

(2015) 09 MAD CK 0287

In the Madras High Court

Case No : Writ Petition (MD) Nos. 13944 of 2011, 32 of 2012 and M.P.(MD) Nos. 2 of 2014, 1 of 2015

Kannan

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 23-09-2015

Acts Referred:

Tamil Nadu Highways Act, 2001 — Section 15(1), 15(2), 16, 2(20)

Citation : (2015) 09 MAD CK 0287

Hon'ble Judges : R. Subbiah, J

Bench : Single Bench

Advocate : T.S.R. Venkataramana, for the Appellant; K. Chellapandian, A.A.G., assisted by M. Govindan, Spl. Govt. Pleader, Advocates for the Respondent

Final Decision : Dismissed

Judgement

R. Subbiah, J—Since the issue involved in both the Writ Petitions are one and the same, they are taken up together and disposed of by a common order.

2. In W.P.(MD). No. 13944 of 2011, the petitioner has prayed for the issuance of a Writ of Mandamus directing the respondents to consider the petitioner's representation dated 23.11.2010 and 4.10.2011 insofar as it relates to Town Survey No. 2/2, Hc.0.0505.0, in Block 8, Ward F No. 50 Devathanam Village, Tiruchirappalli Corporation, Village, Taluk and District and dispose it off within the time frame to be fixed by this Court and pay compensation for the said land acquisition.

2.1. Similarly, the petitioner has filed another Writ Petition in W.P.(MD). No. 32 of 2012 praying for a Writ of Certiorari to call for the records relating of the respondents 1 and 2 insofar as it relates to Town Survey No. 2/2, Hc 0.0505.0, in Block No. 8, Ward F, No. 50, Devathanam Village, Tiruchirappalli Corporation Village, Taluk and District as published in Government Notification in Tamil Nadu Government Gazette Part II Section II dated 5.10.2011 at page 349 and quash

the same.

3. The facts which are pleaded in both the Writ Petitions are almost identical. For the sake of convenience, the facts narrated in W.P.(MD). No. 139244 of 2015, are taken into consideration:-

3.1. The petitioner averred in his affidavit that he is the absolute owner of (Old T.S. No. 1322/1A measuring 15 cents and and T.S. 1322/2A measuring 32 cents), East Chenthamani, Odathuri, Trichy, Municipal Corporation and the same has been in possession of the petitioner for more than 100 years. The property is an ancestral property and the pattas have been issued to the said property in patta No. 87 and 18 respectively. In the said property, the petitioner's grandfather had constructed a building and raised coconut trees. It is further averred that Old T.S. No. 13/22/1A became new T.S. No. 1 and old T.S. No. 13/22/2A became new T.S. No. 2 and they continued to be in patta Nos. 87 and 18 respectively.

3.2. While the situation stood thus, for the new T.S. No. 1, Arul Migu Thayummana Swamy, Devasthanam, Trichy, filed a suit for recovery of possession against the petitioner and his father in O.S. No. 460 of 1987, on the file of the Sub-Court, Trichy alleging that the petitioner are trespassers. The said suit was decreed in favour of the temple on 23.04.1990. Against which, the petitioner preferred an appeal vide A.S. No. 203 of 1990 before the Principal District Court, Trichy and the said appeal was allowed by judgment and decree dated 04.03.1991 dismissing the suit filed by the temple in O.S. No. 460 of 1987. The property in old T.S. No. 1322/2A corresponding to new T.S. No. 2 measuring 32 cents lies to the south of the suit property and this property is the subject matter of the Writ Petition.

