

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 17.04.2018
CORAM
THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
W.P No.36720 of 2007
and
W.P.M.P.No.1 of 2007

P.Kasthuri Bai

..Petitioner

Vs

- 1.State of Tamil Nadu
Rep.by its Secretary to Government,
Housing and Urban Development Department,
Fort.St.George, Chennai - 600 009.
- 2.Tamil Nadu Housing Board,
Represented by its Chairman and Managing Director,
No.331, Anna Salai,
Nandanam, Chennai - 600 035.
- 3.The Chief Revenue Officer,
Tamil Nadu Housing Board,
No.331, Anna Salai,
Nandanam, Chennai - 600 035.
- 4.The District Collector,
Kanyakumari District,
Nagercoil.
- 5.The Special Tahsildar and Land
Acquisition Officer,
Neighbourhood Scheme,
Collectorate, Nagercoil,
Kanyakumari District.
- 6.Tahsildar,
Agastheeswaram Taluk,
Nagercoil, Kanyakumari District.

.. Respondents

Prayer: The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, to call for the records of the 3rd respondent relating to the impugned order dated 07.11.2006 Ref.Letter No.L.A.5.4/71139/93 and quash the same and consequently directing the respondent authorities to receive the land tax from the petitioner in respect of her land viz., all that 18 cents of land consisting of 13 cents in R.S.No.N3-10/4 (now subdivided as N3-10/4-B) and 5 cents of land in R.S.No.N3-10/9A, both within the Nagercoil Revenue Village, Agasteeswaram Taluk, Kanyakumari District.

For Petitioner : Mr.S.Thanka Sivan

For Respondents : Mr.Akhil Akbar Ali
Government Advocate
for R1, R4, R5 and R6
Mr.V.Anandamoorthy
Standing Counsel for R2 and R3

O R D E R

This writ petition has been filed to quash the impugned order dated 07.11.2006 in Ref.Letter No.L.A.5.4/71139/93, issued by the third respondent and consequently direct the respondent authorities to receive the land tax from the petitioner in respect of her lands.

2. Heard Mr.S.Thanka Sivan, learned counsel for the petitioner, Mr.Akil Akbar Ali, learned Government Advocate, appearing for the respondents 1, 4, 5 and 6, Mr.V.Anandamoorthy, learned Standing counsel for the respondents 2 and 3 and perused the materials available on record.

3.The case of the petitioner is that the first respondent issued a notification in G.O.Ms.No.1210, Housing and Urban Development Department, dated 17.9.1991, under Section 4(1) of Land Acquisition Act (hereinafter referred to as "the Act"), to acquire the land of the petitioner. Subsequently, without following the mandatory provisions regarding enquiry under Section 5(A), a declaration under Section 6 of the Act was issued in G.O.Ms.No.776, Housing and Urban Development Department, dated 18.11.1992. Challenging the acquisition proceedings, the petitioner filed W.P.No.10447 of 1993, wherein the Division Bench of this Court having found that the enquiry proceedings under Section 5(A) of the Act was not conducted in accordance with law, quashed the declaration in G.O.Ms.No.776, dated 18.11.1992 and also directed the respondents to hold fresh enquiry under Section 5(A) of the Act, after giving due notice to the petitioner.

4. It seems that the first respondent has not conducted a fresh enquiry as per the direction of this Court in W.P.No.10447 of 1993. Thereafter, the petitioner gave representation dated 25.8.2005 to the respondents 2 to 4, seeking reconveyance of the property. The third respondent rejected the representation of the petitioner stating that the acquired land is essential for the Tamil Nadu Housing Board. Challenging the same the present writ petition.

5. The learned counsel for the petitioner by placing reliance on the decision of the Hon'ble Supreme Court in the case of Vijay Narayan Thatee & Ors. V. State of Maharashtra & Ors., reported in 2010 (2) Law Weekly 567, submitted that admittedly after disposal of the earlier writ petition, the

respondents did not hold any enquiry under Section 5(A) of the Act, so they have no power now to issue notification under Section 6 of the Act. The relevant paragraphs are extracted here under :

''4.The facts in brief are that a Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter for short 'the Act') was issued in respect of the land in question on 29.8.2002. Thereafter a Notification under Section 6 of the Act was issued on 18.6.2003. The said Notification under Section 6 was challenged and the writ petition filed by the appellants was allowed on 20.1.2004 and the Notification under Section 6 of the Act dated 18.6.2003 was quashed. Subsequently a second Notification under Section 6 dated 30.10.2006 was issued by the State Government.

