

(2015) 01 MAD CK 0322

In the Madras High Court

Case No : Writ Petition No. 29187 of 2014 and M.P. No. 1 of 2014

R. Duraisami

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 06-01-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 2, 4(1), 48(b), 5(A), 5A
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 24(2)

Citation : (2015) 01 MAD CK 0322

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Advocate : S.R. Rajagopal, for the Appellant; M.S. Ramesh, Additional Government Pleader, Advocates for the Respondent

Final Decision : Allowed

Judgement

C.S. Karnan, J.

1. The short facts of the case are as follows:--

"The petitioner submits that the property in Survey No. 185 part, Kavundampalayam Village, Coimbatore Taluk, Coimbatore District measuring to an extent of 2400 sq.ft., Plot No. 3, LP/R(CPN.388/86) was purchased by him by a sale deed registered as Document No. 234/88, on the file of Sub Registrar Office, Gandhipuram, Coimbatore, for a sum of Rs. 13,700/- for valuable consideration. Ever since from the date of purchase, the petitioner has been in peaceful possession, enjoying and in occupation of the property. The revenue records reflects his name as the owner of the property. The petitioner understood that from his neighbouring landowners that there were some acquisition proceedings pending in respect of the lands and the Government had not pursued the same. Till date, he has not received any notice in this regard. By virtue of Registration of Deed of sale in his favour and not reflecting of the acquisition proceedings in Encumbrance Certificate, it is evident that no valid

proceedings under the Land Acquisition Act has been initiated. The petitioner further submits that his vendors, viz., (1) Chinna Konar, (2) Ramathal, (3) K.C. Maruthasalam, (4) K.C. Palanisamy covenanted in the Deed of Sale that there are no acquisition proceedings that were (or) are pending."

2. The petitioner further submits that one Dr. (Lt. COL.) C.V. Krishnaswami (Retd.) has preferred a writ petition in W.P. No. 35393 of 2004, directing the respondents to withdraw the acquisition proceedings in respect of the lands covered by 4(1) Notification dated 26.09.1988. This Court, vide order dated 01.02.2005 was pleased to direct disposing of the application filed under Section 48(b) of the Act giving personal hearing to him and subsequently proceedings were instituted and in W.P. No. 11795 of 2008, this Court, by order dated 18.09.2014 was pleased to allow the writ petition filed by the said Krishnaswamy and thereby had directed re-conveyance of the land to him. The petitioner further submits that since he has owned the property adjoining to the same/in the nearby vicinity, he came to know pendency of the writ petition and hence, preferred the present writ petition. The petitioner further submits that in W.P. No. 12771 of 2008, in respect of another extent of land, this Court was pleased to allow the writ petition and both the orders have reached finality.

3. The petitioner further submits that he came to know from one Dr. (Lt. COL.) C.V. Krishnaswami (Retd.) who said that what are germane for this writ petition are as under:--

"(i) The first respondent had issued G.O.Ms. No. 159, dated 26.09.1988, proposing to acquire an extent of 1.85.5 hectares (approximately 6.10 acres) of patta land in S. No. 185 of Kaundampalayam Village, Coimbatore District. The same followed by a 4(1) Notification on the said date. By the said 4(1) Notification, lands comprised in S. No. 185/1 measuring 1.02 acres, S. No. 185/2 measuring 1.52 acres and S. No. 185/3 measuring 3.06 acres in all totalling to 6.10 acres was sought to be acquired.

(ii) The petitioner understood that on 29.10.1988 publication was effected and on 02.11.1988, the same was gazetted and an enquiry under Section 5A was conducted during January-May of 1989 and in November 1991, an award came to be passed. Even in the award, a land measuring about 1.52 acres in S. No. 185/2 which stood in the name of Palanisamy was exempted from acquisition. The petitioner had purchased the property on 25.01.1988 after verifying the encumbrance certificate, which revealed no encumbrance. Ever since the date of purchase, he has been in possession of the property and he has been assessed to tax and all the revenue records reflect him as the owner."

