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W.P(MD).No.17744 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 22.08.2022

ORDER PRONOUNDED ON : 30.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).No.17744 of 2013

and

MP(MD).No. 1 of 2013

Arumugam

Vs

...Petitioner

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

2.The Revenue Divisional Officer Cum
Land Acquisition Officer,
Ramanathapuram.

3.The Executive Engineer,
Tamil Nadu Housing Board,
Ramanathapuram Housing Unit,
Ramanathapuram-623 501.

.....Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Declaration, to declare the entire acquisition proceedings has lapsed in view of the award dated 28.03.2003 in his award No.Na.Ka.A1/12674/89, issued by the second respondent in respect of Ramanathapuram Taluk, Sakkarakottai Village Survey No.155/2A1 and etc.,



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an extent of measuring 7 cents out of one acres and 28 cents land acquired for Tamil Nadu Housing Board after the expiry of two years in violation of Section 11(A) of the Land Acquisition Act.

For Petitioner : Mr.K.Vadivelu
for Mr.A.S.Mujibur Rahman
For R1 & R2 : Mr.S.Shanmugavel
Additional Government Pleader
For R3 : Mr.S.Sumesh
Standing Counsel

ORDER

The present Writ Petition has been filed seeking a Writ of Declaration to declare that the entire acquisition proceedings had lapsed in view of the award dated 28.03.2003 passed by the second respondent herein in respect of Ramanathapuram Taluk, Sakkarakottai Village relating to S.No.155/2A1 and others in Ramanathapuram Taluk for an extent of 7 cents out of one acre and 28 cents of land acquired by the Tamil Nadu Housing Board after the expiry of two years, in violation of Section 11-A of the Land Acquisition Act, 1894.

2.The petitioner has contended that he is the owner of the property and he had purchased the plot out of a layout approved by the local panchayat in S.No.155/2A1. According to the petitioner, from the date of purchase, he is in possession of the property.



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3.The first respondent had issued a notification under Section 4(1) of the Land Acquisition Act, 1894 on 23.12.1992. Though the landlords submitted their objections in an enquiry conducted under Section 5-A of the Land Acquisition Act, the said objections were rejected and declaration under Section 6 of the Act was issued on 11.02.1994. According to the petitioner, a batch of writ petitions were filed by some of the owners challenging the declaration. Those writ petitions were dismissed on 20.04.2001 by the learned Single Judge of this Court. Though initially an order of interim stay was granted, the writ appeals were also ultimately dismissed by the Hon'ble Division Bench of this Court on various dates in March, April and June 2001.

4.The petitioner had further contended that thereafter, an award under Section 11 of the Act was passed on 28.03.2003. He had further contended that as per Section 11-A of the Land Acquisition Act, the award has to be passed within a period of two years from the date of publication of the declaration under Section 6 of the Act. If no award is made within the said period, the entire proceedings for the acquisition of the land shall lapse. He had further contended that in the present case, though interim orders were vacated by the Hon'ble Division Bench of this Court on various dates, the awards were passed beyond the period of two years from the date declaration.



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He had further contended that as far as the petitioner is concerned, he has not challenged the declaration and hence, no stay order was operating as against the second respondent herein from passing an award. Hence, the award passed under Section 11 of the Act on 28.03.2003 is clearly beyond the period of two years from 11.02.1994, on which date, the declaration was issued. On the basis of the above said facts, the petitioner has sought for a prayer for declaration that the entire acquisition proceedings got lapsed in view of the fact that the award has not been passed within a period of two years from the date of declaration.

5.Per contra, the learned Standing Counsel appearing for the Tamil Nadu Housing Board/third respondent had contended that the two year period has to be calculated only from the date on which, the writ appeals were disposed of. In the present case, the writ appeals have been disposed of in the month of March, April and June 2001 and the award has been passed on 28.03.2003 and the same is well within the period of two years from the said date.

6.The learned Standing Counsel for the third respondent had further contended that the present writ petition has been filed after a lapse of ten



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years from the date of passing of the award. He further contended that the possession was handed over to the Housing Board on 20.02.2004. Thereafter, layout has been created by the Tamil Nadu Housing Board and 80% of the lands have already been allotted to the beneficiaries. The remaining extent of the land has been reserved by the department for administrative purposes. He further contended that the present writ petition having been filed after a period of ten years from the date of award, is not maintainable and the same has to be dismissed. If the writ petition is entertained, that would open up all the allotments already made and disturb the entire project of the Tamil Nadu Housing Board.

