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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A.No.90 of 2017 and CMP.No.2176/2017

D.Balaraman

... Appellant/Petitioner

-vs-

1. The Government of Tamil Nadu
rep. by its Secretary to Government,
Housing and Urban Development Department,
Fort St. George, Chennai-600 009.
2. The Special Tahsildar (Land Acquisition),
Tamil Nadu Housing Board Schemes,
Nandanam, Chennai-600 035.
3. The Managing Director,
Tamil Nadu Housing Board Schemes,
Nandanam, Chennai-600 035.
4. The Executive Engineer,
TNHB, Besant Nagar,
Chennai-600 041.

... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the Order of the learned Single Judge made in W.P.No.900 of 2015 dated 11.12.2015.

Prayer in W.P.No.900 of 2015 : To issue a writ of declaration to declare that the entire land acquisition proceedings initiated under the Land Acquisition Act 1894 in respect of the lands to an extent of 18 cents in Survey No.98/5 of Thiruvanmiyur Village duly notified by the 2nd respondent in the Award under reference No.7/86 (Rc.414/79) dated 23.09.1986 as lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act 2013 (Act 30 of 2013) and pass such further.



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For Appellant : Mr.AR.L.Sundaresan,
Senior Counsel for M/sA.L.Ganthimathi

For Respondents : Mr.T.Arunkumar,
1 and 2 Government Advocate

For Respondents : Mrs.Dr.R.Gowri, SC for TNHB
3 and 4

JUDGMENT

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

The appellant herein has brought this Writ Appeal against the impugned order dated 11.12.2015 passed in W.P.No.900 of 2015 in and by which the learned Single Judge while refusing the prayer for issuance of a Writ of Declaration to declare that the entire land acquisition proceedings initiated under the Land Acquisition Act, 1894 in respect of the lands to an extent of 18 cents in Survey No.98/5 of Thiruvannamiyur Village duly notified by the 2nd respondent in the Award under Reference No.7/86 (RC.No.414/79) dated 23.09.1986 as lapsed in view of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013), dismissed the Writ Petition.

2. The brief facts of the case are as follows:

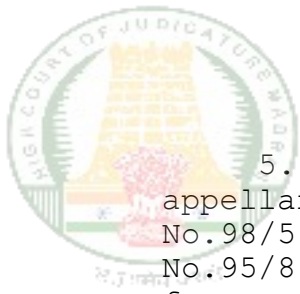
The land-in-question was originally acquired by issuing a Notification under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as, 'the Act'), on 17.07.1978. Subsequently, a Declaration under Section 6 of the Act was also issued on 06.08.1991. Thereafter, an award was also passed on 23.09.1986 in Award No.7/1986 and a compensation of Rs.40.95 p. had been deposited in a Civil Court under Sections 30 and 31 of the Act on 16.02.1987. While so, the grievance of the writ petitioner/appellant herein is that firstly, although the Land Acquisition Proceedings were initiated as early as on 17.07.1978 by issuing a Notification under Section 4(1) of the Act, the physical possession of the land has not been taken and the appellant has been in physical possession and enjoyment of the same till date. Secondly, as per Section 16 of the Act, the mode of taking physical possession of the acquired land following the Panchanama in the presence of witnesses signed by them has not been fulfilled. Thirdly, the compensation payable to the land acquired also has not been paid to him. Therefore, the acquisition proceedings initiated by the respondents stood lapsed.

3. Learned Senior Counsel appearing for the appellant would submit that as per Section 24(2) of the Act 30 of 2013, any acquisition proceedings initiated under the Land Acquisition



Act, 1894, where an award under the said section 11 has been made five years or more and where physical possession of the land has not been taken or where no compensation has been paid, the said proceedings shall be deemed to have lapsed and fresh proceedings have to be initiated in accordance with the provisions of the Act 30/2013. This aspect has been totally overlooked by the learned Single Judge.

