

(2014) 12 MAD CK 0167

In the Madras High Court

Case No : Writ Petition No. 31844 of 2014 and M.P. No. 1 of 2014

R. Saraswathi

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 19-12-2014

Acts Referred:

Constitution of India, 1950 — Article 300A

Land Acquisition Act, 1894 — Section 2, 24(2), 4(1), 5A, 6

Citation : (2014) 12 MAD CK 0167

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

Bench : Single Bench

Judgement

C.S. Karnan, J.—The petitioner submits that the property in S.No. 118 in Kalapatti Village, Coimbatore Taluk originally belonged to her father-in-law and he was in peaceful possession and enjoyment of the same After his demise, the same was inherited by her husband viz., K.C.Ramalingam. Her husband and her sons entered into a registered partition deed dated 15.12.1993 in Doc.No. 7117 of 1993, on the file of SRO, Gandhipuram. The partition deed was duly executed and validly acted upon by the parties to the same. In the said partition, S.No. 118/1 to an extent of Ac 1.54 of land was allotted to the share of her husband viz., K.C.Ramalingam and he has been in peaceful possession and enjoyment of the property from and prior to the date of partition. She further states that the above lands comprised of house and agricultural lands, where coconut and other trees were cultivated and the revenue records stood in his name. After his demise, the petitioner is in possession and enjoyment of the house therein and also doing agricultural activities therein. The petitioner further submits that at this point of time, the third respondent herein invoked the provisions of Land Acquisition Proceedings over the above mentioned property by issuing a notification in LA GO.Ms.251.BC, dated 19.12.1990 under Section 4(1) of Land Acquisition Act. The respondent issued notification for compulsory acquisition for allotting the lands to backward and most backward classes" people. The notification was subsequently followed by a declaration in G.O.3D No. 21, dated

16.03.1994. Her husband and her son unsuccessfully questioned both the notifications. The respondents after issuance of the notification, proceeded with passing of award and had ultimately passed an award dated 14.12.2012 and deposited a sum of Rs. 15,97,724/-. Her other family members received the award towards their share with protest and the share towards her entitlement was deposited before the civil Court and she has not received the same till date.

2. The petitioner further submits that although the land was notified way back in the year 1990 and declared under Section 6 of the Act in 1994, she is still in possession of the property till date. As mentioned earlier, she is residing in the above property and remaining lands are used by her for agricultural activities. She is residing in the property along with her granddaughter and daughter-in-law. She further submits that the respondents herein are not all interested in proceeding further with the above acquisition proceedings. If at all they were interested they would have put the lands into use by allotting the land to any beneficiary but till date, they have not done so. The longevity of the proceedings will speak volumes not only on the lapse but also the disinterest of the respondents in the acquisition process. The petitioner further submits that the above property although alleged to be important for public welfare, as mentioned in the paper, did not serve any useful practical purpose. The respondents having felt the same, did not show any interest in the acquisition. If at all the respondents were interested, they would have taken effective steps to complete the acquisition process. The lapse of nearly 25 years would itself make it amply clear that there is no useful purpose much less public purpose involved in the acquisition. She further submits that the reason being that, the neighbouring lands sought to be acquired for the same alleged public purpose was quashed by this Court by its order dated 25.10.2002 in W.P.No. 14252 of 1996. She further submits that by the above mentioned order, the acquisition becomes redundant as the respondent cannot take the lands by piece meal and the same had resulted in not achieving the purposes of acquisition itself. The petitioner further submits that the respondents had conducted a study as to whether the acquired lands can be put into use for any other public purpose and the result was negative and hence, it is crystal clear that the land acquired is not useful either for the purpose acquired for or any other public purpose. Moreover the lands cannot achieve the goal due to efflux of time.

