

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2019

CORAM

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

W.P. 6808 of 2011
and
M.P.s 2 & 3 of 2011

S.Gopalan

... Petitioner

Vs

1. The Secretary,
Government of Tamil Nadu,
Industries (MII) Department,
Secretariat,
Chennai-600 009.

2. The District Collector,
Kancheepuram District.

3. The Special Tahsildar,
Land Acquisition,
SIPCOT, TACID Division,
Oragadam, Irungattukottai,
Kancheepuram District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for records on the file of the 1st respondent pertaining to the impugned notification under Sec.4(1) of the Land Acquisition Act made in G.O. Ms. No.626, Industries (MII) Department, dated 24.09.1998 and published in the Tamil Nadu Government Gazette and Declaration under Sec.6 of the Land Acquisition Act, dated 07.12.1998 made in G.O.Ms.No.832, Industries (MII) Department dated 04.12.1998 and Award No.3 of 2000 dated 28.11.2000 passed by the 3rd respondent and quash the same and so far as the petitioner is concerned and direct the respondents to issue a fresh notification, if the petitioner's land is required for the scheme.

For Petitioner	: Dr.C.Ravichandran
For Respondents	: Mr.M.Elumalai, Government Advocate for R1 and R2 Ms.Sudarshana Sundar for SIPCOT

O R D E R

This Writ Petition has been filed challenging the impugned notification of the 1st respondent issued under Sec.4(1) of the Land Acquisition Act made in G.O. Ms. No.626, Industries (MII) Department, dated 24.09.1998 and published in the Tamil Nadu Government Gazette and Declaration under Sec.6 of the Land Acquisition Act, dated 07.12.1998 made in G.O.Ms.No.832, Industries (MII) Department dated 04.12.1998 and Award No.3 of 2000 dated 28.11.2000 passed by the 3rd respondent and quash the same in so far as the petitioner is concerned and consequently direct the respondents to issue a fresh notification, if the petitioner's land is required for the scheme.

2. The case of the petitioner is that the petitioner is the owner of the land admeasuring 88 cents at No.200/12, Panruti Village, Punja Survey No.26/1A at Sriperumbudur Taluk. The petitioner has purchased the said lands from Mr.Chithirai and Mr.Chinnapaiyan, son of late Karuppan by virtue of registered Sale deed dated 28.12.1988 vide Document No.3112/1988 on the file of Sub-Registrar Office, Walajabad. Since the petitioner is a permanent resident of Chennai, he was doing export agencies business at Chennai. After the purchase, the petitioner has requested the revenue authorities for mutation of revenue records and accordingly, the patta was mutated in favour of the petitioner. Subsequently, the petitioner has appointed one Santhanam as his power of attorney and executed a deed of Power of Attorney in his favour vide document No.1459 of 2008 on the file of Sub-Registrar office, Virugambakkam.

3. Thereafter, when the said power agent after identifying purchaser went to the registrar office for execution of sale deed, he was informed by the officials that the lands were already acquired and the sale deed could not be registered. On further enquiry, he found that the land was acquired by the 3rd respondent for the purpose of construction of SIPCOT complex and accordingly, the 1st respondent has issued notification under Section 4(1) of the Land Acquisition Act (hereinafter called as 'Act') on 02.10.1998 and a declaration under Section 6 of the Act was issued in G.O.Ms.No.833, Industries (M2) Department, dated 04.12.1998 and subsequently, the award was also passed on 28.11.2000. Immediately after knowing the fact of land acquisition proceedings, the petitioner has filed the present Writ Petition.

4. Mr.C.Ravichandran, learned counsel appearing for the petitioner would submit that though the petitioner has purchased the property in the year 1988, subsequently, the entire records were mutated in favour of the petitioner. But, without issuing any notice and without conducting any enquiry, the petitioner's land was acquired and the award was also passed. Though the land acquisition proceedings completed in the year 2000, the

petitioner came to know about the land acquisition proceedings only in the year 2011 through his power agent. Immediately thereafter, the petitioner has filed the present Writ Petition. Accordingly, he prayed to allow this Writ Petition.

