

(1996) 09 MAD CK 0058
In the Madras High Court

G. Thiruvarasan

APPELLANT

Vs

The Deputy Collector, Land Acquisition and Another

RESPONDENT

Date of Decision : 09-09-1996

Acts Referred:

Land Acquisition Act, 1894 — Section 16, 47

Citation : (1996) 2 MLJ 645

Hon'ble Judges : Shivaraj Patil, J

Bench : Division Bench

Judgement

Shivaraj Patil, J.—This relief sought for in the writ petition is to quash the proceedings No. 2589/88/B/LA of the first respondent dated 25.11.1994 by a writ of certiorari.

2. The facts to the extent they are relevant and necessary for the disposal of the writ petition are as follows:

The father of the petitioner Govindarasu, claiming to be a tenant in respect of the land in R.S.No. 41/1, Old Survey No. 141, situate at Ariyankuppam village, Pondicherry, filed Writ Petition No. 13594 of 1986 questioning the validity of the Land Acquisition proceedings initiated in respect of the said land. He died on 7.6.1991. On his death the petitioner claims to be in possession and enjoyment of the said land. The said writ petition was dismissed. Writ Appeal No. 500 of 1994 challenging the order passed in the writ petition was also dismissed. During the pendency of the proceedings the father of the petitioner having died, the petitioner continued the proceedings. He had filed SLP to appeal in the Supreme Court in No. 21172 of 1994 challenging the order passed in the writ petition and the writ appeal aforementioned, later he withdrew the same.

3. It is submitted that neither the father of the petitioner nor the petitioner was aware that in respect of the said land the provisions of the Pondicherry Land Reforms (Fixation of Ceiling on Land) Act, 1973 had been invoked and the said land had been declared as surplus land. The said proceedings were also the

subject matter of civil suit in O.S.No. 21 of 1979 on the file of Principal Subordinate Judge, Pondicherry, and the said suit was partly decreed. The appeal A.S.No. 22 of 1983 filed against the judgment and decree passed in the suit was allowed on 28.11.1988 and the suit filed by Padmini Chandrasekaran, the original owner of the land, was dismissed.

4. The father of the petitioner had filed an application before the second respondent for renewal under Sub-rule (6) of Rule 24 for continuance of possession of land under Sub-section (5) of Section 7 of the Act. In view of the provisions of the said Act, the father of the petitioner was entitled to continue as a cultivating tenant. The application filed by the father of the petitioner had not been disposed of. Hence the petitioner sent a letter on 13.1.1995 to pass orders on the application. Since no action was taken inspite of reminders a writ petition was filed. It is also stated that another Writ Petition No. 20055 of 1994 was filed by the petitioner. It is also stated that another Writ Petition No. 20035 of 1994 was filed by the petitioner for furnishing copy of the Award. It is further claimed that the petitioner continues to be in possession of the property. According to the respondents, the possession of the property has been taken over on 25.11.1994 as can be seen from the impugned proceedings No. 2589/88/B/ LA dated 25.11.1994. The petitioner got copy of the said impugned proceedings only recently. According to the petitioner possession has not been taken from him.

5. Hence the writ petition is filed having no other alternative remedy, contending that the impugned proceedings of the first respondent are contrary to law, illegal and without jurisdiction; the first respondent having recorded that the petitioner declined to surrender possession erred in recording as if possession has been taken, contrary to the provisions of the Land Acquisition Act; the first respondent failed to note that they cannot take law into their own hands and the law does not permit forcible possession being taken under the Act, and that the Act provides for taking possession in the event of refusal to hand over possession; when the petitioner refused to deliver possession the first respondent should have resorted to the procedure laid down u/s 47 of the Act, and having not done so the recording of delivery possession is illegal and without jurisdiction.

6. The respondent have filed counter affidavit resisting the writ petition. It is stated that at the instance of the Director of Education, Pondicherry the land acquisition proceedings were initiated to acquire the land in question for the construction of "Bharathiar Mani Mandapam", to commemorate the memory of the great poet Subramania Bharathiar. Govindarasu Gownder had filed Writ Petition No. 13594 of 1986 claiming as a tenant and had obtained an interim injunction. Subsequently the Court had ordered stay of dispossession only, allowing the acquisition proceedings to go on. The award dated 26.7.1989 was passed in Award No. 4 of 1989.

