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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.03.2021
Pronounced on : 16.07.2021

CORAM : JUSTICE N.SESHASAYEE

W.P.Nos.16665 & 18252 of 2020
&WMP.Nos.20997 and 22637 of 2020

1.Ranjith Lamech

...Petitioner
in WP/16665/2020

2.M/s.Kgeyes Residence Private Limited,
No.10, Srushtissthal, Second Cross Street,
Raja Annamalaipuram, Chennai - 600 028.
Rep. By its Power of Attorney
Mr.Gopalakrishna Shetty, No.3, Third Street,
Subba Rao Avenue, Chennai - 600 006.

...Petitioner
in WP/18252/2020

Vs.

1.The Government of Tamil Nadu,
Rep. By its Secretary to Government,
Housing and Urban Development Department,
Secretariat, Fort St.George,
Chennai - 600 009.

2.The Special Tahsildar (Land Acquisition),
The Tamil Nadu Housing Board,
Anna Salai, Nandanam,
Chennai - 600 035.

3.The Tamil Nadu State Housing Board,
Rep by its Secretary,
The Tamil Nadu Housing Board,
Anna Salai, Nandanam, Chennai - 600 035.

... Respondents
in both the WPs

Common Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration, declaring that land acquisition proceedings in respect of the lands in Survey Nos.152 & 151/1, which was covered under the Award No.1 of 1988 was passed on 09.05.1988 passed by the 2nd Respondent herein as lapsed.



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For Petitioner : Mr.ARL.Sundaresan
Asst. by Ms.AL.Ganthimathi

For R1 & R2 : Mr.E.Manoharan
Special Government Pleader

For R3 : Mr.M.Baskar

COMMON ORDER

Ranjith Lamech and his sister Asha Lamech (later Asha Nehemiah), had obtained a block of property in Sy.No.152 and 151/1 of Valasaravakkam Village respectively under separate settlement deeds from their parents in the first half of 1960s. The title over the property settled on them was not joint.

2. Part of the property obtained by them as afore stated were notified for acquisition for a public purpose involved in Ramapuram Neighbourhood Scheme promoted by the Tamil Nadu Housing Board. The said notification came to be challenged before this Court, and so was the awards that came to be passed later. Ranjit and Asha were successful in having the Sec.4(1) notification quashed, and on that basis they were also successful in having the awards set aside. Government challenged only the order quashing Sec.4(1) notification that Asha had obtained, but not against the similar order passed in favour of Ranjit. The appeal filed against Asha was allowed. However, the order setting aside the awards passed was not challenged by the Government in both the cases. Now, when faced with certain obstruction to the title from the third respondent, the Tamil Nadu Housing Board (henceforth TNHB), the petitioners claim that the very acquisition proceedings have lapsed and seek a declaration to that effect in this batch of petitions.

3. The material facts that are relevant for appreciating these cases are:

- On 11-06-1975, a notification under Section 4(1) was published, challenging which, Asha and Ranjith have respectively filed W.P.Nos.7125 and 7126 of 1986. (It appears, there was another writ petition filed on similar nature filed in W.P.No.7124 of 1986, of which, this Court is now not concerned with). All these writ petitions were taken up together and came to be allowed Vide order of this Court dated 09-10-1991. As per the interim order passed in these petitions, the physical possession of the property continued with Asha and Ranjith.



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- During the pendency of these Writ Petitions, two events took place: On 07-06-1978 declaration under Sec.6 of the Land Acquisition Act was made; and close to a decade later, on 09-05-1988, Awards were passed.
- Ranjith and Asha challenged the Awards separately in W.P.No.10744 and 10745 of 1988 respectively.
- Following the order passed in W.P.Nos.7125 and 7126 of 1986 (the order by which Sec.4(1) notification came to be quashed), this Court allowed both W.P.Nos.10745 and 10744 of 1988 Vide its Order dated 28-10-1991.
- While so, the Government chose to challenge the Order passed in W.P.7125 of 1986 (filed by Asha challenging Sec.4 (1) notification) in W.A.No.688 of 1995. (It has also seen to have preferred another appeal against the order passed in W.P.No.7124 of 1986 which, as mentioned earlier is alien to the present proceedings). But no appeal was preferred against the order in W.P.No.7126 of 1986, that Ranjith had filed.
- On 19-07-2001, W.A.No.688 of 1995 came to be allowed, which implies that Sec.4(1) notification as pertaining to the property of Asha was held to be validly made.

4.1 Be that as it may, Ranjith faced some obstruction to his peaceful possession from the Tamil Nadu Housing Board. Following which, he had issued a legal notice dated 04-02-2019, to which he did not receive any response. Hence he has filed W.P.16665 of 2020.

4.2 So far as Asha's property was concerned, she sold the 84 cents she had in Sy.No.151/2 in 2015 to the petitioner in W.P.No.18252 of 2020.

