

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 27..04..2021
Orders Pronounced : 12..05..2021

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition No.7621 of 2021

S.Ganesh

... Petitioner

-Versus-

1. The Project Director,
National Highways Authority of India,
No.6 (Old No.44), I Floor, Third Main Road,
Pon Nagar, Tiruchirappalli.
2. The Special District Revenue Officer (LA),
National Highways,
Office of the District Collector,
Villupuram.
3. The Executive Officer,
Koliyanur Panchayat Union,
Kavanipakkam Panchayat,
Villupuram Taluk,
Villupuram District.
4. The Executive Officer,
Anangur Panchayat,
Villupuram Taluk, Villupuram District.

... Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of mandamus directing the respondents 1 and 2 to forthwith pay the compensation payable to the petitioner in respect of road and street formed in the proposed layout measuring an extent of 365 square meters comprised in S.No.10/1B, measuring an extent of 277 square metters in S.No.10/2B at Kavanipakkam village, Villupuram District and measuring an extent of 462 square feet in S.No.752/2 at Anangur village, Villupuram District.

For Petitioner : Mr.AR.L.Sundaresan
Senior Counsel for
Mrs.AL.Ganthimathi

For Respondent(s) :Mr.S.R.Sumathy for R1
Standing Counsel
Mr.E.Manoharan,
Spl.Government Pleader for R2
Mr.S.N.Parthasarathi,
Government Advocate for RR3 & 4

ORDER

[This case has been heard through video conference]

This writ petition seeks a direction to the respondents 1 and 2 to pay compensation to the petitioner towards acquisition of the lands in S.No.10/1B measuring an extent of 365 square meters and measuring an extent of 277 square meters in S.No.10/2B situated at Kavanipakkam Village and measuring an extent of 462 square meters in S.No.752/2 at Anangur Village, Villupuram District which were set apart for public purposes, road and street in a proposed unapproved layout by the State for the formation of four-lane road.

2. The case of the petitioner is that the above lands were originally owned by one V.Vishakharathinam along with other vast extent of lands in different survey numbers and he had developed the properties by forming a layout in the name of "Sri Durga Nagar". However, the layout was not submitted for approval to the authorities concerned and remains unapproved and the developer had sold many of the house plots to different persons. At the time of forming the layout, the developer had left certain extent of land for public purposes like park and roads. In respect of the remaining 54 unsold plots and the lands reserved for public amenities and road purpose, the original owner of the land had executed a power of attorney in favour of the petitioner on 18.03.2013 to deal with those lands. While so, the lands in question along with vast extent of land comprised in different survey numbers were acquired by the respondents 1 and 2 for the formation of four-lane road in the existing NH-45A and compensation was also paid to the respective land owners. So far as the land in question which were earmarked for public amenities and road, no compensation was paid to the petitioner. In such circumstances, he made a representation to the respondents 1 and 2 for payment of compensation payable towards the acquisition of the lands in question, but, so far the compensation has not been paid to him. According to the petitioner, the layout was an unapproved layout and the areas reserved for public purpose and road were not gifted in favour of local body and the ownership continued to remain with the original owner. The Block Development Officer concerned had also given his no objection for awarding compensation to the petitioner. The grievance of the petitioner is that despite such factual position, the respondents 1 and 2 refused to release the

compensation payable to the petitioner. Hence, he had no other option except to approach this court by way of the instant writ petition.

3. Even though the respondents 1 and 3 have entered appearance through their respective counsel, none of them have chosen to file their counter affidavit.

4. Mr.A.R.L.Sundaresan, the learned senior counsel appearing for the petitioner would submit that the layout is an unapproved layout and even though certain extent of lands were earmarked for public purposes and road, those areas were not gifted to the local body concerned. Thus, the ownership of the lands in question was not transferred and the ownership remains with the original owner. In these circumstances, the petitioner alone entitled to receive the compensation payable for the acquisition of lands in question. Even during award enquiry, except the petitioner nobody made any claim over the compensation amount payable for the lands in question. Such being the factual position, the respondents 1 and 2 refused to pay the compensation to the petitioner and kept the same undisbursed and ordered to be deposited into the Current Account.

