

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on :
28..11..2018

Order Pronounced on :
28..01..2019

CORAM
THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition No.5169 of 2018
and
W.M.P.Nos.6343 & 25939 of 2018 of 2018

Mrs.Ranganayakiammal

... Petitioner

-Versus-

1.Government of Tamil Nadu,
Rep. by its Secretary,
Department of Adhi Dravidar Welfare,
Secretariat, Chennai 600009.

2.The District Collector,
Coimbatore District,
Coimbatore 641018.

3.The Special Tahsildar,
(Land Acquisition),
Adhi Dravidar Welfare,
Coimbatore.

4.The Executive Engineer,
Tamil Nadu Slum Clearance Board
Coimbatore Division,
Coimbatore.

[4th respondent was impleaded as per order dated
22.10.2018 in W.M.P.No.27650 of 2018]

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus forbearing from taking possession of the land measuring 4.54 Acres equivalent to 1.88.08 Hectares in S.F.No.296/2 of Kuniyamuthur Village of Coimbatore Taluk and District, acquired by the respondents under the provisions of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act and from constructing any building thereon by the Tamil Nadu Housing Board (sic) and for a direction to the

respondents to return and resume the land to the petitioner subject to such conditions of any payment of the expenses, if any, incurred by the respondents in the process of acquisition.

For Petitioner	: Mr.AR.L.Sundaresan, Senior Counsel for Mr.P.K.Rajagopal
For Respondent(s)	: Mr.C.Thirumaran, Spl. Govt. Pleader for R1 to R3 Mr.R.V.Babu for R4

ORDER

This writ petition has been filed seeking a writ of mandamus forbearing the respondents from taking possession of the land measuring 4.54 Acres equivalent to 1.88.08 Hectares in S.F.No.296/2 of Kuniyamuthur Village of Coimbatore Taluk and District, acquired by the respondents under the provisions of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act and from constructing any building thereon by the Tamil Nadu Housing Board (sic) and for a direction to the respondents for return of the land.

2. The brief facts leading to the filing of this writ petition is as follows:- The petitioner claims to be owner of the land measuring about 4.64 Acres [1.88.0 Hectares] comprised in S.F.No.296/2 of Kulathupalayam Village, Kuniyamuthur in Coimbatore Taluk and District. He had a proposal to set up a stone crushing industry on the land in question and obtained a license for the same. In the year 1997, the respondents had taken steps to acquire the land in question under the provisions of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 [in short "Act 31 of 1978] and issue a notification under Section 4(2) of the Act 31 of 1978 was also issued to the petitioner and he had raised objection for acquisition of his land. Thereafter, a notification under Section 4(1) of the Act had been issued on 02.07.1998. Challenging the above said notification, he had filed a writ petition in W.P.No.17198 of 1998 and the same was dismissed by this court on 27.11.2006. In the mean time, Award had been passed by the 3rd respondent on 12.03.1999 in Award No.6 of 1998-99. Challenging the award, he had filed an appeal, but, he could not persuade the same on account of his old age and inability. But, he was not paid the award amount till date. Even though the notification was issued in the year 1998, the possession of the lands were also not taken from the petitioner. Even though by virtue of Section 5 of the Act, after publication of notification under Section 4(1) of the Act, the land vested absolutely with the Government free from all encumbrance, there

is no specific provision enabling the District Collector or any other authority to take possession of the land from the land owner. By virtue of Section 5 of the Act, the Government may acquire title over such land, but, they have no power to take possession from the petitioner. There is no specific provision in the Act 31 of 1978 for taking possession of the land unlike in The Land Acquisition Act, 1894, Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997, The Railways Act, 1989 and in the absence of any enabling provision for taking possession under the Act 31 of 1878, the respondents cannot take possession of the land from the petitioner.

3. It is further stated by the petitioner that now the Tamil Nadu Slum Clearance Board is taking steps for constructing multi-storeyed building on the land in question. When the land in question was acquired for providing house sites to the landless poor adi dravidar community people, the respondents cannot transfer or use the land for constructing multi-storeyed buildings by the Tamil Nadu Slum Clearance Board. The land acquired for a specific purpose under a special enactment, the same cannot be used for any other purpose. Hence, this writ petition.

