



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
10.06.2021	18.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A. (MD) No.569 of 2021

and

C.M.P. (MD) Nos.2612 & 4222 of 2021

The Tiruchirappalli City Corporation
rep.by its Commissioner
Tiruchirappalli-620 001

... Appellant

-vs-

1.Sundarrajan
2.Umapathi
3.Rajkumar
4.Parthiban
5.Ramkumar
6.Bakkiyalakshmi
7.The State of Tamil Nadu
Rep.by its District Collector
Tiruchirappalli District
Tiruchirappalli-620 001

8.The Revenue Divisional Officer
Tiruchirappalli-620 001

9.The Tahsildar
Tiruchirappalli Taluk
Tiruchirappalli

... Respondents

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 14.12.2020, passed in W.P.(MD) No.12795 of 2019, on the file of this Court.

Prayer in WP(MD). 12795/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Mandamus directing the 3rd respondent to redeliver the vacant physical possession of the property comprised in Old T.S.No.66/8 new T.S.No.112 situated at Sengulam Village, Tiruchirappalli 620020 admeasuring to an extent of Ac.0.42 cents or the remaining extent of the property available in boosthithi after deducting an extent of Ac.2.42 cents out of Ac.2.84 cents acquired by the respondents 1 and 2 for the formation of Daily Market by the 3rd respondent within a specified time frame that may be passed by this Honble High Court.

For Appellant : Mr.N.S.Karthikeyan



For Respondents : Mr.Shankar Murali for R1 to R6
Mr.R.Baskaran
Government Counsel for R7 to R9

J U D G M E N T

T.S.SIVAGNANAM, J.

This appeal by Tiruchirappalli City Corporation is directed against the order dated 14.12.2020 in W.P.(MD) No.12795 of 2019.

2. The said writ petition was filed by the respondents 1 to 6 herein praying for issuance of a writ of mandamus to direct the appellant - Corporation to redeliver the vacant possession of the property comprised in Old T.S.No.66/8, New T.S.No.112 of Sengulam Village, Tiruchirappalli Taluk and District, after deducting an extent of 2.42 Acres out of 2.84 Acres acquired by the respondents 7 and 8 herein for the formation of daily market by the appellant - Corporation.

3. The case of the respondents / writ petitioners is that the Government had issued notice under Section 4(1) of the Land Acquisition Act, 1891 for acquiring land for the formation of a daily market by the appellant - Corporation over an extent of 2.50 Acres and an extent of 42 Cents has been additionally occupied by the appellant - Corporation and therefore, they sought for a direction to redeliver the excess extent of land occupied by the appellant - Corporation.

4. The appellant as well as the other official respondents contended that the entire extent of land was the subject matter of acquisition. The learned Writ Court did not decide the controversy nor considered as to whether a writ of mandamus can be issued to redeliver the property after the acquisition proceedings had attained finality as the land owners had failed in their challenge to the land acquisition proceedings. However, the learned Writ Court observed that without going into the merits of the case and instead of appointing Advocate Commissioner as sought for by the writ petitioners, a decision can be arrived at by the Authority themselves and in case any excess land is available, the same shall be handed over to the persons, who are the owners of the property. The learned Writ Court also fixed a time limit within which such a decision had to be taken. The appellant - Corporation being aggrieved by the said decision is before this Court by way of this appeal.

5. We have elaborately heard Mr.N.S.Karthikeyan, learned counsel appearing for the appellant; Mr.Shankar Murali, learned



counsel appearing for the respondents 1 to 6 and Mr.R.Baskaran, learned Government Counsel appearing for the respondents 7 to 9.

6. The undisputed facts are that the land in question was the subject matter of acquisition under the provisions of 1891 Act. A notification under Section 4(1) of the Act was issued on 18.02.1964. The purpose of acquisition being for formation of daily market by the appellant - Corporation. One R.Muthulakshmi filed W.P.(MD) No.1474 of 2005 challenging the land acquisition proceedings. According to the writ petitioners, the land in question was bequeathed in their favour by Muthulakshmi Ammal by a registered Will dated 07.09.2011. The writ petition was dismissed by order, dated 13.12.2006. Aggrieved by the same, the said Muthulakshmi Ammal filed W.A.(MD) No.337 of 2007, which was dismissed by Judgment dated 25.06.2008. Thereafter, the said Muthulakshmi Ammal filed Rev.Aplc.(MD) No.7 of 2009, which was dismissed by order dated 31.08.2018. In the said order, it was observed that the Award was passed as early as on 15.10.1974 and taking note of the settled legal position that no writ petition can be entertained after the Award is being passed, it was held that the Division Bench has rightly dismissed the appeal by Judgment, dated 25.06.2008. Thus, the challenge to the land acquisition proceedings at the instance of the predecessor-in-title to the writ petitioners attained finality. After the earlier round of litigation culminated in the dismissal of the review application in the year 2018, the writ petitioners opened up the second round of litigation. The writ petitioners set up a plea that the total extent of the land is 2.84 Acres, the acquired extent was only 2.42 Acres and the excess land should be measured and handed over back to them. This plea can never be entertained. The attempt of the writ petitioners was to reopen the challenge to the acquisition proceedings. The challenge to the acquisition proceedings by the predecessor-in-title commenced in the year 2005 and consistently, all the cases filed by her were dismissed and the last of which being Rev.Aplc.(MD) No.7 of 2009, which was dismissed on 31.08.2018. In none of the orders / judgments, there is no reference to a plea raised by Muthulakshmi Ammal that excess land has been taken over than the extent, which was acquired. Admittedly, the writ petitioners' claim is based upon a Will executed by Muthulakshmi Ammal, who was unsuccessful in her attempt in challenging the land acquisition proceedings.

