



W.P.(MD).No.3371 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 24.07.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.3371 of 2020

and

W.M.P.(MD).Nos.2835 of 2020 and 102 of 2021

A.Gunasekaran

... Petitioner

Vs.

1.The Government of India,
Represented by its Secretary,
Ministry of Road Transport and Highways,
Transport Bhavan,
No.1, Parliament Street,
New Delhi.

2.The District Collector,
Madurai District,
Madurai.

3.The Competent Authority,
Cum District Revenue Officer,
Land Acquisitions (NH),
Madurai District.

4.The National Highway Authority of India,
G 5 & 6, setor -10, Dwarka,
New Delhi – 110 075.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, forbearing the respondents or the subordinates from in any way interfering with the petitioner's right to his property in S.No.34/3A1, Usilampatti Village, Madurai District (Corresponding to Patta 268), without acquiring the same as provided under the National Highways Act, 1965, or the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

For Petitioner : Mr.M.Mahaboob Athiff

For R-1 : No Appearance

For R-2 and R-3 : Mr.R.Suresh Kumar,
Additional Government Pleader.

For R-4 : Mr.C.Arulvadivel @ Sekar,
Senior Counsel,
For M/s.C.Arulvadivel Associates.

ORDER

This Writ Petition is filed for Mandamus, forbearing the respondents or the subordinates from in any way interfering with the petitioner's right to his property in S.No.34/3A1, Usilampatti Village, Madurai District (Corresponding to Patta 268), without acquiring the same as provided under the National Highways Act, 1965, or the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.



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2. The respondents have issued notification for acquisition of various lands in Usilampatti Village, Madurai District and issued notification No.3A of the National Highways Act, 1956. The petitioner is the owner of the land in Survey No.34. In the said notification, under Serial No.680, the land in Survey No.34 in Usilampatti Village, Madurai North, Madurai Taluk, Madurai District was notified. After seeing the said notification, the petitioner has submitted the objection to the respondents in the format prescribed for the same. In the objection, it has been mentioned that the petitioner is the owner of the land in Survey No.34/3A and 34/3B. After considering the objections, the respondents have issued 3D Notification on 14.06.2018. However, a mistake has crept in. In Serial No.1044, the respondents have mentioned the Survey number as 34 and subdivision 3A, but wrongly mentioned the owner of land as Bakkiya Lakshmi, wife of Murugesan. In Serial No.1045 for the same Survey No.34 and for the subdivision 3B, the respondents have mentioned the name of the petitioner. The contention of the petitioner is that the subdivided land in 34/3A belongs to him. But it is deliberately mentioned the owner as Bakkiya Lakshmi. The said Bakkiya Lakshmi has appeared before the authorities and submitted that the land does not belong to her. The petitioner has also averred that the



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land belongs to him and not to the said Bakkiya Lakshmi. But the claim of the petitioner is since the respondents have wrongly mentioned the name of the said Bakkiya Lakshmi, the entire acquisition proceedings is vitiated. Since the petitioner is the land owner and without proper notice to the petitioner, the respondents cannot acquire.

3. The contention of the respondents is that once the survey number and the village is mentioned in 3A notification and when the petitioner had submitted objection, then nothing prevents the petitioner from pointing out the mistake crept in 3D notification and claim the award. The Learned Senior Counsel appearing for the respondents relied on the judgment rendered in the case of *Parasurama Vaidyanathan Vs State of Tamil Nadu, Represented by its Secretary and Others* reported in *CDJ 2013 MHC 2644 (W.P.No.6469 of 2005 dated 06.06.2013)*. The relevant portion is extracted hereunder:

4. Heard the learned counsel for both parties. Prima facie, when the respondents issued G.O.Ms.No.474, Housing and Urban Development Department dated 30.5.90 approving the draft notification under Section 4(1) of the Act for acquisition of 82.84.0 hectares of land in Sholinganallur Village, Tambaram Taluk, Kancheepuram District for the implementation of Sholinganallur Neighbourhood Scheme by the Tamil Nadu Housing Board, the petitioner's land comprised in S.No.390-1A and 2A1 was also acquired. After publication of the draft notification in the Tamil Nadu