4. The 3rd respondent - Special Tahsildar (LA), Adi-Dravidar and Tribal Welfare, Coimbatore, has filed his counter affidavit wherein he inter alia contended that the lands were sought to be acquired under Act 31 of 1978 and a notification under Section 4 (1) of Act 31 of 1978 was published in Coimbatore District Gazette on 18.07.1998 and an award was also passed. The writ petition filed by the petitioner challenging the 4(1) Notification was dismissed on 27.11.2006. According to the 3rd respondent, the possession of the land in question was vested with the respondents and the land has now been transferred to the 4th respondent board for the purpose of constructing multi-storeyed buildings for providing tenements to 720 house less poor people belonging to the Adi Dravida community. Even though the lands was acquired originally for the purpose of providing house sites to the landless poor people belonging to the Adi Dravida community, now, the Government had decided to construct multi-storeyed buildings on the land in question and provide tenements to the houseless poor people belonging to the same community and the land in question was not used for any other purpose.

5. The 4th respondent - Executive Engineer, Tamil Nadu Slum Clearance Board, Coimbatore, has filed his counter affidavit wherein he inter alia submitted that the land in question was acquired originally for the purpose of providing house site to 115 landless poor people belonging to Adi Dravida community, subsequently, based on the representations given by the 4th

respondent to the District Collector, it has now been decided to construct multi-storeyed buildings on the land in question and to provide tenements to 720 houseless person belonging to the very same community and not for any other persons. The possession of the land in question had been handed over the the slum clearance board on 25.11.2017 and thereafter, soil test was also done on 02.12.2017 and the land was held suitable for construction. Subsequently, on 19.03.2018, the board had passed a resolution and approved the scheme for construction of 720 tenements at the cost of 6253 lakhs and the Government of India had sanctioned a grant of Rs.1080 lakhs for the project. If the project is implemented 720 houseless poor people from Adi Dravida community would be benefited and whereas if the house sites are given, only 115 persons belonging to the adi dravida community alone would be benefited. The object of the project is only to provide tenements to the houseless poor persons belonging to the adi dravida community.

6. Mr.AR.L.Sundaresan, the learned senior counsel for the petitioner would submit that the lands were originally acquired for providing house sites to the persons belonging to Adi Dravida community and that now the government cannot change the purpose and hand over the possession of the land to the 4th respondent for the purpose of constructing multi-storeyed tenements as the land were acquired under the special enactment and therefore, the petitioner is entitled for return of land.

7. The learned senior counsel would further contend that under Section 5 of the Act, after publication of the the notification under Section 4(1) of the Act, only the title of the land alone vested in the Government and the possession never been vested in the Government and there is no specific provision either under Act 31 of 1978 or the rules framed thereunder for taking possession from the land owner. In the absence of any such provision for taking possession of the land, the respondent cannot take possession of the land legally and the possession is deemed to be vested only in the petitioner. There is no specific provision under Act 31 of 1978 for taking possession of the land from the owner unlike in the other Acts governing the land acquisition and Act 31 of 1978 is absolutely silent on taking over possession. The Act 31 of 1978 being expropriatory legislation dealing with the valuable rights of the property which is protected under Article 300-A of the Constitution of India, the respondent cannot take possession of the land without any authority of law. The learned senior counsel, in support of his contention, made a strong reliance on the judgement of this court reported in (2010) 2 MLJ 1071, (Rangasamy and others v. District Collector, Perambalur District and others) wherein this court has held that the word "vest" employed in Section 5 of the Act can relate only to vesting of title and not possession. That

apart, the learned senior counsel placing heavy reliance upon few other judgments contended that once the land is acquired under the Act 31 of 1978, it cannot be used for any other purposes.

8. Per contra, the learned Special Government Pleader contended that even though the land in question was sought to be acquired originally for the purpose of providing house sites to 115 landless poor persons belonging to Adi Dravida community, now, the Tamil Nadu Slum Clearance Board had proposed to construct multi-storeyed tenements for the purpose of providing tenements to about 720 houseless poor persons belonging to the Adi Dravida community. Considering the fact that if house site is provided only 115 houseless poor persons belonging to the Adi Dravida community alone would be benefited and whereas, if multi-storeyed buildings are put up on the acquired land, 720 houseless poor persons from the Adi Dravida community would be benefited. In these circumstances, the District Collector had granted permission to construct multi-storeyed building and as such there is no change in the purpose for which the land has been acquired.

