

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.08.2019

Coram

The Honourable Mr. Justice M.DHANDAPANI

W.P.Nos.1048 of 2009 and 37952 of 2015
and WMP No.30343 of 2018

C. Poongan Petitioner in both the Writ Petitions

vs.

1. State of Tamil Nadu,
rep by Commissioner & Secretary to Government,
Social Welfare Department,
Fort St. George,
Chennai - 600 009

2. The Special Tahsildar (Admn.),
Land Acquisition Officer,
Sriperumbudur,
Kancheepuram District.

3. The Special Tahsildar (Admn.),
Land Acquisition Officer,
Ambattur,
Tiruvallur District.

.... Respondents 1 to 3 in both the Writ
Petitions

4. T.V. Amsalingam

5. T.V. Subramani

6. T.V. Ganesan

7. T.V. Sundaramoorthy

8. Smt. Vasantha Durai

9. Ekambaram

10.D. Munian

(R.10 impleaded as per Order dated
27.11.2014 in M.P.No.1 of 2014)

... Respondents 4 to 10 in W.P No.1048/2009

The Special Tahsildar,
Ponneri Division (ADW),
Ponneri, Thiruvallur District

... Respondent in W.P.No.37952 of 2015

W.P.No.1048 of 2009:

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari to call for the records of the respondents 1 to 3 relating to Declaration under Section 6 of Land Acquisition Act G.O.Ms.No.1011 Social Welfare Department dated 10.03.1984 and published in Tamil Nadu Government Gazette dated 13.03.1984 in S.No.148/7 and 148/9, Chembarambakkam Village, Poonamallee Taluk, Thiruvallur District.

W.P.No.37952/2015:

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Declaration declaring the Land Acquisition proceedings initiated under the Land Acquisition Act, 1894 with respect to the lands of an extent of 0.69 cents in S.No.148/7 and 0.67 cents in S.No.148/9 situated at Chemberabakkam Village, Poonamallee Taluk, Thiruvallur District belonging to the petitioner as lapsed in view of the Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013).

For Petitioner : Mr.K. Sakthivel

For R.1 to R.3 : Mr.M. Elumalai
Government Advocate

For R.4 to R.6 : Mr.N. Moorthi

For R.7 & R.8 : Steps due for deceased
R.7 and R.8

For R.9 : Mr.T.V.G. Kartheeban

For R.10 : Mr.R. Bharath Kumar

COMMON ORDER

The case of the petitioner is that he is the grand son of one Kullan and is challenging the land acquisition proceedings initiated in the year 1984. The petitioner's grand father viz., Kullan purchased the land bearing Survey No.148/7 in Paimash No.681/A to an extent of 69 cents in Chemberambakkam and the petitioner's grandfather inherited an extent of 62 cents in

Survey No.148/9 in paimash No.678/D Part in Chembrambakkam Village, now Poonamallee Taluk, Thiruvallur District. Subsequently, the petitioner's grand father died in the year 1960 leaving behind his wife, four sons viz., Chinnathambi, Ekambaram, Devan and Sivalingam and one daughter vi., Muniammal @ Vaithiyammal. The petitioner is the son of Chinnathambi.

2. After the death of the petitioner's grand father, the petitioner and other family members enjoyed the property jointly. The petitioner's grand mother Muniammal died in the year 1985 and thereafter also the legal heirs of Kullan continued to possess and enjoy the property jointly.

3. While so, without the knowledge of the legal heirs, the first respondent issued 4(1) Notification under the Land Acquisition Act vide G.O.Ms.No.3089 Social Welfare Department dated 20.12.1983 for the provision of House sites for the Adi-Dravidar of Chembarambakkam village of the erstwhile Chengalpattu District. After issuance of 4(1) Notification, 5-A Enquiry was conducted and even in that Enquiry, the petitioner was not served any Notice, however, Notice was sent to Respondents 4 to 8 and the respondents No.4 to 8 have participated in 5-A Enquiry and after Enquiry, 6(1) Declaration was issued on 10.03.1984 in the name of the 8th respondent and published in the Government Gazette No.128 Part-II, Sec.2 dated 13.03.1984. Thereafter, Award was passed by the 2nd respondent on 29.03.1984.

