
(2014) 11 MAD CK 0291

In the Madras High Court

Case No : Writ Appeal Nos. 2454 and 2455 of 2013

A.K. Gajapathy Naidu

APPELLANT

Vs

The State of Tamilnadu

RESPONDENT

Date of Decision : 28-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 2, 20, 22, 4, 4(1)

Citation : (2015) 1 MLJ 584

Hon'ble Judges : V. Dhanapalan, J;G. Chockalingam, J

Bench : Division Bench

Judgement

V. Dhanapalan, J.—Heard Mr. R. Muthukumarasamy, learned Senior Counsel appearing for the appellant in both Writ Appeals; Mr. S. Gomathinayagam, learned Additional Advocate General assisted by Mr. T.N. Rajagopalan, learned Special Government Pleader appearing for respondents 1 to 3 and Mr. C. Yogesh, learned counsel appearing for respondents 4 to 6.

2. The above appeals are preferred by the aggrieved writ petitioners questioning the correctness of the order of this Court dated 08.01.2013 made in W.P. Nos. 21638 and 21639 of 2011, wherein, the relief sought to direct the respondents therein not to interfere with the possession in respect of their property comprised in Nanjai S. No. 437/3 of an extent of 6624 sq. ft. and 4226 sq. ft., respectively, out of the total extent of 1 Acre and 29 cents (52 acres) situated at Village No. 59, Ponneri Village and Taluk, Tiruvallur District, situate within the sub-Registration District of Ponneri and Registration District of Chennai North, was declined.

3. As the issue involved in both the Writ Appeals are one and the same, they are taken up for disposal by a common judgment.

4. According to the appellants, they are the owners of the lands comprised in Nanjai S. No. 437/3 of an extent of 4226 sq. ft. and 6624 sq. ft., respectively, out of the total extent of 1 acre and 29 cents (52 acres) situated at Village No.

59, Ponneri Village and Taluk, Tiruvallur District, situate within the Sub Registration District of Ponneri and Registration District of Chennai North. They purchased the same from Smt. Sarojini and 5 others represented by their Power Agent Sri. T. Mani on 27.02.2009 and registered as Document No. 937 of 2009 in the Office of the Sub Registrar, Ponneri and since then, they are in possession of the said lands as absolute owners thereof.

5. The appellants purchased the said lands for construction of residential house for their own purpose out of their own savings. Before purchasing the said property, they verified with the parent documents i.e. Sale Deed of the year 1987, executed by Sri. P.N. Muthu Krishnan and others to and in favour of Sri. P.N. Jayaram Mudaliar vide Doc. No. 581 of 1987 in the office of the Sub Registrar, Ponneri, Death and Legal Heirship Certificate of Late P.N. Jayaram Mudaliar, Chitta and Adangal, Encumbrance Certificate for the period from 01.01.1987 to till date. Further, the appellants also verified with the Office of the Sub-Registrar, Ponneri and enquired from the competent authority about any acquisition proceedings over the said land and after careful search, found there was no encumbrance.

6. It is further stated by the appellants that when they were in absolute possession and enjoyment of the said property, a group of officials terming themselves to be from the Adidravidar and Tribal Welfare Department, engaged themselves in measuring the land i.e. 1 Acre and 29 cents (52 Ares). On enquiries made with the above said officials, the appellants were informed that the entire land in S. No. 437/3 and other adjacent lands were purported to be the subject matter of acquisition by the Special Tahsildar, Adidravidar & Tribal Welfare Department. The appellants pleaded with the said officials that they have purchased the said property and have no knowledge of the alleged acquisition and requested to permit them to verify the records to know the veracity of the statement and found that the claim of acquisition is not correct.

