84] observed that sub-awardees and subsequent purchasers do not possess right against the State Government, as the purchases were subsequent to passing of the Award.

29. The appellant has no legally enforceable right to compel the respondents to execute the sale deed in respect of the land acquired from third parties by giving compensation. The appellant is evolving a new jurisprudence in property law. In case, a claim of this nature is entertained, there would be mushroom growth of litigations at the instance of the subsequent purchasers claiming a legal right to direct the Government to sell the land notwithstanding the legal position that in case the land is not required for the purpose for which it was acquired, it should be sold only in public auction.

30. There is one more aspect in the subject case. The appellant was evicted from the land treating it as an encroacher. The Housing Board thereafter developed the land by constructing a multi-storeyed residential complex. The individual flats were allotted to the public by issuing notification. The allottees are now in possession of the respective apartments. They are not before this Court. The right accrued to the allottees cannot be taken away in a proceeding instituted by a third party, who has no semblance of right. We are therefore of the view that the appellant has no legal or moral right to direct the respondents to sell the

acquired land.

31 a) The land was acquired by the State and it was given to the TNHB for a public purpose. The TNHB is a State within the meaning of Article 12 of the Constitution of India. The land was acquired with the public money. The acquired land is therefore a public property.

b) The public property must be sold only by public auction or through any other transparent method. There is no question of a secret sale of public property. In case, the Government is of the view that the acquired land is no more required for the public purpose, steps should be taken for public sale giving opportunity to all interested to take part in the auction process.

32. The Hon'ble Supreme Court in Akhil Bharatiya Upbhokta Congress v. State of Madhya Pradesh and others [(2011) 5 SCC 29] observed that distribution of largesse like allotment of land must be done in a fair and equitable manner. The Supreme Court said:

"...Every action/decision of the State and/or its agencies/instrumentalities to give largesse or confer benefit must be founded on a sound, transparent, discernible and well defined policy, which shall be made known to the public by publication in the Official Gazette and other recognized modes of publicity and such policy must be implemented/executed by adopting a non-discriminatory or non-arbitrary method irrespective of the class or category of persons proposed to be benefited by the policy. The distribution of largesse like allotment of land, grant of quota, permit licence etc.,. by the State and its agencies/instrumentalities should always be done in a fair and equitable manner and the element of favouritism or nepotism shall not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the State"

33. The Supreme Court in City Industrial Development Thr. its Managing Director v. Platinum Entertainment and others [2014 (11) Scale 553 held that entertaining private applications for sale of public property is illegal, fraudulent and is against public policy. The Supreme Court observed:-

"49. State and its agencies and instrumentalities cannot give largesse to any person at sweet will and whims of the political entities or officers of the State. However, decisions and action of the State must be founded on a sound, transparent and well

defined policy which shall be made known to the public. The disposal of Government land by adopting a discriminatory and arbitrary method shall always be avoided and it should be done in a fair and equitable manner as the allotment on favoritism or nepotism influences the exercises of discretion. Even assuming that if the Rule or Regulation prescribes the mode of allotment by entertaining individual application or by tenders or competitive bidding, the Rule of Law requires publicity to be given before such allotment is made. CIDCO authorities should not adopt pick and choose method while allotting the Government land."

34. The learned single Judge considered the legality of the claim made by the appellant and the writ petition was rightly dismissed. We do not find any reason much less justifiable reason to interfere in the well considered order passed by the learned single Judge.

35. In the upshot, we dismiss the intra court appeal without any liability to pay cost. Consequently, connected miscellaneous petition is closed.
svki

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

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

2.The Special Tahsildar (Land Acquisition)
Tamil Nadu Housing Board Scheme
Nandanam, Chennai - 600 035.

3.The Managing Director/ Chairman
Tamil Nadu Housing Board,
Nandanam, Chennai - 600 035.

+1cc to Mr.B.Saraswati, Advocate Sr.No.22598

+1cc to Government Pleader SR.No.23389

+1cc to Mr.V.Anandhamurthy, Advocate Sr.No.22937

NM(CO)

sm:11.4.2018

W.A No.421 of 2018