4. Initially, the respondents No.4 to 8 filed a Writ Petition in W.P.Nos.4170, 3928 to 3931, 4188 and 4201 of 1984, challenging 4(1) Notification. This Court dismissed the Writ Petition on 26.11.1991. Again the Respondents 4 to 8 filed a Writ Petition in W.P.No.1812 of 1993 on the ground of non-compliance of Sections 11 and 16 of the Land Acquisition Act and the Writ Petition was also dismissed by this Court on 10.01.2000. Thereafter, the respondents No.4 to 8 preferred a Writ Appeal in W.A.No.4044 of 2003 before this Court and this Court dismissed the Writ Appeal on 17.08.2006.

5. Thereafter, the legal heirs of Ekambaram filed a Writ Petition in W.P.No.21860 of 2008 and the same was dismissed on 12.07.2011, against which, they preferred an appeal before this Court in W.A.No.2098 of 2011 and the appeal was also dismissed on 29.02.2012 with cost of Rs.60,000/-. However, the present petitioner, though the legal heir of said Kullan, who acquired the property prior to 1960, was not served any notice. He came to know the acquisition proceedings only in the year 2009. Immediately, the petitioner filed the present Writ Petition before this Court, challenging the acquisition proceedings.

6. Mr.K. Sakthivel, learned counsel appearing for the petitioner submitted though earlier litigation, filed by other persons, who claimed title by vexatious records, was dismissed, the present writ petitioner, who is the legal heir of Kullan, is entitled to challenge the acquisition proceedings before this Court, which he came to know in the year 2009 and he collected the entire records through Right to Information Act and thereafter, the petitioner came to know the fraud played by the respondents No.4 to 9.

7. The learned counsel further submitted that the Land Acquisition Officer has also not taken steps to serve notice to the petitioner. In view of the fraud played by the Government Officials, valuable property of the petitioner is acquired by illegal acquisition proceedings, which is illegal and accordingly, praying for allowing the Writ Petitions. In support of his contention, the learned counsel relied on the following case laws:-

- (i) Vyalikaval Housebuilding Co-op Society
by its Secretary vs V. Chandrappa &
Otrs
(2007) 9 SCC 304 (Para - 9)
- (ii) Prahlad Singh and Others vs Union of
India & Ors (2011) 5 SCC
386 (Para - 13)
- (iii) Shankara Co-operative Housing Society
Limited vs M. Prabhakar and Others (2011) 5
SCC 607 (Paras 53 and 54)

8. Per contra, the learned Government Advocate appearing for the State would submit that already land owners, who secured the property by way of mortgage deed and the same was registered as Document No.3083/1960 dated 10.11.1960 on the file of Sub Registrar, Poonamallee, agitated the land acquisition proceedings by filing Writ Petition in W.P.Nos.4170, 3928 to 3931, 4188 and 4201 of 1984 and the same was dismissed on 26.11.1991 and the subsequent Writ Petition in W.P.No.1812 of 1993 was also dismissed on 10.01.2000. Thereafter, they preferred an appeal before this Court in W.A.No.4044 of 2003 and the same was dismissed on 17.08.2006.

9. Apart from above, the other purchasers, who purchased the property from the legal heirs of Kullan also filed Writ Petition in W.P.No.21860 of 2008 and the same was dismissed on 12.07.2011, against which, writ appeal in W.A.No.2098 of 2011 was filed and this Court by order dated 29.02.2012 dismissed the appeal with a case of Rs.60,000/-.

