

(2016) 08 MAD CK 0144
In the Madras High Court
Case No : W.A. No. 2270 of 2013

L.V.K. Properties Private Limited

APPELLANT

Vs

Government of Tamil Nadu

RESPONDENT

Date of Decision : 08-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Metro Railways (Construction of Works) Act, 1978 — Section 17, 6

Citation : (2016) 2 CWC 853 : (2016) 6 MLJ 392

Hon'ble Judges : Mr. Huluvadi G. Ramesh and Mr. M.V. Muralidaran, JJ.

Bench : Division Bench

Advocate : Mr. Sathish Parasaran Senior Counsel for Mr. R. Partarathy, Advocate, for the Appellants; Mr. K. Venkataramani Additional Advocate General assisted by Mrs. A. Srijayanthi Special Government Pleader, for the Respondents; Mr. R. Thiyagarajan Senior Counsel,

Final Decision : Dismissed

Judgement

Mr. Huluvadi G. Ramesh, J.—This appeal is against the order of the learned single Judge dismissing the writ petition filed by the appellants/writ petitioners for a mandamus forbearing the respondents, their men, servants, representatives, agents or employees or any other person acting for or on behalf of the respondents from interfering with the enjoyment and peaceful possession of the petitioners and/or persons claiming through or under it of the land admeasuring 1812 sq.ft., (19505 sq.ft.approx.) situated at Door Nos.343, 346 and 347, Anna Salai and Door Nos.6, 6A, 7 and 8, Fana Street, Nandanam included by taking any steps towards commencement of the tunnelling process in or beneath the said property and/or adjacent to the said property or in any manner interfering with the petitioners right or interest in the said property, without following the due process of law, included in terms of the acquisition procedure laid down under the Metro Railways (Construction of Works) Act, 1978, in particular under Sections 6 to 17 thereof, for the reason that the appellants/writ petitioners have not substantiated their case warranting issuance

of a mandamus.

2. It appears that the appellants collectively purced the subject property from the erstwhile owners in the year 2006 and have been in possession and enjoyment of the same. In the year 2008, the appellants intended to put up a hotel (commercial building) comprising basement+ground floor+10 floors in the said property, but they abandoned the project as unviable. Thereafter, they intended to put up an automobile showroom comprising ground floor+2 floors and also completed the construction after obtaining the necessary permission from the CMDA to maintain the required front set back. In the meanwhile, since the metro rail line project undertaken by the second respondent-Chennai Metro Rail Project to pass near the property of the appellants, on the apprehension that the second respondent would be entering into the property with force, if necessary and commence the tunnelling process, the appellants filed the writ petition for the relief stated supra raising various grounds, namely, that the right to property under Article 300-A is infringed; that the right to possess and enjoy the property includes the right of user or easement of the property below or above the land, as the case may be, and by putting up a desired foundation for any construction in future; that there would be a deprivation of the right of the appellants/writ petitioners to commercially exploit the property for ever, in future; that they are entitled to compensation for the damage or loss in terms of the provisions of the Metro Railways (Construction of Works) Act, 1978, as the word "land" includes not only the face of the earth, but everything under or over it, etc. However, pursuant to the notice issued by the second respondent under Section 24 of the Metro Railways (Construction of Works) Act on 31.10.2013, it appears the appellants, without prejudice to their rights, have permitted the second respondent to install the "geotechnical instrument" vide their letter dated 5.11.2013.

