
(2011) 11 MAD CK 0082

In the Madras High Court

Case No : Writ Petition No's. 8110 and 14085 of 2009

R. Ganagasabai

APPELLANT

Vs

District Collector, Cuddalore District and Others

RESPONDENT

Date of Decision : 28-11-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 4(1), 6, 7

Citation : (2012) 1 MLJ 1136

Hon'ble Judges : N. Kirubakaran, J

Bench : Single Bench

Advocate : V. Raghavachari for R. Veeramani, for the Appellant; R. Ravichandran, Additional Government Pleader and N.A.K. Sarma, for the Respondent

Final Decision : Allowed

Judgement

N. Kirubakaran, J.—The petitioner has approached this Court by these two writ petitions seeking compensation as well as employment. The case of the petitioner is that he was assigned land comprising Survey No. 119/5, to an extent of 2.25 acres situate in No. 156, Veppankurichi Village, Virudhachalam Taluk and the said assignment was made in the year 1971 as "landless poor".

2. Thereafter, for expansion of mining operation, the lands were proposed to be taken over under the Land Acquisition Act (hereinafter called as the Act), by Notification u/s 4(1) of the Act, dated 4.4.1990. After the Draft Notification u/s 6 of the Act, Draft declaration u/s 7 of the Act was approved by the Government and published in the Government Gazette on 17.5.1991. However, during award enquiry, the lands of the petitioner and two other persons were found to be assigned lands. Therefore, award was not passed in respect of those lands.

3. Though lands were acquired, no compensation was paid. Therefore, the petitioner has been approaching the authorities for compensation. The petitioner had already approached this Court earlier by filing Writ Petition No. 24678 of

2002. Though the Government has been recommending, no compensation has been paid. Therefore, the petitioner is before this Court by filing writ petition No. 14085 of 2009, seeking compensation for the land to an extent of 2.25 acres. As far as employment is concerned, it is contended that as per the scheme approved by the Neyveli Lignite Corporation, the petitioner is entitled to employment as his land was acquired. Therefore, Writ Petition No. 8110 of 2009 has been filed seeking employment to his son, under the category of persons affected/displayed by land acquisition in respect of his land in Survey No. 119/5, to an extent of 2.25 acres.

4. A counter affidavit has been filed by the third respondent stating that the assignment made in favour of the petitioner is a conditional one and it would be resumed in case of requirement by the Neyveli Lignite Corporation. Therefore, even before the award was passed, the assignment was cancelled by proceedings, dated 2.9.1993 and by the cancellation of assignment, the right of the petitioner in respect of the land is lost and he is not entitled for any compensation, as compensation is payable only in respect of patta lands. Since the petitioner's land is not a patta land, the petitioner's son is not entitled for employment also.

5. It is contended on behalf of the Neyveli Lignite Corporation that the land which was taken over, did not belong to the petitioner and only by virtue of conditional assignment, the petitioner was given possession of the property. As the assignment was cancelled, no right is available to the petitioner and therefore, no compensation is payable to him. Consequently, the petitioner cannot be called as an affected person so as to get an employment from the Neyveli Lignite Corporation.

6. Heard the parties and perused the records.

7. It is not in dispute that the land comprised in Survey No. 119/5, measuring an extent of 2.25 acres, was assigned as early as on 6.10.1971. The assignment was made to the petitioner as "landless poor" so that he could make his land for cultivation. No doubt, it is a conditional assignment and the only special condition which prohibits the petitioner is, mortgaging the property or encumbering the property. Though it is contended by the respondents that a condition is attached to the assignment that the property should be handed over if it is required by the Neyveli Lignite Corporation, a perusal of the assignment would show that no such condition is in existence. No document was produced either by the Government or by the fourth respondent/Neyveli Lignite Corporation showing that the assignment was a conditional assignment with the special condition to hand over the land whenever required by the Neyveli Lignite Corporation. It goes without saying that the landless poor would have put all his efforts to make it as a cultivable land and to get benefit out of the land. Therefore, rights got accrued to the petitioner and the said rights cannot be very lightly interfered with.

8. It is also an admitted fact that the subject land was proposed to be acquired

under the Act by 4(1) notification, dated 4.4.1990. After 5(a) enquiry, the publication of Draft Notification u/s 6 of the Act and Declaration u/s 7 of the Act, award enquiry was conducted. Only during award enquiry conducted on 25.10.1991, it is alleged in the counter affidavit that the subject land was found to be an assigned land and it was found that the assignment made with the special condition that the land would be resumed by the Government as and when it is required by the Neyveli Lignite Corporation without any value for the land. It is already found by this Court that no document to prove the special condition has been produced by the respondents.

