

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2019

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

W.P. Nos.8284 of 2014 & 5554 of 2015

and

M.P. No.1 of 2015

W.P.No.8284/2014

1.K.Nandagopal
S/o.Late Krishnasamy
No.67, Murugan Koil Street
Avarampalayam
Coimbatore 641 006.

2.K.Govindaraj
S/o.Late Krishnasamy
Krishnarayapuram
Avarampalayam
Chennai - 6.

... Petitioners

-Vs.-

1.The State of Tamil Nadu
Rep by the Secretary to Government
Housing & Urban Development
Department, Fort St. George
Chennai - 600 009.

2.The Chairman
Tamil Nadu Housing Board
Anna Salai, Nandanam
Chennai - 35.

3.The Executive Engineer &
Administrative Office
Tamil Nadu Housing Board
Tatabad, Coimbatore - 12.

4.The Special Tahsildar
[Land Acquisition]
Tamil Nadu Housing Scheme
Coimbatore.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the 1st respondent in letter No.12698/Ne A3(2)/2013-2 dt 28.10.2013 quash the same and consequently direct the 1st respondent to reconvey the petitioners land of an extent of 1.78 acres in S.No.57/1 of Ganapathy Village, Coimbatore District under Section 48(b) of the Land Acquisition Act, 1984.

For Petitioner : Mr.A.Sivaji

For Respondents : Mr.T.M.Pappiah [For R1]
Special Government Pleader

Mr.B.Vivekavanam [For R2 & R3]

W.P.No.5554/2015

1.K.Nandagopal
S/o.Late Krishnasamy
No.67, Murugan Koil Street
Avarampalayam
Coimbatore 641 006.

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4.The Special Tahsildar
[Land Acquisition]
Tamil Nadu Housing Scheme
Coimbatore.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Declaration, declaring the acquisition of the lands, in 1.78 acres in survey No.57/1, Ganapathy Village, Coimbatore Taluk, Coimbatore District as Lapsed under Section 24(2) of the Right to Fair Compensation and Resettlement Act 2013 [Act 30 of 2013].

For Petitioner : Mr.A.Sivaji

For Respondents : Mr.T.M.Pappiah [For R1]
Special Government Pleader

Mr.B.Vivekavanam [For R2 & R3]

C O M M O N O R D E R

The petitioners have filed

- (i) writ petition No.8284 of 2014 challenging the order of rejection passed by the respondents Housing Board under Section 48 (B) of the Land Acquisition Act, 1894; and
- (ii) writ petition No.5554 of 2015 declaring the acquisition proceedings of the lands to an extent of 1.78 acres comprised in Survey No. 57/1, Ganapathy Village, Coimbatore Taluk, Coimbatore district has lapsed under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013.

2.The above said property, originally, belonged to the petitioners father M.Krishnasamy Naidu who died on 24.06.1961 leaving behind the petitioners and their mother and another brother K.Janarthanan. The said K.Janarthanan was missing for many years and therefore, a partition was entered into among other family members on 31.03.1982. Partitioning many properties including the property to an extent of 1.78 acres comprised in

Survey no.57/1, which was allotted to missing person K.Janarthanan. As per the said partition deed, if the missing person Janarthanan did not return home within three (3) years, the property would devolve upon the petitioners. As the said Janarthanan did not return home, the petitioners are entitled to the said property.

3.The first respondent issued Section 4(1) notification under the Land Acquisition Act. Enquiry notice under Section 5A of the Act, dated 30.08.1986 issued to K.Janarthanan was received by K.Nandagopal, who is the first petitioner herein. The 4th respondent passed an award on 22.09.1987 bearing No.7 of 1987. The Tahsildar, Coimbatore [North] issued notice dated 14.03.1988 directing the petitioners to hand over the possession.

4.The 4th respondent/Special Tahsildar filed L.A.O.P. No.171 of 1988 before the Sub Court, Coimbatore, in which, the petitioners claimed the compensation amount deposited by the respondents. The Court held that the petitioners are entitled to the compensation equally and they also received the said amount. The petitioners made representation for re-conveyance of the property under Section 48(B) of the Land Acquisition Act 1894 as the property was not utilized for the purpose for which it was acquired. The said representation was directed to be considered by this Court in Writ Petition No.12308 of 2013 by order dated 18.04.2013. The first respondent by an order dated 28.10.2013 rejected the petitioners' claim for re-conveying the land. The said rejection order is being challenged before this Court in Writ Petition No.8284 of 2015.

