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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.32201 of 2014

and

M.P.No.1 of 2014

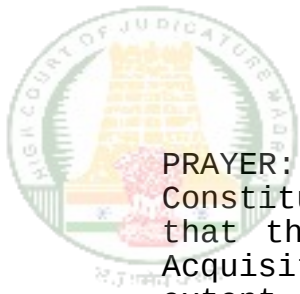
Anil T Geroge

... Petitioner

Vs.

1. State of Tamil Nadu,
Rep.by its Secretary,
Highways Department,
Fort.St.George,
Chennai - 600 009.
2. The Collector of Kancheepuram,
Kancheepuram District,
Kancheepuram.
3. The Revenue Divisional Officer (RDO),
Chengalpet Division,
Chengalpet,
Kancheepuram District.
4. The Tahsildhar,
Tiruporur Taluk,
Tiruporur,
Kancheepuram District.
5. The Divisional Engineer (Highways),
Chengalpet Division,
Chengalpet, Kancheepuram District.
6. The Assistant Divisional Engineer (C&M)
Highways Department,
Chengalpet, Kancheepuram District.
7. Tamil Nadu Road Development Corporation (TNRDC)
Rep.by its Managing Director,
No.171, II Floor, Tamil Nadu Maritime Board Building,
South Kesava Perumalpuram,
Pasumpon Muthuramalinga Devar Road,
Raja Annamalaipuram,
Chennai - 600 028.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Declaration, declaring that the land acquisition proceedings initiated under the Land Acquisition Act, 1984 with regard to the land measuring to an extent of 0.04 acres (4 cents) comprised in S.No.72/3C1 part of Thiruvidadanthai Village, Chengalpet Taluk, Kancheepuram District belonging to the petitioner having lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 which came into force with effect from 01.01.2014.

For Petitioner : Mr.N.Premkumar

For Respondents : Mr.M.R.Gokul Krishnan
Government Advocate
(for R-1 to R-6)
: Mr.M.Sivavarathanan (for R-7)

O R D E R

This petition has been filed seeking to declare that the land acquisition proceedings initiated under the Land Acquisition Act, 1894 with regard to the land measuring to an extent of 0.04 acres (4 cents) comprised in S.No.72/3C1 part of Thiruvidadanthai Village, Chengalpet Taluk, Kancheepuram District belonging to the petitioner having lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'the New Act' for short) which came into force with effect from 01.01.2014.

2. The case of the petitioner is that he purchased the property comprised in S.No.72/3C1 to an extent of 41 cents. Out of 41 cents, 20.5 cents had been purchased from one Govindammal & others, and 20.5 cents had been purchased from one Desingh and P.Gajendran by the registered sale deeds dated 08.09.2014. His vendors were already issued joint patta in Patta No.934. The subject land was acquired for the purpose of strengthening and widening of the East Coast Road from Thiruvannamiyur to Cuddalore. After completion of the acquisition proceedings, no compensation was paid either to the petitioner or his vendors. That apart, under Section 4(1) of the Land Acquisition Act, 1894 (Central Act I of 1894) (hereinafter referred to as 'the Act' for short) notification was issued for acquisition of the land comprised in S.No.72/3C1 (part) ad-measuring 0.01.5 hectares or 0.04 acre. Whereas, the land has been acquired and sub divided as S.No.72/3C1B to an extent of 0.04.0 hectares or 0.10 cents from the land owners. Therefore, the respondents cannot acquire more land without issuing the said 4(1) notification as contemplated under the Act.



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3. The learned counsel for the petitioner submitted that the subject land was not published in the 4(1) notification. Even according to the respondents, the land comprised in S.No.72/3C1 ad-measuring 0.01.5 hectares or 0.04 acre was only notified and without 4(1) notification, they cannot acquire excess land. That apart, even in their counter, they categorically admitted that after the acquisition of land, the award was passed on 29.11.1995 in Award No.16 of 1990. The proposal for disbursement of compensation due to the land owners was sent to the District Collector to sanction of funds to pay the compensation. Once the payment is disbursed to the land owners, the possession of the land will be taken up by the Highways Department. Therefore, admittedly they have not paid compensation and as such, the entire acquisition proceedings is lapsed as contemplated under Section 24(2) of the New Act.

