

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :04.12.2017

DELIVERED ON:10.01.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A Nos.1565 of 2010, 684 of 2015,,
MP Nos.1 of 2010 and 1 of 2015

P.Palaniappan ...Appellant in W.A.No.1565 of 2010/
Petitioner

Erode Housing Unit
Rep. By its Chief Engineer and
Administrative Officer,
T.N.H.B Shopping Complex,
Surampatti, Erode. ...Appellant in W.A.No.684/2015

Vs

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

2.The Managing Director,
The Tamil Nadu Housing Board,
Nandanam, Chennai - 600 035.

3.The Executive Engineer/Administrative Officer,
Tamil Nadu Housing Board,
Erode Housing Unit, Gandhiji Road,
Erode -2. ...Respondents in W.A.No.1565/2010

1.P.Palaniappan ...1st Respondent in WP.No.684/10

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

3.The Special Tahsildar,
Land Acquisition Neighbourhood Scheme,
Erode. ...Respondents in W.A.No.684/2010/
2&3 Respondent/1 & 2 Respondent

Prayer:- Writ Appeals filed under clause 15 of the Letter
Patent against the order dated 16.07.2010 and 09.12.2014 in
W.P.NO.16676 of 2000 and 17809 of 2014 respectively.

WP.No.16676/2000:Petition filed U/A 226 of the constitution of India for issuance of a writ of certiorarified mandamus calling for the entire records relating to the impugned proceedings of the 1st respondent in his letter No.7751/LA 3 (1)/97-18, dated 7.8.2000 and quash the same and consequently direct the respondents to reconvey the petitioner's land situated in Erode 'C' village S.N.No.1251/1B measuring to the extent of 5,881 sqmt. to the petitioner on certain condition imposed by this Court.

WP.No.17809/2014:Writ petition filed U/A 226 of the constitution of India for a writ of Declaration or any other appropriate writ, order or direction in the nature of writ, declaring the land Acquisition proceedings initiated U/s 4(1) of the land Acquisition Act 1894 in respect of land measuring on extendt of 1.50 acres in Survey No.1251/1B at Kollampalayam Village, Erode Taluk and District, deemed to have lapsed in view of section 24(2) of Right to Fair compensation and Transparency in land acquisition Rehabilitation and Re-Settlement Act 2013 (30 of 2013)

For Appellant

in W.A.No.1565/2010 : Mr.AR.L.Sundaresan
Senior Counsel for
Ms.AL.Gandhimathi

in W.A.No.684/2015 : Mr.V.Anandhamurthy
Standing Counsel

For Respondents : Mrs.A.Srijayanthi
Special Govt.Pleader for R1
in W.A.No.1565/2010 and
For R2 and R3 in
W.A.No.684/2015

Mr.AR.L.Sundaresan
Senior Counsel for
Mr.P.Immanuel Prakasam for R1
in W.A.No.684/2015

Mr.V.Anandhamurthy
for R2 and R3 in W.A.No.1565/2010

COMMON JUDGMENT

K.K. SASIDHARAN,J.

Introductory

The land owned by the appellant in W.A.No.1565 of 2010 was acquired along with larger extent for a Housing Scheme by Notification under Section 4(1) of the Land Acquisition Act, 1894 dated 17 July, 1980 (hereinafter referred to as "the Act") and after conclusion of the proceedings, the land was handed over to the Requisitioning Body on 6 October, 1989.

The land is part of the lay out plan approved by the statutory authority. The major portion of the Scheme has already been completed. The writ petition filed by the land owner for re-conveyance of the land on the ground that it was not used for the purpose for which it was acquired was dismissed by the learned single Judge by order dated 16 July, 2010. During the currency of the intra court appeal filed against the order passed by the Writ court, the land owner filed a fresh writ petition invoking Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Tamil Nadu) Amendment Act, 2013 (Act 30 of 2013) on the ground that possession was not taken and compensation was not paid. The learned Judge entertained the stale claim and allowed the writ petition notwithstanding the documents produced by the Housing Board regarding taking over possession, deposit of compensation amount before the Civil Court and utilisation of major portion of the land acquired for the Scheme.

