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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2021

CORAM

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

W.A.No.1573 of 2016

S.Sathyannarayanan

...Appellant

Versus

1. The Govt. of Tamil Nadu,
Rep. By its Secretary,
Housing & Urban Development,
Fort St. George,
Chennai - 9.
2. The District Collector,
Kanchipuram District.
3. The Special Tahsildar (Land Acquisition I),
Marimalai Nagar Scheme,
Kattankolathur, Chengalpet Circle,
Kanchipuram District.
4. The Member Secretary,
CMDA, No.8, Thalaimuthu Natarajan Malaigai,
Egmore, Chennai - 8.

...Respondents

Prayer: Writ Appeal has been filed under Section 15 of Letter of Patent against the order dated 26.07.2016 passed in W.P.No.25720 of 2016.

WP Prayer: Writ petition filed under Article 226 of the Constitution of India for issue of writ of mandamus directing the respondents to re-convey / release the lands of the petitioner situate at 74, Thirukatchur Village, Chengalpet Taluk, Kanchipuram District, comprised in Survey Nos.540/3A & 540/3B measuring an extent of 48 cents and 46 cents respectively, as the land acquisition proceedings in Award No.13 of 1986 in respect of the said lands has lapsed.

For Appellant : Mr.Sathish Parasaran, SC
for Mr.G.Poonkundran

For R1 to R3 : Mr.V.Manokaran, GA
For R4 : Mr.P.S.Ganesh, standing counsel



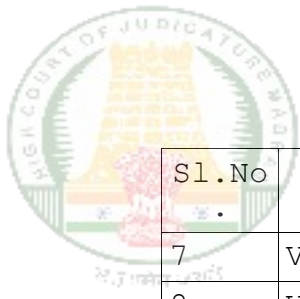
JUDGMENT

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

The present appeal is directed against the impugned order passed by the learned Single Judge in W.P.No.25720 of 2016, dated 26.07.2016, in and by which, the prayer of the writ petitioner for issuance of a writ of mandamus to direct the respondents to reconvey/release his lands situated at No.74, Thirukatchur Village, Chengalpet Taluk, Kanchipuram District, comprised in Survey Nos.540/3A & 540/3B measuring an extent of 48 cents and 46 cents respectively, was refused.

2. Mr.Sathish Parasaran, learned Senior counsel, for Mr.G.Poonkundran, learned counsel for the appellant, submitted that the Government issued a draft Notification under Section 4 (1) of the Land Acquisition Act (in short "the Act") in G.O.Ms.No.386, Housing and Urban Development Department, dated 02.11.1979, proposing to acquire 94.27 acres of land comprised in Survey Nos.91 etc., situated at No.74, Thirukatchur Village, Chengalpet Taluk, for the formation of a new town known as Maraimalai Nagar. Out of 94.27 acres, proceedings were initiated for 22.87 acres under Section 5(A) of the Act. Subsequently, declaration under Section 6 of the Act was issued in G.O.Ms.No.868, Housing and Urban Development Department, dated 28.08.1982, and the same was also published in Tamil Nadu Government Gazette on 15.09.1982. After the issuance of notice under Sections 9(1) and 10 of the Act, the Award enquiry was conducted on 28.08.1982 and thereby an Award was passed on 19.09.1986 in Award No.13 of 1986 for the formation of Marimalai Nagar in an area measuring an extent of 25.92 acres. After some time, the Government issued G.O.Ms.No.497, dated 23.03.1987, excluding 25.92 acres of land including the appellant's land from the acquisition proceedings. Subsequently, those person whose lands were excluded have obtained No Objection Certificate from the concerned authorities and thereby patta was also issued in their names. The land owners who had obtained NOC and patta are stated below:-

Sl.No	Name	Survey No.	Extent (acres)
1	Akshya Builders	531	7.42
2	Udhaya Shankar	539/1	1.09
3	Udhaya Shankar	539/2	1.10
4	Udhaya Shankar	540/2	0.70
5	Udhaya Shankar	544/1E	0.28
6	Udhaya Shankar	545/1,2,3	0.45



