

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.10.2019

PRONOUNCED ON : 17.10.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition No.23637 of 2019 and
W.M.P.No.23453 of 2019

Smt.Janaki Chellappa ... Petitioner

Vs

1.Tamil Nadu Housing Board,
Rep. By its Managing Director,
No.493, Anna Salai,
Nandanam, Chennai - 600 035.

2.The Executive Engineer,
Tamil Nadu Housing Board,
HUDCO Colony,
Tatabad, Coimbatore - 641 012.

3.The Tahsildar,
Coimbatore North Taluk,
Dr.Balasundaram Road,
ATT Colony,
Gopalapuram,
Coimbatore - 641 018.

...Respondents

Prayer :- This Writ Petition is filed under Article 226 of the Constitution of India for a writ of Mandamus directing the third respondent to transfer the patta in respect of the petitioner's lands bearing Plot Nos.51 and 52, Anbu Nagar Layout, comprised in Old S.F.No.279, new S.F.No.279/1A, Kavundampalayam Village, Coimbatore Taluk, measuring an extent of 11 cents and 374 sq.ft (5163 sq.ft) in the name of the petitioner, without insisting upon No Objection Certificate from the respondents 1 and 2, by considering her representation dated 14.05.2019.

For Petitioner : Mr.P.Mathivanan

For Respondents

1 and 2 : Dr.R.Gowri, Standing Counsel

For 3rd Respondent : Mr.D.Raja,
Additional Government Pleader

O R D E R

The case of the petitioner is that, she purchased the property bearing Plot Nos.51 and 52, Anbu Nagar Layout, comprised in Old S.F.No.279, new S.F.No.279/1A, Kavundampalayam Village, Coimbatore Taluk, measuring an extent of 11 cents and 374 sq.ft (5163 sq.ft) under sale deed dated 10.02.1964. Since, the petitioner settled at U.S.A., along with her family, she did not apply for transfer of patta in her name. While so, the Tamil Nadu Housing Board (hereinafter referred to as "the TNHB") has acquired vast extent of land at Kavundampalayam Village, Coimbatore including the petitioner's land for the purpose of developing Anna Nagar Housing Scheme under the notification issued under Section 4(1) of the Land Acquisition Act, vide G.O.Ms.No.861 Housing and Urban Development dated 26.08.1982 and that the same was published in the Tamil Nadu Government Gazette on 02.09.1985.

2. Some of the plot owners challenged the acquisition in W.P.No.2203 of 1988 before the High Court and the said writ petition was allowed and the acquisition proceedings relating to S.No.279 and other survey numbers were quashed vide order dated 04.02.1997. The respondents did not prefer any appeal against this order and same has reached finality.

3. The petitioner with an intention to settle at India sought for patta for the land for constructing house. The revenue authorities instructed her to get No Objection Certificate (NOC) from the TNHB to consider her request for grant of patta. Accordingly, she has made her representation on 14.09.2018 to the TNHB to issue NOC in respect of her property. The TNHB has not so far considered her representation. Hence, the present writ petition seeking mandamus to direct the third respondent to grant patta in respect of her land which she has purchased in the year 1964 without insisting upon NOC from the TNHB.

4. The second respondent has filed counter stating that the acquisition proceedings initiated in the year 1985 culminated in passing of award dated 04.09.1987. The present writ petition is filed after 30 years of the award proceedings which is not maintainable as per the dictum of the Hon'ble Supreme Court as well as the High Court. In support of his submissions, the learned Standing Counsel for the respondents 1 and 2 relied upon the following judgments:-

"1. In Executive Engineer vs. Girija Janarthanan (W.A.Nos.1241 and 1242 of 2005 dated 25.11.2008);

2.In Swaika Properties (P) Ltd., v State of Rajasthan and others (2008(4) SCC 695);

3.In S.Harshavardhan v. State of Tamil Nadu (2005(3) CTC 691);

4.In State of Punjab and others v. Sadhu Ram (1997(9)SCC 544) and

5.In Municipal Council, Ahmednagar and another v. Shah Hyder Beig and others (2000 (2) SCC 48)"

5.Further the respondent counsel submitted that the contention of the petitioner that the entire acquisition proceedings was quashed in W.P.No.2203 of 1988 is not correct. Only in respect of the petitioners in that writ petition, the acquisition proceeding was quashed. The present writ petitioner is not a party in that writ petition. Therefore, the benefit of that writ petition cannot be extended to her. Further more, the remaining portion of the land acquired is intact and the TNHB is proceeding with the Anna Nagar Scheme in phased manner. The piece of land which the petitioner claims patta is required for the TNHB for laying approach road. Since, the patta has already been transferred in the name of the TNHB and the compensation amount has been deposited, the writ petition is liable to be dismissed.

6.Heard the Counsels. Records perused.

7.The contention of the petitioner is that, the land was purchased by the petitioner under valid sale deed on 10.02.1964. Due to her residence at abroad, she has not transferred the patta in her name immediately after purchase. When the Land Acquisition notification under Section 4(1) of the Act was made, her name was not mentioned in the notification. Likewise, neither opportunity under Section 5-A of the Act or declaration under Section 6 of the Land Acquisition Act was issued in her name. All along, she was kept under dark about the acquisition proceedings. Only when she thought of putting up construction, she applied for patta and only then, she came to know about the acquisition proceedings. Since the entire acquisition of the other plot owners in Anbu Nagar, Kavundampalayam Village, Coimbatore, has been quashed and there is no purpose of retaining her piece of land extending around 11 cents. It is contended by the learned Counsel for the respondent that, it is not entire acquisition proceedings is quashed. Only in respect of the petitioners in W.P.No.2203 of 1988, the acquisition proceedings was quashed. The remaining lands are in possession of Tamil Nadu Housing Board and the scheme is developed in phase manner.

