

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.03.2018

Coram: The Honourable Mr. Justice N. SESHASAYEE

W.P.No.1286 of 2004
and
W.M.P.No.4290 of 2018

1. Rajagopal
2. Karuppan
3. Selvam

(petitioners 2 and 3 are impleaded as per order of the Court by NSSJ dated 22.02.2018)

...petitioners

Versus

1. The State of Tamil Nadu
Rep. by its Commissioner & Secretary (Harijan Welfare),
Fort St.George,
Chennai.
2. The District Collector,
Vellore District, Vellore.
3. The Tahsildar (Harijan Welfare),
Gudiyattam Taluk,
Vellore District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for a issuance of a Writ of Certiorarified Mandamus calling for the records in connection with the land acquisition made in Survey No.499 and 500/2B of Latheri Village of the third respondent in Award No.2/90-91 RCA 2587/87 dated 20.11.1990 and quash the same consequently direct the respondents to re-convey the said land to the petitioners. (Prayer amended as per order dated 08.01.2018 by NSSJ in W.M.P.No.388 of 2018 in W.P.No.1286 of 2004)

For Petitioners : Mr.R.Sampath Kumar

For Respondents : Mr.Akhil Akbar Ali,
Government Advocate

O R D E R

1.1. The case of the petitioners is as follows: petitioners' father was one Mr.Krishnan Naickar, owned 42 cents in Survey No.499, and another 82 cents in Survey No.500 (2B) of Latheri Village, Gudiyatham Taluk, Vellore District. The aforesaid lands are dry lands. Mr.Krishnan Naickar has passed away leaving behind him surviving four sons namely Karuppan, Murugasan, Rajagopal and Selvam, of who, Murugesan is left out in this case. The petitioners have only 1/4th share in the total extent of property. In other words, only 31 cents as their share in aforesaid both plots of land taken together.

1.2. While so, the properties of the petitioners were sought to be acquired and a Notification under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as "Act"), dated 20.04.1988, was issued for the purpose of allotting house sites to members of the Adi Dravidar community. This was followed by necessary declaration under Section 6 of the Act and the same culminated in an award passed by the Land Acquisition Authority on 20.11.1990. Be that as it may, Government had issued back to back two Executive Orders issued by the Revenue Department, one in G.O.No.257 dated 15.02.1983 followed by G.O.No.2078 dated 27.12.1984, indicating its decision not to acquire the agricultural lands of small farmers and issued appropriate direction to the Land Acquisition Authorities. However, so far as the present acquisition is concerned, the first petitioner was not even informed about the passing of the award until they gathered information about the same obtained under the Right to Information Act.

1.3. In the meantime, the first petitioner had approached the first respondent with his representation dated 05.11.1996 and followed it with a reminder dated 10.12.1999 to spare the lands of the petitioner from acquisition. As he did not receive any information as to the action taken on his representation, the first petitioner moved this Court in W.P.No.2938 of 2002 and this Court vide its order dated 06.02.2002, directed the Authority concerned to dispose of his representation within a period of six weeks. However, this order was considered too inadequate by the first respondent to consider the representation of the petitioner, forcing the petitioner to prefer another representation dated 17.04.2003. This time, the first petitioner was served with an information from the Authority concerned Vide under a communication dated 16.05.2003 to the effect that no representation such as the one petitioner claimed was available with them. The petitioner would not give up and he preferred yet another representation dated 20.05.2003 along with the copies of his earlier representations dated 05.11.1996 and 10.12.1999. Ultimately, on 20.08.2003, an

order was passed rejecting the petitioner's request not to acquire the land. It was also indicated therein that Patta has been granted to the beneficiaries. Notwithstanding the said assertion made in the proceedings of the first respondent dated 20.08.2003, petitioner asserts that possession of the property continue to be with them. Thereafter, the petitioner made another representation dated 01.09.2003 referring to G.O.No.257 dated 15.02.1983 and there was no response. The property however, continue to remain with the petitioner.

1.4. Both the G.Os in G.O.No.257 dated 15.02.1983 and G.O.No.2078 dated 27.12.1984 have come before this Court with the present Writ Petition right through the pendency of the proceeding.

2. The counter affidavit filed on 07.02.2018 is silent on G.O.No.2078 dated 27.12.1984. It is also conceded in paragraph 10 of the counter affidavit that possession of the property could not be taken as the land owners were unwilling to part with possession.

5. Heard Mr.R.Sampath Kumar, the learned counsel for the petitioners. The learned counsel asserted that in G.O.No.257 dated 15.02.1983 and G.O.No.2078 dated 27.12.1984, the Government has taken a conscious step not to disturb the small farmers and to spare their lands from acquisition proceedings. These G.Os are beneficial in character and are intended to protect the agriculturalists, especially, the small farmers in an essential agrarian Society. Now by ignoring these two G.Os, the Land Acquisition Authorities take away the property of small farmers through the left hand what the Government has intended to grant them through its right hand. This is plainly a malafide exercise of administrative power by the Land Acquisition Authority. However, inasmuch as, the Authority concerned has conceded that possession of the property continue to lie with them, the very purpose of acquiring the property some 20 years ago would have lost of its contextual relevance today.

