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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2021

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.11029 of 2011

and M.P.No.2 of 2011

and W.M.P.Nos.28637 of 2017, 16585 and 16589 of 2021

A.Palanisamy

... Petitioner

-Vs-

1. The State of Tamil Nadu,
represented by its Secretary to Government,
Housing and Urban Development Department,
Fort St.George, Chennai - 9.
2. The Special Tahsildar,
Land Acquisition,
Housing Scheme Unit-III,
Coimbatore.
3. The Tamil Nadu Housing Board,
represented by its Managing Director,
Anna Salai, Nandanam,
Chennai - 600 035.
4. The Executive Engineer and
Administrative Officer,
Tamil Nadu Housing Board,
Coimbatore Unit, Tatabad,
Coimbatore - 641 018.
(R3 and R4 impleaded as per
order dated 23.12.2021 made in
W.M.P.No.27047 of 2021 in
W.P.No.11029 of 2011)

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, to call for the records in relation to the notification issued under Section 4(1) of the Land Acquisition Act, 1894 in G.O.Ms.No.878, dated 28.05.1991 (Housing and Urban Development Department) and the declaration made under Section 6 of the Land Acquisition Act, 1894 in G.O.Ms.No.473, dated 27.07.1992 (Housing and Urban Development Department) by the



first respondent and the award proceedings in Award No.5 of 1994 dated 28.07.1994 made by the second respondent under the Land Acquisition Act, 1894 and quash the same in respect of the lands belonging to the petitioner, comprised in S.F.No.118/1A2, situated at Vilankurichi Village, Coimbatore.

(Prayer amended vide order dated 13.08.2021 made in W.M.P.No.16582 of 2021 in W.P.No.11029 of 2011)

For Petitioner : Mr.AR.L.Sundaresan, Senior Counsel
for Mr.G.Sankaran and
Mr.S.Nedunchezhiyan

For R1 and R2 : Mr.C.Kathiravan
Special Government Pleader

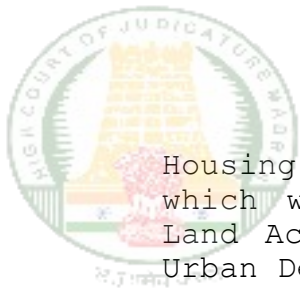
For R3 and R4 : Dr.R.Gouri, Standing Counsel

ORDER

This Writ Petition has been filed for the issuance of Writ of Certiorari, to call for the records in relation to the notification issued under Section 4(1) of the Land Acquisition Act, 1894 in G.O.Ms.No.878, dated 28.05.1991 (Housing and Urban Development Department) and the declaration made under Section 6 of the Land Acquisition Act, 1894 in G.O.Ms.No.473, dated 27.07.1992 (Housing and Urban Development Department) by the first respondent and the award proceedings in Award No.5 of 1994 dated 28.07.1994 made by the second respondent under the Land Acquisition Act, 1894 and quash the same in respect of the lands belonging to the petitioner, comprised in S.F.No.118/1A2, situated at Vilankurichi Village, Coimbatore.

2. Heard Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the petitioner, Mr.C.Kathiravan, learned Special Government Pleader appearing for the respondents 1 and 2 and Dr.R.Gouri, learned Standing Counsel appearing for the respondents 3 and 4.

3. The land comprised in S.F.No.118/1A2 situated at Vilankurichi Village, Coimbatore District, belong to the petitioner's father i.e. R.Arakutti Gounder. He died on 19.09.1993. Even before his death, he bequeathed the subject property in favour of the petitioner by the registered sale deed, dated 16.08.1993, registered vide Document No.190 of 1993. When the respondents visited the subject property and made enquiries with regard to persons interested in the land, the petitioner came to understand about the acquisition proceedings. On enquiry, the petitioner came to understand that the notification under Section 4(1) of the Land Acquisition Act, 1894 (herein after called as "the Act") in G.O.Ms.No.878,



Housing and Urban Development Department, dated 28.05.1991, which was followed by the declaration under Section 6 of the Land Acquisition Act, 1894, made in G.O.Ms.No.473, Housing and Urban Development Department, dated 27.07.1992.

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4. On verification of the notification under Section 4(1) and Section 6 declaration of the Act, his father name was contained in respect of the subject property. But his father or the petitioner were not served any notices as contemplated under the Act. The petitioner specifically raised grounds that the petitioner's father or in the name of the petitioner, no notices were served for enquiry as contemplated under Section 5A of the Act before issuance of declaration under Section 6 of the Act.

5. The first respondent failed to give any prior approval for initiating the acquisition proceedings as envisaged under Section 3(f)(VI) of the Act, which is a mandatory one and violation thereof constitutes infirmity in the entire allegation proceedings. The petitioner or his father were not served any notices under Section 9(3) and 10 of the Act for the award enquiry. Even after the award no notices were served as contemplated under Section 12(2) of the Act.

6. While pending the writ petition, the petitioner also filed a petition raising additional grounds as contemplated under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, since, the possession of the subject property has not been taken over and no award amount has been deposited in respect of the subject property so far.

