
(2013) 03 MAD CK 0175

In the Madras High Court

Case No : Writ Petition No. 7375 of 2006

P. Dakshinamurthy

APPELLANT

Vs

Collector of Cuddalore District, Cuddalore and Others

RESPONDENT

Date of Decision : 06-03-2013

Acts Referred:

Citation : (2014) 1 MLJ 227

Hon'ble Judges : S. Tamilvanan, J

Bench : Single Bench

Advocate : R. Gururaj, for the Appellant; S. Navaneethan, Additional Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

S. Tamilvanan, J.—The writ petition has been filed under Article 226 of the Constitution of India seeking an order in the nature of certiorarified mandamus to call for the records pertaining to the notification dated 8.2.2000 issued by the first respondent in the official gazette of Cuddalore District pertaining to land in Survey No. 69/8 Ac. 2.16 in Silambimangalams Village, Chidambaram Taluk, Cuddalore District and consequently forbearing the respondents from interfering with petitioner's peaceful possession and enjoyment of the said property. The case of the petitioner is that the property originally belonged to one Rahila Bivi of Mylapore, Chennai. She leased out the same to the petitioner and the petitioner was raising paddy and for which separate lease deed dated 10.06.1991 was entered into between the petitioner and the said Rahila Bivi in respect of the petition mentioned properties.

2. Learned counsel appearing for the petitioner submitted that in pursuance of the lease agreement, the petitioner had taken over possession of the properties and raising crops and on the date of filing of the writ petition, casurina crop was raised in the lands and that was one year old and further submitted that respondents 1 and 2 initiated land acquisition proceedings, by notification dated 8.2.2000, made in the Cuddalore District Gazette, without issuing notice to the

petitioner under 31/78 of Tamil Nadu Act, 1978. According to learned counsel appearing for the petitioner, subsequent to the notification and the proceeding, the land was acquired, though as per Government policy, agricultural land could not be acquired for providing house sites and there are poramboke lands available in the village. It is further contended on behalf of the petitioner that a suit in O.S. No. 8 of 2000 was filed by the petitioner herein before the District Munsif cum Judicial Magistrate, Parangipettai against the respondents, seeking bare injunction, based on the lease agreement entered into between the petitioner and the said Rahila Bivi. The suit was decreed ex parte on 16.4.2004 and subsequently, the same was set aside. However, an ex parte decree was passed on 10.3.2005 and permanent injunction was granted in the suit.

3. Per contra, learned Additional Government Pleader appearing for respondents 1 and 2 submitted that the petitioner has no locus standi to maintain the writ petition, since the petitioner was neither the owner nor a cultivating tenant of the land. It was further contended by the learned Additional Government Pleader appearing for respondents 1 and 2 that there is no supporting document available on the side of the petitioner to show that he was cultivating tenant. So far as the suit in O.S. No. 8 of 2000 on the file of District Munsif cum Judicial Magistrate, Parangipettai is concerned, learned Additional Government Pleader submitted that the suit is nothing to do with the land acquisition proceedings and the alleged ex parte decree is non est in the eye of law, as the prayer sought for is only for permanent injunction restraining the defendants therein not to dispossess the land except under due process of law.

4. A copy of the plaint relating to the suit in O.S. No. 8 of 2000 was also filed in the typed set of papers. The relief sought for in the suit is only permanent injunction in favour of the plaintiff, restraining the defendants therein, their men or subordinates or the agent from interfering with the lawful possession and enjoyment of the suit properties except under due process of law. According to the Additional Government Pleader, the land acquisition proceedings is taken only in accordance with law, which cannot be construed as an illegal act or an act against law and further submitted that the suit filed against the land acquisition proceeding is not legally sustainable, in view of the legal bar under the Land Acquisition Act.

5. Mr. R. Gururaj, learned counsel appearing for the petitioner, in support of his contention relied on the following decisions:

1. State of Punjab Vs. Modern Cultivators, Ladwa,
2. Thirumathi Pushpa Bai Balasingh Vs. The District Collector and Another,
3. Karamshi Jethabhai Somayya Vs. The State of Bombay,
4. Gopal Krishnaji Ketkar Vs. Mahomed Haji Latif and Others,
5. K. Jayalakshmi and Others Vs. Principal Commissioner and Commissioner of Land Reforms and Others, .

