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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.10.2021

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.40298 of 2015

and

M.P.No.1 of 2015

R.Krishnamoorthy

... Petitioner

-Vs-

1. The State of Tamil Nadu,
Represented by its Special Secretary
to Government,
P.W.(High Ways) Department,
St.George Fort,
Chennai - 600 009.
2. Land Acquisition Officer &
Special Tahsildar (Land Acquisition) Unit-I,
East Coast Road, widening scheme,
Big Melamaiyur, Chengalpet.
3. Revenue Divisional Officer/Sub-Collector,
Chengalpet District,
Chengalpet.
4. The District Collector,
Kancheepuram District,
Kancheepuram.
5. The Revenue Divisional Officer,
Thiruporur Division,
Kancheepuram District.

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Declaration, declaring that the Land Acquisition Proceedings initiated by issuance of notification under Section 4(1) in G.O. (M.s).No:1491/Pw.Hs-2/Department, dated 27.10.1992 and published in the Tamil Nadu Gazette, dated 30.10.1992 followed declaration made under Section 6 in G.O.(M.s).No.1164, P.W.(Highways) (HS2) dated 06.08.1993 as published in Part-II, Section-2 of Tamil Nadu Government Gazette (Extraordinary) dated 13.08.1993



respectively culminating into issuance of notice under Section 12(2) of the Land Acquisition Act, 1894 issued by the R.D.O. Chengalpet/third respondent herein, signed by him on 21.08.2015, in respect of the petitioner's land comprised in S.No:338/5B2, measuring an extent of 34 cents, situate in Thiruvidadanthai group, Vada Nemmeli village then Chengalpet taluk and district and now in Thiruporur Taluk, Kancheepuram District as having statutorily lapsed in terms of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and non-est in law.

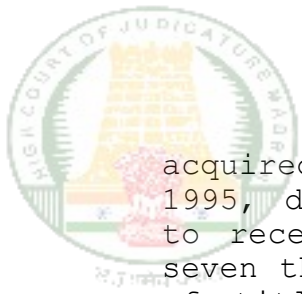
For Petitioner : Mr.V.Ayyadurai, Senior Counsel
for Mr.P.Muthukumaarasaamy

For Respondents: Mr.Richardson Wilson
Government Advocate.

ORDER

This Writ Petition has been filed for the issuance of a Writ of Declaration, declaring that the Land Acquisition Proceedings initiated by issuance of notification under Section 4(1) in G.O.(M.s).No.1491/Pw.Hs-2/Department, dated 27.10.1992 and published in the Tamil Nadu Gazette, dated 30.10.1992 followed declaration made under Section 6 in G.O.(M.s).No.1164, P.W.(Highways) (HS2) dated 06.08.1993 as published in Part-II, Section-2 of Tamil Nadu Government Gazette (Extraordinary) dated 13.08.1993 respectively culminating into issuance of notice under Section 12(2) of the Land Acquisition Act, 1894 issued by the R.D.O. Chengalpet/third respondent herein, signed by him on 21.08.2015, in respect of the petitioner's land comprised in S.No.338/5B2, measuring to an extent of 34 cents, situated in Thiruvidadanthai group, Vada Nemmeli village then Chengalpet taluk and district and now in Thiruporur Taluk, Kancheepuram District as having statutorily lapsed in terms of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and non-est in law.

2. The petitioner owned the land comprised in Survey No.338/5, to an extent of 62 cents, situated in Thiruvidadanthi Group, Vada Nemmeli Village, Chengalpet. It was purchased by him by a registered Sale Deed dated 11.10.1989, vide Document No. 2720 of 1989. He has put up a compound wall around his property and subsequently sub divided as Survey Nos.338/5A and 338/5B2. While being so, the petitioner received a notice in the month of August 2015 under Section 12(2) of the Land Acquisition Act, 1894 (herein after called as "Act"), dated 26.08.1995, signed by the third respondent on 21.08.2015. It reveals that an extent of 34 cents comprised in Survey No.338/5B2 was sought to be



acquired under the Act and passed an award in Award No. 13 of 1995, dated 26.08.1995, whereby the petitioner was called upon to receive the compensation at Rs.1,07,769/- (Rupees one lakh seven thousand seven hundred and sixty nine only), on production of title documents. The petitioner was not served with any notice whatsoever and as such, he issued notice to the third respondent for details with regard to acquisition.