5.The petitioners contend that the Kalapati Housing Scheme for which the lands were acquired, were quashed in the writ petition filed by some of the land owners in Writ Petition No.724 of 1986 etc., batch on 23.10.1991. According to the petitioners, the scheme was not implemented inspite of a long gap of 27 years. Though the land was acquired under the scheme, physical possession was not taken and it is still lying vacant. That apart, in and around the subject property land, pucca private houses have come up and they are having road facilities and hence, there is no need to form a road over the land in S.F.No.57/1. The fact that the land is lying vacant has been informed by the local planning authority by communication dated 27.11.2013, wherein it was stated that the land is still vacant for the purpose of forming a road. Though the acquisition was made in the year 1983, award was passed on 22.09.1987 and money was deposited before the Civil Court, the possession has not been taken till date. When possession has not been taken, by

virtue of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 [Act 30 of 2013] the acquisition proceedings have become lapsed and therefore, the Writ Petition No.5554 of 2015 has been filed.

6.Heard Mr.A.Sivaji, learned counsel appearing for the petitioners, who made the following submissions :-

[1] the petitioners along with two others have become the owner of the property as legal heirs of their father Krishnasamy Naidu after his death and the same was partitioned by virtue of partition deed entered in the year 1982.

[2] since the Janarthanan was missing and there was no claim by him in respect of 1.78 acres comprised in Survey No.57/1, Ganapathy Village, the property was shared by the petitioners.

[3] Even though the proceedings were initiated by issuance of 4(1) notification dated 07.03.1983, an award was passed on 22.09.1987 and compensation amount of Rs.64,504/- was deposited before the Civil Court by the Special Tahsildar, as Janarthanan, the brother of the petitioners, who was missing, did not claim the said amount under Section 30 of the Act in LAOP 171 of 1988, the Civil Court declared the entitlement of the petitioners to claim the deposited compensation amount. Subsequently, the petitioners received and shared the said compensation.

[4] Even though award was passed, money was paid, the property remains vacant as the scheme has not been implemented.

[5]The land acquisition proceedings initiated by the neighbors have been allowed and there exist private houses and therefore, there is no necessity to form a road by making use of the petitioners' land. Therefore, they are entitled to re-convey of the property under Section 48(B) of the Act.

[6] Even though the award was passed as early as 1987, the amount was deposited and paid to the petitioners in 1989, the physical possession of the property was not taken as per law. The Tahsildar, by communication dated 14.03.1988 had only called upon the petitioners to handover the possession of the property by 23.03.1988. There is no proof for having taken the possession of the property by the respondents as per law, as the handing over possession letter by the Tahsildar dated 11.12.1987 could prove only paper possession which is contrary to the judgment of this

Court in A.N.Visalakshi and 3 others Vs. The Special Commissioner, Urban Land Ceiling and Land Reforms and 2 others reported in 2015 (5) CTC 823 and the decision made in the case of The Secretary to Government, Revenue Department and 3 others Vs. B.Anand Kumar reported in 2016 (3) CTC 668. Therefore, he would submit that the possession has not been taken as per law.

[7] There is no document available with the respondents for having taken possession as per law and if it is so, the entire proceedings are lapsed under section 24(2) of Act 30 of 2013.

7.In this regard, he relied upon many judgments as follows and another judgment made in the case of Tamilnadu Housing Board, rep by its Chairman v. K.Meenakshi Achi (Deceased), rep by her Power of Attorney, P.L.Chinnapalaniappa Chettiar and Others reported in 2017 (1) MLJ 129. By relying upon these judgments, the learned counsel appearing for the petitioners seek for allowing both the writ petitions.

8.On the other hand, Mr.Vivekavanan, learned counsel appearing for the Housing Board would make the following submissions:

[1] The petitioners are strangers to the property, as the land acquisition proceedings were initiated in the name of Mr.Janarthanan, whom the petitioners claim to be their missing brother.

[2] There is no proof that Mr.Janarthanan is the brother of the petitioners' and there is no production of any legal heir certificate.

[3] The compensation amount was deposited before the Civil Court and it was withdrawn by the petitioners.

[4] The possession of the property was taken as was evident from transfer certificate dated 11.12.1987.

[5] The property stands in the name of Tamil Nadu Housing Board.

