

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.02.2018

Coram: The Honourable Mr. Justice N. SESHASAYEE

W.P.No.2297 of 2018
and
W.M.P.No.2806 of 2018

Mr. Shanthakumar

... Petitioner

Versus

1. The State of Tamil Nadu,
Rep. by its Secretary,
Housing and Urban Development,
Fort St.George,
Chennai.
2. The Chairman,
Tamil Nadu Housing Board,
Rep. by its Managing Director,
Anna Salai, Nandanam,
Chennai - 18.
3. The Special Tahsildar (Land Acquisition),
Unit III,
Tamil Nadu Housing Board Schemes,
Nandanam,
Chennai - 18.
4. Ramasamy Udayar Trust,
Rep. by its Trustee Mr. Venkatesh,
No.14, C.P.Ramasamy Iyer Road,
Alwarpet, Chennai-18.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the Section 4(1) Notification vide G.O.Ms.1096 (Housing and Urban Development) dated 17.07.1978 published as Notification No:II(2)/HUD/3911/78 pages 5 to 9 of Supplement to Part II Section 2 of the Tamil Nadu Government gazette dated 09.08.1978 read with Section 6 Declaration vide G.O.Ms.No.667 Housing and Urban Development dated 06.08.1981 passed by the first respondent in respect of the petitioner's land, comprised in S.No.102/5, at Kamaraj Nagar, South Avenue, Thiruvanmiyur, Chennai - 600 041 Thiruvanmiyur Village, Chennai Corporation limits measuring 71 cents, quash the same and consequently direct the respondents to

restore possession of the said land to the petitioner and the other legal heirs of Sriram Chettiar.

For Petitioner : Ms. K. M. Valsala

For Respondents - 1 & 3 : Mr. M. Karthikeyan,
Addl. Government Pleader

For Respondent 2 : Mr. B. Vivekavanam

O R D E R

1.1. The case of the petitioner is that a property measuring about 71 cents originally belonged to his father Mr. Sriram Chettiar, that in the year 2000, this property was acquired by the State for the purposes connected with the Tamil Nadu Housing Board for establishing Besant Nagar Housing Scheme - Phase II, that a Notification under Section 4(1) of the Land Acquisition Act 1894 was published on 17.07.1978, that this had culminated in an award passed in the year 1986, that through informations he gathered by invoking Right to Information Act on 25.06.2001 the petitioner came to know of about the particulars pertaining to the acquisition proceedings as well as certain sales allegedly made by his father to seven persons.

1.2. The aforesaid property was an ancestral property in the hands of the petitioner's father and that the petitioner had right over the same as a co-parcener. The petitioner therefore instituted a civil suit in O.S.No.8017/2006 on the file of the Assistant Judge No.I, City Civil Court for declaring the sale deeds alleged to have been executed by his father as void and lost the same by the judgment of the said Court on 28.01.2014, whereupon the petitioner along with others preferred A.S.No.272 of 2014 and lost the same too on 17.02.2017 before the Second Additional Judge, City Civil Court. Thereafter, the petitioner has come forward with the present petition challenging inter alia the very acquisition proceedings on the ground that no notice was issued prior to the declaration under Section 6 of the Land Acquisition Act 1894, or at any time prior to the passing of the award by the Land Acquisition Authority to his father and seek to restore possession of the same.

2. Heard Mr.M.Karthikeyan, the learned Additional Government Pleader appearing for the respondents 1 and 3 and Mr.Vivekavanam, the learned counsel appearing for the second respondent.

3. The learned counsel for the petitioner submitted that right to property is a Constitutional right under Article 300-A of the Constitution, and when transgressed upon by the authorities of

the State Machinery under the guise of exercising the power of eminent domain, it dents the quality of the citizen within the meaning of Article 21 of the Constitution. The unfortunate citizen who took the brunt of the arbitrary action of the authorities is the petitioner, contended the counsel. Therefore, what may prima facie appear as a case of laches in approaching the Court, the same should not let to outweigh the valuable Constitutional Rights of the petitioner. The learned counsel further alleged that the property acquired from petitioner's father is a valuable property and the Housing Board has sold it to the fourth respondent Trust on a private sale for an estimated Rs.33 Crores and this has happened during the pendency of the petitioner's Civil Suit.

4. Both the counsel appearing for the respondents vehemently opposed the contentions of the petitioner on the ground that the laches of the petitioner is incurable and to entertain the same would be an abuse of judicial process.

5. There are two parts to petitioner's case:

- Challenging the acquisition on grounds that Section 4 (1) Notification dated in 1978 and Section 6 Declaration issued thereafter dated 06.08.1981 were after about 27 years;
- That the Housing Board has sold a very valuable property by private sale in violation of the norms of allotting the plots to the fourth respondent.

7. So far as the first part of the petitioner's allegation is concerned, even by petitioner's own averment, he came to know of the acquisition proceedings in the year 2000, and he could not pretend innocence and ignorance about the same when he chose to challenge it beyond 18 years. It may be that the petitioner might have diverted his time and energy in instituting the Civil Suit to declare his title. But that does not imply that the time will stop on him to approach this Court. If he had a right to invoke the jurisdiction and challenge the Notification under Section 4(1) and Section 6 of the Land Acquisition Act, 1894, as rightly contended by the learned counsel for the respondents, as on date, the petitioner has failed to sustain his title in the property too. There is no cause of action for him to challenge the acquisition at this belated stage. After opting to sleep over his rights for several years, petitioner has created a situation where it has become impossible for this Court to entertain this petition and should this Court sanctions petitioner's present attempt it would amount to this court aiding abuse of its own judicial process. Therefore, this petition cannot be sustained.

8. As to the second point, dehors the title of the petitioner to the property and irrespective of the consequence that has visited his attempt to have the acquisition proceedings quashed, he still may have a right to challenge such alleged acts of illegality of the Housing Board in allotting the property or in utilizing the property. Therefore, if at all, the petitioner considers it necessary to challenge the alleged private sale of the Housing Board property, it may have to be done independently, since the cause of action for the same is independent of the cause for the present attempted action.

9. With the above observation, this present petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

mrr

To

1. The Secretary,
Housing and Urban Development,
Fort St.George,
Chennai.
2. The Chairman,
Tamil Nadu Housing Board,
Anna Salai, Nandanam,
Chennai - 18.
3. The Special Tahsildar (Land Acquisition),
Unit III,
Tamil Nadu Housing Board Schemes,
Nandanam,
Chennai - 18.

+1cc to Mr.B.Vivek Vannan, Advocate, S.R.No.8134

+1cc to Mr.K.S.Kumar, Advocate, S.R.No.7798

W.P.No.2297 of 2018

RRK(13/02/2018)