3. Later, the petitioner came to know about the 4(1) notification issued on 27.10.1992 in G.O.Ms.No.1491/Pw/Hs-2/Department and published in the local dailies on 02.11.1992. On 11.11.1992, the substance of the 4(1) notification was published in the locality. Subsequently, on 13.08.1993, the declaration under Section 6 of the Act was Gazetted and published in the local dailies on 14.08.1993 and 15.08.1993. The substance of the declaration under Section 6 was published in the locality on 26.08.1993. On 01.06.1994, the notification under Section 7 was Gazetted. The notices under Section 9(3) and 10 were sent as per the order of the Sub-Collector on 07.07.1995. Therefore, the petitioner challenged the acquisition proceedings on the ground that he was not paid any compensation till today and the possession of the property has not been taken by the respondents and he is in possession and enjoyment of the subject property.

4. Mr.Ayyadurai, the learned Senior Counsel for the petitioner raised grounds that the acquisition proceedings were initiated in the year 1992 and it has not been completed even till the year 2015. The petitioner was never served with any notification under Section 4(1) of the Act. In fact, the Tamil dailies i.e., Athristam, Vetrimalalai, Dhina Thoothu and Makkal Kural, in which, the substance of notification under Section 4 (1) of the Act, said to have been published, are not having circulation in the locality. The substance of declaration under Section 6 of the Act is said to have been published in the locality on 26.08.1993 and as such, the award should have been passed on or before 25.08.1995. But the impugned award has been passed only on 26.08.1995 beyond the prescribed period of two years and as such, the acquisition proceedings have lapsed in terms of proviso to Section 11(A) of the Act. The respondents failed to deposit the compensation amount as per the award, immediately after passing the award as mandated under Section 31 of the Act. The notice under Section 12(2) of the Act have been issued after a period of twenty years and it would deprive the valuable right of the petitioner to make reference under Section 18 to claim enhancement of compensation.

5. The petitioner was never paid any compensation and it is also evident from the notice issued under Section 12(2) of the Act only in the month of August 2015, signed by the third respondent on 21.08.2015. The petitioner has been in effective possession and enjoyment of the subject land till today and not



even have taken symbolic possession of the subject property and as such, the entire land acquisition proceedings have lapsed in terms under Section 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. In support of his contentions, he relied upon the following judgments reported in :-

1. 2020 (3) MLJ 769 LNIND 2020 MAD 242 in the case of Executive Engineer, Tamil Nadu Housing Board, Coimbatore vs. R.Parthasarathi and Others,

2. 2017 (1) SCC 411 in the case of Delhi Development Authority vs. Radha Nagpal and Others,

3. 2016 (15) SCC 710 in the case of State of West Bengal and others vs. Aziman Bibi and others,

4. 2020 (4) SCC 572 in the case of D.B. Basnett (Dead), through legal representatives vs. Collector, East District, Gangtok, Sikkim and Another,

5. 2021 (2) CTC 300 in the case of K.Saraswathi. 2. K.Balan @ Vijayakumar vs. State of Tamil Nadu, represented by its Secretary to Government Housing and Urban Development Department, Secretariat, Fort St. George, Chennai-600 009.

6. Per contra, Mr.Richardson Wilson, the learned Government Advocate for the third respondent filed a counter stating that the notice issued under Section 12(2) of the Act, dated 26.08.1995 wrongly stated the signed date as 21.08.2015 and it is only a typographical error. Before passing an award, a notice in Form No.7 as required under Sections 9(3) and 10 of the Act had been duly served on the petitioner, thereby called upon him to attend the Award enquiry to be held on 09.08.1995.

7. After filing the writ petition, the Tahsildar, Thiruporur, inspected the subject property and it would revealed that the petitioner has possession of the remaining portion of the Survey No.338/5B1 and the acquired portion comprised in Survey No. 338/5B2, is lying vacant on the western side of the East Coast Road. The compound wall has been fallen down on one side, while erecting underground water line by the Metro Water Scheme. He also submitted a sketch with photographs to show that the subject land is lying vacant. He further submitted that to substantiate the contentions to lapse the acquisition proceedings under Section 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition Act, 1894, the petitioner has to prove the non depositing of the compensation amount and non taking the possession of the subject property. The portion of the subject property acquired from the petitioner and sub divided as Survey No.338/5B2 and all the revenue records mutated in the name of East Coast Road. Therefore, the acquired land is vested with the Government. The petitioner was duly



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served with notice under Sections 9(3) and 10 of the Act. However, the petitioner failed to appear for enquiry and passed the award. As far as the compensation is concerned, it was ordered to be kept under the revenue deposit. Accordingly, the award amount has been deposited in the revenue deposit and as such, the acquisition proceedings have not lapsed and prayed for dismissal of the writ petition.