7. It is also averred by the appellants that on the application made by them to the Head Quarters Deputy Tahsildar on 23.03.2009, he had issued Patta bearing No. 948, which is in the name of Sri. P.N. Muthu Krishnan and Sri. Rajendran, the initial owners. Further the Village Administrative Officer, Village No. 59, Aaladu Village had issued Chitta and Adangal on 15.06.2009, which also stands in the name of Sri. P.N. Muthu Krishnan and others, thereby confirming that the said land has been developed as house sites. When the appellants enquired with the other adjacent land owners, they informed that in the year 1993, the Special Tahsildar initiated acquisition proceedings under Central Act, 1894, which has been challenged by them in Writ Petition Nos. 117, 118, 2776 and 2777 of 1998 before this Court and the acquisition proceedings were quashed and also set aside on 05.07.2000. Further, it is transpired that this Court had directed the respondents to proceed further under the State Act, if necessary.

8. In the above notification, a total extent of 3.21.5 Hectares of land was notified for acquisition for the purpose of Adi-Dravidar and Tribal Welfare.

Out of the above said total extent of 3.21.5 Hectares, the owner of the land in S. No. 437/2 of an extent of 0.79.0 Hectares had filed W.P. No. 117 of 1994; the land owner in S. No. 438/3 of an extent of 0.62.5 Hectares had filed W.P. No. 118 of 1994, the land owner in S. No. 438/2 of an extent of 1.02.0 Hectares had filed W.P. No. 2776 of 1994 and the land owner in S. No. 437/2 of an extent of 0.79.0 Hectares had filed W.P. No. 2777 of 1994 challenging the award passed in Award No. 5/94-95. As stated above, all the above said Writ Petitions were allowed by this Court vide order dated 05.07.2000 and the said orders became final, no appeals were filed and no steps were taken till date for acquisition of the said lands and the owners continue to be in possession of the same.

9. While so, the appellants obtained Chitta and Adangal from the Village Administrative Officer on 15.06.2011 in respect of the land comprised in S. No. 437/3 as the same stood in the name of P. Muthukrishnan and three others, the previous owner. However, later on 29.07.2011, the appellants obtained a fresh Chitta and Adangal from the same Village Administrative Officer. In the said Chitta and Adangal, the names of the previous owners were struck off and changed into Special Tahsildar, Adi-Dravidar Welfare, without any intimation or notice inspite of repeated orders of this Court.

10. Since the respondents have changed the name of the owners in the revenue records, apprehending interference with their peaceful possession and enjoyment of the above said property, the appellants moved this Court in W.P. Nos. 21638 and 21639 of 2011 seeking issuance of writs of mandamus to the 3rd respondent therein, who is the Special Tahsildar, Adi-Dravidar & Tribal Welfare Department, not to interfere with their possession of the above mentioned lands.

11. Resisting the averments of the appellants/writ petitioners in the Writ Petitions, the Special Tahsildar, Adi Dravidar and Tribal Welfare Department, who is the 3rd respondent in the Writ Petitions, filed a counter affidavit, wherein, it is stated as follows:

11.1. The Writ Petitions are not at all maintainable at this length of time in as much as the award passed as early as on 28.03.1995 has been challenged in an indirect way by invoking Article 226 of the Constitution of India. The quantum of compensation also can hardly be challenged in the appropriate proceedings, as 16 years has lapsed. The subject matter of the lands falling in erstwhile Ponneri Taluk, Vempakkam were acquired for providing house site patta to the Adi Dravidars and an award dated 28.03.1995 was passed in Award No. 5 of 94-95. Admittedly, the purchase of the lands by the writ petitioners is subsequent to the passing of the award and the purchaser should have been careful in purchasing the lands by verifying various records and he cannot blame the respondents for his failure to verify the records. The principles of Caveat-emptor would be applicable to the writ petitioners. As the compensation was not claimed by the owners of the lands, the same was deposited with the revenue account as early as on 30.03.1995 and thereafter, all the revenue records got mutated in favour of the Adi-Dravidar Department.

