



W.P(MD)No.4821 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 13.07.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.4821 of 2014
and
W.M.P.(MD)No.1 of 2014

A.Joy Muthammal Chandra Bai

... Petitioner

Vs.

1.The District Collector,
Tirunelveli,
Tirunelveli District.

2.The Revenue Divisional Officer,
Tirunelveli.

3.The Superintendent of Police,
Tirunelveli,
Tirunelveli District.

4.The Tahsildar,
Palayamkottai Taluk Office,
Tirunelveli-627002.

5.The Principal,
Government Engineering College,
Palayamkottai,
Tirunelveli District.

... 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, to remove the wire fence put up by the fifth respondent in the petitioner's property to an extent of 13.5 cents comprised in Plot No. 59 in Survey No.A.Pu.No.100/1 situated at (Vengalaneer Samuthiram Village), Tuckarammalpuram, Palayamkottai Taluk, Tirunelveli District and restore the same in earlier position and consequently, take action on the petitioner's representation dated 28.02.2014.

For Petitioner : M/s.J.Maria Roseline

For Respondents : Mr.D.Gandhiraj
Special Government Pleader for R1 to R5

ORDER

Heard the learned counsel on either side.

2. The petitioner is a retired teacher. She purchased the petition mentioned plot vide sale deed dated 24.08.1972 (Document No. 2719/1972) on the file of the Palayamkottai Sub Registrar Office. The petitioner came to know in the year 2014 that her land had been fenced by the fifth respondent. Since her request for removal of the fence was not heeded to, the present writ petition came to be filed.



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3. The respondents have filed counter affidavit. The stand taken in the counter affidavit is that the petition mentioned plot along with other lands was acquired way back in 1994. Thereafter, it was handed over to the fifth respondent who had put up the fence. For the last 23 years, the property is in the exclusive possession of the fifth respondent and therefore, the question of accepting the petitioner's prayer will not arise. They pressed for dismissal of the writ petition.

4. The learned counsel appearing for the petitioner points out that the purchase by the petitioner was through a registered document. The petitioner was never put on notice about the acquisition proceedings. Any administrative act that is in contravention of the principles of natural justice can be ignored as nullity. The petitioner is therefore not required to challenge the land acquisition proceedings. She is entitled to maintain the writ petition in the manner it has been framed. When confronted with the Full Bench Judgment of the Madras High Court reported in ***AIR 1989 Mad 222(P.C.Thanikavelu Vs. The Special Deputy Collector for Land Acquisition, Madras)***, the learned counsel appearing for the petitioner



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submitted that this Court ought to distinguish the said decision in the facts and circumstances of this case. She pointed out that what was purchased by the petitioner was a developed house site and not an agricultural land. She is therefore not obliged to apply for mutation of patta. The authorities on the other hand were duty bound to have verified the encumbrance register. Since the petitioner's transaction is very much reflected in the encumbrance register, the authorities ought to have notified the petitioner. Failure on their part is fatal. The learned counsel appearing for the petitioner called upon this Court to allow the writ petition as prayed for.

5. I carefully considered the rival contentions and went through the materials on record. It is beyond dispute that the land acquisition proceedings under 1894 Act were initiated vide G.O.Ms.No.791, Education, Science and Technology (T2) Department, dated 13.09.1994. After issuing notification under Section 4(1) of the Act, enquiry under Section 5(A) was conducted on 14.06.2015. It was followed by declaration under Section 6 of the Act. Award enquiry was subsequently conducted. Thereafter, possession of the land was also handed over to



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the fifth respondent. All these proceedings had taken place during 1994 to 1996. It is true that the petitioner was not put on notice. Even her name does not figure in any of the proceedings under the Land Acquisition Act. The only question that calls for consideration is whether on this ground, the proceedings can be treated as nullity.

6. The learned Additional Government Pleader appearing for the respondents relied on the decision of the Hon'ble Full Bench reported in ***AIR 1989 Mad 222(P.C.Thanikavelu Vs. The Special Deputy Collector for Land Acquisition, Madras)***. The Hon'ble Full Bench had held that the authorities are obliged to issue notice only to those whose names appear in the revenue record. If the purchaser of the land had failed to get his name entered in the revenue record, the authorities while acquiring the land are not obliged to notify him. The learned Additional Government Pleader also pointed out that this Judgment has been consistently followed. He relied on the decisions reported in 1999 (1) CTC 586 (P.Tamilarasan Vs. State of Tamil Nadu) and (2009) 3 MLJ 1322 (K.N.Soundarrajan and others Vs. State of Tamil Nadu).



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7. Judicial discipline dictates that I follow the aforesaid decisions.

I therefore hold that failure on the part of the authorities to notify the petitioner before acquiring the petition mentioned land cannot be put against them. In any event, the fifth respondent can be said to have obtained illegally only if they had fenced the land belonging to the petitioner. Section 16 of the Land Acquisition Act, 1984 states that when one's possession is taken, it is vested in the Government free of all encumbrance. In the revenue record also, the land had been classified as Government poromboke. The fifth respondent cannot be faulted for having fenced the property. This writ petition is not maintainable. The petitioner will have to work out her remedy in the manner known to law.

8. With this liberty to the petitioner, the writ petition is dismissed. At the same time, equity obtaining in this case cannot be lost sight of. The petitioner as the land owner is entitled to seek enhancement of the compensation. Under Section 18 of the Act, any person interested in the acquired land possesses such a right. Such right can be exercised only from the date when the amount is tendered to the petitioner. The petitioner was no where in the picture. Therefore, the question of



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limitation cannot be put against the petitioner. It is stated that a sum of Rs.27,000/- has been deposited before the civil Court. The petitioner is at liberty to seek withdrawal of the same. If any such application is made, it shall be allowed without notice. The petitioner through her counsel states that the amount awarded by the authorities is awfully inadequate and does not reflect the market value. I therefore direct the competent authority to make reference before the jurisdictional court for enhancement of the compensation. Such reference will be made within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

13.07.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To

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Tirunelveli,
Tirunelveli District.

2.The Revenue Divisional Officer,
Tirunelveli.

G.R.SWAMINATHAN, J.



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