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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2019

CORAM

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

W.P. 37545 of 2005
and
W.P.M.P. 40245 of 2005

S.R.P.Chandrasekara Raju

... Petitioner

-Vs-

1. The Government of Tamil Nadu,
rep. by Secretary to Government,
Backward classes and Most Backward
Classes Welfare Department,
Fort St. George,
Chennai-600 009.
2. The District Collector,
Krishnagiri.
3. The Special Tahsildar,
Adi-Dravida Welfare,
Krishnagiri.
4. Bagalur Navithar Nala Sangam,
rep. by its President N.Manjunath,
1/238, Malur Main Road,
Bagalur, Hosur Taluk,
Krishnagiri District.

R4 impleaded vide order
dated 23.07.2019 in
W.M.P. 36358 of 2018

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, call for the records on the file of the 1st respondent in G.O. (3d) 60, dated 14.08.1995 issued under Section 4 of the Land Acquisition Act and declaration issued under Sec.6 of the Land Acquisition Act in G.O. Ms.67, dated 18.10.1996 and quash the same as illegal, incompetent and without jurisdiction.



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For Petitioner : Mr.V.Lakshminarayanan
for M/s.V.Raghavachari

For Respondents : Mr.M.Elumalai,
Government Pleader for
R1 to R3

Mr.K.Ezhilarasan for R4

O R D E R

This Writ Petition has been filed challenging the impugned Sec. 4 notification of the 1st respondent dated 14.08.1995 and declaration issued under Sec.6 of the Land Acquisition Act in G.O. Ms. 67, dated 18.10.1996 and quash the same as illegal, incompetent and without jurisdiction.

2. The case of the petitioner is that he is the co-owner of the property bearing Survey No.110/2A and the other owners of the property are Durairaj, Hamsaraj, Sankarraaj and Basavaraj. The petitioner's brother died without leaving any issues and he survived by his wife Varalakshmi, however, other brothers are legal heirs. The 3rd respondent has decided to acquire the land for the purpose of providing house sites to the Adi-dravida families. Accordingly, the 3rd respondent has issued notification under Section 4(1) of the Land Acquisition Act (hereinafter called as 'Act') on 14.08.1995 and the paper publication was issued in "Pirpagal" and "Makkal Kural", Chennai edition on 22.09.1995. Thereafter, the publication of substance in the locality was issued by Tom-Tom on 19.10.1995. After conducting enquiry under Section 5A of the Act, declaration under Section 6 of the Act and publication of substance in the locality was issued on 18.10.1996 and the paper publication was issued in "Dinamalar" and "Murasoli" on 25.10.1996 and 24.10.1996 respectively. Challenging the above said notification as well as declaration, the present Writ Petition has been filed by the petitioner.

3. Mr.V.Lakshminarayanan, learned counsel appearing for the petitioner would submit that though the notification under Sec.4 (1) of the Act was issued in the name of death person, thereafter, the said Durairaj's wife has informed to the petitioner that she did not have any legal heirs. There were three brothers for the petitioner viz., Hamsaraj, Sankarraaj and Basavaraj. Thereafter, the declaration under Sec.6 of the Act was issued in the name of petitioner and even thereafter, no award notice was issued in favour of the petitioner or in favour of other legal heirs. The 3rd respondent has proceeded with the enquiry in the name of death person and passed an award.



Immediately after the issuance of declaration under Section 6 of the Act, the petitioner has instituted a Suit in O.S.No.477 of 1996 and the said suit was dismissed by the lower court by a judgment and decree dated 08.09.1999 on the file of District Munsif Court, Hosur. Thereafter, the present Writ Petition has been filed. The learned counsel further submitted that there was a delay in challenging the notification, and even after excluding the lapsed period of 9 years, they have persuaded the matter before the Civil Court. However, in the present case, since the date of publication, the other legal heirs have not appeared before the award enquiry and no notice was issued. Hence, the petitioner is entitled to award notice under Sec.12 (2) of the Act and it would be sufficient to issue a direction to the Land Acquisition Officer to issue notice under Section 12 (2) of the Act as well as the award enabling the petitioner to claim higher compensation.

4. Mr.M.Elumalai, learned Government Pleader appearing for the respondents 1 to 3 would submit that though initially notification under Sec.4(1) of the Act was issued in the name of death person, however, wife of the said Durairaj appeared before the enquiry officer and informed that the land was maintained by her and thereafter, the other notice was issued in the name of the petitioner and declaration under Sec.6 of the Act was also issued in the name of the petitioner. However, the present Writ Petition has been filed after lapse of 9 years, which is unsustainable one. On this sole ground, the Writ Petition is liable to be dismissed on the ground of laches. Further, the learned Government Pleader would submit that the very same petitioner filed a Writ Petition for reconveyance under Sec.48-B of the Act in W.P.No.37691/2015 and the said Writ Petition was dismissed by this Court vide order dated 26.11.2015. Further, after the acquisition, the possession was taken by the competent authority and after possession, patta was given to 66 landless persons and 32 persons have constructed the building therein. Hence, it is not possible for reconveyance of the parted land in favour of the petitioner.

5. Considering the facts and circumstances, since the petitioner himself not inclined to challenge the land acquisition proceedings, he has made a simple request to issue a direction to the Land Acquisition Officer under Sec.12(2) of the Act. Today, Mr.G.Venkatesan, Special Tahsildar (ADW), Krishnagiri District and Mr.C.Sridhar, Special Revenue Inspector, C/o. Special Tahsildar, (ADW), Krishnagiri District have produced the original files before this Court and this Court had perused the records, in which the award proceedings was recorded in page No.133 of the original file, in which the Land Acquisition Officer did not reveal with regard to appearance of the owner or interested person of the property for



fixation of compensation. So, since the persons not appeared before the award enquiry, the interested persons or the owners are entitled to receive notice under Sec.12(2) of the Act. For better appreciation of facts, Section 12(2) of the Act is extracted hereunder :-

"12(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or through representatives when the award is made"

6. On perusal of the above provision makes it clear that the Collector or the Acquisition Officer shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made. Admittedly, no interested persons having appeared in person or through representative. Hence, they are entitled to receive notice along with award copy. So, in view of the above, I am inclined to issue a direction to the Land Acquisition Officer / District Collector to issue a notice under Sec.12 (2) of the Act along with the award copy enabling the petitioner to file an appropriate application under Sec.18 of the Act before the Land Acquisition Officer. Accordingly, the present Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

rpp

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government,
Government of Tamil Nadu,
Backward classes and Most Backward
Classes Welfare Department,
Fort St. George,
Chennai-600 009.
2. The District Collector,
Krishnagiri.
3. The Special Tahsildar,
Adi-Dravida Welfare,
Krishnagiri.



+1cc to the Govt.Pleader, Vide Sr.No.63830

Kak (16/09/2019)