

(2007) 08 MAD CK 0035

In the Madras High Court

Case No : Writ Petition No's. 18610, 18804, 19223, 19261 to 19267, 19495, 19594, 19603, 19901, 19960, 20036, 20048, 20061 to 20063, 20323, 20810 and 21470 of 2007

Nagappa Petroproducts Private Limited

APPELLANT

Vs

Tamil Nadu Housing Board

RESPONDENT

Date of Decision : 02-08-2007

Acts Referred:

Land Acquisition Act, 1894 — Section 10, 11, 11A, 16, 28A

Tamil Nadu State Housing Board Act, 1961 — Section 84, 84(1), 84(2)

Citation : (2008) WritLR 349

Hon'ble Judges : A. Kulasekaran, J

Bench : Single Bench

Advocate : T.R. Rajaraman, in WP No. 18610 of 2007, for the Appellant; R. Girirajan in WP No. 18610 of 2007, for the Respondent

Final Decision : Dismissed

Judgement

A. Kulasekaran, J.—The case of the petitioners is as follows:

The petitioners are owners of the land and superstructure wherein they are residing/carrying on business for a long period. The respondents

surprisingly affixed notices near their lands, then, the petitioners approached the respondents for copy of the said notices, but they refused to

furnish the same, however, after perusal of copy of the notices issued to similarly placed persons they came to know that it is alleged that the

petitioners encroached the property of the respondents and they were called upon to handover possession within the stipulated short period. The

said notices are illegal and without jurisdiction. u/s 84 of the Tamil Nadu Housing Board Act, power is vested with the housing board to evict

certain persons mentioned in 84 (1)(a)(i)(ii) and (iii)(d) but the petitioners does

not come under the purview of Section 84(1)(a) of the Act, hence, the said notices are untenable. Before resorting to eviction, the mandatory provisions of Section 84(2) of the said Act has not been complied with by the respondents by issuing notice u/s 84(1) of the Act. The petitioners have spent substantial amount for putting up superstructure, however, without prejudice to their right, they are ready and willing to purchase the lands, which is in their occupation, at the prevailing market rate and prayed for quashing of the impugned notices and allow the writ petitions.

2. The case of the respondents is as follows:

The lands in Old Survey Nos. 249/1 to 6, 250/1 to 8, 251 and 252/2A in T.S. No. 2, Block No. 4, Arumbakkam Village, Egmore-

Nungambakkam Taluk, were acquired by the acquisition body following Land Acquisition Act. The Tamil Nadu Housing Board, hereinafter

referred to as Board had invested huge public money for acquiring the same in order to utilise the said lands for suitable housing scheme for

residential and commercial purpose. The Board is a statutory body and its main object is to develop the lands and implement the housing scheme

for the people belonging to economically weaker sections (EWS), lower income group (LIG), middle income group (MIG) and higher income

group (HIG). In order to implement and develop housing schemes, the Tamil Nadu Housing Board has obtained financial assistance from World

Bank, HUDCO and other financial institutions. The Housing Board has to allot houses or house site through lot. The petitioners are unauthorised

encroachers of the lands of the housing board. Due to the encroachment by the petitioners, the Board is not in a position to implement the schemes

in time, as a result, it incurred great financial loss and hardship, which ultimately defeats the main object of the Board. Some of the encroachers

were evicted on 26.05.2007. The petitioners vendors suppressing the real fact that the lands belonged to the Board clandestinely executed sale

deeds. There is no necessity to issue notices u/s 84 of the Tamil Nadu Housing Board Act, however, formal notices were issued and affixed in the

sites in the locality and the respondents are empowered to issue such notices to the encroachers. The petitioners and their vendors, if any are land

grabbers and knowing well that the lands belonged to the Board, false sale deeds were executed and the lands were occupied by the petitioners.

Some of the petitioners and their vendors or their predecessors have filed similar cases which were dismissed, the details of the same are furnished

below. The possession of the petitioners are unlawful and there cannot be any injunction or other similar relief be granted against the housing

board, who is the true owner and prayed for dismissal of the writ petitions.

