

(2011) 06 MAD CK 0084

In the Madras High Court

Case No : Review Application No. 153 of 2010 in Writ Petition No. 8906 of 2010

K. ELangovan

APPELLANT

Vs

R. Balakrishnan, The District Collector, The District Adi
Dravidar and Tribal welfare officer and The Special Tahsildar
Adi Dravidar Welfare

RESPONDENT

Date of Decision : 17-06-2011

Acts Referred:

Citation : (2011) 06 MAD CK 0084

Hon'ble Judges : K.B.K. Vasuki, J

Bench : Single Bench

Advocate : K. Thiruvalluvar, for the Appellant; V.Viswanathan, AGP (writs) for R2
to R4 K. Baskar, for R1, for the Respondent

Final Decision : Dismissed

Judgement

K.B.K. Vasuki, J.—The Petitioner herein is one of the beneficiaries of the acquisition proceedings initiated under TN Act 31/1978 but not party to the writ petition.

The facts remains undisputed are that the land in question originally belonged to the father of the writ Petitioner and the same was sought to be

acquired for Harijin welfare scheme and acquisition proceedings was initiated award was passed and possession was taken over by the

Government all during 1981.

2. In the meanwhile, some of the land owners including the writ Petitioner father filed batch of writ petitions and the writ Petitioner father

R.Krishnasamy filed WP. No. 3958 of 1981 questioning the vires of Act.31/1978 and to quash the acquisition proceedings initiated under the Act

as illegal and without jurisdiction and the batch of writ petitions are allowed by

order dated 25.11.1981 by the Division Bench of this Court and on the strength of the order. The Act was struck down and all acquisition proceedings taken under the Act stood nullified. Aggrieved against the same, the state Government filed appeal before the Supreme Court, in the meanwhile compensation award was passed and land owners received the compensation. Pending appeal before the Supreme Court the father of the writ Petitioner filed WP. No. 5182 of 1989 for writ of mandamus for forbearing the Respondents from interfering with his peaceful possession and enjoyment of the land except under due process of law and the writ petition was allowed, however, without prejudice to the right of the Appellants/state to pursue the appeal before the Supreme Court and to recover any money which is paid to the land owners as compensation. The order of the learned single judge was challenged by the official Respondents in W.A. No. 1491 of 1991 and the Division Bench of this Court is by order dated 06.01.1992 confirmed the relief granted and the observation made by the learned single judge. Similar writ petitions filed by A.Krishnamoorthy in WP. No. 5277 of 1989 and one H.Gopal in WP. No. 5278 of 1989 are also allowed. In the meanwhile, the appeal filed against the Division Bench order of our High Court striking down Tamil Nadu Act 31/1978 is disposed of by the Supreme Court by order dated 23.11.1994 thereby up holding the validity of the Act except Section 11(1) in so far as they provide for payment of compensation amount in installments which is held to be ultra vires of the Constitution and the same is also reported in AIR 1995 SC 2114 in State of Tamil Nadu and Ors. v. Ananthi Ammal and others.

3. In the meanwhile, in so far as the land in S. No. 75/6A originally belonging to R.Krishnasamy is concerned, civil suit arose between the family members of Krishnasamy after his death in O.S. No. 88 of 1995 and the same ended in compromise decree on 28.09.2005 in and under which, the land measuring 58 cents in S. No. 75/6A Mettusakarakupam Village, mentioned as item 9 of suit "A" schedule is allotted to writ Petitioner K.Ramamurthy who was the 2nd Defendant in the suit.