4. The petitioner further submits that he came to know about the acquisition proceedings and pendency of the proceedings instituted by Dr. Krishnaswamy and was awaiting the outcome. The petitioner further submits that just prior to Deepavali, he was informed that this Court was pleased to pass an order for all the aforementioned facts revealed to them. The petitioner is a bonafide

purchaser for a valuable consideration without notice of any of the acquisition proceedings and have taken due diligent steps that were required of a prudent buyer before purchasing of the properties. From the copy of the order issued on all the facts are counter verified and he is swearing to this affidavit based on the same. The petitioner understands that the Land Acquisition Act stood repealed by Act 30 of 2013 and under Section 24(2) of the Repealing Act, the physical possession of the land not having been taken, the proceedings have deemed to have lapsed. Hence, the petitioner has filed the above writ petition.

5. The respondents have filed a counter statement and resisted the above writ petition. The respondents submit that the Land Acquisition Proceedings were initiated to acquire lands comprised in S.F. No. 185/1, 2 and 3 measuring an extent of 6.10 acres in Kavundampalayam Village, Coimbatore North Taluk, Coimbatore District, by the Land Acquisition Officer/Special Tahsildar (Adi Dravidar and Tribal Welfare) Coimbatore for issuing patta to the poor house-less Adi Dravidars. The Notification under Section 4(1) of the Act was approved in G.O.Ms. No. 159, Adi Dravidar and Tribal Department, dated 26.09.1988. The proposals under Section 4(1) of the Land Acquisition Act, 1894 for the acquisition to an extent of 1.85.5 hectares of land in S.F. No. 185 of Kavundampalayam Village of Coimbatore North Taluk to provide house-sites to the landless poor Adi Dravidar people was approved by the Government in G.O.Ms. No. 159, Adi Dravidar and Tribal Welfare Department, dated 26.09.1988.

The Notification under Section 4(1) of the Land Acquisition Act was published at Page No. 3 of the T.N.G.G. No. 42 of supplement to Part II Section 2 dated 02.11.1988 and in the Tamil dailies as shown below:--

and a locality publication was made on 15.11.1988. Thereafter, the enquiry under Section 5(A) of the Land Acquisition Act was conducted on 11.01.1989, 14.02.1989 and 03.05.1989. The Notices inviting them to attend the enquiry were sent to the Notified Land Owners viz., 1) Thiru. Chinna Konar, 2) Tmt. Ramathal, 3) Marudhakkal, 4) Tmt. Marudakkal, 5) Thiru. Palanisamy and 6) Thiru. Natarajan. Since they refused to receive the notices, the notices were served by affixture by the V.A.O, only one Thiru. Krishnan from Karur of Trichy District appeared for enquiry that was held on 03.05.1989 and gave a statement. He has stated in his statement that he entered an agreement which was registered along with 1) Thiru. Chinna Konar, 2) Tmt. Ramathal, 3) Marudhakkal, 4) Tmt. Marudakkal, 5) Thiru. Palanisamy and 6) Thiru. Natarajan that he would pay only Rs. 1,570/- percent of land even if it fetched higher value. He formed layout for 23 sites in extent of 2.03 1/2 acre and got approval by Director of Town and Country Planning vide Ref. No. L.P.(R)(C.P.N) No. 388/86. He has also paid a sum of Rs. 10,176/- to the Village Panchayat towards the development charges vide receipt No. 17261, Miscellaneous Receipt No. 283/87-88, dated 19.01.1988. He has disposed of 15 sites out of 23 house sites to various persons. His request for exemption from the Land Acquisition Proceedings was rejected as there were no buildings constructed.

6. The respondents further submit that the proposals under Section 6 of the Land Acquisition Act was approved by the Government in their G.O.Ms. No. 227, Adi Dravidar and Tribal Welfare Department, dated 02.11.1989 and published as shown below:--