The case is covered by the order of the Hon'ble Supreme Court in Mahavir and Others vs. Union of India and another (SLP No.24781 of 2017 dated 8 September 2017), wherein, the Supreme Court has made it clear that Section 24 of Act 30 of 2013 does not invalidate courts judgments/orders in which right have been finally lost or due to inaction is barred and that the law does not permit examination of barred or totally fraudulent claims and that Section 24(2) cannot be invoked in such cases.

The writ petition initiated by the land owner is nothing but reviving a dead litigation and making a fraudulent claim on the strength of the beneficial provision under Act 30 of 2013.

Background Facts

2. The Government of Tamil Nadu acquired 4.41.0 Hecs. of land in Erode Village, Erode Taluk for and on behalf of the Tamil Nadu Housing Board. The land owned by the appellant in W.A.No.1565 of 2010 (hereinafter referred to as the "land owner") admeasuring 1.50 acres in Survey No.1251/1B was part of the larger extent acquired for the Housing Scheme. The Notification under Section 4(1) of the Act was issued on 17 July, 1980. The Declaration under Section 6 of the Act was made on 26 August, 1982. Thereafter, Award was passed.

3. The possession of the land was taken over by the Land Acquisition Officer. The physical possession of the land was handed over to the Housing Board on 6 October, 1989. The Housing Board, after taking possession submitted a comprehensive lay out plan for approval. The lay out plan relating to the acquired property including the land owned by the land owner was approved by the Director of Town and Country Planning vide DTCP No.1512/1992. The land acquired from the land owner was reserved for allotment to the weaker

section through Slum Clearance Board. The compensation amount was deposited before the Reference Court under Section 31(2) of the Act.

4. The land owner filed a writ petition in W.P.No.16676 of 2000 challenging the order rejecting the request for re-conveyance. The writ petition was dismissed by order dated 16 July, 2010 on the ground that the land has already been earmarked for development. The order is under challenge in W.A.No.1565 of 2010.

5. The land owner during the currency of the appeal filed against the order in W.P.No.16676 of 2010 filed a fresh writ petition in W.P.No.17809 of 2014 for a declaration under Section 24(2) of Act 30 of 2013. The learned single Judge allowed the writ petition primarily on the ground that the land was not used for the purpose for which it was acquired and that the compensation amount was not paid. According to the learned single Judge, the land owner is from a poor family owning 1.50 acres and as such, he should be permitted to undertake agricultural activities inasmuch as agricultural purpose is more important than Housing Scheme. Feeling aggrieved, the Erode Housing Unit has come up with the intra court appeal in W.A.No.684 of 2015.

Summary of Submissions

6. The learned Standing Counsel for the Housing Board contended that the land in question has already been partly used for the purpose for which it was acquired. The possession of the land was taken from the land owner and it was handed over to the Housing Board on 6 October, 1989. The writ petition filed for re-conveyance was dismissed. The land owner knowing fully well that the possession is with the Housing Board and compensation amount has already been deposited before the Civil Court took advantage of Section 24 (2) of Act 30 of 2013. The learned single Judge without discussing the background facts including the factum of taking possession by the Housing Board allowed the writ petition. According to the learned Standing Counsel, there is no question of applying Section 24(2) of Act 30 of 2013, in view of the factual situation that the possession is with the Housing Board and that the amount has already been deposited before the Civil Court.

7. The learned Senior Counsel for the land owner contended that possession was not taken in the manner known to law and the so called delivery of possession has no legal sanction. According to the learned Senior Counsel, the land owner has not received the compensation and as such, it cannot be said that the amount was deposited before the Civil Court. It was further contended that the land owner is still in possession of the land and for that reason, he is entitled to the benefit of Section 24(2) of Act 30 of 2013.

Discussion

8. The land owned by the land owner was part of the larger extent acquired by the Government of Tamil Nadu for the purpose of a Housing Scheme floated by the Housing Board. The Award was passed as early as on 22 September, 1986. The Award amount was deposited before the jurisdictional Subordinate Court on 5 February, 1990. The lay out plan prepared by the Housing Board was approved by the competent authority by order dated 23 November, 1992. The land owner filed a writ petition in W.P.No.12027 of 1995 for a direction to the State of Tamil Nadu to delete the land from the acquisition. The writ petition was dismissed by order dated 4 September, 1995. The learned single Judge in the order dated 4 September, 1995 recorded a factual finding that the land owner challenged the acquisition proceedings at more stages than one. The order passed by the learned single Judge has become final. It was only thereafter, the land owner again filed a writ petition for re-conveyance. The request was rejected. The order was unsuccessfully challenged in W.P.No.16676 of 2000.

