
(2012) 02 MAD CK 0322

In the Madras High Court

Case No : Writ Appeal No. 2098 of 2011 with M.P. No's. 1 and 2 of 2011

Mr. P. Sundar and Others

APPELLANT

Vs

The Special Tahsildar, Adi-Dravidar Welfare, The
Commissioner and Secretary, Adi Dravidar Welfare and Social
Welfare Department, Government of Tamil Nadu, The
Collector, Thiruvallur District, Thiruvallur and Mr. B. Vincent,
President, Chembarambakkam Village Panchayat

RESPONDENT

Date of Decision : 29-02-2012

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 16, 4(1), 5A, 6

Citation : (2012) 02 MAD CK 0322

Hon'ble Judges : N. Kirubakaran, J; Elipe Dharma Rao, J

Bench : Division Bench

Advocate : C. Selvaraj, S.C. for M/s. Senthilswamy Associates, for the
Appellant; A. Srijayanthi, Govt. Advocate For R.1 to R.3 and Mr. R. Bharathkumar
For R. 4, for the Respondent

Final Decision : Dismissed

Judgement

Elipe Dharma Rao, J.—The appellants have unsuccessfully challenged the acquisition proceedings before the learned single Judge, resulting in their filing this writ appeal. Background of the case:

An extent of 4.06 acres of land comprised in S. Nos. 148/4, 7, 8, 9; 151/13 and 14 of Chembarambakkam village, Sriperumbudur Taluk, then Chengalpattu District and now in Kancheepuram District, classified as "dry lands", were sought to be acquired by the Government for providing house sites to the poor Adi Dravidars of Chembarambakkam village. Accordingly, a Notification u/s 4(1) of the Land Acquisition Act (hereinafter referred to as the Act) was issued in G.O.Ms.No. 3089, dated 28.12.1983 and was published in the Government Gazette on 4.1.1984. Section 5-A enquiry was conducted on 15.2.1984 and Declaration u/s 6 of the Act was issued on 10.3.1984 and ultimately an Award u/s 11 of the Act was passed on 29.3.1984. The compensation amount of Rs.

47,348/= was deposited with the Sub Registrar of Sriperumbudur under revenue deposit on 31/3/1986.

2. In this backdrop, the appellants 1 and 2 (husband and wife), posing as subsequent purchasers from appellants 3 to 6, of the above said S.Nos.148/7 and 148/9 have come forward to challenge the acquisition proceedings, by filing W.P.No. 21860 of 2008 along with appellants 3 to The learned single Judge, by the order dated 12.7.2011, has disposed of the said writ petition, holding that the writ petition filed after passing of the award is not maintainable and the subsequent purchasers, if at all, could claim only compensation, since they have entered into the shoes of the original owners. Aggrieved, this writ appeal has been filed by the appellants.

Arguments:

3. We heard the learned counsel on either side, at length.

4. Mr. C. Selvaraj, the learned senior counsel appearing for the appellants would argue that no actual possession was taken till date by the Land Acquisition Officer and therefore, the learned single Judge ought not to have dismissed the writ petition on the ground that the appellants cannot question the land acquisition proceedings after the award has been passed. In support of his arguments, the learned senior counsel would rely on the judgments of the Honourable Apex Court in Prahlad Singh and Others Vs. Union of India (UOI) and Others, and Banda Development Authority, Banda Vs. Moti Lal Agarwal and Others, He would further argue that the original owners themselves being Adidraavidars, their lands should not have been acquired by the respondents, in order to provide house sites to other Adi DravidaRs.

5. On the other hand, Mrs. A. Srijayanthi, the learned Government Advocate appearing for the respondents 1 to 3 would strenuously argue that the appellants 1 and 2 are the subsequent purchasers of the land, regarding which the acquisition proceedings were completed long back and thus, they do not have any locus standi to challenge the acquisition proceedings after many years have rolled by. She would further argue that award having been passed on 29.3.1984, possession was also taken by the Land Acquisition Officer on 12.1.1993 and therefore, this writ appeal is liable only to be dismissed.

6. Mr. R. Bharathkumar, learned counsel appearing for the fourth respondent would argue that having already sold the properties, the appellants 3 to 6 cannot question the acquisition proceedings and the appellants 1 and 2 being the purchasers, after finalisation of the entire acquisition proceedings cannot have any locus standi to challenge the acquisition proceedings. The learned counsel would further argue that after taking possession, all necessary steps have been taken for dividing the said lands and lands were allotted to the beneficiaries in the year 1995 itself and therefore, these writ proceedings filed by the appellants should be dismissed.