11.2. It is incorrect to say that the vendor of the writ petitioners is not aware of the acquisition proceedings inasmuch as he had participated and admittedly filed Writ Petition challenging the said acquisition. Therefore, only to claim benefits under the award already passed, the petitioners have ventured by filing these Writ Petitions. Further, as per the notification made under Section 4(1) of the Central Act, dated 18.06.1993 vide G.O. 3(D) No. 459 published on 07.07.1993 in part II Section 2 by the Government declaration under Section 6 of the Act dated 11.07.1994 in G.O. No. 453 was published in Government Gazette dated 11.07.1994. The above facts of acquisition were known to the original owner of the land in Survey No. 473/3. The details of the Writ Petitions filed by the vendors in respect of the other part of Survey Numbers as stated in paragraph No. 4 would clearly prove the fact that the subject matter of the lands are not challenged in the said Writ Petitions. Secondly, the orders passed in the Writ Petitions as mentioned in the affidavit relates to the other Survey Number and the order was passed giving liberty to proceed under the State Act, as its validity was also upheld by this Court as well as by the Apex Court.

11.3. The acquisition having been admittedly made about 16 years earlier, it would be grossly improper for the writ petitioners to seek any relief challenging the said acquisition either directly or indirectly by invoking Article 226 of the Constitution. The alleged claim of possession by the writ petitioners is contrary to truth and the 3rd respondent is in possession of lands as per records as well as in fact and therefore the question of interfering with the possession of the writ petitioners is not at all sustainable and the writ petitions filed are grossly misconceived and liable to be dismissed.

12. After hearing the learned counsel on either side, this Court, by an order dated 08.01.2013, dismissed the above Writ Petitions with the following observation:

"12. In view of the same, I am of the considered view that the order passed in W.P. No. 5954 of 2009 dated 31.08.2009 cannot be applied to the petitioners.

13. Yet another contention that has been raised by the learned senior counsel for the petitioners is that in W.P. Nos. 117, 118, 2776 and 2777 of 1998, this Court had quashed the entire acquisition proceedings and hence, the said order will cover the case of S. No. 437/3 also. However, I am unable to agree with the said contention of the learned senior counsel for the petitioners, the reason being that, in the writ petitions referred to above, the petitioners have clearly set out the survey numbers which they have purchased and they have sought for quashing of the acquisition proceedings in respect of the properties purchased by them. Their prayer is very clear viz., "Insofar as their lands alone." While allowing the writ petitions, this Court has quashed the acquisition proceedings which could only mean that it pertains to the petitioners and the property which they own and nothing more. Therefore, as stated already, I am unable to accept the contention raised by the learned senior counsel for the petitioner that when this court has quashed the acquisition proceedings, it pertains to the entire

notification including S. No. 437/3.

14. One more aspect that has to be seen is that the learned counsel appearing for the impleaded parties submitted that in respect of S. No. 437/3, writ petitions have been filed and the same have been dismissed by this court in W.P. Nos. 104 and 105 of 1994 dated 11.02.2000.

15. For all the reasons stated above, I am of the considered view that the relief that has been sought for by the petitioners cannot be acceded to. In fine, the writ petition stands dismissed...."

13. Learned Senior Counsel appearing for the appellants would strenuously contend that the learned Single Judge erred in holding that the common order dated 05.07.2000 passed by this Court in W.P. Nos. 117 and 118 of 1994 and W.P. Nos. 2776 and 2777 of 1998, setting aside the impugned notification dated 18.06.1993 pertains only to particular Survey numbers and not the entire notification including Survey No. 437/3. He would further contend that when the Award dated 28.03.1995 passed in the case of the lands in question is under the Central Act, the learned Single Judge ought to have allowed the Writ Petitions.

14. In support of his case, learned counsel for the appellants has relied on a Full Bench decision of this Court reported in *Seethalakshmi Ammal Vs. The State of Tamil Nadu and Another*, wherein, it is held as follows:

