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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.30481 of 2015

J.Manimekalai

.. Petitioner

Vs

1.The District Collector,
Namakkal District, Namakkal.

2.The Revenue Divisional Officer,
Trichengode,
Namakkal District.

3.The Tahsildar,
Tiruchengode Taluk,
Namakkal District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the 3rd respondent to issue patta and necessary mutation in all revenue records after made subdivision in Survey No.481/1, 2 & 482 to the extent of 12.41 acre by considering petitioner representation dated 12.05.2015.

For Petitioner : Mr.R.Marudhachalamurthy

For Respondents : Ms.Akila Rajendran
Government Counsel

ORDER

The prayer sought for herein is for a writ of mandamus directing the third respondent to issue patta and necessary mutation in all revenue records after made subdivision in Survey No.481/1,2 & 482 to the extent of 12.41 acre by considering petitioner representation dated 12.05.2015.

2. It is the case of the petitioner that the petitioner along with one Thilagavathy purchased the land in Survey No.481/1, 2 & 482 to the extent of 12.41 acres at Pallakkapalayam Village, Trichengode Taluk, Namakkal District.

3. The said land was purchased by the petitioner and another as stated above by a registered sale deed registered as Document No.1775/2008 on the file of the Sub Registrar, Kumbhakapalayam.



4. Therefore, the petitioner and another had been in possession and enjoyment of the property in question which was sought to be acquired for a public purpose viz., for construction of a dumping yard thereby notification in G.O.No.120, Municipal Administration and Water Supply Department dated 29.08.2007 issued by the first respondent was published initiating the land acquisition proceedings under the Land Acquisition Act, 1894 wherein the emergency provision under Section 17 also had been invoked.

5. The said land acquisition proceedings had been challenged in W.P.No.32575 of 2007 where the entire land acquisition proceedings having been considered was quashed by this Court by order dated 24.06.2013 in the said writ petition on the ground that, the notification of the emergency provision i.e., under Section 17 of the Land Acquisition Act ought not to have been issued. Therefore, on that ground, the land acquisition proceedings was quashed. However, liberty was given to the land acquisition authorities to reissue the notification without invoking the emergency provision under Section 17 of the Act. The relevant portion of the order in Writ Court reads thus:

"23. For all the reasons stated above, this Court comes to the conclusion that the invocation of urgency clause under Section 17(2) is not justified and hence the notification in G.O.No.120, Municipal Administration and Water Supply Department dated 29.08.2007 is bound to be quashed. After the filing of the writ petition, this Court has ordered status-quo and subsequently the order was made absolute. Therefore, the subsequent passing of the award shall be of no consequence.

Accordingly, the writ petition is allowed and the notification in G.O.No.120, Municipal Administration and Water Supply Department dated 29.08.2007 is set aside. So far as the prayer for direction in the nature of negative mandamus not to proceed with the acquisition proceedings is concerned, this Court is of the considered view that such a blanket order is not justifiable in view of the fact that impugned notification is set aside on the ground of improper invocation of the emergency clause and not on the ground that the purpose for which the land was sought to be acquired was not a public purpose and that hence, the said part of the prayer has got to be negatived with the observation that the Government can proceed with the acquisition proceedings by issuing a fresh notification under Section 4(1) whereupon opportunity to raise objections shall be given to the petitioner and other land owners. No costs"



6. Though the said notification having been quashed where it is always open to the respondents land acquisition authorities to reissue the notification by deleting the notification of the emergency provision under Section 17, till the filing of this writ petition, no such move had been made by the respondents intending their action to acquire the land in question in the normal course of utilising the provision under the Land Acquisition Act.

7. In this context, it is the case of the petitioner that, the petitioner had given a representation on 12.05.2015 to the Tahsildar concerned i.e., the third respondent to issue patta to and in favour of the petitioner for the said land, however, the same had not been considered probably on the reason that, the land in question since had already been proposed to be acquired under the Land Acquisition Proceedings, though in this regard, the 4(1) notification having been quashed, on the other ground that notification under Section 17 shall not be issued, subsequently, at any time the Government may come forward to acquire the land and on that pretext, probably the third respondent Tahsildar had not acted upon on the representation of the petitioner dated 12.05.2015. Therefore, in that circumstances, in order to act upon on the representation of the petitioner and to issue a mandamus to that respect, the petitioner has approached this Court by filing the present writ petition.

8. Heard Mr.Marudhachalamurthy, learned counsel appearing for the petitioner, who would submit that, though the notification was quashed by the orders of this Court dated 24.06.2013, for the past 8 years, nothing has been moved further expressing their intention to acquire the land again by issuing the regular 4(1) notification as subsequently, the 2013 Act has also come into effect. Therefore, at this juncture, whether the purpose for which originally they intended to acquire the land in question is still there or not is not known. Hence the question of issuing any further land acquisition proceedings for the very same public purpose may not arise at this juncture. Hence, there can be no impediment for the third respondent Tahsildar to consider the request of the petitioner for issuance of patta in the name of the petitioner as claimed by her, hence, the learned counsel seeks indulgence in that line.

9. Ms.Akila Rajendran, learned Government Counsel appearing for the respondents has relied upon the following averments made in the counter affidavit.

