

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.P.No.40629 of 2015 and
M.P.No.1 of 2015

K.Rajkumar

... Petitioner

Vs.

1. State of Tamilnadu

Rep. by its Secretary to Government,
Adi dravidar and Tribal
Welfare Department,
Fort St. George, Chennai - 09.

2. The Special Tahsildar,
(Land Acquisition)
Adi Dravidar Welfare,
Coimbatore-18.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India for issuance of Writ of Declaration to declare that the entire land acquisition proceedings initiated, under the Land Acquisition Act, 1894, issued by notification under Section 4(1) of the Land Acquisition Act, in G.O.Ms.3-D No.738, Adi-Dravidar and Tribal Welfare Department, dated 02.08.1991 which was published in Part-II Sec.2(Supplement) of Tamil Nadu Government Gazette dated 28.08.1991 and declaration under Section 6 of the Act in G.O.Ms.No.(3d) No.679, Adi Dravidar & Tribal Welfare Department, dated 22.09.1992 and award Mo.5/92-93 dated 22.03.1993 in respect of the land measuring an extent of 70 cents comprised in Survey No.344 (Part) now subdivided as Survey Nos.344/1 and 344/2 (Part) situated at Vilankurichi Village, Coimbatore, belonging to the petitioner, as lapsed by virtue of the "Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act30/2013).

For Petitioner : Mr.A.V.Raja

For Respondents: Mr.Akhil Akbar Ali
Government Advocate

O R D E R

The petitioner has come forward with this petition seeking declaration that the land acquisition initiated with a notification under Section 4(1) of the Land Acquisition Act,

1894 on 02.08.1991 and culminated in an award on 22.03.1993 has lapsed on both grounds provided therefore under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act, 30 of 2013).

2. The brief facts which are essential for the current purpose is that the petitioner owned a plot of land measuring 3.50 acres in S.No.344 (Part) of Vilankurichi Village and the same is sought to be acquired for some public purposes for providing house sites for Adi Dravidars. This was sought to be challenged now. The petitioner has earlier filed few writ petitions at different stages of the acquisitions but was unsuccessful. The petitioner further avers in the affidavit that the land acquisition authority had deposited the compensation payable under Section 31 in LAOP No.139/93 before the Sub-Court, Coimbatore.

3. According to the petitioner, his possession has not yet been taken. In the meantime, he has indicated that the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act, 30 of 2013) which came into force on 01.01.2014 and that under Section 24(2) thereof in cases where an award was passed five years or more prior to the commencement of the said Act and where possession was not taken or compensation was not deposited, the entire acquisition proceeding would lapse inasmuch as possession of the petitioner's property was not taken in the manner known to law.

4. The context of the present case while the petitioner himself concedes the compensation deposited under Section 31 of the Land Acquisition Act, 1894 into Court. As to the allegation about taking possession is concerned, in an identical case in W.P.No32286 of 2014, counter and status report has been filed by the respondents therein, wherein the Special Tahsildar (L.A), Adi Dravidar Welfare in paragraph 8 of his counter affidavit has averred that possession was taken on 08.04.2009 and in the status report, the very Special Tahsildar who has said to have taken possession on 08.04.2009, had stated that the possession was taken as a vacant plot in the presence of Village Administrative Officer, Vilankurichi Village and surveyor as the witness.

5. As to the utilisation of the property, on instruction, the learned Government Advocate submitted that property has not been allotted to the beneficiary and not yet been handed over by the State to the beneficiaries.

6. The original files of the case was produced for perusal and the said file contains a memorandum / panchanama which appears to be photostat copy, where it is seen that possession was handed over by the Revenue Inspector to the Special Revenue Inspector, Adi Dravidar Welfare, Coimbatore-South. In the context of the application of Section 24(2) of the Central Act 30/2013, what significant is the document under which the State has taken possession from the owners of the land. It is now settled that possession of land pursuant to acquisition should be taken under a memorandum or panchanama signed by the owner of the property acquired, or by two independent witnesses. This procedure admittedly has not been done in the case at hand. The fact that no possession was handed over to the beneficiaries also gains significance in the context of the assertion of the respondents that the possession was taken. Hence, the statement of the Special Tahsildar about taking possession on 08.04.2009 is suspected. Since whatever that is now produced as a document evidencing handing over of possession is inter-departmental in character, the same cannot be considered as an evidence establishing of taking delivery of the possession of the petitioner's property. Necessarily Section 24(2) come to play.

8. In the result, this writ petition is allowed and the declaration under Section 6 of the Act in G.O.Ms.No.(3d) No.679, Adi Dravidar & Tribal Welfare Department, dated 22.09.1992 has lapsed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
Government of Tamil Nadu,
Adi Dravidar and Tribal Welfare Department,
Fort St.George, Chennai.

2. The Special Tahsildar (LA),
Adi Dravidar Welfare, Coimbatore.

+ 1 cc to Mr.A.V. Raja, Advocate SR.15734

+ 1 cc to Government Pleader SR.17115

W.P.No.40629 of 2015 and
M.P.No.1 of 2015

(CS-DR)
EU(12/04/2018)