

IN THE HIGH COURT OF JUDICIATURE AT MADRAS

DATED : 16.04.2021

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE P.T.ASHA

W.A.Nos.1529 to 1532 of 2015 and M.P. Nos.
1, 1, 1 & 1 of 2015 and 2, 2 and 2 of 2015

S.Sakthivel Shanmugam
rep. by her Power of Attorney
M.Shanmugam ... Appellant in W.A. No.1529 of 2015

P.Sasikala
rep. by her Power of Attorney
M.Shanmugam ... Appellant in W.A. Nos.
1530 to 1532 of 2015

versus

1.The State Government,
rep. by its Secretary to Government,
Housing and Urban Development Department,
Fort St. George, Chennai-9.

2.The District Collector,
Collectorate,
Kanchipuram,
Kanchipuram District.

3.The Tamil Nadu Housing Board,
rep. by its Managing Director,
Nandanam,
Chennai 600 035. ... Respondents in all cases

Prayer in all cases: Appeal filed under Clause 15 of Letters Patent to set aside the order dated 04.08.2015 in W.P. Nos.23570, 23569, 23571 and 23572 of 2015 and allow the present writ appeals as prayed for.

Prayer in W.P.No.23569, 23570, 23571, 23572 of 2015 : Writ Petition filed under Article 226 of the Constitution of India directing the Respondents to release unutilized land bearing Plot No.14 an extent of 2125 Sq. feet plot comprised in Survey No.363/3 Part subsequently sub divided as per patta No.6802, plot No.VIII an extent of 1732 Sq. feet plot comprised in Survey No.362/2A part and 363/1A Part, Plot No.VII an extent of 1740 Sq. feet plot comprised in Survey No.363/1A Part subsequently sub divided as per Patta No.6842 and Plot No.28

an extent of 1650 Sq. feet plot comprised in Survey No.363/3 and 369/4B Part subsequently sub divided as per Patta No.6802 respectively in sholinganallur Village Tambaram Taluk Kanchipuram District as per new Act Section 24(2) of Right to Fair Compensation Transparency Act in Land acquisition Rehabilitation and Resettlement Act in 2013.

For Appellants in all cases : Mr.A.R.L.Sundaresan,
Senior Counsel for
Ms.AL.Ganthimathi

For Respondents in all cases : Mr.K.Magesh,
Special Government Pleader
for R1 & R2
Dr.R.Gowri for R3

COMMON JUDGMENT

(Judgment of this Court was delivered by T.RAJA,J.)

The writ appeals have been filed against the common order dated 04.08.2015 passed by the learned Single Judge in W.P. Nos.23569 to 23572 of 2015.

2.Mr.A.R.L.Sundaresan, learned senior counsel appearing for the appellants, who are subsequent purchasers, submitted that after the land acquisition proceedings were initiated, the original owners of the land questioned the same in the Writ Petition No.3453 of 1992 un-successfully and after the dismissal of the writ petition, they have also pursued their challenge in writ appeal in W.A. No.62 of 2000 and the same was also dismissed. Being aggrieved, they have also filed Special Leave Petition(C) No.25476 of 2010 before the Apex Court and the same was also dismissed. However, during the pendency of these proceedings, these appellants, being the subsequent and innocent purchasers, became the owners of the land by virtue of the registered sale deed dated 26.09.2005. After purchasing the land in question, they have also obtained patta from the Tahsildar, Sholinganallur. When the respondents have not paid the compensation to the land owners and the physical possession of the land also continues with the land owners even today, the land acquisition proceedings will stand vitiated as per the 2013 Act.

3.In support of his submission, learned senior counsel for the appellants brought to our notice the patta issued on 22.09.2015, 26.09.2005 and 31.10.2005 in respect of the land covered in Survey Nos.362/2A & 363/1A, 369/3, 363/1A and 369/3 & 369/4B in the name of Sakthivel Shanmugam and Sasikala. Mr.Sundaresan further submitted that when the physical possession of the land continues with the appellants and the

respondents have not even paid the compensation for the land in question, the appellants are entitled to get back the land. These legal aspects have been completely overlooked by the learned Single Judge, therefore, these appeals are liable to be allowed by setting aside the impugned order.

