



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Wednesday, the Thirtieth day of March Two Thousand and Twenty Two

PRESENT

The Hon`ble Mr.Justice S.M.SUBRAMANIAM

C.M.P. (MD) No.2060 of 2022
in
S.A. (MD) No.774 of 2021

1 THE DISTRICT COLLECTOR
THENI
(TAMILNADU ADHIDRAVIDAR AND TRIBAL
WELFARE DEPARTMENT)
THENI DISTRICT.

2 THE TAHSILDAR,
ADHIDRAVIDAR AND TRIBAL WELFARE DEPARTMENT,
THENI,
THENI DISTRICT.

... PETITIONERS / RESPONDENTS 1 & 2

Vs

1 JEYAMANI
2 SINDHUJA
3 PRIYAM
4 LATCHAM PRABU
5 THAVAMANI

... RESPONDENTS 1 to 4 / APPELLANT
... 5th RESPONDENT / 3rd RESPONDENT

Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to vacate the Injunction order dated 09-02-2022 made in C.M.P.(MD). No.10408 of 2021 in S.A.(MD)No.774 of 2021.

PRAYER IN S.A.(MD) No.774 of 2021:

To set aside the Judgment and decree dated 07.07.2014 passed in A.S.No.36 of 2013 on the file of the Subordinate Judge, Uthamapalayam reversing the judgment and Decree dated 18.01.2012 passed in O.S.No.142 of 2005 on the file of the District Munsif Court, Uthamapalayam by allowing this Second Appeal.

ORDER : This petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of MR.R.BASKAR, Additional Advocate General assisted by M/S.GOVERNMENT PLEADER, for the 1st petitioner and of MR.G.SIVARAJA, Government Advocate for the 2nd respondent and of MR.V.MEENAKSHI SUNDARAM, Advocate for the respondents, the court

<https://hcmv.judges.gov.in/cases> ing order:-



This civil miscellaneous petition is filed to vacate the interim injunction granted by this Court on 09.02.2022 in C.M.P.(MD) No.10408 of 2021 in S.A.(MD) No.774 of 2021.

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2. The petitioners herein are the District Collector of Theni District and Tahsildar of Adhi Dravidar and Tribal Welfare Department, Theni. They are respondents 1 and 2 in the second appeal.

3. The plaintiffs / respondents 1 to 4 instituted a partition suit to allot $\frac{3}{4}$ share in the suit schedule property and hand over possession. The suit was partly decreed with reference to Item Nos.1, 5, 6 and 7 and dismissed with reference to Item Nos.2, 3, 4 and 8 of the suit schedule property. Challenging the same, the petitioners / defendants 2 and 3 filed appeal suit, which was allowed by the First Appellate Court. Aggrieved over the Judgment and Decree of the First Appellate Court, the plaintiffs / respondents 1 to 4 have filed the second appeal.

4. Interim injunction was granted by this Court at the time of admission of the second appeal. No doubt, balance of convenience is the imminent factor to be considered for extending the interim order granted by this Court.

5. The learned Additional Advocate General appearing for the petitioners / defendants 2 and 3 mainly contended that the second appeal itself was instituted after a delay of seven years and the Judgment and Decree in the appeal suit was passed during 2014. Meanwhile, the Government completed all the formalities as the Judgment and Decree passed in the appeal suit reached finality and no second appeal was filed by that time. The project was proposed for construction of tenements to the landless poor adi dravida people through Tamil Nadu Urban Habitat Development Board. The concrete structures of the building have already been completed and the project is in progress. At this stage, the plaintiffs / respondents 1 to 4 have filed the second appeal after a lapse of about seven years. The project cost was approved by the Government and in the event of extending the interim injunction for a prolonged period, there is a likelihood of escalation of project cost and ultimately, the sufferer would be the State Exchequer and thus, the interim injunction granted by this Court is to be vacated.

6. The learned Additional Advocate General further contended that even presuming that the plaintiffs / respondents 1 to 4 establish their right in the second appeal, then also the State is empowered to acquire the land for the implementation of the public project and in such circumstances, the plaintiffs / respondents would be entitled for a fair compensation in accordance with law.



Therefore, balance of convenience is to be considered for the purpose of allowing this miscellaneous petition.

