

IN THE HIGH COURT OF JUDICIATURE AT MADRAS

DATED : 26.04.2021

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.A. No.1346 of 2011
and M.P. No.1 of 2011

The Chairman,
Tamil Nadu Housing Board,
No.493, Anna Salai,
Nandanam,
Chennai-600 035.

... Appellant

versus

1.K.A.Ramachandra Rao

2.The State of Tamil Nadu,
rep. by the Secretary to Government,
Housing & Urban Development Department,
Fort St. George,
Chennai-600 009.

3.The Special Tahsildar (LA),
Housing Scheme,
Coimbatore.

... Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent to allow this writ appeal by setting aside the order made in W.P. No.5031 of 2000 dated 22.06.2009 on the file of this Court.

Prayer in WP.No.5031 of 2000: To call for the records relating to GO.Ms.No.297(Housing and urban development Department) dated 15.04.1993 published in Tamil Nadu Government Gazette Extraordinary, Madras dated 16.04.1993 in part II section 2 issued under section 6 declaration of Land Acquisition Act in respect of the lands bearing Survey No.409 measuring 12½ cents in vilankurichy village, Coimbatore North Taluk, Coimbatore District and quash the same.

For Appellant : Dr.R.Gowri

For Respondents: Mr.AR.L.Sundaresan,
Senior Counsel for

Mr.D.Senthilkumar for R1

Mrs.A.B.Reehana Begum,
Government Advocate for R2 & R3

JUDGMENT

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

The Chairman of Tamil Nadu Housing Board has brought this writ appeal against the impugned order dated 22.06.2009 passed by the learned Single Judge in W.P. No.5031 of 2000 in and by which, the learned Single Judge, based on the order passed in W.P. Nos.19925 and 19927 of 1994 dated 21.12.2004, allowed the writ petition on the ground that Notification issued under Section 4(1) of the Land Acquisition Act (hereinafter referred to as 'the Act') and the Award passed under Sections 6, 9 and 10 of the Act were quashed.

2.Learned counsel appearing for the appellant contended that the writ petitioner is not entitled to come to this Court invoking Article 226 of the Constitution of India with the huge and un-explained delay of five years from the date of passing the Award dated 18.04.1995 in Award No.1/1995. In the meanwhile, the appellant has taken possession by virtue of Section 16 of the Act, when 4(1) Notification followed by Section 6 declaration had taken place. After passing the award, either the land owner or the interested person has no legal right in respect of the land in question. Therefore, when the award No.1 of 1995 was passed on 18.04.1995, after huge and unexplained delay of 5 long years, the writ petitioner cannot come to this Court.

3.Secondly, the order passed by the learned Single Judge allowing the writ petition was subsequently set aside by the Division Bench vide its judgment dated 25.11.2008 in Writ Appeal Nos.1241 and 1242 of 2005 on the ground that the Notification issued under Section 4(1) has become defective, due to improper publication in the local newspaper and that the public purpose would override the individual interest and that belated claims cannot be entertained. These aspects have been overlooked by allowing the writ petition filed by the writ petitioner. Hence, the impugned order is liable to be set aside by allowing the appeal, it is pleaded.

4.Per contra, Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the first respondent/writ petitioner, opposing the above contentions, pleaded that when similar writ appeal in W.A. No.3887 of 2019 was filed by Ravisam challenging the similar order passed by the learned Single Judge in W.P. No.3640 of 2001, the Hon'ble First Bench, setting aside the impugned

judgment dated 24.06.2019 and the Review Application dated 26.08.2019, allowed the Writ Appeal No.3887 of 2019 and remitted back the matter to the learned Single Judge. Learned Senior counsel appearing for the first respondent contended that in the present case on hand, when 4(1) Notification was issued, followed by Section 6 declaration, neither the name of the writ petitioner nor the name of the vendor was mentioned in spite of the fact that the vendor's name found a place in the revenue records. Continuing his arguments, he would submit that the writ petitioner has purchased the land in question on 30.09.1981, but the 4(1) Notification was issued on 05.02.1992, after several long years. However, Section 6 declaration was issued on 15.04.1993 and thereafter, the Award No.1 of 1995 was passed on 18.04.1995 by the Collector. When the original owner of the land in question has executed the sale deed on 30.09.1981 before the issuance of 4(1) Notification, the name of the writ petitioner should have been shown either in the 4(1) Notification or in the Section 6 declaration. In the present case on hand, without showing the name of the land owner in 4(1) Notification or in Section 6 declaration, the Department cannot proceed to hold the Award enquiry under Section 5-A of the Act. Moreover, before holding the Award enquiry, no notice was issued either to the writ petitioner or to his vendor. These aspects have been overlooked by the learned Single Judge while allowing the writ petition. Moreover, when the writ petitioner has filed the above writ petition under Article 226 of the Constitution of India, raising several legal issues that no notice was issued to the petitioner or to the vendors before holding the Award enquiry under Section 5-A of the Act, failure of which would vitiate the entire land acquisition proceedings, the appellant, without even filing any counter affidavit answering any one of the substantial issues, merely making oral statement that a similar order passed by the learned Single Judge was set aside by the Division Bench in Writ Appeal, hurriedly this impugned order allowing the writ petition has been passed without deciding any good reasons. Now a similar order has been set aside by the First Bench. Therefore, when a similar order was set aside by the Hon'ble First Bench in W.P. No.3887 of 2019 vide order dated 22.07.2020 on the ground that notice was issued to the dead person, whereas, in the present case, no such notice was issued to the land owner namely, the writ petitioner and that the writ Court did not examine any factual or legal issues and the matter may be remanded back to the learned Single Judge for fresh consideration, it is pleaded.

5.Finding merits on the submission made by Mr.Sundaresan that there was no records produced before us and no notice was issued either to the writ petitioner or to his vendor, taking note of the fact that 4(1) Notification was issued on 05.02.1992, followed by Section 6 declaration issued on

15.04.1993 and award was passed on 18.04.1995 bearing Award No.1 of 1995 and the writ petitioner had purchased the land way back on 30.09.1981, we are of the considered opinion that notice ought to have been issued to the original owner of the land. As it has not been done so, we are inclined to remand the matter back for fresh consideration. Accordingly, the impugned order is set aside and the writ appeal is allowed remanding the matter back to the learned Single Judge for fresh consideration as per law. Consequently, M.P. No.1 of 2011 stands closed. No costs.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

vga

To

1.The Secretary to Government,
The State of Tamil Nadu,
Housing & Urban Development Department,
Fort St. George,
Chennai-600 009.

2.The Special Tahsildar (LA),
Housing Scheme,
Coimbatore.

+2cc to Mr.D.Senthil Kumar, Advocate, S.R.No.25369

W.A. No.1346 of 2011
and M.P. No.1 of 2011

RSV(CO)
CB(13/07/2021)

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