W.A.No.1565 of 2010

9. The request made by the land owner for re-conveyance under Section 48-B of the Act was negatived by the Government. It was the said order, which was challenged in W.P.No.16676 of 2000. The Government in the impugned order made it very clear that the land was required for the purpose for which it was acquired. The materials produced before us including the lay out plan approved by the planning authority clearly shows that the land acquired from the land owner was earmarked for allotment to the members of the lower strata of society through Slum Clearance Board. The Government is expected to earmark a portion of the acquired land for allotment to poor people. It was for the said purpose, the land acquired from the land owner was earmarked.

The question regarding re-conveyance

10. Section 48-B of the Act was inserted by State amendment in the Land Acquisition Act, for re-conveyance of the property. The provision reads thus:-

"48-B Transfer of land to original owner in certain cases- Where the Government are satisfied that the land vested in the Government under this Act is not required for the purpose for which it was acquired, or for any other public purpose, the Government may transfer such land to the original owner who is willing to repay the amount paid to him under this Act for the acquisition of such land inclusive of the amount referred to in sub-section (1-A) and (2) of Section 23, if any, paid under this Act."

11. The question of re-conveyance in terms of Section 48-B would arise only in case the Government is of the view that the land is not required for the purpose for which it was acquired or for any other public purpose. Before taking a decision for re-conveyance, the Government must be convinced that the land is not required not only for the purpose for which it was acquired, but for any other public purpose also.

12. As observed by the Hon'ble Supreme Court in Tamil Nadu Housing Board v. Keeravani Ammal and others [(2007) 9 SCC 255], Section 48-B introduced into the Land Acquisition Act in the State of Tamilnadu is an exception to the general rule that the land on acquisition become the property of the State and it could be used by the Government for any public purpose or in case, it is not needed for such public purpose, the same can also be sold by public auction. The provision like 48-B must therefore requires a strict construction, meaning thereby, satisfaction of the Government with regard to the non-utilisation of the land must be arrived at on the basis of relevant materials.

13. There is no right to compel the Government or the requisitioning body to re-convey the land either to the erstwhile land owner or to the subsequent purchaser. The issue is no longer res integra in view of the string of decisions on the point.

14. The Supreme Court in Keeravani Ammal (cited supra) considered the scope and ambit of Section 48-B of the Land Acquisition Act. The Supreme Court made it very clear that there is no vested right to the land owner to claim re-conveyance. The Supreme Court, in the said decision, 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.

15. The Hon'ble Supreme Court in Tamil Nadu Housing Board v. L.Chandrasekaran (dead) by Lrs. and others [(2010) 2 SCC 786] once again considered the right claimed by the erstwhile land owners under Section 48-B for re-conveyance and made the legal position very clear that there is no question of re-conveyance by the Government, in case, the land had already been transferred to the requisitioning body and the latter had utilised substantial portion thereof for execution of the Scheme and for other public purpose. The following observation would make the position clear:-

"28. It need no emphasis that in exercise of power under Section 48-B of the Act, the Government can release the acquired land only till the same continues to vest in it and that

too if it is satisfied that the acquired land is not needed for the purpose for which it was acquired or for any other public purpose. To put it differently, if the acquired land has already been transferred to other agency, the Government cannot exercise power under Section 48-B of the Act and reconvey the same to the original owner. In any case, the Government cannot be compelled to reconvey the land to the original owner if the same can be utilised for any public purpose other than the one for which it was acquired."