3.3. When the town survey was completed in Tiruchirappalli new T.S. Nos. 1 and 2 were located in Ward F, Block 8 assigning door No. 3/10, East Chinthamani. On 25.07.2003, the Deputy Director, Survey and Settlement, Trichy, issued a notice to the petitioner under Section 9(2) of the Tamil Nadu Act 8 of 1923. He has clearly mentioned that new T.S. No. 2 corresponds to old T.S. No. 1322/2, Hc. 1288. Further, the Deputy Director, Urban Land, Trichy in proceedings Ne.Mu.A. 6/1460/2005 dated 23.07.2005 assessed for urban land tax for the new T.S. No. 2. The said order clearly states that the new T.S. contains seven houses built and rented by the petitioner, in which, the petitioner also resides. Though Town patta was issued to the petitioner for new T.S. Nos. 1 and 2, by order dated 18.12.2008, the name of Hanuman Temple and Thayumana Swami mutt were mentioned under column No. 16 as registered owner of "Inam title deed". But, the temple and Mutt lost their title under the "Inam Abolition Act" and the petitioner became the owner of the property. While so, the Dharmapuram Aadinam disturbed the possession of the petitioner in T.S. No. 2 and therefore, the petitioner filed O.S. No. 960 of 2005 before the Court of District Munsiff, Tiruchirappalli and the said suit was decreed on 31.08.2005 in favour of the petitioner.

3.4. While the matter stood thus, the second respondent acting for the first respondent issued a publication in Dinamalar, Trichy, edition dated 19.11.2010 declaring that various numbers of properties in No. 50, Devathanam Village are being acquired under the Tamil Nadu Highways Act. However, the petitioner strongly protested and objected to an entry number 1 in the table found in the publication for Ward F, Block No. 8, New T.S. No. 2/2, Hc.0.0505.0 as it is stated that the property in question belongs to the Thayumanaswamy Temple inspite of the fact that the Trichy Municipal Corporation had assessed the property in question in favour of the petitioner. In this connection, on 23.11.2010, the petitioner submitted an objection to the second respondent through his advocate, but there was no reply. Hence, the petitioner sent another representation on 04.10.2011, since there was no reply even for the subsequent representation the present Writ Petition has been filed.

4. Pending the Writ Petition, the petitioner moved another Writ Petition in W.P. (MD). No. 32 of 2012 along with a miscellaneous petition in M.P.(MD). No. 1 of 2012 in W.P.(MD). No. 32 of 2012 to quash the notification with regard to the subject property. The said Writ Petition was admitted by this Court on 05.01.2012 and an order of interim stay was granted on the said date.

5. On appearance, the second respondent, namely, the District Revenue Officer, Tiruchirappalli, has filed a counter affidavit in W.P.(MD). No. 13944 of 2011 stating that the writ petition is liable to be dismissed for want of proper and necessary documents to substantiate his claim and uphold his entitlement since the patta stands in the name of Chief Administrator Thayumana Swamy, a religious endowment. The State Highway is the requisitioning body and as such the National Highways is a necessary party, but, wantonly, the petitioner omitted to include the Highways Department as a party to the proceedings. As per the revenue records, the property belongs to Thayumana Swamy Devasthanam, Trichy. Further, the patta Nos. 87 and 18 claimed by the petitioners are standing only in the names of one Amirtham and Arulmighu Singaperumal Kovil Trust. After the issuance of 15(2) notification, the petitioner sent his objection and the respondent by considering the said objection, directed the petitioner to seek remedy before the appropriate civil court. In fact, the petitioner submitted his objection on 23.11.2010 wherein the petitioner stated as follows:-

"If on any reason the officer is not able to decide the title, the matter may be referred to the competent court and thus render justice."

5.1. It is the further statement of the second respondent that the patta No. 87 issued in respect of the subject property, namely, T.S. No. 1322/1A measuring 15 cents, (S. No. 2/2, Hc.0.0505.0, in Block No. 8, Ward F, No. 50, Devathanam Village, Tiruchirappalli Corporation Village, Taluk and District) appears to be a forged one. Though the petitioner has produced a copy of the judgment made in A.S. No. 203 of 1990 by the Principal District Court, Trichy, to show that it is the petitioner who is the owner of the subject property and not the said Thayumana Swamy Temple, the subject matter of the said appeal which is T.S. No. 1322/1,

