

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2020

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.15154 of 2020
and WMP.Nos.18921 & 18922 of 2020

James

...Petitioner

Vs.

1. The Tamil Nadu Housing Board,
Salem Housing Unit,
Salem-636 008,
Rep by its Executive Engineer,
and Administrative Officer.

2. The District Registrar,
District Registrar Office,
Collector Office Complex, Salem.

3. The Joint-I Sub Registrar,
Salem (West)
District Registrar Office,
Collector Office Complex,
Salem.

...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus calling for the records pertaining to (i) the order of the First Respondent in No.Ni.A.1/4280/2003 dated 06.09.2016 and Letter No.Ni.A.1/4200, dated 20.07.2026 (First Respondent's Orders). (ii) order of the Second Respondent in Letter No. Mu.ku.No.3938/B/2020 dated 24.07.2020/Second Respondent's Order) and (iii) the consequently Refusal Check Slip in Refusal Number RFL/Joint 1 Sub Registrar:Salem(West)/33/2019 dated 12.11.2019. passed by the Third Respondent herein (Refusal Check Slip) and quash same and direct the Respondents herein to accept admit and register instruments pertaining to the portion of the land bearing Plot No.9, measuring 1374 square feet bounded on the north by Plot Nos. 7 & 8, cast Manickam and Muthusamy's land, south by Plot No.10 and west by 15 feet common pathway, comprised in the Survey No.94/4, situated at Ayyaperumampatti Village, Salem Taluk, Salem District (Subject Property).

For Petitioner : Mr.G.Vivekanand
For Respondents: Mr.T.M.Pappiah R2 & R3
Special Government Pleader
Mr.M.Baskar R1

O R D E R

On consent given by either side, the main writ petition itself has been taken up for final hearing.

2. This Writ Petition has been filed against the impugned proceedings of the third respondent dated 12.11.2019 refusing to accept and register the documents presented by the petitioner on the basis of the letter given by the first respondent dated 06.09.2016 and the letter given by the second respondent dated 20.07.2020.

3. Heard Mr.G.Vivekanand, learned counsel for the petitioner, Mr.M.Baskar, learned counsel for the first respondent and Mr.T.M.Pappiah, learned Special Government Pleader appearing on behalf of respondents 2 and 3.

4. The issue involved in the present writ petition is squarely covered by the earlier orders passed by this Court in W.P.No.9566 of 1986, dated 28.02.2018. For proper appreciation, the relevant portions in the order are extracted hereunder:

''1.1. The case of the petitioners is that they are the joint purchasers of 2.08 acres out of 3.999 acres of land in Survey No.94/4 of Iyenperumalpatti Village, Salem Taluk under two sale deeds dated 12.08.1980 and 18.06.1981, executed by certain, Poongavanam, Natarajan, Arumugam, Manickam and Rajarathinam, all of who are heirs of a certain Muthusamy Gounder. The fifth petitioner has purchased another 55 cents in the same survey number. After the aforesaid purchase, the petitioners have also effected necessary mutation in the Revenue Records and Patta was also issued in the name of the petitioners. The petitioners were in joint possession of the entire property and have been cultivating the same.

1.2. While so, a notification under Section 4 (1) of the Land Acquisition Act vide G.O.Ms.No.755 Housing and Urban Development dated 04.09.1981, was issued whereunder the Government proposed to acquire the entire land in Survey No.94/4 for formation of a neighbourhood scheme by the Housing Board. The said notification was issued well after the petitioners had purchased the property. In the said notification the aforesaid Muthusamy Gounder, i.e., the father of petitioners' vendors, was shown as the owner of the

property proposed to be acquired. Muthusamy Gounder however, was stated to have died some time in 1979 or thereabout, long prior to the publication of 4(1) Notification. This notification per se is therefore bad in law and it does not conform to the requirements of the Statute.

1.3. Thereafter, the second respondent/Land Acquisition Officer had issued a Notice under Section 5A for an enquiry, which notice was addressed to Poongavanam, one of the vendors of the petitioners. The petitioners were later given to understand that on 18.01.1982, Poongavanam had filed his objections before the second respondent, bringing to the latter's notice about the sales he and his siblings had made in favour of the petitioners. That however, did not improve the situation, vis-a-vis, the right and interest of the petitioners in the proposed acquisition as could be ascertained from the fact that when the Government issued a subsequent notification declaring its intention to acquire the land under Section 6 of the Land Acquisition Act vide G.O.Ms.No.608 Housing and Urban Development dated 03.08.1984, it again omitted to name the petitioners as owners of the land in Survey No.94/4. Plainly, the Government has been travelling along the track which the statute has not provided for it to travel. Hence, both the notifications issued under Section 4(1) and the declaration made under Section 6 are illegal and contrary to the provisions of the Land Acquisition Act, 1894 and are liable to be quashed.