The proposals for the Direction under Section 7 of the Land Acquisition Act was approved in Government Lr. No. 28289/ADW8/90-1, dated 16.01.1990 and published at page 5 of the T.N.G.G.36 of Supplement to Part II Section 2, dated 12.09.1990. After the publication of Declaration under Section 6 and Direction under Section 7 of the Land Acquisition Act, as stated above, the Award Enquiry was conducted on 12.11.1991 and 19.11.1991, by the Land Acquisition Officer/Special Tahsildar (LA) Adi Dravidar Welfare, Coimbatore. The Notified landowners have attended the enquiry and refused to receive the notices. Accordingly, an Award No. 9/91-92 Ref. No. 1405/84(A), dated 21.11.1991 for an extent of 4.58 acre in S.F. No. 185 of Kavundampalayam Village was passed out of 6.10 acres (2.47.0) and extent of 1.52 acre of land belonging to Thiru. Palanisamy was exempted. The respondents further submit that the persons who purchased house sites from the notified landowners prior to the publication of 4(1) Notification and after the award being passed, have filed, writ petition in W.P. No. 12771 of 2008 and W.P. No. 11795 of 2008 before this Court, challenging the Land Acquisition Proceedings. Originally, the lands in S.F. No. 185, Kavundampalayam Village stands registered in the name of 1) Thiru. Chinna Konar, 2) Tmt. Ramathal, 3) Marudhakkal, 4) Tmt. Marudakkal, 5) Thiru. Palanisamy and 6) Thiru. Natarajan, as per the Revenue records. By an order dated 08.09.2014, both the writ petitions were allowed by this Court, by quashing the Notification and consequently, directing the respondents to re-convey the lands to the petitioners. The respondents further submit that the Government has been advised to file a writ appeal against the said orders and the same is under process. However, it is pertinent to submit here that the petitioner herein is not a party to the writ petition and there is no bar for these respondents to proceed further in so far as the land of the petitioner concerned.

7. The respondents further submit that the adjacent landowners Tvl. Vikos Golecha, Paras Devi Golecha and Lalitha Duggar have purchased house sites in S.F. No. 185/1 and 3 measuring an extent of 0.82 acres in Kavundampalayam Village, Coimbatore North Taluk, Coimbatore by virtue of sale deed No. 915/95, 916/95 and 1052/95, Sub Registrar, Gandhipuram, Coimbatore. They have submitted their representation as instructed by the High Court Madras to reconvey the lands under Section 48(B) of the Land Acquisition Act before the Government. The Government in their G.O.Ms.(3Pa) No. 17, dated 03.04.2008 have rejected their representation. Then, they have filed W.P. No. 12771 of 2008 before this Court and this Court, on 18.09.2014 has allowed the writ petition and quashed the Land Acquisition Proceedings initiated on their house sites. Likewise Thiru. C.V. Krishnasamy, Sivananda Colony, Coimbatore has put in representation before the Government, with a request to re-convey the lands in S.F. No. 185/1 and 185/2 measuring an extent of 1.02 acres of lands in Kavundampalayam

Village, Coimbatore North Taluk, Coimbatore District. His daughter and son-in-law have proposed to construct hospital and medical centre in that area. But, the Government in their G.O.(Pa) No. 10, dated 06.02.2008 have rejected the representation under Section 48(b) of the Act. Aggrieved by this order, the petitioner has filed a writ petition in W.P. No. 11795 of 2008 before this Court and this Court, on 18.09.2014 has allowed the above writ petition and quashed the Land Acquisition Proceedings initiated on the lands and directed the first respondent to re-convey the lands in S.F. No. 185/1 measuring an extent of 1.02 acres in Kavundampalayam Village, Coimbatore North Taluk, Coimbatore District.

8. The respondents further submit that one of the landowners, Thiru. Palanisamy had made a representation to the Additional Collector, Coimbatore for deletion of his holdings from the land proposed to be acquired as his family consisted of 3 mentally retarded children. The same was sympathetically considered by the Additional Collector and the extent of lands were exempted from the Land Acquisition Proceedings on compassionate grounds, though the petitioner Krishnasamy's daughter Tmt. Shanthi Rajendran and son-in-law Thiru. Rajendran have purchased the lands during the year 1995. They have no intention to construct the hospital. Thiru. Krishnasamy come to know about the acquisition, with an intention to defeat the acquisition proceedings, he sought for exemption of the land from acquisition, which is an afterthought. To substantiate the above fact, Tmt. Santhi Rajendran and Son-in-law Rajendran have not mentioned the construction of hospital in his title deed, i.e., (sale deed). The respondents further submit that this Court has quashed the Land Acquisition Proceedings in its above judgment in support of judgment delivered in (2014) 1 MLJ 874 (SC) [Pune Municipal Corporation v. Harakchand Misirimal Solanki]. In the judgment, it is mentioned that the erstwhile landowners have not received the compensation amount which is deposited in the Court so far. Though, it is Government money, it is deposited as compensation amount in the name of the landowners in the Sub Court, Coimbatore as contemplated in the Land Acquisition Act. The amount deposited is only for landowners and others cannot claim that amount. The petitioner is the subsequent purchaser and cannot claim benefits of Section 24(2) of the New Act. The Land Acquisition Proceedings have been initiated and completed as per the provisions contemplated in the Land Acquisition Act without any deviation. Therefore, necessary steps have been taken in this office for filing the writ appeal on the above cases, as soon as possible. The respondents further submit that the petitioner has filed this writ petition to drag on the Land Acquisition Proceedings.

