

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.01.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND

THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A No.1153 of 2016 and
W.P.No.31107 of 2014

Jeejababy

...Appellant in W.A.1153/2016 and
Petitioner in WP.31107/2014

Vs

1.The State of Tamil Nadu
Rep. by the Secretary to Government,
Housing and Urban Development Department.

2.The Special Tahsildar,
Land Acquisition (Housing Scheme)
Hosur, Dharmapuri District.

3.Jayalakshmi

4.The Managing Director
Tamil Nadu Housing Board, Chennai. ...Respondents in
W.A.No.1153 of 2016
(R4 Suo motu impleaded vide order
of court dated 26.10.16 in W.A.No.1153/2016)

1.The Secretary to Government
Highways Department,
Fort St.George, Chennai - 600 009.

2.The Chief Engineer,
Highways Department,
Chepauk, Chennai - 600 005.

3.The Division Engineer,
Highways Department,
Krishnagiri District, Krishnagiri.

4.The Assistant Engiener,
Highways Department,
Hosur, Krishnagiri District.

5.The Sub Collector
(Land Acquisition Officer)
Hosur, Krishnagiri District.

6.The Executive Engineer and
Admin Officer,
Tamil Nadu Housing Board,
Hosur, Hosur 635 109.

...Respondents in
W.P.No.31107/2014

(R6 impleaded as per order dated 26.10.2017

by KKSJ and PVJ in M.P.No.1/14 in W.P.No.31107/14)

Prayer:- Writ Appeal filed under clause 15 of the Letter Patent
against the order dated 15.06.2015 in W.P.No.13955 of 2003.

WP.No.13955 of 2003:Writ Petition is filed under Article 226 of
the Constitution of India to direct the issue of Writ of
declaration or any other appropriate writ or direction to
declare that the acquisition proceedings initiated in
GO.Ms.NO.788(Housing and Urban Development) and dated 17/06/1980
and the consequent declaration in G.O.Ms.No.647(Housing and
Urban Development Department) and dated 24/03/1983 as nonest
and void.

Writ Petition filed under Article 226 of the Constitution of
India for issuance of a Writ of Declaration, declaring that the
proceedings initiated by the respondents under Land Acquisition
Act, 1894 are deemed to be lapsed in view of Sections 24 and 25
of Act 30 of 2013 i.e, The Right to Fair Compensation and
Transparency in Land Acquisition and Resettlement Act, 2013 for
the lands in Survey No.31 extent Two acres and fifteen cents
(Acres 2.15 cents), Hosur Village and Taluk, Krishnagiri
District.

For Appellant &
Petitioner : Mr.P.Subba Reddy

For Respondents : Mr.V.Anandhamurthy
for R1, R2 and R4 in W.A.No.1153/2016
for R1 to R6 in W.P.No.31107/2014

COMMON JUDGMENT
(made by K.K. SASIDHARAN, J.)

Introductory

The land owner, who is the appellant in the intra court
appeal and the petitioner in the writ petition lost the
litigation initiated by her challenging the land acquisition
proceedings. Subsequently, by taking a different ground, another
writ petition was filed challenging the Award. Thereafter,
another writ petition was filed invoking Section 24 of the Right

to Fair Compensation and Transparency in Land Acquisition and Re-Settlement Act, 2013 (hereinafter referred to as "Act 30 of 2013"). Since the land owner trespassed into the acquired land, the possession of which was taken and handed over to the Tamil Nadu Housing Board, a Civil Suit was filed by the requisitioning department for declaration and injunction. The suit was decreed by the Trial Court and it was confirmed by the First Appellate Court. The second appeal filed by the land owner was dismissed by the High Court. Even thereafter, the land owner is prosecuting the litigations with a false claim that she is still in possession of the land and that the amount was not deposited before the Civil Court.

2. The case is covered by the decision of the Hon'ble Supreme Court in *Mahavir and Others vs. Union of India* and another [(2018 (1) Scale 174)], wherein, the Supreme Court has made it clear that Section 24 of Act 30 of 2013 does not invalidate courts judgments/orders in which right have been finally lost or due to inaction is barred and that the law does not permit examination of barred or totally fraudulent claims and that Section 24(2) cannot be invoked in such cases.

Brief Facts

3. The Government of Tamil Nadu pursuant to the request made by the Tamil Nadu Housing Board acquired 93.21 acres of land in Chengalpattu Village, which includes 2.15 acres of land owned by the appellant. The notification under Section 4(1) of the Land Acquisition Act, 1894 was issued on 17 June 1980. Thereafter, Declaration under Section 6 was issued on 24 March 1983. The appellant filed a writ petition in W.P.No.3391 of 1989 challenging the Declaration on the ground that enquiry was not conducted in accordance with Section 5-A of the Act. The writ petition was dismissed by order dated 13 March 1988. The Land Acquisition Officer took possession of the land and it was handed over to the Tamil Nadu Housing Board on 25 November 1985.

4. Since the appellant is also the writ petitioner, she would henceforth be referred to as the appellant.

5. The Housing Board filed a civil suit in O.S.No.24 of 1997 before the Sub-Court, Hosur against the appellant. It was a suit for declaration to declare the title of the Housing Board and for a permanent injunction restraining the appellant from trespassing into the property. The Housing Board also prayed for a mandatory injunction for removal of the unauthorised construction put up by the appellant after trespassing into the property. The suit was decreed by the Sub-Court, by judgment and decree dated 4 April 2003.