4.Per contra, opposing the above submissions, Dr.Gowri, learned counsel for the third respondent contended that it is an admitted case that the appellants are the subsequent purchasers by virtue of the sale deed dated 26.09.2005 and they have purchased the land from the erstwhile owners, who un-successfully, having challenged the land acquisition proceedings in W.P. No.3453 of 1992, W.A. No.62 of 2000 and S.L.P. (C) No.25476 of 2010, lost their legal battle finally and therefore, the issue became final and concluded, hence the subsequent purchasers have no legal right to question the land acquisition proceedings any longer. Taking support from the ratio laid down by the Hon'ble Apex Court in the case of Shiv Kumar and another vs Union of India and others reported in 2019 10 SCC 229, holding categorically that the proviso to Section 24(2) does not recognise any subsequent purchaser after Section 4 notification inasmuch as it provides that where an award has been made and the compensation in respect of a majority of landholdings has not been deposited in the account of beneficiaries, then, all beneficiaries specified in the notification for acquisition issued under the 1894 Act, shall be entitled to compensation under the provisions of the 2013 Act. Continuing her argument, learned counsel for the third respondent submitted that even the transaction of sale, effected after Section 4 Notification being void and ineffective cannot effect transfer of the land, such incumbents cannot invoke the provisions of Section 24 as the sale transaction did not clothe them with the title, more particularly, when the purchase was made, the possession of the land had already vested with the Government, hence, they cannot claim possession and challenge the acquisition as the proceedings have been lapsed under Section 24.

5.With regard to the payment of compensation, learned counsel for the third respondent submitted that the entire compensation has been paid on 15.03.1994 by way of bankers cheque for Rs.4,54,134/- on 01.03.1994, but the payment of compensation has not been received by the erstwhile owners. Therefore, as per the above ratio laid down by the Hon'ble Apex Court, the appellants, being the subsequent purchasers, have no locus standi to come to this Court.

6.First of all, let us examine the arguments of Mr.Sundaresan. whether subsequent purchasers of land, acquired by the land acquisition authority, are legally entitled to maintain these writ appeals.

7.Section 16 of the Old Act 1894 prohibits any transfer of acquired land after Section 4(1) Notification, followed by section 6 declaration ending up with passing of the Award

under Section 11 by the Collector had been made. Section 16 is extracted as under:

'16.Power to take possession: When the Collector has made an award under Section 11, he may take possession of the land, which shall thereupon (vest absolutely in the (Government)), free from all encumbrances.'

8.A careful perusal of Section 16 tells us that any land acquired under this Act vests with the Government free from all encumbrances, hence, the Collector has got the power to take possession, when he made an Award under Section 11 of the Act. Even Section 16-A is relevant to be extracted hereunder:

'16-A. Restriction on transfer, etc. - (1) No person or authority (other than the Government), for whom any land is acquired under this Act for any public purpose as referred to in sub-section (1) of Section 4, shall transfer the said land or any part thereof by way of sale, mortgage, gift, lease or otherwise except with the previous sanction of the Government.'

9.A mere perusal of the above provision tells us clearly that no person for whom any land is acquired shall transfer the land or any part thereof by way of sale, mortgage, gift, lease except with the previous sanction of the Government. If any such sale or transfer takes place, the same shall be null and void. Similarly, Section 44-A also prohibits transfer of land by anyone after initiation of acquisition proceedings. Therefore, the appellant has no legal right to maintain the writ petition. As Sections 16, 16-A & 44-A of the Land Acquisition Act prohibit any transfer of land after 4(1) Notification is issued, since the land in question stood vested with the Government, hence, these appeals cannot be maintained.

10.Besides, under Section 16, when the Collector makes an award by virtue of Section 11, the land acquired under the Land Acquisition Act 1894 vests with the Government and the Collector has got the power to take possession. In this case, after Section 4(1) Notification dated 30.05.1990, followed by Section 6 declaration dated 21.06.1991, Award No.5/93 was passed on 30.06.1993, consequently it vests with the Government, therefore, submission made by the learned senior counsel that the Revenue Authority has issued patta on 17.05.2015 in the name of the subsequent purchasers in respect of the acquired land will not vest any legal title or ownership on the land in question in view of Section 16 and 16-A of the Act for a simple reason that the owner of the land ceased to be in possession and enjoyment of the land acquired by the Government, therefore, the patta dated 22.09.2015, 26.09.2005 and 31.10.2005 said to have been obtained by the appellants will not have any legal sanctity as it appears to have been obtained by manipulation. Therefore, this Court will not espouse any such claim of manipulators of revenue records.

