

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2021

CORAM

THE HONOURABLE Mr. JUSTICE S.S.SUNDAR

W.P.No.17382 of 2008

and

M.P.Nos.1 and 2 of 2008

and

M.P.No.1 of 2010

Deepak Lamech

... Petitioner

vs

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

2.The Special Tahsildar (Land Acquisition),
No.9, Tamil Nadu Housing Board,
439, Anna Salai,
Nandanam, Chennai - 600 035.

3.The Tamil Nadu State Housing Board,
by its Secretary,
493, Anna Salai,
Nandanam, Chennai - 600 035.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Declaration, declaring that the land acquisition proceedings initiated by issuing notification under Section 4(1) as published in the Gazette dated 11.06.1975 followed by issuing declaration under Section 6 dated 09.06.1978 which was culminated into passing of an Award No.1/1988 dated 09.05.1988 in so far as it relates to the lands comprised in S.No.152/1 measuring an extent of 1.18 acres situate in Valasaravakkam Village as non-est in law and nullity as being statutorily lapsed in terms of proviso to Section 11 A of the Land Acquisition Act 1894 and as per order made in W.P.No.10657/1988 dated 28.10.1991 and consequently forbear the respondents from interfering with the right of the petitioner in respect of the aforesaid lands.

For Petitioner : M/s.A.L.Ganthimathi

For Respondents : Mr.E.Manohar (For R1 and R2)
Special Government Pleader

Mr.M.Bhaskar (For R3)

O R D E R

The present writ petition is filed for a Writ of Declaration, declaring that the land acquisition proceedings initiated by issuing notification under Section 4(1) of the Land Acquisition Act, 1984, as published in the Gazette dated 11.06.1975 followed by issuing declaration dated 09.06.1978 under Section 6 of the Land Acquisition Act, which was culminated into passing of an Award No.1/1988 dated 09.05.1988 insofar as it relates to the lands comprised in Survey No.152/1 measuring an extent of 1.18 acres situate in Valasaravakkam Village as non est in law and nullity as being statutorily lapsed in terms of proviso to Section 11-A of the Land Acquisition Act and as per the order made in W.P.No.10657/1988 dated 28.10.1991 and consequently, forbear the respondents from interfering with the right of the petitioner in respect of the aforesaid lands.

2. The brief facts necessary for disposal of the writ petition are as follows:-

The petitioner is the owner to an extent of 2.11 Acres of land comprised in Survey No.152/1 in Valasaravakkam Village. The petitioner states that he has been in exclusive possession and enjoyment of that land. The First Respondent issued a notification under Section 4(1) of the Land Acquisition Act (Central) which was published in Tamil Nadu Government Gazette dated 11.06.1975, proposing to acquire large extent of lands including the land belongs to the petitioner for the purpose of implementation of housing schemes to meet the demands of various sections of the public and for development of the area as new Ramapuram Neighbourhood Scheme.

3. It is admitted that the notice under Section 5-A of the Land Acquisition Act was issued on 06.11.1975. Though the petitioner raised written objections, a declaration under Section 6 of the Land Acquisition Act was issued vide G.O. Ms. No. 956 dated 07.06.1978 in respect of an extent of 1.18 Acres in Survey No.152/1B. After the declaration was published, an award enquiry was conducted on 18.09.1980. It is stated that after the award enquiry, no further action was taken for a long

time. The petitioner challenged the notification dated 11.06.1975 issued under Section 4(1) of the Land Acquisition Act in W.P. No.7124 of 1986.

