

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 19.06.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.17245 of 2008
and
M.P.No.2 of 2008

K.P.Premachandran

... Petitioner

Vs.

1.The Government of Puducherry,
Rep. By the Additional Secretary (Revenue)
Department of Revenue and Disaster Management
Puducherry.

2.The Deputy Collector (Revenue)-cum-
Land Acquisition Officer,
Mahe, Puducherry.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records relating to the impugned Declaration under Section 6 of the Land Acquisition 1894 issued by the first respondent in G.O.Ms.No.122 dated 19.02.2008 (the impugned order) and served on the petitioner in and by proceedings of the second respondent in No.2997/C2/LA/RLWC/2005 dated 27.02.2008 and the Notification issued by the first respondent in G.O.Ms.No.75 dated 13.08.2007 under Section 4 (1) of the Land Acquisition Act 1894 (Central Act I of 1894) and quash the same.

For Petitioner : Mr.P.V. Sanjeev

For Respondents : Mr.D. Ravichandran
Additional Government Pleader
(Puducherry)

O R D E R

The petitioner has filed this petition seeking issuance of a Writ of Certiorari to call for the records relating to the impugned Declaration under Section 6 of the Land Acquisition, 1894 issued by the first respondent in G.O.Ms.No.122 dated 19.02.2008 (the impugned order) and served on the petitioner in

and by proceedings of the second respondent in No.2997/C2/LA / RLWC/2005 dated 27.02.2008 and the Notification issued by the first respondent in G.O.Ms.No.75 dated 13.08.2007 under Section 4 (1) of the Land Acquisition Act 1894 (Central Act I of 1894) and quash the same.

2. The case of the petitioner is that the petitioner and the family members have owned certain properties in Mahe and in the State of Kerala. The properties that they owned jointly include the property comprising of land of extent H-A-Ca 0.06.0 (approximately 15 cents) comprised in R.S.No.85/6A/2 in Mahe.

3. In an earlier occasion, there were five land acquisition proceedings in respect of the petitioner's family properties in Mahe. The land acquisition proceedings in respect of petitioner's lands in O.S. No.448 R.S.19/10B which was acquired for the purpose of construction of a Mini Civil Station at Mahe and the said acquisition proceedings were in the year 1985. Later, in the year 1989, some of the family properties comprised in Survey No.19/10B were acquired for the purpose of construction of a Town Hall and Shopping Complex for the Mahe Municipality. Thereafter, in the year 1993, certain other family properties comprised in R.S.No.19/10B, 19/13B were acquired for the purpose of expansion of the Mini Civil Station at Mahe. Subsequently, certain other properties were acquired for the widening of the curve near the Mahe Church. In the year 1996, some of the petitioner's lands were acquired for the purpose of construction of Fire Station and Staff Quarters at Mahe. The present land proceeding was initiated against the petitioner's family members without serving any notice to the interested persons except the petitioner and his father. His father passed away in the year, 1979 leaving behind his wife and eight legal representatives.

4. Though the Notification under Section 4(1) of the Land Acquisition Act, 1894 was issued against the petitioner as well as the petitioner's deceased father, every legal representatives were not included the said Notification. Challenging the above said Notification, the present writ petition is filed.

5. Learned counsel for the petitioner would submit that though the Notification under Section 4(1) of the Land Acquisition Act, 1894 was issued against the petitioner as well as his deceased father, the other seven legal representative names were not appeared in the said Notification. Immediately thereafter, the petitioner appeared for 5-A enquiry and filed a written objection intimating that the partition suit was pending before the appropriate civil court and however, without considering that no notice against the petitioner and his father, the said proceeding was initiated. Hence, the entire acquisition proceedings are invalid for the simple ground of

non-inclusion of the interested persons under 4(1) Notification as well as the notification published in the name of deceased person and therefore, he prayed for allowing the writ petition.

6. Learned counsel Additional Government Pleader appearing for the Pondicherry would submit that the Revenue Authorities of the Pondicherry Government conducted the enquiry before issuing of notice. The enquiry reveals that the entire property belonged to the petitioner's paternal family member, viz., Kalatte Thavazhi Tharavadu and grandfather of the petitioner's father. The said Kalatte Thavazhi Tharavadu is the petitioner's great grand father and his entire properties are maintained by the petitioner's father or petitioner by issuing 4(1) Notification against the petitioner or petitioner's father. Out of 50 members, the petitioner managed the entire property. Hence, the 4 (1) Notification issued against the petitioner and he was enquired under Section 5-A and Declaration under Section 6 of the Land Acquisition 1894 was passed. The declaration is a valid one and accordingly, he prayed for dismissal of the petition.

7. On perusal of the written instructions from the respondent, it is revealed that originally the property belonged to Kalatte Thavazhi Tharavadu, great grand father of the petitioner as well as the grandfather of the petitioner's father and the learned counsel for the respondent fairly conceded that the properties are owned by 50 members. However, the properties are managed by the petitioner. Hence, the notice issued against the petitioner as well as his deceased father under 4(1) Notification is invalid. Further the fact remains that the petitioner's father viz., Kunnatheduthil Kallatte Karayi Govindan passed away in the year 1979 itself and the respondent also admitted that the land stands in the name of Kalatte Thavazhi Tharavadu, great grandfather of the petitioner as well as the grandfather of the petitioner even without ascertaining the legal representatives issued under Section 4(1) Notification and further declaration were made in the name of the dead person as well as the petitioner is invalid and it is also relevant to mention that the petitioner is managing the 50 members properties and the Land Acquisition Officer was informed that the partition suit was pending before the competent court. The act of the first respondent authority that without ascertaining the abovesaid details with regard to the interested persons, issuing a Declaration under Section 6 of the Land Acquisition Act, 1894 issued in G.O.Ms.No.122 dated 19.02.2008 against the petitioner and a dead person is an invalid one. Hence, the land acquisition proceeding is vitiated and the same is quashed. Accordingly, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

8. However, the respondent is entitled to proceed further in the manner known to law and the petitioner is at liberty to proceed in accordance with law.

Sd/-
Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

gv

To

1.The Additional Secretary (Revenue)
The Government of Puducherry,
Department of Revenue and Disaster Management
Puducherry.

2.The Deputy Collector (Revenue)-cum-
Land Acquisition Officer,
Mahe, Puducherry.

+1cc to Mr.P.V.Sanjeev, Advocate, S.R.No.49982

W.P.No.17245 of 2008
and
M.P.No.2 of 2008

KS (CO)

RRS (26/07/2019)



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