11. Besides, it has been held by the Apex Court in the case of Shiv Kumar and another vs Union of India and others reported in 2019 10 SCC 229 that the purchasers after Section 4 notification have not been given the right to receive the higher compensation under the provisions contained in the 2013 Act, hence, the appellants, being the subsequent purchasers, have no locus standi

to come to this Court. In this context, it is pertinent to extract relevant paragraphs 18, 19 and 20 as under:

'18. Even otherwise, proviso to Section 24(2) does not recognise a purchaser after Section 4 Notification inasmuch as it provides that where an award has been made and the compensation in respect of a majority of landholdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition issued under the 1894 Act, shall be entitled to compensation under the provisions of the 2013 Act. The proviso makes it clear that in case of compensation concerning the majority of landholdings has not been deposited, then recorded owner(s) at the time of issuance of notification under Section 4 of the 1894 Act shall have the right to receive the compensation. Purchasers after Section 4 notification have not been given the right to receive the higher compensation under the provisions contained in the 2013 Act.

19. The 2013 Act presupposes that a person is required to be rehabilitated and resettled. Such a person who has purchased after Section 4 notification as sale deed is void under the 1894 Act, cannot claim rehabilitation and resettlement as per policy envisaged under the 2013 Act, as his land has not been acquired, but he has purchased a property which has already been acquired by the State Government, he cannot claim even higher compensation, as per proviso to Section 24(2) under the 2013 Act. An original landowner cannot be deprived of higher value under the 2013 Act, which higher compensation was not so contemplated when the void transaction of sale had been entered, and right is conferred under the proviso to Section 24 (2) on recorded owners under the 1894 Act. We have come across instances in which after notifications under Section 4 were issued and the property was purchased at throwaway prices by the builders and unscrupulous persons, such purchasers are void and confer no right even to claim higher compensation under Section 24(2) of the 2013 Act as it is to be given to the owner as mentioned in the

notification.

20. Given that, the transaction of sale, effected after Section 4 notification, is void, is ineffective to transfer the land, such incumbents cannot invoke the provisions of Section 24. As the sale transaction did not clothe them with the title when the purchase was made; they cannot claim "possession" and challenge the acquisition as having lapsed under Section 24 by questioning the legality or regularity of proceedings of taking over of possession under the 1894 Act. It would be unfair and profoundly unjust and against the policy of the law to permit such a person to claim resettlement or claim the land back as envisaged under the 2013 Act. When he has not been deprived of his livelihood but is a purchaser under a void transaction, the outcome of exploitative tactics played upon poor farmers who were unable to defend themselves.'

12. The above observation vividly makes the legal position clear that any sale of land after the issuance of notification under Section 4 of Land Acquisition Act 1894 is void, hence, it does not give any right to subsequent purchasers to invoke provisions of Section 24(2) of 2013 Act, even the proviso does not recognise such purchasers.

13. Since the above ratio laid down by the Hon'ble Apex Court clearly non-suits the appellants on the ground that they are only subsequent purchasers, who have no locus standi to question the land acquisition proceedings, more particularly, when the land owners had un-successfully challenged the acquisition proceedings, we are unable to find any merits in the appeals filed by the subsequent purchasers appellants. Hence, the appeals, being not maintainable, shall stand dismissed. Consequently, connected Miscellaneous Petitions also stand closed. No costs.

Sd/-

Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

vga

To

1. The State Government,
rep. by its Secretary to Government,
Housing and Urban Development Department,
Fort St. George, Chennai-9.

2.The District Collector,
Collectorate,
Kanchipuram,
Kanchipuram District.

3.The Tamil Nadu Housing Board,
rep. by its Managing Director,
Nandanam,
Chennai 600 035.

+1cc to Ms.AL.Ganthimathi, Advocate SR.No.23326

+1cc to Government Pleader SR.No.23371

W.A.Nos.1529 to 1532 of 2015 and M.P. Nos.
1, 1, 1 & 1 of 2015 and 2, 2 and 2 of 2015

AJB (CO)
GMY (29/06/2021)



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