7. The writ petition was dismissed, so also the writ appeal. The SLP filed in the Supreme Court also was withdrawn on 16.12.1994. The petitioner filed Contempt

Application No. 444 of 1994. The same was closed without any order having been made against the respondents on 7.7.1995; further the Sub Application No. 99 of 1995 in the said contempt application was also dismissed on 20.7.1995. Even the habeas corpus petition filed by the petitioner was also dismissed.

8. The owner of the land Padmini Chandrasekaran owned lands in excess of the ceiling limit prescribed under the Act, draft statement was published in the Gazette dated 28.6.1976 declaring on extent of 16.40.08 N. as surplus. She had filed objections. After considering the objections, final statement was published in the Gazette dated 26.8.1976 declaring 13.34.30 N. of land as surplus. The said surplus land was notified u/s 17(1) of the Act in the gazette dated 18.9.1976.

9. The petitioner had filed Writ Petition No. 20035 of 1994 which was dismissed as withdrawn on 4.1.1995 since copy of the Award was furnished. Another Writ Petition No. 11143 of 1995 has been filed seeking for stay against dispossession. This Court dismissed the writ miscellaneous petition on 25.9.1995 holding that the possession of the land had already been taken over by the Land Acquisition Officer on 25.11.1994. As regards taking over of possession, in paragraph 8 of the counter affidavit, it is stated thus:

It is respectfully stated that the Land Acquisition Officer went to the site on 25.11.1994 at 10.00 a.m. along with the Revenue Officer who was the representative of the Director of Education for taking over possession of the site. Police personnel were also present for giving protection to the authorities. Thiru S. Thiruvarasaj was present in the said site on 25.11.94. When Mr. P.M. Balachandran, then Land Acquisition Officer took possession of the acquired land from the petitioner, the petitioner refused to sign the handing over proceedings as he was refused one month time requested by him for vacating, by his letter dated 24.11.94. The Land Acquisition Officer therefore took over possession of the land in the presence of independent witnesses. The Land Acquisition Officer took over possession of the land as per the provisions contemplated under the Land Acquisition Act and handed over to Education Department. Now, the possession of the land is with Education Department, and Bharathiar Palkalaikoodam is functioning in the said land.

10. It is further submitted that the petitioner has no locus-standi whatsoever to maintain the writ petition. Once possession of the land was taken over by the Government as per Section 16 of the Land Acquisition Act, it is vested with the Government free from all encumbrances. Thus the respondents have prayed dismissal of the writ petition.

11. The respondents have filed two counter-affidavits in W.M.P.No. 3186 of 1996 in this Writ petition, one on 26.6.1996 and the other on 16.8.1996. In paragraph 4 of the counter-affidavit filed on 26.6.1996, it is stated thus:

It is humbly submitted that possession has been taken by the Land Acquisition Officer Thiru Balachandran who was then the Land Acquisition Officer on

25.11.1994, after serving notice of intention to take possession to the petitioner. The petitioner received the said notice for taking possession and made a request for grant of one month time for surrendering possession by his letter dated 24.11.1994. But the Land Acquisition Officer refused to grant one month time as prayed for by the petitioner and has taken possession with the police aid exercising Magisterial power u/s 47 of the Land Acquisition Act. After taking possession of the land on 25.11.1994, he handed over the same to the requisition department viz., Education Department and obtained acknowledgement to that effect. The Education Department in turn has handed over the same to the Director of Art and Culture on the same date who is now running Bharathiar Palkalai Koodam in the acquired property. The property has been fenced at a cost of Rs. 5,31,000 and so many improvements were made subsequent to taking over possession by the department. The Director of Art and Culture is in peaceful enjoyment of the acquired property running Bharathiar Palkalai Koodam.

12. It is further stated in that counter-affidavit that Contempt Application No. 444 of 1994 was filed complaining disobedience of the order of stay granted in W.M.P.No. 30555 of 1994. It was disposed of in the following terms:

There has been no breach of the terms of the interim order which was to have effect only if the petitioner was still in possession. This contempt petition is therefore closed without any order having been made against the respondent.

