



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A. (MD) .No.538 of 2019

and

CMP (MD) No.4538 of 2019

The Managing Director,
State Transport Corporation,
Madurai Zone,
Madurai.

...Appellant/ 6th Respondent

Vs.

1. T.R. Dinakaran

...1st Respondent/Petitioner

2. The State of Tamil Nadu,
Represented by its Secretary to Government,
Transport Department,
Fort St. George,
Chennai - 9.

3. The District Collector,
Virudhunagar,
Virudhunagar District.

4. The District Revenue Officer,
Virudhunagar

5. The Revenue Divisional Officer,
Land Acquisiton Officer,
Aruppukottai.

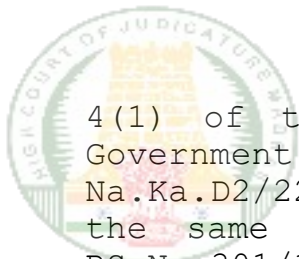
6. The Tahsildar,
Aruppukkottai.

...Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the letters patent to set aside the order dated 23.07.2018 in W.P.(MD).No.5854 of 2017 on the file of this Court.

Prayer in WP(MD) . 5854/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus or any other order or direction or writ particularly in the nature of a writ of Certiorarified mandamus calling for the records relating to the notification under section



4(1) of the land acquisition act, 1894, published in Tamilnadu Government Virudhunagar district Gazette, extraordinary, in Na.Ka.D2/22052/99 dated 10.09.2014 by the 4th respondent and quash the same in so far as it relates to acquisition of lands in RS.No.301/1 (T.S.No.2/1) ward-G, Block-13 having an extent of 0.39 Acres and R.S.No.301/2 (T.S.No.2/2) Ward-G, Block-13 having an extent of 0.45 Acres in Aruppukottai Village and consequently direct the respondents to surrender the vacant possession of the lands in R.S.No.301/1 (T.S.No.2/1) Ward-G, Block-13 having an extent of 0.39 Acres and R.S.No.301/2 (T.S.No.2/2) Ward-G, Block-13 having an extent of 0.45 Acres in Aruppukottai Village, Virudhunagar District and to pay damages for use and occupation from taking over occupation of the land in the year 1977 till the date of payment of compensation or to pay the market value as on date along with damages for their authorized use and occupation to the petitioner.

For Appellant : Mr. Veerakathiravan
Senior Advocate
for Mr. J. Senthil Kumariah
For Respondents : Mr. S. Kadarkarai
for R1
Mr. A.K. Manikkam
Standing counsel for Government
For R2 t R6

JUDGMENT

[Judgment of the Court was made by **T.S.SIVAGNANAM, J.**]

This Writ appeal by the Managing Director, State Transport Corporation, Madurai Zone is directed against the order dated 23.07.2018 in W.P (MD) No.5854 of 2017.

2. The said Writ Petition was filed by the first respondent herein praying for issuance of a writ of certiorarified mandamus to quash the notification issued under Section 4(1) of the Land acquisition Act, 1894, published in Tamil Nadu Government Virudhunagar District Gazette, Extraordinary in Na.Ka.D2/22052/99, dated 10.09.2014 insofar as it relates to the acquisition of the lands in RS.No.301/1 (T.S.No.2/1), Ward-G, Block-13, having an extent of 0.39 acres and R.S.No.301/2 , (T.S.No.2/2) Ward G, Block-13, having an extent of 0.45 acres in of Aruppukottai Village and for a consequential direction upon the appellant and the respondents 2 to 6 herein to surrender the vacant possession of the lands in question and pay damages for use and occupation for taking over the lands in the year 1977 till the date of payment of compensation and to pay market value as on date along with damages.

3. We have elaborately heard Mr. Veerakathiravan, learned Senior Counsel for Mr. J.Sentil Kumariah, learned Standing Counsel

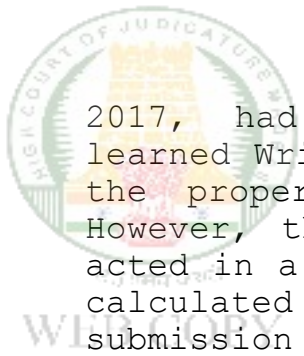
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for the Transport Corporation and Mr. S. Kadarkarai, Learned counsel for the first respondent/writ petitioner and Mr. A.K. Manikkam, learned Government Counsel for the respondents 2 to 6.