8. Admittedly, the petitioner has not effected transfer of patta in her name, immediately after her purchase. As a consequence, when under Section 4(1) notification was published in the Government Gazette on 08.09.1982, her vendor Rangammal is shown as the owner and notification refers her name. When 63 plots owners in Anbu Nagar, Kavundampalayam Village, Coimbatore, have approached this Court by filing W.P.No.2203 of 1988, the petitioner has not challenged the acquisition proceedings. While considering the plea of the petitioners in W.P.No.2203 of 1988, this Court has considered the fact that, those petitioners have transferred the patta in their respective names and have occupied the land after constructing house. Contrarily the petitioner herein has neither transferred the patta in her name, nor put up any construction. Due to her own fault, the notification was issued in the name of her vendor. The award have also been passed and kept in deposit, due to non-claim. The patta has already been transferred in the name of Tamil Nadu Housing Board and the acquisition proceedings in so far as the petitioner's land had reached logical end on passing of the award. After lapse of three decades challenging the acquisition proceedings which has reached its logical end cannot be revived.

9. In Municipal Council, Ahmendnagar and another Vs. Shah Hyder Beig and Others reported in (2002) 2 SCC 48, the Hon'ble Supreme Court has identical set of facts held as below:-

14. The High Court has thus misplaced the factual details and misread the same. It is now a well-settled principle of law and we need not dilate on this score to the effect that while no period of limitation is fixed but in the normal course of events, the period, the party is required for filing a civil proceeding ought to be the guiding factor. While it is true that this extraordinary jurisdiction is available to mitigate the sufferings of the people in general but it is not out of place to mention that this extraordinary jurisdiction, has been conferred on to the law courts under Article 226 of the Constitution on a very sound equitable principle. Hence, the equitable doctrine, namely, 'delay defects equity' has its fullest application in the matter of grant of relief under Article 226 of the Constitution. The discretionary relief can be had provided one has not by his act or conduct given a go-bye to his rights. Equity favours a vigilant rather than an indolent litigant and this being the basic

tenet of law, the question of grant of an order as has been passed in the matter as regards restoration of possession upon cancellation of the notification does not and cannot arise. The High Court as a matter of fact lost sight of the fact that since the year 1952, the land was specifically reserved for public purposes of school playground and roads in the development plan and may reason therefore, the notification to acquire the land has, therefore, been issued under the provisions of the Act as stated above.

10. In C. Padma and others Vs. Deputy Secretary of the Government of Tamil Nadu & others reported in 1997 (2) SCC 627 the Hon'ble Supreme Court has held as below:-

"The admitted position is that pursuant to the notification published under Section 4 (1) of the Land Acquisition Act, 1894 [for short, the "Act"] in G.O.R. No.1392 Industries dated October 17, 1962, total extent of 6 acres 41 cents of land in Madhavaram village Saidapet Taluk, Chengalpattu District in Tamil Nadu was acquired under Chapter VII of the Act for the manufacture of Synthetic Rasina by Tvl. Reichold Chemicals India Ltd., Madras. The acquisition proceedings had become final and possession of the land was taken on April 30, 1964. Pursuant to the agreement executed by the company, it was handed over to Tvl. Simpson and General Finance Co. which is a subsidiary of Reichold Chemicals India Ltd. It would appear that at a request made by the said company, 66 cents of land out of one acre 37 cents in respect of which the appellants originally had ownership, was transferred in G.O.M.S. No.816 Industries dated March 24, 1971 in favour of another subsidiary company. Shri Rama Vilas Service Ltd., the 5th respondent which is also another subsidiary of the Company had requested from two acres 75 cents of land; the same came to be assigned on lease hold basis by the Government after resumption in terms of the agreement in G.O.M.S. No.439 Industries dated May 10, 1985. In G.O.M.S. No.546 Industries dated March 30, 1986, the same came to be approved of. Then the

appellants challenged the original G.O.M.S. No.1392 Industries dated October 17, 1962 contending that since the regional purpose for which the land was acquired had ceased to be in operation, the appellants are entitled to restitution of the possession taken from them. The Learned single Judge and the Division Bench have held that the acquired land having already vested in the state, after receipt of the compensation by the predecessor-in-title of the appellants, they have no right to challenge the notification. Thus the writ petition and the writ appeal came to be dismissed.

11. Time and again, laches as well as passing of award has been taken as a point against the land owners who challenge the acquisition proceedings belatedly. This is one such case where the petitioner is bound to lose on these two grounds.

12. For the above said reasons, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

17.10.2019

jbm/bsm

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Managing Director,
Tamil Nadu Housing Board,
No.493, Anna Salai,
Nandanam, Chennai - 600 035.

2. The Executive Engineer,
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3. The Tahsildar,
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Dr. Balasundaram Road,
ATT Colony, Gopalapuram,
Coimbatore - 641 018.

+1cc to Mr.P.Mathivanan, Advocate, SR.No. 87147
+3CCs to DR.R.Gowri, Advocate, SR.No.87010

W.P.No.23637 of 2019

Kak(23/10/2019)



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