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Government Gazette No.II on 13.6.90, the same was also published in two Tamil daily newspapers, namely, Murosoli and Dinakaran on 16.6.90. Again the gist of the notification was also published in the locality on 2.7.90. Thereafter, the enquiry under Section 5-A of the Act was conducted on 5.9.90. After the enquiry, notice under Section 5-A in Form III was sent to the petitioner on 7.11.90. The objections raised by the land owners during the 5-A enquiry were also communicated to the Chairman and Managing Director of the Tamil Nadu Housing Board Schemes. However, the Chairman and Managing Director of the Tamil Nadu Housing Board in his letter dated 3.1.91 informed that the lands notified in the scheme are essentially required for formation of a compact Housing Scheme framed by the Tamil Nadu Housing Board and the objections raised by the petitioner were overruled, as a result, a direction was given to proceed with the land acquisition proceedings. In the meanwhile, the petitioner filed W.P.No.3400 of 1992 questioning the acquisition proceedings, but the writ petition was dismissed on 26.9.95. Thereafter, W.A.Nos.228 to 230 of 1996 were filed unsuccessfully and they were also dismissed by order dated 3.7.96. It must be noted that when interim injunction was granted on 9.3.92, only a limited order of stay of taking over possession of the land alone was granted and the respondents were also allowed to conduct other proceedings. Therefore, the award was passed in time within two years period of the draft declaration under Section 6 of the Act and the same was approved and locally published on 1.7.91 in Award No.3 of 1993 dated 28.6.93. When the award itself was passed during the pendency of the writ petition, unfortunately, the petitioner did not come forward to indicate the genuine mistake occurred in the passing of the award, when the award has been wrongly passed in the name of Tmt.Prashanti Vaidyanathan stating that she is the absolute owner of the land. When the Award No.3 of 1993 clearly mentions that the notice under Section 9(3) and 10 of the Land Acquisition Act were served but the pattadar did not



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attend the award enquiry, since the pattadar obtained stay order from the High Court, Madras in W.P.No.3400 of 1992 dated 9.3.92, however, the High Court, while staying the possession of the land alone, has allowed the respondents to conduct the further proceedings, which shows that the respondents had rightly proceeded to pass the award. Therefore, the passing of the award dated 28.6.93 stating that the entire compensation is ordered to be paid to the pattadar could have been brought to the notice of this Court by moving appropriate application. But the petitioner, for the reasons best known to him, failed to do so. Again when the record shows that the land in S.No.390-1A and 2A1 having an extent of 11 cents was taken over by proceedings dated 4.8.2010, subsequently, the said land also has been utilised by the respondents for laying a road to reach the nursery school. Therefore, when the land has already been utilised by the respondents for laying a proper road to reach the nursery school situated in the locality, the petitioner herein who has been all along fighting the matter before this Court by filing W.P.No.3400 of 1992 and W.A.No.230 of 1996 unsuccessfully, has come to this Court belatedly by filing the present writ petition in the year 2005 seeking a prayer to issue a writ of mandamus against the respondents to handover possession of the land is absolutely unworkable for more than one reason. Firstly, the petitioner cannot plead that he was unaware of the order passed by this Court in WMP No.4794 of 1992 dated 9.3.92 granting limited stay of taking over possession of the land alone with further liberty to the respondents to conduct other proceedings. When this Court has passed an order directing the respondents to conduct the proceedings, the petitioner's non-participation in the proceedings shows that he was not prepared to abide by the orders passed by this Court. Secondly, the respondents, after completing the award enquiry, no doubt, has passed the award in the name of Tmt.Prashanti Vaidyanathan on the premise that she is the absolute owner of the land. However, when a mistake had occurred, nothing prevented the petitioner from bringing to



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the notice of this Court by moving an appropriate application for passing of the award in the name of the correct person. But the petitioner had not chosen to move an appropriate application during the pendency of the writ petition from the date of passing of the award viz., 28.6.93 till the dismissal of W.P.No.3400 of 1992 dated 26.9.95 or the dismissal of W.A.No.230 of 1996 dated 3.7.96. Therefore, the petitioner cannot be allowed to take advantage of the condonable mistake crept in the passing of the award. Thirdly, the petitioner, after the dismissal of the writ appeal on 3.7.96, kept quiet for about nine long years, without taking any steps to find out what happened to his property when all other interested persons had received the compensation in the same locality till he filed the writ petition in the year 2005. Therefore, the petitioner being aware of the award enquiry, cannot be allowed to challenge the award enquiry by filing the writ petition in the year 2005 with unexplained delay.

5. With regard to the judgment relied on by the learned counsel for the petitioner in the case of A.P.Housing Board mentioned supra, no doubt, the Hon'ble Apex Court, while emphasising the importance of passing of the award in favour of the land owner, has laid down the law that the acquisition of land without payment of compensation is wholly without jurisdiction and therefore if any award was passed belatedly, it was held that the said award was a nullity, for the reason that no land can be acquired without payment of compensation. In paragraph-30 of the judgment, it was held that though proceedings started in 1965 and the award was passed in 1971, no compensation was paid till the matter was decided by the High Court in 1988. In that context, it was held that the acquisition of land without payment of compensation is wholly without jurisdiction and therefore the award also was held as a nullity. But in the present case, the petitioner had already challenged the acquisition proceedings by filing W.P.No.3400 of 1992 and



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kept the matter pending along with the grant of limited order of stay. During the pendency of the said writ petition, on the basis of the liberty given to the respondents, when the award was passed, the respondents had passed the award in the name of Tmt.Prashanti Vaidyanathan. But the petitioner has miserably failed to bring to the notice of this Court the said mistake and for passing of the award in the correct name. Therefore, the above judgment cannot be made applicable to the present case. Moreover, when writ appeals were filed unsuccessfully, after the dismissal of the writ appeals on 3.7.96, again the petitioner did not take minimum care to rectify the simple mistake crept in the Award No.3 of 1993. Moreover, the petitioner deliberately waited from the date of dismissal of the writ appeal for about nine years. All these sinister strategies adopted by the petitioner clearly shows the oblique motive, therefore, this Court is not inclined to show any indulgence to the petitioner for the deliberate mistake and calculated plan made by the petitioner in filing the belated writ petition for release of the land.

