

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

WRIT APPEAL No.428 OF 2013

1. The Government of Tamil Nadu,
rep. by the Secretary to the Government,
Adi Dravidar and Tribal Welfare Department,
Fort St. George,
Chennai - 9.
2. The Special Tahsildar,
(Adi Dravidar Welfare),
Sriperumbudur,
Kancheepuram District. Appellants

vs.

Sowrirajan Respondent

Writ Appeal filed under Clause 15 of the Letters Patent against the order of this Court dated 02.03.2012 made in W.P.No.4249 of 2004. Petition filed under Article 226 of the constitution of India praying to issue writ of certiorarified Mandamus or any other writ or order or direction to call for the records in the Tamil Nadu Government Gazette Notification No.155 dated 12.3.1992 G.O.3D NO.187(ADW.B) dated 11.02.1992, quash the same and to issue a direction forbearing the respondents from interfering with peaceful possession and enjoyment of lands by the petitioner bearing survey No.347/1 and 347/2, at No.62, Malayampakkam Village, Sriperumbudur Taluk, Kancheepuram District.

For Appellants : Mr.A.N.Thambidurai,
Special Government Pleader

For Respondent : Mr.T.S.Baskaran

J U D G M E N T

(Judgment of the Court was delivered by M.VENUGOPAL,J.)

The Appellants/Respondents have focussed the present intra-Court Writ Appeal before this Court as 'aggrieved persons' as against the order dated 02.03.2012 in W.P.No.4249 of 2004 passed by the learned Single Judge in allowing the Writ Petition.

2. Earlier, this Court, while passing orders in the impugned Writ Petition on 02.03.2012, at paragraph 8, had inter alia observed as follows:

" 8. ... The land in question is a vacant land. Therefore, taking possession does not mean that creating some records by sitting in the office. It all depends on the animus of the parties. If only after due intimation to the land owner, the record is made to show that possession has been taken, then it will amount to actual taking possession. But in this case, absolutely there is no record for taking possession of the land. Therefore, as per the law laid down by the Hon'ble Supreme Court in Raghbir Sing Sehrawat's case, this writ petition, though filed after the award was passed, cannot be dismissed on the ground of delay and laches. "

and further, at paragraph 9, had proceeded to mention as follows:

9. I find every force in the arguments of the learned counsel for the petitioner that the petitioner was not aware of the acquisition proceedings. The very fact that knowing fully well that the petitioner was the owner of the land, still the respondents did not issue any notice and did not afford opportunity to him at any stage of the proceedings, would go to show that the acquisition of the land belonging to the petitioner sought to be made, has not been done by strictly following the procedure established under law. It is needless to point out that the right to property, though not a fundamental right, still, it remains to be a constitutional right. Every man has got his own sentimental attachment to his property. Depriving him of his property should therefore be done by strictly adhering to the procedure established under law. ..."

and ultimately, allowed the Writ Petition by quashing the acquisition proceedings in respect of the land in S.No.347/2.

3. Assailing the Validity, Legality and Correctness of the impugned order dated 02.03.2012 passed by the Learned Single Judge, the Learned Special Government Pleader appearing for the Appellants submits that the Writ Court should not have allowed the Writ Petition on the ground that the possession of the acquired land was taken after passing of the Award, in the manner known to law. As a matter of fact, the said land was in possession from the year 2000.

4. Advancing his arguments, the Learned Special Government Pleader contends that the Respondent/Writ Petitioner was not in possession of the acquired land during the entire period of land acquisition proceedings, viz. from 1989 to 1993.

5. The Learned Special Government Pleader appearing for the Appellants projects an argument that the land was sold to one Madhavan through oral transaction even before the publication of Section 4(1) notification in the year 1991 and the said Madhavan was the land owner during the entire period of land acquisition proceedings from 1989 to 1993. Added further, it is represented on behalf of the Appellants that after the death of the said Madhavan, the Respondent/Writ Petitioner has filed the present Writ Petition in the year 2004.

