

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.03.2018

Coram: The Honourable Mr. Justice N. SESHASAYEE

W.P.No.36632 of 2003

and

W.P.M.P.Nos.44505 of 2003 & 91 of 2015

1. Venu
2. Rajalingam
3. Perumal

...Petitioners

Versus

- 1.The Government of Tamil Nadu,
rep. by the District Collector,
Dharmapuri District,
Dharmapuri.

2. The Land Acquisition Officer and
Special Tahsildar,
(Adi Dravidar Welfare),
Dharmapuri.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a issuance of a Writ of Certiorari calling for the records relating to the Notification issued by the first respondent under Section 4(1) of the Tamil Nadu Acquisition of Lands for Harijan Welfare Scheme Act, 1978 and published in the Dharmapuri District Gazette district 26.11.1999 in respect of the lands in Survey No.39/2 and 41, Sivadi Village, Dharmapuri Taluk and District and the Award dated 10.12.1999 passed by the second respondent herein his office proceedings Ref.Na.Ka.1218/1999 (A), quash the same.

For Petitioners

: Mr.P.Mani

For Respondents

: Mr.Akhil Akbar Ali,
Government Advocate

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ORDER

1.1. The case of the petitioners is that they were successors in interest of their father R.Krishnan, who was a registered cultivating tenant of Survey Nos.39, 40 and 41 of Sivadi Village, Dharmapuri Taluk, and that his name has been included in the record of tenancy Vide proceedings of the Tenancy Record Officer/Tahsildar dated 06.12.1980. While so, Krishnan Gounder passed away on 25.11.1999, consequent to which the petitioners

succeeded to his interest as cultivating tenants. While so, petitioners came to know that sometime during the first week of December, 1999, the property of which the petitioners are the cultivating tenants was proposed to be acquired to benefit the members of the Adi Dravidar Community of that locality. The petitioners therefore, sent a legal notice dated 08.12.1999, informing the respondents herein that they are in possession and enjoyment of the aforesaid land as cultivating tenant.

1.2. Meanwhile, some of the intended beneficiaries attempted to trespass into the property which forced the petitioners to institute a suit in O.S.No.50 of 2000 on the file of the II Additional District Munsif, Dharmapuri for declaration of the possession over the suit property and for injunction. The respondents herein were also parties to the said suit and were arrayed as defendants 7 and 8. Though in their written statement they had pleaded that the properties of which Krishnan Gounder was a cultivating tenant, had been notified under Section 4(1) of the Tamil Nadu Acquisition of Lands for Harijan Welfare Schemes Act, 1978 (hereinafter referred to as "Act") Vide notification dated 26.11.1999 and that an award too has been passed on 10.12.1999. However, details thereof have not been forthcoming immediately and therefore, the petitioners have come forward with the present petition.

2. Heard the learned counsel for the petitioners and Mr.Akhil Akbar Ali, the learned Government Advocate for the respondents.

3. The learned counsel for the petitioners submitted that page No.1 of the typed set of papers has contained a copy of the proceedings of the Tahsildar and Tenancy Record Officer, Dharmapuri, based on which their father Krishnan Gounder had been registered as a cultivating tenant. The right of cultivating tenant is a heritable right and the same can be denied by the landlord only on proof of the fact that the petitioners are not contributing their physical labour for doing agricultural activity as a cultivating tenant. At no point of time, the landlord has raised the issue. In this context, the Tamil Nadu Acquisition of Lands for Harijan Welfare Schemes Act, 1978 makes a distinction between a owner of the property and a person interested in a property. Section 3(i) of the Act defines person interested as one who is interested in the amount payable on account of acquisition of property acquired. Section 4(2) of the Act mandates that the District Collector or any Officer authorised by the District Collector, shall call upon the owner or any person who may be interested in such land to show cause why such land should not be acquired before proceeding to issue notification declaring the intent of the Collector to acquire the land for advancing the object behind the enactment. Even Section 6 of the Act provides that the

compensation must be paid to the owner as well as the person interested. Inasmuch as, the petitioners have substantial interest over the land as cultivating tenants, the petitioners as parties interested ought to have been served with Notice under Section 4(2) of the Act.

4. In the counter affidavit filed, it is averred that public Notice under Section 5(1) of the Act 31 of 1978 was given and none of the petitioners have raised objections. The entire acquisition proceedings had taken place consistent with the provisions of the Tamil Nadu Act 31 of 1978.