3. Opposing the grounds raised by the appellants/writ petitioners at the outset, it was contended by the second respondent that there been no deviation in the alignment of tunnelling as approve by the Central Government and that the provisions of the statute do not contemplate payment of any compensation for any loss or diminution of the value of the property for any activity that may be taken up by the land owners, in future or in respect of deprivation of any commercial exploitation of the property, in future etc., as the payment of compensation arises only when there is acquisition of land. According to the second respondent, tunnelling is done 55 feet beneath the surface of the land and hence the question of acquisition does not arise at all. Further, even at the time when permission was granted to the appellants/writ petitioners to put up an automobile showroom comprising of ground+2 floors, the appellants themselves agreed that they would not erect any structure, underground or aboveground, unconditionally and in perpetuity. In view of the same, they cannot make any objection as to the tunnelling work on the ground of loss or diminution in the value of the property and demand the predetermination of the right to claim compensation before the commencement of the work. When it is the duty of the

second respondent to carry out the works with all precautionary measures which are necessary, only in order to assess the possibility of any damage likely to be caused, the second respondent decided to install the "geotechnical instrument" to monitor the ground disturbance/deformation during the construction of tunnel. As such the appellants cannot be allowed to scuttle the process of tunnelling work undertaken in the subject property.

4. As the learned single Judge ultimately dismissed the writ petition holding that the writ petitioners have not substantiated their case for issuance of a mandamus, the appellants are before us in this appeal.

5. Heard the learned counsel for the parties.

6. The learned senior counsel for the appellants, reiterating the very same grounds, submit that the second respondent cannot be allowed to interfere with the possession and enjoyment of the appellants in respect of the subject property, more particularly, to carry out the tunnelling work beneath the property without following the due process of law included the acquisition procedure laid down under the Metro Railways (Construction of Works) Act, 1978 under Sections 6 to 17 thereof, when the right of user or any right in the nature of easement of any land is deprived. In this context, the learned senior counsel also placed reliance on a judgment of the Apex Court in the case of Thressiamma Jacob and others v. Geologist, Department of Mining and Geology and others, (2013) 9 SCC 725.

7. Per contra, the learned senior counsel for the second respondent-CMRL submit that when the appellants had already given an undertaking that they would not construct more than ground+2 floors and also undertook to maintain the front set back, it is not open to them to object to the tunnelling work being carried out in the property, when the tunnelling work is done 55 feet beneath the earth, which will not come in their way of enjoyment.

8. We have considered the submissions and also gone through the order of the learned single Judge. It is not in dispute that the second respondent is carrying out the tunnelling work 55 feet beneath the earth, which may not come in the way of the appellants to enjoy the property in terms of the undertaking given by them that they would not put up more than ground+2 floors and also would maintain the required front set back as per the development control regulations while seeking approval of construction. It is also not in dispute that the second respondent sought to install the "geotechnical instrument" and other equipments only in order to assess the disturbance/deformation to be caused during the tunnelling work beneath the earth to the extent of 55 feet after consulting/intimating the land owners like the appellants with a request to extend their cooperation. As opined by the learned single Judge, the respondents are not obliged to decide, on principle, the entitlement of the appellants/writ petitioners to seek for compensation on the alleged deprivation of any commercial exploitation of the land owned by them and that too, in future, as it is well

settled that even under the land acquisition laws, the entitlement and the quantum of compensation are determined only on the basis of the existing features and the likelihood damage or loss sustained on the date of acquisition proceedings and not for any future activity to be carried on by the land owners. Moreover, the statute do not contemplate the determination of compensation on the likelihood of loss or diminution in the value of the land due to tunnelling activity beneath the property, as the same is restricted only to the specific factors set out in Section 13(4) of the Metro Railways (Construction of Works) Act, 1978. When there is no acquisition of land or permanent disturbance being caused to the possession and enjoyment of the property of the appellants through valid process of law, as the tunnelling work is carried out 55 feet beneath the surface of the land owned by them, the judgment of the Apex Court in Thressiamma Jacob and others case relied upon by the learned senior counsel for the appellants cannot be applied to the instant case, much less to claim future rights. On the facts and circumstances of the case, we are not inclined to interfere with the order of the learned single Judge on any of the grounds raised by the appellants. Accordingly, the writ appeal fails and it is dismissed. Consequently, M.P.Nos.1 of 2013 & 1 to 3 of 2014 are also dismissed. No costs.