1.4. Hence the petitioners have come forward with the present petition. This Writ Petition was disposed of with the batch of other Petitions, Vide an earlier order dated 16.11.1996, and that this Court has allowed the Petition and quashed the said Notifications. The Government preferred Appeals challenging this Order in W.A.No.33 of 2003. This was heard along with two other Writ Appeals and were disposed of by a Division Bench of this Court on 16.06.2006. By its order, the Division Bench has set aside the order of the learned Single Judge and remanded the matter back to the learned Single Judge for pointed consideration of the matter, based on particular facts available in each of the case. That is how this case happened to come before this Court today.

2. In the meantime, the Land Acquisition Act, 1894, was replaced by its successor Act namely, 'The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013',

(Central Act 30 of 2013), and Section 24(2) thereof provides that in all cases where awards have been passed five years next prior to the commencement of the Act 30/2013, where compensation was not paid, or possession of the property acquired was not taken, the acquisition itself would lapse. The petitioners with an intention to leave no stone unturned, came up with additional set of grounds seeking to declare that the acquisition itself has lapsed.

3. Mr.M.Karthikeyan, the learned Additional Government Pleader appears for the respondents and submitted that the Government has not responded to the Writ Petition in its original form at any time before and as regards the additional grounds, it is yet to respond.

4. In the absence of any material to negate the contentions of the petitioners, this Court is left with the materials provided by the petitioners. The petitioners have produced three material documents: (a) The first one is the Notification published under Section 4(1) of the Land Acquisition Act, 1894, which was issued in the name of Muthusamy Gounder, who as earlier indicated, was the father of the petitioners' vendors; (b) The declaration of the Government under Section 6 which was seen issued in the names of Muthusamy Gounder's children. Again the petitioners' names are seen omitted; and the objection filed by Poongavanam, one of the vendors of the petitioners, during the enquiry under Sec.5-A of the Act before the Land Acquisition Authority informing the latter about the sales that they had made in favour of the petitioners was ignored.

5. The files are produced and it discloses the correctness of facts that the petitioners have presented. It is unfortunate that notwithstanding the fact that the petitioners' vendors had informed the Authority concerned that they did not have any subsisting interest in the property, the authorities preferred to stay in their zone of ineptitude and refused to correct their own errors. They therefore, with all consciousness, have walked into serious lapses in acquiring the property.

6. What is disappointing in the whole exercise is not even the initial failure on the part of the Government to do its homework completely before issuing the notification under Sec.4(1) of the Act, but its continued indifference not to correct its initial mistake when it came up with a declaration under Sec.6. Does it not display the abject indifference with which the authorities in the instant

case have approached an enquiry under Sec.5-A of the Act, and their willingness to reduce the same to a farcical exercise? Doctrine of res ipso loquitur, that finds general and frequent application essentially in law of negligence now finds its way for describing administrative action.

7. And who has suffered? Not the Authorities, but the citizens of this country. So far as the interest of the petitioners goes, for them there was no enquiry under Sec. 5-A of the Act, nor was there any notice of an enquiry before the award was passed. It is now too frivolous a proposition to require any elaborate statement that an enquiry under Section 5A of the Land Acquisition Act, 1894 is indispensable and mandatory, and any violence there to cannot be rectified except by resorting to a fresh acquisition proceedings.

8. As to the additional grounds raised under Sec.24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013, it is fairly conceded that the petitioners are still in possession.

9. In conclusion, this Writ Petition is allowed and G.O.Ms.No.755, Housing and Urban Development dated 04.09.1981 containing 4(1) Notification and the consequential declaration made under Section 6 of the Land Acquisition Act in G.O.Ms.No.608, Housing and Urban Development dated 03.08.1984 is hereby quashed. This order will not be a bar to the Government initiating any fresh proceedings for acquisition. No costs.''

5. It is clear from the above order that this Court has quashed the 4(1) Notification and the consequential deceleration issued under Section 6 of the Land Acquisition Act, 1894. It is brought to the notice of this Court that this order has become final and no steps have been taken by the Government to initiate any fresh proceedings for acquisition.

6. In view of the above order passed by this Court, the Tamil Nadu Housing Board cannot prevent the petitioner from dealing with the subject property since there is no pending acquisition proceedings. The petitioner cannot be deprived of the enjoyment of the property unless otherwise by due process of law and such a right is guaranteed under Article 300(A) of the Constitution of India.

7. In view of the above discussion, the impugned refusal slip issued by the third respondent dated 12.11.2019 is quashed. The directions issued by the Tamil Housing Board to the

Registration Department not to register any documents, is also not valid in the eye of law, in view of the fact that the entire acquisition proceedings has been quashed. There shall be a direction to the third respondent to entertain the documents submitted for registration by the petitioner, if it is otherwise in order and register the same subject to the payment of the stamp duty and registration fees. The documents shall also be returned after duly registering the same.

8. This Writ Petition is allowed with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Tamil Nadu Housing Board,
Salem Housing Unit,
Salem-636 008,
Rep by its Executive Engineer,
and Administrative Officer.

2. The District Registrar,
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Collector Office Complex,
Salem.

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Salem (West)
District Registrar Office,
Collector Office Complex,
Salem.

+1cc to Mr.G.Vevek Anand, Advocate, S.R.No.39741

+1cc to the Government Pleader, S.R.No.39817

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VG-II (CO)
RV(22/12/2020)