5. The learned senior counsel would further submit that earlier the Block Development Officer by way of his proceedings dated 26.12.2018 addressed to the Land Acquisition Officer (LA) Unit-1, National Highways 45A, Villupuram had clearly stated that the lands which were earmarked for public purposes including public amenities and roads were not transferred to the panchayat by way of gift deeds and the Block Development Officer had clearly expressed his no objection for making payment of compensation to the petitioner.

6. The respective learned counsel appearing for the respondents 1 and 2, per contra, would contend that admittedly the lands in question for which compensation is sought to be paid to the petitioner were reserved for public utility such as park and road and as per the provisions of The Tamil Nadu Town and Country Planning Act, 1971 and the development control rules, the lands in question shall automatically vest with the local body and the petitioner cannot claim any right over the space reserved for public purpose such as park and road. Even in case of unapproved layout, the lands which were reserved for public purpose will automatically vest with the local body and they are only entitled to maintain the same. Therefore, the petitioner cannot claim compensation for the lands reserved for public purpose and the Land Acquisition Officer was absolutely right in keeping the amount undisbursed and deposited into current account.

7. I have considered the rival submissions carefully and also perused the records carefully.

8. The issue involved in this writ petition is as to whether the owner of the lands is entitled to receive compensation towards the lands which were set apart in an unapproved layout for public purpose and road and not gifted to the local body concerned?

9. Admittedly the layout is an unapproved layout and the areas which were reserved for public purpose in the layout have not been transferred to the local body concerned by way of gift. Reserving any area for street, open space, etc. in a layout plan is normally for a public purpose and is meant to be used by the public in general. In the land reserved for public purpose, the local body concerned gets a right over it as a custodian to manage the same. The reservation however, does not by itself, confer any right, title or interest thereof in the local body until that land is transferred in their favour by way of a gift deed. Even though the lands were set apart for public purposes, the promoter of the layout deemed to be the owner of the lands unless and otherwise, the promoter transfers the land in favour of the local body by way of gift deed or by any other mode and the land reserved for public purpose will not automatically get vested with the Government or local body without proper transfer of title.

10. In this context, it is useful to refer to a judgement of the Hon'ble Supreme Court in P.T.Chet Ram Vashist (Dead) by LRs v. Municipal Corporation of Delhi, (1995) 1 SCC 47 wherein the Hon'ble Supreme Court has held as follows:-

"6. Reserving any site for any street, open space, park, school etc. in a layout plan is normally a public purpose as it is inherent in such reservation that it shall be used by the public in general. The effect of such reservation is that the owner ceases to be a legal owner of the land in dispute and he holds the land for the benefit of the society or the public in general. It may result in creating an obligation in nature of trust and may preclude the owner from transferring or selling his interest in it. It may be true as held by the High Court that the interest which is left in the owner is a residuary interest which may be nothing more than a right to hold this land in trust for the specific purpose specified by the coloniser in the sanctioned layout plan. But the question is, does it entitle the Corporation to claim that the land so specified should be transferred to the authority free of cost. That is not made out from any provision in the Act or

on any principle of law. The Corporation by virtue of the land specified as open space may get a right as a custodian of public interest to manage it in the interest of the society in general. But the right to manage as a local body is not the same thing as to claim transfer of the property to itself. The effect of transfer of the property is that the transferor ceases to be owner of it and the ownership stands transferred to the person in whose favour it is transferred. The resolution of the Committee to transfer land in the colony for park and school was an order for transfer without there being any sanction for the same in law. "

11. Thus, the law is very clear that unless the property is transferred to local body concerned, the local body cannot claim to be the legal owner of the lands in question and as such they are not entitled to compensation.