5.The short question that arises for consideration is whether the Notification under Section 6 dated 30.10.2006 is valid. In our opinion, the said Notification was clearly barred by clause (ii) of the proviso to Section 6 of the Act which reads as under :-

''[Provided that no declaration in respect of any particular land covered by a notification under Section 4, sub-section(1) -
(i).....

(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification;"

It can be seen from the aforesaid proviso to Section 6 that it is couched in negative language. It is well settled that when a Statute is couched in negative language it is ordinarily regarded as peremptory and mandatory in nature. [See Principles of Statutory Interpretation by Justice G.P.Singh 11th Edition, 2008 pages 390 to 392]. As stated by Crawford "Prohibitive or negative words can rarely, if ever, be directory. And this is so even though the statute provides no penalty for disobedience. "[See Crawford : Statutory Construction P.523; See also in this connection Haridwar Singh Vs.Begum Sumbra, AIR 1972 SC 1242 (1247) = (1973) 86 L.W.36, Lachmi Narain Vs. Union of India AIR 1976 SC 714 (726), Mannalal Khetan Vs.Kedarnath Khetan AIR 1977 SC 536 = (1977) 90 L.W.102 S.N.etc.]''

6.The learned Government Advocate appearing for the respondents on the basis of the counter affidavit filed by the fourth respondent submitted that this Court has granted

permission to conduct enquiry under Section 5(A) of the Act and they are taking steps to conduct fresh enquiry.

7. The third respondent has filed a counter affidavit contending that pursuant to the notification, an award was already passed and therefore, the petitioner is not entitled for the prayer sought for in this writ petition.

8. In the instant case, it is not in dispute that Section 4(1) notification was issued on 17.09.1991 and declaration under Section 6 of the Act was issued on 18.11.1992 and in W.P.No.10447 of 1993, the Division Bench of this Court by order dated 11.1.1996, quashed the declaration issued under Section 6 of the Act and directed the respondents to conduct fresh enquiry. Admittedly, the first respondent has not conducted any enquiry so far.

9. A plain reading of Section 6 of the Act and the decision cited above would make it clear, that the proviso to Section is mandatory in nature and if no declaration is issued within one year, the respondent has no authority to proceed further as per Section 4 notification. It is settled law, that once Land Acquisition Proceedings are quashed, right would revert back to the owner of the property.

10. In the light of the above facts, in my considered opinion, the petitioner is entitled to succeed in this writ petition. Accordingly, the impugned order is quashed and the respondents are directed to make necessary corrections in the revenue records to show that the petitioner is the owner of the property. Consequently, they are directed to receive the kist from the petitioner.

11. Accordingly, this writ petition is allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ms

To

1.The Secretary to Government,
State of Tamil Nadu
Housing and Urban Development Department,
Fort.St.George, Chennai - 600 009.

2.The Chairman and Managing Director,
Tamil Nadu Housing Board,
No.331, Anna Salai,
Nandanam, Chennai - 600 035.

3.The Chief Revenue Officer,
Tamil Nadu Housing Board,
No.331, Anna Salai,
Nandanam, Chennai - 600 035.

4.The District Collector,
Kanyakumari District,
Nagercoil.

5.The Special Tahsildar and Land
Acquisition Officer,
Neighbourhood Scheme,
Collectorate, Nagercoil,
Kanyakumari District.

6.Tahsildar,
Agastheeswaram Taluk,
Nagercoil, Kanyakumari District.

+1cc to M/s.V.Anandhamoorthy, Advocate Sr.no.28506

+1cc to M/s.S.Thangasivan, Advocate Sr.No.28386

RK(CO)
sm:15.5.2018

W.P No.36720 of 2007
and
W.P.M.P.No.1 of 2007

सत्यमेव जयते
WEB COPY