4. Despite the judgment passed by the Supreme Court upholding the vires of Act 31/1978 K.Ramamurthy son of Krishnasamy who was the original owner of the property in question approached the Special officer Land

Acquisition for reallocation of the lands and for restoring the entries

in the revenue records and such claim is admittedly made on the strength of the order made in WA. No. 1491 of 1991 confirming the order made

in WP. No. 5182 of 1989 and obtained an order in his favour but the authority concerned failed to give effect to the order for reallocation of lands

and for restoring the entries in relevant revenue records and for such failure the applicant came forward with WP. No. 8906 of 2010 for issue of

writ of mandamus for directing the 3rd Respondent to transfer the land to an extent of 52.5 cents comprised in S. No. 75/6A of

Mettusakarakuppam Village, Thirupattur Taluk,, Vellore District and to restore the entries in patta, chitta and adangal and other connected revenue

records in the name of the Petitioner as per the order of the Special Tahsildar (ADW) Thirupattur, Vellore District.

5. The writ petition was heard on both sides and disposed of by an order dated 28.07.2010 by directing the writ Petitioner to refund the

compensation amount within two weeks with further direction to the 3rd Respondent/Special Tahsildar to effect necessary changes in the revenue

records in the name of the Petitioner in respect of the land in question within four weeks thereafter.

6. Aggrieved against the order, one of the allottees/assignees of the land has come forward with the present review petition. The learned Counsel

for the review Petitioner has seriously contented that though the vires of the Act under which acquisition of the lands in question is taken was

originally shut down by the High Court the same was upheld by the Apex Court in the appeal preferred by the Supreme Court and the orders

passed against officials from proceeding with the acquisition proceedings and from depriving the land owners of the possession of the lands in

question are subject to the result of the appeal pending before the Supreme Court. The Supreme Court also during the pendency of the appeal

before the same ordered status quo to be maintained and our Apex Court finally decided the validity of the Act 31/1978 as such the orders issued

in favour of the land owners including that of the father of the writ Petitioner on the strength of the interim order of the Supreme Court stands

nullified and the acquisition proceedings initiated under the Act and the legality of all the acts done by the competent authorities for the purpose of

such acquisition become legally restored and the land owners lost their rights in the lands in favour of the Government, as such the question of reconveying the land in question which already vested with the Government to the erstwhile owners by receiving back the compensation paid to them does not at all arise.

7. The learned Counsel for the review Petitioner also filed typed set of papers enclosing the copy of the orders passed by our court in WP. No.

2755 of 1991 and W.A. No. 881 of 1992 against the order made in W.P. No. 5277 of 1989 as referred to above in para 2 of the order on the

strength of the Supreme Court order against the land owner and in favour of one of the beneficiaries in respect of one of the plots allotted to him in

S. No. 72/1B in Thirupathur in W.P. No. 37594 of 2007. It is further contended by the learned Counsel for the review Petitioner, that the

possession of the lands acquired having been taken over under the Tamil Nadu Act 31/1978 and the lands having been divided into house sites

and having been allotted to number of landless poor including that of the review Petitioner, No. relief as sought for in the writ petition can be

granted in favour of the writ Petitioner.

8. Per contra, the learned Counsel for the writ Petitioner would seriously contend that the order passed in WP. No. 8906 of 2010 is only

consequential in nature pursuant to the order passed by this Court in WP. No. 5182 of 1989 as confirmed in WA.1491 of 1991 against the

validity of the Act 31/1978 as such the authorities are bound by the direction issued by this Court.

9. The learned Additional Government Pleader representing the Respondents 2 to 4 herein has in this review petition come forward with detailed

counter affidavit wherein it is contended that, pending appeal before the Supreme Court, the apex court ordered status quo as on 10.12.1981 to

be maintained and as the Petitioner and Ors. have handed over the possession of the land in question to the competent land acquisition authority as

early as on 31.03.1991 itself, the orders passed in WP. No. 5182 of 1989 confirmed in WA.1491 of 1999 cannot be implemented and in view of

the orders passed by the Supreme Court in batch of SLP in CA. No. 3312 of 1981 on 22.11.1994 the question of reassigning the land to the

Petitioner does not arise herein.

10. The learned Additional Government Pleader also produced the file relating to the acquisition proceedings for perusal of this Court.