Sl.No	Name	Survey No.	Extent (acres)
7	Veeraraghavan	542/2	1.18
8	Veeraraghavan	543/2	1.64

However, by another Government Order in G.O.Ms.No.134, dated 23.04.1998, the lands which were excluded under G.O.Ms.No.497, dated 23.03.1987, were sought to be restored. Thereafter, the affected parties filed W.P.No.9531 of 1998 before this Court seeking for issuance of a writ of mandamus to quash the G.O.Ms.No.134, Housing and Urban Development Department, dated 23.04.1998, as illegal and without justification. This Court, by order dated 26.04.2007, observing that the Government cannot cancel its earlier order of withdrawing from the acquisition proceedings in respect of lands owned by various persons, that too, after a lapse of 11 years, allowed the writ petition by quashing the G.O.Ms.No.134, dated 23.04.1998, cancelling the order of exclusion granted in G.O.Ms.No.497, dated 23.03.1987. This order became final, as no appeal has been filed.

3. In the meanwhile, after issuance of G.O.Ms.No.497, dated 23.03.1987, excluding the land in question, the writ petitioner's father purchased the land in question from the original owner Vasantha Kumari by way of a registered sale deed dated 03.12.2007 bearing Document No.14313 of 2007 on the file of Sub-Registrar-II, Chengalpet. Followed by earlier order passed in W.P.No.9531 of 1998, dated 26.04.2007, one another writ petition in W.P.No.17210 of 2008 was filed for the same relief and this Court, by order dated 16.09.2009, on the statement made by learned Additional Government Pleader that G.O.Ms.No.134, Housing and Urban Development Department, dated 23.04.1998, was already quashed, allowed the writ petition. Therefore, it is contended, when the land in question belonging to the writ petitioner was already excluded by the Government in G.O.Ms.No.497, dated 23.03.1987, the Government, without issuing any GO under Section 4(1) of the Act, followed by declaration under Section 6 of the Act, cannot have any authority to withdraw G.O.Ms.No.497, dated 23.03.1987, excluding the subject land from the acquisition proceedings. In any event, G.O.Ms.No.134, Housing and Urban Development Department, dated 23.04.1998, seeking to cancel the G.O.Ms.No.497, dated 23.03.1987, was already quashed by this Court on the ground that once the lands were released from the acquisition by the Government, after a lapse of 11 years, the order granting exemption could not be cancelled unilaterally, that too, without giving any opportunity to the appellant in the light of the judgment of the Delhi High Court in Jai Narain Vs. L.A. Collector, New Delhi [AIR 1976 Del.166]. Subsequent to the above judgment, no further appeal has been filed, therefore, the respondents cannot have any legal right to reopen the order of



withdrawal, that too, after a lapse of 11 years. This aspect has been completely overlooked by the learned Single Judge, learned Senior counsel pleaded.

4. Learned Senior counsel further argued that as could be seen from the counter affidavit filed by the third respondent before this Court, neither the compensation was paid to the landowner nor physical possession of the land in question was taken over by the Government. Therefore, the legal fiction under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Settlement Act, 2013 (Act 30 of 2013) would also support the case of the appellant.

5. In support of his submissions, learned Senior counsel has relied on the following two judgments:-

- (a) Bondu Ramaswamy and others Vs. Bangalore Development Authority and others [(2010) 7 SCC 129]; and
- (b) Kovai Medical Centre Research and Educational Trust and Others Vs. The State of Tamil Nadu and Others [Manu/TN/2029/2010].

6. Concluding his arguments, learned Senior counsel submitted that once the Government exercises its power under Section 48(1) of the Act to withdraw the acquisition of any land, of which possession has not been taken, it is not for the Government to simply cancel the order withdrawing from the acquisition proceedings, inasmuch as if the Government wants to acquire the same land again, it should follow the land acquisition proceedings afresh by issuing a fresh 4(1) Notification. Therefore, the impugned order passed by the learned Single Judge rejecting the prayer of the writ petitioner to release/reconvey the land in question is liable to be set aside and the writ appeal deserves to be allowed.