4. The case on hand has had a chequered history and it is a classical case where bureacracy has taken away the rights of a land owner, the first respondent, without following the due procedure contemplated under law. To say the least, the appellant corporation can be termed as a land grabber. We say so, because the lands, which are the subject matter of this appeal, along with the adjacent lands, were subjected to acquisition proceedings, which was put to challenge by the writ petitioner in W.P.No.3753 of 2000 on various grounds and in particular that the acquisition proceedings have lapsed as the award has not been passed under Section 11 of the Act within the time stipulated under Section 11 (A). The writ petition after contest was allowed by order dated 18.12.2009. The order attained finality since the writ appeal filed by the department was dismissed. In fact, in the said order dated 18.12.2009, the court granted liberty to the appellant and the respondents 2 to 6 to issue a fresh notification under Section 4 (1) of the Act. Nothing happened thereafter and in the year 2014, the notification under Section 4 (1) of the 1894 Act was issued. This could not have been issued because by then the 1894 Act stood repealed and the new Act, Right to Fair Compensation and Transparency in Land Acquisition Act, 2013 (Central Act 30 of 2013) came into existence. Probably this legal position was lost sight of by the authorities, and by sheer non-application of mind, they issued notification dated 10.9.2014 under the 1894 Act and probably after legal advise, all further proceedings were abandoned by the authorities. Subsequently, the authorities took a turn and addressed to the first respondent by various communications to come for private negotiations. This did not fructify as there was a gross disconnect between the amount claimed by the first respondent land owner and what was offered by the department. Therefore, once again the writ petitioner had to approach this court and file a Writ Petition in W.P(MD) No.5854 of 2017, to quash the notification dated 10.09.2014. The said writ petition was disposed of by the impugned order.

5. The learned Single Bench, during the pendency of the writ petition, had taken effective steps to mediate and settle the matter, probably bearing in mind two important aspects; one is the land has been utilised by the appellant corporation without initiating any land acquisition proceedings and thereby they are virtually a trespasser into the first respondent's property and the first respondent has been dealt with in a most unfair and arbitrary manner. The second aspect, which probably weighed in the mind of the learned Single Judge was that the land was to be used as a depot for the State Transport Corporation. There appears to be serious efforts taken at the behest of the learned Single Bench to mediate and settle the issue. Ultimately the court found that the District

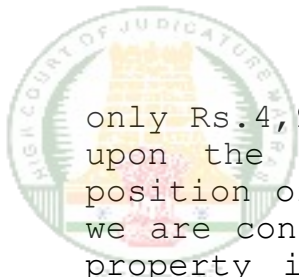


2017, had fixed the value of the land at Rs.1,341/- per sq.ft. The learned Writ Court came to the conclusion that this can be taken as the proper value for the purpose of determining compensation. However, the first respondent even at that stage appears to have acted in a very reasonable manner and agreed to accept compensation calculated at the rate of Rs.800/- per sq.feet. Based on such submission directions and observation, the Writ petition stood disposed of.

6. Before us the learned Senior Counsel appearing for the appellant would vehemently contend that as per the report submitted by the Collector, the value is far less than what has been ordered by the learned Writ Court and such fixation cannot be made and what the first respondent would be entitled to is only fair and reasonable compensation and not any exorbitant amount which had been arrived at in the impugned order. The learned Senior Counsel appearing for the appellant corporation would submit that the District Collector has passed the order on 12.10.2017 taking note of all relevant factors and documents and fixed the compensation at Rs.4,95,000/-. Therefore, it is submitted that this amount is a reasonable amount which is payable to the land owner.

7. In our considered view, the strenuous efforts taken by the learned writ court have all turned out to be wasted efforts. As mentioned earlier, the appellant corporation is a trespasser into the lands of the first respondent and to say the least they are a land grabber and having acted in such a high handed manner, the present action and attitude is highly unreasonable and arbitrary. Therefore, we are inclined to take up the matter on merits. So far as the notification which is impugned in the writ petition is concerned it is wholly without jurisdiction in the light of the fact that in the year 2014 notification could not have been issued under the 1894 Act which stood repealed and replaced by Act 30 of 2013. This would be sufficient to quash the notification dated 10.09.2014 issued under Section 4(1) of the 1894 Act.