4. Continuing his arguments, learned Senior Counsel for the appellant would further submit that when the writ petitioner/appellant and his family members, who all belong to Scheduled Caste Community, also do not have any other property to bank upon their survival, their meagre land cannot be acquired. In this regard, the Government of Tamil Nadu had also issued a Circular in the year 1977, giving a clear guideline that the lands belonging to Scheduled Caste/Scheduled Tribes shall not be acquired except where it becomes absolutely necessary and in such cases, the District Collector should obtain the prior permission of the Government for including such lands in the Land Acquisition Proceedings. Therefore, when the Government Circular issued in the year 1977 speaks clearly that the land belonging to the weaker sections, namely, Scheduled Caste/Scheduled Tribes should not be acquired, in the present case, when the appellant owns only a small extent of land, namely, 18 cents covered in Survey No.98/5 of Thiruvannamiyur Village, it has been acquired. But, ironically, the respondents have come forward to re-convey the land covered in Survey No.95/8 Part in favour of one Mr.Kannappan, S/o.Babu Gurukkal, who filed an Appeal Petition to the Government of Tamil Nadu because the Government of Tamil Nadu in Letter No.44161/LA2(1)/04-3, HUDD, dated 20.09.2005 and Letter No.36644/LA2(1)/05-3, dated 16.03.2006 had directed the Tamil Nadu Housing Board to re-convey the land in S.Nos.95/8 part to an extent of 0.09 acres to one T.Kannappan, on consideration of the return of the award amount by him with interest. Finally, the land belonging to the said Mr.Kannappan covered in S.No.95/8 part having a small extent of land 0.09 acres was re-conveyed on payment of development charges of Rs.8,00,000/- along with further interest. But in the present case, when the land covered in Survey No.98/5 having an extent of 18 cents belonging to the writ petitioner/appellant was acquired overlooking the circular issued by the Government of Tamil Nadu in the year 1977, regrettably, only a sum of Rs.40.95p was deposited. Therefore, when the adjacent land covered in Survey No.95/8 belonging to Mr.Kannappan S/o.Babu Gurukkal was ordered to be re-conveyed on payment of Rs.8,00,000/-, the respondents by passing an award No.7/1986 dated 23.09.1986 had not paid the reasonable compensation to the appellant that goes to show that they were interested in taking over the lands belonging to the weaker sections of the society and the payment of Rs.40.95 p. cannot be construed as a compensation at all.



5. Arguing further, learned Senior Counsel for the appellant would submit that when the land covered in Survey No.98/5 is closely situated nearer to the land covered in Survey No.95/8 part, re-conveying the land covered in Survey No.95/8 in favour of Kannappan and not showing the similar treatment to the appellant herein when the acquisition of his land is completely banned and prohibited by the Government Circular issued in the year 1977, it clearly shows that the respondents have applied the pick and choose method and not conducted the land acquisition proceedings fairly. Therefore, the approach adopted by the respondents cannot pass the test of reasonableness as contemplated under Article 14 of the Constitution of India.

6. Concluding his arguments, learned Senior Counsel would further submit that though the entire project itself has been concluded, the physical possession of the land-in-question even now continues with the appellant herein for the simple reason that the mandatory conditions contemplated under Sections 16 and 47 of the Land Acquisition Act have not been complied with. Even the law laid down by the Apex Court in a case in Indore Development Authority vs. Manoharlal and others reported in (2020) 8 Supreme Court Cases 129 in para 366.7 ought to have been followed and since the same has not been followed, the impugned order is liable to be set aside, he pleaded.

7. Learned Counsel appearing for the respondents 3 and 4/ Tamil Nadu Housing Board argued that the contentions made by the appellant that neither the physical possession of the land-in-question was taken by the respondents nor the payment of compensation was made, cannot be accepted. In support of her contention, drawing our notice to the typed set of papers filed by the Housing Board showing the Transfer of Charge Certificate dated 23.09.1986 indicating the taking possession of the lands belonging to the various survey numbers replied that the physical possession of the lands had already been taken not only from the appellant, but also from other persons.

8. We are unable to find any justification in the said submission of the learned Counsel for the Tamil Nadu Housing Board. It is seen from the Transfer of Charge Certificate dated 23.09.1986 issued by the Housing Board that several lands acquired by the State Government have been physically taken over, but, as per Section 16 of the Land Acquisition Act, which is extracted hereunder, one of the accepted modes of taking physical possession of the acquired land is to be reported by a Memorandum or Panchanama by the Land Acquisition Officer in the presence of the witnesses signed by them and that alone would constitute the physical possession of the land.