6. Yet another argument put forth on the side of the Appellants is that the acquired land was registered in the name of one Shanmugha Mudaliar and the Respondent/Writ Petitioner has purchased the subject matter of the land in the year 1971 and he failed to register his land in his name till the initiation of land acquisition proceedings in the year 1989. Based on the above, it is the stand of the Appellants that the Learned Single Judge had failed to appreciate that the land was under the enjoyment of the aforesaid Madhavan, who appeared for Section 5 (A) enquiry and deposed that this land was purchased by him through the oral transaction. Furthermore, after providing service of award enquiry notice, an Award came to be passed. According to the Appellants, intimation of Award was sent in Form 12 as per the then Land Acquisition Act, 1894.

7. The Learned Special Government Pleader appearing for the Appellants brings it to the notice of this Court that the Respondent/Writ Petitioner is not residing in Malayampakkam Village and not cultivating the land and sold the land to one Madhavan through an oral transaction, long back. Based on this, the name of the Respondent/Writ Petitioner was correctly published in the Declaration Notification published on 12.03.1992 in the Tamil Nadu Government Gazette in two Tamil Dailies, (i) Thinathoodhu on 14.03.1992 and (ii) Adirahtam on 15.03.1992 and gist of the notification was published on 14.03.1992. Lastly, it is the stand of the Respondent/Writ

Petitioner that the Appellants have taken possession of the acquired land on 08.11.2000, after all the Writ Petitions filed against the Land Acquisition proceedings.

8. In this connection, it is not out of place for this Court to make a pertinent mention that in the counter (to the Writ Petition), the Appellants/Respondents had categorically mentioned that one Madhavan is a Lessee of the Respondent/Writ Petitioner and his name was included in Section 4(1) Notification. Also, when the said Madhavan raised objections, it came to be rejected. It comes to be known that the subsequent Notification under Section 6 of the Land Acquisition Act, 1894 was issued and the said acquisition proceedings was challenged by the aforesaid Madhavan in W.P.No.20190 of 1992 and finally, the Writ Petition was dismissed.

9. It is not in dispute that the said Madhavan had expired. The Award was also passed on 11.01.1993. Because of the dispute with regard to the ownership of the property, the compensation amount was kept in Civil Court deposit as per Section 30 of the Land Acquisition Act, 1894, notwithstanding the fact that a plea is taken on behalf of the Appellants, that possession was taken as early as on 08.11.2000 and in this regard, reliance was placed on the Special Tahsildar's letter dated 11.03.2004 (which was addressed to the Inspector of Police, Mangadu).

10. However, the aforesaid letter of the Special Tahsildar, dated 11.03.2004 cannot come to the aid of the Appellants in the considered opinion of this Court, because of the simple reason that the Learned Single Judge, while passing the impugned order in the Writ Petition, at paragraph 7, had clearly observed in a crystallized fashion that the aforesaid letter points that one Sowrirajan had trespassed into the land after filing the present Writ Petition and had taken possession of the property and added further, the Tahsildar had prayed for action by the Police. However, on the side of the Respondent/Writ Petitioner, the factum of possession being taken is disputed and according to the Learned Counsel for the Respondent, the Respondent/Writ Petitioner was not dispossessed in any manner.

11. One cannot ignore the vital fact that the land in question is a vacant land and in reality, for taking possession, there must be some official credible records and only after giving due intimation to the land owner, ordinarily, possession will be taken by the Revenue Authorities and in the present case, there is no record to show in regard to taking possession of the land. In regard to handing over of possession by the Respondent/Writ Petitioner and also taking over of possession by the concerned Revenue Authorities, in the instant case on hand,

no Muchalika/Panchanama/Athatchi was prepared and produced before this Court.