9. Subsequently only, the assignment was cancelled by the Revenue Divisional Officer by his proceedings dated 2.9.1993. On a perusal of the records produced by the Government, it is seen that a notice dated 10.3.1993 was issued to the petitioner and others for cancelling the assignment. The notice dated 10.3.1993 is said to have been refused to be received by the petitioner on personal service and no steps were taken to serve it through other mode by registered post. Even the cancellation order dated 2.9.1993 also is found to be not served upon the petitioner. Though it is found in the records that the said order of cancellation of assignment was stated to be dispatched, actually no acknowledgment is seen in the file. In view of that, the cancellation order is found to be not communicated to the petitioner and it cannot take effect. Since the rights got already accrued to the petitioner in respect of the land, proper and effective steps should have been made by respondents 1 to 3 to actually serve the show cause notice as well as the order of cancellation of assignment. In view of that, the cancellation of the assignment itself is bad and the further classification of the land pursuant to cancellation of assignment as Government Tarisu is also bad.

10. Mr. V. Raghavachari, learned counsel appearing for the petitioner rightly submitted relying upon the judgment of His Lordship Justice Shivaraj Paul in R. Abdul Jabbar and Others Vs. The State of Tamil Nadu and Others, that the steps taken by the Government to acquire the land would entitle the petitioner to get compensation. In the said case, the lands were assigned to the beneficiary with a condition not to sell to anybody and would be resumed to the Government when required by Neyveli Lignite Corporation. Land acquisition proceedings were taken subsequently. After that, the assignment was cancelled. This Court held that having treated the lands as not belonging to itself is under obligation to pay compensation under the Act. Paragraph Nos. 12, 14 and 15 of the above referred judgment reads as follows at p. 269 of MLJ:

"12. The Supreme Court yet in another decision in the case of Special Land Acquisition Officer, Hosanagar Vs. K.S. Ramachandra Rao and Others, referring to the decision of the Supreme Court aforementioned, held that despite a condition attached to the grant, that no compensation would be paid, if the land was required for public purpose, as notified in the provisions of the Land Acquisition Act, the parties were entitled to payment of compensation. Of course, in the said decision, it was also incidentally decided that it was not necessary for the

Supreme Court to go into the question as to whether valuation made by the Land Acquisition Officer was correct or not. In this Judgment, reference was made to Special Land Acquisition and Rehabilitation Officer, Sagar Vs. M.S. Seshagiri Rao and Another, aforementioned. Thus, on principle, both the decisions support the contention of the petitioners. I am not able to see any distinction as to the question on the principle, namely, if once the Government notifies the land for acquisition under the provisions of the Land Acquisition Act, although it had the right to resume the land, it was not open to it to deny payment of compensation.

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14. One more factor to be noticed is that the respondents 1 to 4, having proceeded to acquired the lands in question, noticing that Section 6 declaration was made at that stage, as stated in the impugned order itself, wanted to cancel the assignment with a view to deny or refuse the payment of compensation amount to the petitioners in respect of the said lands. There is some force in the submission of the Government Advocate as well as by the learned counsel for the fifth respondent, that the petitioner No. 1 had purchased the lands in violation of the condition of assignment. But the question before me is whether compensation can be denied having initiated the acquisition proceedings in respect of the very lands even assuming the petitioner No. 1 purchased the lands in violation of conditions of assignment. The answer is to be found in the Supreme Court judgments in this regard. If the first petitioner has purchased the lands in violation of the conditions of the grant, it was open to the authorities to issue necessary notices pointing out the violation of the particular condition and pass appropriate orders. That is not the position here. The impugned order says that the assignment was cancelled on the ground that the land was required for N.L.C. If the land was required for N.L.C, Clause 22 of the assignment order itself gave that power to the Government and as obligation was cast on the petitioners to surrender the lands. I do not understand as to why the authorities had to pass the impugned orders cancelling the assignments.

15. It is plain that the Government need not acquire its own lands, and the Government was not competent in the proceedings under the Land Acquisition Act to put forward its own title to the properties sought to be acquired, denying compensation to the persons entitled, having issued notifications specifying the lands and the names of owners/occupiers/persons interested. Thus under the circumstances, I have no hesitation to hold that whenever the Government waives to avail or invoke the condition of the grant or assignment, that a grantee or assignee will surrender lands whenever required by the Government without claiming compensation, and initiates proceedings for compulsory acquisition of such lands under the provisions of the Land Acquisition Act, treating such lands as not belonging to itself, but to others, is under an obligation to pay compensation as provided in the Act. Viewed in any way, the petitioners are entitled to succeed."

In this case also, the land was assigned and subsequently steps to have taken by

land acquisition proceedings. Only at the stage of award proceedings, it was found to be assigned land and subsequently assignment was cancelled. Therefore, the said judgment is squarely applicable to the facts of the present case and therefore, this Court has to hold that once the Government notifies the land for acquisition, it is not open to the government to deny payment of compensation to the petitioner.

11. As already held the assignment is not with the special condition that the land will be resumed whenever Neyveli Lignite Corporation requires. Even during the assignment was in force, land acquisition proceedings were started and that only during award enquiry, it was found that the land was an assigned land. No proper steps were taken to cancel the assignment by communicating the order and therefore, the cancellation itself is invalid.

12. Following the judgment of this Court in *R. Abdul Jabbar and 5 Others v. State of Tamil Nadu and 4 Others* (supra), the Government cannot deny compensation having initiated proceedings under the Act even though it got right to resume the assigned land.

