

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 30.10.2018

Judgment Delivered on : 14.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

W.A.Nos.1009 and 1046 of 2016
and
C.M.P.Nos.13134 and 13701 of 2016

1. Mrs.Jothilakshmi @ Jothi
2. Mr.G.Balasubramanian
3. Mrs.Mahadevi
(Appellants 1 to 3 are
represented by their
General Power of Attorney Agent
Umar Rahamathullah)

.. Appellants in W.A.No.1009 of 2016

O.Muthu

.. Appellant in W.A.No.1046 of 2016

Vs.

1. The Government of Tamil Nadu,
Rep. by its Secretary to Government,
Housing and Urban Development Department,
Fort St.George, Chennai-600 009.
2. The Land Acquisition Officer and Special Tahsildar
(Land Acquisition),
Unit No.III, The Tamil Nadu Housing Board,
Nandanam, Chennai-600 034.
3. The Chairman, The Tamil Nadu Housing Board,
Nandanam, Chennai-600 034.

4. P.Shanmugam
5. O.Muthu
6. Mrs.M.Mary
7. N.Sriram
8. N.Sadasivam
9. Dharmalingam
10. N.Gunalan

.. Respondents in W.A.No.1009 of 2016

1. Mrs.Jothilakshmi @ Jothi
2. G.Balasubramanian
3. Mrs.Mahadevi
(Respondents 1 to 3 are represented by
their General Power of Attorney Agent
Umar Rahmathullah)
4. P.Shanmugam
5. Mrs.M.Mary
6. M.Sriram
7. N.Sadasivam
8. Dharmalingam
9. N.Gunalan
10. The Government of Tamil Nadu,
Rep. by its Secretary to Government,
Housing and Urban Development,
Fort St.George, Chennai.
11. The Land Acquisition Officer,
Special Tahsildar (LA) Unit-III,
Tamil Nadu Housing Board,
Nandanam, Chennai.
12. The Chairman,
Tamil Nadu Housing Board,
439, Anna Salai,
Nandanam, Chennai.

.. Respondents in W.A.No.1046 of 2016

Writ Appeals filed under Clause 15 of the Letters Patent against the order dated 04.04.2016 passed by the learned Single Judge in W.P.No.6150 of 2011 on the file of this Court.

WP.No. 6150 of 2011: Filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records from the Second Respondent pertaining to award No.1/2010 (D/394/83), dated 0806/2010, and to quash the same.

For appellants in W.A.No.1009 of 2016
: Mr.AR.L.Sundaresan, Senior Counsel
for Mr.C.T.Murugappan

For appellants in W.A.No.1046 of 2016
: Mr.Silambanan, Senior Counsel for
Mr.B.S.Manjunath

For respondents in W.A.No.1009 of 2016

: Mr.C.Thirumaran, Spl.G.P.for RR-1 & 2
Mr.K.R.Krishnan for R-4
Mr.Silambanan, Senior
Counsel for
Mr.B.S.Manjunath for R-5
No appearance for RR-6 to 10

For respondents in W.A.No.1046 of 2016:

Mr.AR.L.Sundaresan, Senior Counsel
for Mr.C.T.Murugappan for RR-1 to 3

Mr.K.R.Krishnan for R-4
Mr.C.Thirumaran, Spl.G.P. for RR-10 & 11
Mr.V.Anandamoorthy for R-12
No appearance for RR-5 to 9

COMMON JUDGMENT

R.SUBBIAH, J

Since the facts and the issue involved in both these Writ Appeals are identical and arising out of the same order passed in the Writ Petition by the learned Single Judge, they are disposed of by this common judgment.

2. The writ petitioners 1 to 3 in W.P.No.6150 of 2011 have filed W.A.No.1009 of 2016 and the fifth writ petitioner in W.P.No.6150 of 2011 has filed W.A.No.1046 of 2016, challenging the order passed by the learned Single Judge in W.P.No.6150 of 2011, praying for issuance of a Writ of Certiorari to quash the Award No.1 of 2010 (D1/394/83), dated 08.06.2010 passed by the second respondent in the Writ Petition, namely The Land Acquisition Officer and Special Tahsildar (LA), Unit-III, Tamil Nadu Housing Board, Nandanam, Chennai, in and by which, the learned Single Judge has observed as follows:

"8. Therefore, there will be a direction to third respondent to lodge a police complaint against petitioners 1 and 2 and all concerned, and, if such a complaint is lodged, it shall be transferred and entrusted to a senior and energetic officer of CBCID, who shall conduct a thorough probe to bring to light the perpetrators of illegality.