4. The respondents filed counter and stated that the petitioner is the subsequent purchaser, that too after completion of the entire acquisition proceedings. Therefore, his sale deed become void ab-initio and he has no locus standi to challenge the acquisition proceedings. That apart, insofar as the extent of land is concerned, though 4(1) notification was issued for the land comprised in S.No.72/3C1 (part) ad-measuring 0.01.5 hectares or 0.04 acre, there was errata for the 4(1) notification and subsequently, award has been passed for the total extent of 0.04.0 hectares equivalent to 0.10 cents at Rs.3,139/-. Therefore, prayed for dismissal of this Writ Petition.

5. Heard Mr.N.Premkumar, the learned counsel for the petitioner, Mr.M.R.Gokul Krishnan, learned Government Advocate appearing for the first to sixth respondents and Mr.M.Sivavarthanan, learned counsel appearing for the seventh respondent.

6. Admittedly, the petitioner is the subsequent purchaser of the subject land by the registered sale deeds dated 08.09.2014, that too after acquisition proceedings. The Government have decided to acquire the land for the strengthening and widening of the East Coast Road from Thiruvannamiyur to Cuddalore. Accordingly, the respondents have published notification under Section 4(1) read with Section 17(3) Urgency Clause of the Land Acquisition Act (Central Act 1 of 1894) by G.O.Ms.No.1547, P.W (Highways) (HS-2) Department dated 05.11.1992. The draft declaration as contemplated under Section 6 of the Act was approved by G.O.Ms.No.1662/Public Works (HS-2) Department, dated 30.11.1993. Subsequently, it was published in the two tamil daily and thereafter, its substance was also published in the local newspaper. The declaration under Section 7 of the Act was approved by the Government dated 24.02.1995 and published in the Tamil Nadu Gazette on 22.03.1995.



7. On a perusal of the counter, it reveals that the subject land comprised in 72/3C1 has been sub-divided in the award and the land comprised in S.No.72/3C1B ad-measuring to an extent of 0.04.0 hectares and equivalent to 10 cents was acquired. Thereafter, the award enquiry was conducted and the award has been passed on 29.11.1995 in Award No.16 of 1990. However, the award amount has not been deposited by the respondents either in the name of the petitioner or in the name of his vendors. Though the award amount has not been deposited, the petitioner being subsequent purchaser, he has no locus standi to challenge the entire acquisition proceedings, which was completed on 29.11.1995.

8. Admittedly, the petitioner is the subsequent purchaser and it is settled position of law that the subsequent purchaser cannot have right to challenge the acquisition proceedings. In this regard, it is relevant to rely upon the judgment reported in (2019) 10 SCC 229 in the case of Shiv Kumar and anr Vs Union of India and ors, in which the Hon'ble Supreme Court of India held as follows:-

"13. The definition of 'landowner' is in Section 3(r), the same is extracted hereunder:

3. Definition.-In this Act, unless the context otherwise requires,--

(r) "landowner" includes any person,-- (i) whose name is recorded as the owner of the land or building or part thereof, in the records of the authority concerned; or

(ii) any person who is granted forest rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007) or under any other law for the time being in force; or

(iii) who is entitled to be granted Patta rights on the land under any law of the State including assigned lands; or (iv) any person who has been declared as such by an order of the court or Authority;

Landowner is a person who is recorded as the owner of land or building. The record of date of issuance of preliminary notification Under Section 11 is relevant. A purchaser after Section 11 cannot be said to be a landowner within the purview of Section 3(r).

.....

21. Thus, under the provisions of Section 24 of the Act of 2013, challenge to acquisition proceeding of the taking over of possession under the Act of 1894 cannot be made, based on a void transaction nor declaration can be sought Under Section 24(2) by such incumbents to obtain the land. The declaration that acquisition has lapsed under the Act of 2013 is to get the property back whereas, the transaction once void, is



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always a void transaction, as no title can be acquired in the land as such no such declaration can be sought. It would not be legal, just and equitable to give the land back to purchaser as land was not capable of being sold which was in process of acquisition under the Act of 1894. The Act of 2013 does not confer any right on purchaser whose sale is ab initio void. Such void transactions are not validated under the Act of 2013. No rights are conferred by the provisions contained in the 2013 Act on such a purchaser as against the State.

