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W.P. No.28253 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.28253 of 2023

J.Mary Merlin Jona

... Petitioner

Vs

1.The Executive Engineer cum
Administrative Officer
Tamil Nadu Housing Board
Salem Housing Unit
Ayyenthirumaligai Road, Salem - 8

2.The Joint Sub Registrar No.1
Office of the District Registrar
Salem (West), Salem

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order dated 26.06.2023 made in RFL/1/Joint Sub Registrar Salem West/29/2023 issued by the 2nd respondent and quash the same and consequently direct the 2nd respondent to register the settlement deed dated 31.03.2023 executed by the petitioner in favour of Mary Portia Dalathy Christhuraj within the time fixed by this court.



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For Petitioner : Mr.R.Nalliyappan

For Respondents : Mr.C.Kalaichelvan for R1
Mr.L.S.M.Hasan Fizal
Addl. Govt. Pleader for R2

ORDER

Challenge has been made to the refusal slip issued by the second respondent when the petitioner has presented a sale deed for registration, mainly on the ground that the property stood in the name of Tamil Nadu Housing Board.

2. It is the case of the writ petitioner that when she presented the document for registration, the same has been refused, merely on the basis of the letter. According to her, the notification issued for acquiring the land for the first respondent has already been quashed. That order has reached finality.

3. A counter has also been filed by the respondents wherein, it is also admitted about quashing of the notification. It is their contention that the compensation has already been paid to the land owner. Hence opposed the writ



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petition. Having taken such a stand, when this court raised a question as to any challenge made to the order of this court quashing the notification, the answer was that no appeal is filed. Further no documents or materials are placed before this court to show that compensation amount has already been disbursed. However, the fact remains that the entire acquisition proceedings have been quashed by this court. It is relevant to note that since in a similar writ petition in W.P. No.15154 of 2020 dated 08.12.2020, this court has passed a detailed order. The relevant portion is extracted hereunder:

"4. The issue involved in the present writ petition is squarely covered by the earlier orders passed by this Court in W.P.No.9566 of 1986, dated 28.02.2018. For proper appreciation, the relevant portions in the order are extracted hereunder:

"1.1. The case of the petitioners is that they are the joint purchasers of 2.08 acres out of 3.999 acres of land in Survey No.94/4 of Iyenperumalpatti Village, Salem Taluk under two sale deeds dated 12.08.1980 and 18.06.1981, executed by certain, Poongavanam, Natarajan, Arumugam, Manickam and Rajarathinam, all of who are heirs of a certain Muthusamy Gounder. The fifth petitioner has purchased another 55



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cents in the same survey number. After the aforesaid purchase, the petitioners have also effected necessary mutation in the Revenue Records and Patta was also issued in the name of the petitioners. The petitioners were in joint possession of the entire property and have been cultivating the same.

1.2. While so, a notification under Section 4(1) of the Land Acquisition Act vide G.O.Ms.No.755 Housing and Urban Development dated 04.09.1981, was issued whereunder the Government proposed to acquire the entire land in Survey No.94/4 for formation of a neighbourhood scheme by the Housing Board. The said notification was issued well after the petitioners had purchased the property. In the said notification the aforesaid Muthusamy Gounder, i.e., the father of petitioners- vendors, was shown as the owner of the property proposed to be acquired. Muthusamy Gounder however, was stated to have died some time in 1979 or thereabout, long prior to the publication of 4(1) Notification. This notification per se is



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therefore bad in law and it does not conform to the requirements of the Statute.

1.3. Thereafter, the second respondent/Land Acquisition Officer had issued a Notice under Section 5A for an enquiry, which notice was addressed to Poongavanam, one of the vendors of the petitioners. The petitioners were later given to understand that on 18.01.1982, Poongavanam had filed his objections before the second respondent, bringing to the latter's notice about the sales he and his siblings had made in favour of the petitioners. That however, did not improve the situation, vis-a-vis, the right and interest of the petitioners in the proposed acquisition as could be ascertained from the fact that when the Government issued a subsequent notification declaring its intention to acquire the land under Section 6 of the Land Acquisition Act vide G.O.Ms.No.608 Housing and Urban Development dated 03.08.1984, it again omitted to name the petitioners as owners of the land in Survey No.94/4. Plainly, the Government has been travelling along the track which the statute



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has not provided for it to travel. Hence, both the notifications issued under Section 4(1) and the declaration made under Section 6 are illegal and contrary to the provisions of the Land Acquisition Act, 1894 and are liable to be quashed.

1.4. Hence the petitioners have come forward with the present petition. This Writ Petition was disposed of with the batch of other Petitions, Vide an earlier order dated 16.11.1996, and that this Court has allowed the Petition and quashed the said Notifications. The Government preferred Appeals challenging this Order in W.A.No.33 of 2003. This was heard along with two other Writ Appeals and were disposed of by a Division Bench of this Court on 16.06.2006. By its order, the Division Bench has set aside the order of the learned Single Judge and remanded the matter back to the learned Single Judge for pointed consideration of the matter, based on particular facts available in each of the case. That is how this case happened to come before this Court today.