7. Learned Senior counsel argued that Mr.V.Manokaran, learned Government Advocate, appearing for the respondents 1 to 3 reiterating the stand taken in the counter affidavit filed by the third respondent, submitted that the arguments advanced by the appellant that G.O.Ms.No.497, dated 23.03.1987, has excluded the land belonging to the writ petitioner and others will not be correct for the reason that the said GO excluding certain lands was only a proposal. Moreover, the subject lands are still with the possession of the respondents. After the order passed by this Court in W.P.No.9531 of 1998, dated 26.04.2007, three other writ petitions, namely, W.P.Nos.10236/98, 7110/99 and 9437/06 were filed, wherein, this Court, by order dated 17.10.2008,



refused to grant the similar relief sought for by the writ petitioners therein. That shows that G.O.Ms.No.497, Housing and Urban Development Department, dated 23.03.1987, proposing to exclude the land has not been accepted and G.O.Ms.No.134, dated 23.04.1998, withdrawing G.O.Ms.No.497 still holds good, therefore, the appellant has no right whatsoever to press his prayer.

8. Learned Government Advocate further argued that appellant herein is a subsequent purchaser and therefore, the subsequent purchaser cannot come to the Court questioning the land acquisition proceedings. When the proposal for de-notification was sent to the extent of 25.92 acres, the de-notification was issued only to the extent of 6.47 acres by G.O.Ms.No.43A, dated 11.11.1987. As per the Notification, S.No.546/2, having an extent of 0.24 acres; S.Nos.534, 540/2, 544/1, 545/1, 545/2 and 545/5, having an extent of 1.93 acres; and S.No.531/5A and 531/5B, having an extent of 4.30 acres; were alone excluded and in these lands, the land belonging to the writ petitioner is not covered. Hence, the claim of the appellant cannot be entertained.

9. Mr.P.S.Ganesh, learned standing counsel for the fourth respondent/CMDA, has adopted the above said argument of the learned Government Advocate for the respondents 1 to 3.

10. Heard the learned counsel appearing on either side and perused the materials available on record.

11. Initially, the Government issued a Notification under Section 4(1) of the Act in G.O.Ms.No.386, Housing and Urban Development Department, dated 02.11.1979, proposing to acquire 94.27 acres of land. Out of the said 94.27 acres, proceedings were initiated for 22.87 acres of land and thereby enquiry notice under Section 5A was issued in respect of 22.87 acres of land, followed by, declaration under Section 6 of the Act was also issued in G.O.Ms.No.868, Housing and Urban Development Department, dated 28.08.1982, and this was published in the Tamil Nadu Government Gazette on 15.09.1982. Thereafter, the Government thought fit to exclude certain lands from the land acquisition proceedings and accordingly, G.O.Ms.No.497, Housing and Urban Development Department, dated 23.03.1987, was issued excluding 25.92 acres of land which included 94 cents of appellant's land. Pursuant to the said G.O., the persons whose lands were excluded from acquisition proceedings were granted No Objection Certificate and also patta in their names from the concerned authorities.

12. Additional affidavit filed by the appellant shows that after exclusion, the Revenue Authorities have also given patta



and No Objection Certificate in respect of the neighboring lands, which are stated below:-

