

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.04.2019

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.NO.9771 OF 2019

AND

W.M.P.NO.10368 OF 2019

L.Yegappan

...Petitioner

Versus

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Housing and Urban Development Department,
Secretariat, Fort St.George,
Chennai - 600 009.
2. The Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai - 600 035.
3. The Chief Revenue Officer,
Tamil Nadu Housing Board,
Nandanam, Chennai - 600 035.
4. The Executive Engineer,
K.K.Nagar Division,
Tamil Nadu Housing Board,
Ashok Nagar Shopping Complex,
Ashok Nagar, Chennai - 600 083.
5. The Superintending Engineer,
Chennai Circle,
Tamil Nadu Housing Board,
Nandanam, Chennai - 600 035.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Declaration to declare the land acquisition proceedings in respect of the land of an extent of 2160 sq.ft comprised in S.No.51/22 Valasaravakkam Village, Saidapet Taluk, Chengalpet District, as lapsed as per Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition and Rehabilitation and Resettlement Act 2013.

For Petitioner : Mr.AR.Karthick Lakshmanan
For Respondent - 1 : Mr.D.Raja,
Additional Govt. Pleader
Respondents - 2 to 5 : Mr.M.Baskar

O R D E R

With the consent of both sides, this Writ Petition is taken up for final disposal.

2. The petitioner in this Writ Petition has prayed for a Writ of Declaration to declare the land acquisition proceedings in respect of the land of an extent of 2,160 sq.ft comprised in S.No.51/22 Valasaravakkam Village, Saidapet Taluk, Chengalpet District, as lapsed as per Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition and Rehabilitation and Resettlement Act 2013.

3.1. The petitioner herein is the owner of the land measuring to an extent of 2,160 sq.ft comprised in S.No.51/2, Valasaravakkam Village, Saidapet Taluk, Chengalpet District which was purchased by him from M/s.Mohan Breweries and Distilleries Ltd., by way of a registered Sale Deed dated 01.03.1990. The petitioner's land was sought to be acquired for expansion of Kalaingar Karunanidhi Neighbourhood Scheme, by the Tamil Nadu Housing Board in the year 1986 and Section 4(1) Notification was also issued to the petitioner vide various Government Orders viz., G.O.Ms.No.899 Housing Department dated 11.06.1975, G.O.Ms.125 Housing Department dated 08.05.1975 and G.O.Ms.No.399 Housing Department dated 08.05.1975. Thereafter, Section 6 Declaration was made on 07.06.1978 under G.O.Ms.No.983. However, award was passed on 28.07.1986 in Award No.3 of 1986. Then the owners of the property have executed the Power of Attorney in the year 1981 and later, the property was divided as plots and sold to various persons who were in possession and enjoyment of the property and are still in possession.

3.2. A series of Writ Petitions came to be filed by various land owners challenging the land acquisition proceedings before this Court on various grounds and in one such Writ Petition filed in W.P.No.3683 of 1985, this Court by order dated 08.10.1991, held that the public purpose specified in the Notification was vague and did not contain material particulars so as to enable the petitioners/land owners to make effective objections under Section 5(a) of the Act, and by observing so quashed the Notification and allowed the Writ Petition. While

so, some of the plot owners in S.No.51/1 received a notice alleging that the land comprised in S.No.51/1 have already been acquired under Award No.3 of 1986 dated 31.07.1986 and possession was taken on 02.09.1986 and the owners encroached the same by way of constructing pucca building and thereby trespassed into the land vested with Tamil Nadu Housing Board and hence a notice under Section 84(2) of the Tamil Nadu Housing Board Act (hereinafter referred to as 'TNHB Act') was issued directing the owners to remove the said unauthorized encroachment within 15 days from the date of receipt of this notice failing which they will be evicted under the provisions of the TNHB Act.

3.3. The petitioner is a registered owner of the property, and he is in possession and enjoyment of the same since the date of his purchase and prior to that petitioner's vendor was in possession and enjoyment of the property. While so, at no point of time, the Housing Board has taken possession of the property. Therefore, land acquisition proceedings initiated for the Kalaingar Karunanidhi Neighbourhood Scheme itself has become lapsed. Hence, the petitioner has filed the present Writ Petition for the relief stated supra.

4. The learned counsel appearing for petitioner submitted that no notice has been issued under Section 84(2) or any other provisions of the TNHB Act. If any such notice has been served, the petitioner would have submitted objection before the Authorities concerned stating that Section 84(2) of the TNHB Act would not apply to him. He further submitted that Writ Petitions in W.P.Nos.6068, 6071, 6075, 6079, 6080, 6082, 6083, 6085, 6086, 6088, 6090 & 6092 of 2019 were filed before this Court in respect of the very same relief and the same were disposed of by this Court dated 06.03.2019, safeguarding the interest of the land owners by restraining the respondent/Board from taking any coercive action against the petitioners until issuing 84(2) Notice and directing the petitioners to submit their explanation before the respondent/Board. Therefore, the learned counsel prayed that the similar direction may be issued in this case as well as the petitioner is also one among the aggrieved land owners.

5. Mr.D.Raja, learned Additional Government Pleader takes notice for the first respondent and Mr.M.Baskar, learned counsel takes notice for the respondents 2 to 5.

6. In view of the submissions made by the petitioner's counsel, this Court is inclined to pass the following orders:

(i) It is open to the respondent/Housing Board to issue Notice under Section 84(2) of the TNHB Act to the petitioner

within a period of one week from the date of receipt of a copy of this order.

(ii) If such notice is received by the petitioner, then he shall submit his explanation before the respondent Authorities within a period of three weeks from the date of receipt of a copy of this order.

(iii) On receipt of the petitioner's explanation, the respondent/Board shall consider the same and pass appropriate orders on merits and in accordance with law. Till such time, the respondent/Board shall not take any coercive action against the petitioner.

7. This Writ Petition is disposed of with the above directions. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mrr

To

1. The Secretary to Government,
Housing and Urban Development Department,
Secretariat, Fort St.George,
Chennai - 600 009.
2. The Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai - 600 035.
3. The Chief Revenue Officer,
Tamil Nadu Housing Board,
Nandanam, Chennai - 600 035.
4. The Executive Engineer,
K.K.Nagar Division,
Tamil Nadu Housing Board,
Ashok Nagar Shopping Complex,
Ashok Nagar, Chennai - 600 083.

5. The Superintending Engineer,
Chennai Circle,
Tamil Nadu Housing Board,
Nandanam, Chennai - 600 035.

+1cc to M/s.A.L.Gandhimathi, Advocate, S.R.No.31936
+1cc to Mr.M.Baskar, Advocate, S.R.No.32793
+1cc to the Government Pleader, S.R.No.31950

W.P.No.9771 of 2019

LN(CO)
CS/05/07/2019



WEB COPY