8. Heard Mr.V.Ayyadurai, the learned Senior Counsel appearing for the petitioner and Mr. Richardson Wilson, the learned Government Advocate appearing for the respondents.

9. The respondents acquired the land ad-measuring 25.39 acres situated in No.45, Thiruvidadanthai Village, Chengalpet, for widening and strengthening of existing East Coast Road from Thiruvannamiyur to Cuddalore. Admittedly, the notification under Section 4(1) of The Right to Fair Compensation and Transparency in Land Acquisition Act, 1894, dated 27.10.1992, published in the Tamil dailies Athristam and Vetrimalalai. These newspapers are not having circulation in the locality. Before passing an award, a notice in Form No.7 as required under Sections 9(3) and 10 of the Act issued to the petitioner.

10. On perusal of records produced by the respondents, there is absolutely no proof to show that it was sent to the petitioner and received by the petitioner. That apart, the said Form No.7 was signed by the Sub Collector. Therefore, the Form No.7 was not served to the petitioner at any point of time. The petitioner came to know about the acquisition proceedings only on the notice issued under Section 12(2) of the Act, dated 26.08.1995. It was signed by the third respondent herein only on 21.08.2015 and received by the petitioner in the month of August 2015. Therefore, admittedly the said notice was not served to the petitioner immediately after passing the award.

11. Insofar as the award is concerned, even according to the respondents, the substance of the declaration under Section 6 was published in the locality on 26.08.1993. As per the proviso to Section 11(A) of the Act, the respondents should have passed the award within a period of two years i.e., on or before 25.08.1995. Whereas, the impugned award was passed on 26.08.1995, i.e., after a period of two years. Even after the award, no notice was served on the petitioner as contemplated under Section 12(2) of the Act immediately. As stated supra, it was served only in the month of August 2015, thereby called upon the petitioner to receive the compensation of Rs.1,07,769/.

12. Insofar as the deposit of the award amount is concerned, a perusal of records reveals that the award was passed on 26.08.1995 and the Form No.7 was served on the



petitioner only in the month of August 2015. The respondents produced records of deposit of payment voucher and revealed that the said deposit of payment voucher pertaining to the Award No. 12 of 1995 to the tune of Rs.10,00,00,000/- (Rupees Ten Crores only). Whereas, the award in respect of the petitioner land is concerned, it was passed in Award No.13 of 1995. Even assuming that the said deposit of payment voucher is pertaining to the Award No.13 of 1995, it was made only on 31.03.2011, after a period of sixteen years from the date of the award.

13. A perusal of the extract of the "A" Register reveals that after acquisition proceedings, the subject land has been mutated in the name of East Coast Road and the remaining land stood in the name of the vendor of the petitioner. Whereas, immediately after purchase, the petitioner was issued patta in Patta No. 1150, dated 04.05.1990, i.e., before issuance of notification under Section 4(1) of the Act. Thereafter, the petitioner also paid all the revenue dues in his name and accordingly, the revenue records were mutated in the name of the petitioner.

14. The learned Government Advocate for the respondents submitted that the possession of the land was taken and sub divided as Survey No.338/5B2 and produced the FMB and the photographs along with demarcated plan. It shows that the subject land has been sub divided and it is situated adjacent to the service road of the East Coast Road. The subject property has been surrounded with compound wall. In fact, by the letter dated 18.09.2021, addressed to The Managing Director, Jindal Water Infrastructure Limited, it was informed that the subject land are abutting East Coast Road on the western side of the road. The petitioner has put up a compound wall with granite blocks to protect the property and also engaged a watchman to take care of the land. During the month of July 2021, a poclain machine was working outside the property. When it was being so, it got damage to the compound wall and also started to dump the soil dug up from the road side into his land. Whereas, the respondents states in the counter that the compound wall has been fallen down on one side while erecting underground water line by the Metro Water Scheme. Thus, it is clear that the petitioner is in possession and enjoyment of the subject property even till today. There is absolutely no evidence to show even for symbolic possession of the subject property after passing an award, dated 26.08.1995.