4. This Court, while entertaining the said writ petition along with other writ petitions filed by similarly placed persons, granted interim stay by an order dated 25.07.1986 in W.M.P.Nos.10316 to 10318 of 1986 in W.P.Nos.7124 to 7126 of 1986. Thereafter, the interim stay granted by this Court was made absolute by an order dated 14.07.1987 in W.M.P.Nos.10316 to 10318 of 1986 in W.P.Nos.7124 to 7126 of 1986. However, the award was passed in Award No.1 of 1988 on 09.05.1988 and a copy of the award was also received by the petitioner on 23.06.1988. Challenging the said award, the petitioner once again filed another writ petition in W.P.No.10657 of 1988 in respect of the land in S. Nos. 152/1 and 152/3 in Valasaravakkam Village. The writ petition filed by the petitioner challenging the notification issued under Section 4(1) of the Land Acquisition Act, was allowed along with a batch of writ petitions filed by similarly aggrieved persons by a common order dated 09.10.1991 in W.P. No. 8226 of 1986 and batch. Subsequently, the writ petition in W.P.No.10657 of 1988 filed by the petitioner challenging the award was also allowed along with other writ petitions filed by similarly aggrieved persons by an order dated 28.10.1991 in W.P.Nos.10744, 10745 and 10657 of 1988 by this Court. Hence the award in respect of petitioner's land dated 09.05.1988 was quashed. It is true that the subsequent writ petition in W.P. No. 10657 of 1988 was allowed not on merits but on the ground that the acquisition proceeding was quashed in the earlier writ petition.

5. It is admitted before this Court that no further appeal was filed as against the common order dated 28.10.1991 in W.P.Nos.10744, 10745 and 10657 of 1988 passed by this Court quashing the award in Award No. 1 of 1988. However, the writ appeals in W.A. Nos. 687 and 688 of 1995 filed by the first and second respondents as against the common order dated 09.10.1991 in W.P.Nos.8226 of 1986 and batch including the writ petition in W.P. No. 7124 of 1986 were allowed by observing that if the Government intends to proceed further, it would be open to the petitioner herein to place all the materials including the order in W.P. No. 3693 of 1986 before the concerned authority. The Hon'ble Supreme Court in State of Tamil Nadu vs. L. Krishnan reported in AIR 1996 S.C. 497 has held that it cannot be said that unless a final and effective scheme prepared in accordance with the provisions of Chapter VII of the Housing Board Act is in existence, the Government cannot issue a notification under Section 4 of the Land Acquisition Act for acquiring land for acquiring the land if it is required for execution of the schemes by the Housing Board. In the light of the aforesaid view

expressed by the Hon'ble Supreme Court, the Hon'ble Division Bench in the order in W.A.Nos. 687 and 688 of 1995 dated 19.07.2001 observed that the conclusion arrived by the Learned Single Judge quashing acquisition proceeding for want of scheme or on the ground of vagueness cannot be sustained.

6. By virtue of the order passed by this Court earlier in W.A.Nos.687 and 688 of 1995, the authorities seem to think that they need not proceed further to pass fresh award. It is also admitted that no fresh enquiry was conducted giving further opportunity to the petitioner following the observation made in the order dated 19.07.2001. It is unfortunate to notice that the respondents did not have an independent advice as to the necessity of filing appeal as against the order dated 28.10.1991 in W.P. No. 10657 of 1988 which was an independent writ petition filed by the petitioner challenging the award.

7. Learned Special Government Pleader appearing for the first and second respondents submitted that the writ petition filed by the petitioner challenging notification issued under Section 4(1) of the Land Acquisition Act was ultimately dismissed and that the acquisition proceedings would stand revived automatically as the writ petition challenging award was allowed only because the earlier writ petition challenging acquisition was allowed.

8. The procedure contemplated under the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act' for short) has to be understood properly before dealing with the issue on hand. Under the Act, the first respondent has to issue preliminary notification under Section 4(1) of the Act when the Government propose to acquire any land belonging to an individual for a public purpose. The preliminary notification is issued to give an opportunity to the land owners to file their objection to the acquisition, if any. When the interested persons file objections, an enquiry is contemplated under Section 5-A of the Act by the Collector designated by Government for the purpose of acquisition to consider their objections and then to recommend whether their objections can be accepted or overruled by way of a report to the Government. After going through the records, the Government would decide whether the land is ultimately needed for the public purpose. Upon satisfying that the land is required for the public purpose de hors the objections raised by the land owners, a declaration under Section 6 of the Act has to be issued by the Government. Even for issuing declaration under Section 6 of the Act, the proviso to Section 6 of the Act prescribes a time limit. No valid declaration can be made beyond the period specified. Thereafter, the Land Acquisition Officer has to determine the compensation payable to the land owners. Proceedings shall be initiated independently by the Land