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2. *In the meantime, the Land Acquisition Act, 1894, was replaced by its successor Act namely, -The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013-, (Central Act 30 of 2013), and Section 24(2) thereof provides that in all cases where awards have been passed five years next prior to the commencement of the Act 30/2013, where compensation was not paid, or possession of the property acquired was not taken, the acquisition itself would lapse. The petitioners with an intention to leave no stone unturned, came up with additional set of grounds seeking to declare that the acquisition itself has lapsed.*

3. *Mr.M.Karthikeyan, the learned Additional Government Pleader appears for the respondents and submitted that the Government has not responded to the Writ Petition in its original form at any time before and as regards the additional grounds, it is yet to respond.*

4. *In the absence of any material to negate the contentions of the petitioners, this Court is left with the materials provided by the*



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petitioners. The petitioners have produced three material documents: (a) The first one is the Notification published under Section 4(1) of the Land Acquisition Act, 1894, which was issued in the name of Muthusamy Gounder, who as earlier indicated, was the father of the petitioners-vendors; (b) The declaration of the Government under Section 6 which was seen issued in the names of Muthusamy Gounder-s children. Again the petitioners- names are seen omitted; and the objection filed by Poongavanam, one of the vendors of the petitioners, during the enquiry under Sec.5~A of the Act before the Land Acquisition Authority informing the latter about the sales that they had made in favour of the petitioners was ignored.

5. The files are produced and it discloses the correctness of facts that the petitioners have presented. It is unfortunate that notwithstanding the fact that the petitioners- vendors had informed the Authority concerned that they did not have any subsisting interest in the property, the authorities preferred to stay in their zone of ineptitude and refused to correct their own



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errors. They therefore, with all consciousness, have walked into serious lapses in acquiring the property.

6. What is disappointing in the whole exercise is not even the initial failure on the part of the Government to do its homework completely before issuing the notification under Sec.4(1) of the Act, but its continued indifference not to correct its initial mistake when it came up with a declaration under Sec.6. Does it not display the abject indifference with which the authorities in the instant case have approached an enquiry under Sec.5~A of the Act, and their willingness to reduce the same to a farcical exercise? Doctrine of res ipso loquitur, that finds general and frequent application essentially in law of negligence now finds its way for describing administrative action.

7. And who has suffered? Not the Authorities, but the citizens of this country. So far as the interest of the petitioners goes, for them there was no enquiry under Sec. 5~A of the Act, nor was there any notice of an enquiry before the award was passed. It is now too



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frivolous a proposition to require any elaborate statement that an enquiry under Section 5A of the Land Acquisition Act, 1894 is indispensable and mandatory, and any violence there to cannot be rectified except by resorting to a fresh acquisition proceedings.

8. As to the additional grounds raised under Sec.24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013, it is fairly conceded that the petitioners are still in possession.

9. In conclusion, this Writ Petition is allowed and G.O.Ms.No.755, Housing and Urban Development dated 04.09.1981 containing 4(1) Notification and the consequential declaration made under Section 6 of the Land Acquisition Act in G.O.Ms.No.608, Housing and Urban Development dated 03.08.1984 is hereby quashed. This order will not be a bar to the Government initiating any fresh proceedings for acquisition. No costs."



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5. *It is clear from the above order that this Court has quashed the 4(1) Notification and the consequential deceleration issued under Section 6 of the Land Acquisition Act, 1894. It is brought to the notice of this Court that this order has become final and no steps have been taken by the Government to initiate any fresh proceedings for acquisition.*

6. *In view of the above order passed by this Court, the Tamil Nadu Housing Board cannot prevent the petitioner from dealing with the subject property since there is no pending acquisition proceedings. The petitioner cannot be deprived of the enjoyment of the property unless otherwise by due process of law and such a right is guaranteed under Article 300(A) of the Constitution of India.*

7. *In view of the above discussion, the impugned refusal slip issued by the third respondent dated 12.11.2019 is quashed. The directions issued by the Tamil Housing Board to the Registration Department not to register any documents, is also not valid in the eye of law, in view of the fact that the entire acquisition proceedings has been quashed. There shall be a direction to the third respondent to entertain the documents submitted for registration by the petitioner, if it is otherwise in order and register the same subject to the payment of the stamp duty and registration*



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fees. The documents shall also be returned after duly registering the same."

4. It is to be noted that the above order was also not challenged so far. Therefore, now merely on the basis of the unsupported contention in the counter, the first respondent cannot take a stand that they are still have any right over the property. In such view of the matter, the refusal slip issued by the second respondent is quashed and directed the second respondent to register the document within a period of seven days from the date of receipt of a copy of this order. No costs.

With the above direction, the writ petition is allowed. No costs.

19.06.2024

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

Asr

To

1.The Executive Engineer cum
Administrative Officer
Tamil Nadu Housing Board



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Salem Housing Unit
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2.The Joint Sub Registrar No.1
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3.The Government Pleader
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N.SATHISH KUMAR, J.

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