13. In paragraph 11 of the counter affidavit filed on 16.8.1996, it is stated thus:

I humbly submit that the pressmen present at the time of taking possession have taken photos and published in Dinamalar on 26.11.94 (a prominent Tamil Daily in Tamil Nadu and Pondicherry), showing the presence of myself, the Land Acquisition Officer, Police Officer, Thiru T. Selvaraj, Revenue Officer, Thiru M. Sarathi, Tahsildar and others which will speak for itself, the physical taking possession of the acquired property on 25.11.1994.

14. The petitioner has filed additional affidavit on 23.8.1996 reiterating his stand and has further stated that the respondents have been taking varying stands in regard to taking over of possession from time to time.

15. Shri S.V. Jayaraman, learned Counsel for the petitioner fairly submitted that the petitioner cannot challenge the validity of the acquisition proceedings in respect of the land in question in view of the dismissal of the Writ Petition No. 13994 of 1986 Writ Appeal No. 500 of 1994, and the SLP No. 21172 of 1994 having been withdrawn.

16. However the learned Counsel contended that the impugned proceedings dated 25.11.1994 relating to taking of possession of the land cannot be sustained as the possession could not be taken except in accordance with the provisions of Section 47 of the Land Acquisition Act, 1894 (for short, "the Act") under the circumstances of the case. He pointed out to the impugned

proceedings dated 25.11.1994, and submitted that the petitioner had refused to hand over possession of the land. Once he refused to hand over possession of the land, it was incumbent on the authorities to take recourse to Section 47 of the Act. In not complying with Section 47 of the Act, in taking possession of the land, the impugned proceedings cannot be held valid. The learned Counsel also submitted that the respondents have tried to improve their case as to taking of possession of the land in accordance with Section 47 of the Act, from time to time in subsequent affidavit having not made the position clear earlier.

17. On the other hand, Shri P. Krishnamoorthy, the learned Government Pleader representing the respondents argued that the petitioner has no right whatsoever over the land in question when the validity of the acquisition proceedings in respect of the land in question is upheld; even the Award was passed and thereafter possession of the land was taken over on 25.11.1994; as such the land in question vested with the Government free from all cumbrances; the petitioner has neither right nor interest, nor concern with the land any more, and as such the petitioner has no locus standi to maintain the writ petition. He submitted that possession of the land was taken over on 25.11.1994 in the presence of independent witnesses. Further possession of the land was handed over to the Education Department and Bharathiyar Palkalai Koodam in functioning in the said land.

18. The learned Counsel for the respondent further submitted that W.M.P.No. 17688 of 1995 filed by petitioner in W.P.No. 11143 of 1995 seeking an interim order of injunction restraining the respondents from in any way interfering with his possession and enjoyment over the land in question was dismissed on 25.9.1995 after hearing both parties. In the Contempt Application No. 444 of 1994 in which the petitioner and complained that there was disobedience of the order of stay granted is W.M.P.No. 30555 of 1994, this Court found that there was no breach of the terms of the interim order. He also stated that the pressmen present at the time of taking possession have taken photographs and published in Dhinamalar (a prominent Tamil Daily in Tamil Nadu and Pondicherry) on 26.11.1994, showing the presence of the Deputy Tahsildar, Land Acquisition, Land Acquisition Officer, Police Officer, T. Selvaraj, Revenue Officer, M. Sarathy, Tahsildar and others which will speak for itself of physical taking over of possession of the acquired property on 25.11.1994. According to the learned Government Pleader, the petitioner simply refused to hand over possession which was noted, but he did not offer any resistance and at any rate the provisions of Section 47 was substantially complied with. Hence he prayed for dismissal of the writ petition.

19. I have considered the submissions made by the learned Counsel for the parties.

20. The short question that arises for consideration is whether the impugned proceedings dated 25.11.1994 relating to taking over possession of the acquired land cannot be sustained, on the ground that much taking of possession was not

in accordance with Section 47 of the Act.

21. The facts which were not debated are the following:

The land in question was acquired for public purpose, the acquisition proceedings have become final, and the award also was passed.

22. There is little controversy between the parties as to the actual taking over possession of the land. The petitioner asserts that he still continue to be in possession of the land in question. The respondents contend otherwise and assert that physical and actual possession was taken over on 25.11.1994 itself.