9. The respondents further submit that the Land Acquisition Proceedings initiated to acquire the lands during the year 1988. The Land Acquisition Proceedings initiated as for the provisions contemplated under the Land Acquisition Act 1894 and the same also agreed and approved by the Government. The Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement 2013 (Act 30 of 2013) came into force only on 01.01.2014 and since the petitioner is the subsequent purchaser and he cannot claim any right or

benefit under Section 24(2) of the New Act. The respondents further submit that the Land Acquisition Proceedings were initiated to acquire the lands in S.F. No. 185/1 during the year 1988. The petitioner ought to have verified or ascertained whether any Land Acquisition Proceedings are in force from the Tahsildar Coimbatore (North) Taluk/from the Collector, Coimbatore. But, the petitioner was not done so. The Land Acquisition Proceedings were initiated and completed according to the provisions contemplated in the Land Acquisition Act 1894. Hence, the averments made in para two is not acceptable. The respondents further submit that the Land Acquisition Proceedings were initiated to acquire the lands in S.F. No. 185/1 of Kavundampalayam Village, Coimbatore during the year 1988. The petitioner ought to have verified or ascertained whether any Land Acquisition Proceedings are in force from the Tahsildar Coimbatore (North) Taluk/from the Collector, Coimbatore. But, the petitioner was not done so. The Land Acquisition Proceedings were initiated and completed according to the provisions contemplated in the Land Acquisition Act, 1894. Hence, the averments made in para three is not acceptable. The respondents further submit that this Court has issued instructions to consider the petitioner's prayer and pass Orders under Section 48(B) of the Land Acquisition Act. The Government have considered his request sympathetically and refused the request of the petitioner. The Judgment delivered by the High Court of Madras to one person, it won't applicable to another person, who has not approached the Court for such relief. Hence, the averments made in para four is not acceptable. The respondents further submit that an extent of 1.52 acres of lands pertaining to the landowner Palanisamy was exempted from the Land Acquisition Proceedings as his family consists there mentally retarded children, by the Additional Collector on compassionate grounds and also his request scrutinized on humanitarian manner. Hence, the averments made in paras 5 and 6 are not acceptable. The respondents further submit that the Land Acquisition Proceedings initiated to acquire lands during the year 1988. The Land Acquisition Proceedings initiated as per the provision contemplated under the Land Acquisition Act, 1894 and the same also agreed and approved by the Government. The compensation of the land acquired had been deposited in the civil Court, Coimbatore. The Right to Fair Compensation and Transparency in Land Acquisition Act, Rehabilitation and Resettlement Act 2013 (Act 30 of 2013) came into force only on 01.01.2014. Hence, the petitioner cannot claim any right or benefit under Section 24(2) of New Act. Therefore, the respondents entreat the Court to dismiss the above writ petition.

10. The highly competent counsel Mr. S.R. Rajagopal appearing for the petitioner submits that the petitioner had purchased the property in Survey No. 185 part, Kavundampalayam Village, Coimbatore Taluk, Coimbatore District measuring to an extent of 2400 sq.ft. He further submits that the said sale deed was registered on the file of Sub Registrar's Office, Gandhipuram, Coimbatore. He further submits that the petitioner has well scrutinized the title deeds pertaining to the said property including the encumbrance certificate. He further submits that at the time of purchasing the said properties, the vendors had possessed

marketable title deeds over the said properties. The highly competent counsel further submits that the first respondent has issued a Notification under Section 4(1) of the Act on 26.09.1988. The said notification was issued in the name of the erstwhile owner of the property. Further, the erstwhile owners/vendors did not attend the enquiry, which was held by the fifth respondent under Section 5(A) of the Act. The highly competent counsel further submits that before initiating the Land Acquisition Proceedings, the petitioner has purchased the said property, after layout of house sites. The layout had been approved by the Director of Town and Country Planning Department. As such, the Land Acquisition Proceedings has become lapsed.