"30. We have already seen that the concept of person aggrieved is not in any way different from a person interested and that there can be a variety of interests and different persons may have different interests. It is also possible that a person surrendered some interests but fought for the other interests, such as the owner found no tenable objection to the acquisition but questioned the adequacy of the compensation. The locus standi to question the acquisition thus will not be available to him. He can, however, question the quantum of compensation. Similarly a purchaser of a piece of land under acquisition, who came in the picture only after the stage of objection under S. 5-A but before the dispute of compensation was decided, may enter into the proceeding and question the compensation amount but may not demand inquiry under S. 9, he cannot be heard to say that he was entitled to a notice. A purchaser, may have a right to raise objections to the award and/or even acquisition such as the objection that the proceeding elapsed because the award was not made within the stipulated period and like but not the objections which the owner availed or had opportunity to avail under S. 5-A of the Act. If his purchase is after the award but before possession is taken by the Collector, he may not be heard to question the acquisition because his vendor never questioned the acquisition. These, however, will depend upon facts as well as law attracted to the fact situation of each case. Thus it will be a misconception to say that a purchaser shall have not locus standi. But it will be equally misconceived if it is said that the purchaser shall have locus standi in all circumstances."

15. On the other hand, learned Additional Advocate General appearing for

respondents 1 to 3 would submit that in the order dated 05.07.2000 passed by this Court in W.P. Nos. 117 and 118 of 1994 and W.P. Nos. 2776 and 2777 of 1998, the impugned notification dated 18.06.1993 was set aside in so far as the petitioners' lands is concerned. Further, the learned Single Judge of this Court in paragraph 13 of the common order dated 08.01.2013 made in W.P. Nos. 21638 and 21639 of 2011, has clearly explained the stand taken in the order dated 05.07.2000 passed by this Court that "this court has quashed the acquisition proceedings which could only mean that it pertains to the petitioners and the property which they own and nothing more". It is his further contention that the claim of the appellants/writ petitioners that the quashing of the acquisition proceedings pertains to the entire notification including S. No. 437/3 cannot be acceptable and that it is grossly improper for the appellants to challenge the acquisition proceedings either directly or indirectly by invoking Article 226 of the Constitution of India.

16. To substantiate his stand, learned Additional Advocate General has relied on the following decisions rendered by the Hon"ble Supreme Court:

(i) State of Tamil Nadu and Others Vs. Ananthi Ammal and Others,

"18. Section 20 of the said Act states that the provisions of the Land Acquisition Act, save as expressly provided in the said Act, shall cease to apply to any land which is required for the purpose specified in Section 4(1) and such land shall be acquired only in accordance with the provisions of the said Act. Consequently, Section 22 makes the provisions of the said Act applicable also to cases in which proceedings have been started before the commencement of the said Act under the Land Acquisition Act for the purposes of Harijan Welfare Schemes, provided that no awards have been made under the Land Acquisition Act. We see no unreasonableness in this provision, particularly having regard to the terms of Section 20. We must, however, take into account the fact that the judgment under appeal striking down the said Act was delivered as far back as September 1981, and no stay thereof was obtained from this Court. It is likely, therefore, that in cases where proceedings under the Land Acquisition Act had already been started to acquire lands for Harijan Welfare Schemes, they might have been revived and completed in the interregnum. We, therefore, make it clear that the provisions of Section 22 shall have no effect in such cases where awards have been made."

(ii) V. Chandrasekaran and Another Vs. The Administrative Officer and Others,

"6. The issue of maintainability of the writ petitions by the person who purchases the land subsequent to a notification being issued under Section 4 of the Act has been considered by this Court time and again.

In Pt. Lila Ram Vs. The Union of India and Others, , this Court held that, any one who deals with the land subsequent to a Section 4 notification being issued, does so, at his own peril. In Smt. Sneh Prabha etc. Vs. State of U.P. and Another, , this Court held that a Section 4 notification gives a notice to the public at large that

the land in respect to which it has been issued, is needed for a public purpose, and it further points out that there will be "an impediment to anyone to encumber the land acquired thereunder." The alienation thereafter does not bind the State or the beneficiary under the acquisition. The purchaser is entitled only to receive compensation. While deciding the said case, reliance was placed on an earlier judgment of this Court in Union of India (UOI) Vs. Shivkumar Bhargava and Others, .

7. Similarly, in U.P. Jal Nigam, Lucknow through its Chairman and another Vs. M/s. Kalra Properties (P) Ltd. Lucknow and others, , this Court held that, purchase of land after publication of a Section 4 notification in relation to such land, is void against the State and at the most, the purchaser may be a person interested in compensation, since he steps into the shoes of the erstwhile owner and may therefore, merely claim compensation.