Discussion and findings:

7. The law on the point of maintainability of a writ petition, after passing of the Award is very well settled by now. Right from the case in Pt. Girdharan Prasad Missir and Another Vs. State of Bihar and Another, C. Padma and Others Vs. Dy. Secretary to the Govt. of T.N. and Others, and Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd., and others, till the recent judgments in The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others, and Tej Kaur and Others, etc. Vs. State of Punjab and Others, it has been consistently held by the Honourable Apex Court that "after the Award is passed, no writ petition can be filed challenging the acquisition notice or against any proceedings thereunder and such writ petition is liable to be dismissed for laches". This view of the Honourable Apex Court has been followed by this Court also in many cases, like the one in S. Harshavardhan and Another Vs. State of Tamil Nadu and Others, , Ramalingam and Others Vs. The State of Tamil Nadu and Others, and Executive Engineer and Administrative Officer, Tatabad, Coimbatore v. Girija Janarthanan and others Executive Engineer and Administrative Officer, Coimbatore Housing Unit, Tamil Nadu Housing Board Vs. Girija Janarthanan and Others, . The learned single Judge, has reiterated this legal position, to oust the claim of the petitioners/appellants.

8. In the grounds of appeal, the appellants have insisted that the learned single Judge has erred in holding that the writ petition filed after the Award has been passed is not maintainable. But, as could be seen from Para No. 8 of the order of the learned single Judge, the learned counsel appearing for the petitioners/appellants himself has admitted before the learned single Judge that the writ petition, filed after the Award is passed, is not maintainable and however, has argued that the subsequent purchasers are entitled for compensation. In short, this is what the order passed by the learned single Judge also. Having already admitted before the learned single Judge that their writ petition filed, after the Award is passed, is not maintainable, the appellants cannot be permitted to do a somersault again, in order to gain wrongfully. This very ground taken on the part of the appellants, as against their own admission before the learned single Judge, would depict their ill-intention of dragging on the litigation, to thwart the beneficiaries, forgetting the fact that the entire acquisition proceedings have completed 19 years back, with the possession of the said lands having been taken over by the authorities 12.1.1993. In fact, the fourth respondent has stated that the lands were allotted to the beneficiaries in the year 1995 itself.

9. In Shanti Sports Club and Another Vs. Union of India (UOI) and Others, , the Honourable Apex Court has held that "once the land is acquired by following due process of law, the same cannot be transferred by the landowner to another person and any such transfer is void and is not binding on the State. A transferee of the acquired land can, at best, step into the shoes of the landowner and lodge claim for compensation.

10. In fact, in an earlier pronouncement in Hindu Kanya Maha Vidyalaya, Jind

and Another Vs. Municipal Committee, Jind and Others,], the Honourable Apex Court has held that "purchaser of a portion of land, after its acquisition and award would not become a person interested merely because he is liable under sale agreement to pay additional price in the event of enhancement of compensation for the acquisition and hence such purchaser not entitled to be impleaded to proceedings under S.18 and to an opportunity of hearing for contesting the claimant's claim for enhanced compensation."

11. From the above judgments, it is clear that after the lands are acquired by due process of law, the landowner cannot transfer it to some other person and even if any such transfer is effected by the landowner, the same is not binding on the Government, being a void transaction and if at all, at best, the subsequent purchaser, can claim compensation, as enters into the shoe of the landowner.

12. The learned single Judge, following this dictum has ordered that the competent authority shall consider the claim of the appellants for compensation. But, the underlying factor is to claim compensation as a subsequent purchaser, the transaction between the landowner and the subsequent purchaser must be genuine and free from suspicion. Therefore, we have to see the whether the direction issued by the learned single Judge, in the case on hand, is sustainable in law.

13. From para No. 3 of the counter affidavit filed by the appellants 1 and 2 to the vacate stay petition filed before the learned single Judge, they have stated that the lands in question originally belonged to the father of the appellants 3 to 6 (Mr. Ekambaram) and since he purchased the properties while in the joint family, the other members of the joint family viz. his mother Ellakka @ Muniammal and brothers namely 1.Chinnathambi, 2.Devan and 3.Sivalingam have released the said properties in his favour under a registered release deed dated 2.12.1957. Thereafter, the properties were mortgaged by the said Ekambaram in favour of one Mr. Vadivel Mudalir on 10.11.1960 under a registered mortgage deed. But, according to the appellants 1 and 2 themselves, though the said mortgage was discharged and the property was redeemed, "unfortunately", the said mortgage was not cancelled by Ekambaram. Therefore, even according to the appellants, in view of the registered mortgage created in favour of Vadivel Mudaliar, which was not cancelled, for whatever reason it may be, Vadivel Mudaliar became the owner of the property. It seems, thereafter, the properties devolved on the legal heirs of the said Vadivel Mudaliar.