... ..

10. As such, this Writ Petition is dismissed with costs of Rs.50,000/- on first

petitioner and Rs.2,00,000/- on second petitioner, to be payable to Tamil Nadu Mediation and Conciliation Centre, attached to this Court, within a period of three weeks from the date of receipt of a copy of this order. If they fail to remit the costs as stated above, the said amount shall be recovered, by initiating appropriate proceedings for revenue recovery or such other proceedings. Though this Court issued directions to the Housing Board to file a criminal complaint before the Superintendent of Police and the matter to be referred to CBCID, this Court has not imposed any costs on third petitioner, namely, Mahadevi, so also the other petitioners, viz., petitioners 4 to 10, Power Agents, etc., and their complexity in the issue will also be investigated and, if the investigation reveals their culpability, they have to be proceeded in accordance with law."

3. For the sake of convenience, the parties herein are referred to as they are ranked in the Writ Petition.

4. The writ petitioners claim to be the owners of the land (s) comprised in T.S.No.16/1 to 16/5 and 16/8 situated in Puliyur Village, Egmore-Nungambakkam Taluk, Chennai District. The said lands were originally owned and possessed by one Mr.Kalyana Sundara Pathar, the father of the first writ petitioner and grandfather of the writ petitioners 2 and 3. The said properties have been granted to the second writ petitioner by virtue of a Shrotrium Patta issued on 15.12.1947. The writ petitioners (being the legal heirs) have been in possession and enjoyment of the properties. The land in T.S.No.16/2 was sought to be acquired by the Government for the purpose of forming Neighbourhood Scheme for the Tamil Nadu Housing Board. Notification under Section 4(1) of the Land Acquisition Act was issued by the Government on 24.07.1984 and Declaration under Section 6 of the said Act was issued by the Government on 09.04.1986 and in the locality on 15.04.1986.

5. It is the further case of the writ petitioners that as per Section 11-A of the said Act, the Award has to be passed within two years from the date of publication of Declaration under Section 6 of the Act, i.e. in this case, within two years from 15.04.1986. The Award was actually passed on 08.06.2010, but there were several proceedings in respect of the said properties. Even if the period of interim stay granted in all those proceedings, had to be excluded, the Award ought to have been passed prior to 08.06.2010. According to the writ petitioners, if all the lapse periods of stay are taken into

consideration, i.e. by excluding the period of interim stay granted, and if the limitation period of two years is calculated for passing the Award, the Award ought to have been passed on or before 19.03.2010, whereas in this case, the Award was passed only on 08.06.2010. Hence, the award has to be quashed.

6. According to the learned Special Government Pleader appearing for the official respondents, the Award was passed in time, even after exclusion of the stay periods.

7. Keeping in mind the submissions made on either side, we have carefully perused the materials available on record.

8. In this case, if the exclusion of period of interim stay is calculated and applied for passing of the Award, the same would suffice to answer the issue involved in the Writ Appeals. It is relevant to notice the dates as follows:

(i) The local publication of Declaration under Section 6 was issued on 15.04.1986. As per Section 11-A, the Award ought to have been passed within two years from 15.04.1986, i.e. on or before 14.04.1988.

(ii) But there were continuously orders of stay in various writ proceedings. The first stay was granted in W.P.No.13985 of 1986 filed by one Samuga Nalapani Kazhagam pertaining to S.No.16/2, by this Court on 22.12.1986, and that Writ Petition was disposed of on 20.02.1997, and therefore, there was stay from 22.12.1986 to 20.02.1997.

(iii) Prior to filling of W.P.No.13985 of 1986, i.e. from 15.04.1986 to 22.12.1986, there was no stay for 251 days. According to the learned Special Government Pleader, if 251 days is excluded, even thereafter, there was a time for one year three months and 23 days.