3. The petitioner further submits that she gave a detailed representation to the respondents to consider re-conveying the land acquired. She further submits that she has set out in detail in her representation about her need and sentimental attachment over the property. She further submits that the lands are her husband's ancestral property and her husband was born and died in the above property and she is also in the evening of her life and in these circumstances, it is quite obvious that she has attachment towards the property. The petitioner further submits that it is clear that the purpose of acquisition as mentioned earlier had become redundant and unusable, and it would not serve any purpose, much-less for the welfare of the public. The petitioner further submits that her

family had already parted with huge extents of lands for public purpose and the same was not objected as the same was in the interest of the public and the above mentioned land is the only land available with her. She further states that she is in peaceful possession and enjoyment of the property by living there till date and the same can be easily evidenced by the fact that the property is assessed for property tax. The same initially stood in the name of her husband and the same got transferred to her name. The petitioner further submits that the property tax assessment paid by her for the 2014 half yearly would clearly evidence that she is in possession and enjoyment of the same. The water tax is also assessed to the property and the same stands in the name of her husband as well as her. She further submits that the entire property consists of house as well as agricultural lands and she has raised coconut and other trees in the above lands. The kist, adangal and A register stands in the name of her husband and the latest A register would go to prove that the lands are still cultivated by her. Thus, the above revenue documents would clearly prove that she is in undisputed possession of the property which she has also mentioned in her representation dated 27.10.2014, wherein she had stated that she is ready to give back the award amount taken by her daughter-in-law, with interest, in the event of lands being re-conveyed to her. She had also given a representation to the first respondent on 05.02.2014. She submits that although the respondents received both the representations they did not either re-convey or rejected the same. She further submits that right to hold the property is a constitutional right guaranteed under Article 300A of the Constitution of India and the same can be taken away in the interest of public purpose. She further submits that she has clearly demonstrated that the land acquired is not laudable for the purpose mentioned in the acquisition or for any other purpose. She has given a detailed representation to the respondents seeking for re-conveyance of land, but the same was not considered. She has no other choice except to approach this Court seeking for re-conveyance.

4. The petitioner further submits that she has a legal right to seek for the prayer as she has parted with her lands and have also demonstrated with the respondents that the lands acquired is not viable for any public purpose, and also demonstrated that she comes within the parameters enshrined in many number of orders of this Court as well as the Hon"ble Apex Court pertaining to the procedures under Section 48B of the Land Acquisition Act. At any rate, she has a legal right to assert the status of her request under the representations. The respondents being statutory authorities are bound to respond to the same and the failure on the part of the respondents had forced her to approach this Court. Hence, the petitioner has filed the above writ petition.

5. The third respondent has filed a counter statement and resisted the writ petition. The third respondent submits that with a view to provide house sites to house less families of Backward Class and Most Backward Classes and de-notified community people of Kalappatti Village within the limits of Coimbatore North Taluk, Coimbatore District, proposals under Section 4(1) of the Land Acquisition

Act, 1894 were submitted to the Government for acquisition of 0.62.5 hectares or 1.55 acres of land in S.F.No. 118 Part of Kalapatti Village, Coimbatore North Taluk, Coimbatore District. The Government in their G.O.No. 251 Backward Classes and Most Backward Classes Department dated 05.12.1990 had approved the Notification under Section 4(1) of the said Act. The third respondent further submits that the Tamil Nadu Government issued Gazette Notification at Page No. 7, 49 - (a) Part II Section - 2 dated 19.12.1990, in the following Newspapers.

(a) Malai Malar (b) Pirpagal dated 20.12.1990 Locality - dated 26.04.1991 and 5 (a) enquiry was conducted on 22.07.1991 by this respondent after the publication of required notice as laid down in Land Acquisition Manual. The notified owner is K.C.Ramalingam who is the husband of this writ petitioner.

The third respondent further submits that the notified owner filed writ objection under Section 5-A. One Thiru.Marappan S/o.Venkatasamy Gounder and another Thiru.Krishnaraj S/o.Sundarasamy Gounder, who are not notified owners, also filed writ objection on 5-A enquiry dated 24.07.1991. At this stage, the notified owner filed a writ petition No. 10310 of 1991 and obtained interim stay of his possession alone on 29.07.1991. The third respondent further submits that the objections raised by the landowner K.C.Ramalingam at the time of I.A. enquiry were overruled by this respondent in his proceedings dated 25.02.1994. Further, necessary proposals for the publication of declaration under Section 6 of the Land Acquisition Act were sent to the Government and it was approved in G.O. (3D) No. 21, Backward Classes and Most Backward Classes Department dated 16.03.1994 and was published in Tamil Nadu Government Gazette on 16.03.1994 and in Newspaper Dinamalar dated 21.03.1994 and Pirpagal dated 21.03.1994 locality (village) 24.05.1994. In the meantime, when the writ petition filed by Mr.K.C.Ramalingam was pending, the said Ramalingam died on 21.12.2000. After that he did not receive any orders from this Court. As a result, the Land Acquisition proceedings could not be completed till then.