7.The learned Standing Counsel for the third respondent further contended that the petitioner has not challenged the declaration and had waited for a period of ten years to challenge the award. The petitioner having approached the Court with laches, writ petition ought not to be entertained by this Court. The learned Standing Counsel for the third respondent had relied upon the Judgments of the Hon'ble Supreme Court reported in **1996 (11) SCC 501 [Municipal Corporation of Greater Bombay Vs. Industrial Development Investment Co. Pvt. Ltd. and Others]**; **2015 (8) SCC 723 [Chairman and Managing Director, Tamil Nadu Housing Board and**



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Another Vs S.Saraswathy and Others]; and 1996 (6) SCC 445 [State of Rajasthan and Others Vs. D.R.Laxmi and Others] and contended that the acquisition proceedings cannot be challenged after a long delay, especially, after the passing of the award and possession has already been taken. Hence, he prayed for dismissal of the writ petition.

8.I have carefully considered the submissions made on either side.

9.The petitioner is no doubt the owner of the land which was subjected to acquisition proceedings under the Land Acquisition Act, 1894. Though a declaration under Section 6 of the said Act has been published on 11.02.1994, the petitioner has not chosen to challenge the said declaration. The further proceedings under the Land Acquisition Act could not be carried out only because of the interim orders obtained by the other land owners.

10.Though the other land owners were unsuccessful before the learned Single Judge of this Court, a batch of writ appeals were entertained by the Hon'ble Division Bench of this Court and an order of interim stay was granted. However, all the appeals were finally disposed of on four different dates, namely, 01.03.2001, 16.04.2001, 20.04.2001 and 13.06.2001.



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Admittedly, in all the cases, an award under Section 11 of the Act has been passed on 28.03.2003. The petitioner has contended that the award has been passed after a period of two years from the date of declaration. However, no records have been produced to the effect relating to the date on which, interim orders were granted by the High Court.

11.As far as the present petitioner is concerned, he has not challenged the declaration and hence, no stay order was operating in favour of the writ petitioner, preventing the second respondent herein from proceeding further. Hence, the two year period as contemplated under Section 11-A of the Act, had expired long back and the award passed on 28.03.2003 is certainly beyond the period of two years. Section 11-A of the Land Acquisition Act is extracted as follows:-

“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 fro the date of the publication of the declaration and if no award is made within that period, the entire proceedings 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, 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.”

12.A perusal of the above said Section would clearly reveal that if no award is made within a period of two years from the date of publication of declaration, the entire proceedings for the acquisition of the land shall lapse. However, though an award has been passed on 28.03.2003, the present writ petition has been filed in the month of October 2013, nearly after the period of ten years. According to the learned counsel for the third respondent herein, the possession has also been taken by the Housing Board on 20.02.2004 and the layout has been created and 80% of the plots have already been allotted to the beneficiaries. Whether at this stage this Court can interfere and declare that the acquisition proceedings have got lapsed or not is the issue to be considered.

13.The Hon'ble Supreme Court in a Judgment reported in **1996 (11) SCC 501 [Municipal Corporation of Greater Bombay Vs. Industrial Development Investment Co. Pvt. Limited and others]**, in paragraph No.29 has held as follows:-



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“....29.It is thus well-settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the notifications. The High Court has, no doubt, discretionary powers under Article 226 of the Constitution to quash the notification under Section 4(1) and declaration under Section 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third party rights were created in the case is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned Single Judge dismissing the writ petition on the ground of laches.”

14.A perusal of the judgment of the Hon'ble Supreme Court clearly indicates that when there is an inordinate delay in approaching the Court, when all the steps in the acquisition proceedings have become final, the Court should not quash the award. The mere fact that no third party rights were created is not a ground for interference. In the present case, 80% of the plots have already been allotted to the beneficiaries and hence, third party rights have already been created.



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15.The Hon'ble Supreme Court in a Judgment reported in **2015 (8) SCC 723 [Chairman Managing Director, Tamil Nadu Housing Board and another Vs. S.Saraswathy and Others]**, in paragraph No.12 has held as follows:-

“...12.It has been repeatedly reiterated by this Court that those who have missed the boat in challenging the acquisition proceedings, who sat idle and have let the grass grow under their feet cannot, thereafter, be permitted to jump on the bandwagon of others who entered the portals of the Court at the appropriate time and thereafter obtained favourable orders. Significantly, in Chandrasekaran⁶ the Court was alive to the reality of utilisation of large chunks of land by the State for housing scheme; and in this scenario, it was obviously and rightly reluctant and facially hesitant to quash the acquisition proceedings in toto, knowing that would result in grave consequences to society. In this analysis, the respondents including their vendor, P.Velu, cannot be permitted to take any advantage of the orders passed by this Court in A.S.Naidu².”