16. The question before the Supreme Court in Rajasthan State Industrial Development and Investment Corporation v. Subhash Sindhi Cooperative Housing Society, Jaipur and others [(2013) 5 SCC 427], was as to whether transferee of land after issuance of Section 4(1) notification is entitled to claim release of land from acquiring authorities on the basis of similar release of land. The Hon'ble Supreme Court, by placing reliance on the earlier judgments indicated that the sale subsequent to Section 4(1) notification is void and there would be no need for an order for quashing as it would be automatically null and void without more ado. The question regarding discrimination was answered by the Supreme Court by observing that if the land of other similarly situated persons have been released, the Court must be satisfied that it is similarly situated in all respects, and has an independent right to get the land released. It was further observed that Article 14 of the Constitution does not envisage negative equality and it cannot be used to perpetuate any illegality. The Supreme Court set aside the order passed by the High Court directing re-conveyance and held that there was no right to claim release on the ground that others were given the benefit of such release.

17. The learned single Judge was right in holding that the land owner has not made out a case for re-conveyance under Section 48-B of the Act. We do not find any reason to take a different view in the matter. We are therefore of the view that the order dated 16 July, 2010 in W.P.No.16676 of 2000 does not call for interference. The appeal in W.A.No.1565 of 2010 is liable to be dismissed.

W.A.No.684 of 2015

18. The land owner notwithstanding the finality attached to the land acquisition and taking over possession by the Tamil Nadu Housing Board projected a case before the learned single Judge as if possession is still with him and that the compensation amount has not been deposited.

19. The writ petition filed by the land owner in W.P.No.17809 of 2014 invoking Section 24(2) of Act 30 of 2013 was considered by the learned single Judge as if the claim was

for exclusion of the land or rather re-conveyance. It was essentially a writ petition for a declaration that the land acquisition proceedings lapsed on account of the two contingencies enumerated under Section 24(2) of Act 30 of 2013.

20. We have perused the Award file produced by the learned Additional Government Pleader. There are documents to show that intimation was given to the land owner to surrender vacant possession. The land owner failed to comply with the said direction. The land remained as a vacant land. The Land Acquisition Officer therefore took possession of the land after following the prescribed procedure. The possession of the land was handed over to the Tamil Nadu Housing Board on 6 October, 1989. Since possession has already been taken, the appellant is not entitled to the benefit of Section 24(2) of Act 30 of 2013.

21. The next claim of the land owner is on account of the alleged non-deposit of the compensation amount. The Housing Board has given sufficient materials to demonstrate that the compensation amount has already been deposited before the Civil Court on 5 February, 1990. Therefore on the second ground also, the land owner is not entitled for an order under Section 24(2) of Act 30 of 2013.

22. The land owner by invoking Section 24(2) of Act 30 of 2013 appears to have made an attempt to give life to a dead litigation. The possession was taken as early as on 6 October, 1989. Similarly, the compensation amount was deposited before the Civil Court. Therefore, the appellant has no justifiable claim to invoke Section 24(2) of Act 30 of 2013.

23. The Hon'ble Supreme Court in Mahavir case (cited supra) considered a similar issue regarding the claim based on Section 24(2) of the Act 30 of 2013. The Supreme Court while negating the claim made by the land owners and upholding the judgment of the High Court made the following observation:-

"19. The court is duty bound to prevent the abuse of the process of law in the cases which have been concluded several decades before, in our considered opinion, the provisions of Section 24(2) of the 2013 Act cannot be invoked in such cases of dead claims or stale claims. There are several numbers of cases coming to this court in which matters had been contested up to this court questioning the acquisition and the petitions have been dismissed by this court, and acquisition has attained finality, possession was taken, the award passed. Notice had been issued under Section 12(2) of the Act tendering the awarded amount but it has not been collected by the claimants/land owners deliberately or they had

refused to collect it and are not ready and willing to accept it and, thereafter, it has been deposited in the name and account of the owners in the treasury which is also deposited as per the State Governments instructions issued time to time relating to how Government money is to be dealt with. The act of failure to deposit money under section 31 after possession is taken only imposes liability to pay higher interest under section 34. The acquisition would not lapse under the Act.

20. In our opinion, the cases in which there is deliberate action of the owners for not collecting the compensation and they do not want to receive it, section 24(2) of the 2013 Act does not come to their rescue as provisions are to help those persons who are deprived of compensation but not for those who deliberately had not received it and litigated for decades for quashing of proceedings avoiding to receive compensation by willful act. The failure to deposit in court under section 31(1) in such cases would attract only interest as envisaged under section 34 of the Act and the provisions of section 24 cannot be so invoked in such cases.