[6] There was an unexplained delay on the part of the petitioners to approach this Court seeking relief and therefore, all the writ petitions have to be dismissed on the ground of laches.

9.The petitioners cannot contend that possession was not taken yet and seek for benefit under Section 24(2) of the New Act in one writ petition and and on the contrary, cannot ask for re-conveyance of the property under Section 48(b) of the Act which itself would prove that the possession was already taken.

The surrounding properties have not been released from acquisition, even as per the information given by the Tamil Nadu Housing Board to the second petitioner vide communication dated 04.03.2014. Hence, he seeks for dismissal of the writ petition.

10.Mr.T.M.Pappiah, learned Special Government Pleader adopted the argument of Mr.Vivekavan and would submit that the proceedings were over as early as 1989 itself by taking possession as well as by payment of the compensation. Therefore, these writ petitions have to be dismissed.

11.Heard the parties and perused the records.

12.It is evident that the property comprised in Survey no.57/1 to an extent of 1.78 acres of Ganapathy Village, Coimbatore North Taluk, Coimbatore District was acquired by Tamil Nadu Housing Board as per 4(1) notification dated 07.03.1983. The award was passed on 22.09.1987 and there is no dispute between the parties till this stage. With regard to the title of the property, it is contended by the learned counsel for the petitioners that though the acquired property was allotted to K.Janarthanan brother of the petitioners, as legal heir of Krishnasamy Naidu, the property vested with them by virtue of the partition deed dated 31.03.1982 entered among the family members viz., the legal heirs of the Krishnasamy Naidu. As per the partition deed, if the missing person Janarthanan did not return home within three (3) years, the property would devolve upon the petitioners. Since K.Janarthanan did not return back, the property was allotted to the petitioners. Though the proceedings were initiated in the name of K.Janarthanan, there was no claim by him regarding the compensation. Therefore, the authorities deposited the compensation amount before the Civil Court in LAOP No.171/1988 under Section 30 of the Land Acquisition Act. The petitioners by virtue of judgment dated 31.08.1989 passed by the Sub Court, Coimbatore got a declaration that the petitioners are entitled to said compensation amount Rs.65,504/- to be shared equally. The Court also gave a findings in this regard which reads as follows:-

“இந்நீதிமன்றத்தில் செலுத்தப்பட்டுள்ள இழப்பீட்டுத் தொகையான ரூ.65,504/-ஐ கோரிக்கையாளர்கள் இருவரும் சம அளவில் அடைய உரிமை உடையவர்கள் என்றும் இவ்விரு இததொகை அவர்களுக்கு கொடுக்கப்பட வேண்டும் என்று தீர்வம் வழங்கப்படுகிறது.”

From the above Civil Court findings, it is clear that the petitioners are entitled to the compensation amount which they obtained and shared among themselves. Also from the judgment made in LAOP No.171 of 1988, it is very clear that the

possession of the property was already taken and it has also been recorded in paragraph no.4 of the judgment which reads as follows:

“கணபதி கிராமத்தில் உள்ள ப.ல எண்.57/1 ல் 1 ஏக்கர் 78 செண்ட்டு தமிழ்நாடு வீட்டுவசதி வாரியத்திற்காக அரசால் நிலம் கையகப்படுத்துதல் சட்டத்தின் கீழ், எடுத்துக் கொள்ளப்பட்டுள்ளது. அங்ஙனம் எடுத்துக் கொள்ளப்பட்ட சமயம் நிலச் சொந்தக்காரருக்கு கிடைக்க வேண்டிய இழப்பீட்டுத் தொகை ரூ.65,504/. என்று தனி வட்டாட்சியர் அவர்கள் முடிவ , செய்துள்ளார்கள்.”

Though the petitioners would contend that the possession of the property was not taken by the respondents, at no point of time the petitioners had stated that the possession of the property was not taken till they filed Writ Petition No.5554 of 2015 seeking declaration that the land acquisition proceedings got lapsed in view of Section 24 of the New Act i.e., after a period of almost 3 decades [29 years]. Even before that, the petitioners only gave a representation on 24.08.2012 under Section 48(B) of the Land Acquisition Act for re-conveyance of the property. The re-conveyance of the property would arise only when the property was already taken possession and not before that. Therefore, the contention that the possession was not taken by the respondents has to be rejected.

