

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2018

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

W.P.No.34814 of 2016
and WMP.Nos.29970 & 29971 of 2016

Amalorpavam Educational Welfare Society
Rep. by its Secretary Lourdusamy
S/o.S.Arumainathan
137, Yanam Vengadachalam Pillai Street
Puducherry - 600 001. Petitioner

-Vs-

- 1.Union of India
Union Territory of Puducherry
Rep by the Additional Secretary to Government
Revenue & Disaster Management Department
Government of Puducherry
Puducherry.
- 2.The Deputy Collector (Revenue) South-
cum-Land Acquisition Officer
Office of the Deputy Collector (Revenue) South
Villianur, Puducherry - 605 010.
- 3.The Sub Registrar
Villianur, Puducherry. Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the (i) notification U/s.4(1) of the Land Acquisition Act, 1894 bearing G.O.Ms.No.86 dated 29.09.2006 published in the Gazette of Puducherry dated 30.09.2006 and (ii) declaration U/s.6 of the Land Acquisition Act 1894 bearing G.O.Ms.No.105 dated 30.11.2006 published in the Gazette of Puducherry on 01.12.2006 on the file of the first respondent and (iii) Award No.5/2009 dated 16.11.2009 on the file of the second respondent (iv) the two notices bearing No.616/DCRS/LA/U/2004/B1 dated 22.09.2015 U/s.12 (2) of the Land Acquisition Act 1894, (v) the two notices bearing No.616/DCRS/LA/U/2004/B1 dated 22.09.2015 & (vi) the notices bearing No.4868/DCRS/GLR/B1/2015 dated 15.12.2015 on the file of the second respondent and quash the same insofar as they are relating to the portions of the lands of the petitioner bearing (i) R.S.112/1B measuring 0.04.88 HAC and (ii) R.S.No.112/3B, measuring 0.24.95 HAC i.e., in total 0.29.83 HAC

situated at Odiampet Village, Puducherry and consequently direct the respondents 1 & 2 to initiate fresh proceedings under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013, determine and pay the compensation and acquire the above portions owned by the petitioner in accordance with the methods and procedures prescribed therein.

For Petitioner : Mr.T.P.Manoharan, Senior Counsel,
Assisted by Mr.K.P.Jotheeswaran

For Respondents : Mr.J.Kumaran
Government Advocate (Pondy)

ORDER

1. The petitioner is the absolute owner of the property bearing R.S.No.112/3 and R.S.No.112/1 (Cadastre No.62) measuring a total extent of 0.75.60 HAC situated at Odiyampet, Puducherry. While so, the Government of Puducherry has issued notification under Section 4(1) r/w Section 17 of the Land Acquisition Act 1894 (hereinafter referred to as "Act" in brevity) on 30.09.2006, proposing to acquire the petitioner's property along with the adjacent properties for the purpose of formation of bye-pass road south of Pondicherry-Villianur Railway lin, bye-passing Arumparthapuram-Natesan Nagar segment of NH-45A at Kurumbapet and Odiampet Revenue Villages. In the said acquisition of takes within it petitioner's property measuring an extent of 0.29.83 HAC. A declaration under Section 6(1) of the Land Acquisition Act, 1894 was issued on 01.12.2006. Thereafter, the respondents was silent for 2 years. However, in the year 2008, the second respondent issued a notice dated 25.07.2008, informing that an enquiry under Section 17(3-A) of the Land Acquisition Act, 1894 was proposed to be held on 20.08.2008 and was required to furnish certain documents to prove his ownership. But no enquiry was conducted as fixed. Thereafter, the petitioner received a notice dated 16.09.2008 from the second respondent wherein it was informed that pursuant to the enquiry held on 20.8.2008, 80% of the compensation amount was fixed tentatively for the acquisition of the petitioner's lands (i.e., Rs.6/- per sq.ft. against the market value of Rs.1000/- per sq.ft.) and the petitioner was required to claim his share upon production of original documents etc., On receipt of this notice dated 16.09.2008, the Executive Member of the Society submitted a letter to the second respondent dated 25.09.2008, wherein he had denied accepting the amount of Rs.6/- per sq.ft., but consented to receive the award under protest, without prejudice to his right of claiming the enhanced compensation under Section 18 of the Land Acquisition Act, 1894.

