

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.25222 of 2018

A.Rani ... Petitioner

v.

1.The State of Tamil Nadu,
Department of Law and Justice,
rep. by its Secretary,
Fort St. George,
Chennai - 600 009.

2.State of Tamil Nadu,
rep. by its Secretary to Government,
Social Welfare Department,
Fort St. George,
Chennai - 600 009.

3.The District Collector,
Dharmapuri District,
Dharmapuri.

4.The Special Tahsildar,
(Land Acquisition)
Adi Dravidar Welfare,
Harur, Dharmapuri District.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Declaration, declaring The Right to Fair Compensation and Transparency in land Acquisition Rehabilitation and Resettlement (Tamil Nadu Amendment Act) 2014 (Tamil Nadu Act 1 of 2015) published on 05.01.2015 by the 1st respondent as ultra vires Article 14 of the Constitution of India and the Principal Act, namely the Right to Fair Compensation and Transparency in land Acquisition Rehabilitation

and Resettlement Act 2013 (Act 30 of 2013) and consequently, declare the acquisition proceedings under the Notification dated 24.01.2001 published in the District Gazette No.13 dated 01.02.2001 issued by the 3rd respondent under Section 4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (Tamil Nadu Act No.31 of 1978) in respect of the petitioner's land measuring an extent of 0.37.0 Hectares of land in S.F.No.199/1C1 (Part) of S.Thathampatti Village, Harur Taluk, Dharmapuri District is lapsed and void.

For Petitioner : Mr.A.V.Raja

For Respondents : Mr.V.Anandhamurthy
Addl. Government Pleader

ORDER

(Order of the Court was made by Subramonium Prasad)

The present writ petition challenges the insertion of Section 105-A of the Right to Fair Compensation and Transparency in land Acquisition Rehabilitation and Resettlement (Tamil Nadu Amendment Act), 2014 as ultra vires Article 14 of the Constitution of India and the Principal Act, viz., the Right to Fair Compensation and Transparency in land Acquisition Rehabilitation and Resettlement Act 2013 (Act 30 of 2013).

2. This Court in The Caritas India and others v. Union of India and others, decided on 3.7.2019 in W.P.No.22448 of 2018, etc. batch, has observed as under:

"158. In view of the discussion, the net result of Writ Petitions before us is as follows:

158.1. Contention of petitioners that the President failed to apply his mind while granting assent to Section 105-A of the New Act, cannot be accepted.

158.2. The Petitioners have also not demonstrated, how and why the impugned State Acts were arbitrary in nature, and liable to be struck down on the ground of being manifestly arbitrary.

158.3. However, the Writ Petitioners before us ultimately succeed because, Article 254(1) by its operation rendered the impugned Tamil Nadu Legislations repugnant, and null and void, as on the date on which the New Act was made, i.e. 27.09.2013, the date of making of the New Act, as

held in the case of State of Kerala v Maar AppraemKuri Co. (Supra) and therefore the impugned Acts do not survive.

158.4. By enacting Section 105-A of the New Act, the State of Tamil Nadu could not have revived the three state Acts, that had become repugnant as on 27.09.2013.

158.5. In order to revive these acts, the State must reenact these statutes, in accordance with Article 254(2) of the Constitution of India, and obtain the assent of the President. Merely, by inserting Section 105-A and the 5th Schedule, in the new Act, these impugned enactments do not get revived. Since this had admittedly not been done, the Acts remain repugnant, and Article 254(1) renders them inoperative.

158.6. In view of the requirements of Article 254 (2) of the Constitution of India, Section 105-A of the New Act, is virtually otiose. Since We have already held that Section 105-A has not revived the State Acts, the validity of Section 105-A per se, need not be examined by us.

158.7. The provisions of Section 105A(2) and (3) are mandatory in view of the necessity of complying with these provisions. The State Government has failed to make the necessary notifications, as contemplated under 105A(2) and as such the provisions of Section 105A(2) have not been satisfied. Since the notifications have not been made under sub-section (2) the requirement of sub-section (3) i.e. placing the draft notifications before the State Legislature has also obviously not been met. We therefore hold, that the requirements of Section 105A(2) & (3) have not been satisfied, and as such the insertion of the enactments in the 5th Schedule of the new Act, was not done in accordance with law.

158.8. Consequently, all the acquisitions made under the three impugned enactments made on or after 27.09.2013, are held to be illegal and quashed save those lands which have already been put to use and the purpose for which the land was acquired has been accomplished."

3. The said judgment was challenged before the Hon'ble Supreme Court by filing Special Leave Petition (C) Nos.22727 - 22730 of 2019, wherein the Hon'ble Supreme Court, issued notice by observing as under:

"Heard Shri K.K.Venugopal, learned Attorney General for India and learned counsel for the parties.

These matter (s) require deeper consideration for which we issue notice to the respondents and post the same for final disposal in view of the urgency pointed out by the learned Attorney General. To be listed on a non-miscellaneous day in the third week of November, 2019.

Mr.Kumanan and Ms.Rashmi Nandakumar, counsel appearing on caveat, waives notice for the respective respondent (s).

In the meantime, we stay the operation of the first part of paragraph 158.8 of the impugned common order dated 03.07.2019, which reads as under:

"Consequently, all the acquisitions made under the three impugned enactments made on or after 27.09.2013, are held to be illegal and quashed."

We further order that the High Court shall not proceed with the hearing of any writ petition pending before it or to be filed hereafter concerning the subject matter considered vide impugned judgment, until further orders to be passed by this Court.

It is pointed out to us that interim protection was granted to the petitioner (s) before the High Court such as the order dated 8.9.2014 passed in Writ Petition No.24182/2014 in the following terms: "Proceedings can go on, but no final order will be passed and status quo as to possession of the land will be maintained." The same shall continue to operate until further orders to be passed by this Court.

This arrangement shall apply in respect of all the writ petitions filed before the High Court concerning the subject matter considered by the impugned order."

4. Subsequent to the issuance of notice, the State Government of Tamil Nadu has brought out The Tamil Nadu Land Acquisition Laws (Revival of Operation, Amendment and Validation) Act, 2019. By virtue of this Act, the acquisitions made under Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978; Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 and the Tamil Nadu Highways Act, 2001 have been validated retrospectively from 26.09.2013. The subsequent developments, after filing of the instant writ petition, renders the instant writ petition infructuous.

5. The further contention of the petitioner that award was passed in 2001 and the State Government has neither deposited the compensation into the Court, nor has taken possession of the land and therefore, the acquisition is deemed to have been lapsed under Section 24(2) of the the Right to Fair Compensation and Transparency in land Acquisition Rehabilitation and Resettlement (Tamil Nadu Amendment Act), 2014 cannot be adjudicated upon in the instant writ petition because there is no prayer for the same.

6. In view of the above, the writ petition is dismissed as infructuous without prejudice to the rights of the petitioner to approach appropriate forum for redressal. No costs. Consequently, W.M.P.No.29328 of 2018 is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To:

1.The Secretary,
State of Tamil Nadu,
Department of Law and Justice,
Fort St. George,
Chennai - 600 009.

2.The Secretary to Government,
State of Tamil Nadu,
Social Welfare Department,
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4.The Special Tahsildar,
(Land Acquisition)
Adi Dravidar Welfare,
Harur, Dharmapuri District.

+1cc to Mr.A.V.Raja , Advocate SR.No. 2524
+1 cc to Government Pleader Sr.No. 2012

W.P.No.25222 of 2018

A.SK(06/02/2020)



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