5. The counsel for the petitioners submitted that in the counter affidavit filed by the respondents, it conveniently omits to state why no notice was served on the petitioners. That tenancy creates a substantial interest in the property obtained in lease and hence the petitioners are entitled to a notice under Sec.4 (2) of the Act. To fortify his argument, the learned counsel relied on the judgment of the Supreme Court Union of India and Others Vs. Krishnan Lal Arneja and Others [(2004) 8 SCC 453]. He also added that the petitioners continued to be in the possession of the property even at this distant day and this Court has granted interim order protecting the said possession.

6. Mr. Akhil Akbar Ali, the learned Government Advocate submitted that the compensation amount has been determined vide award dated 10.12.1999 and a sum of Rs.1,39,881/- (One Lakh Thirty Nine Thousand Eight Hundred and Eighty One Rupees Only) has already been paid to the owner of the property. He also submitted that no notice of any kind appears to have been served on the petitioners in their capacity as persons interested in the property. He added that in view of the Interim Order passed by this Court, the respondents could not utilize the property for which the property was acquired so far.

7. The solution to the controversy involved in this petition rests on a solitary point: Whether the petitioners are persons interested within the meaning of Section 3(i) and hence under Section 4(2) of the Act. Section 3(i) of the Act reads as follows:

".....
.....
(i) "person interested" in relation to any land or building, includes any person claiming, or entitled to claim, an interest in the amount payable on account of the acquisition of that land or building under this Act;"

This provision is required to be distinguished from Section 3(h) which defines owner independently. Section 3(i) does not

explicitly state that a tenant is a person interested, but on the other hand it merely qualifies a person interested in terms of his right to be paid compensation in view of the acquisition of the property. In Union of India and Others Vs. Krishnan Lal Arneja and Others [(2004) 8 SCC 453], the Hon'ble supreme Court has held:

".....37. One more contention urged on behalf of the appellants in SLP(C) No.5451 of 2003, namely, that the Writ Petition filed by the respondents being tenants was not maintainable, is required to be dealt with. It does not appear that this contention was urged before the Division Bench of the High Court. In the light of the decision of this Court in Municipal Corporation of Greater Bombay Vs. Industrial Development Investment Co. (P) Ltd, it cannot be said that in no case, the tenant of the land which is sought to be acquired under the provisions of the Act can challenge the acquisition proceedings. It is clear from Section 5-A (3) of the Act that for the purpose of the said section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired. In an appropriate case, a tenant having sufficient subsisting interest in the land can challenge the acquisition proceedings. In view of the facts and circumstances of the case, the learned Single Judge did not dismiss the Writ Petition as not maintainable on the ground that the tenant could not maintain the Writ Petition. The Division Bench of the High Court also did not disturb the order of the learned Single Judge. This apart, the very same notification being common is quashed at the instance of other writ petitioners. In this view, at this stage, the contention urged on behalf of the appellants that Writ Petition filed by a tenant was not maintainable, cannot be accepted."

8.1. Broadly, a person can be defined as one who has got a lawful and subsisting interest in an immovable property involved in the acquisition. The substantial law namely the transfer of property under Section 105 defines a lease as a transfer of right of enjoyment in the property, and this has always been considered as an interest created in the property in favour of the tenant. When it is extended to a case of cultivating tenant as per Tenant Protection Act (Tamil Nadu Act), under Section 2 (aa), it is defined as a cultivating tenant who contributes physical labour in the land belonging to the another under a tenancy agreement, either expressed or implied.

8.2. This Court therefore holds that failure to issue notice under Section 4(2) of the Act to a tenant, more particularly, a

cultivating tenant is fatal to entire acquisition proceedings. More so because, the Land Acquisition Authority had every opportunity of verifying every records or all records which may indicate the list of persons who may be interested in a property. Its time that the Land Acquisition Authorities possessed a forward looking view and approach acquisition with a broader vision for identifying the person who either may be the owner of the property or a person interested in the property acquired. It is however made clear that petitioners right to continue as cultivating tenants depend on the proof of the fact that they contribute physical labour in cultivating the lands. This may have to be ascertained factually.

9. In the result, this Writ Petition is allowed and the Award passed by the second respondent vide proceedings Ref.Na.Ka.1218/1999(A) dated 10.12.1999 is hereby quashed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

mrr

To :

- 1.The District Collector,
Dharmapuri District,
Dharmapuri.
2. The Land Acquisition Officer and
Special Tahsildar,
(Adi Dravidar Welfare),
Dharmapuri.

+1cc to Mr.P.Mani, Advocate SR.No.19193
+1cc to Government Pleader SR.No.20924

W.P.No.36632 of 2003

NA(CO)
GN(01/06/2018)