16. Power to take possession. ----- When the Collector has made an award under section 11, he may take possession of the land, which shall thereupon [vest absolutely in the [Government], free from all



encumbrances].

9. While considering an identical issue, the Apex Court also in the case of Tamil Nadu Housing Board vs. A.Viswam reported in 1996 (8) SCC 259 has clearly and categorically laid down the law as to how the physical possession of the land acquired should be taken over by the Land Acquisition Officer, holding that one of the accepted modes of taking possession of the acquired land is by way of recording a Panchanama by the Land Acquisition Officer in the presence of the witnesses signed by them. But, in this case, the mandatory directions contained in Section 16 of the Act providing the evidence of taking physical possession by recording a Panchanama has not been found in the Transfer of Charge Certificate filed by the Housing Board.

10. Secondly, coming to Section 47 of the Act which is also reproduced hereunder for the sake of ready reference, shows that if the Collector is prevented from taking physical possession of the land, he can enforce the surrender of the land to himself by applying to a Magistrate or to the Commissioner of Police. But in the present case, it appears that no such measures have been resorted to as per Section 47 of the Act.

''47. Magistrate to enforce surrender.----- If the Collector is opposed or impeded in taking possession under this Act of any land, he shall, if a Magistrate, enforce the surrender of the land to himself, and, if not a Magistrate, he shall apply to a Magistrate or (within the towns of Calcutta*, Madras* and Bombay*) to the Commissioner of Police and such Magistrate or Commissioner (as the case may be) shall enforce the surrender of the land to the Collector.''

11. In this regard, it is apposite to refer to the latest decision of the Hon'ble Apex Court in the case of Indore Development Authority vs. Manoharlal and others reported in (2020) 8 Supreme Court Cases 129, wherein it is held in para 366.7 that the mode of taking physical possession under the 1894 Act and as contemplated under Section 24(2) is by drawing of Inquest Report/Memorandum. As we have highlighted above, when there was no such inquest report or memorandum or panchanama prepared, we are unable to agree with the approach adopted by the respondents in taking physical possession of the land-in-question.

12. Thirdly, the Forty Fourth Constitutional Amendment, 1978, deleted Articles 19(1)(f) and 31 from Part III, the Chapter on Fundamental Rights in the Constitution, guaranteeing to acquire, hold and dispose of the property. Instead, it inserted Article 300A in a new Chapter IV of Part XII of the Constitution, which states that no person shall be deprived of his property save by the authority of law. Although the right



to one's property is no longer a fundamental right, 44th Amendment ensured a constitutional right/legal right/statutory right, therefore, in the event of breach, a remedy to an aggrieved person is available under Article 226 of the Constitution of India. Hence, protection under Article 300A is still available to any person in the event of depriving his right to property.

13. This apart, in the case on hand, although 4(1) notification was issued on 17.07.1978, the respondent has passed the award only on 23.09.1986, which is 8 years after the 4(1) notification. Section 24(2) of the Act 30 of 2013 says that where an award under Section 11 of the Act has been made five years or more and where physical possession of the land has not been taken or where no compensation has been paid, then such land acquisition proceedings shall be deemed to have been lapsed. Therefore, as stated above, since the award was passed after 8 years from the date of 4(1) notification, the land acquisition proceedings shall lapse.

14. Lastly, coming to the payment of compensation, it is to be noted that the appellant, admittedly, a member of the Scheduled Caste Community and he has pleaded that he is not having any other land except the land-in-question. When the acquisition took place in the year 1986, the respondents after acquiring the land-in-question situate in a prime area had deposited a sum of Rs.40.95p at the rate of Rs.1% for 18 cents in the civil court under Sections 30 and 31 of the Act on the premise that there was a dispute with regard to the title of the land among the land owners. As per Section 11 of the Land Acquisition Act, 1894, the Collector, while passing the award, shall proceed to enquire into the true value of the land. But, in the present case, the Collector, without conducting a proper enquiry, fixed Rs.40.95p as total compensation for acquisition of 18 cents covered in S.No.95/8, Thiruvannamiyur, which is a prime locality surrounded by IT Parks, therefore, such a meagre compensation awarded by the Land Acquisition Officer shows that that he has not fixed fair and reasonable compensation on the basis of the market value of such land. Therefore, such an compensation arrived at by the authorities is as good as not paying the compensation at all.

