

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 02.07.2020
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.8730 of 2020
and WMP.No.10583 of 2020

1. P.Kannappan
2. P.Shanmugam
3. S.Saraswathi
4. V.Jayanthi ... Petitioners

Vs.

1. The Principal Secretary to Government
Housing and Urban Development Department,
Fort St. George,
Chennai 600 009.
2. The Managing Director,
Tamil Nadu Housing Board,
Anna Salai, Nandhanam,
Chennai 600 035.
3. The land Acquisition Officer & Special Thasildhar,
Tamil Nadu Housing Board,
Tatabad, Coimbatore 641 012. ... Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus directing the 1st respondent/Government to consider the representation dated 29.12.2019 and to disburse the compensation amount to the acquired land under section 4(1) of Land Acquisition Act in the year 1982 in Award No.1/1985 on the file of the Land Acquisition Officer & Special Thasildhar, Tamil Nadu Housing Board, Tatabad on the requisition body of 2nd respondent/Tamil Nadu Housing Board, Nandanam, Chennai 600 035 to implement housing scheme along with high compensation u/s.18 of Land Acquisition Act with interest till date.

For Petitioners : Mr.D.Veerasekaran
For Respondents : Mr.M.Elumalai, GA for R1
Mrs.R.Gowri for R2
Mr.Baskar for R3

O R D E R

By consent, this writ petition is taken up for final disposal at the time of disposal itself, through Video Conferencing, due to COVID-19 pandemic.

2.The petitioners have filed this Writ Petition praying for a mandamus directing the 1st respondent to consider their representation dated 29.12.2019 and to disburse the compensation amount for the land acquired under section 4(1) of Land Acquisition Act in the year 1982 vide Award No.1/1985 on the file of the Land Acquisition Officer & Special Tahsildhar, Tamil Nadu Housing Board, Tatabad and for consequential relief.

3.Brief facts leading to the filing of the writ petition are that the petitioners' grandfather late Nachi Konar and his brother Kulandhai Konar jointly purchased agricultural land measuring to an extent of 8.40 acres in Survey Nos.296/1, 296/2A and 296/2B of Kavundampalyam Village, Coimbatore - North Taluk, Coimbatore for valid sale consideration in the year 1913. After their death, the legal heirs became the absolute owners of the said land. While so, the Government initiated acquisition proceedings to the vast extent of 65.27 acres in Survey No.284/1 of Kavundampalyam Village, Coimbatore Taluk & District for the purpose of formation of Anna Nagar Housing Scheme, Coimbatore in the year 1982, which was approved vide G.O.Ms.No.815 Housing Department dated 16.08.1982. However, the award was passed to an extent of 29.45 acres instead of 65.27 acres, vide Award No.1 of 1985, as per which, the petitioners' father was entitled to get Rs.8,183/- for 70 cents i.e., 30,492 sq.ft., but he did not receive the said amount. At that time, the market value of the land was Rs.1,25,000/- per acre. According to the petitioners, the land acquisition officer fixed the market value of the petitioners' land at the lesser value of Rs.7,000/- per acre based on the sale of larger extent of 2.39 acres, whereas they fixed the market value of the land in the vicinity at Rs.9,000/- per acre and hence, the two different yardsticks adopted by the Land acquisition officer is arbitrary, illegal and discriminatory in nature. The petitioners' father continuously approached the respondents for the past 23 years, but he died without receiving the compensation. Thereafter, the petitioners, who are all now the senior citizens, were taking steps for getting compensation in respect of the acquired land. Though the representation dated 27.02.2018 submitted by them was forwarded by the first respondent to the second respondent for taking action and the second respondent inturn directed the third respondent to look into the issue, no order came to be passed with respect to disbursal of compensation amount to the petitioners. Hence, the petitioners again made a detailed representation on 29.12.2019 with a request to pay compensation for their land acquired in the year 1982. Finding no response on

the said representation, they preferred the present writ petition for the aforesaid relief.

4. Heard the learned counsel for the petitioners, who submitted that the land acquisition proceedings was initiated in 1982 and the award was passed in 1985, through which, the petitioners' land was acquired by the Government, however, no compensation was paid to the petitioners' father or even to the petitioners, till date. Placing reliance on the decision rendered in Vidya Devi v. State of Himachal Pradesh and others [Civil Appeal No.60-61 of 2020 dated 08.01.2020], the learned counsel submitted that in similar circumstances, the Supreme Court directed the respondent therein to pay the compensation on the same terms as awarded by the Reference Court along with all statutory benefits including solatium, interest etc. within a period of 8 weeks treating it as a case of deemed acquisition. Stating so, the learned counsel sought indulgence of this Court by granting appropriate direction to the respondents.

5. On the other hand, the learned counsel taking notice on the side of the respondents fairly submitted that the respondent authorities would consider the representation of the petitioners and pass appropriate orders, on merits.

6. This Court considered the submissions made by the learned counsel on either side and perused the materials available on record.

7. This is a very pathetic case, wherein the petitioners' father was fighting for compensation in respect of his land acquired in the year 1982 and he died on 13.08.2008 without enjoying the fruits of the compensation. Thereafter, the petitioners, who are all now the senior citizens, besides illiterate, except the first petitioner, were taking steps to get the compensation, but they also did not receive any positive response from the side of the respondents.