11. Heard the rival submissions made on all sides.

12. Though, contradictory statements are given at different stage regarding taking over of possession by the Government the perusal of the relevant

file reveals that the original owner of the lands in question viz., R.Krishnasamy along with two others by name Chinnamai and Gopal handed over

the possession of land in question to the Government as early as on 30.03.1981 along with an undertaking in writing that they have No. connection

what so ever with the lands in question and they will not enter into the same.

The close reading of the contents of the relevant file further reveals that they were also paid compensation as per award and the lands totally

measuring 2.58 acres are already divided into 60 plots and name transfer of the entire extent is effected in the revenue records as Adi Dravidar

colony and the 60 plots are allotted to 60 assignees and they are also put in possession of the respective plots.

13. The validity of the TN Act 31/1978 is upheld by the Supreme Court by order dated 22.11.1984. Though pending appeal before the Supreme

Court, the writ petitions filed by some of the land owners against the officials concerned either from proceeding with the acquisition or from

depriving the land owner from their enjoyment of the property the orders made therein are only subject to the outcome of the appeal pending

before Supreme Court. The Supreme Court while upholding the vires of Act 31/1978 not passed any specific order regarding dropping of

acquisition proceedings initiated under Act 31/1978 as such neither of the land owners whose lands are acquired or their representatives/LRs or

any person claiming under them can be permitted to say that the acquisition proceedings initiated in respect of their land is already dropped.

14. As a matter of fact, the relief sought for by the present writ Petitioner K.Ramamurthy to direct the 3rd Respondent to comply with the order of

the 2nd Respondent is only on the strength of the order passed in the writ appeal which is subject to the outcome of the Supreme Court

proceedings. Though the Supreme Court proceedings is completed as early as on 22.08.1984 and the copies of which are enclosed in the file

produced by the Learned Additional Government Pleader (writs) but the disposal

of the appeal upholding vires of Act 31/1978 is not brought to the notice of this Court on the Government side at the time of disposal of the writ petition.

15. Further the close reading of the order passed in WP. No. 2775 of 1991 and WP. No. 37594 of 2007 reveals that High Court has in

pursuance of the Apex Court decision rejected similar relief sought for by another land owner and decided the issue in favour of one of the

assignee of the lands. The Division Bench of our High Court by judgment dated 06.09.2000 made in W.A. No. 881 of 1992 filed by the state

against the order made in WP. No. 5277 of 1989 in favour of the erstwhile owner by name A.Krishnamurthy for issuance of writ of mandamus for

bearing the Respondents from interfering with the peaceful possession and enjoyment of land, dismissed the writ petition on the ground that the act

under which the writ Petitioner's land had been acquired and for which compensation has been given, has been upheld by the Supreme Court

and the question of restoring the possession of the land to the writ Petitioner does not arise nor is there any liability on the writ Petitioner to return

the compensation that has been received by him. Had this Court been duly informed about the Supreme Court verdict and the orders passed in

subsequent writ petitions and writ appeal against the erstwhile land owner and in favour of the one of the beneficiaries of the acquisition

proceedings, the present writ petition would have been accordingly disposed of against the writ Petitioner. The factum of disposal of Supreme

Court proceedings nature of the order passed thereon is placed before this Court only by the review Petitioner and the same is admitted in the

counter filed on behalf of the Government in the review petition.

16. Be that as may, the argument advanced on the side of the review Petitioner that in view of the decision of the Supreme Court reported in State

of Tamil Nadu and Others Vs. Ananthi Ammal and Others, upholding the validity of the Tamil Nadu Act 31/1978 the acquisition proceedings

initiated under the act are deemed to be upheld deserves merit and acceptance and the question of reconveying the land with necessary change in

the entries in the revenue records in the name of the original owner after receiving back compensation does not arise herein, and the relief granted

in the present writ petition on 28.07.2010 is vitiated for want of suppression of

material fact regarding the disposal of the Supreme Court

proceedings, as such the relief sought for in the writ petition cannot be granted and the writ petition has to be necessarily dismissed.

17. In the result, the review petition is allowed by setting aside the order dated 28.07.2010 made in WP. No. 8906 of 2010 and the writ petition is

dismissed. No. order as to costs.