8. In Ajay Krishan Shinghal, etc. etc. Vs. Union of India and Others, ; Mahavir and Another Vs. Rural Institute, Amravati and Another, ; Gian Chand Vs. Gopala and Others, ; and Meera Sahni Vs. Lt. Governor of Delhi and Others, , this Court categorically held that, a person who purchases land after the publication of Section 4 notification with respect to it, is not entitled to challenge the proceedings for the reason, that his title is void and he can at best claim compensation on the basis of vendors title. In view of this, the sale of land after issuance of a Section 4 notification is void and the purchaser cannot challenge the acquisition proceedings..."

17. Heard the learned counsel on either side and given careful consideration of the materials available on record.

18. On a careful scrutiny of the case on hand, the question which arises for consideration before us is as to whether the appellants/writ petitioners are entitled to the relief sought in the Writ Petitions viz. directing the respondents not to interfere with the possession of the petitioners in respect of the properties comprised in Nanjai S. No. 437/3 of an extent of 6624 sq. ft. and 4226 sq. ft., respectively, out of the total extent of 1 acre and 29 cents (52 acres) situated at Village No. 59, Ponneri Village and Taluk, Tiruvallur District.

19. It is seen from the records that this Court, by a common order dated 05.07.2000 in W.P. Nos. 117, 118, 2776 and 2777 of 1998, quashed the land acquisition proceedings initiated by the petitioners therein, with a direction to the respondent to proceed further under the State Act. Pursuant to the said order, in the revenue records, the name of previous vendors were changed and substituted in the name of the respondent on the ground that S. No. 437/3 was not the subject matter of the writ petitions referred to above.

20. A perusal of the provisions laid down under the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 would show that it empowers the State to acquire lands for Harijan Welfare Schemes. For better appreciation of the case, relevant provisions of the said Act are extracted as under:

4. Power to acquire land-(1) Where the District Collector is satisfied that, for the purpose of any Harijan Welfare Scheme, it is necessary to acquire any land, he may acquire the land by publishing in the District Gazette a notice to the effect that he has decided to acquire the land in pursuance of this section.

20. Land Acquisition Act not to apply: Save as otherwise provided in this Act, the provisions of the Land Acquisition Act, 1894 (Central Act I of 1894) shall cease to apply to any land which is required for the purpose specified in sub-section (1) of Section 4 and any such land shall be acquired by the Government only in accordance with the provisions of this Act.

24. Publication of rules, the date of the commencement of the rules and notifications and placing of rules and notifications on the Table of the Legislature-

(1) (a) All rules made under this Act shall be published in the Tamil Nadu Government Gazette and, unless they are expressed to come into force on a particular day, shall come into force on the day on which they are so published.

(b) All notifications issued under this Act shall, unless they are expressed to come into force on a particular day, come into force on the day on which they are published.

(2) Every rule made or notification issued under this Act shall, as soon as possible after it is made or issued, be placed on the Table of [the Legislative Assembly], and if before the expiry of the session in which it is so placed or the next session, [the Legislative Assembly agrees] in making any modification in any such rule or notification or [the Legislative Assembly agrees] that the rule or notification or [the Legislative Assembly agrees] that the rule or notification should not be made or issued, the rule or notification shall, thereafter, have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

The above provisions would clearly show that the Central Act, viz. Land Acquisition Act, 1894 cannot be applied to the present case, as there is a separate State Act being enacted for the welfare of Adidravidar.

21. The appellants/writ petitioners stated that they purchased the lands in question from their vendors on 27.02.2009 itself after verifying Chitta, Adangal and Encumbrance Certificate from 01.01.1987. To the above, it is the stand of the respondents that they decided to acquire the lands in question for the Harijan Welfare Scheme in the year 1995 itself, that an award was also passed on 28.03.1995 to that effect and the vendors of the writ petitioners were also aware of the said acquisition proceedings. Therefore, the circumstances of each case will thus show how far the Court can go to accommodate the subsequent purchasers/writ petitioners and what is the extent of their rights in jeopardy. If they are coming to meddle in the proceedings in which their vendors had notice and or participated, they would only be seeking a recommencement of the

proceeding that will not be permissible and they have got no standing to sue for judicial relief, thereby meaning that the principles of caveat emptor would be applicable to the appellants/writ petitioners.