(iv) But, in the meantime, there was a stay in another Writ Petition in W.P.No.2879 of 1988 filed by one Ahamedulla Basha pertaining to S.No.16/1, granted by this Court on 21.03.1988, and this Writ Petition was disposed of on 20.02.1997.

(v) In the meanwhile, again in another Writ Petition in W.P.No.4016 of 1988 filed by one Chelliah (Member of the Sangam) pertaining to S.Nos.16/2 and 16/3, interim stay was granted on 08.04.1988, and the said W.P. was disposed of on 14.06.1997.

(vi) Therefore, even after 20.02.1997, after the disposal of W.P.No.13985 of 1986, there was stay in W.P.No.4016 of 1988 which was in operation till 14.06.1997.

(vii) Again, in W.P.No.3902 of 1988 filed pertaining to S.Nos.16/5 and 16/6, interim stay was granted by this Court on 07.04.1988 and it was disposed of on 16.07.1998. Lastly, stay was there upto 16.07.1998.

(viii) If all the above said stay periods are excluded, even thereafter, there remained one year, three months and 23 days for passing the Award.

(ix) Therefore, there was time to pass award till 09.11.1999. In the meantime, in the appeal filed in W.A.No.366 of 1999, there was a stay granted on 17.03.1999 and that

continued till 27.07.2009 on which date, the appeal was dismissed. Therefore, stay was there upto 27.07.2009 and therefore, one year 3 months and 23 days have to be excluded from 27.07.2009 and the said time limit to pass an Award, was available upto 20.11.2010.

(x) For better understanding of the dates, the details of stay and Writ Petition are given below:

Sl. No.	Writ Petition	Filed by	Stay period
1	W.P.13985 of 1986	Samuga Nalapani - Kazhagam S.No.16/2	Interim stay granted on 22.12.1986 and disposed of on 20.02.1997
2	W.P.2879 of 1988	Ahamedulla Basha - S.No.16/1	Interim stay granted on 21.03.1988 and disposed of on 20.02.1997
3	W.P.4016 of 1988	Chelliah (member of the Sangam) - S.Nos.16/2 and 16/3	Interim stay granted on 08.04.1988 and disposed of on 14.06.1997
4	W.P.3902 of 1988	S.Nos.16/5 and 16/6	Interim stay granted on 07.04.1988 and disposed of on 16.07.1998
5	W.P.1733 of 1999	Duraikannuammal S.Nos.16/1 to 16/7	Disposed of on 22.02.1999

Sl. No.	Writ Petition	Filed by	Stay period
6	W.A.No.366 of 1999	Against order in W.P.No.1733 of 1999, dated 22.02.1999 - Prayer - challenging the Notification under Section 4 (1) in G.O.Ms.No.570, dated 22.08.1984 insofar as it relates to the acquisition of the petitioner's land in T.S.Nos.16/1 to 16/7, Puliyur Village and Declaration in G.O.Ms.No.351, dated 04.03.1986, Gazetted on 19.03.1986	Interim stay granted on 17.03.1999 and extended until further orders on 21.04.1999 and the writ appeal came to be dismissed on 27.07.2009
7	W.P.16369 of 1993	Filed by Ahamadullabasha - S.No.16/2	Interim stay granted on 17.11.1993, disposed of on 19.10.2001
8	W.P.6794 of 1999	Filed by G.Jothilakshmi in respect of S.No.16/2 was posted along with W.A.No.366 of 1999	Disposed of on 27.07.2009

9. According to the learned Special Government Pleader, since the award was passed prior to 20.11.2010, i.e. on 08.06.2010, the award is well within the period of limitation as per Section 11-A of the Act, whereas, according to the learned counsel for the petitioner, the stay granted in W.P.No.3902 of 1988 cannot be taken into consideration for calculating the two years period for passing award as per Section 11-A of the Act, since in the said Writ Petition, stay was granted in respect of

S.Nos.16/5 and 16/6 and not in respect of S.No.16/2, which is the subject matter of the present writ petition. Further, according to the learned counsel for the petitioner, S.No.16/5 and 16/6 are covered by a different award and not by Award No.1 of 2010 which pertains to S.No.16/2. But in our opinion, this contention is liable to fall to the ground, in view of the ruling of the Supreme Court reported in 2018 (7) SCC 763 (Raj Kumar Gandhi Vs. State (UT of Chandigarh)), extracted in the subsequent paragraph of this judgment.