1.2. Be that as it may, the petitioner was served with yet another notice dated 03.12.2008 under Section 9(3) and 10 of the Land Acquisition Act, 1894, directing him to appear for an enquiry on 12.12.2008. But no enquiry was conducted even on the said date. Thereafter, an award came to be passed on 16.11.2009, fixing the compensation for the property acquired, and that no communication was served on the petitioner enclosing the copy of the award, which according to the petitioner is more in the nature of a proposal and will not constitute an award within the meaning of Sec.11 of the Act. Thereafter, nothing was heard till 22.09.2015. Sometime in September 2015, the petitioner was served with two notices both dated 22.09.2015, by the second respondent wherein he was informed to appear before him to receive the compensation amount within 30 days, failing which, the amount would be kept in Revenue Deposit and further directed the petitioner or his representative might be present at the property acquired on 28.09.2015 at 10.30 a.m. But neither the second respondent nor his subordinates visited the spot on the said date.

2. The petitioner contends that as per Section 11-A of the Act, an award should be passed within two years from the date of publication of Declaration under Sec. 6 of the Act i.e., before 29.11.2008 or before the commencement of the Right to Fair Compensation Act, which came into effect on 01.01.2014. However, the award came to be passed on 16.11.2009. Hence, according to the petitioner, the entire acquisition has lapsed under Section 11-A of the Act on 30.11.2008. Hence, if at all any the respondents are required to go for fresh acquisition, if they are desirous of acquiring the petitioner's property as per the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013).

3.1 The second respondent has filed his counter wherein it is alleged that based on the proposal submitted by the Public Works Department, Puducherry, the Land Acquisition Officer had conducted preliminary inspection on 19.10.2005, and a notification under Section 4(1) was issued Vide G.O.Ms.No.86 dated 29.09.2006. The final award came to be passed by the Land Acquisition Officer only on 16.11.2009, during which period i.e., from July 2008 to November 2009, the proposals sent to the Government for approval but remain unaccepted and finally approval was sanctioned only on 13.11.2009. Further, in response to the notice sent by the respondents on 20.08.2008 and 12.12.2008, neither the land owners nor the interested persons appeared for enquiry, and they also failed to produce the parent documents and other related documents to prove ownership over the property acquired. Hence, there appears to be delay and laches on the part of petitioner's conduct. It is also

alleged that the urgency for taking possession of the petitioner's property is only to overcome the decongestion and routine traffic problem existed in the State and this has been clearly specified in the 4(1) notification. Even during the award enquiry conducted for receiving the compensation, the petitioner did not produce the parent documents, which is essential to prove his ownership, owing to which the respondents could not make compensation.

3.2 In the meantime time, the writ petition in W.P.No.7070 of 2010 came be filed by few other land owners challenging the that the acquisition has lapsed, and this Court had granted interim stay Vide its order dated 13.04.2010. Hence, the Land Acquisition Officer did not proceed further, but subsequently, Vide order dated 21.09.2015, this Court modified the order restricting it only to the writ petitioners in W.P.No.7070/2010 alone. Subsequently, the Land Acquisition Officer issued a notice under Section 12(2) of the Act to the petitioner for taking possession and accordingly, the lands were taken into possession on 28.09.2015 from other landowners including the petitioner. Though the date of award has been mentioned in the notice as 16.11.2009, only in view of the stay granted by this Court in W.P.No.7070 of 2010 had halted the proceedings of the Land acquisition Officer and hence there was a delay of more than five years. It is further alleged that in the instant case the award was passed during the year 2009 itself and hence at this juncture the petitioner's contention seeking compensation under New Act is unacceptable and hence this writ petition should not entertained and is liable to be dismissed.