Acquisition Officer to pass award fixing compensation for the acquired lands. Before passing an award, every person who is interested in getting compensation for the lands should be given an opportunity to state his interest and about the value for the land. Thereafter, the award will be passed by the Land Acquisition Officer. Time limit has been prescribed by the Act for passing of the award under Section 11-A of the Act. Even after the declaration under Section 6 is validly made, the acquisition proceedings may sometimes lapse, if the award is not passed within the prescribed time. In this case, the declaration being made before 1984 amendment, the award should be passed within a period of two years from the commencement of Amendment (i.e. 24.09.1984). Of course, the period during which any further action is stayed by orders of Court should be excluded.

9. In the present case, the award was passed on 09.05.1988. Thereafter, the writ petition was filed by the petitioner challenging the award. The award was quashed by this Court following the judgement in the other writ petition in W.P.No.7124 of 1986 quashing the notification issue under Section 4(1) of the Act. However, the order of this Court in W.P.No.10657 of 1988 was allowed to become final and the award cannot automatically revive merely because the earlier writ petition in W.P.No.7124 of 1986 was ultimately dismissed in the writ appeal in W.A. No. 687 of 1995. Since the writ appeal filed as against the order made in W.P.No.7124 of 1986 was allowed, the writ petition filed by the petitioner stands dismissed. The land owner can approach this Court at every stage of the proceeding and the cause of action can be different to challenge acquisition at the stage of notification issued under Section 4 (1) of the Act, declaration under Section 6 of the Act and Award. The passing of award is a statutory function. Quashing of award will render the entire proceedings initiated under the Act, lapsed.

10. Having regard to the statutory obligations by prescribing time limit for every stage of acquisition proceedings, the order quashing the award should be treated as independent. The authorities having allowed the order in W.P.No.10657 of 1988 to become final, cannot now contend that the order in W.P.No.10657 of 1988 will have no consequences in view of the order passed by the Hon'ble Division Bench in W.A.No. 687 of 1995 against the order in W.P.No.7124 of 1986.

11. One of the contention raised by the respondents is that the notification issued under Section 4(1) of the Act, was quashed wrongly by referring to the judgement of the Hon'ble Supreme Court in State of Tamilnadu -vs- L.Krishnan reported in A.I.R. 1996 S.C 497. By assuming that the Hon'ble Supreme Court of India has quashed the notification on the ground that there

is failure on the part of the Housing Board to frame a scheme before issuing notification under Section 4(1) of the Act, writ petitions challenging acquisition including the petitioner's writ petition was allowed.

12. This Court in several judgements quashed the notification issued by the Government while acquiring the land for the Tamil Nadu Housing Board on the specific ground that the acquisition proceedings by the Tamil Nadu Housing Board even before framing a scheme are invalid. The views expressed by this Court on the ground of vagueness or failure to frame scheme before issuing notification under Section 4(1) of the Act was later not approved by the Hon'ble Supreme Court and it was held in subsequent judgements that failure to frame scheme before acquisition proceedings will not vitiate the land acquisition proceedings. Similarly, the Hon'ble Supreme Court did not entertain a challenge to acquisition only on the ground of vagueness. These developments have nothing to do in the present case as the petitioner may raise several grounds challenging the award in the writ petition in W.P.No.10657 of 1988, which was allowed. Though the writ petition challenging the award was allowed in this case by citing the order passed earlier by this Court in W.P.No.7124 of 1986, the petitioner could have challenged the award on other grounds. Since the award was quashed, the petitioner need not pursue further after the order in W.P.No.10657 of 1988.