10. In the present case, land acquisition proceedings were initiated in the year 1984 and Award was passed on 29.03.1984. After passing of Award, possession was taken over by the Government and the same was approved by the Division Bench of this Court in W.A.No.2098 of 2011, which cannot be interfered with now in a mechanical manner and it is a settled law that after passing of Award, no person is entitled to file a Writ Petition, challenging the land acquisition Proceedings. In support of his contention, the learned Government Advocate relied on the following case laws:

i) S. Harshavardhan and another vs State of Tamil Nadu rep by Secretary reported in 2005 (3) CTC 691 (Para - 3)

(ii) Tamil Nadu Housing Board, Chennai vs M. Meiyappan and Others reported in (2010) 14 SCC 309 (Para- 21)

(iii) Executive Engineer and Administrative Officer, Coimbatore Housing Unit, Tatabad, Coimbatore vs Girija Janarthanan & Others reported in (2009) 2 MLJ 918

and accordingly prayed for dismissal of the writ petitions.

11. Mr.G. Sankaran, learned counsel appearing for the beneficiaries, who want to implead themselves in the Writ Petition, would submit that the petitioner himself admitted in paragraph No.3 of the affidavit that during the life time of petitioner's grand father, the 9th respondent viz., Ekambaram fabricated a document, as if, the petitioner's grand father, his brothers viz., Chinnathambi, Devan and Sivalingam executed a sale deed in favour of Ekambaram by way of registered Document No.2750/1957 dated 02.12.1957 and thereafter, the said Ekambaram executed a mortgage deed in favour of one Vadivelu Mudaliar, who is the father of respondents No.4 to 7 and father-in-law of Ekambaram vide registered document No.3083/1960.

12. The learned counsel further submitted that the entire acquisition proceedings were approved by this Court in various writ proceedings and appeal proceedings and again, filing of writ petition, challenging the acquisition proceedings is unsustainable and accordingly, prayed for dismissal of the writ petitions.

13. Heard both sides and perused the materials available on record.

14. It is an undisputed fact that the land acquisition proceedings were initiated in the year 1984 and 4(1) Notification was issued on 28.12.1983 in the name of 8th respondent, who is the daughter-in-law of Vadivelu Mudaliar. The respondents No.4 to 8 have participated in the Enquiry and filed their objections and their objections were over ruled by the Land Acquisition Officer. Thereafter, Declaration under Section 6(1) was issued on 10.03.1984 in the name of the 8th respondent and published in the Government Gazette No.128 Part-II, Sec.2 dated 13.03.1984. Thereafter, Award was passed by the 2nd respondent on 29.03.1984.

15. It is also undisputed fact that the respondents 4 to 8 initially filed a Writ Petition in W.P.Nos.4170, 3928 to 3931, 4188 to 4201 of 1984, challenging the 4(1) Notification and the writ petition was dismissed on 26.11.1991. Thereafter, one T.V. Amsalingam filed another Writ Petition in W.P.No.1812 of 1993 seeking writ of mandamus forbearing the respondent from taking possession of the land without compliance of Sections 11 and 16 of the Land Acquisition Act. The said Writ Petition was also dismissed on 10.01.2000 with the observation that "the petitioners having participated in the award enquiry and property also having been taken possession nothing survives in the writ petition and the same is dismissed as devoid of merits." Against which, the petitioners therein filed a Writ Appeal in W.A.No.4044 of 2003 and the Division Bench of this Court by Judgment dated 17.08.2006 dismissed the appeal on the ground that the possession has been taken on 13.01.1993. Thereafter, the legal heirs of Ekambaram filed a Writ Petition in W.P.No.21860 of 2008 and the same was dismissed on 12.07.2011, against which, they preferred an appeal before this Court in W.A.No.2098 of 2011 and the appeal was also dismissed on 29.02.2012 with cost of Rs.60,000/-.

16. In the present case, though the petitioner averred that the petitioner's grand father, his brothers viz., Chinnathambi, Devan and Sivalingam executed a sale deed in favour of Ekambaram by way of registered Document No.2750/1957 dated 02.12.1957 and thereafter, the said Ekambaram executed a mortgage deed in favour of one Vadivelu Mudaliar, who is the father of respondents No.4 to 7 and father-in-law of Ekambaram vide registered document No.3083/1960, till date, the petitioner has not challenged the sale deed as well as the mortgage deed. Without challenging the sale deed and the mortgage deed and also without ascertaining the title, filing a Writ Petition before this Court, is unsustainable and till date, the petitioner has not established his title before any other competent forum.