4. Heard Mr.T.P.Manoharan, learned Senior Counsel appearing for the petitioner and Mr.J.Kumaran, learned Government Advocate (Puducherry). It may be stated here that this petition is heard along with W.P.43007 of 2016 which too pertains to the acquisition of land for the same project, wherein this court has found that the acquisition has lapsed even prior to the date of award, but has chosen to modify the relief in the context of the facts affecting that case. This case stands substantially on the same footing.

5. Primarily the submissions made on behalf of the petitioner closes the issue. Under Section 11-A of the Land Acquisition Act, 1894, the entire proceedings for the acquisition of land will stand lapsed if an award under Section 11 is not passed within a period of two years from the last date of publication of the declaration under Section 6(1) of the Act. The details of this publication is provided even in the counter affidavit and they are tabulated as below :

Mode of Publication	Date of publication
English daily "The New Indian Express"	04.12.2006
Tamil daily "Dinakaran"	03.12.2006
Gazette Publication No.154	01.12.2006
Public affixture	17.10.2007

When the Government admits that the last date of publication of Section 6(1) declaration by public affixture was on 17.10.2007, then it does not require rocket science to hold that an award passed on 16.11.2009 will stand lapsed under Section 11-A of the Act. In all cases where the survival of land acquisition proceedings is tested under sec.11-A of the Land Acquisition Act, 1894, the Court only needs to look to the clock or the calendar, and not to any legal literature to know what the results are. Nothing more is required to be done thereafter, as nothing can survive beyond the date on which the two years period expired when the acquisition proceedings will stand statutorily lapsed. And, nothing can revive the acquisition either as there is no statutory means of achieving it. This predicament of the respondents is self invited, and its consequences are self inflicted, and the respondents should take the blame for the same.

6. The only defence put forward by the respondents is that an order of stay was passed by this Court in W.P.7070 of 2017. But even by their own statement in the affidavit, it was passed only on 13-04-2010, after the acquisition has lapsed under Sec.11-A of the Old Act. In fact this court in its Order in W.P.7070 of 2016 has arrived at the same conclusion and directed fresh acquisition of the property of the petitioners before it.

7. This Court in its Order in W.P.43007 of 2016 has delved deeply on the manner the authorities have dealt with the entire acquisition, and hence it is not required to be restated. It may be stated that where the argument advanced in this case differed from the W.P.43007 of 2016 is that the counsel for the petitioner contended that possession of the property has not been taken while this was denied by the counsel for the respondent. This is a dispute on fact and hence this Court does not choose to modify the relief.

8. In conclusion this petition is allowed, and the notification U/s.4(1) of the Land Acquisition Act, 1894 bearing G.O.Ms.No.86 dated 29.09.2006 published in the Gazette of Puducherry dated 30.09.2006 and (ii) declaration U/s.6 of the Land Acquisition Act 1894 bearing G.O.Ms.No.105 dated 30.11.2006 published in the

Gazette of Puducherry on 01.12.2006 on the file of the first respondent and (iii) Award No.5/2009 dated 16.11.2009 on the file of the second respondent (iv) the two notices bearing No.616/DCRS/LA/U/2004/B1 dated 22.09.2015 U/s.12(2) of the Land Acquisition Act 1894, (v) the two notices bearing No.616/DCRS/LA/U/20014/B1 dated 22.09.2015 & (vi) the notices bearing No.4868/DCRS/GLR/B1/2015 dated 15.12.2015 on the file of the second respondent are quashed and the respondents are directed to resort to fresh acquisition under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013). No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

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Sub Assistant Registrar

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To:

- 1.The Additional Secretary to Government,
Union of India,
Revenue and Disaster Management Department,
Government of Puducherry, Puducherry.
- 2.The Deputy Collector (Revenue)-
South- cum-Land Acquisition Officer
O/o.The Deputy Collector (Revenue) (South)
Vallianur,Pondicherry - 605010.
- 3.The Sub Registrar,
Vallianur, Puducherry.

+1cc to Mr.K.P.Jotheeswaran, Advocate, S.R.No.14837
+1cc to the Government Pleader,Puducherry, S.R.No.15026

W.P.No.34814 of 2016

BR(CO)

rrs 31/10/2018

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