6. The third respondent further submits that for fixing compensation there were 1052 land sales during the said period. From the statistics obtained from the Registration Department in Sl.No. 271, an extent of 1.64 acres of land in S.F.No. 1143/2 of Kalapatti Village has been sold for a consideration amount of Rs. 51,660/- as per document No. 2331/1990, dated 04.04.1990 in the Office of Sub Registrar, Ganapathy. According to this sale, the rate per acre works out to Rs. 31,500/-. Since the said agricultural land sales is very low and does not reflect the market value of the land under acquisition and with a view to compensate the landowner reasonably it has been decided to take the sale proceedings of house sites which took place during the said period. The third respondent further submits that in the mean time, the writ petitioner's two sons viz., Parthibaraj and Jagadeesh had also expired. This respondent calculated the compensation payable to the landowners, viz., Saraswathi, the writ petitioner and also two others viz., Mrs.Latha W/o. Jagadeesh and Subhakani, D/o.Jagadeesh as follows:-

The third respondent further submits that the notice was issued to the

landowners mentioned above to appear for award enquiry and enquiry was conducted on 07.11.2012. Tmt.Latha alone appeared and gave objections and without prejudice to her claiming right she received the compensation. The writ petitioner did not appear and hence, the amount for the writ petitioner has been deposited in the Subordinate Court, Coimbatore. The third respondent further submits that though there was a delay of more than 10 years for passing award, the award was passed on 14.12.2012. The third respondent further submits that the writ petitioner has given a representation to all the respondents for re-conveying the land in her representation dated 27.10.2014, in which she has also mentioned that the said Latha is willing to pay back the amount received as compensation and she had further stated that already 7 1/2 acres for Industrial Complex and 1.14 Crores was spent by petitioner's Late Husband for construction of school. Hence, this respondent entreats the Court to dismiss the above writ petition.

7. Mr.S.Venkatesh, the highly competent counsel appearing for the petitioner submits that the subject matter of the property was belonging to her husband, viz., Ramalingam. After his demise, the landed property have been partitioned among the legal-heirs. As such, the petitioner and others have obtained the said property. Under these circumstances, the third respondent herein had issued notification under Section 4(1) of the Land Acquisition Act in the year 1990. Thereafter, a final enquiry was conducted but, the petitioner did not attend the enquiry. Other co-land owners had attended the enquiry and received compensation of a sum of Rs. 15,97,724/- with protest. The respondent had given a declaration on 16.03.1994 and the compensation has been deposited on 14.12.2012 i.e., after a lapse of eight years. As per the provision of the Act, the compensation should be deposited within a period of two years and as such, the respondents have committed serious lapse in acquiring the said property. The highly competent counsel further submits that the petitioner and her family members are continuously cultivating the said land after constructing a residential house thereon. Further, the petitioner made representation to re-convey the said lands and the same has not been considered so far. The Village Administrative Officer had issued chitta and adangal, which reveals that the petitioner is cultivating the said land until now. It clearly proves that the petitioner has not received compensation of her apportioned amount from the total compensation of the said land. Besides, she is in physical position. As such, the petitioner is entitled to seek relief under Section 24(2) of the New Act or the petitioner is entitled to receive relief under Section 48-B of the Old Act since the property had not been delivered to the respondents herein for the purpose of providing house sites for the weaker sections of the local area. Besides, the petitioner has established an educational institution over the said property. Hence, the highly competent counsel entreats the Court to allow the writ petition.