6. Refuting the argument of the learned counsel, Mr.Akhil Akbar Ali, the learned Government Advocate submitted that G.Os mentioned are mere guidelines to the District Collector and they do not over-ride the statutory power vested in the Collector to appreciate the suitability of the land for the public purposes involved. Secondly, possession could not be taken because the property was continuously involved in one Writ Petition or the other and the Authorities are weary of taking possession.

7. If only the submissions of the learned Government Advocate has to countenance, especially in the context of the two G.Os in G.O.No.257 dated 15.02.1983 and G.O.No.2078 dated 27.12.1984 issued by the Revenue Department, the Land Acquisition Authority

ought to at least demonstrate non availability of other lands suitable for the intended public purpose and also why the properties of small farmers alone are suitable for the entitled purpose. On perusing the papers, it does not appear that the Land Acquisition Authority had weighed the suitability or otherwise of other lands which do not fall under the category of lands indicated in G.Os in G.O.No.257 dated 15.02.1983 and G.O.No.2078 dated 27.12.1984 before proceedings to acquire the lands but instead appears to have mechanically proceeded to acquire the lands. This violence has not been adequately explained. In the back drop of the fact that possession of the land has not been taken, the failure of the Land Acquisition Authority's consideration of the G.Os in G.O.No.257 dated 15.02.1983 and G.O.No.2078 dated 27.12.1984 exposes the acquisition proceedings to the peril of being set aside.

8. This Court therefore, quashes the land acquisition proceedings from the stage of Section 6 Declaration and remit back to the Authority to consider the fact of G.Os in G.O.No.257 dated 15.02.1983 and G.O.No.2078 dated 27.12.1984 and take such appropriate steps as are necessary under the circumstances. This apart given the fact that possession was not taken till date, the Collector should also borne in mind the effect of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013).

9. Accordingly, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions is closed.

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

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To

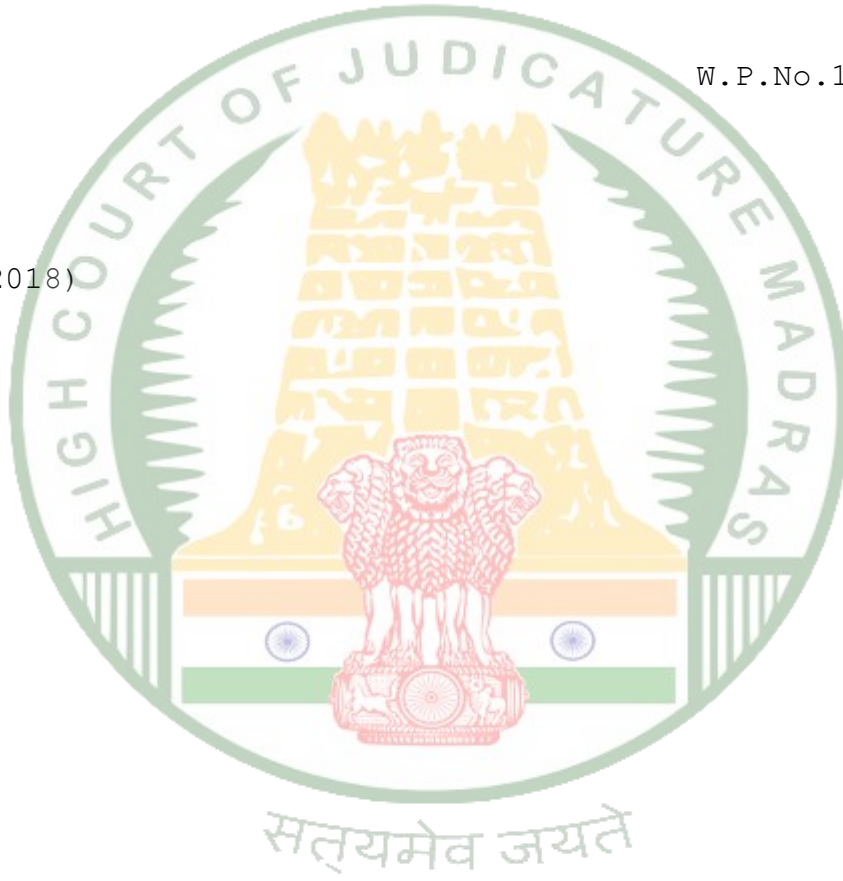
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W.P.No.1286 of 2004

MR (CO)
SP (02/05/2018)



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