
(2013) 08 MAD CK 0119

In the Madras High Court

Case No : Writ Petition No. 516 of 2006 and W.P.M.P. No. 591 of 2006

Dhanalakshmi and Others

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 23-08-2013

Acts Referred:

Citation : (2013) 8 MLJ 45

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Advocate : K. Muthumani Doraisamy, SC for R.T. Doraisamy, for the Appellant;
R. Rajeswaran, Spl. G.P., Assisted by N. Sakthivel, GA, for the Respondent

Final Decision : Allowed

Judgement

S. Nagamuthu, J.—The first petitioner is the mother of the second petitioner. The first petitioner's husband was one Mr. E. Kuppusamy. Mr. E. Kuppusamy died in the year 1999. Mr. E. Kuppusamy's father was one Mr. Ellappa Naicker. Mr. Ellappa Naicker died on 03.03.1962. Mr. Ellappa Naicker owned the lands comprised in Survey No. 643/1A2 and 643/1B2A situated at Sholinganallur Village, Tambaram Taluk, Kanchipuram District. Of course, patta for the said properties stood in Postal Page No. 68 the name of Mr. Ellappa Naicker even after his demise in the year 1962. For the purpose of implementing Sholin-ganallur Neighbourhood Scheme, Phase-II, the Tamil Nadu Housing Board was in need of 53.92 acres of land in Sholinganallur Village, Tambaram Taluk, Kanchipuram District. Therefore, the Tamil Nadu Housing Board made a request to the Government to acquire necessary lands for the said purpose, under the provisions of the Land Acquisition Act. Accordingly, the Government under G.O.Ms. No. 454 Housing & Urban Development Department dated 23.05.1990, issued a notification u/s 4(1) of the Land Acquisition Act (hereinafter referred to as "the Act") thereby proposing to acquire 53.92 acres of land in Sholinganallur Village including the lands belonging to Mr. Ellappa Naicker comprised in Survey No. 643/1A2 and 643/1B2A.

2. But, the said notification was issued in the name of Mr. Ellappa Naicker in respect of the lands in question though, Mr. Ellappa Naicker died in the year 1962 itself. Mr. Kuppusamy, the son of Mr. Ellappa Naicker who had inherited the said property along with the second petitioner herein also was not aware of the acquisition proceedings. An enquiry appears to have been conducted u/s 5A of the Act. But, no notice was served either on Mr. Kuppusamy or on the petitioners 1 and 2 herein. The Special Tahsildar on completing the enquiry, had submitted a report to the Government. On accepting the said report, the Government issued G.O.Ms. No. 996 Housing & Urban Development Department dated 17.06.1991, thereby acquiring 21.83.0 hectares of land including the lands belonging to Mr. Ellappa Naicker mentioned above. The said notification u/s 6 of the Act was published in the Tamil Nadu Government Gazette on 19.06.1991.

3. According to the petitioners, the said acquisition proceedings were not known to the petitioners. It is stated by the respondents that subsequent to the above declaration u/s 6 of the Act, proceedings were conducted for determining the amount of compensation. Accordingly, three awards were made under Award Nos. 2/1993 dated 18.06.1993; 1/1998 dated 30.06.1998 and 1/2001 dated 23.11.2001 respectively. In so far as the lands in question are concerned, award was passed under Award No. 2/1993 dated 18.06.1993 itself.

4. According to the petitioners, without knowing all the above developments believing honestly that they continued to be the owners of the lands in question, they developed the said lands into house-sites and sold away the plots to the petitioners 3 to 7 herein. Thus, the petitioners 3 to 7 herein have become the absolute owners of the said lands and they have constructed packa houses on the said properties and they are now occupying the same.

5. While so, the Tamil Nadu Housing Board issued notices to the petitioners calling upon them to vacate the premises and to hand over vacant possession of the same as the Tamil Nadu Housing Board has become the absolute owner of the property, as per the acquisition made u/s 6 of the Act, and also on the allegation that the possession was also handed over by the Government to the Tamil Nadu Housing Board. The said notice of eviction was issued u/s 84(2) of the Tamil Nadu Housing Board Act. According to the petitioners, they came to know about the above acquisition proceedings only after the above notice dated 12.12.2005. Immediately, the petitioners have come up with this writ petition challenging the entire acquisition proceedings.

6. The Tamil Nadu Housing Board has filed a detailed counter which has been adopted by the respondents 1 and 2. In the said counter, inter alia, it is stated that this writ petition which was filed long after passing of the award is not maintainable, in view of the judgment of the Hon"ble Supreme Court in The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others, . It is further contended in the counter that the notice u/s 4(1) of the Act, was issued in respect of the lands in question only in the name of Mr. Ellappa Naicker because, in the revenue records, the name of Mr. Ellappa Naicker was found as

the owner of the land in question. It is further stated in the counter that an enquiry was appropriately held by the competent authority u/s 5A of the Act. All the objections raised by the land owners were all considered and finally, the Special Tahsildar submitted a report recommending for acquisition of these lands thereby rejecting the objections. It is further stated in the counter that thereafter, the Government considered all the relevant materials and issued a notification u/s 6 of the Act under G.O.Ms. No. 996 dated 17.06.1991. It is also stated that subsequently, possession was taken and handed over to the Tamil Nadu Housing Board. It is finally contended that the petitioners are treated only as encroachers as their occupation is unauthorized and therefore, they are liable to be evicted. In view of all the above, according to the respondents, this writ petition is liable to be dismissed.