THIRUKATCHUR VILLAGE

Sl. No.	Survey No.	Extent in areas	Extent in acres	Name of the Owner	Patta No.
1	542/2A	0.44	1.09	AVRN Hotels Private Limited	1900
2	542/2B	0-3.5	0.09		
3	543/2	0-66.5	1.64		
4	540/2B	0-28.5	0.70	S.Udayashankarr	1344
5	531/5B1	0-45.0	1.11	Akshaya J.M.B. Properties Private Limited	1530
6	531/5A1	0-18.0	0.44		
7	531/5A2	0-27.5	0.68		
8	531/5B2	0-83.0	2.05		
9	531/5C4A	2-2.50	5.00		
10	534/1B	0-40.0	0.99		
11	536	0-33.50	0.83	S.Udayashankar	1318
12	544/1E	0-9.50	0.23		
13	545/1	0-11.50	0.28		
14	545/2	0-12.0	0.30		
15	538/2	0-34.0	0.84	S.Udayashankar	1342
16	547/3A	0-23.0	0.57		
17	540/1D1	0-3.50	0.09	Rathina Naicker	1362
18	540/1D2	0-4.00	0.10		
19	540/1C	0-7.50	0.19	Ceyala Naicker	1361
20	540/1B	0-7.50	0.19	Nagammal	1360
Total			17.41		

Since the lands belonging to the appellant are covered under G.O.Ms.No.497, Housing and Urban Development Department, dated 23.03.1987, after the withdrawl of land acquisition proceedings in G.O.Ms.No.134, Housing and Urban Development Department, dated 23.04.1998 was quashed by this Court in W.P.No.9531 of 1998, dated 26.04.2007, the appellant's father Mr.K.Sundararaj purchased 94 cents of land comprised in Survey Nos.540/3A and 540/3B by a registered sale deed dated 03.12.2007 bearing Document No.14313 of 2007 on the file of Sub-Registrar-II, Chengalpet. Therefore, he cannot be considered as subsequent purchaser, the reason being that the appellant's father purchased the land in question on 03.12.2007 after a lapse of 20



years after the said land was excluded by G.O.Ms.No.497, dated 23.03.1987, hence, it is not open to them to say that the appellant is a subsequent purchaser, because, on the date of purchase, the owner of the land was in lawful possession. Moreover, after the land in question and other lands to the extent of 25.92 acres have been excluded, the appellant's land alone having an extent of 94 cents comprised in S.Nos.540/3A and 540/3B cannot be retained by the Government, because, admittedly, the respondents do not have any legal authority on the land in question. Moreover, it is also to be noted that till date, the appellant has not been tendered with compensation as per Sections 31 or 34 of the Act. In addition thereto, none of the respondents in their counter affidavit have explained that they have tendered compensation or the appellant has received it, due to which, the appellant can take a shelter under Section 24(2) of the 2013 Act, which says that the land acquisition proceedings shall be deemed to have lapsed where an award under Section 11 has been made five years or more prior to the commencement of the Act but the physical possession of the land has not been taken nor the compensation has been paid. But, in the present case, the appellant does not lay any such claim under Section 24(2) of the 2013 Act. Moreover, after passing of the Government Order in G.O.M.s.No.497, Housing and Urban Development Department, dated 23.03.1987 excluding the land of the appellant and several others, several multi-storeyed buildings have come-up in and around that 25.92 acres of land. We have also seen various documents and photographs showing that in the same places where they have excluded the similar lands from the acquisition proceedings, various commercial offices and residential buildings have come-up. Therefore, in our considered view, the respondent cannot raise any objection to the appellant alone, as that will not pass the test of reasonableness on the anvil of Article 14 of the Constitution of India.

13. In the year 2007, this Court, on earlier occasion, while entertaining the similar writ petition No.9531 of 1998 seeking a prayer for issuance of a writ of certiorari to quash G.O.Ms.No.134, Housing and Urban Development Department, dated 23.04.1998, allowed the similar prayer by order dated 26.04.2007 by restoring G.O.Ms.No.497, dated 23.03.1987, excluding certain lands from the land acquisition proceedings. Subsequently, one another writ petition No.17210 of 2008 was also filed challenging the very same G.O.Ms.No.134, dated 23.04.1998, wherein also, this Court, by order dated 16.09.2009, passed the following order:-

"3. The learned Additional Government Pleader appearing for the respondents produced Government Letter No.18624/UD 3(1)/08-9, dated 16.09.2009, and reported that the said