5. Per contra, Mr.M.Elumalai, learned Government Advocate appearing for the respondents 1 and 2 would submit that the 1st respondent has issued notification under Sec. 4(1) of the Act on 02.10.1998 and a declaration under Sec.6 of the Act was issued in G.O.Ms.No.833, Industries (M2) Department, dated 04.12.1998 and subsequently, the award was also passed in the year 2000. After passing the award, the filing of Writ Petition is not at all maintainable. In the present case, the acquisition authority has acquired the lands for the purpose of construction of SIPCOT complex and the SIPCOT has divided the said lands into plots and the said disputed land was arrayed as OSR lands. Since the petitioner's land was arrayed as Open Space Reservation land, even the Government as well as SIPCOT have no power to alienate the property and those lands are belonging to the plot owners, who purchased the property from the SIPCOT. In support of his contentions, the learned Government Advocate has relied upon the decision in the case of The State of Tamil Nadu and another v. P.Kanagamani and others reported in 1975 AIR (Madras) 303 and the relevant portion of the judgment reads as follows :-

"18. Apart from the above considerations, the decision of the Supreme Court in AIR 1961 Supreme Court 1500 referred to already clearly and categorically lays down the proposition that an award made by a Collector under Section 11 of the Act is not a decision and that it is only an offer made by him on behalf of the Government to the owner of the land. That decision will clearly lead to the inevitable conclusion that the award of the Collector made under Section 11 of the Act cannot be questioned by way of a petition for the issue of a writ of certiorari under Article 226 of the Constitution of India."

6. The learned Government Advocate has further relied upon the unreported decision of the Division Bench of this Court in the case of Executive Engineer and Administrative Officer, Coimbatore Housing Unit, T.N.H.B. v. Girija Janarthanan and others in W.A. Nos.1241 and 1242 of 2005 and the relevant portion of the judgment is extracted hereunder:-

"11. It is argued by Mr.K.Doraisami, learned senior counsel that in as much as the 4(1) notification did not contain the name of the original owners from whom the land was purchased by the respondents, the very initiation of the acquisition proceedings is vitiated and therefore, merely because the award was passed and the possession having been taken, the statutory right conferred on the landowner to have a notice in the

form of 4(1) notification in his name cannot be defeated. When the mandatory provisions of Section 4 (1) are not complied with, the acquisition proceedings are illegal per se and such defect cannot be cured only on the ground that an award was passed and on the basis of such award, the possession was taken. The answer to the above submission is the judgment of the Supreme Court in State of Rajasthan v. D.R.Laxmi and others, 1997 MLJ 116. In paragraph 7 of the judgment, the Supreme Court by placing reliance on the judgment in Sanjeevnagar Medical and Health Employees Co.op. Society V. Mohd. Abdul Wahab (1996) 3 SCC 600 and in Satendra Prasad Jain case (1993) 4 SCC 369, has observed as follows :-

"10. The order for action, if ultra vires the power, becomes void and it does not confer any right. But, the action need not necessarily be set at naught in all events. Though the order may be void, if the party does not approach the Court within reasonable time, which is always a question of fact and have the order invalidated or acquiesced or waived, the discretion of the Court has to be exercised in a reasonable manner. When the discretion has been conferred on the Court, the Court may in appropriate case decline to grant the relief, even if it holds that the order was void. The net result is that extraordinary jurisdiction of the Court may not be exercised in such circumstances. It is seen that the acquisition has become final and not only possession had already been taken, but reference was also sought for, the award of the Court under Sec.26 enhancing the compensation was also accepted. The order of the appellate court had also become final. Under those circumstances, the acquisition proceedings having become final and the compensation determined also having become final, the High Court was highly unjustified in interfering with and in quashing the notification under Sec.4(1) and declaration under Sec.6."

12. Recently, in Swaika Properties (P) Ltd. And another v. State of Rajasthan and others, (2008) 4 SCC 695, while considering the very same question, the Supreme Court has held that "a writ petition challenging the notification for acquisition of land, if filed after the possession having been taken, is not maintainable." Therefore, even if a defect had crept in the issuance of 4(1) notification, this Court shall not entertain the challenge to the land acquisition proceedings after the award is passed and

possession is taken."