14. The Mortgage deed dated 10.11.1960 was registered as Document No. 3083/1960 before the Sub Registrar's Office, Poonamallee. Since, even as per the admission of the appellants, the said mortgage was not cancelled, no doubt, Vadivel Mudaliar became the owner of the properties. While that being so, what right or authority could the said Ekambaram will enjoy to execute a settlement deed in favour of his sons/appellants 3 to 6 on 10.3.2006, under which document, the appellants 3 to 6 are claiming right over the properties, so as to justify their action in passing the said rights to the appellants 1 and 2 under sale

deeds, both dated 20.12.2006. But, the only answer forthcoming from the appellants is that civil suits are pending before the Sub Court and therefore, this Court need not have to go into those aspects of the case. But, on a thorough perusal of the entire materials placed on record, prima facie, we doubt very much the propriety of the very civil litigations initiated by the appellants 1 and 2, since it is their own admission that the mortgage created by the original owner Ekambaram in favour of Vadivel Mudaliar on 10.11.1960 under document No. 3083/1960 has not been cancelled and thus Vadivel Mudalilar continued to the owner for all legal purposes.

15. It is really shocking for one to know that the appellants 1 and 2 having dared to purchase the lands already acquired under due process of law by the respondents, are initiating different proceedings against the respondents, as if they are bona fide purchasers of the lands. As has already been pointed out supra, the entire acquisition proceedings came to an end with the taking over of possession on 12.1.1993, and these appellants 1 and 2 have, admittedly, "purchased" these properties on 20.12.2006 from appellants 3 to 6. Though there was some dispute with regard to the date on which the possession was taken - whether it was 12.1.1993 or 13.1.1993 -, the fact remains that the possession was taken over by the Competent Authority, pursuant to the acquisition proceedings.

16. The appellants 1 and 2 are raising hue and cry as if much injustice has been caused to them. The material on record would force us to comment that the appellants 1 and 2 have ventured to "purchase" these lands, solely with a view to thwart the acquisition proceedings, that too at a much belated stage.

17. We need to comment on the cunning litigations initiated by the appellants. These writ proceedings have been initiated by appellants 1 to 6 together, challenging the acquisition proceedings, in the month of August 2008. Simultaneously, the appellants 1 and 2 herein have filed suits in O.S.No. 164 of 2008 and O.S.No. 166 of 2008, respectively before the Sub Court, Poonamallee against the appellants 3 to 6 herein as defendants 1 to 4 and respondents 1 to 3 herein as defendants 5 to 7. One Vasantha Durai, daughter-in-law of the above said Vadivel Mudaliar has been arrayed as defendant No. 8. In both these suits, the plaintiffs" have sought for a declaration that they are the absolute owners of the lands in question and for possession of the suit property, in case the Court finds that the plaintiffs" are not in possession as on the date of the decree and also for grant of permanent injunction restraining the defendants 5 and 6 allotting the suit properties to the Adi-Dravida people or anybody else and from interfering with the plaintiffs" peaceful possession and enjoyment of the suit properties either by themselves or by their men and agents. Thus, as could be seen from the very cause title of both the writ proceedings and the civil suits, one could very well understand that these are the clandestine proceedings initiated hand-in-glove by all the appellants and that the appellants 1 and 2/ plaintiffs themselves are very much in doubt about their possession, though for

litigation sake they are contending that the possession of the properties lies with them.

18. The entire materials on record would show the avaricious litigations initiated by these appellants, knowing pretty well that they are fighting losing battles. The lands having already been acquired decades back by the authorities, have also been allotted to eligible Adi Dravidars by the fourth respondent/the village panchayat. While that being the case, the finding of the learned single Judge that the fourth respondent cannot stake his claim in this writ petition, does not appeal to us, as the fourth respondent is fighting for the cause of all the beneficiaries. Therefore, that part of finding of the learned single Judge, in para No. 14 of the order, is liable to be set aside.