7. I have heard the learned Senior Counsel appearing for the petitioners; the learned Special Government Pleader appearing for the respondents 1 and 3 and I have also perused the records carefully. There is no representation for the respondents 2 and 4.

8. For the sake of convenience, let me take up the objection regarding the maintainability of this writ petition at first. It is the contention of the respondents that this writ petition which was filed in the year 2006 long after passing of the award in the year 1993, is not at all maintainable, in view of the judgment of the Hon''ble Supreme Court in *Municipal Council, Ahmednagar v. Shah Hyder Beig*, case (cited supra). In the said judgment, the Hon''ble Supreme Court has held that long after the award had been passed in the land acquisition proceedings and compensation had been made over to the requiring authority, a writ petition challenging the notices issued under Sections 4 and 6 of the Act was not maintainable. Referring to the said judgment, the learned Special Government Pleader would submit that in this case, though the award was passed on 18.06.1993, the present writ petition came to be filed only on 02.01.2006. The learned Special Government Pleader would therefore submit that in view of the law laid down by the Hon''ble Supreme Court in *Municipal Council, Ahmednagar v. Shah Hyder Beig*, case, (cited supra), the present writ petition is liable to be dismissed as not maintainable.

9. But, the learned Senior Counsel appearing for the petitioners would submit that the said judgment of the Hon''ble Supreme Court in *Municipal Council, Ahmednagar v. Shah Hyder Beig*, case came to be again considered by the Hon''ble Supreme Court in an another judgment in *Babu Ram and Another Vs. State of Haryana and Another*, . In the said judgment, after having referred to the law laid down in *Municipal Council, Ahmednagar v. Shah Hyder Beig* case, the Hon''ble Supreme Court in paragraph No. 32 has held as follows:--

32. Since Section 5A of the LA Act had been dispensed with, the stage u/s 9 was arrived at within six months from the date of the notice issued under Sections 4 and 17(2) of the LA Act. While such notice was issued on 23.11.2005, the award u/s 11 was made on 23.05.2006. During this period, the appellants filed a suit

and thereafter, withdrew the same and filed a writ petition in an attempt to protect their constitutional right to the property. It cannot, therefore, be said that there was either any negligence or lapse or delay on the part of the appellants.

10. Relying on the said judgment of the Hon''ble Supreme Court, the learned Senior Counsel appearing for the petitioners would submit that it is not as though, in every case, where a challenge is made after passing of the award, the Court should dismiss the writ petition, holding that the writ petition is not maintainable, on the ground of inordinate delay. It is the further contention of the learned Senior Counsel that in an appropriate case, where, it is shown by the land owner that there was neither negligence nor lapse on his part then, simply because, there had occurred delay, on that ground, the writ petition cannot be held to be not maintainable. The learned Senior Counsel would point out that thus, the view taken by the Hon''ble Supreme Court in Babu Ram v. State of Haryana, case (cited supra), as found in paragraph No. 32 of the judgment, will not be applicable to the facts of the present case. In the instant case, according to the learned Senior Counsel, since, notice was issued u/s 4(1) of the Act, against the dead person and since, no notice was served on the legal representatives of the deceased and since, there was no enquiry held by affording opportunity to the legal representatives of Mr. Ellappa Naicker, who are the petitioners 1 and 2 herein, the entire acquisition proceedings should be held to be a nullity. In other words, according to the learned Senior Counsel the notification issued against the dead person is a nullity.

11. The learned Senior Counsel would nextly rely on a judgment of a Division Bench of this Court in Savithiriammal Vs. The State of Tamil Nadu, wherein, the Division Bench has held that the land acquisition proceedings initiated by issuance of notification in the name of the dead person is void ab-initio. Speaking for the Bench, the Hon''ble Mr. Justice P. Sathasivam (as he then was) in paragraph No. 5 has held as follows:--

5. This Court, in M. Muthuswamy Kandiar Vs. State of Tamil Nadu, ; V. Devaraj, V. Sundararajan, V. Damodarasamy, Dr. V. Ramachandran and V. Lakshminarayanamasami Vs. The State of Tamil Nadu, ; Miss. Asiya Mariyan Vs. The Secretary to Government of Tamil Nadu. Adi- Dravidar and Tribal Welfare Department, Fort St. George, Madras and another, ; and in series of other decisions, held that Notice/Notification issued in the name of dead person and the proceedings with respect to the said lands cannot be sustained. By applying the said principle, we accept the contention of the learned counsel for the appellant and quash the Notification issued u/s 4(1), dated 14.06.1995. Consequently, Writ Appeal is allowed. No costs. Connected Miscellaneous Petition stands closed. It is made clear that the respondents are free to proceed with the acquisition, if they so desire, by initiating fresh proceedings in accordance with law.