15. The mutation of the revenue records are nothing but the desk work and neither symbolic possession nor physical



possession have taken in respect of the subject land from the petitioner. Insofar as the compensation amount also is concerned, as per the award amount, no amount has been deposited by the respondents and there is no evidence to show about the compensation amount made deposited in the revenue deposit or the Court deposit.

16. The learned Senior Counsel for the petitioner relied upon the judgment, in which the Hon'ble Division Bench of this Court relied upon the judgment reported in 2006 (1) CTC 51 in the case of N.D.Ramanujam and Others Vs. The State of Tamil Nadu rep. by its Secretary to Government and others. After extracting the provisions under Section 11 of the Act, held that there is no proof for prior approval. In the case on hand, the Collector without any prior approval of the appropriate Government or of such Officer as the appropriate Government may authorize in this behalf passed an award. Therefore, held that as far as prior approval under Section 11(1) of the Act is concerned, this Court doubts obtaining of prior approval under Section 11(1) of the Act and it has been shown in a suspicious manner. In the case on hand, the respondents failed to produce any document to show that the prior approval was obtained before passing an award.

17. In 2016 (15) SCC 710 in the case of State of West Bengal and others vs. Aziman Bibi and others, the Hon'ble Supreme Court of India held that the proceedings initiated under Section 4 and 6 of the Act had lapsed by the reason of failure of the competent authority to make proper award within the time stipulated for the purpose for once it was held that the proceedings had indeed lapsed, legal consequence would follow that would not allow even a writ Court to nullify such consequences. The Section 11(A) of the Land Acquisition Act, 1894, provides that the award shall be made under Section 11 of the Act within a period of two years from the date of declaration under Section 6 of the Act and if no award is made within a said period, the entire process for acquisition shall stand lapsed. In the case on hand, the award has been passed after a period of two years from the date of declaration under Section 6 of the Act.

18. As far as non issuance of 4(1) notification, the learned Senior Counsel relied upon the Judgment reported in 2020 (4) SCC 572 in the case of D.B. Basnett (Dead), through legal representatives vs. Collector, East District, Gangtok, Sikkim and Another, the Hon'ble Supreme Court of India held that the procedure of Section 4(1) of the Act is mandatory and unless that notice is given in accordance with the provisions contained therein, the entire acquisition proceedings would be vitiated. An entry into the premises based on such non-compliance would



result in the entry being unlawful. In the case on hand, there is no proof to show whether the process of acquisition has been followed in accordance with law. No notification has produced for the intention to acquire the land under Section 4 or any other declaration thereafter.

19. In view of the above, the respondents failed to follow any of the procedure as contemplated under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, while acquiring the subject land. As stated supra, the twin conditions as contemplated under Section 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 also proved by the petitioner, since the petitioner has not been paid any compensation amount and there is no proof to show that the entire compensation amount was already deposited in the Revenue Deposit or the Court Deposit. Insofar as the possession is concerned, even till today, the petitioner is in possession and enjoyment of the subject land and the respondents failed to produce any record to show even for symbolic possession in respect of the subject land. Therefore the entire acquisition proceedings have lapsed.

20. Accordingly, the proceedings initiated by the respondents under Section 4(1) in G.O.(M.s).No:1491/Pw.Hs-2/Department, dated 27.10.1992 and declaration made under Section 6 in G.O.(M.s).No.1164, P.W.(Highways) (HS2) dated 06.08.1993 are hereby quashed. However, the fourth respondent is directed to restore the subject land in the name of the petitioner and issue patta to the petitioner within a period of six weeks from the date of receipt of a copy of this order.

21. In the result, the writ petition stands allowed. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar



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To

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1. The Special Secretary to Government,
The State of Tamil Nadu,
P.W.(High Ways) Department,
St.George Fort,
Chennai - 600 009.
2. Land Acquisition Officer &
Special Tahsildar (Land Acquisition) Unit-I,
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5. The Revenue Divisional Officer,
Thiruporur Division,
Kancheepuram District.

+1cc to M/s.P.Muthukumarasamy, Advocate Sr.53291

W.P.No.40298 of 2015 and
M.P.No.1 of 2015

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