

(2014) 04 MAD CK 0254
In the Madras High Court
Case No : W.P. No. 10820 of 2010

A.L. Vellaichamy

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 10-04-2014

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1), 6

Citation : (2014) 3 MLJ 840

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Final Decision : Allowed

Judgement

T.S. Sivagnanam, J.—In this Writ Petition, the petitioner seeks for issuance of a writ of Certiorarified Mandamus to quash the order passed by the second respondent, dated 06.05.2010 and to direct the first respondent to consider the petitioner's representation, dated 13.05.1998, for reconveyance of the land belonging to the petitioner situated in survey No. 390/4, Sholinganallur village. The petitioner purchased the land in question during 1986 by a registered sale deed, dated 12.11.1986. The said land along with adjacent lands were subject matter of land acquisition proceedings by the Government of Tamil Nadu for the purpose of formation of Sholinganallur Neighbourhood Scheme by the Tamil Nadu Housing Board. Under the said scheme, the lands which were acquired were to be divided into housing plots and sold to the general public by the draw of lots. The petitioner challenged the acquisition proceedings by filing W.P. No. 16138 of 1997, which was dismissed by order dated 29.10.1997, as being barred by delay and laches. Since the petitioner was residing in the said land along with his family by constructing a house, he filed a Miscellaneous Petition in W.M.P. No. 28334 of 1997, seeking for modification of the order dated 29.10.1997, on the ground that he has built the house in land in question and in the light of the observations made by the Hon''ble Division Bench of this Court in W.A. No. 660 of 1987. In the said order passed by the Hon''ble Division Bench certain

observations were made by which the Board was directed to consider reconveyance of the land to the original land owners. This Court by order dated 27.03.1998, disposed of the Miscellaneous Petition holding that the order passed in the writ petition does not require any modification. However, as the petitioner sought for an observation as made by the Hon''ble Division Bench in its order dated 29.08.1996 and in the light of the order passed by the Hon''ble Division Bench, it was observed that following the said judgment, it was made clear that it is open to the petitioner to make appropriate application to the Housing Board for reconveyance in conformity with the resolution No. 67/86, dated 02.07.1996, passed by the Housing Board, in case the petitioner satisfies the conditions laid down in the said resolution, reconveyance of the area covered by the building put up by the writ petitioner and it is open to the respondents to consider the request and pass orders according to law. Pursuant to such directions/ observations, the petitioner submitted a representation on 03.03.1998, requesting the second respondent to exempt his house site and reconvey the land. The second respondent by communication dated 17.04.1998, rejected the petitioners request. Thereafter, the petitioner sent a representation to the first respondent on 13.05.1998, since the first respondent is the competent authority to consider for reconveyance u/s 48B of the Land Acquisition Act (Act). This was followed by a remainder enclosing copy of the order passed in W.M.P. No. 28334 of 1997, dated 27.02.1998. Since there was no reply to any of the representations, the petitioner continued to send remainders. While so, by notice dated 06.05.2010, the petitioner was termed as an encroacher of the land allotted to the Housing Board and was called upon to vacate the premises within ten days, failing which the petitioner was informed that he would be evicted from the property and the cost incurred for such process would be recovered from him. That notice dated 06.05.2010, which was received by the petitioner on 10.05.2010, is subject matter of challenge in this writ petition.

2. The learned counsel appearing for the petitioner reiterated the contention raised in the writ petition, which have been referred supra and submitted that the Housing Board has passed a resolution dated 02.07.1986 in resolution No. 67/86, reconveying the lands to the erstwhile land owners, who have constructed houses, even though such construction was made after the publication of the notification u/s 4(1) of the Act subject to the condition that they pay development charges. In this regard, the petitioner placed reliance on the decision of the Hon''ble Division Bench of this Court in the case of The Government of Tamil Nadu Vs. Rajeswari Venkatesan and The Tamil Nadu Housing Board, , wherein it was held that the resolution dated 02.07.1986, is also applicable to the cases where buildings have been constructed after issuance of notification u/s 4(1) of the Act. Further, it is submitted that the petitioner along with his family are residing in the said property for over 15 years and property tax has also been remitted for the house constructed by the petitioner during 1987 and the petitioner was an employee of the Tamil Nadu Co-operative Milk Producers'' Federation Ltd. and retired from service during the pendency of

this writ petition.