23. From the impugned proceedings dated 25.11.1994 it is clear that possession of the land R.S.No. 41/1 measuring an extent of 4.30.00 hectares situate at Ariyankuppam Revenue Village has been taken over from the land owners by the Deputy Collector (Land Acquisition, Pondicherry at 10.00 A.M. on 25.11.1994, vide Award No. 4 of 1989 dated 26.7.1989, in the presence of two independent witnesses and other officer. The petitioner had only refused to hand over possession, which is also recorded in the said proceedings.

24. This Court in W.M.P.No. 17698 of 1995 in W.P.No. 11143 of 1995 passed the following order relating to the said land:

...Upon hearing the arguments of Ms. R.T. Shyamala, Advocate for the petitioner, and of Mr. P. Krishnamoorthy, Government Pleader for Pondicherry on behalf of the respondent, the court made the following order:

It is submitted by the learned Counsel for the Government Pleader, Pondicherry that the respondent has already taken possession of the properties on 25.11.1994. In view of the above, this petition is dismissed.

25. In Contempt Application No. 444 of 1994 between the same parties in respect of the same land, the order was passed to the following effect:

There has been no breach of the terms of the interim order which was to have effect only if the petitioner was still in possession. This contempt petition is therefore closed without any order having been made against the respondents.

26. The petitioner has been resisting the acquisition proceedings in respect of the land and also taking over possession, in one or the other proceedings. The award was passed as early as on 26.7.1989. The respondents could take possession of the land only on 23.11.1994, having regard to the impugned proceedings, in which it is clearly recorded that possession of the land was taken over in the presence of independent witnesses and other officer. A note is made in the proceedings that the petitioner has refused to hand over possession. It does not mean that possession of the land was not taken over merely because he refused to hand over possession, that too when the acquisition proceedings have become final and the award was passed long back. I do not find any good reason to say that actual possession of the land was not taken over on 25.11.1994, more so when nothing is attributed against the independent witnesses and other officers

who were present and have signed the proceedings.

27. Added to this, the fact of taking over possession gets support from the publication made in one of the leading Tamil dailies "Dhinamalar" on 26.11.1994 with photograph. The order passed by this Court extracted above in W.M.P.No. 17698 of 1995 reflects that possession of the land had been taken over on 25.11.1994, because on that basis the petition filed for interim injunction was dismissed. The order made in Contempt Application No. 444 of 1994 extracted above also indicates of taking over possession and the petitioner not being in possession of the land. In this view I have no hesitation to hold that the actual possession of the land was taken over under the impugned proceedings on 25.11.1994.

28. The question remains to be considered is whether there was compliance of Section 47 of the Act in taking over possession of the land. Section 47 of the Act reads that in case of any impediment or opposition in taking possession of any acquired land under the Act, surrender of such land could be enforced if the Land Acquisition Officer himself is a Magistrate, and if he is not a Magistrate, he shall apply to the Magistrate or to the Commissioner of Police as the case may be, who shall enforce the surrender of the land to the Collector.

29. The object and purpose of Section 47 is to effectuate" taking over possession pursuant to the acquisition of land and passing of the award. The services of a Magistrate for that purpose could be taken to avoid any untoward incident and to maintain law and order, in a situation where the land owner or occupant offers such a resistance or impediment which would lead to law and order problem or untoward incident or violence etc. If the owner or occupant of the land is is to simply say that he is not willing to hand over possession or he refused to hand over possession without anything-more and without creating any problem in the matter of taking over of actual possession, in my view it may not be always necessary to take the services of a Magistrate to enforce the surrender of land. Services of a Magistrate could be taken when it becomes necessary to enforce surrender of the land.

30. This apart, in the case on hand, as can be seen from paragraph 4 of the counter affidavit filed by the respondents on 26.6.1996, the petitioner received the notice of taking possession and requested for grant of one month's time for surrendering possession by his letter dated 24.11.1994; the land acquisition officer refused to grant one month time and took possession with the police aid exercising Magisterial power u/s 47 of the Act on 25.11.1994; he also handed over the same to the requisitioning department; the property has been fenced at a cost of Rs. 5,30,000 after taking over possession, and many improvements were made subsequent to taking over possession by the Department.