11. The highly competent counsel appearing for the petitioner further submits that the Land Acquisition Officer had adapted Land Acquisition Act, 1894 for acquiring the lands to an extent of 1.85.5 hectares in Survey Field No. 185, Kavundampalayam Village to provide house sites to the Adi Dravidar families. The fifth respondent had not adapted the Special Act, 1978 for acquiring the said land for the said purpose. Therefore, the entire Land Acquisition Proceedings have become lapsed since the Old Act does not permit to acquire the said lands. Further, the writ petitioner has not received any compensation so far, besides, the petitioner is in possession and as such, the petitioner is entitled to secure a remedy under Section 24(2) of the New Act. Further, the fourth respondent/District Collector had revealed in his proceedings, dated 11.11.2010, that the landowners did not appear before the Special Tahsildar, Land Acquisition for enquiry as per Section 5(A) of the Act. Further, the same proceedings reveals that the physical possession had not been taken. As such, the said acquisition proceedings are not sustainable under law. Hence, the highly competent counsel entreats the Court to allow the above writ petition.

12. The very competent Additional Government Pleader Mr. M.S. Ramesh appearing for the respondents submits that the first respondent had issued a notification in G.O.Ms. No. 159, on 26.09.1988, for acquiring the lands to an extent of 1.85.5 hectares of land comprised in Survey Field No. 185 of Kavundampalayam Village of Coimbatore Taluk to provide house sites to the landless Adi Dravidar people. The said notification was published in the name of the landowners as per Revenue records. After notification, an enquiry was conducted under Section 5A of the Act. Subsequently, a declaration was published and as such, the property had been acquired. The very competent Additional Government Pleader further submits that after acquiring the said land, some third parties had purchased the said acquired property. Further, the respondents have deposited the said compensation amount before the Sub Court, Coimbatore. Further, the acquired lands are now under the care and custody of the respondents and the records relating to the said property as mentioned as Adi Dravidar Natham. Therefore, the above writ petition is not maintainable. Hence, the very competent Additional Government Pleader entreats the Court to dismiss the above writ petition.

13. From the above discussion, this Court is of the view that:

"(i) The fifth respondent/Special Tahsildar, (Land Acquisition) had initiated the Land Acquisition Proceedings in the year 1988 for acquiring the lands comprised in Survey Field No. 185 of Kavundampalayam Village. The Acquisition Proceedings had been completed in the year 1991. However, as on date, the purpose, viz., to provide house sites to the landless Adi Dravidar People was not executed, after a lapse of around 23 years and as such, the Acquisition Proceedings have become defunct.

(ii) Originally, the Land Acquisition Officer had acquired to an extent of 6.10 acres for the said purpose. After passing an award, the respondents had discharged a part of the acquired land to an extent of 1.52 acres to the landowner, viz., Thiru. Palanisamy. Now, the petitioner is seeking exemption for a small portion of the land i.e., to an extent of 2400 sq.ft. The said small portions of the land had been approved by the Director of Country and Town Planning Department in the year 1986. As such, the petitioner is entitled for re-conveyance of the lands as a similar remedy was already obtained by the other landowner.

(iii) The other two landowners have filed two writ petitions in W.P. No. 12771 of 2008 and W.P. No. 11795 of 2008. This Court, by an order dated 18.09.2014, allowed the writ petitions, by quashing the Land Acquisition Proceedings and directed the respondents to re-convey the lands to and in favour of the writ petitioners therein. Therefore, the writ petitioner herein is also entitled to receive the similar remedy.

(iv) The District Collector/the fourth respondent's proceedings dated 11.11.2010 reveals that the acquired properties had not been taken and compensation amount had not been paid to the present landowner. From the above proceedings dated 11.11.2010, it is clearly seen that the respondents are not in physical possession, besides the said properties were not allotted to the Adi Dravidar people and as such, the purpose for which the land was acquired was defeated. Hence, the writ petitioner is entitled to secure a remedy under Section 24(2) of the Act 30 of 2013."

14. On considering the facts and circumstances of the case and arguments advanced by the highly competent counsels on either side and on perusing the typed set of papers and this Court's view mentioned above as (i) to (iv), the above writ petition is allowed. Consequently, this Court declares that the Land Acquisition Proceedings in respect of the property in Survey No. 185 part, Plot No. 3 Kavundampalayam Village, Coimbatore Taluk, Coimbatore District measuring an extent of 2400 sq.ft. has lapsed in light of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 (Act 30 of 2013). Consequently, this Court directs the respondents to re-convey the said lands to and in favour of the writ petitioner herein within a period of three months from the date of receipt of a copy of this

order.

15. In the result, the writ petition is allowed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.