

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.P.No.23385 of 2015
and
M.P.No.1 of 2015

1. R.Nanjundeeswaran (Deceased)

2.V.Kanagapoorani ... Petitioners
(P2 Substituted as Legal Heir of
the deceased R.Nanjundeeswaran
as per order dated 15.12.2017
by NSSJ in W.M.P. No.35266/2017
in W.P.No.23385 of 2015).

Vs

1. The District Collector,
Tirupur, Tirupur District.

2. The Special Tahsildar,
Adi-Dravidar Welfare,
Pollachi.

3. The Special Tahsildar,
Adi-Dravidar and Tribal Welfare,
Kangeyam, Erode District.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India for issuance of Writ of Declaration declaring the Land Acquisition Proceedings initiated in Section 4(1) Notification under the Tamil Nadu Acquisition of Land for Adi-Dravidar Welfare Scheme Act, 1978 insofar as the petitioner's land situated at Survey No.462/1A, Kannamanaickanur I Village, Udumalpet Taluk, Tirupur District measuring about 2.02 Acre is null and void, has lapsed in view of the provisions of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

For Petitioners : Mr.V.Stalin

For Respondents : Mr.M.Karthikeyan
Additional Government Pleader

ORDER

1.1. The petitioner has filed this petition challenging the notification issued under Section 4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978, (henceforth would be referred to as Harijan Welfare Schemes Act, for short) on the ground that it has lapsed in view of the provisions of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter would be referred to as Right to Fair Compensation Act, for sake of brevity).

1.2. The case of the petitioner is that the petitioner owned 4.0 acres of land in S.No.462/1A at Kannamanaikkanur I Village, Udumalpet Taluk, Tirupur District, of which 1.98 acres was acquired by the Government under the Harijan Welfare Schemes Act. The 2nd respondent has issued a notice to the petitioner under Section 4(2) of the said Act dated 27.12.1995. This was challenged, but rejecting the challenge subsequent notification under Section 4(1) of the said Act was issued and this was followed by passing of an award on 29.03.1996. Subsequently, the petitioner has filed an appeal in C.M.A.No.1 of 2005 before the Sub-Court, Udumalpet, for enhancing the compensation amount and the same was allowed and the 2nd respondent was directed to pay a sum of Rs.2,04,930/- Vide order dated 13.03.2008 and the compensation amount has also been received by the petitioner.

1.3. The entire extent of 4.0 acres that the petitioner owned is an agricultural land and it is under cultivation of the petitioners. Notwithstanding the fact that this property was acquired, at no point of time the petitioner's possession and enjoyment over the same is disturbed. While so, on 21.03.2015, the 3rd respondent attempted to take possession over the western side of the land for the Adi-Dravidar Welfare Scheme. The petitioner then approached the 3rd respondent and explained that while he did not oppose to acquiring 1.98 acres of land in 1995, still it was not appropriate on the part of the respondents to dis-possess the petitioner after a lapse of 20 years. He also made a representation dated 23.03.2015 to the respondents that in the eventuality of taking possession, the eastern portion of the land might be taken, so that he could save the irrigation facilities available on the western portion. On 27.03.2015, the representation of the petitioner was rejected

by the 3rd respondent on the ground that allotment of plots to 56 Adi Dravidar family has already been made, and that there exists no irrigation facilities as was claimed by the petitioners.

1.4. It is required to be stated that the notice under Section 4 (2) dated 27.12.1995 was issued earlier merely indicated the area that was intended to be acquired, but it did not denote the exact place where this property to be acquired was located within the total extent available. In this circumstance, the third petitioner made a representation dated 13.04.2015 and followed it with W.P.No.11233 of 2015 for issuance of a writ of mandamus to forbear the respondents from acquiring the petitioner's property in S.No.462/1A measuring about 2.02 acres before following due process of law. This Court directed the first respondent to consider the representation of the petitioner dated 13.04.2015 and disposed of the above said W.P.No.11233 of 2015 on 17.04.2015. Thereafter, on 29.05.2015 the 1st respondent/the District Collector, Tiruppur called the petitioner for personal hearing and the petitioner participated in the said enquiry.