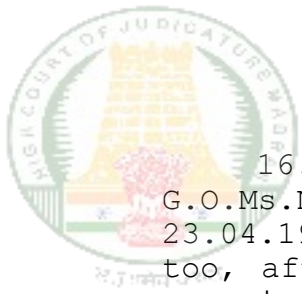
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Government Order was quashed on a writ petition filed by one Thiru S.Udayasankar, Indirani and Karunakaran, made in W.P.No.9531/98 by its order dated 26.04.2007. However, the learned Additional Government Pleader submitted that the steps are being taken to file an appeal against this order.

4. Considering the above statement made by the Additional Government Pleader appearing for the respondents, the impugned Government Order namely, G.O.Ms.No.134, Housing and Urban Development Department, dated 23.04.1998, is quashed and the writ petition stands allowed. In view of the same, the consequential letter of the second respondent dated 06.09.2006 is also liable to be set aside and is accordingly set aside."

14. As could be seen above, learned Additional Government Pleader for the respondents producing the Government Letter No.18624/UD 3(1)/08-9, dated 16.09.2009, reported that the G.O.Ms.No.134, Housing and Urban Development Department, dated 23.04.1998, was already quashed by this Court and no appeal has been filed, even after 2 ½ years from the earlier order dated 26.04.2007 passed in W.P.No.9531 of 1998. Besides, as highlighted above, this Court, in the earlier order dated 26.04.2007 passed in W.P.No.9531 of 1998, held that under Section 48(1) of the Act, when the Government has power to withdraw any land from the acquisition proceedings, after exercising such power, the Government, having passed G.O.Ms.No.497, dated 23.03.1987, had withdrawn the land of the appellant from the acquisition proceedings and therefore, it is not open to the Government to cancel the order withdrawing from the acquisition proceedings, because, the if the Government wants to acquire the land, as highlighted above, the Government should follow the land acquisition proceedings afresh by issuing a fresh 4(1) Notification, but, that has not been done in this case.

15. In a similar issue, the Delhi High Court in Jai Narain's case cited supra, held that if the Government withdraws any land from the acquisition proceedings in exercise of the power conferred under Section 48 of the Act, it is obvious that Section 4 Notification has exhausted itself and the lands have been released from the acquisition proceedings and if the Government wants to acquire the lands again, the Government shall have to act in accordance with the provisions of Sections 4 to 8 of the Act. Thus, we are of the considered view that the impugned order passed by the learned Single Judge cannot be sustained.



16. In view of the above, considering the fact that the said G.O.Ms.No.134, Housing and Urban Development Department, dated 23.04.1998, withdrawing G.O.Ms.No.497, dated 23.03.1987, that too, after more than a decade, was quashed by this Court on two occasions, namely, in W.P.No.9531 of 1998, dated 26.04.2007 and in W.P.No.17210 of 2008, dated 16.09.2009, we are of the considered view that refusal to release the land or issue patta in favour of the appellant who is a similarly placed person as that of various neighboring landowners as extracted supra, is violative of Articles 14 of the Constitution of India.

17. In fine, for the reasons stated above, the impugned order is set aside and the writ appeal stands allowed. Consequently, the respondents are directed to release land to the writ petitioner/appellant besides issuing patta for the land in question within a period of eight weeks from the date of receipt of a copy of this order. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rkm

To

1. The Secretary,
Housing & Urban Development,
Fort St. George,
Chennai - 9.
2. The District Collector,
Kanchipuram District.
3. The Special Tahsildar (Land Acquisition I),
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Kattankolathur, Chengalpet Circle,
Kanchipuram District.
4. The Member Secretary,
CMDA, No.8, Thalaimuthu Natarajan Malaigai,
Egmore, Chennai - 8.

+1cc to the Government Pleader, Sr.40804

+1cc to Mr.G.Poonkundran, Advocate, Sr.40602

W.A.No.1573 of 2016

AK-II[co]
NSK 06/09/2021