13.The petitioners would contend that the possession of the property was not taken as per law and it is only a paper possession as only the notice was issued by the Tahsildar on 14.03.1988 and certificate of taking possession and transfer, dated 11.12.1987 is only a paper possession and no actual possession has been taken. However, no documents have been produced by the petitioners to show that the property continued to remain with them. If really they are in possession, the petitioners would have produced property tax receipts, Chitta, Adangal etc. On the other hand, the respondents produced a copy of the Fasli which stands registered in the name of TNHB, in respect of the acquired property. Further, if really the property was not taken possession, the Government would not have deposited the amount before the Civil Court and the petitioners would not have got the compensation amount. It is an unimaginable that the Government deposited the entire amount before the Civil Court in 1988 itself, even before the taking possession of the property. The petitioners also would not have received the compensation. This factor would also go to show that the falsity of the petitioners' case. Even during the award proceedings, the petitioners did not raise the contention that the possession of the property remained with them.

14. Having received the compensation after losing the property, the petitioners are estopped from stating that the possession still remains with them, in spite of receipt of the compensation. It is evident from the Certificate of taking over possession and transfer, dated 11.12.1983 that the possession was taken by the Tamil Nadu Housing Board and subsequently, their names have been reflected in Fasli records.

15.1. There is no dispute with regard to the ratio decidendi made in the judgments made in the case of A.N. Visalakshi and 3 others Vs. The Special Commissioner, Urban Land Ceiling and Land Reforms and 2 others reported in 2015 (5) CTC 823 and the decision made in the case of The Secretary to Government, Revenue Department and 3 others Vs. B. Anand Kumar reported in 2016 (3) CTC 668.

15.2. The judgment reported in 2015 (5) CTC 823, A.N. Visalakshi and 3 others Vs. The Special Commissioner, Urban Land Ceiling and Land Reforms and 2 others is with regard to taking possession under Tamil Nadu Urban Land Ceiling Act, 1978. In that case though an order was passed under Section 11(5) of the Act and the notice was issued to the owners, the land owners made a representation to keep the proceedings under abeyance, since they preferred an appeal. When the appeal is pending, the respondents are said to have taken possession and therefore, the Court came to the conclusion that the land delivery receipt executed between the Urban Land Ceiling Department and the Revenue Department is only a paper possession. Whereas, in the instant case, after taking possession on 11.12.1989, the petitioners never stated that the possession remains with them. On the other hand, they got the compensation as per the Civil Court decree dated 22.08.1988 and shared among themselves. The other judgments relied upon by learned counsel appearing for the petitioners regarding the taking up of possession would all relate to the proceedings under Section 24(2) of the New Act and there is no quarrel regarding the dictum laid down in the judgments. As already observed by this Court, the facts are different and therefore, the said judgments are not applicable.

15.3. The other judgments relied on by the learned counsel reported in 2016 (3) CTC 688, The Secretary to Government, Revenue Department and 3 others Vs. B. Anand Kumar is also about the proceedings under the Tamil Nadu Urban Land [Ceiling and Regulation] Act 1978. In that case, it was held Panja Nama or land delivery receipt is not sufficient. Whereas, in this case the land lord/ the petitioners never raised the question of possession and they got benefited by getting the compensation for the acquired land.

16.The writ petitions have to be dismissed on the ground of latches. The property was acquired by virtue of 4(1) notification dated 07.03.1983, the award was passed on 22.09.1987, the possession was taken on 11.12.1987 and the compensation was ordered to be shared between the petitioners by virtue of order dated 22.08.1988. While so, after a lapse of 25 years, the petitioners gave a representation that too, for re-conveyance under Section 48(B) of the Act. Only for the purpose of getting benefit under Section 24(2) of the New Act viz., [Act 30 of 2013] falsely, the petitioners would contend before this Court that the possession was not taken contrary to the Acts. Delay is fatal for any proceedings. As already stated, the petitioners without raising any point regarding possession for 30 years, all of a sudden tried to cook up a case as if the possession has not been taken only with a malafide motive of obtaining benefits under Section 24(2) of the Act. The Hon'ble Supreme Court in a number of judgments had held that the delay is fatal to the claim.

17.One more point which has to be considered is that the petitioners had already unsuccessfully challenged the acquisition proceedings in Writ Petition nos.17179 and 17180 of 1994 wherein this Court had upheld the acquisition. The contention that the scheme was not at all implemented and therefore, it is not required for the purpose for which the land was acquired is also not correct, as land is required for laying of the road and the scheme has been implemented.