6. Sumathi Srinivas and Others Vs. State of Tamil Nadu and Others,

6. A Division Bench of this Court in Thirumathi Pushpa Bai Boinsingh v. The District Collector, Tirunelveli Kattabomman District and Another (*supra*) has held that the order passed by the District Collector on the basis of a report of the Tahsildar was improper, accordingly, the same was set aside by the Court and the order reads thus:

Considering the fact that the appellant herein was not given an opportunity before passing the order by the Collector, we set aside the order dated 17.2.1997 passed by the first respondent and direct the District Collector, first respondent herein, to pass an order in the above matter, after giving an opportunity of being heard to the appellant herein/petitioner in the writ petition. Accordingly the order passed in the writ petition is set aside and the writ appeal is allowed.

7. Learned counsel appearing for the petitioner relied on the decision and submitted that the petitioner was not in possession and enjoyment of the land before acquiring the land. Respondents 1 and 2 had not given any notice to petitioner and therefore, the order passed by the first respondent is liable to be set aside.

8. This Court M. Jaichandren, J. in K. Jayalakshmi and Others v. Principal Commissioner and Commissioner of Land Reforms, Chepauk, Chennai and Others (*supra*) has held that there was nothing on record to show that actual physical possession of the lands were taken over by the respondents therein and that compensation amount was also not paid to the petitioner herein in respect of the land, hence, the land ceiling proceeding said to have been instituted in respect of the lands in question was not sustainable in law. Though the decision referred to was pertaining to Land Ceiling Act, according to the counsel for the petitioner, the analogy of the decision is applicable to the present case on hand.

9. In Sumathi Srinivas and Others v. State of Tamil Nadu rep. by the Secretary to Government, Chennai and Others (*supra*), this Court (K.N. BASHA, J.) held that the petitioners therein have not been served with the notices under Sections 9(4), 9(5) and 11(5) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and they have served notice only to the registered land owners on the basis of the names recorded under the revenue records and the respondents claim was that they had taken over symbolic possession and not the actual and physical possession of the land. In the aforesaid circumstances, this Court held that the petitioners therein have substantiated their claim of actual and physical possession was with them and hence the writ petitions filed by the petitioners could not be thrown out on the ground of delay and laches more particularly, the respondents have not taken any action as per the provision u/s 11(6) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act 1978.

10. According to the learned counsel appearing for the petitioner, respondents 1 and 2 have not served notice to the petitioner and hence, the land acquisition proceeding initiated by them is vitiated. It is also brought to the notice of this

Court by the learned counsel appearing for the petitioner that responsibility rests upon the Government not to withhold any document without producing the same to the Court, as held in the decision *Karamshi Jethabhai Somayya v. State of Bombay* (supra), which reads as follows:

6.... Though the High Court threw the blame for this lapse on the appellant, we do not think there was any justification for it. Apart from the fact that the appellant asked for the production of all the relevant documents, the Government, being the defendant in this case, should have produced the documents relevant to the question raised. While it is the duty of a private party to a litigation to place all the relevant matters before the Court, a higher responsibility rests upon the Government not to withhold such documents from the Court. Be that as it may, the documents were finally produced before the Court and the High Court considered the same in the arriving at its conclusion. Though Mr. Nambiar suggested that the said documents related to some other party, as we will indicate in the course of the judgment, the said file dealt also with the agreement alleged to have been entered into between Karale and the Government.

11. In *Gopal Krishnaji Ketkar v. Mohamed Haji Latif and Others* (supra), the Hon"ble Apex Court has held that a party in possession of certain documents as best evidence which would throw light on the issue in controversy withholding the same would lead to their adverse inference against the person notwithstanding the documents. It cannot be disputed that a party cannot rely on abstract doctrine of onus of proof or on the fact that he was not called upon to produce it. It is the duty of the party to produce the relevant document which is under the custody to decide the lis before the Court, according to law.