9. So far as taking possession of the land under Section 5 of the Act is concerned, according to the learned Special Government Pleader, if once the notification under Section 4(1) of the Act has been published in the District Gazette, the title and possession of the land shall absolutely vest in the Government and hence, there is no separate provision for taking possession of the land. According to the learned Special Government Pleader Act 31 of 1978 being special Act which intended to provide benefit to the persons belonging to the Scheduled Castes and Schedule Tribes, the legislature thought it fit to state that the title and possession would automatically vest in the Government consequent upon the issuance of a notification under Section 4(1) of the Act and there is no illegality in it.

10. The learned Special Government Pleader lastly submitted that the petitioner had already filed a writ petition challenging the notification under Section 4(1) of the Act and the same was ultimately dismissed by this court by order dated 27.11.2006 and therefore, now, it is not open to the petitioner to come up with the instant writ petition and hence, the writ petition deserves only to be dismissed.

11. I have considered the rival submissions carefully.

12. The primordial contention of the learned senior counsel for the petitioner is that in the absence of any specific provision under Act 31 of 1978, enabling the respondents to take

possession of the land, the respondents cannot take possession of the land from the petitioner. According to him, even though Section 5 of the Act provides for vesting of land absolutely in Government free from all encumbrances and it only relates to title of the land and the possession never vest in the Government.

13. Before dealing with the above contention, it would be useful to refer to Section 5 of the Act which reads as follows:-

"5. When a notice under sub-section (1) of section 4 Government is published in the District Gazette, the land to which the said notice relates shall, on and from the date on which the notice is so published vest absolutely in the Government free from all encumbrances."

14. A careful reading of the above provision would make it clear that from the date of issuance of the notification under Section 4(1) of the Act, the land to which the notification has been issued shall vest absolutely in the Government free from all encumbrances. The word "vest" appears in various enactment has been considered by the Hon'ble Supreme Court as well as this court in number of judgments and it has has been unanimously held that the word "vest" does not have a fixed connotation and it may mean vest in title or vest in possession as indicated in the context in which it has been used in a particular Act.

15. The Hon'ble Supreme Court in Fruit & Vegetable Merchants Union, Subzi Mandi, Delhi v. Delhi Improvement Trust, Regal Buildings, Cannaught Place, New Delhi, AIR 1957 SC 344, has explained the word, "vest" as follows:-

"The word "Vest" has not got a fixed connotation, meaning in all cases that the property is owned by the persons or the authority in whom it vests. It may vest in title or it may vest in possession, or it may vest in a limited sense, as indicated in the context in which it may have been used in a particular piece of legislation."

16. In Vatticherukuru Village Panchayat v. Nori Venkatarama Deekshithulu, (1991) (1) Supp 2 SCC 228, the Hon'ble Supreme court has held as follows:-

"10. The word 'vest' clothes varied colours from the context and situation in which the word came to be used in a statute or rule. Chamber's Mid-Century Dictionary at p. 1230 defines 'vesting' in the legal sense "to settle, secure, or put in fixed right of