19. An argument has been advanced on the part of the appellants that the original owners themselves are Adi dravidars and hence their lands should not have been acquired by the respondents for allotment to other Adi Dravidars. Though this argument seems to be catchy, decades after completion of the acquisition proceedings and allotment of lands to beneficiaries, the appellants cannot rake up such pleas, particularly when the original owners themselves have failed in their challenge to the acquisition proceedings before legal fora, in more than one round of litigation, as could be seen from a contemporary Division Bench judgment of this Court in W.A. No. 4044 of 2003, dated 17.8.2006 [T.V.Amsalingam V. State of Tamil Nadu]. Therefore, this argument advanced on the part of the appellants fails.

20. Coming to the judgments relied on by the learned senior counsel for the appellants, in the first judgment relied on by him in Prahlad Singh and Others Vs. Union of India (UOI) and Others, the High Court had dismissed the writ petition on ground that landowners had no locus standi to challenge land acquisition proceedings as land vested u/s 16 of the Act, without going into other aspects of the case. The Honourable Apex Court, on examination of the records, having found that issue of vesting had not been proved by the authorities, had remitted the matter back to the High Court for decision on merits. But, in the case on hand, the very fact lies that after finalisation of the acquisition proceedings and allotment of land to beneficiaries, the properties were sold out by appellants 3 to 6 (clandestinely posing as landowners) to the appellants 1 and 2, who started questioning the acquisition proceedings decades after their finalisation. Further more, the records would speak to the factum of taking of possession by the authorities and allotment to eligible Adi Dravida persons by the fourth respondent. It is also to be kept in mind that the original owners have unsuccessfully challenged the acquisition proceedings and those findings have reached their finality. For all these reasons, this judgment relied on by the learned senior counsel for the appellants would render no help to their case.

21. In fact, in the second judgment relied on by the learned senior counsel for the appellants in Banda Development Authority, Banda Vs. Moti Lal Agarwal and Others, the Honourable Apex Court has categorically held that writ petitions filed

after long years of acquisition should not be entertained and such claimants should be denied equitable relief as during this period, acquired land had been utilized for implementing residential scheme and third party rights created. Exactly, this is what had happened in the case on hand also. As could be seen from the counter affidavit of the fourth respondent, the lands were allotted to the beneficiaries in the year 1995 itself. Therefore, this judgment of the Honourable Apex Court did not at all support the case of the appellants.

22. The pathetic situation in this case is that all the documents, right from the mortgage deed dated 10.11.1960 to the sale deeds dated 20.12.2006 are executed in the office of the Sub Registrar, Poonamallee. This would depict the poor state of things prevailing in the offices concerned with registration of immovable properties. Is it not the duty of the officer, registering a document pertaining to an immovable property, to verify all the documents and entries in the revenue records before registering such documents? Had the officer entertaining the settlement deed dated 10.3.2006 executed by Ekambaram in favour of his sons/the appellants 3 to 6 herein and the officer entertaining the sale deeds in favour of appellants 1 and 2 executed by appellants 3 to 6 based on such a settlement deed, were vigilant enough at the time of registering those documents, this ex facie fictitious litigation would not have cropped up at the instigation of the appellants. The dereliction of duty of the concerned officers at the helm of affairs at the relevant point of time and their "inaction", for the reasons best known to them, has precipitated the matter to the worst, paving way for unscrupulous persons to claim rights based on such illegal and fictitious documents. We place on record our anguish to this apathy and sorry state of affairs prevailing in the Registration Department, in this time of real estate boom and under-valuation of the properties. If such unworthy officers are allowed to deal with the properties, it would not only help the avaricious clients to come with their stakes and "claims", like the case on hand, but also the innocent purchasers would fall prey to them, losing their life savings and even life in litigation and ultimately faith in the entire system, which would erode the roots of our democracy. The inefficient scrutiny of the documents or purposefully omitting efficient scrutiny of the documents by the concerned, resulting in registration of documents by the officials at the Registrar Offices, in order to pave way for the unscrupulous persons to register their illegal and fictitious transactions, is also one of the reasons for docket explosion in legal fora. Therefore, it is right time that such black sheeps in the Registration Department are dealt with iron hand. Hence, the Inspector General of Registration, No. 100, Santhome High Road, Chennai-600028 is directed to conduct a thorough investigation into the above referred fraudulent transactions in the office of the Sub Registrar, Poonamallee and initiate necessary proceedings - criminal and departmental - against all concerned, including the appellants herein, for venturing into such fraudulent action, knowing pretty well that the mortgage was not cancelled and the properties stand in the name of Vadivel Mudaliar and his legal heirs, within eight weeks from the date of receipt of a copy of this judgment

and report compliance to this Court.