10. In this case, though there are two different Awards, all are covered under the same Notification, dated 24.07.1984 under Section 4(1). Therefore, if the stay granted earlier in all the Writ Petitions, is taken into consideration, the Government has got time for one year three months and 23 days even from 27.07.2009, i.e. upto 20.11.2010, as discussed above. However, the Award was passed as early as in 08.06.2010 itself, which is well within time. Further, if the interim stay granted in W.A.No.366 of 1999 is taken into consideration, as contended by the learned Special Government Pleader, there was a time available upto 20.11.2010, as noted above, whereas, in this case, the Award was passed on 08.06.2010 itself, and it is well within the period of two years from the date of Declaration made under Section 6 of the Act.

11. In the above context, as stated above, a reference could be placed on a judgment of the Supreme Court relied on by the learned Special Government Pleader appearing for the official respondents, reported in 2018 (7) SCC 763 (Raj Kumar Gandhi Vs. State (UT of Chandigarh)) (cited supra), in which the Supreme Court has held as follows:

"9. The first question for consideration is whether the award was passed within the period stipulated under Section 11-A from the date of publication of declaration under Section 6 excluding the period of stay. It is apparent from the notification issued under Section 4 and declaration under Section 6 that notification under Section 4 had been issued for the development of residential-cum-commercial complex and for construction of college building and sports stadium, etc., by the Notified Area Committee, Manimajra, Union Territory Chandigarh and declarations under Section 6 had also been issued for the aforesaid purpose i.e. Scheme No.3. Though different notification under Section 21 and declaration under Section 6 had been issued, they are related to Scheme No.3 only. Scheme No.3 is one and this aspect has been considered by the High Court in Puran Chand

Gupta Vs. Union of India, W.Ps.(C).Nos.10297 and 10580 of 1997, decided on 04.08.1998 (P & H) and Devinder Kumar Vs. State (UT of Chandigarh), 1998 SCC Online P & H 1202 and the matters have travelled to this Court with respect to same notification and a three-Judge Bench of this Court in Puran Chand Gupta Vs. Union of India (Civil Appeal Nos.663-64, order dated 08.08.2001 (SC) decided on 08.08.2001) has observed:

"The point at issue is covered by the judgment of a Bench of three learned Judges delivered in Yusufbhai Noormohmed Nendoliya Vs. State of Gujarat & Anr. (1991 (4) SCC 531). That Judgment has been subsequently followed by several Benches of this court. It has been urged by Mr.R.K.Jain, learned counsel for the appellants, that the view taken therein can be contrary to the interest of the landholder and that, therefore, the Section should be so construed that it refers only to an order of stay obtained by a particular landholder in whose case alone the Explanation would apply. Having regard to the view that has consistently been taken by this court over several years, we are not disposed to take a contrary view and refer the matter to a larger Bench. Accordingly, the civil appeals are dismissed. No order as to costs."

10. In Devinder kumar Vs. State (UT of Chandigarh, 1998 SCC Online P & H 1202 also, the question about Pocket Nos.8 and 6 was considered and the High Court has held that it would not make any difference in the matter as the scheme was one. Thus, it is apparent that in view of the decision in Puran Chand Gupta (Civil Appeal Nos.663-64, order dated 08.08.2001) (SC), rendered by a three-Judge Bench of this Court, no case for

interference is made out on merits of the case. As the question raised is similar as urged in the aforesaid matter, a large number of matters were decided along with Puran Chand by the High Court. When the scheme was same i.e. No.3, obviously authorities could not have proceeded further pocket-wise and they were justified not to proceed further in view of the various stay orders granted by the High Court from time to time with respect to different pockets of the Scheme No.3. In view of the decision in Puran Chand Gupta, which has dealt with the case by a reasoned order, we do not find it appropriate to interfere on the aforesaid ground urged by the learned counsel appearing on behalf of the appellants.