7. The learned counsel appearing for the plaintiffs / respondents 1 to 4 vehemently opposed the above contentions by stating that no doubt, there is a proposal for compromise. However, the same may take some times for crystallizing the terms and conditions. The plaintiffs / respondents 1 to 4 instituted the suit for partition, which was partly decreed and the first appeal filed by the petitioners / defendants 2 and 3 was allowed. However, the plaintiffs / respondents 1 to 4 are entitled for the portion of the land in the event of succeeding in the second appeal and therefore, the property rights of the plaintiffs / respondents 1 to 4 are to be protected. It is further contended that any such project must be subject to the result of the second appeal. Even in case acquisition laws are enforced in respect of the suit schedule property, then also the plaintiffs / respondents 1 to 4 would be entitled for a fair compensation and therefore, the interim injunction is to be extended till such a time their rights are crystallized in the second appeal.

8. On considering the arguments advanced by the learned Additional Advocate General appearing for the petitioners / defendants 2 and 3 and the learned counsel appearing for the plaintiffs / respondents 1 to 4, it is an admitted fact between the parties that the Government had taken a decision to construct tenements to the landless poor adi dravida people and the project details were given and constructions were commenced and more so, the concrete structures have already been completed. The building is in halfway through and under these circumstances, the plaintiffs / respondents 1 to 4 have filed the second appeal. It is also not in dispute that the second appeal was filed after a lapse of seven years from the date of passing of the Judgment and Decree in the appeal suit. Therefore, the petitioners / defendants 2 and 3 were under the impression that the Judgment and Decree in the appeal suit became final and accordingly, proceeded with the project and the Government allotted funds and commenced construction works.

9. This Court is of the considered opinion that the case on hand is a classic case, where the delay of seven years is condoned, which caused prejudice to the petitioners / defendants 2 and 3 / Government.

10. This being the factum, the balance of convenience is to be considered with reference to the rights of the parties. It is an admitted fact that public project is in the process of implementation. Construction works have already been commenced and in the event of the plaintiffs / respondents 1 to 4 succeeding in the second appeal, no doubt, they will be entitled for compensation. Even presuming that the rights of the property are crystallized in



favour of the plaintiffs / respondents 1 to 4, then also the Government is empowered to invoke the acquisition laws and pay compensation as the public project has already been commenced and it is in the process of implementation.

11. The learned Additional Advocate General appearing for the petitioners / defendants 2 and 3 brought to the notice of this Court that 200 landless poor people were already given allotment and their rights are accrued and therefore, the project should not be delayed or dismantled and it must be completed in all respects within a reasonable time as per the project schedule and therefore, the interim injunction if ordered to be continued further, it would cause greater prejudice to the State Exchequer and result in huge financial loss to the public money.

12. This being the factum established, the rights of the plaintiffs / respondents 1 to 4 may be crystallized at the time of passing final Judgment in the second appeal. However, the public project cannot be stalled as the Government has already invested huge amount in the project. Public interest will prevail over the private interest. As property right being a statutory right, even presuming the plaintiffs / respondents 1 to 4 succeed in the second appeal, the Government is empowered to invoke the acquisition laws and pay compensation to them. Therefore, this Court is inclined to vacate the interim injunction granted by this Court on 09.02.2022.

13. Accordingly, this miscellaneous petition is allowed and the interim injunction granted by this Court on 09.02.2022 in C.M.P.(MD) No.10408 of 2021 in S.A.(MD) No.774 of 2021 is hereby vacated.

14. Registry is directed to list the second appeal after two weeks.

sd/-
30/03/2022

/ TRUE COPY /

/ /2022
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1 THE SUBORDINATE JUDGE, UTHAMAPALAYAM.

2 THE DISTRICT MUNSIF, UTHAMAPALAYAM.

+1 CC to M/s.SPL GP (SR-2687[I] dated 30/03/2022)

+1. C.C. to MR.D.N.NALLATHAMBI, Advocate SR.No.2855.

ORDER IN
C.M.P.(MD) No.2060 of 2022
in
S.A.(MD) No.774 of 2021
Date :30/03/2022

MK/VR/SAR.II/31.03.2022/4P/5C

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