

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 27.06.2018

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

WP.No.15672 of 2018 and WMP.No.18611 of 2018

J.Jayakrishnan

...Petitioner

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 Special Tahsildar (land Acquisition I)
Tamil Nadu Housing Board Schemes
Nandanam, Chennai-600 035.

3.The Tamil Nadu Housing Board
Rep.by its Chairman and Managing Director,
Nandanam, Chennai-600 035.

4.The Executive Officer and Administrative Officer,
Sasthiri Nagar Complex,
Bescent Nagar Division,
Muthusami Salai, Chennai.

...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records of the 4th respondent herein relating to the order bearing letter No.HS/0257/13 dated 29.05.2018 in respect of the property in Survey No.421/3B2 of Sholinganallur Village, formerly known as Tambaram Taluk, now sholinganallur Taluk, Kancheepuram District and quash the same and forbear the respondents form in any manner interfering with the peaceful possession and enjoyment of the property of the petitioner.

For Petitioner : Mr.A.R.L.Sundaresan, Senior Counsel
assisted by Mrs.A.L.Ganthimathi.

For Respondents : Mr.R.Udhaya Kumar
Additional Government Pleader
for R1 and R2
Mr.Anandha Murthy, Standing Counsel
for R3 and R4

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.,]

By consent, the writ petition is taken up for final disposal. Mr.R.Udhaya Kumar, learned Additional Government Pleader accepts notice on behalf of the respondents 1 and 2 and Mr.Anandha Murthy, learned Standing Counsel accepts notice on behalf of respondents 3 and 4.

2. The petitioner claims that he is the owner of the landed property admeasuring to an extent of 15 cents of Old S.No.421/3, New S.No.421/3B, Patta No.741 formerly at Sholinganallur Village, Kancheepuram District and he purchased the said property through a registered Sale Deed bearing Doc.No.1585 of 2004 dated 22.03.2004 registered on the file of the office of the Sub Registrar Office, Neelangarai. The petitioner would further aver that the said land was the subject matter of acquisition under the Land Acquisition (Central Act), 1894 for formation of Sholinganallur Neighbourhood Housing Scheme, Phase-I vide Award No.1 of 1997 dated 02.05.1997 and the original owner namely Thiruvengadam Naicker was declared with the compensation of Rs.33,366/- and since the amount has not been yet received and since the patta as well as records stood in his name, the petitioner was in the bonafide impression that he continues to be the owner and therefore he purchased the property. Later on only, he came to know that the said property was also subject matter of the above said acquisition.

3. It is further averred by the petitioner that since the possession of the land has not been taken as well as the compensation has not been paid, he has invoked Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-Settlement Act, 2013 by filing W.P.No.33195 of 2014 and the said writ petition has been entertained and it is still pending without any interim orders. The petitioner would further state that taking advantage of the said fact, the 4th respondent has issued a Stop Work Notice / notice, calling for the approved plan dated 18.04.2018, for which the petitioner has submitted his detailed response on 20.04.2018 and it was also followed by a notice under Section 84 (2) of the Tamil Nadu Housing Board Act issued by the competent authority. The petitioner has submitted his reply to the said notice on 14.05.2018. However without taking note of the same, the 4th respondent has issued the impugned notice dated 29.05.2015, informing that he will be evicted from the land in question and challenging the legality of the same, the petitioner came forward to file this writ petition.

4. Mr.A.R.L.Sundaresan, learned Senior Counsel assisted by

Mr.A.L.Ganthimathi, learned counsel appearing for the petitioner has invited the attention of this Court to the typed set of documents and would submit that notwithstanding the land which was purchased by the petitioner under the registered Sale Deed dated 22.03.2004 which was the subject matter of acquisition, Patta as well as other revenue records stood in the name of one Thiruvengadam Naicker, the petitioner was in the bonafide impression that he is the owner and purchased the same and later on only became aware of the fact of land acquisition and having found that denying the payment of compensation, equally, possession of the land also has not been taken up, he filed W.P.No.33915 of 2014 and the same is pending without any interim orders. It is the further submission of the learned Senior Counsel, that the said property is also subjected to statutory levies and all of a sudden, the respondents had taken action to term the petitioner as an encroacher and sought to dispossess him and would further state that till the disposal of W.P.No.33915 of 2014, the respondents shall defer further proceedings interms of the impugned notice and prays for appropriate orders.