23. On one hand, the appellants have initiated these writ proceedings and on the other hand, they have filed civil suits knowing pretty well that they are fighting losing battles, solely with a view to drag on the proceedings and to thwart the interest of the beneficiaries. This type of forum shoppe by the unscrupulous and litigation mongers, like the appellants should not be encouraged and to be an eye opener for such persons, we deem it apt to dismiss this writ appeal with costs.

24. As we doubt very much the propriety of the "ownership" being claimed by the appellants 1 and 2 through the appellants 3 to 6, in view of the very admission made on the part of the appellants 1 and 2 herein that the mortgage created by Ekambaram (the father of appellants 3 to 6) in favour of Vadivel Mudaliar on 10.11.1960 has not been cancelled, the question of any of the the appellants becoming entitled to even compensation also gets under cloud of suspicion. However, since the civil suits are pending before the Sub Court, Poonamallee and that the compensation amount deposited by the authorities could not be disbursed for want of production of documents by the original owners, we direct the Sub Judge, Poonamallee to dispose of the suits in O.S.No. 164 of 2008 and O.S.No. 166 of 2008 within three months from the date of receipt of a copy of this judgment, of course, without being influenced by any of the observations made by us in this judgment, and report compliance to this Court. Summary and conclusions:

25. All our above discussions, would lead us to arrive at the following conclusions: (i) A writ petition filed after an Award has been passed in the Land Acquisition proceedings, is not maintainable.

(ii) The appellants having admitted before the learned single Judge that their writ petition filed after the Award having been passed is not maintainable, cannot be permitted to do a somersault before us, once again to suit their convenience.

(iii) Since a thorough perusal of the entire materials placed on record, would prima facie establish the fact that the appellants 3 to 6 have no alienable right over the properties, as, even according to the averments in the counter affidavit filed by the appellants 1 and 2 in the vacate stay petition before the learned single Judge, the registered mortgage created by Ekambaram (the father of the appellants 3 to 6) on 10.11.1960 in favour of Vadivel Mudaliar (father-in-law of the eight defendant in both the suits filed by the appellants 1 and 2, viz. MRs. Vasantha Durai) has not been cancelled, the subsequent settlement deed executed by Ekambaram in favour of appellants 3 to 6 on 10.3.2006 is void abinitio. Hence, as none of the appellants, prima facie, appears to be not at all the owners of the land, the question of payment of compensation to any of them does not at all arise.

(iv) Since the material on record unclinchingly establish the apathy and sorry state of affairs prevailing in the Registration Department of Tamil Nadu in general and the Sub Registrar's Office, Poonamallee, in particular, the Inspector General

of Registration, No. 100, Santhome High Road, Chennai-600028 is directed to conduct a thorough investigation into the above referred fictitious transactions and initiate necessary proceedings - criminal and departmental - against all concerned, including the appellants herein, for venturing into such fraudulent action, knowing pretty well that the mortgage was not cancelled and the properties stand in the name of Vadivel Mudaliar, within eight weeks from the date of receipt of a copy of this judgment and report compliance to this Court.

(v) The Sub Judge, Poonamallee is directed to dispose of O.S.Nos.164 and 166 of 2008 within three months from the date of receipt of a copy of this judgment, of course, without being influenced by any of the observations made by us in this judgment, and report compliance to this Court.

(vi) To curb the practice of filing fictitious litigations like the one in hand by unscrupulous litigants like the appellants and to be an eye opener for such persons, we deem it appropriate to dismiss this writ appeal with costs.

Result:

Accordingly, with the above observations and directions, the order of the learned single Judge, directing the competent authority to consider the claim of the appellants for compensation and further holding that the fourth respondent cannot stake his claims and it is only appropriate that the fourth respondent works out his case before the authority concerned in respect of his grievance, is set aside. In other aspects, the order of the learned single Judge is confirmed. The writ appeal is dismissed with a cost of Rs. 60,000/= (Rupees sixty thousand Only) to be paid by all the appellants in equal proportions to the Tamil Nadu State Legal Services Authority, High Court campus, Chennai-104 within four weeks from today. In default, the Member Secretary, Tamil Nadu State Legal Services Authority is directed to initiate all necessary legal proceedings against the appellants for recovery of the said amount. Consequently, M.P.Nos.1 and 2 of 2011 are also dismissed.