1.5. Thereafter, the petitioner's request was rejected by the 1st respondent on 30.06.2015. Subsequently, the petitioner came to know that the sketch indicating the portion of the property proposed acquisition as per notification under Section 4(1) is entirely different from what was sought to be taken possession of. In fact, the petitioner was paid compensation as per the sketch dated 21.03.1996.

1.6. The petitioner now contends that the respondents are attempting to take possession of a piece of his property that was not a part of the acquisition, and is contrary to the plan that it prepared at the time of acquisition. Inasmuch as the possession of the petitioner's property was not taken before the commencement of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 on 01.01.2014, the entire acquisition proceedings is lapsed under Sec.24(2) of the said Act.

2. The 2nd respondent has filed its counter and it is broadly contended that the acquisition proceedings have been completed and compensation has also been paid. That on 15.11.2002, possession too has been taken. In the possession certificate, based on the boundary indicated therein, only the property on the western half of the S.No.462/1 was indicated as the property acquired and this will be evident from the description of boundaries that since taking possession, the entire property was divided into 56 house sites, allotted to various identified beneficiaries, that pattas too have been granted to them, and it is in these circumstances, the Collector has rejected the

petitioner's representation dated 13.04.2015, and without challenging the said order of the Collector, the petitioner has again come forward with the present writ petition.

2.2. As to actual user, the petitioner is not using the western portion of the land. So far as the sketch said to have been prepared at the time of passing of the award initially it was wrongly prepared, but it was cancelled and recalled. The said sketch was not approved by the District Collector, the Authority constituted under the statute for acquiring the lands either. Subsequently, a correct sketch was prepared on 29.03.1996.

3. This case has come before this Court for hearing on 02.02.2018. On that day, this Court was informed that two plans were originally prepared, one a East-West Plot that abuts the northern boundary of the S.F.No.461, and the other which is now contested, was on the east of the said Survey Number. To resolve this confusion, the Tahsildar concerned was directed to appear before this Court. Subsequently, it was represented before this Court by the counsel for the petitioner that the petitioner is willing to part with the land in terms of the plan dated 21.03.1996 by which, the property acquired was shown as East-West plot on the northern extremity of the survey number. Since the property has not been fully developed, none of the beneficiaries have occupied the property and since the petitioner is also willing to part with the extent of property acquired, this Court required the Tahsildar to consider such request of the petitioner and to make a feasible study of the petitioner's proposal. Accordingly, the Tahsildar has surveyed the property and filed his status report along with the plan.

4. Today, Mr.M.Karthikeyan, the learned Additional Government Pleader appearing for the respondents, and instructed by Mr.M.Kannan, the Special Tahsildar, Adi-Dravidar Welfare, Kangeyam, would submit that the allotment have been made on the western half of the property in S.No.462/1A. The eastern side of the property would not be suitable for house sites, as heavy tension overhead electric line passes through this portion. He also submitted that there is a new electric line with low tension that runs about the middle of the western half of the property.

5.The learned counsel for the petitioner would now make a plea that if the present low tension line that runs across the western half of the S.No.462/1A is further pushed to western side, it is possible to have one big plot, and if the northern half can be utilised to the extent possible, they will be still left with a portion on the western half.

6. In essence, the petitioner has not challenged the acquisition proceedings for acquiring the plot which can address the requirement of the Government as well as his own beneficial enjoyment. In the said circumstance, the petitioner is directed to make a fresh representation with all his proposals to the 1st respondent within a period of four weeks from the date of receipt of a copy of this order, whereupon the 1st respondent may take a purposeful call on the matter and decide the issue. Whatever decision the Collector takes on the petitioner's representation is final and the petitioner accepts that it would be final.

7 . With the above directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

ssn
To

1. The District Collector,
Tirupur, Tirupur District.

2. The Special Tahsildar,
Adi-Dravidar Welfare,
Pollachi.

3. The Special Tahsildar,
Adi-Dravidar and Tribal Welfare,
Kangeyam, Erode District.

+1cc to the Government Pleader Sr.39571

W.P.No.23385 of 2015
and
M.P.No.1 of 2015

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srg 31/05/2018