16.A perusal of the Judgment of the Hon'ble Supreme Court reveals that the parties who have not challenged the acquisition proceedings cannot be permitted to jump upon the bandwagon of others, who had already challenged the acquisition proceedings and obtained favourable orders. In the present case, the petitioner has not chosen to challenge the declaration,



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dated 11.02.1994, eventhough many of the other land owners have chosen to challenge the same. Eventhough an award was passed on 28.03.2003, he has not chosen to challenge the said award or approached this Court seeking declaration about the lapse of the acquisition proceedings as contemplated under Section 11-A of the Act, within a reasonable time. Under the same acquisition proceedings, one Sikappi had filed a writ petition challenging the award proceedings on the ground that it has been passed beyond the period of two years and she had succeeded in getting a declaration about the lapse of the acquisition proceedings in Writ Appeal No.408 of 2009, dated 21.11.2006. The said writ appeal arises out of a writ petition in W.P.(MD)No.4573 of 2004. Hence, it is clear that the said land owner had approached the Court within a period of one year from the date of the award alleging that the award has been passed beyond the period of two years from the date of declaration. The petitioner having been waiting for a period of ten years, cannot now approach the Court and rely upon the Judgment in Writ Appeal No.408 of 2005. That apart, the Hon'ble Division Bench of this Court in the said writ appeal has specifically held that the acquisition proceedings in respect of the land of the appellant shall lapse. Hence, the petitioner cannot take advantage of the said Judgment.



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17.The Hon'ble Supreme Court in a Judgment reported in **1996 (6) SCC 445 [State of Rajasthan and Others Vs. D.R.Laxmi and Others]** in Paragraph No.10 has held as follows:-

“....10.The order or action, if ultra vires the power, it becomes void and it does not confer any right. But the action need not necessarily set at naught in all events. Though the order may be void, if the party does not approach the Court within reasonable time, which is always a question of fact and have the order invalidated or acquiesced or waived, the discretion of the Court has to be exercised in a reasonable manner. When the discretion has been conferred on the Court, the Court may in appropriate case decline to grant the relief, even if it holds that the order was void. The net result is that extraordinary jurisdiction of the Court may not be exercised in such circumstances. It is seen that the acquisition has become final and not only possession had already been taken but reference was also sought for ; the award of the Court under Section 26 enhancing the compensation was accepted. The order of the appellate court had also become final. The order of the appellate court had also become final. Under those circumstances, the acquisition proceedings having become final and the compensation determined also having become final, the High Court was highly unjustified in interfering with and in quashing the notification under Section 4 [1] and declaration under Section 6.”



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18.A perusal of the above said Judgment will clearly indicate that even if an order or action is ultra vires and it is void, it need not necessarily be set aside in all events. Though the order may be void, if the party does not approach the Court within a reasonable time to invalidate the same, the discretion of the Court has to be exercised in a reasonable manner. When the acquisition proceedings have become final, the High Court was highly unjustified in quashing the notification under Section 4(1) and the declaration under Section 6 of the Act.

19.In the present case, the award has been passed on 28.03.2003 and possession has been taken by the Tamil Nadu Housing Board on 20.02.2004. A layout has been created by the Housing Board and 80% of the land has already been allotted to the beneficiaries and the remaining lands are retained by the department for administrative purposes. In such circumstances, any order passed declaring that the acquisition proceedings had got lapsed would completely upset the entire project and would affect the third party rights of the beneficiaries. Hence, this Court is not inclined to entertain the writ petition under Article 226 of the Constitution of India in view of the above said facts and circumstances and in the light of the judgments of the Hon'ble Supreme Court cited *supra*.



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20. In view of the above said discussion, the writ petition is devoid of merits and the same stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Internet : Yes/No
Index : Yes/No
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To

1. The Secretary to Government,
State of Tamil Nadu
Housing and Urban Development Department,
Fort St. George, Chennai-600 009.
2. The Revenue Divisional Officer Cum
Land Acquisition Officer,
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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

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