31. Section 47 does not also prescribe any particular form to apply to a Magistrate to enforce surrender of land whenever needed and it also does not say that there must be specific application. In some cases necessity may arise on

the spot at the time of taking possession suddenly. In that situation it is open to the authorities to apply to the concerned Magistrate by appropriate communication. In the light of the facts and circumstances of the case, in my view, there has been substantial compliance of Section 47 of the Act, at any rate the interest of the petitioner was in no way prejudiced when possession of the land was taken over on 15.11.1994 peacefully.

32. In the case of Syed Abbas Hussain Nagri Vs. State of Andhra Pradesh and Another, while dealing with Section 47 of the Act, in paragraphs 10 and 11, it is stated thus:

10. In accordance with the above-mentioned well-recognised principles even if Section 16 does not lay down the precise mode of the taking possession, I am bound to construe Section 47 of the Act as supplying the power to adopt a suitable method by which surrender of possession of the land, of which the title vests in the Government after the award, can be enforced. It is not possible, in my opinion, to import into Sections 16 and 47 of the Act any limitations not authorised by the express languages of these provisions. In my opinion, despite some ambiguity in Section 16 as to when the title to the land vests in the Government, that is to say, whether immediately on the making of the award or at the time when possession is taken, I think it is quite clear that the power to take possession is not effected by any such ambiguity. I am disposed to interpret the words "shall thereupon vest in the Government free from all encumbrances" as relating to the time at which the award was given u/s 11 because it is at that time that the right and title of the Government becomes clear and freed from all encumbrances. The term "encumbrances" would include such legal rights and obstacles to actual possession which may have existed such as a right of a mortgagee or of a tenant to be in actual possession. Learned Counsel for the petitioners concedes that this seems to be the object of freeing the right of the Government from all encumbrances. He admits that the petitioners could not put forward any tenancy rights after the making of the award. All that is contended for the petitioners is that they have a right to continue in possession until and unless duly evicted by a legally prescribed mode of eviction.

11. In my opinion, after an award is made, a fair and reasonable procedure for eviction is fully covered by Section 47 of the Act. There is no need for a separate suit against a trespasser. Indeed, if such a requirement were held to be necessary, it would defect the object of Section 47 of the Act. The validity of Section 47 of the Act is not assailed on the ground that it invests the Collector with too wide a discretion so that it could be used for purposes of discrimination. The meaning of Section 47 of the Act is that, whenever the Collector is obstructed in taking actual possession of the land, in respect of which an award has been made so that the title vests absolutely in the Government as provided by Section 16, he may take such steps as may reasonably be necessary to enforce the surrender of the land to himself. It is true that the section does not mention any notices to be given. But the Land Acquisition Collector (respondent

No. 1) in issuing notices to the petitioners and in hesitating to use actual force, as he could no doubt authorise the use of, was only acting with excessive caution. Now that it has been held by this Court that the petitioners had neither a substantive nor a procedural right as against the opposite party No. 1, invested with the magisterial power u/s 47 of the Act, there need be no such hesitations on the part of the contesting opposite parties. There suit is that I dismiss this writ petition with costs. The interim stay as also vacated.

33. The High Court of Calcutta in the case of Krishnalal Sadhu and Others Vs. State of West Bengal and Others, has taken the view that a Second Class Magistrate duly authorised, has power to enforce surrender of a land as contemplated in Section 47 on behalf of the Sub Divisional Officer to whom the original application u/s 47 had been made by the office of the Collector. It is also held that the Magistrate before whom the application u/s 47 is actually made need not be personally present to take or enforce possession. He can take the assistance of Subordinate Officers specially authorised by him to take possession on his behalf. Further the Section also does not require issuing of any notice as a condition precedent to enforcement of delivery of possession of surrender of the land.

34. The aforementioned decisions dealing with Section 47 of the Act also indicate that the purpose of Section 47 should be kept in view in regard to the compliance with requirements of Section 47 of the Act.

35. Thus having regard to all aspects and on the facts and in the circumstances of the case. I do not find any merit in the writ petition.

36. In the result, for the reasons stated the writ petition is dismissed.