7. Mr.Shankar Murali, learned counsel for the writ petitioners, would contend that the land acquisition proceedings were upheld on the ground that Award was passed within the time. But the case of the writ petitioners is that excess land has been taken over by the appellant - Corporation. Such a plea cannot be raised by the writ petitioners for more than one reason. Firstly, the writ petitioners being successors-in-title and interest and claiming a right under the Will executed by Muthulakshmi Ammal cannot plead a different case than the original owner. It was never



the case of Muthulakshmi Ammal that excess land has been taken over. That apart, when there is a challenge to the land acquisition proceedings, it is deemed that all points were considered and the acquisition has been upheld.

8. There cannot be a piecemeal and repeated challenge to the same land acquisition proceedings on different grounds by the land looser nor can a challenge be entertained by a person, who claims to be a successor-in-title on the alleged ground, which was never raised by the original owner while questioning the land acquisition proceedings. Thus, the prayer sought for in the writ petition ought to have been outrightly rejected as frivolous and as a case of abuse of process of Court.

9. In the typed set of papers, the Award proceedings in Award No.2/74, dated 15.10.1974, has been filed. Mr.Shankar Murali, learned counsel for the writ petitioners, referred to Page No.2 of the Award, wherein the description of the property was given and stated that in the tabular column, it has been mentioned that the extent required as per the Draft Notification is to 2.42 Acres and the extent required as per the Draft Declaration and Acquisition is 2.50 Acres, which will show that the extent of land, which was notified for acquisition is only 2.42 Acres, which is the same extent mentioned in the Notification issued under Section 4(1) of the Act, dated 18.02.1964 and therefore, there is an excess land. In our considered view, the argument advanced does not merit consideration as the Award has to be read as a whole and more particularly, Paragraph-XI of the Award, which deals with ownership and apportionment, wherein it has been stated that the land in question measures 2.50 Acres, it is classified as a Government Dry in the Revenue accounts and it stands registered in the name of S.Dhanabakiathammal and R.Muthulakshmi Ammal. Further, the Award states that the entire registered extent of 2.50 Acres of land in S.F.No.66/8 has been proposed to be acquired and therefore, no new sub division number has been assigned and the existing sub division No.66/8 is retained. Thus, it is clear that the extent of 2.50 Acres has been acquired. In fact, during the Award proceedings, there was a dispute over the extent held by Dhanakakkiathammal and the extent held by R.Muthulakshmi Ammal. Nevertheless, the total extent of the property has been shown as 2.50 Acres and the entire extent has been acquired and therefore, in the Award proceedings, it is stated that no sub division number has been given as the entire sub division, namely, 66/8 is retained. Since there was a dispute between Dhanabakkiathammal and Muthulakshmi Ammal, the Land Acquisition Officer directed the amount of compensation to be deposited in the Civil Court and made a reference under Section 31 (2) of the Land Acquisition Act. The present plea of the writ petitioners is by referring to the document, which according to them, is A-Register and the extent is 2.68 Acres. As observed



earlier, the plea raised by the writ petitioners is absolutely vexatious and unsustainable in law and on facts and there is every justification to reject the prayer and impose heavy cost.

10. For all the above reasons, the writ appeal is allowed and the order and direction, dated 14.12.2020, passed in W.P.(MD) No.12795 of 2019, are set aside. Consequently, W.P.(MD) No.12795 of 2019 is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (W)

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/ /2021

Sub Assistant Registrar(CS)

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the Judgment may be utilized for official purposes, but, ensuring that the copy of the Judgment that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

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To:

1.The District Collector,
Tiruchirappalli District,
Tiruchirappalli-620 001.

2.The Revenue Divisional Officer,
Tiruchirappalli-620 001.

3.The Tahsildar,
Tiruchirappalli Taluk,
Tiruchirappalli.

+2 CC to M/s.K.S.SANKAR MURALI, Advocate (SR-19678[F] dated 21/06/2021)

+1 CC to M/s.SPL GP (SR-19951[F] dated 22/06/2021)

+1 CC to M/s.N.S.KARTHIKEYAN, Advocate (SR-19805[F] dated 22/06/2021)

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and

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KK(28.06.2021) 5P 8C