whereas, the subject matter of the suit is T.S. No. 1322/2. Though the petitioner has produced a copy of the decree in O.S. No. 960 of 2005 to show that he is the owner of the property in question comprised in S. No. 1322/2, in the said suit, the Thyumanaswamy Temple is not a party and hence, the decree copies submitted by the petitioner in respect of the civil proceedings will not be helpful to the petitioner to claim title on the subject property. It is the further statement of the second respondent that though the petitioner had produced town survey register and survey map, the same would show that the land belongs to Thayumanaswamy Temple. Hence, the name of the temple was published in the notification. Further, it is averred that the official respondents have passed an award on 12.12.2012 in respect of the all the lands acquired by them except the lands where there are title dispute that is pending like the case hand.

5.2. It is further averred in the counter affidavit that though the petitioner has produced a town survey field, register and survey map, the same would show that the lands belong to the Thayumanaswamy temple and hence, the name of the temple was published in the notification. It is further averred that the respondent has passed an award on 12.12.2012 to all the acquired lands under the land acquisition, except the lands where there are title dispute, including the subject land. Further, the respondent is in the process of acquisition proceedings in the interest of "public at large" and the official respondent is ready to deposit the award amount before the competent civil court. The Highway authority has completed construction of entire stretch of the road over bridge which is about 98% and the subject matter of the writ is only for about 2% due to pendency of the Writ Petition and hence, the respondent is not in a position to complete the work.

5.3. The District Revenue Officer, has also filed a counter affidavit in W.P.(MD). No. 32 of 2012, inter alia stating that only at the instance of the petitioner's objection the award was not passed for the subject property. But, in the notification the name of the temple alone is stated, since the revenue records reveals the name of the temple. Hence, the petitioner's objection was seriously considered, but, however, the same has to be referred only to the competent authority to decide the title dispute. Further, the lands have been acquired as per the recommendation of the Committee. It is further submitted that the Highways (Projects) Department has started the work with the acquired land along with road portion available for the construction work. At present, nearly, 70% of the work has been completed and nearly 20 crores of rupees has been spent. The land portion which is required in T.S. No. 2/2 is about 0.055.0 hectares, which is situated in the starting portion of the bridge on the northern portion of the western part which is essential for the completion of the work. Due to the delay, the implementation of the programme has come to a grinding halt. Therefore, he prayed for vacating the impugned order of this Court dated 05.01.2012.

6. Similarly, the third respondent, namely Arulmigu Thayumanasamy Devasthanam, has filed a counter affidavit inter alia stating that the property in

T.S. No. 2, Old S. No. 1322/2 measuring 1288 sq.m. absolutely belongs to the third respondent temple and the same is in possession and enjoyment of the third respondent temple. The town survey record clearly states that the land belongs to the "Thayumanaswamy Pasumadam". The second respondent issued a notification dated 19.11.2010 proposing to acquire a portion of T.S. No. 2. i.e. T.S. No. 2/2 measuring 505 sq.m. for formation of railway over bridge. Further, as narrated by the petitioner that in respect of T.S. No. 1, the temple filed suit in O.S. No. 460 of 1987 for recovery of possession and the same was decreed in favour of the temple. As against which, the petitioner went on appeal and the same was allowed in favour of the petitioner. Aggrieved over the same, the temple filed S.A. No. 284 of 1992 on the file of this Court and by judgment and decree dated 29.7.2002, this Court was pleased to permit the temple to withdraw the said suit with liberty to file a fresh suit for the same cause of action. The allegations of the petitioner that the entire Devathanam Village including the land in T.S. No. 2 is an inam land and that the temple has lost the title is denied as false and the petitioner is liable to prove the same. Further, the alleged decree obtained by the petitioner against Dharmapuram Adheenam is not binding on this respondent and the same would have been obtained by collusion without impleading the real owner, namely, the Arulmigu Thayumanasamy Devasthanam. Eventually, the temple prayed for the dismissal of the Writ Petitions.