22. 'Void is, ab initio,' a nullity, is inoperative, and a person cannot claim the land or declaration once no title has been conferred upon him to claim that the land should be given back to him. A person cannot enforce and ripe fruits based on a void transaction to start claiming title and possession of the land by seeking a declaration Under Section 24 of the Act of 2013; it will amount to conferment of benefit never contemplated by the law. The question is, who can claim declaration/rights Under Section 24(2) for the restoration of land or lapse of acquisition. It cannot be by a person with no title in the land. The provision of the Act of 2013 cannot be said to be enabling or authorizing a purchaser after Section 4 to question proceeding taken under the Act of 1894 of taking possession as held in U.P. Jal Nigam (supra) which is followed in M. Venkatesh (supra) and other decisions and consequently claim declaration Under Section 24 of the Act of 2013. What cannot be done directly cannot be permitted in an indirect method.

23. The provisions of the Act of 2013 aimed at the acquisition of land with least disturbance to the landowners and other affected families and to provide just and fair compensation to affected families whose land has been acquired or proposed to be acquired or are affected and to make adequate provisions for such affected persons for their rehabilitation and resettlement. The provisions of Act of 2013 aim at ousting all inter-meddlers from the fray by ensuring payment in the bank account of landholders Under Section 77 of the Act.

24. The intendment of Act of 2013 is to benefit farmers etc. Subsequent purchasers cannot be said to be landowners entitled to restoration of land and cannot be termed to be affected persons within the provisions of Act of 2013. It is not open to them to claim that the proceedings have lapsed Under Section 24(2)."



9. In the above judgment, the Hon'ble Supreme Court of India held that under the provisions of Section 24 of the New Act, acquisition proceedings cannot be challenged based on a void transaction or declaration cannot be sought to get the property back. The transaction once void, is always a void transaction. As no title can be acquired in the land as such, no such declaration can be sought. It would not be legal, just and equitable to give the land back to the purchaser as the land was not capable of being sold which was in process of acquisition under the Act of 1894. Therefore, the New Act does not confer any right on purchaser whose sale is void ab initio. Therefore the petitioner being the subsequent purchaser cannot challenge the acquisition proceedings.

10. After the acquisition, the land has been duly demarcated, surveyed, measured and mapped as contemplated under Section 8 of the Act. The notice under Sections 9(1) and 10 of the land was published in the Village on 08.11.1995. The petitioner's vendors were duly served notice under Sections 9(3) and 10 of the Act. Thereafter, the award enquiry was conducted and award has been passed on 29.11.1995 in Award No.16 of 1990. As stated supra, the petitioner being the subsequent purchaser, he cannot challenge the acquisition proceedings. Therefore, this Writ Petition is devoid of merits.

11. In the result, this Writ Petition is dismissed. However, the petitioner is at liberty to look out his remedy with regard to differentiation in the extent of the property comprised in S.No.72/3C1. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar

kv

To

1. The Secretary,
State of Tamil Nadu,
Highways Department,
Fort.St.George,
Chennai - 600 009.



2. The Collector of Kancheepuram,
Kancheepuram District,
Kancheepuram.
3. The Revenue Divisional Officer (RDO),
Chengalpet Division,
Chengalpet,
Kancheepuram District.
4. The Tahsildhar,
Tiruporur Taluk,
Tiruporur,
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5. The Divisional Engineer (Highways),
Chengalpet Division,
Chengalpet, Kancheepuram District.
6. The Assistant Divisional Engineer (C&M)
Highways Department,
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Pasumpon Muthuramalinga Devar Road,
Raja Annamalaipuram,
Chennai - 600 028.

+1CC to M/s.M.Sivavarthan, Advocate, SR.No. 45171
+2CCs to M/s.N.Premkumar, Advocate, SR.No. 44915
+1CC to The Government Pleader, SR.No. 45181

W.P.No.32201 of 2014

BP(CO)
B.VC (06/10/2021)