11. In *Abhey Ram Vs. Union of India* (1997 (5) SCC 421) this Court has considered the extended meaning of the words "stay of the action or proceedings" and referring to various decisions, observed that any type of the orders passed by the Court would be an inhibitive action on the part of the authorities to proceed further. This Court has observed thus: (SCC.pp.428-29, para 9):

"9. Therefore, the reasons given in *B.R.Gupta Vs. U.O.I.* (1988 SCC Online Del 367 : (1989) 37 DLT 150 (Del) (DB) are obvious with reference to the quashing of the publication of the declaration under Section 6 vis-a-vis the writ petitioners therein. The question that arises for consideration is: whether the stay obtained by some of the persons who prohibited the respondents from publication of the declaration under Section 6 would equally be extendible to the cases relating to the appellants. We proceed on the premise that the appellants had not obtained any stay of the publication of the declaration but since the High Court in some of the cases has, in fact, prohibited them as extracted hereinbefore, from publication of the declaration, necessarily, when the Court has not restricted the

declaration in the impugned orders in support of the petitioners therein, the officers had to hold back their hands till the matters are disposed of. In fact, this Court has given extended meaning to the orders of stay or proceeding in various cases, namely, Yusufbhai Noormohmed Nendoliya Vs. State of Gujarat - 1991 (4) SCC 531; Hansraj H.Jain Vs. State of Maharashtra - 1993 (3) SCC 634; Sangappa Gurulingappa Sajjan Vs. State of Kamataka - 1994 (4) SCC 145; Gandhi Grah Nirman Sahkari Samiti Ltd. Vs. State of Rajasthan - 1993 (2) SCC 662; G.Narayanaswamy Reddy Vs. State of Karnataka - 1991 (3) SCC 261 and Roshanara Begum Vs. Union of India - 1986 (1) Apex Dec. 6 (SC). The words "stay of the action or proceeding" have been widely interpreted by this Court and mean that any type of the orders passed by this Court would be an inhibitive action on the part of the authorities to proceed further. When the action of conducting an enquiry under Section 5-A was put in issue and the declaration under Section 6 was questioned, necessarily unless the Court holds that enquiry under Section 5-A was properly conducted and the declaration published under Section 6 was valid, it would not be open to the officers to proceed further into the matter. As a consequence, the stay granted in respect of some would be applicable to others also who had not obtained stay in that behalf. We are not concerned with the correctness of the earlier direction with regard to Section 5-A enquiry and consideration of objections as it was not challenged by the respondent union. We express no opinion on

its correctness, though it is open to doubt.

12. In Om Parkash Vs. Union of India (2010 (4) SCC 17 : 2010 (2) SCC (Civ) 1, this Court as to the effect of interim stay has observed thus (SCC p.44, para 72):

"72. Thus, in other words, the interim order of stay granted in one of the matters of the landowners would put complete restraint on the respondents to have proceeded further to issue notification under Section 6 of the Act. Had they issued the said notification during the period when the stay was operative, then obviously they may have been hauled up for committing contempt of court. The language employed in the interim orders of stay is also such that it had completely restrained the respondents from proceeding further in the matter by issuing declaration/notification under Section 6 of the Act."

13. Thus, it is apparent that when the stay has been granted in one matter and when the scheme was one, authorities were justified in the facts and circumstances of the instant case to stay their hands. Moreover, a large number of writ petitions have been dismissed by the High Court and orders have attained finality and this Court has also dismissed the appeals/SLPs. Thus, we are not inclined to take a different view in the instant case."

12. In the above said case before the Supreme Court, there were Awards passed in respect of the same Notification, and therefore, following the said decision of the Supreme Court, we are not inclined to accept the submission made by the learned counsel for the writ petitioners to the effect that the stay granted in W.P.No.3902 of 1988 cannot be taken into consideration for the purpose of calculating the limitation period of two years for passing the award from the date of the Notification.