12. A Division Bench of this court in The District Collector, Kancheepuram District and another v. S.Rajasekaran, (2015) 3 LW 636 has held that until the reserved area is transferred to the local body, it cannot claim to be the legal owner of that area. The relevant portion of the judgement of the Division Bench of this Court reads as under:-

"15. It is the admitted case of the appellants that for the land in question, which was set apart for the public purpose in the approved layout, the writ petitioners have to execute a gift deed in favour of the local body. Since the writ petitioners are the owners of the entire land even after the approval, they are entitled for compensation. The owners of the lands except the lands set apart for public purpose have sold the plots/lands to individual owners. Hence, even after the approval of the layout, the local body has got some right over the lands set apart for public purpose. So the lands set apart for public purpose in the approved layout can be used by the public and the plot owners and other local body etc., Because of that, we cannot presume that the lands were automatically transferred to the local body or vest with the local body and that is why, the one of the condition laid down in the approved layout is that they are insisting the writ petitioners to execute a gift deed in favour of the local body. In this case, admittedly, even though the layout was approved,

there was no gift deed executed in favour of the local body till the acquisition proceedings is over. Hence, the title to the lands in question is not at all transferred to the local body and the local body cannot be the legal owner of the lands in question."

13. Another Division Bench of this Court in *The Project Director, National Highways Authority of India, Trichirappalli-620 001 v. Subramani*, (W.A.No.238 of 2013 dated 21.04.2017) has held that since the land in question was not gifted to local body, they are not entitled to claim compensation. The relevant portion of the judgement reads as under:-

"3. It is pertinent to note that payment to the Local Panchayat does not arise since the layout was admittedly not sanctioned by the competent authority and as such, the subject land was not gifted to the Local Panchayat and that possession of the property was also not taken by them. Further, the Local Panchayat itself vide proceedings dated 6.8.2010, gave no objection for the respondents 1 to 4 to receive compensation, which is a sum of Rs.23,52,895/-. Further, the persons who had purchased unapproved plots had also not made any claim in respect of the acquired property. Therefore, there is absolutely no rival claimant from any quarter to claim compensation apart from the respondents 1 to 4. It is the specific case of the respondents 1 to 4 that they are the owners of the subject land and entitled to receive the compensation. The appellant raised contention that irrespective of the fact that whether layout is an approved or not, roads and streets are necessarily earmarked for the usage of those purchasers and for the public at large and therefore, after selling the plots by the respondents 1 to 4 by forming a layout even if it is not approved, it goes without saying that such roads lose the character of private property as such, the respondents 1 to 4 are not entitled to compensation. We do not find any substance in the said contention raised on behalf of the appellant in view of the fact that the Local Panchayat itself has reported no objection for the respondents 1 to 4 to receive the compensation, which shows that they have no right over the acquired subject property."

14. In view of the above settled legal proposition and considering the entire facts and circumstances of the case, more particularly, the layout was not approved and the reserved areas were not transferred to the local body, the title of the lands in question remain with the owner of the property / promoter and the local body also has no objection for paying compensation to the petitioner, the petitioner alone is entitled for compensation.

In the result, this Writ Petition is allowed and the respondents 1 and 2 are directed to pay the compensation to the petitioner in respect of the lands in S.No.10/1B measuring an extent of 365 square meters and measuring an extent of 277 square meters in S.No.10/2B situated at Kavanipakkam Village and measuring an extent of 462 square meters in S.No.752/2 at Anangur Village, Villupuram District, together with all statutory benefits. No costs.

s/d-
Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

To

1. The Project Director,
National Highways Authority of India,
No.6 (Old No.44), I Floor, Third Main Road,
Pon Nagar, Tiruchirappalli.
2. The Special District Revenue Officer (LA),
National Highways,
Office of the District Collector,
Villupuram.
3. The Executive Officer,
Koliyanur Panchayat Union,
Kavanipakkam Panchayat,
Villupuram Taluk,
Villupuram District.
4. The Executive Officer,
Anangur Panchayat,
Villupuram Taluk, Villupuram District.

+1 Cc to M/s.A.L. Gandhimathi, Advocate sr 27222.

W.P.No.7621 of 2021

RK(CO)

SP(06/07/2021)