7. The learned Government Advocate has also relied upon the decision of the Division Bench of this Court in the case of S.Harshavardhan and another v. State of Tamil Nadu, rep. by the Secretary to Government, Industry Department, Chennai and others reported in 2005 (3) CTC 691 and this Court has observed in paragraph 3 as follows :-

"3. It has been repeatedly held by the Supreme Court in Tej Kaur v. State of Punjab, 2003 (4) SCC 485, 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 15.03.1994 whereas the writ petition was filed on 12.04.1994, i.e. after the award was given. Hence, the writ petition was dismissed as belated. Similarly in Municipal Council, Ahmednagar v. Shah Hyder Beig AIR 2000 SC 671, 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 others v. Deputy Secretary to the Government of Tamil Nadu and others, 1997 (2) SCC 627; Municipal Corporation of Greater Bombay v. The Industrial Development Investment Co. Ltd., AIR 1997 SC 482, 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."

8. Mrs.Sudharshana Sundar, learned counsel appearing for SIPCOT submitted that though the SIPCOT is not a party, in order to assist this Court, she has appeared before this Court and submitted that after the completion of land acquisition proceedings, the 1st respondent has handed over the lands to SIPCOT. Thereafter, the SIPCOT has allotted the lands to the beneficiaries. Hence, she prayed to dismiss the Writ Petition filed by the petitioner.

9. I have considered the rival submissions made by the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for the respondents 1 and 2 and the learned counsel appearing for SIPCOT.

10. On perusal of the records, it reveals that the 1st respondent has issued notification under Section 4(1) of the Act on 02.10.1998 and a declaration under Section 6 of the Act was issued in G.O.Ms.No.833, Industries (M2) Department, dated

04.12.1998 and subsequently, the award was also passed on 28.11.2000. The undisputed fact in the present case is that though the award was passed in the year 2000, subsequently, the entire land was taken out by the SIPCOT and thereafter, the SIPCOT has allotted the lands in favour of the beneficiaries. It is also further undisputed fact that the present disputed land was allotted under open space reservation were belong to the allottees of the SIPCOT industrial estate and the petitioner has filed the Writ Petition after the lapse of 11 years i.e. only in the year 2011, which is legally unsustainable one. Hence, on the above ground of laches, after passing the award, the Writ Petition cannot be entertained and the decision reported in the decision of this Court reported in 2005 (3) CTC 691 is squarely applicable to the present case. It also appears that the acquisition proceedings were initiated against the vendor of the petitioner and though the records were mutated in favour of the petitioner, the notice under Section 12(2) of the Act was not issued to the petitioner and it is an admitted fact that the petitioner has not appeared before the award enquiry. In such a situation, as per Section 12(2) of the Act, the District Collector has to send notice to the parties concerned along with the award copy. But, in the present case, the notice under Section 12(2) of the Act was not served on the petitioner. Hence, I am inclined to issue a direction to the respondents 1 and 2 to issue a notice under Section 12(2) of the Act along with the copy of the award enabling the petitioner to file an appropriate application before the concerned authorities for enhancement of compensation. However, a liberty is also granted to the petitioner to receive compensation on production of title deeds after receipt of notice under Section 12(2) of the Act. Accordingly, the present Writ Petition stands dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-III)

सत्यमेव जयते

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Sub Assistant Registrar

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To

1. The Secretary,
Government of Tamil Nadu,
Industries (MII) Department,
Secretariat, Chennai-600 009.

2. The District Collector,
Kancheepuram District.
3. The Special Tahsildar,
Land Acquisition,
SIPCOT, TACID Division,
Oragadam, Irungattukottai,
Kancheepuram District.

+1cc to Mr.C.Ravichandran, Advocate SR.No.69605

+1cc to Mr.S.Mohan, Advocate SR.No.69511

+1cc to Government Pleader, High Court, Madras SR.No.69720

W.P. 6808 of 2011
and
M.P.s. 2 & 3 of 2011

GP (CO)
GMY (19/09/2019)



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