3. The learned Counsel appearing for both sides reiterated the contents of their pleadings and their arguments were considered and material

records were perused. It is not in dispute that the petitioners herein are in occupation of the lands comprised in Old Survey Nos. 249/1 to 6, 250/1

to 8, 251 and 252/2A in T.S. No. 2, Block No. 4, Arumbakkam Village, Egmore-Nungambakkam Taluk, which are acquired for the West

Madras Neighbourhood Scheme (Anna Nagar Scheme) by the respondents by invoking the provisions of Land Acquisition Act, 1894 and award

No. 14 of 1966 and 15 of 1966 dated 28.03.1966 were passed, later, the said lands were handed over to the Board.

4. The petitioners in WP Nos. 19261 to 19266 of 2007, 19490, 19901, 20036, 20048, 19960, 20061, 20062, 20063, 20810 and 20323 of

2007 or their predecessor had already filed writ petitions before this Court as well as suits before the Civil Court either challenging the acquisition

proceedings or consequential eviction proceedings initiated by the respondents, which were dismissed and the details of the same are mentioned

below, which are not disputed by the respective petitioners.

WP No. Name of the petitioner Previous WP- Writ appeal Suit No.

dismissed on dismissed on dismissed on

19261/2007 Premavathy WP 18535/98 WA 508/99 OS 2711/99

15.03.99 25.07.2000 21.03.2000

19262/2007 M.S. Chandra-sekar WP 18535/98 WP 7561/02 WA 508/99

15.03.99 20.03.02 25.07.2000

OS 2566/99

31.07.2001

19263/2007 A. Suresh WP 19902/07 - - -

09.06.07

19264/2007 M. Ravichandran WP 18535/98 WA 508/99 OS 2711/99

15.03.99 25.07.2000 21.03.2000
19265/2007 S. Thanga Mariappan WP 8040/02 - - - -
22.03.02
19266/2007 Thenmami Ammal WP 8040/02 - - - -
22.03.02
19490/2007 D. Vinayagam - - - - OS 5563/2000
26.12.2001
19901/2007 J. Vincent WP 26109/03 - - OS 5568/2000
(disposed) 26.12.2001
AS.287/2002
06.06.2003
20036/2007 Valarmathi WP 4060/04 - - - -
11.03.04
20048/2007 M. Thanga Pushpam - - - - OS 5567/2000
26.12.2001
19960/2007 Vijayammal - - - - OS 5565/2000
26.12.2001
20061/2007 V. Ranga-rajana - - - - OS 5564/2000
26.12.2001
20062/2007 V. Chandra-babu - - - - OS 5562/2000
26.12.2001
20063/2007 Usha Muthu Krishnan WP 18535/98 WA 508/1999 - -
15.03.99 25.07.2000
20810/2007 M. Sermaraj WP 7562/02 - - - -
20.03.02
20323/2007 K.M. Samy WP 18535/98 WA 508/1999 OS 5569/2000
15.03.99 25.07.2000 26.12.2001

5. In view of the admitted position that the earlier litigations were dismissed, seeking the very same relief the present writ petitions are filed, hence, they are liable to be dismissed.

6. It is alleged by the petitioners in WP Nos. 19267, 18804, 19223, 19594, 19603, 18610 and 21470 of 2007 that they have not filed any earlier

writ petitions or suits and first time these writ petitions are filed, which cannot be entertained for the reasons mentioned below.