12. Having considered the averments, material papers and the submissions made by both the learned counsel, this Court is of the view that the vital point for determination is whether the petitioner has any locus standi to challenge the land acquisition proceeding. Admittedly, the property that is the subject matter for the acquisition proceeding, was not owned by the petitioner herein. In fact the petitioner is claiming only leasehold right in the property. Learned Additional Government Pleader appearing for respondents 1 and 2 submitted that the petitioner has no right in the property and there is no supporting materials produced by him to show that the petitioner is a cultivating tenant or atleast having any lease hold right to maintain the writ petition challenging the acquisition proceedings.

13. In support of the claim, the petitioner has produced only a typed copy of an alleged unregistered lease agreement dated 10.6.1991 allegedly entered into between one Rahila Bivi and the petitioner herein. The same cannot be accepted by a writ Court as the same is an inadmissible document. As contended by the learned Additional Government Pleader, there could be no evidentiary value attached to the typed copy. There is no supporting materials or evidence to show that the petitioner herein was cultivating the land or having any lease hold right

to show that atleast he is in possession and enjoyment of the property. Further it is admitted by the petitioner himself that Rahila Bivi, who owned the property, subsequently sold the lands on 27.9.1995 in favour of the third respondent. It is not the case of the petitioner that the petitioner continued to be a lessee, under the third respondent herein subsequent to the alleged purchase of the land by the third respondent on 27.9.1999 till the writ petition was filed by the petitioner in the year 2006. This Court is the view that there is no suppression of material papers by the respondents and further the petitioner has not specifically stated any relevant documents not produced by respondents 1 and 2 and further it being a writ petition, this Court cannot go into any disputed question of facts, as contended by the learned Additional Government Pleader. It is an admitted fact that the land was acquired for the purpose of providing house sites to poor Adhi-Dravidar people under a welfare scheme and accordingly sites were allotted to various poor persons.

14. Respondents 1 and 2 have also raised a legal plea that the writ petition is not maintainable for non-joinder of necessary parties, since the beneficiaries under the said scheme were not impleaded as parties in the writ petition. Even as per the averments made in the writ petition, it is clear that the petitioner is not the owner of the property that was acquired as per the proceedings of respondents 1 and 2. The petitioner has stated that Rahila Bivi was the actual owner of the property and subsequently she sold the property in favour of the third respondent on 27.9.1999. It is not the case of the petitioner that the petitioner became a tenant under the third respondent or having any lease hold right against the third respondent. Respondents 1 and 2 have not admitted that the petitioner is in possession and enjoyment of the property. Hence the petitioner was neither the owner nor in possession of the property on the date of the impugned order passed by the respondents, as submitted by Additional Government Pleader.

15. On the aforesaid circumstances, the burden is upon the petitioner to establish that he was in possession and enjoyment of the property or having lease hold right on the date of the impugned order. There is no acceptable legal evidence available to show that the petitioner was in possession and enjoyment of the property. Learned Additional Government Pleader contended that the petitioner and the third respondent have colluded themselves and filed this writ petition. Since the petitioner has come forward with this writ petition under Article 226 of the Constitution of India, the burden is upon the petitioner to establish the alleged factum and the claim made by him in the writ petition.

16. As contended by the learned Additional Government Pleader appearing for respondents 1 and 2, the suit in O.S. No. 8 of 2000 seeking bare injunction restraining the defendants therein not to dispossess the petitioner herein, except under due process of law, is nothing to do with the land acquisition proceedings, since the land acquisition proceeding itself is a legal action taken by the authority under due process of law, which cannot be construed as an action taken

arbitrarily against the petitioner. Admittedly, there is no declaratory relief sought for, even as per the copy of the plaint. The petitioner has not established his case by producing prima facie material to show that he was in legal possession and enjoyment of the property as cultivating tenant or having lease hold right. Hence the alleged suit and the order if any passed therein was without jurisdiction and non est in the eye of law, as contended by the learned counsel for respondents 1 and 2. On the aforesaid circumstances, this Court is of the view that the petitioner has no locus standi to challenge the land acquisition proceeding initiated by respondents 1 and 2 and the petitioner has not established any prima facie right or legal possession to challenge the impugned notification dated 8.2.2000 published in the official gazette relating to Cuddalore District in respect of Survey No. 69/8 Ac. 2.16 in Silambiman-galams Village, Chidambaram Taluk, Cuddalore District, hence, the writ petition is liable to be dismissed. In the result, the writ petition is dismissed. No order as to costs.