22. Once the State Act gives power to the District Collector to acquire the land for welfare scheme, the interference by the Court is limited, as legal wrong requires a judicially enforceable right and the touchstone to justiciability is injury to a legally protected right.

23. Once the acquisition proceedings have started and award also passed, it is needless to state that the land in question vests with the Government only and the petitioners cannot claim right over the acquired land, though he has got necessary proof viz. Chitta, adangal to prove that he is in possession of the same. It is pertinent to note that W.P. Nos. 117, 118, 2776 and 2777 of 1998 were entertained by this Court on the sole ground that the survey numbers in regard to the lands of the petitioners therein were clearly set out, whereas, in the case on hand, it is not the case of the appellants/writ petitioners that the acquisition proceedings initiated in respect of the lands in Survey No. 437/3 have to be completely exempted from acquisition. In the Writ Petitions seeking for mandamus, they have only sought for a direction to the respondents/State not to interfere with the peaceful possession of the lands in question. It is therefore clear that the appellants/writ petitioners are only trying to stall the acquisition proceedings initiated in respect of the lands in S. No. 437/3 by way of obtaining injunction by invoking Article 226 of the Constitution of India.

24. Moreover, the appellants/writ petitioners cannot assume that since because the entire acquisition proceedings in W.P. Nos. 117, 118, 2776 and 2777 of 1998 have been quashed by this Court, the same also covers S. No. 437/3. A reading of the relief sought by the petitioners in the above Writ Petitions would clearly show that they sought to quash the land acquisition proceedings in respect of their lands alone, i.e. their relief was specific. The appellants/writ petitioners have mistakenly understood that the petitioners in the said Writ Petitions sought to quash the entire acquisition proceedings in respect of the Harijan Welfare Scheme.

25. The relief sought by the appellants for a direction to the respondents not to interfere with the possession of the lands in question could be considered only if there is a legal right. Though they claim they are owners of the land by virtue of the Sale Deed dated 27.02.2009, 4(1) notification in respect of the lands in question was issued on 18.06.1993 vide G.O. 3(D) No. 459 dated 07.07.1993. Thereafter, Section 6 declaration was made on 11.07.1994. The original owners of the land were aware of the acquisition proceedings in S. No. 437/3. A perusal of the Writ Petitions filed by the vendors in respect of other parts of Survey numbers would clearly prove that the subject matter of the land in question was not challenged by them therein. Also, in the order passed in those Writ Petitions, liberty was given to the petitioners therein to proceed under the State Act as its validity was upheld by the Honourable Supreme Court in Ananthi Ammal's case.

Now, after a period of 16 years, the appellants/writ petitioners have made an attempt to challenge the acquisition proceedings either directly or indirectly by invoking Article 226 of the Constitution of India. The alleged claim of possession of the land is contrary to truth and in fact the 3rd respondent, namely, the Special Tahsildar, Adi-Dravidar & Tribal Welfare Department is in possession of the land as per records. Therefore, the question of interfering with the possession of the land in question by the appellants/writ petitioners cannot be allowed to stand.

26. Be it the State Act or the Central Act, insofar as land acquisition proceedings are concerned, it is done only for the welfare of the public at large. More particularly, it aims in improving the standard of living of the economically weaker section of the society. Paramount consideration should be given to welfare schemes and the individuals are supposed to be very cautious by verifying all the relevant records before purchasing a land. It has been well settled that when a person purchases a property pending acquisition proceedings, such a sale in his favour shall be void as against the State, irrespective of his knowledge over the acquisition proceedings.

27. For the foregoing discussions and observations, we are of the considered view that the order of the learned Single Judge cannot be faulted with and needs no interference by this Court. Accordingly, the Writ Appeals fail and the same are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.