7. The petitioners alleged that the possession of the acquired lands are with them for a long period, hence, they cannot be evicted without due

process of law. The possession of the acquired lands could be taken only by way of Memorandum or Panchanama or Mahazar or any other name

or nomenclature which is legally accepted norm. It would not be possible for the acquisition body or the requisition body to take physical

possession of the land immediately, in such event, subsequent continuation of possession, if any, had by the erstwhile owner or the occupier is only

illegal or unlawful possession which does not bind either the acquisition body or the requisition body. In this context, it would be relevant to refer to

the decision of the Honourable Supreme Court reported in

i) State of Tamil Nadu and another Vs. Mahalakshmi Ammal and others, wherein in Para No. 9, the Honourable Supreme Court held thus:

9. It is well-settled law that publication of the declaration u/s 6 gives conclusiveness to public purpose. Award was made on 26-9-1986 and for

Survey No. 2/11 award was made on 31-8-1990. Possession having already been undertaken on 24-11-1981, it stands vested in the State u/s 16

of the Act free from all encumbrances and thereby the Government acquired absolute title to the land. The initial award having been made within

two years u/s 11 of the Act, the fact that subsequent award was made on 31-8-1990 does not render the initial award invalid. It is also to be seen

that there is stay of dispossession. Once there is stay of dispossession, all further proceedings necessarily could not be proceeded with as laid

down by this Court. Therefore, the limitation also does not stand as an impediment as provided in the proviso to Section 11A of the Act. Equally,

even if there is an irregularity in service of notice under Sections 9 and 10, it would be a curable irregularity and on account thereof, award made

u/s 11 does not become invalid. Award is only an offer on behalf of the State. If compensation was accepted without protest, it binds such party

but subject to Section 28A. Possession of the acquired land would be taken only by way of a memorandum, Panchnama, which is a legally

accepted norm. It would not be possible to take any physical possession. Therefore, subsequent continuation, if any, had by the erstwhile owner is

only illegal or unlawful possession which does not bind the Government nor vested u/s 16 divested in the illegal occupant. Considered from this

perspective, we hold that the High Court was not justified in interfering with the award.

(ii) State of Himachal Pradesh Vs. Tarsem Singh and Others, wherein the Honourable Supreme Court held in para-7 thus:

7. In the aforesaid two cases, Entry 21 of List II of the Seventh Schedule of the Government of India Act and Entry 18 of List II of the Seventh

Schedule of the Constitution of India were relied upon for the purpose of holding that there was a legislative competence while enacting the Land

Acts. The question whether vesting of all interests and rights in the land free from all encumbrances would also include easementary right, was not

the subject-matter of decisions and, therefore, the said decisions have no application in the present case. Section 3 of the Act provides that,

notwithstanding any custom, usage, instrument, agreement or decree of the court, all titles, interests and rights in the land shall stand extinguished

and all such rights, title and interests shall vest in the State free from all encumbrances. Learned Counsel, when argued that easementary right being

over the land has not vested in the State, omitted to consider the significance of the expression ""free from encumbrances"". The word

encumbrance"" means a burden or charge upon property or a claim or lien upon an estate or on the land. ""Encumber"" means burden of legal

liability on property, and, therefore, when there is encumbrance on a land, it constitutes a burden on the title which diminishes the value of the land.

In Abdul Karim Khan v. Managing Committee, George High School it was held that encumbrance would include easementary right of drainage

over the land. In Rashid Allidina v. Jiwandas Khemji it was laid down that the word ""encumbrance"" has always been understood to include

easementary right. In Ganga Vishnu Swaika v. Machine Mfg. Co. Ltd. it was ruled that an easementary right to discharge water on other's land

comes within the meaning of encumbrance on the right in the land.

8. As mentioned above, some of the petitioners, for the first time filed writ petitions challenging the eviction order, such writ petitions also not

maintainable. It is well settled that once award is passed, no writ petition can be filed challenging the acquisition proceedings or any proceedings

thereunder. Followed The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others, , in Para No. 17, it was held thus:

17. In any event, after the award is passed no writ petition can be filed challenging the acquisition notice or against any proceeding thereunder. This

has been the consistent view taken by this Court and in one of the recent cases C. Padma v. Dy. Secy. to the Govt. of T.N this Court observed as

below : (SCC p. 628, para 4)

4. The admitted position is that pursuant to the notification published u/s 4(1) of the Land Acquisition Act, 1894 (for short "the Act") in GOR No.