13. That apart G.O. Ms. No. 190, dated 5.6.1998, gives rights to the petitioner.

Paragraph No. 2 of the Government Order reads as follows:

"2. Accordingly, a review was held on 3.4.'98. Based on the decisions arrived at in that meeting, the Government issues the following orders so as to expedite the execution of Neyveli Lignite Corporation Projects:

(1) Taking into account that most of the occupants have been enjoying ownership for a long time, it is hereby ordered that the conditionally assigned lands of about 91 hectares would be acquired under the urgency provision of the Land Acquisition Act, and compensation paid for the lands so acquired by the Neyveli Lignite Corporation. The District Revenue Officer, Cuddalore is directed to send 4(1) notification proposals and Declaration u/s 6 of Land Acquisition Act to the Government through Special Commissioner and Commissioner for Land Administration and complete the whole Land Acquisition proposal within six months.

(2) Taking into account the fact that families have been occupying Natham lands for decades together, and natham pattas could not be issued due to non-conduct of natham survey, natham lands granted and in occupation shall be treated as patta lands and be acquired under Land Acquisition Act and the compensation shall be paid by the Neyveli Lignite Corporation."

By the above Government Order, it was ordered that the conditionally assigned lands would be acquired under the Land Acquisition Act and compensation would be paid for the lands by the Neyveli Lignite Corporation. When the Government Order is very categorical that compensation has to be paid for conditional assigned lands, the petitioner is also entitled benefit under the Government Order as it is admitted fact that he is an assignee under the Government in

respect of 2.25 acres.

14. It is contended on behalf of the Government as well as especially by the fourth respondent/Neyveli Lignite Corporation that there is a heavy delay on the part of the petitioner in approaching the Court seeking compensation as well as employment. However, it is seen that the petitioner has been approaching the authorities from 1997 onwards and by virtue of communications dated 19.3.1997, 27.3.1997 and the authorities have been forwarding the petitioner's representation for compensation. It is further followed by the petitioner's representation dated 18.7.2000, the third respondent's letter dated 8.8.2000, the second respondent's communication dated 25.9.2000 and communication of the first respondent dated 11.4.2001. Further, the petitioner had already approached this Court by filing writ petition No. 24678 of 2002, seeking compensation and the same was disposed on 29.8.2008. Therefore, it cannot be said that there was laches on the part of the petitioner as he has been following the matter. It has been held by the Hon'ble Supreme Court in the case of Haryana State Electricity Board Vs. State of Punjab and Haryana and Others, that when the petitioner was making representation and moving the appropriate authorities at all stages, the writ petition cannot be thrown out on the ground of laches. The said judgment is also applicable to the petitioner's case. Therefore, the petitioner cannot be denied benefit on the ground of laches. In H.D. Vora Vs. State of Maharashtra and Others, the petitioner therein approached the Court after 30 years the order was passed. However, finding that there existed valid and strong ground for challenge, the contention regarding laches was rejected. Similarly in G. Asokan v. Neyveli Lignite Corporation 2004 (3) CTC 484: LNIND 2004 Mad 677, this Court held that there is no specific period of limitation for filing writ petition and a person can approach the High Court under Article 226 of the Constitution of India without any undue delay and the question whether there is delay or not would largely depend upon the prejudice which would be caused to the other side, if the writ petition is not filed at an earlier date.

15. In this case, it cannot be said that prejudice is caused to the respondents by filing writ petition at this point of time. However, it has already been recorded that there is no delay on the part of the petitioner, as he has been approaching the authorities regularly. In view of that, the petitioner is entitled to compensation, for the land to an extent of 2.25 acres, payable by the respondents and the respondents are directed to determine and pay the compensation to the petitioner for the subject lands within 12 weeks from the date of receipt of the copy of this order.

16. As far as the question of employment is concerned, the learned counsel for the fourth respondent/Neyveli Lignite Corporation submitted that as per the scheme, a person is entitled to job only when his patta land is acquired. As already stated, the Government, by virtue of G.O. Ms. No. 190, dated 5.6.1998, already ordered compensation in respect of conditionally assigned lands under the Act. The petitioner cannot be said to be not affected by the acquisition

proceedings. After all, the petitioner was assigned land in the year 1971 and he has been enjoying the land by making livelihood out of the said land till 1993 when possession was taken. Therefore, irrespective of the nomenclature whether the petitioner is a patta holder or not he derived benefits from the land by valid assignment and he has to come under the category of "project affected family."

17. The recommendation of the third respondent to the fourth respondent, dated 28.9.2001 would reveal that the third respondent already recommended for employment of petitioner's son and the recommendation reads as follows:

In view of that also, the petitioner's claim for job for his son is to be appropriately considered by the fourth respondent. The said exercise has to be done by the fourth respondent within eight weeks from the date of receipt of a copy of this order. With the above direction, both the writ petitions are allowed. No costs. Consequently, the connected miscellaneous petitions are closed.