15. Coming to the discriminatory treatment meted out to the appellant, it may be pointed out that the land belonging to one Mr.Kannappan S/o.Babu Gurukkal covered in Survey No.95/8-part is adjacent to the appellant's land. It is also an admitted fact that even the affidavit filed by the Housing Board/4th respondent on behalf of the 3rd respondent also shows that the land covered in S.No.95/8-part having an extent of 0.09 acres was re-conveyed to the land owner, accepting the appeal filed by Mr.Kannappan, S/o.Babu Gurukkal. As a matter of fact, when an appeal was filed by the said Kannappan for reconveyance, the Government of Tamil Nadu in Letter No. 44161/LA2(1)/04-3, HUDD, dated



20.09.2005 has directed the Tamil Nadu Housing Board to re-convey the land in Survey No.95/8-Part to an extent of 0.09 acres of land on condition of returning the award amount by him. The affidavit further says that the land in Survey No.95/8 measuring to an extent of 9 cents to be re-conveyed as per the Government Order after collecting the development charges of Rs.8,00,000/- along with further interest. Therefore, as we have indicated above, when a similar extent of land belonging to one Kannappan was acquired and the same was also handed over to the Tamil Nadu Housing Board and after taking physical possession of the land and transferring the land to the Tamil Nadu Housing Board, the Tamil Nadu Government, accepting the appeal of the said Kannappan has directed the Tamil Nadu Housing Board to re-convey the land on receipt of the development charges of Rs.8,00,000/- with further interest and more particularly, when 9 cents of land was re-conveyed back to the land owner Mr.Kannappan on receipt of the huge amount of Rs.8,00,000/-, it is not known how the respondent can discriminate the poor appellant alone who belongs to weaker section. Therefore, such an approach clearly shows that the respondents have violated the principle of equality laid down in Articles 14 and 15 of the Constitution of India and thus, in our considered view, acquisition of his land is bad in law.

16. Moreover, the Government of Tamil Nadu also issued a clear instruction by way of Memorandum dated 06.05.1977 directing that the land belonging to Harijans should not be acquired except where it becomes absolutely inevitable. Relevant portion thereof is extracted below:-

With a view to speed up the process of Land Acquisition work for providing house sites to the Houseless Harijan families, instructions have been issued in the past requesting the Collectors to follow them scrupulously at the time of instituting Land Acquisition Proceedings. The following further instructions are issued in regard to exercise the power by the District Collectors.

(i) Land belonging to poor persons with meager land holding need not generally be acquired unless otherwise inevitable for the purpose of maintaining proximity and vicinity to the main Village.

(ii) Lands belonging to Harijans should not be acquired except where it becomes absolutely inevitable. In such cases the Collectors should obtain prior permission of the Government for including such lands in the Land Acquisition Proposals.

A mere perusal of the above Memorandum would show two aspects; firstly the land belonging to the poor person with meager land



holding need not be acquired unless otherwise it is inevitable for the purpose of maintaining proximity and vicinity to the main village; and secondly, the land belonging to Harijans should not be acquired except where it is absolutely inevitable, and in such event, the Collector should obtain prior permission of the Government before acquisition of the land belonging to Harijans. Therefore, in the present case, admittedly, the appellant is a member of the Scheduled Caste/Scheduled Tribes Community and he is having no other land except the land in question covered in Survey No.98/5 part, hence, in our considered view, acquisition of his land is bad in law.

17. In fine, for the reasons stated above, the Writ Appeal is allowed by setting aside the impugned order passed by the learned Single Judge in W.P.No.900 of 2015 dated 11.12.2015. No costs. Consequently, connected CMP. is closed.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Government of Tamil Nadu,
Housing and Urban Development Department,
Fort St. George, Chennai-600 009.
2. The Special Tahsildar (Land Acquisition),
Tamil Nadu Housing Board Schemes,
Nandanam, Chennai-600 035.
3. The Managing Director,
Tamil Nadu Housing Board Schemes,
Nandanam, Chennai-600 035.
4. The Executive Engineer,
TNHB, Besant Nagar,
Chennai-600 041.

+1cc to M/s.AL.Ganthimathi, Advocate SR.No.55501

+1cc to Government Pleader SR.No.56242

W.A.No.90/2017

AJS (CO)
GMY (04/02/2022)