13. When this Court quashed award in W.P.No.10657 of 1988, the petitioner was made to think at least to the extent that the acquisition proceedings cannot be continued without the order in W.P.No.10657 of 1988 being set aside. When the award itself was quashed, there is no room for assuming that the acquisition proceedings will be revived by an order in the appeal preferred against the order quashing the preliminary notification under Section 4(1) of the Act. When the award in Award No. 1 of 1988 was quashed by this Court, the acquisition proceedings could have been continued by initiating proceedings for passing fresh award if it is permissible in law that is by passing a fresh award within the time stipulated under Section 11A of the Act after excluding the time during which any action pursuant to preliminary notification is stayed by orders of Court.

14. Considering the individual's right under Article 21 read with Article 300-A of the Constitution, the provisions relating to the land acquisition has to be interpreted giving meaning to every limitation prescribed under the Act. So doing, this Court is unable to sustain the acquisition as it is impossible to pass a valid award after this length of time. Though it was open to pass fresh award without filing an appeal against the order in

the writ petition quashing award, due to lapse of time it cannot be suggested now.

15. Having regard to the admitted position, this Court is of the view that the order in W.P.No.10657 of 1988 being allowed to become final, the award proceedings remain quashed and there is no legal provision or principle that can be cited to revive the award as a consequence to the order allowing writ appeal in W.A. No. 687 of 1995.

16. It is also to be noted that the principles of res judicata is applicable to decision in the writ petition. This Court and the Hon'ble Supreme Court in several number of cases has dealt with the issue and held that the principles of res judicata is applicable to the proceedings under Article 226 of the Constitution of India. Though Civil Procedure Code is not applicable to a proceedings under Article 226 of the Constitution of India, the principle namely estoppel by judgement has been applied by all High Courts. By the previous judgement, this Court has quashed the award passed by the Land Acquisition Officer. By setting aside the order in W.P.No.7124 of 1986, the notification issued under Section 4(1) of the Act, was revived. However, it would mean nothing to revive the entire acquisition proceedings in the absence of a valid award. By lapse of time, the respondents cannot pass a fresh award. Even by excluding time during which there was stay, the petitioner is entitled to get the full advantage of the order in W.P.No.10657 of 1988, which cannot be rendered invalid or neutralised by the order in W.A.No.687 of 1995 which does not render the prayer in W.P. No. 10657 of 1988 infructuous especially when the prayer in W.P. No. 10657 of 1988 arose on a different cause of action.

17. One more aspect is noticed by this Court. While allowing W.A. No. 687 of 1995, the Hon'ble Division Bench gave liberty to the petitioners to place all the materials including the order in W.P. No. 3693 of 1986 wherein the acquisition was quashed on the ground of vagueness. This only suggests that this Court expected the respondents to start the proceedings from the stage of 5-A enquiry. The declaration under Section 6 was not subsequently challenged. In these circumstances, the petitioner will be put to serious prejudice if this Court holds in favour of respondents reviving the award as a consequent of restoring the 4(1) notification pursuant to order in appeal.

18. In view of the reasons stated above, this Court is of the view that the petitioner is entitled to the relief sought for and the writ petition is allowed and the notification issued under Section 4(1) of the Act as contemplated in the Government Gazette dated 11.06.1975 and the declaration dated 09.06.1978 under Section 6 of the Act, in respect of the petitioner's land

stand lapsed in terms of Proviso to Section 11-A of the Act. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS VIII)

/true copy/
Sub Asst. Registrar

dm
To

- 1.The Commissioner & Secretary to Government,
Housing and Urban Development Department,
Fort George,
Chennai - 600 009.
- 2.The Special Tahsildar (Land Acquisition),
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439, Anna Salai,
Nandanam, Chennai - 600 035.
- 3.The Secretary,
Tamil Nadu State Housing Board,
493, Anna Salai,
Nandanam, Chennai - 600 035.

+1 cc to M/s.A.L.Ganthimathi Advocate sr12452

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