

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 13.03.2018

Judgment Pronounced on : 28.04.2018

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

W.P.No.27761 of 2017
and WMP.Nos.29747 & 29748 of 2017

K.Buvaneswari

Rep by her General Power of Attorney

K.Gajalakshmi

.....Petitioner

-Vs-

1.The Principal Secretary to
Government of Tamil Nadu
Highways and Minor Ports (HW2) Department
Fort St.George
Chennai - 600 009.

2.The District Collector
Kancheepuram
Kancheepuram District.

3.The Special Tahsildar (Land Acquisition)
Inner Ring Road Plan
Chrompet
Chennai - 600 044.

4.The District Revenue Divisional Officer
(Land Acquisition Officer)
Kancheepuram.

5.Meenakshi

6.Narmatha

7.Senthil Kumar

8.J.Amirtha Valli

9.J.Jegajothi

10.J.Selva Prakash

11.M.Selvi

12.Minor M.Logesh

(Minor represented by mother and natural guardian M.Selvi)

13.S.Varalakshmi

14.A.Kalavathi

..... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records of the fourth respondent and quash Na.Ka.No.13085/2011 F3 Award No.6/17 dated 30.04.2017 and consequently direct the fourth respondent to issue fresh award and include the name in the fresh award.

For Petitioner : Ms.K.Gajalakshmi
Party-in-Person

For Respondents : Mr.Akhil Akbar Ali
Government Advocate [for R1 to R4]
Mrs.Vijayalakshmi Natrajan [R5 to R7]

ORDER

The petitioner, who has approached this court through her Power of Attorney/daughter with the present petition for quashing an interim award in Award No.6/2017 dated 30.4.2017, passed under Tamil Nadu Highways Act, 2001.

2. The facts that are necessary to appreciate the petitioner's case are that:

- A certain Ekambara Mudaliar was possessed of a parcel of lands including the property in S.F.No. 553/5A, Ward III, Melamaiyur Village, Chengalpattu Taluk, Kancheepuram District. Ekambara Mudaliar was married twice, first to one Anjalakshi Ammal and then to one Kullammal. Through Anjalakshi Ammal, Ekambara Mudaliar had a son named Jayavel, who is now no more and his heirs are respondents 8 to 12. Through Kullammal, Ekambara Mudaliar had 3 daughters and a son, of whom the petitioner is one of the daughters. Ekambara Mudaliar died in 1990 and a few years thereafter, in 1994 to be precise, his son Alagesan too died, leaving behind him surviving his heirs respondents 5 to 7. The other two daughters born through Kullammal are respondents 13 and 14.
- The property in S.F.No. 553/5A ad-measuring 11.75 cents was the self-acquired property of Ekambara Mudaliar. He died intestate. However on 13.12.1985, prior to his death, a partition deed was brought into existence, to which Ekambara Mudaliar, Jayavel and Alagesan were parties. The petitioner was appeared to have been excluded in the partition deed.
- This property was notified for acquisition under the provisions of Tamil Nadu Highways Act, 2001, and an interim award too has been passed in favour of the heirs of Alagesan. Since the petitioner was excluded therein, she

has now come forward with the present petition seeking to quash the interim award passed.

2. The primary contest to this petition came from respondents 5 to 7, whom as already indicated are the heirs of the petitioner's brother Alagesan. In their counter affidavit, they allege that the petition was misconceived inasmuch as it seeks to unsettle the title that Alagesan had obtained under a Registered Partition deed dated 13.12.1985, wherein he was allotted certain properties including the property in S.No.553/5A currently under acquisition. Any challenge to the title of the property is beyond the scope of the present petition, and if at all the petitioner believes that she has any right in the said property she has to work out her remedy else where. In fact on an earlier occasion, the 5th respondent had filed an eviction petition in RCOP.No.6 of 2000 before the District Munsif Court, Chengalpattu, to evict the tenant of a certain property allotted to Alagesan under the partition deed, and this was resisted on the ground of want of absolute title to the petitioner in the said property. The Rent Controller, however, rejected the defence of the tenant. This apart, the petitioner herein had earlier filed W.P.No.38501 of 2016 with identical contentions and this came to be dismissed on 12.6.2017. Hence, the present endeavour of petitioner is an abuse of judicial process.

3. Heard the Power of Attorney for petitioner and Mr.Akhil Akbar Ali, learned Government Advocate for respondents 1 to 4 and Mrs.Vijayalakshmi Natarajan, learned counsel for respondents 5 to 7.

4. The petitioner has more or less parroted the same line of contention that she has taken up in WP.No.38501 of 2016 and the focus of her attack was on the genuineness of the partition deed dated 13.12.1985. According to the petitioner, she came to know of this partition deed sometime in the year 2000 when she obtained an encumbrance certificate, that she also objected to the proceedings of the Rent Controller in RCOP.No.6 of 2000. This apart, this Court in its order dated 12.06.2017 in W.P.38501 of 2016 has made clear that if the petitioner was keen to impugn the genuineness of the partition deed that could not be done in a writ proceedings but before the appropriate Civil Court. It is very unfortunate that the petitioner who is represented in this proceedings by her daughter, continues to waste the time of this Court when she wants this Court to set at naught the partition deed dated 13.12.1985 in spite of the fact that she came to know of its existence almost in the year 2000. Unless the said partition deed is set aside, to which the petitioner's father Ekambara Mudaliar too was a party, in the manner known to law, the authorities would be free to rely on

the same.

4. It may be that a party may have an option to appear in person to conduct a judicial proceeding but that does not change the legal process necessary to establish her right and title to the property now acquired. Unfortunately, despite the fact that she has been instructed to approach appropriate forum, the petitioner appears to be persisting with her attempts with a flare of rare optimism that neither law permits nor the legal process encourages.

5. In the result, this petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ds
To:

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4.The District Revenue Divisional Officer
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+1 cc to the Govt Pleader sr 32746
+1 cc to M/s.K.Gajalakshmi party in person sr 32343
+1 cc to Mr.S.Natarajan Advocate sr 32369

W.P.No.27761 of 2017

aa05/06/2018