13. Learned counsel for the Tamil Nadu Housing Board relied

on the decision of a Supreme Court reported in 2011 (13) SCC 534 (Jeet Singh and others Vs. Union of India (UOI) and others), wherein the Apex Court after exhaustively discussing the law on the subject, observed as follows:

"17. In the instant case, the facts are peculiar. The land owners, i.e. the appellants and their father made all possible efforts to delay the proceedings. In fact, the proceedings were delayed because of the litigation initiated by them. In fact they wanted the acquisition proceedings to fail. Let us look at their conduct and behaviour. The father challenged the acquisition proceedings and in the said proceedings, an interim direction to maintain status quo was granted. On the other hand, another petition was filed making a grievance that no compensation was paid to them and in that petition a direction was given to pay compensation to them. Thus, they had shown their intention to claim and get compensation and compensation can be given only if their land was acquired. Again they filed another petition submitting that the proceedings had lapsed. We do take notice of the above conduct and attitude of the appellants and their father and we believe that in such a set of facts and circumstances, they would not be entitled to any discretionary relief in a petition filed under Article 226 of the Constitution of India.

18. In the aforestated set of circumstances, in our opinion, the acquisition proceedings cannot be permitted to lapse, especially when the Land Acquisition Collector had acted promptly after getting a certified copy of the order whereby the stay granted in CWP No.6687 of 1998 was vacated. As his counsel was absent when the abovestated order was passed, he could not know about the said order earlier and as per findings of the High Court, he came to know about vacation of the stay order for the first time on 27th March, 2003.

19. We also note the fact that possession of the land in question was taken long back and the land in question has been put to the use for which it has been

acquired.

20. We do not find any fault with the Land Acquisition Collector for not making the award before getting a certified copy of the order dated 23rd July, 2002 on 27th March, 2003 especially when he was not informed about the said fact earlier. There cannot be any doubt that no person would ever think of taking an action when he has been restrained by any interim order of any court from doing so. Once a person has been restrained by a court of competent jurisdiction from doing something, the person concerned is not expected to do anything till he gets communication from the court to the effect that the earlier order was modified or vacated. No officer would ever think of taking a chance upon any unauthentic communication with regard to vacation of interim relief because in that event, if the information is not correct, he might be held guilty under the provisions of the Contempt of Courts Act. In the instant case, there is nothing on record that prior to 27th March, 2003, the Land Acquisition Collector had received any communication that the stay granted on 12th February, 1999 had been vacated and, therefore, he was absolutely right in not taking any action for proceeding further for making an award till 27th March, 2003.

21. In view of the above circumstances, one can surely believe that the Land Acquisition Collector could have proceeded further for making an award only after 27th March, 2003, when a certified copy of the order dated 23rd July, 2002 was communicated to him.

22. In view of the afore-stated undisputed facts with regard to communication of the said order dated 23rd July, 2002 on 27th March, 2003, and taking notice of all the aforestated facts we are of the view that the High Court was right in dismissing the writ petition."

14. Further, though different Awards are passed, yet they relate to the same Notification under Section 4(1) and

Declaration under Section 6 of the Act, and the properties are related to Scheme No.3 and it was considered by this Court. Therefore, the stay granted in respect of those survey numbers will be covered under the same Notification and it can also be taken into consideration for the purpose of calculation of lapse period. In fact, the judgment of the Supreme Court reported in 2018 (7) SCC 763 (cited supra), will squarely answer the issue in favour of the respondents-Government.

15. Therefore, we do not find any infirmity in the impugned order passed by the learned Single Judge and the Award is passed only within two years from the date of publication of Declaration issued under Section 6.

16. Hence, the Writ Appeals are dismissed, confirming the impugned order passed by the learned Single Judge. No costs. Consequently, C.M.Ps. are closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

cs

To

1. The Secretary to Government,
Housing and Urban Development Department,
Fort St.George, Chennai-600 009.
2. The Land Acquisition Officer and Special Tahsildar
(Land Acquisition),
Unit No.III, The Tamil Nadu Housing Board,
Nandanam, Chennai-600 034.
3. The Chairman,
The Tamil Nadu Housing Board,
Nandanam, Chennai-600 034.

+1cc to Mr.K.R.Krishnan, Advocate, S.R.No. 86804
+1cc to the Government Pleader, S.R.No. 87939

W.A.Nos.1009 and 1046 of 2016

EV(CO)
GN(04/01/2019)