6. Similarly, the reliance placed on another unreported judgment of this Court in W.A.Nos.875 and 876 of 2009 dated 22.12.2011 holding that at no stretch of imagination the delay could be called as a deposit within reasonable time, cannot also be made applicable to this case, for the simple reason that this Court is not able to appreciate the callous reason offered by the petitioner for filing the writ petition with a huge delay of nine years from the date of dismissal of the writ appeals. Moreover, when the writ Court had already given liberty to the respondents to proceed with the award enquiry, the petitioner deliberately boycotted the award enquiry. Again when the award was also passed in the name of Tmt.Prashanti Vaidyanathan, during the pendency of the earlier writ petition, he has not even come forward to rectify the mistake by way of moving an appropriate application in the pending writ petition or



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by way of making any representation to the respondents. All these instances cumulatively picturise the conduct of the petitioner that he has come to the Court with unclean hands, therefore, he is disentitled to the assistance of this Court under Article 226 of the Constitution of India, that apart, he is held guilty of laches.

In the present case, the petitioner has submitted an objection for 3A notification for the entire land situated in S.No.34. When the 3D notification was issued, it is mentioned that as S.No.34/3A belong to Bakkiyalakshmi and S.No.34/3B belong to the petitioner. When the petitioner well aware that the entire land belongs to him and when for S.No.34/3B, the petitioner's name is mentioned, nothing prevents the petitioner from claiming compensation for S.No.34/3A. More so, when the said Bakkiyalakshmi has declined the ownership of the said land. This would indicate the deliberate attitude of the petitioner, by taking advantage of the mistake crept in the notification is claiming to quash the entire notification. Therefore, this Court following the judgment stated supra is not inclined to entertain the plea of the petitioner.

4. The Learned Senior Counsel further relied on the judgment rendered in the case of *Thomas Victor and Another Vs. The Secretary Ministry of Shipping Road Transport and Highways and Others in Special Leave to Appeal (C)*



No(s).16129 and 16130 of 2022 dated 05.07.2023, which is extracted hereunder:

However, the learned counsel for the petitioners has sought to persuade this Court to consider the submission of the petitioners on merits also namely on the validity of acquisition of the subject land. He contended that the notification of acquisition issued under Section 3A as well as Section 3D(1) of the Act was issued in the name of the mother of the petitioners who had by then deceased. Therefore, the petitioners had no opportunity to object to the proposed acquisition.

In this regard, learned counsel for the petitioners drew our attention to two judgments of this Court in the case of Nareshbhai Baghubai and Others Vs. Union of India reported in (2019) 15 SCC 1 and the Competent Authority Vs Barangore Jute Factory and Others reported in (2005) 13 SCC 477 wherein this Court had directed that the date of the acquisition be shifted so as to adequately compensate the land users while sustaining the acquisition. Learned counsel, therefore, submitted that the same approach could be adopted by this Court in the present case also.

Per contra, learned senior counsel appearing for respondent No.2 at the outset submitted that having made preliminary submission before this Court, restricting the scope of this Special Leave Petition to compensation only, the petitioner cannot now seek to assail the acquisition on the ground that the notifications were issued in the name of a dead person. Secondly he also submitted that in the aforementioned decision, this Court was pleased to shift the date of preliminary notification based on the peculiar facts of those cases and having regard to sustaining the entire acquisition itself and to save the projects from being set aside.



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In the circumstances, we find that the submissions made by learned counsel for the petitioners cannot be accepted for the reason that as a person interested in a subject land nothing prevented the petitioners from objecting to the acquisition. Further the scope of the proceeding has been restricted to only receiving adequate compensation.

5. In the present case, the petitioner is claiming that notification of acquisition is issued under Section 3D in the name of Bakkiyalakshmi and hence there is no opportunity to object to the proposed acquisition. This Court is not able to accept the contention of the petitioner, since the petitioner is already aware of the acquisition and has submitted an objection for notification issued under Section 3A. When the petitioner has received 3D notification, for the portion of the land in Survey No.34 i.e. 34/3B, it has been rightly mentioned the petitioner's name as the owner and when the petitioner has received compensation for the land in Survey No.34/3B, the petitioner ought to have demanded before the authorities that the Bakkiyalakshmi name is wrongly mentioned in 34/3A and he is the owner of the said land also and ought to have received the compensation for these lands under 34/3A as well. But the petitioner is now taking a plea, since the respondents have mentioned the said Bakkiyalakshmi as the owner, the entire proceedings ought to be cancelled cannot be accepted. The petitioner has deliberately failed to receive the



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compensation which cannot be entertained. The petitioner is directed to receive the compensation amount which is deposited before the appropriate authorities at the earliest.

6. With the above direction, this Writ Petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

24.07.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
Nsr

Note: Issue Order Copy on 28.07.2023.



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To
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S.SRIMATHY, J.

Nsr

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