5.1 Ranjith's contention is that, inasmuch as the Government did not challenge the order passed in W.P.No.7126 of 1986, there is no 4(1) notification for the Government to Act and to justify its action. Secondly, as regards the order quashing the award passed in W.P.No.10744 of 1988 that he had filed, there was no appeal. And, if at all an award had to be passed that should have been passed in accordance with Sec.11-A of the Land Acquisition Act.

5.2. The case of the petitioner in W.P.18252 of 2020 is substantially similar in that, notwithstanding the fact Section 4(1) notification was held to be valid as per the Order in W.A.No.688 of 1995, since no appeal was preferred challenging the order in W.P.No.10745 of 1988, fresh award should have been



passed within the statutory time stipulated. Since no fresh award was passed, the acquisition proceeds have lapsed.

6. The third respondent/TNHB has filed its counter wherein it has essentially gone silent on the allegation of Ranjith that no appeal was preferred against the order passed in W.P.No.7126 of 1986 [challenging 4(1) notification], and on the allegation that the Land Acquisition Proceedings have lapsed for breach of Section 11-A.

7. Heard Mr.ARL.Sundaresan, learned Senior counsel assisted by Ms.AL.Ganthimathi, learned counsel for the petitioners and Mr.E.Manoharan, learned Special Government Pleader for the respondents 1 and 2 and Mr.M.Basker, learned counsel for the third respondent.

8. The point is least complicated. Literally both the Government, the acquiring body, and the beneficiary namely the TNHB have been caught napping. When notification under Sec.4(1) was quashed in two separate petitions in W.P.Nos.7125 and 7126 of 1986, for reasons known only to the Government and the TNHB, it chose to challenge only the order passed in favour of Asha in W.A.688 of 1995. It is true that this appeal came to be allowed which meant the notification concerning Asha's property was held valid. The effect of this order cannot be telescoped to impact Ranjit's right to his property, for the title that Ranjit and Asha claimed are not joint but separate over separate blocks of properties.

9. Now to the second part. This pertains to the awards passed initially on 09-05-1988, but later came to be set aside on 28-10-1991 in W.P.Nos.10744 and 10745 of 1988. The passing of these orders meant that there was no award. And, the Government and the TNHB chose not to challenge it, which implies that the orders passed in W.P.10744 and 10745 of 1988 have become final.

10. Now, arrives Sec.11-A of the Land Acquisition Act. It reads:

"11-A. Period within which an award shall be made. - The Collector shall make an award under section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceeding for the acquisition of the land shall lapse:
Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984 (68 of 1984), the award shall be made within a period of two years from such commencement.



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Explanation - In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded."

This provision came into force on 24-09-1984. In the context of this case, the Proviso to Sec.11-A is critical, since the acquisition proceedings here had commenced prior to the date of coming into force of Sec.11-A. According to the Proviso, in all cases where acquisition proceedings had commenced prior to the advent of Sec.11-A, awards must be passed within two years from the date on which Sec.11-A became operational, lest the acquisition proceedings would stand lapsed under Sec.11-A. This would mean that Awards in the present case should have been passed as on 24-09-1986. However, Award admittedly was passed only on 09-05-1988. By that time the acquisition proceedings had already lapsed. Therefore stricto sensu, what was challenged in W.P.10744 and 10745 of 1988 was an Award passed in a lapsed-acquisition proceedings.

11. The statutory lapse of acquisition proceedings is conditioned by only one factor - non passing of the Award within the two years period as stipulated. The provision does not require any judicial concurrence or any administrative considerations to hold that the acquisition proceedings has lapsed. It is a statutory declaration as to the consequence that might visit and impact an ongoing land acquisition proceedings and its effect is plain and simple: on the morning following the date on which the two year period expires, there will be just no land acquisition proceedings pending. What has statutorily lapsed cannot be revived even by a judicial order.

12. As seen above, the proceedings have lapsed even on 24-09-1986. Therefore, even the order passed in W.A.No.688 of 1995 might not be of any consequence as the same cannot revive what is already lapsed and no where it was brought to the notice of the Court that there was an order of stay against passing of the Award in terms of the explanation to Section 11-A. To reiterate the counter filed by the TNHB is silent on this aspect.

13. In conclusion, both the Writ Petitions are allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar



Tsg

To

1. The Secretary to Government,
The Government of Tamil Nadu,
Housing and Urban Development Department,
Secretariat, Fort St. George,
Chennai - 600 009.

2. The Special Tahsildar (Land Acquisition),
The Tamil Nadu Housing Board,
Anna Salai, Nandanam,
Chennai - 600 035.

3. The Secretary,
The Tamil Nadu State Housing Board,
The Tamil Nadu Housing Board,
Anna Salai, Nandanam, Chennai - 600 035.

+2cc to A.L.Ganthimathi, Advocate, Sr.34452, 34453.

+1cc to Government Pleader, Sr.34329

W.P.Nos.16665 & 18252 of 2020

SR-II[co]

NSK 23/07/2021