possession; to endow, to descend, devolve or to take effect, as a right". In Black's Law Dictionary, (5th edn. at p. 1401) the meaning of the word 'vest' is given as : "to give an immediate, fixed right of present or future enjoyment; to accrue to; to be fixed; to take effect; to clothe with possession; to deliver full possession of land or of an estate; to give seisin; to enfeoff". In Stroud's Judicial Dictionary, (4th edn., Vol. 5 at p. 2938), the word 'vested' was defined in several senses. At p. 2940 in item 12 it is stated thus "as to the interest acquired by public bodies, created for a particular purpose, in works such as embankments which are 'vested' in them by statute", see Port of London Authority v. Canvey Island Commissioners [(1932) 1 Ch 446] in which it was held that the statutory vesting was to construct the sea wall against inundation or damages etc. and did not acquire fee simple. Item 4 at p. 2939, the word 'vest', in the absence of a context, is usually taken to mean "vest in interest rather than vest in possession". In item 8 to 'vest', "generally means to give the property in". Thus the word 'vest' bears variable colour taking its content from the context in which it came to be used. Take for instance the land acquired under the Land Acquisition Act. By operation of Sections 16 and 17 thereof the property so acquired shall vest absolutely in the government free from all encumbrances. Thereby, absolute right, title and interest is vested in the government without any limitation divesting the pre-existing rights of its owner. Similarly, under Section 56 of the Provincial Insolvency Act, 1920, the estate of the insolvent vests in the receiver only for the purpose of its administration and to pay off the debts to the creditors. The receiver acquired no personal interest of his own in the property. The receiver appointed by the court takes possession of the properties in the suit on behalf of the court and administers the property on behalf of the ultimate successful party as an officer of the court and he has no personal interest in the property vested thereunder. In Fruit and Vegetable Merchants Union v. Delhi Improvement Trust [1957 SCR

1 : AIR 1957 SC 344] , the question was whether the Delhi Improvement Trust was vested of the Nazul land belonging to the government with absolute right, when the property was entrusted under the scheme for construction of the markets etc. It was held by this Court that placing the property at the disposal of the trust did not signify that the government had divested itself of the title to the property and transferred the same to the trust. The clauses in the agreement show that the government had created the trust as its agent not on permanent basis but as a convenient mode of having the scheme of improvement implemented by the Trust subject to the control of the government."

17. In Dr.M.Ismail Faruqui v. Union of India, 1994 (6) SCC 360, the Hon'ble Supreme Court has held as follows:-

21. Section 3 provides for acquisition of rights in relation to the 'area' defined in Section 2(a). It says that on and from the commencement of this Act the right, title and interest in relation to the area shall, by virtue of this Act, stand transferred to, and vest in, the Central Government. It is well-settled that the meaning of 'vest' takes colour from the context in which it is used and it is not necessarily the same in every provision or in every context. In Maharaj Singh v. State of U.P. [(1977) 1 SCC 155 : (1977) 1 SCR 1072] , it was held: (SCR p. 1081 : SCC pp. 164-65, para 16)

"Is such a construction of 'vesting' in two different senses in the same section, sound? Yes. It is, because 'vesting' is a word of slippery import and has many meanings. The context controls the text and the purpose and scheme project the particular semantic shade or nuance of meaning. That is why even definition clauses allow themselves to be modified by contextual compulsions."

The meaning of 'vest' in Section 3 and in Section 6 is of significance in the context of the constitutional validity of the

statute. It can vary in different parts of the statute or even the same section, depending on the context of its use."

18. A Division Bench of this Court, in R. Shanmugam v. State of Tamil Nadu, 2006 (4) MLJ 805, has held as follows:-

14. The word "vest" has no fixed connotation, meaning in all cases that the property is owned by the persons or the authority in whom it vests. It may vest in title, or in possession, or it may vest in a limited sense, as indicated in the context in which it is used in a particular statute. It has variable import depending upon the use in a given statute and the word "vest" used in different statutes, should be construed in the context of the provision of particular statute. Insofar as the word "vest" used in the law relating to local bodies like Corporation, Municipalities, Panchayats, it should be construed to mean conferring the power on the Corporation or the council as the case may be, only for the purpose of executing any improvement scheme which it has undertaken for maintenance and in order to maintain such public streets and appurtenances and not with a view to clothing it with complete title. In fact, when the provisions of the City Municipal Corporation Acts, District Municipalities Act and Town Panchayat Act speak of the word "vesting" of the streets, appurtenances in Corporation or Municipality as the case may be, it does not necessarily mean that ownership of the land has passed on to any of them. Section 56 of the Provincial Insolvency Act (5 of 1920) empowers the Court at the time of the making of the order of adjudication or thereafter to appoint a receiver for the property of the insolvent and to further provide that "such property shall thereupon vest in such receiver". The word "vest" employed therein is only for the purpose of the receiver to administer the estate of insolvent for payment of the debts after realizing, and the property of the insolvent vests in the receiver not for all purposes but only for the purpose of the Insolvency Act and the receiver has no interest of his own in the

property. Referring to the provisions of Section 134 of the Lunacy Act, 1890 in the case of In re Brown, it has been laid down by Lindley, L.J., that the word vested in that section included the right to obtain and deal with, without being actual owner of, the lunatic's personal estate.