21. In the instant case, the claim has been made not only belatedly, but neither the petitioners nor their previous three generations had ever approached any of the authorities in writing for claiming compensation. No representation had ever been filed with any authority, none has been annexed and there is no averment made in the petition that any such representation had ever been filed. The claim appears not only stale and dead but extremely clouded. This we are mentioning as additional reasons, as such claims not only suffer from delay and laches but courts are not supposed to entertain such claims. Besides such claims become doubtful, cannot be received for consideration being barred due to delay and laches.

22. The High Court has rightly observed that such claims cannot be permitted to be raised in the court, and cannot be adjudicated as they are barred. The High Court has rightly observed that such claims cannot be a subject matter of inquiry after the lapse of a reasonable period of time and beneficial provisions of Section 24 of the 2013 Act are not available to such incumbents. In our opinion, Section 24 cannot revive those claims that are dead and stale.

23. The High Court has observed that Raisina is a part of the Lutyens zone of Delhi. It is prime of New Delhi and Government offices etc. are located. The petitioners asked the High Court to infer and conclude that in the absence of some indication of the record being made available by them that their ancestors have not ever received any compensation. How the petitioners came to know that their ancestors had not received compensation has not been disclosed in the petition. The High Court has rightly declined to entertain such claims. The protective umbrella of section 24 is not available to barred claims. If such claims are entertained under section 24, it would be very-very difficult to distinguish with the frivolous claim that may be made even after tampering the records etc. or due to non-availability of such record after so much lapse of time. Once right had been lost due to delay and laches or otherwise, it cannot be revived under provisions of section 24 of the Act of 2013. The intendment of Act 2013 is not to revive stale and dead claims and in the concluded case when rights have been finally lost. If there is delay and laches or claim is otherwise barred, it is not revived under section 24(2) of the 2013 Act. The provision does not operate to revive legally barred claims. The provision of Section 24 does not invalidate courts judgments/orders in which right have been finally lost or due to inaction is barred. Law does not permit examination of barred or totally fraudulent claims. The provisions of the law cannot be permitted to be defrauded or misused. Section 24(2) of the 2013 Act cannot be invoked in such cases. The High Court has rightly declined to entertain the writ petitions filed by the petitioners. It is not conceivable how the petitioners could file such a petition in a laconic manner relating to the prime locality at New Delhi that too for hundreds of acres with the delay of more than 100 years."

24. The facts of the present case are more or less identical to the decision rendered by the Hon'ble Supreme Court in Mahavir case (cited supra). In the subject case, the land acquisition has become final. The claim made by the land owner for exclusion of the land from acquisition was negatived and the order has become final. The issued raised by the land owner on the strength of Section 48-B of the Act has already been negatived by the learned single Judge. It was only after all these judicial proceedings, the land owner filed a fresh

writ petition claiming the benefits under Section 24(2) of Act 30 of 2013. There is absolutely no merit in the claim made by the land owner on the basis of Section 24(2) of Act 30 of 2013. We are therefore of the view that the appellant in W.A.No.684 of 2015 must succeed.

Disposition

25. In the result, the order dated 9 December, 2014 is set aside. The writ petition in W.P.No.17809 of 2014 is dismissed. The order dated 16 July 2010 in W.P.No.16676 of 2000 is confirmed.

26. In the up shot, we allow the intra court appeal in W.A.No.684 of 2015 and dismiss the connected appeal in W.A.No.1565 of 2010. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

- 1.The State of Tamil Nadu,
Secretary to Government,
Housing and Urban Development Department,
Fort St.George, Chennai - 600 009.
- 2.The Managing Director,
The Tamil Nadu Housing Board,
Nandanam, Chennai - 600 035.
- 3.The Executive Engineer/Administrative Officer,
Tamil Nadu Housing Board,
Erode Housing Unit, Gandhiji Road,
Erode -2.

+1cc to Mr.AL.Ganthimathi, Advocate SR.No.2572
+1cc to Mr.V.Anandhamurthy, Advocate Sr.No.2298
+1cc to Mr.G.Mohanakrishna, Advocate Sr.No.1787
+1cc to Mr.EC.Murali, Advocate SR.No.1788

VGII(CO)

sm:12.2.2018

W.A Nos.1565/2010 and
684/2015