7. The second respondent filed a counter and revealed that the subject property along with other properties ad-measuring 874.64.0 hectares comprised in Survey No.118/1A1 etc., including the petitioner's land comprised in S.F.No.118/1A2 situated at Vilankurichi, Coimbatore North Taluk, Coimbatore District, for the construction of house under the Ganapathy Neighbourhood Scheme, Phase II. The Draft notification under Section 4(1) of Act was approved in G.O.Ms.No.878, Housing and Urban Development Department, dated 28.05.1991. The substance of the notification was published in newspapers dailies on 23.06.1991 and 24.06.1991. The notice for the enquiry as contemplated under Section 5A of the Act was issued and enquiry was conducted on 16.09.1991. The copy of the statements of objections obtained from the land owners during the enquiry were communicated to the Executive Engineer and Administrative Officer, Coimbatore Housing Unit. After considering the objections at the time of enquiry and approved the draft declaration and published in the Tamil Nadu Government Gazette, dated 28.07.1992. The Draft



Direction under Section 7 of the Act was approved and published in the Tamil Nadu Government Gazette on 15.06.1994.

8. The Land Acquisition Officer in the award proceedings stated that the notices under Section 9(3) and 10 of the Act, were served on the land owners and interested persons. The award enquiry as contemplated under Section 11 of the Act was conducted on 11.07.1994, 12.07.1994 and 13.07.1994. However, the petitioner's father did not appear for award enquiry. Hence, the ownership of apportionment and alienable right for the extent of the subject land could not be decided and as such the entire compensation amount at Rs. 1,17,508/- was ordered to be deposited in the Civil Court as contemplated under Section 30 and 31(2) of the Act. Because of the interim order passed by this Court in this writ petition, the possession of the land has not been taken over by the requisition body. Therefore, there is absolutely no answer for the service of notices as contemplated under Section 5A, 9(3), 10 and 12(2) of the Act even passing the award.

9. Dr.R.Gouri, the learned Standing Counsel for the respondents 3 and 4, vehemently contented that the present writ petition has been filed after a period of 22 years and as such the writ petition is not maintainable. Further she contended that though the petitioner's father died during the acquisition proceedings, it was not indicated and the revenue records were not mutated in the names of the legal heirs i.e. the petitioner.

10. In support of her contentions, she relied upon the judgments in 1996 (1) SCC 250 in the case of "State of T.N and others Vs. L.Krishnan and others", in 1996 (11) SCC 501 in the case of "Municipal Corporation of Greater Bombay Vs. Industrial Development Investment Co. Pvt. Ltd and others", in 2008 (3) SCC 462 in the case of "Hindustan Zinc Ltd Vs. Bhagwan Singh Bhati and others", in 2005 6 SCC 493 in the case of "Govt. Of A.P. and others Vs. Kollutla Obi Reddy and others", in 2008 (4) SCC 695 in the case of "Swaika Properties (P) Ltd and another Vs. State of Rajasthan and others", in 2006 (11) SCC 464:2007 (1) SCC (L&S)500 in the case of "U.P.Jal Nigam and another Vs. Jaswant Singh and another".

11. Admittedly, there is no piece of paper produced by the respondents to show that the petitioner or his father or the interested persons on the subject land were served notice under Section 5A for the enquiry. The counter reveals that they simply followed the usual formalities and after due publication and services of required notices. But as stated supra, no piece of evidence produced by the respondents to prove the same.



12. Even in the name of the dead person, no notices were served under Section 9(3) and 10 of the Act before passing an award. Even after passing an award on 28.07.1994 in Award No.05 of 1994, no notice was served on the petitioner or his deceased father or any interested persons in respect of the subject property as contemplated under Section 12(2) of the Act.

13. A perusal of the award also revealed that the petitioner's father is the notified person under Section 4(1) of the Act. He did not appear for award enquiry, hence, the ownership of apportionment and alienable right of the subject property could not be decided. The entire compensation for the subject property is ordered to be deposited in the Civil Court as contemplated under Section 30 and 31(2) of the Act. There is absolutely no evidence to show that after the award, the award amount has been deposited before the Civil Court. This Court while admitting this writ petition ordered an interim stay of dispossession alone. Therefore, there is absolutely no impediment for the respondents to deposit the award amount as ordered by the Land Acquisition Officer in Award No.05 of 1994. dated 28.07.1994.

14. Even till today, the respondents did not deposit the award amount in respect of the subject property. Insofar as the possession is concerned, admittedly, the petitioner is in possession and enjoyment of the same. Therefore, the acquisition proceedings have lapsed as contemplated under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. That apart, as stated supra the respondents failed to follow any procedure as contemplated under the Act and acquired the subject land.

15. In view of the above, the notification issued under Section 4(1) of the Land Acquisition Act, 1894 in G.O.Ms.No.878, dated 28.05.1991 (Housing and Urban Development Department) and the declaration made under Section 6 of the Land Acquisition Act, 1894 in G.O.Ms.No.473, dated 27.07.1992 (Housing and Urban Development Department) by the first respondent and the award proceedings in Award No.5 of 1994 dated 28.07.1994 made by the second respondent under the Land Acquisition Act, 1894, is hereby quashed.



16. Accordingly, this writ petition stands allowed. Consequently, connected Miscellaneous Petitions are closed. There shall be no order as to costs.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
The State of Tamil Nadu,
Housing and Urban Development Department,
Fort St.George, Chennai - 9.
2. The Special Tahsildar,
Land Acquisition,
Housing Scheme Unit-III,
Coimbatore.
3. The Managing Director,
The Tamil Nadu Housing Board,
Anna Salai, Nandanam,
Chennai - 600 035.
4. The Executive Engineer and
Administrative Officer,
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Coimbatore Unit, Tatabad,
Coimbatore - 641 018.

+1cc to the Government Pleader Sr.69742

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and M.P.No.2 of 2011
and W.M.P.Nos.28637 of 2017, 16585 and 16589 of 2021

ssv[col]
srg 21/01/2022