15. With the above understanding of the word "vesting", let us now consider the word "vest" used in Section 16 of the Tamil Nadu Amendment Act.

"Section 16. Power to take possession.- When the Collector has made an award under Section 11, he may take possession of the land which shall thereupon vest absolutely in the Government free from all encumbrances"

The word "vest" used in Section 16 must include vesting of land in Government, not only in regard to title but also possession. It is well accepted principle of interpretation that if the plain language of the provision is clear and unambiguous, it would be only proper for the Courts to interpret and give plain grammatical meaning to such provision. In our opinion, the word "vest" used in Section 16 means and includes not only conferring mere right to possess the land acquired by the Government but also confer title on it. This is more so in view of the specific provisions of Section 16 of the Central Act, which provides that once possession of the land is taken by the Collector, the same shall absolutely vest in the Government free from all encumbrances"

19. A close reading of the above judgments would make it clear that the word "vest" does not have a fixed meaning and it has to be viewed from the context in which it came to be used.

20. A careful reading of Section 5 of the Act 31 of 1978 makes it very clear and unambiguous that after the notification under Section 4(1) of the Act 31 of 1978 has been published in the District Gazette, from that date, the land absolutely vest in the Government free from all encumbrances. In the above circumstances, in the absence of any other provision in the said Act providing for taking possession of the land, it has to be construed that the title and possession of the land

absolutely vest in the Government free from all encumbrances and no separate proceeding needs to be initiated for taking possession of the land. In the judgments relied upon by the learned senior counsel for the petitioner in Rangasamy and others v. District Collector, Perambalur District, (2010) 2 MLJ 1071, even though a learned single Judge of this court had taken the view that the word "vest" used in Section 5 of the Act 31 of 1978 only relates to vesting of title and not possession, in view of the various judgments referred to above, with great respect, I am unable to persuade myself to subscribe to such a view.

21. Apart from that, the acquisition proceedings were completed as early as in the year 1997 and thereafter, the possession was also taken by the respondents and the respondents are now taking steps to construct multi-storeyed tenements to provide housing to the houseless poor persons belonging to the Adi Dravida community. Therefore, in the said factual scenario, after lapse of more than 20 years, now, it is not open to the petitioner to claim that the possession of the land has not been legally taken from him. Further, the writ petition filed by the petitioner challenging the acquisition proceeding was also dismissed by this court on 27.11.2016. In the light of the above facts and circumstances of the case, this court is of the considered view that the writ petition is also liable to be dismissed on the ground of delay and laches also.

22. So far as the next contention of the learned senior counsel regarding the change of purpose is concerned, it is now made clear that even though the land in question was sought to be acquired for providing house sites to 115 landless poor persons belonging to the Scheduled Caste persons, now, it has been proposed to put up multi-storeyed tenements on the land in question and to provide tenements to 720 houseless poor persons belonging to the scheduled castes community only. Thus, in the considered opinion of this court, instead of giving house sites, if multi-storeyed buildings are put up on the land acquired more number of adi dravida people will be benefited. As the lands are being used only for providing housing for the houseless poor persons belonging to the Adi Dravida community. there is no change of purpose as contended by the petitioner.

23. In the result, the writ petition is dismissed. No costs. Consequently, connected WMPs are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

kmk

To

1.The Secretary, Department of Adi Dravidar Welfare,
Secretariat, Chennai 600009.

2.The District Collector,
Coimbatore District, Coimbatore 641018.

3.The Special Tahsildar, (Land Acquisition),
Adi Dravidar Welfare, Coimbatore.

4.The Executive Engineer,
Tamil Nadu Slum Clearance Board
Coimbatore Division,Coimbatore.

+1cc to Mr.R.V.Babu, Advocate, S.R.No.6458

+1cc to Mr.P.K.Rajagopal, Advocate, S.R.No.6865

+1cc to the Government Pleader, S.R.No.6945

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GSP(05/02/2019)