3. The learned Standing counsel appearing for the respondent Board submitted that the petitioner has absolutely no vested right to continue in possession of the said property and in terms of the award, the name of the land owner in respect of survey No. 416/6, is one Tmt. P.L. Visalakshmi and the petitioners name does not find place in the award. It is further submitted that the total extent of 204.70 acres land was acquired after following the procedure as per provisions of the Act and an award was passed on 08.06.1993, and as per award, the registered land owners is one Mr. Sadagopa Naicker and he appears to have sold an extent of 0.36 acres to certain persons and the petitioner is one among the purchasers. Since the petitioner and others did not appear for the award enquiry, the compensation amount as determined by the Land Acquisition Officer has been deposited before the Sub-Court, Poonamallee. It is further submitted that on the date when the award was passed, the land was a vacant land and the land is covered in Phase-III of the Sholinganallur Neighbourhood Scheme and it is to be utilised by the Housing Board and it is essential for the Board. It is further submitted that since the petitioner had encroached upon the Housing Board land and put up a pakka RCC building subsequent to the award, the impugned notice was issued directing him to vacate the premises. It is submitted by the learned counsel that the petitioner is an unauthorised occupant of the Government land and he has to be evicted and the writ petition is liable to be dismissed. Further, it is submitted that the land in question along with the entire extent was handed over to the Housing Board on 14.09.1993 and 19.07.1994 and on the said date, there was no superstructure in the lands and it is submitted that the Government have already taken a decision that the request for reconveyance is not feasible for consideration and an order to the said effect was passed on 17.04.1998 and the petitioner has not questioned the said order, but has submitted another representation and has approached this Court by way of this writ petition. Therefore, it is contended that the writ petition is devoid of merits and liable to be dismissed.

4. Heard the learned counsels appearing on either side and perused the materials placed on record.

5. The case of the second respondent board is that the petitioner is said to be the purchaser of the land from the original land owner in whose name, the acquisition proceedings were taken and concluded. In the counter affidavit, it has been mentioned that as per the award No. 1/97, the land owner in respect of survey No. 416/6, is one Tmt. P.L. Visalakshmi; further in respect of land in survey No. 390/4, the land owner is one Mr. Sadagopa Naicker. The first respondent would state that the petitioner is a purchaser of the said property from the legal heirs of Mr. Sadagopa Naicker.

6. Admittedly, the Government acquired vast extent of land in Sholinganallur village for the purchase of formation of Sholinganallur Neighbourhood Scheme by the Tamilnadu Housing Board, which was to be developed in three phases. In this

writ petition, there is no challenge to the acquisition proceedings and the prayer is only for reconveyance based on the resolution passed by the Housing Board, which was considered by the Hon''ble Division Bench of this Court in the case of Rajeswari Venkatesan (supra). The case before the Hon''ble Division Bench was an appeal filed by the Government of Tamil Nadu against an order passed in a writ petition directing the respondents therein to consider the prayer for reconveyance. The Hon''ble Division Bench took note of the stand taken in the counter affidavit filed in the writ petition, wherein it was admitted that certain lands could be exempted without detriment to the scheme and the same were exempted by the Government and the Housing Board by resolution dated 02.07.1986, resolved to reconvey the lands, where buildings have come up and occupied by the land owner by way of reconveyance and therefore, the petitioner can approach the Tamil Nadu Housing Board for reconveyance of his property by handing over formal permission in view of the fact that the award has already been passed. Therefore, the Housing Board was conscious of the fact that even in cases where the award was passed, request for reconveyance would be entertained in terms of resolution No. 67 of 1986, dated 02.07.1986. The Hon''ble Division Bench took note of the fact that the Housing Board stated that number of buildings were constructed after the publication of the notification u/s 4(1) of the Act and therefore, the following suggestions were made:-

...All the above buildings are constructed after publishing the Notification. All these are illegally unapproved layouts. It is not necessary to give compensation as per the Land Acquisition Act since the above buildings were constructed after publishing the 4(1) Notification. While seeing the sketch given by the Special Tahsildar (L.A.), excepting some lands buildings are available then and there. Hence, acquisition should be done along buildings and comparing with Board layout and without affecting the buildings the same may be allotted to the land owner under ex-land owner category after collecting Administration Charges. By doing so, the land owner could avoid the Court expenses. Moreover, the expenses incurred by the Board for the past 15 years to the Land Acquisition Staff's would not be wasted so that the Board will be benefited.

7. The Government in G.O.Ms. No. 667, dated 06.08.1981, took the following decisions:-

...A resolution is requested in the decision of the proposal may be extended to other Villages for Land Acquisition Work. After taking a decision by the Board the same should be sent to Government for its approval. Because, if 4(1) Notification is not published before the 23.08.1986, the Award of acquisition of these lands will not be used. Hence, acquisition should be done along buildings and comparing with Board layout and without affecting the buildings the same may be allotted to the land owner under ex-land owner category after collecting Administration Charges. Hence acquisition should be done along buildings and comparing with Board layout and without affecting the buildings the same may be allotted to the land owner under ex-land owner category after collecting

Administration Charges.