5. Per contra, Mr.R.Udhaya Kumar, learned Additional Government Pleader appearing for the respondents 1 and 2 would submit that admittedly the petitioner had purchased the property after the award and as such he has no locus standi to maintain either W.P.No.33915 of 2014 as well as the present writ petition and would further state that despite absence of planning permission, he started putting up construction and taking note of the same only, the officials of the Corporation of Chennai had issued a stop work notice dated 18.04.2018 and therefore, it cannot be faulted with.

6. The learned Standing Counsel appearing for the respondents 3 and 4 would submit that the lands were assigned for Sholinganallur Neighbourhood Housing Scheme, Phase-I and since the petitioner had purchased the property after the award dated 02.05.1997, the earlier writ petition as well as the present writ petition are not maintainable and would further aver that admittedly without any planning permission, he has started putting up the shed by constructing a Compound Wall and since the possession of the land has been taken by the Tamil Nadu Housing Board as early as on 16.08.2004, it cannot be said that the petitioner continues to remain in possession of the property and therefore, prays for dismissal of this writ petition.

7. This Court has considered the rival submissions and also perused the materials placed before it including the photographs.

8. The fact remains that the petitioner has invoked Section

24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-Settlement Act, 2013 by filing W.P.No.33195 of 2014 and the same has been entertained and pending without any interim orders. In the considered opinion of this Court, whether the petitioner is a bonafide purchaser of the land, whether he is entitled to maintain the said writ petition or not, can be gone into only in W.P.No33195 of 2014. The fact remains that the petitioner is in possession and enjoyment of the land in question. A perusal of the affidavit and the representation of the petitioner dated 20.04.2018 to the Assistant Executive Engineer, Zone-XV,

Corporation of Chennai, would disclose that the petitioner started putting up a huge shed without any planning permission / approval and in the considered opinion of this Court, he cannot do so.

9. A perusal of the materials would also prima facie disclose that the petitioner had purchased the property through a registered Sale Deed dated 22.03.2004, after the award came to be passed on 02.05.1997 and whether he is a bonafide purchaser and consideration without notice of land acquisition cannot be gone into by this Court, at this stage, as it is to be adjudicated in W.P.No.33195 of 2014. This Court taking into consideration of the fact that the petitioner is in possession of the land in question, directs the 4th respondent to defer further decision interms of the impugned notice till the disposal of W.P.No.33195 of 2014.

10. Since the petitioner had put up shed without planning permission / authorisation, he shall remove the same within six weeks from the date of receipt of copy of this order and thereafter it is open to the respondents 3 and 4 to cause inspection, as to whether the said superstructure has been removed or not and if not, shall take action in accordance with law to remove the same at the earliest. The petitioner till the disposal of W.P.No.33195 of 2014, shall not create any third party right in respect of the land in question and shall not alter the physical features also.

11. The writ petition is disposed of with the above directions. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government,
Housing and Urban Development Department,
Fort St.George, Chennai-600 009.
- 2.The Special Tahsildar (land Acquisition I)
Tamil Nadu Housing Board Schemes
Nandanam, Chennai-600 035.
- 3.The Chairman and Managing Director,
The Tamil Nadu Housing Board,
Nandanam, Chennai-600 035.
- 4.The Executive Officer and Administrative Officer,
Sasthiri Nagar Complex,
Bescent Nagar Division,
Muthusami Salai, Chennai.

+1cc to Mrs.AL.Gandhimathi, Advocate SR.No.41286
+1cc to Government Pleader SR.No.41450

WP.No.15672 of 2018

KK(CO)
GN(16/07/2018)



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