7. The Highway and Minor Ports Department, the fourth respondent in W.P.(MD). No. 32 of 2012, has filed a vacate stay petition inter alia stating that T.S. No. 2/2 stands in the name of the Thayumanasamy Devasthanam Temple alone. Further, there was no communication received from the petitioner on 23.11.2010 or subsequent to the said date from the petitioner's counsel by making objection to the Notification issued under Section 15(2) of the Tamil Nadu Highways Act 2001. Hence, acquisition was made by issuing Gazette Notification under Section 15(1) on 05.10.2011. If any application is received from the petitioner after 30 days from the date of publication under Section 15(2) of the Tamil Nadu Highways Act 2001, issued on 19.11.2010, the same could not be entertained. After Gazette notification, the land is vested with the Government as per Section 16 of the said Act. In the case on hand, the Government has issued G.O.Ms. No. 272 dated 13.11.2007 which was sanctioned to have an over bridge at L.C. 248, for which, technical sanction was accorded on 23.11.2009. In consequence thereof, tender was approved on 17.02.2010 and the work place was handed over on 24.03.2010. Hence, as per 15(2) of the Act, notice was published on 19.11.2010. As per notification, 30 days time was fixed for objection. Hence, notice under Section 15(1) was approved on 19.09.2011. Then, Gazette Notification under Section 15(1) was published on 05.10.2011 by enquiring with the landlord. In consequence thereof, structural value was fixed on 05.11.2012 and draft award was approved on 07.12.2012 by fixing the time for passing the award on or before 12.12.2012. The acquisition of land in New T.S. No. 2/2 Hec.0.0505.0 in Block No. 8 Ward F in No. 50 Devathanam Village has been

completed. Necessary further proceedings has not yet proceeded due to the pendency of the Writ Petition. Hence, he prayed for vacating the interim order granted by this Court and further to dismiss the Writ Petition.

8. Pending Writ Petitions, an impleading petition came to be filed in both the Writ Petitions. Both the impleading petitions were allowed by this Court on 14.09.2015. In both the impleading petitions, the petitioners therein have stated that due to the interim order granted by this Court, the highways authority is unable to complete the project and thereby the interest of the common man is affected.

9. The learned counsel for the petitioner submitted that he is the owner of 14 cents in T.S. No. 1322/1A measuring 15 cents and T.S. No. 1322/2A measuring 32 cents for which pattas have also been issued to the petitioner. The temple and mutt lost their title under the "Inam Abolition Act" and the petitioner has become the absolute owner of the property. In fact, the Arul Migu Thayumanasamy Devasthanam, has filed a suit in O.S. No. 460 of 1987 on the file of the Sub-Court, Trichy. The said suit was decreed in favour of the temple and the petitioner went an appeal and the same was decreed in favour of the petitioner. As against which, the temple filed a second appeal before this Court. Knowing fully well that the petitioner is the owner of the temple, the second appeal was withdrawn by the temple. Therefore, as on date, the petitioner is the owner of the lands in question. Subsequent to the withdrawal of the second appeal, neither the temple nor mutt have filed any other suit against the petitioner.

9.1. The learned counsel for the petitioner also invited the attention of this Court as to the judgment made in O.S. No. 960 of 2005 filed against one Mounamada Kattalai, a sub-institution of Dharmapuram Atheenam and submitted that the said Mutt interfered with the possession of the petitioner in respect of the subject property. Hence, the said suit was filed in O.S. No. 960 of 2005 by the petitioner herein for declaration that the petitioner is having possessory title over the property and consequential relief for delivery of vacant possession of the suit property and for mandatory injunction to remove the super structure over the suit property. The said suit was decreed in favour of the petitioner. Therefore, the cumulative effect of the decree passed in the civil proceedings, in favour of the petitioner, would go to show that except the petitioner nobody has the right over the property in question. In these situation, the District Revenue Officer, Tiruchirappalli, had issued a notification to acquire the land for the purpose of constructing a Road Over Bridge. In the said notification, instead of stating the name of the petitioner as the owner of the property, the owner of the property was shown as "Arulmigu Thayumanasamy Devasthanam". Since, the petitioner is the actual owner of the property, it is mandatory on the part of the respondents to give notice to the petitioner. But no notice was given to the petitioner. The petitioner has given an objection on 23.10.2010 and 04.10.2011, to the said notification in respect of the property concerned, however, the respondents have failed to consider the objection. He further submitted that as per Section 2(20) of