1392 Industries dated 17-10-1962, total extent of 6 acres 41 cents of land in Madhavaram Village, Saidapet Taluk, Chengalpattu District in Tamil

Nadu was acquired under Chapter VII of the Act for the manufacture of Synthetic Rasina by Tvl. Reichold Chemicals India Ltd., Madras. The

acquisition proceedings had become final and possession of the land was taken on 30-4-1964. Pursuant to the agreement executed by the

company, it was handed over to Tvl. Simpson and General Finance Co. which is a subsidiary of Reichold Chemicals India Ltd. It would appear

that at a request made by the said company, 66 cents of land out of one acre 37 cents in respect of which the appellants originally had ownership,

was transferred in GOMs No. 816 Industries dated 24-3-1971 in favour of another subsidiary company. Shri Rama Vilas Service Ltd., the 5th

respondent which is also another subsidiary of the Company had requested for two acres 75 cents of land; the same came to be assigned on

leasehold basis by the Government after resumption in terms of the agreement in GOMs No. 439 Industries dated 10-5-1985. In GOMs No. 546

Industries dated 30-3-1986, the same came to be approved of. Then the appellants challenged the original GOMs No. 1392 Industries dated 17-

10-1962 contending that since the original purpose for which the land was acquired had ceased to be in operation, the appellants are entitled to

restitution of the possession taken from them. The learned Single Judge and the Division Bench have held that the acquired land having already

vested in the State, after receipt of the compensation by the predecessor-in-title of the appellants, they have no right to challenge the notification.

Thus the writ petition and the writ appeal came to be dismissed.

9. Some of the petitioners submitted that they have filed civil suit in which they obtained injunction. Some of them alleged that against the judgment

of dismissal of the suit they are taking steps to file appeal or first appeal filed which is pending or second appeal is pending. After acquisition

proceedings are over, the land vest with the Government or requisition body, hence no suit against them is maintainable.

10. After acquisition, as mentioned above, the property stood divested from whomsoever it belongs earlier, thereafter, no one can lay any claim to

the said acquired land once over as the land ultimately stood over and vested with the Board. Thus, the person in occupation be treated as

trespasser, who cannot claim any remedy against the owner nor can the court issue the same. Followed Tamil Nadu Housing Board Vs. A.

Viswam (Dead) by Lrs., wherein in Para-12, it was stated thus:

12. Thus considered, the title of the land in Survey No. 140/4 having been vested in the appellant, to whomsoever it belonged earlier, it stood

divested from him/them and no one can lay any claim to the said acquired land once over and claim injunction on that basis. The injunction,

therefore, cannot be issued against the true owner, namely, the Housing Board in whom the land ultimately stood vested and then stood transferred

to the Municipal Corporation. A trespasser cannot claim injunction against the owner nor can the court issue the same.

11. In view of the said fact, the properties covered in these writ petitions are vested with the Board and all rights, title and interest, including the

easementary rights of the owners and occupiers stood extinguished and all such right, title and interest vest in the Board free from all encumbrances

as held by the Honourable Supreme Court in the decisions mentioned supra.

12. For the said reasons, all the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

13. The learned Counsel appearing for the petitioners submitted that the petitioners are in occupation of the said lands for a substantial period,

hence, sufficient time may be granted to them to remove their belongings and to deliver vacant possession. Considering the same, time of six

months is granted from today to enable the petitioners to deliver vacant possession of the property to the respondents provided they submit an

affidavit of undertaking to that effect to the respondents within a period of two weeks from today. If the affidavits of undertaking are not filed within

the time stipulated, it is open to the Board to initiate eviction forthwith without waiting for the said period of six months.

14. The petitioners submitted that after construction in the said lands are over and in the event of selling the constructed portion under any of the

scheme of the respondents or the Board decided to sell the lands without construction, they may be considered on priority basis. Such relief cannot

be given and allotments can be made only through lot or by public auction, however, any representation is received for allotment of land or building

from the petitioners, it is for the Board to consider it on merits and pass orders in accordance with law.