8. Though the right to property ceased to be a fundamental right by the Constitution (Forty Fourth Amendment) Act, 1978, it continued to be a human right in a welfare State and a Constitutional right under Article 300 A of the Constitution. Article 300 A provides that no person shall be deprived of his property save by authority of law. The State cannot dispossess a citizen of his property except in accordance with the procedure established by law. The obligation to pay compensation, though not expressly included in Article 300 A, can be inferred in that Article. In Delhi Airtech Services Pvt. Ltd. & Ors. v. State of U.P. & Ors. [(2011) 9 SCC 354], the Supreme Court recognized the right to property as a basic human right in the following words:

"It is accepted in every jurisprudence and by different political thinkers that some amount of property right is an indispensable safeguard against tyranny and economic oppression of the Government. Jefferson was of the view that liberty cannot long subsist without the support of property. "Property must be secured, else liberty cannot subsist" was the opinion of John Adams.

Indeed the view that property itself is the seed bed which must be conserved if other constitutional values are to flourish is the consensus among political thinkers and jurists."

9. In the decision in Vidya Devi case, cited on the side of the petitioner, the Supreme Court, after extensively dealt with the case of the appellant, who was 80 years old and whose land was acquired by the State, held as under:

"10.3. In this case, the Appellant could not have been forcibly dispossessed of her property without any legal sanction, and without following due process of law, and depriving her payment of just compensation, being a fundamental right on the date of forcible dispossession in 1967.

10.4. The contention of the State that the Appellant or her predecessors had "orally" consented to the acquisition is completely baseless. We find complete lack of authority and legal sanction in compulsorily divesting the Appellant of her property by the State.

10.5. In a democratic polity governed by the rule of law, the State could not have deprived a citizen of their property without the sanction of law. Reliance is placed on the judgment of this Court in Tukaram Kana Joshi & Ors. v. M.I.D.C. & Ors. [(2013) 1 SCC 353] wherein it was held that the State must comply with the procedure for acquisition, requisition, or any other permissible statutory mode. The State being a welfare State governed by the rule of law cannot arrogate to itself a status beyond what is provided by the Constitution. This Court in State of Haryana v. Mukesh Kumar [(2011) 10 SCC 404] held that the right to property is now considered to be not only a constitutional or statutory right, but also a human right. Human rights have been considered in the realm of individual rights such as right to shelter, livelihood, health, employment, etc. Human rights have gained a multifaceted dimension.

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10.7. The contention advanced by the State of delay and laches of the Appellant in moving the Court is also liable to be rejected. Delay and laches cannot be raised in a case of a continuing cause of action, or if the circumstances shock the judicial conscience of the Court. Condonation of delay is a matter of judicial discretion, which must be exercised judiciously and reasonably in the facts and circumstances of a case. It will depend upon the breach of fundamental rights, and the remedy claimed, and when and how the delay arose. There is no period of limitation prescribed for the courts to exercise their constitutional jurisdiction to do substantial justice. In a case where the demand for justice is so compelling, a constitutional Court would exercise its jurisdiction with a view to promote justice, and not defeat it.

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13. In view of the aforesaid facts and circumstances of the present case, the Respondent-State is directed to pay the compensation on the same terms as awarded by the Reference Court vide Order dated 07.07.2015 in Anakh Singh's case (i.e. Land Reference No.1 of 2011 RBT No.01/13) alongwith all statutory benefits including solatium, interest, etc. within a period of 8 weeks, treating it as a case of deemed acquisition. An Affidavit of compliance is directed to be filed by the State before this Court within 10 weeks.

It is informed that an appeal has been preferred by Ravinder Singh s/o Anakh Singh & Ors. being RFA No.35 of 2016 which is pending before the High Court of Himachal Pradesh at Shimla. Taking note thereof, if an appeal is filed by the present appellant within 8 weeks from the date of compensation being paid to her by the State, the appeal will be treated to be within limitation, and would be decided on its own merits in accordance with law.

The Respondent State is directed to pay legal costs and expenses of Rs.1,00,0000/- to the present appellant.

14. The Appeals are accordingly allowed. The Orders dated 11.09.2013 and 13.05.2014 passed by the High Court are set aside.

Ordered accordingly."

10. Following the aforesaid decision, this Court has no hesitation to issue a direction to the respondents in favour of the petitioners.

11. Accordingly, this writ petition stands disposed of, directing the respondents to consider the petitioners' representation dated 29.12.2019 and pass appropriate orders, on merits and in accordance with law and also in the light of the decision of the Supreme Court referred to above, after affording an opportunity of personal hearing to the petitioners, within a period of four weeks from the date of uploading the copy of this order in the web site. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

dpq/rk
To

1. The Principal Secretary to Government
Housing and Urban Development Department,
Fort.St.George, Chennai 600 009.
2. The Managing Director,
Tamil Nadu Housing Board,
Anna Salai, Nandhanam, Chennai 600 035.
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A.SK(04/08/2020)

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