17. Hence, the petitioner filed the writ petition without any basis. Further, the petitioner filed the writ petition, challenging the acquisition proceedings, which was concluded in the year 1984 and the petitioner has not explained the delay for filing the present writ petition, filed after 24 years. It is relevant to refer the decision of the Hon'ble Supreme Court in Tamil Nadu Housing Board, Chennai vs M. Meiyappan and Others reported in (2010) 14 SCC 309, wherein, the Apex Court has held as follows:

" 20. We feel that the view echoed in Dayal Singh is not in consonance with the decision of the Constitution Bench in Rabindranath Bose which was not noticed in the said judgment. It is also pertinent to note that subsequently in Printers (Mysore) Ltd vs. M.A. Rasheed another three judge Bench of this Court had observed as follows:-

"25. Furthermore, the writ petition should not have been entertained keeping in view the fact that it was filed about three years after making of the allotment and execution of the deed of sale. The High Court should have dismissed the writ petition on the ground of delay and laches on the part of the first respondent. The Division Bench of the High Court also does not appear to have considered the plea taken by the appellant herein to the effect that the first respondent had been set up certain interested persons."

21. In the present case, as already stated, the respondents did not furnish any explanation as to why it took them 16 years to challenge the acquisition of their lands and had in fact participated in these proceedings before the Land Acquisition Collector. We have no hesitation in holding that the High Court ought not to have entertained the writ petition of the respondents after 16 years of the passing of the award. The High Court should have dismissed the writ petition at the threshold on the ground of delay and laches on the part

of Respondents 1 to 17, notwithstanding its earlier decision in WP No.2244 of 1991, which decision, according to the appellant, was otherwise distinguishable."

18. It is also relevant to refer the decision of this Court in the case of S. Harshavardhan and another vs State of Tamil Nadu rep by Secretary and others, reported in 2005(3) CTC 691 wherein, this Court has held as follows:

3. It has been repeatedly held by the Supreme Court in *Tej Kaur v. State of Punjab*, that writ petition challenging the land acquisition proceedings should not be entertained after the award has been passed. In that case, the award was passed on 15.3.1994 whereas the writ petition was filed on 12.4.1994, i.e., after the award was given. Hence the writ petition was dismissed as belated. Similarly in *Municipal Council, Ahmednagar v. Shah Hyder Beig*, the Supreme Court observed vide paragraph 17:

"In any event, after the award is passed, no writ petition can be filed challenging the acquisition notice or against any proceedings thereunder."

The Supreme Court also observed in that decision that this has been the consistent view of the Court e.g., in *C. Padma and Ors. v. Deputy Secretary to the Government of Tamil Nadu and Ors.*, *Municipal Corporation of Greater Bombay v. The Industrial Development Investment Co. Ltd.*, etc. Hence, without going into the merits of the case, we are of the opinion that the writ petition was rightly dismissed on the ground of laches. The writ appeals are, therefore, dismissed. Connected W.A.M.P. Nos. 3414 and 4854 of 2002 are closed.

19. In view of the above settled legal position, the decisions relied on by the learned counsel for the petitioner are not applicable to the present case. Accordingly, the Writ Petition, challenging the Land Acquisition Proceedings, is dismissed.

20. The Petitioner filed another Writ Petition in W.P.No.37952 of 2015, for issuance of Declaration declaring the Land Acquisition proceedings initiated under the Land Acquisition Act, 1894 with respect to the lands of an extent of 0.69 cents in S.No.148/7 and 0.67 cents in S.No.148/9 situated at Chemberabakkam Village, Poonamallee Taluk, Thiruvallur District belonging to the petitioner as lapsed in view of the Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013).

21. This Court perused Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013). For the sake of convenience, Sec.24(2) of the Act is reproduced hereunder:-

" 24. Land acquisition process under Act No.1 of 1984 shall be deemed to have lapsed in certain cases:-

(1)

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1984), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under Section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act."