8. Next we come to the consequential relief sought for by the first respondent who sought for directing vacant possession to be handed over to him along with compensation. If the land acquisition proceedings have been quashed, the resultant consequence is that possession has to revert back to the land owner. Therefore, the consequential relief has to definitely be granted. However, this Court is conscious of the fact that the land has been utilised by the appellant transport cooperation ever since 1977 and it has been utilised to establish a bus depot which is stated to have been established not only in the first respondent's land but lands owned by other land owners whose lands have been acquired and those acquisition proceedings have attained finality. In any event, there can be no viamedia in the present matter as all efforts which were taken by the writ court have not been accepted by the appellant corporation and they continue to state that they would pay



only Rs.4,95,000/- to the first respondent, having illegally entered upon the land and utilised the same since 1977. The financial position of the appellant corporation is not a matter of concern as we are concerned about the rights of a land loser. Though right to property is not a fundamental right, yet the citizen cannot be dispossessed of his property without following due procedure established under the relevant statute. Admittedly in the instant case, the same has not been followed and therefore the possession of the property at the hands of the appellant corporation is illegal. Therefore, the appellant corporation has to vacate and surrender vacant possession of the land in question to the first respondent/writ petitioner.

9. The second limb of the consequential direction sought for is for payment of damages for use and occupation since 1977. In our considered view, this is a matter where evidence is to be recorded and during the course of such enquiry, certain disputed factual aspects may also have to be gone into. Therefore, as a Writ Court, we may not be justified in quantifying the compensation payable to the first respondent but we record a positive finding that the first respondent land owner is entitled to be compensated by the appellant corporation for illegally entering upon his land and establishing a bus depot and continue to be in possession ever since 1977.

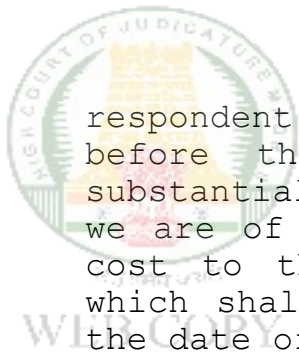
10. In the light of the above,

(i) the Writ Appeal is dismissed. Consequently, the writ petition is allowed and the 4(1) notification dated 10.09.2014 issued under 1894 Act is quashed.

(ii) The appellant corporation is directed to vacate and surrender vacant possession of the lands in question to the first respondent within a period of three months from the date of receipt of a copy of this judgement.

(iii) In the alternative, if the appellant corporation and the official respondents are of the view that the land is still required for them for the purpose of the bus depot, we give liberty to the official respondents and the appellant to initiate land acquisition proceedings under Act 30 of 2013 within two months from the date of receipt of copy of this Judgment. It goes without saying that if proceedings are initiated under Act 30 of 2013 and the acquisition proceedings is sustained and it travels up to the stage of payment of compensation, the compensation needs to be computed based on the value of the property on the date of notification which is to be issued.

(iv) In the preceding paragraphs, we have specifically observed that the occupation of the lands in question was illegal and they were a



respondent has been dragged into various litigations and he has been before this court ever since the year 2000, due to which substantial money and time had been spent on litigation. Therefore, we are of the view that the apellant corporation is liable to pay cost to the first respondent which we quantify at Rs.1,00,000/- which shall be paid to the first respondent within two weeks from the date of receipt of a copy of this judgment.

11. Consequently, connected Miscellaneous Petition is closed.
No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note :

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

To:-

1. The Secretary to Government,
Transport Department,
Fort St. George,
Chennai - 9.
2. The District Collector,
Virudhunagar,
Virudhunagar District.
3. The District Revenue Officer,
Virudhunagar
4. The Revenue Divisional Officer,
Land Acquisiton Officer,
Aruppukottai.
5. The Tahsildar,
Aruppukkottai.



6. The Managing Director,
State Transport Corporation,
Madurai Zone,
Madurai.

+1 CC to M/s.S.KADARKARAI, Advocate (SR-24258[F] dated 29/07/2021)
+1 CC to M/s.SPL GP (SR-24426[F] dated 29/07/2021)

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