18.The order passed by the respondents rejecting the petitioners' claim for re-conveyance of the property under Section 48(B) of the Land Acquisition Act categorically stated that on 11.12.1987, the Tamil Nadu Housing Board got possession of the property and other properties to an extent of 16.62 acres in the same block for housing purposes and the property under S.F.No.57/1 is meant for laying road. Since the property is required for laying road and the scheme is being implemented, the question of granting any relief to the petitioners under Section 48(B) of the Land Acquisition Act does not arise and the claim is liable to be rejected. Accordingly, the respondents rightly rejected and passed the impugned order dated 28.03.2013. Hence the Writ Petition No.8284 of 2014 is dismissed.

19.The petitioner would also contend that the adjoining the properties have been released and the land owners of the released lands have put up individual houses and therefore, the

petitioners land should also be given to the petitioners. However, as rightly pointed out by Mr.V.Vivekavanan, learned counsel appearing for the Housing Board that the communication dated 11.03.2014 issued under Right to Information by the Housing Board by the petitioner would categorically state that no adjoining land comprised in S.F.No.54/1, 54/2, 55/1, 55/2b, 56/1A, 57/1, 57/3, 57/4, 61/2 has been re-conveyed under Section 48(B) or released. Hence, the contention of the petitioners that the petitioners' property should also be released is not sustainable. The respondents categorically stated that the land acquired from the petitioners is essentially noted to form a comprehensive housing scheme and therefore, the property is very much needed for the implementation of the scheme and there is no question of re-conveying the property or releasing the property. The petitioners are guilty of latches and also abusing the process of Court.

20. The Writ Petition is liable to be dismissed for the following reasons:-

- (1) Section 4(1) notification to acquire the property was issued as early as on 07.03.1983; The award was passed on 22.09.1987;
- (2) The possession was taken on 11.12.1987;
- (3) The authorities deposited the compensation amount before the Civil Court in L.A.O.P.No.171/1988 under Section 30 of the Land Acquisition Act and the Compensation amount of Rs.65,504/- was ordered to be shared by virtue of the Civil Court judgment dated 31.08.1989. The Civil Court decree dated 31.08.1989 itself categorically stated that the acquired land in Survey No.57/1 to an extent of 1.78 acres was taken by the authorities.
- (4) The compensation was ordered to be shared between the petitioners by virtue of order dated 22.08.1987 and they received the said amount.
- (5) The Writ Petition Nos.17179 and 17180 of 1994 challenging the acquisition proceedings by the Petitioners were dismissed, upholding acquisition proceedings. The property comprised in S.F. No.52/1 is meant for laying road and cannot be re-conveyed.
- (6) Adjoining properties comprised in S.F. Nos.54/1, 54/2, 55/1, 55/2b, 56/1A, 57/1, 57/3, 57/3, 57/4 and 61/2 have not been re-conveyed under Section 48(B) of the Land Acquisition Act as proved by the information obtained under the Right to Information dated 11.03.2014.
- (7) The Writ Petitions are liable to be dismissed on

the ground of laches as the Petitioners attempt to get an order for re-conveyance under Section 48(B) of the Land Acquisition Act almost three decades of the original acquisition proceedings.

(8) The Petitioners have not produced any documents, like, property tax receipts, Chitta, Adangal etc. so as to prove that they are in possession of the subject property.

(9) Having got the compensation amount pursuant to the award passed for the acquired land and having shared the compensation as per the City Civil Court decree dated 31.08.1989 under Section 30 of the Land Acquisition Act, the Petitioner cannot maintain writ petition.

(10) Once compensation has been deposited and the same was received by the petitioners and possession was taken, the land acquisition proceedings comes to an end, the petitioners are strangers and they cannot maintain the writ petition. The writ petition is nothing but abuse and misuse of the judicial process to unjustly enrich themselves by making a false claim and therefore, the petitioners are guilty of laches and delay is fatal to the proceedings for the claims made by the petitioners.

21. The petitioners has to be slapped with cost for wasting the Court time and also for abusing the process. However, due to judicial restraint, this court is not awarding any cost. Accordingly, the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

-Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar

To

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+ 1 cc to MR.A.Sivaji, Advocate Sr.No.34117

+ 2 cc to Mr.B.Vivekavanam, Advocate Sr.No. 33526 & 33527

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EV(CO)

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