"9) It is submitted that the Government of Tamil Nadu is liberty to issue a Fresh notification u/s. 4(1) of the Land Acquisition Act, 1894 by issuing an Amendment to 4(1) notification approved in G.O.Ms.No.120 (Municipal Administration and Water Supply Dept) dated 29-08-2007 or by substituting the section 17(1) in Place section 17



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(2) with incorporation of satisfaction of Govt about urgency.

10) It is therefore submitted that the Govt have not yet withdrawn its intention to acquire lands to an extent of 8.55.0 Hectares (21.12 Acres) in S.F.No.481/1 (Part), 481/2 & 482 of Pallakkapalayam Village in Kumarapalayam Taluk of Namakkal District. Hence, the prayer of the Writ Petitioner to issue patta and necessary mutation in all revenue records deserves no consideration and liable to be dismissed.

11) It is submitted that the averments in paras 2, 3 & 4 in affidavit, it is submitted Government have not withdrawn its intention to acquire the lands in 4(1) notification approved in G.O.Ms.No.120 (Municipal Administration and Water Supply Department) Dept, dated 29-8-2007. Hence the purchase made by the Writ Petition is not a 'Bar' for the Government to proceed further.

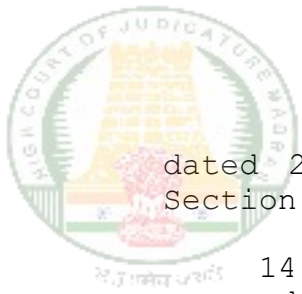
12) It is submitted that the averments in paras 5, 6 and 7 it is submitted that the Honourable Court in order passed on 24-06-2013 observed that the Government can proceed with the acquisition proceedings by issuing a fresh notification u/s 4(1) of Land Acquisition Act 1894, as the Government have not yet withdrawn its intention to acquire the lands."

10. By relying upon these averments made in the counter affidavit filed by the third respondent on behalf of the respondents, the learned Government Counsel would submit that, the land acquisition proceedings was quashed by this Court not for any other reason but only for the invocation of emergency provision under Section 17 of the Act.

11. Therefore, by that quashment, it will not preclude the respondents or the Land Acquisition Authorities to reissue the notification for the very same public purpose or any other public purpose, if any such public purpose arises now or in future. Therefore, probably, on that ground the third respondent Tahsildar has not considered the request of the petitioner for issuance of patta. Therefore, the petitioner cannot straightaway seek mandamus to issue patta, at this juncture, without having a clear cut direction from the Government as to whether they have still intention to acquire the land in question or not, therefore she seeks indulgence to reject the plea raised by the petitioner.

12. I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

13. Admittedly the land acquisition proceedings issued in the year 2007 have been questioned by the orders of this Court



dated 24.06.2013, of course on the ground of invocation of Section 17 of the Act.

14. Though that quashment may not preclude the respondents from reissuing the notification, the fact remains that, for all these years, no such notification has been reissued.

15. Though in the counter affidavit of the respondents filed by the third respondent, they have taken the stand that Government has not withdrawn its intention to acquire the lands, that would not ipso facto give reason to say 'No' by the third respondent to the request of the petitioner for issuance of patta.

16. Once the land acquisition proceedings having been quashed in the year 2013, for all these years, the land stands in the name of the petitioner and the same since has become absolute property of the petitioner, as no contra claim or rival claim has been projected, the petitioner, in the considered opinion of this Court, would be entitled to seek patta for the said land from the third respondent.

17. If at all the Government is still having the intention to acquire the land in question for the very same purpose, though nothing has been stated in the counter affidavit and no further materials have been produced to substantiate the said contention, however, the power of the Government to acquire any third parties land or private persons land for any public purpose is always vested with them. Therefore, merely because such power is vested with the Revenue Authorities they cannot say for ever that the land owners cannot seek for patta.

18. Even if patta is issued in the name of the petitioner based on the present ownership, that would not preclude the respondents to issue a land acquisition notification afresh for a public purpose in future depending upon such requirement. Therefore, on that pretext, the third respondent cannot keep the representation of the petitioner for ever without taking any action.

19. In that view of the matter, this Court is inclined to pass the following orders in this writ petition.

That there shall be a direction to the third respondent Tahsildar to consider the representation of the petitioner dated 12.05.2015 and pass orders thereon for grant of patta in respect of the land in question to and in favour of the petitioner, if the petitioner is otherwise entitled to get patta, after verifying the relevant ownership of the petitioner as claimed by her and in this regard, if an opportunity of being heard is required to be given for getting further input from the



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petitioner, such opportunity also can be given to the petitioner and thereafter, final orders as claimed shall be passed by the third respondent within a period of four weeks from the date of receipt of a copy of this order.

20. With this direction, this Writ Petition is disposed of. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

Sgl

To

- 1.The District Collector,
Namakkal District, Namakkal.
- 2.The Revenue Divisional Officer,
Trichengode,
Namakkal District.
- 3.The Tahsildar,
Tiruchengode Taluk,
Namakkal District.

+1cc to Mr.R.Marudhachalamurthy, Advocate, S.R.No.35748
+1cc to the Government Pleader, S.R.No.35951

W.P.No.30481 of 2015

PL(CO)
GN(14/09/2021)