12. I have considered the above submissions.

13. A perusal of the said judgment of the Division Bench would go to show that, consistently, this Court has been holding the view that a notification issued u/s 4(1) of the Act, against a dead person is nullity. In the instant case, admittedly, Mr. Ellappa Naicker who was the original owner of the lands in question died in the year 1962 itself. Thus, the notification issued u/s 4(1) of the Act, should be treated as nullity. Apart from that, it is not as though there was no enquiry held by the Special Tahsildar. Certainly, during the course of enquiry, he could have come to know that Mr. Ellappa Naicker died in the year 1962 itself. Even thereafter, the Special Tahsildar did not bother to issue notice to the petitioners 1 and 2 herein and to Mr. E. Kuppusamy to allow them to participate in the enquiry held u/s 5A of the Act. Thus, it is crystal-clear that the enquiry u/s 5A of the Act was also held against a dead person and therefore, the same is also a nullity. Since, the notice u/s 4(1) of the Act itself is held to be void, it goes without saying that all the consequential proceedings are also held to be void.

14. In the judgment in *Municipal Council, Ahmednagar v. Shah Hyder Beig*, (cited supra) the Hon"ble Supreme Court has held the view that a challenge made to the acquisition proceedings long after the award had been passed cannot be maintained. A close reading of the said judgment would go to show that it is founded on the principle of negligence or lapses on the part of the land owner. That is what has been clarified in the subsequent judgment in *Babu Ram v. State of Haryana*, case (cited supra). In paragraph No. 32 of the said judgment, the Hon"ble Supreme Court has specifically stated that "It cannot, therefore, be said that there was either any negligence or lapse or delay on the part of the appellants." It is on this factual finding, the Hon"ble Supreme Court has held that a writ petition is maintainable though, the same is filed after the award has been passed. In the instant case, since, I am holding that the very notification u/s 4(1) of the Act is a nullity; the petitioners were not put on notice during the enquiry proceedings and the petitioners 1 and 2 were neither negligent nor guilty of lapses, the writ petition is maintainable.

15. Now, turning to the facts of the present case, the learned Senior Counsel appearing for the petitioners would submit that a Division Bench of this Court was pleased to set aside the entire acquisition proceedings under G.O.Ms. No. 996 dated 17.06.1991 (the Government Order under challenge in the present writ petition). I have gone through the common order made by the Division Bench in a batch of writ petitions in W.P. Nos. 10430 to 10434 of 1991 etc., batch cases dated 24.01.1996. A perusal of the order of the Division Bench would go to show that, on facts, the Division Bench has held that enquiry u/s 5A of the Act was not held properly. Therefore, the Division Bench was pleased to set aside the declaration made u/s 6 of the Act. A further question arose before the Division Bench as to whether the notification u/s 4(1) of the Act would be allowed to survive so that enquiry could be conducted thereafter u/s 5A of the Act. The Division Bench was not pleased to concede to the said request made by the Government. In paragraph No. 7 of the order, the Division Bench has held as follows:--

7. It is not possible to keep the notification u/s 4(1) in tact and quash the remaining proceedings in view of the judgment of the Supreme Court in Oxford English School Vs. Government of T.N. and Others, .

16. Thus, a major portion of the land which was acquired under G.O.Ms. No. 996 dated 17.06.1991 has been excluded now by the order of the Division Bench. In such view of the matter, I do not think that Sholinganallur Neighbourhood Scheme, Phase-II, would be hereinafter implemented at this length of time. At any rate, since, I am holding that the notification issued u/s 4(1) of the Act itself is a nullity, there is no scope to allow the said notification to survive any more.

17. The learned Special Government Pleader would vehemently submit that there was no need for the Special Tahsildar to make a rowing enquiry to find out as to who was the original owner of the land in question to afford opportunity. According to the learned Special Government Pleader, it is suffice for the Special Tahsildar to afford opportunity to the land owners as per the revenue records during the relevant period. This argument, in my considered opinion, though attractive, does not persuade this Court, because, I am inclined to quash the proceedings not only on the ground that there is a defect in the enquiry held u/s 5A of the Act, but, on the ground that the notification u/s 4(1) of the Act itself is a nullity as it was issued against the dead person. In the result, the writ petition is allowed and the impugned Government Orders in G.O.Ms. No. 454 Housing and Urban Development Department dated 23.05.1990 and G.O.Ms. No. 996 Housing and Urban Development Department dated 17.06.1991 issued by the first respondent ending with the Award No. 2/1993 dated 18.06.1993 on the file of the third respondent so far as they relate to Survey Nos. 643/1A2 and 643/1B2A are concerned are quashed. No costs. Consequently, connected miscellaneous petition is closed.