12. Be that as it may, insofar as the present case is concerned, this Court is of the earnest view that the Respondent/Writ Petitioner (who was the owner of the land) was not issued with any notice and no opportunity was provided to him at any stage of the proceedings, which would unerringly point out that the acquisition of the land belonging to the Respondent/Writ Petitioner purported to have been made, was not done by adhering to the procedures envisaged in law.

13. There is no quarrel as to the proposition that 'Right to Property' is a Fundamental Right and also a Constitutional Right, which cannot be deprived to anyone much less the Respondent/Writ Petitioner. However, considering the fact that no notice was issued to the Respondent/Writ Petitioner and also that the Respondent/Writ Petitioner was not provided with adequate opportunity to defend his case, thereby violating the principles of natural justice, this Court, without any haziness, comes to the resultant conclusion that the view taken by the learned Single Judge in allowing the Writ Petition does not suffer from any serious material irregularity or patent illegality in the eye of law.

14. In view of the foregoing, the present Writ Appeal is devoid of merits and accordingly, the same stands dismissed, leaving the parties to bear their own costs. The order passed by the learned Single Judge is confirmed by this Court for the reasons assigned in this Appeal. Consequently, connected M.P.No.1 of 2013 is closed.

Sd/-

Assistant Registrar (CS-VII)

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Sub Assistant Registrar

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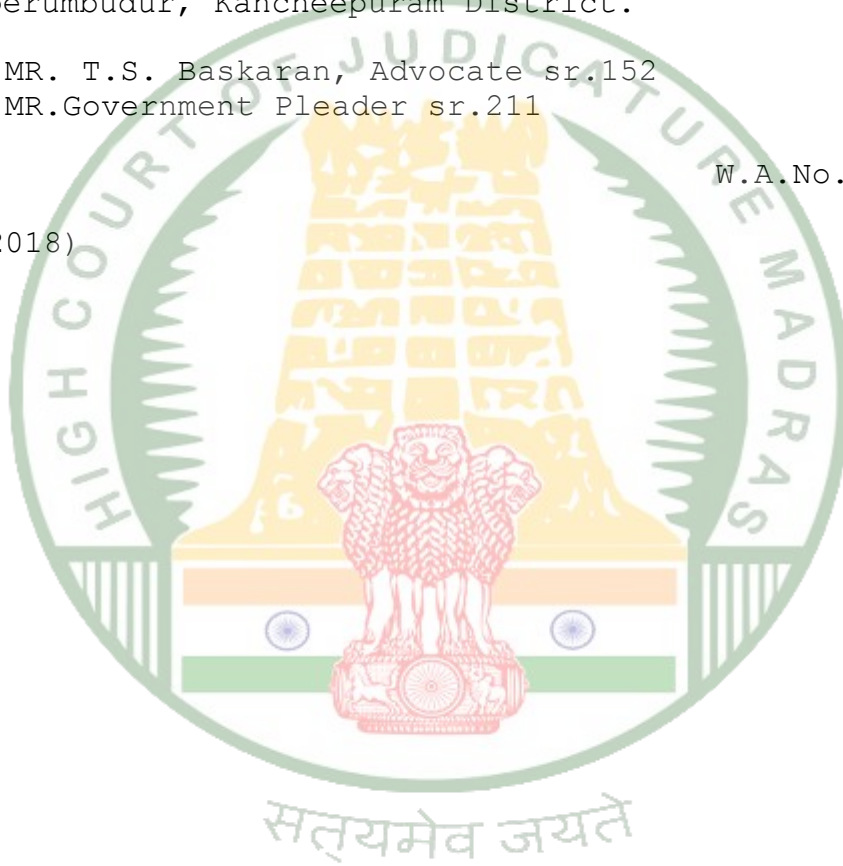
To

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+ 1 cc to MR. T.S. Baskaran, Advocate sr.152
+ 1 cc to MR.Government Pleader sr.211

W.A.No.428 of 2013

SV(CO)
EU(24/01/2018)



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