6. The decree in O.S.No.24 of 1997 was challenged before the Additional District Court at Hosur in A.S.No.35 of 2003. The first appeal was dismissed by the Appellate Court by judgment and decree dated 24 March 1997.

7. The appellant notwithstanding the conclusion of the land acquisition proceedings and the dismissal of the writ petition challenging the land acquisition and the decree granted by the Civil Court declaring the title of the Housing Board, filed a writ petition in W.P.No.13955 of 2003 challenging the Declaration under Section 6 of the Land Acquisition Act, dated 24 March 1983 as non est and void. The writ petition was dismissed on 15 June 2015.

8. The appellant in the mean time taking advantage of Act 30 of 2013 filed a fresh writ petition in W.P.No.31107 of 2014 for a declaration of statutory lapse under Section 24(2) of Act 30 of 2013. The appellant in the writ petition contended that she is still in possession of the land and that the compensation amount was not deposited.

9. The second appeal filed by the appellant against the decree in A.S.No.35 of 2003 before this Court in S.A.No.540 of 2017 was dismissed by judgment and decree dated 19 July 2017.

10. The order passed by the learned single Judge dismissing the writ petition in W.P.No.11955 of 2013 is under challenge in W.A.No.1153 of 2016.

Submissions

11. The learned counsel for the appellant contended that there are no materials produced by the respondents to prove that compensation amount was deposited before the Civil Court. The learned counsel contended that even if there is a finding with respect to the title of the Housing Board and the possession of the land, even then, the appellant is entitled to the benefit of Section 24(2) of Act 30 of 2013 in view of non-deposit of the compensation amount.

12. We have also heard the learned Additional Advocate General on behalf of the Housing Board.

Discussion

13. This intra court appeal and the writ petition are clear abuse of process of court. The appellant earlier filed a writ petition in W.P.No.3391 of 1998 challenging the declaration under Section 6 of the Act. The writ petition was dismissed on merits. The appellant long after the disposal of the writ petition initiated a fresh writ petition in W.P.No.13955 of 2003, once again challenging the very same declaration under Section 6 of the Act, but on a different ground.

14. The appellant in the writ petition in W.P.No.13955 of 2003 contended that before passing the Award, previous approval of the appropriate authority was not taken. The argument was made on the basis of the amendment made to the Land Acquisition Act.

15. The land acquisition has become final on account of the Award passed by the Land Acquisition Officer and the subsequent act of taking possession. The ground taken by the appellant in W.P.No.13955 of 2003 was available to her even when the earlier writ petition in W.P.No.3391 of 1998 was pending. Since no such contentions were taken earlier, there is no question of permitting similar contentions at a later point of time. In case, a party fails to take a contention, which was available to her, it is deemed that such contention has been taken and it was negatived by the Court. The order in W.P.No.3391 of 1998 has become final. The said order would operate as res judicata for filing a similar writ petition later challenging the very same notification. We are therefore of the view that the writ petition in W.P.No.13955 of 2007 is barred by the principles of constructive res judicata.

16. The appellant file a writ petition in W.P.No.31107 of 2014 invoking Section 24(2) of Act 30 of 2013. It is the contention of the appellant that possession is still with her and that compensation amount was not paid.

17. The records produced by the Housing Board indicates that Award No.15/1985 was passed on 16 November 1985. The compensation amount was deposited before the Sub-Court, Krishnagiri. Notice of such deposit was duly given to the appellant. The possession of the land was taken over by the Land Acquisition Officer and it was handed over to the Housing Board on 25 November 1985.

18. The Government of Tamil Nadu pursuant to the request made by the Divisional Engineer, National Highways, Dharmapuri, allotted 2.15 acres of land out of the total acquired land of 93.21 acres for the formation of Inner Ring Road in Hosur Town. The land was given free of cost to the Highways Department by the Government as it was for the purpose of formation of Inner Ring Road in public interest. The appellant taking advantage of the subsequent events relating to the allotment of land by the State Government to the Highways Department for formation of ring road filed the writ petition. There is absolutely no merit in the writ petition.

19. The appellant in order to invoke Section 24(2) of Act 30 of 2013 must plead and prove that the compensation amount was not paid and that possession was not taken. Neither of the twin conditions are not attracted in the subject case. The possession

was taken and it was handed over to the Housing Board. Similarly, compensation amount was deposited before the Civil Court. Therefore, the appellant is not entitled to initiate fresh proceedings on the basis of Act 30 of 2013.

20. The Civil Court granted a decree of declaration and permanent injunction in favour of the Housing Board. The second appeal filed against the decree was dismissed by the High Court. The Judgment in O.S.No.24 of 1997 contains materials to prove that possession was taken over by the Housing Board. Such being the factual position, the appellant is not entitled to the benefit of Section 24(2) of Act 30 of 2013.

21. We are therefore of the view that there is no merit in the appeal filed against the order in W.P.No.13955 of 2003 or in the writ petition in W.P.No.31107 of 2014.

22. In the result, the intra court appeal and the writ petition are dismissed. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

svki

To

1.The Secretary to Government,
The State of Tamil Nadu
Housing and Urban Development Department.

2.The Special Tahsildar,
Land Acquisition (Housing Scheme)
Hosur, Dharmapuri District.

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Hosur, Hosur 635 109.

+4 ccs to Mr.P.Subba Reddy Advocate sr 5033

+1 cc to M/s.V.Anandhamurthy Advocate sr 5418

+1 cc to the Govt Pleader sr 5500

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W.P.No.31107 of 2014

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