the Tamil Nadu Highways Act, even a person who is incharge of the land or building will fall within the definition of owner. When that being the legal position, the respondents ought to have issued a notice to the petitioner. Since no notice was issued to the petitioner, he has prayed for quashing of the notification in respect of the property with regard to Survey No. 2/2, Hc.0.0505.0, in Block 8, Ward F No. 50 Devathanam Village, Tiruchirappalli Corporation, Village, Taluk and District.

10. Per contra, the learned Additional Advocate General submitted that as per Section 15(1) of the Tamil Nadu Act, the Government has a right to acquire the land for the purpose of common interest. Under the said section, the District Revenue Officer is the competent authority to issue a notification. No doubt, the petitioner claims title by producing patta No. 87. However, the said patta No. 87 is signed "for Tahsildar" not "by Tahsildar". Therefore, the genuineness of the patta possessed by the petitioner is very much doubtful. Even, if there is a dispute between the temple and the petitioner with regard to the title over the subject property, they have to work out their remedy only before the competent civil court. For the purpose of deciding the title between the temple and the petitioner, the project cannot be stalled at any cost. The project is almost completed but for the small stretch of the lands in dispute, it could not be completed which resulted in causing much problem to the public. Therefore, these Writ Petitions are liable to be dismissed.

11. The learned Standing Counsel appearing for Arulmigu Thayumanasamy Devasthanam submitted that the suit referred by the petitioner is in no way connected with them as it is a fictitious suit filed by the petitioner without impleading the real owner of the property, namely, the temple. Further, the allegation of the petitioner that the temple has withdrawn the second appeal is false for the simple reason that they have withdrawn the said second appeal with liberty to file a fresh suit for the same cause of action. Therefore, it cannot be said that the temple has lost the right as alleged by the petitioner. Hence, he prayed for the dismissal of the Writ Petition.

12. The learned counsel appearing for the intervenor submitted that due to dispute between the private parties, the project is totally stalled by which a number of people are being affected and hence, he prayed this Court for a suitable direction in order to complete the project as early as possible for the benefit of public at large.

13. I heard the submissions made by all the parties and perused the materials available on record.

14. Considering the submissions made by all the parties, it is seen that the Government has almost completed the project except for a small stretch of the land due to the interim order granted by this Court. Therefore, the respondents are not in a position to complete the project which is done for public welfare. It is further seen that there is strong dispute as regards the title of the lands in

question between the petitioner as well as Arulmigu Thayumanasamy Devasthanam Temple. Time and again, this Court as well as the Supreme Court have held that as regards the title in dispute the Writ Court has no jurisdiction to entertain the same and the only course available to the petitioner as well as the temple is to approach the competent civil court and establish their title and get compensation accordingly. Further, this Court cannot conduct any roving enquiry as to who is the owner of the property in question. Even the petitioner in his objection on 23.11.2010 has stated that if for any reason the officer is not able to decide the title, the matter may be referred to the competent court. The Government has fairly come forward to deposit the compensation award amount for the disputed land in question before the competent civil court. Therefore, there is no point in continuing the stay, when the project is implemented for the welfare of the people at large, especially, in the counter affidavit, it has been averred that 70% of the work has already been completed.

15. For the foregoing reasons, the Writ Petitions stand dismissed relegating the petitioner as well as the Temple to approach competent civil court and establish their title and the Government is directed to deposit the entire award amount in respect of the land in question within a period of eight weeks from the date of receipt of a copy of this order. Subject to the outcome of the proposed civil proceedings, the parties are entitled for the compensation amount to be deposited in the Civil Court concerned. No costs, consequently, connected miscellaneous petitions are closed.