22. In the present case, Award was passed by the 2nd respondent on 29.03.1984 and Award Enquiry was conducted, in which, the land owners have participated and the same was challenged before this Court and this Court dismissed the Writ Petition. Thereafter, physical possession was taken over by the Government on 13.01.1993 and the same was approved by the Division Bench of this Court. Hence, the ground raised in this Writ Petition, is not sustainable and accordingly, the writ petition is dismissed.

23. In view of the above decisions and in the absence of explanation for filing the writ petition after 24 years and further, already land acquisition proceedings was upheld by the learned Single Judge as well as Division Bench of this Court, I am not inclined to interfere with the order impugned.

24. In the result, both the Writ Petitions are dismissed. No costs.

25. In view of the dismissal of both the writ petitions, there is no necessity to implead the beneficiaries. Hence, the petition in WMP No.30343 of 2018 is closed.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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To

1. The Commissioner & Secretary to Government,
State of Tamil Nadu,
Social Welfare Department,
Fort St. George,
Chennai - 600 009

2. The Special Tahsildar (Admn.),
Land Acquisition Officer,
Sriperumbudur,
Kancheepuram District.

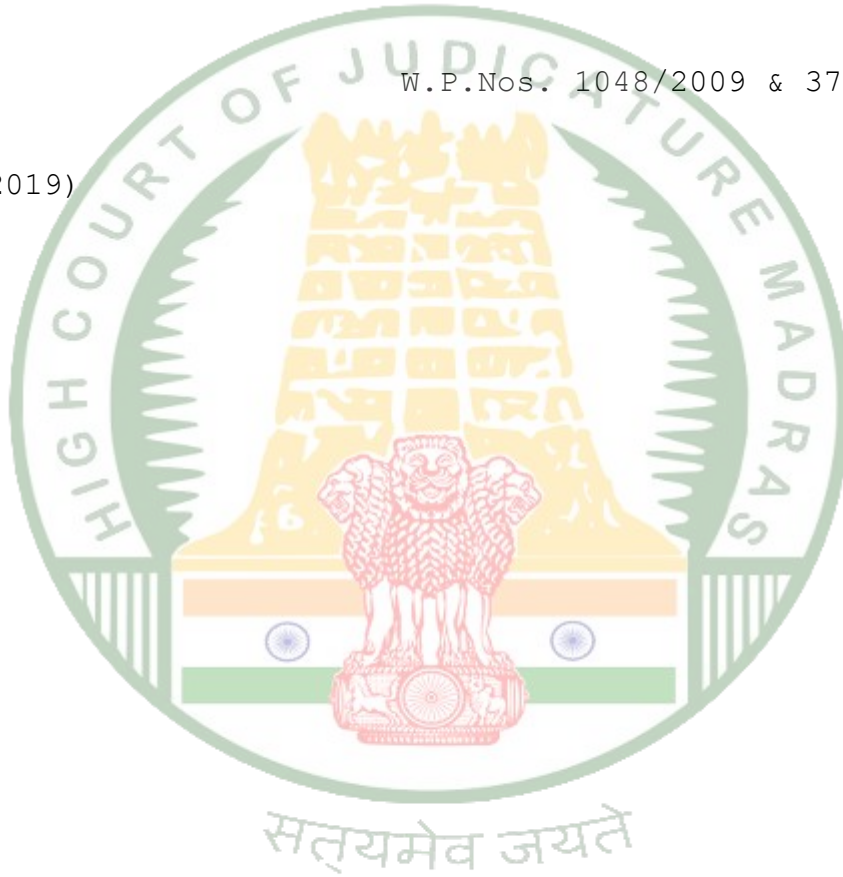
3. The Special Tahsildar (Admn.),
Land Acquisition Officer,
Ambattur, Tiruvallur District.

4. The Special Tahsildar,
Ponneri Division (ADW),
Ponneri, Thiruvallur District

+2 Ccs to Mr.K.Sakthivel, Advocate sr 71503 & 71504.
+1 CC to Mr.R. Bharath Kumar, Advocate sr 72347.
+1 CC to Govt. Pleader sr 72786.
+1 CC to Mr.G. Sankaran, Advocate sr 71925.

W.P.Nos. 1048/2009 & 37952 of 2015

BS (CO)
SP(05/09/2019)



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