8. The Hon"ble Division Bench observed that the respondent therein having constructed a house after the notification u/s 4(1) of the Act was entitled to the allotment of the land along with building in her favour after submitting the development charges. It was further held that resolution No. 67/1986, dated 02.07.1986, is not only applicable in cases where buildings have been constructed prior to the notification u/s 4(1), but also in cases where notification is issued after Section 4(1) of the Act, but acquisition has not reached finality. Further, it was pointed out that resolution No. 67/86, dated 02.07.1986, does not stipulate reconveyance of the land, but the decision was to allot the very same land to the person, who was the owner of the land and constructed a building thereon. It was further pointed out that the word "reconveyance" was used by the Division Bench in the earlier decision as in resolution No. 67/1986, it was required to be allotted in favour of such owner of the land and building, subject to payment of development charges etc. Therefore, the contention raised by the Government of Tamil Nadu as well as the Housing Board by relying upon the decision of the Hon"ble Supreme Court in the case of Tamil Nadu Housing Board Vs. Keeravani Ammal and Others, was held to be not applicable and that the Government cannot derive any advantage from the decision of the Hon"ble Supreme Court. With the above observations, the Division Bench dismissed the Writ Appeal filed by the Government making it clear that the land owner is entitled for allotment of land along with building constructed thereon to the extent of land on which she has put up construction after payment of development charges.

9. It is not in dispute that the decision of the Hon"ble Division Bench which was rendered on 18.06.2007, became final. In the preceding paragraphs, the facts of the case on hand has been set out, the petitioner purchased the land much prior to the notification issued u/s 4(1) of the Act and to that extent the submission of the respondent Board appears to be factually incorrect. The petitioner does not dispute the fact that he put up construction after the issuance of Section 4(1) notification. During 1997, the petitioner challenged the acquisition proceedings by filing a writ petition in W.P. No. 16631 of 1997, which was dismissed by order dated 29.10.1997, on the ground of delay and laches, as the declaration u/s 6 of the Act, was issued on 21.06.1991. The petitioner on coming to know about the resolution passed by the Board in resolution No. 67/86, filed a Miscellaneous Petition in W.M.P. No. 28334 of 1997, to modify the order in the writ petition. The petitioner placed reliance on the decision of the Hon"ble Division Bench which in fact was taken note of by the Hon"ble Division Bench in the case of Rajeswari Venkatesan, (supra). The said Miscellaneous Petition was disposed of, by order dated 27.03.1998, leaving it open to the petitioner to make an appropriate application to the Housing Board for reconveyance in conformity with the resolution No. 67/86, and in case the petitioner satisfies the conditions laid down in the said resolution, reconveyance of the area covered by the building put up by the petitioner, and it is open to the respondents to consider the request and

pass orders according to law. The Housing Board would state that the request made was rejected by the Housing Board and the petitioner did not question the same. Nevertheless, the petitioner submitted a representation on 27.04.1998, in which the petitioner while requesting to the extend the benefit of resolution No. 86, also stated by way of abundant caution, is preferring an appeal to the Government against the proceedings, dated 17.04.1998 and in fact, the petitioner preferred such an appeal to the Government on 13.05.1998, to set aside the order dated 17.04.1998, passed by the second respondent and to exempt or to reconvey the land in his favour. No record has been placed before this Court to show that the appeal petition dated 04.05.1998, received by the Government on 13.05.1998, copy of which has been filed in page 9 of the typed set of papers, has been disposed of by the Government. Therefore, the petitioner cannot be non-suited on the ground that the second respondent has already passed an order on 17.04.1998. While such being the factual position, the petitioner cannot be treated as an encroacher in the light of the fact that the appeal filed against the order dated 17.04.1998 is still pending with the Government.

10. Be that as it may, the second respondent did not take into consideration the observations made by the Hon'ble Division Bench in the case of Rajeswari Venkatesan, (supra), and the observations of this court in the order dated 27.02.1998 in W.P.M.P. No. 28334 of 1997, in W.P. No. 16138 of 1997.

11. The learned counsel for the respondent Board submitted that the superstructure put up by the petitioner is a small structure and has recently built and the records produced by the petitioner such as the telephone bill (Land line) cannot in any manner advance the case of the petitioner.

12. The learned counsel for the petitioner produced photographs of the house constructed by the petitioner from which it is evidently clear that it is a fully built RCC construction and the plot surrounded by a compound with iron gate and from the photographs it appears to be an old construction, there is thick foliage and fully grown coconut trees standing in the plot. From the copy of the telephone bill (land line), it is seen that the date of installation of telephone connection was 09.11.2000. This would prima facie show that the petitioner was in possession, was residing in the said premises at least from November 2000. It is the case of the petitioner is that he had put up construction immediately after the notification u/s 4(1) of the Act and he was an employee of Tamil Nadu Co-operative Milk Producers' Federation Ltd., (TCMPF) at Sholinganallur Dairy and commuting to his work place from his residence.

13. Thus, on a cumulative consideration of all the above facts, this Court is fully convinced that the petitioner's case deserves to be considered on par with the land owners in the decision of this Court in the case of Rajeswari Venkatesan, (supra) and the decision of the Hon'ble Division Bench of this Court in W.A. No. 1247 of 1994, dated 28.11.1991. In the result, the writ petition is allowed and the impugned order is set aside and the respondents are directed to consider and

allot the said land along with building constructed thereon to the extent of the land on which the petitioner has put up construction after payment of development charges, as directed by the Hon''ble Division Bench in the case of The Government of Tamil Nadu Vs. Rajeswari Venkatesan and The Tamil Nadu Housing Board, , within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.