8. The highly competent Government Advocate Mr.V.Shanmugasundar appearing for the respondents submits that the petitioner's land to an extent of 0.62.5 hectares or 1.55 acres of land situated at Kalapatti Village, Coimbatore North

Taluk, Coimbatore District had been acquired to provide house sites to house less families of backward classes and most backward classes and de-notified community people of the Village. The acquisition proceedings had been strictly adhered to under the Old Act and the entire acquisition proceedings had been completed in the year 1991. Further, except for the petitioner herein, the other landowners have received compensation. Therefore, now the acquired properties vests under the respondent's occupation. At the time of final enquiry, the petitioner's husband had participated and thereafter, the (Late) Husband of the petitioner had challenged the acquisition proceedings before this Court. Subsequently, the petitioner's husband had lost his case. Hence, for utilizing the said land, a delay had been caused. Now, the Department for the Backward Class had sanctioned a sum of Rs. 28,76,000/- for completing the implementation of the Scheme. Therefore, the property is absolutely required for the respondents in order to provide house sites to the weaker sections under the Neighbourhood Housing Scheme.

9. Per contra, Mr.S.Venkatesh, the highly competent counsel appearing for the petitioner submits that the petitioner has dug a bore well and also obtained electricity connection for the purpose of irrigation. She also constructed a RCC roof house wherein, the petitioner is staying and taking care of the cultivation over the land. Besides, she is remitting land tax to the Revenue Authorities. Hence, the highly competent counsel entreats the Court to grant relief to the petitioner.

10. From the above discussion, this Court is of the view:-

(i) As per the respondent's counter statement, the subject lands had been acquired in the year 1994 and the award amount had been passed on 14.12.2012. As such, 18 years have lapsed for depositing the compensation amount and as such, the respondents have committed a lapse in acquiring the petitioner's land.

(ii) The notification had been given under Section 4(1) of the Old Act and a declaration was published under Section 6 of the Old Act on 16.03.1994. The compensation amount had been deposited on 14.12.2012. As such, the respondents have not strictly followed the Act. Further, there is no documentary proof to show that the properties have been taken over by the respondents from the petitioner. Further, the respondents had sanctioned a sum of Rs. 28,76,000/- in order to implement the Scheme. It clearly proves that there is a larger delay on the part of the respondents for providing house sites to the economic weaker section. Therefore, after a prolonged lapse of 24 years, the Scheme has gone into oblivion and it can be considered only defunct, to say the least.

(iii) The Village Administrative Officer, who is monitoring the jurisdiction of the Village had issued a chitta and adangal and both these documents clearly show that the petitioner is cultivating the said land continuously until now. Therefore, the subject land had not been taken over by the respondents and the petitioner

had not received her apportioned compensation share amount. Hence, the petitioner is entitled to obtain remedy under Section 24(2) of the New Act.

(iv) The petitioner had put up a RCC roof house over the said land and residing there in order to undertake around the clock cultivation. Besides, the petitioner has dug a bore well and obtained electricity service connection for irrigation purpose. The continuous metering of power and subsequent use clearly is a proof of her occupation, cultivation, and enjoyment of the said land. Now, the petitioner is using the land for residential purpose as well as for cultivation.

(v) The joint owners have received compensation of their apportioned share except the petitioner herein. Hence, the petitioner is liable to pay the compensation amount with accrued interest thereon as per Normal Government Norms. Only after the petitioner effects such payment, she is entitled to the re-conveyance of the land in her name.

11. On considering the facts and circumstances of the case and arguments advanced by the learned counsels on either side and on perusing the typed-set of papers and this Court's view listed above as (i) to (v), this Court allows the above writ petition. Consequently this Court directs the respondents herein to re-convey the land situated in Coimbatore District, Coimbatore North Taluk, No. 12, Kalapatti Village West, S.No. 118/1 to an extent of 1.54 acres, 0.62.5 hectares bounded on North by S.F.No. 90, East & South by S.F.No. 118/2 and west by S.F.No. 86, under the provisions of Section of 48-B of the Land Acquisition Act to the petitioner herein, within a period of three months from the date of receipt of this order, after receiving the compensation amount with accrued interest as per Government rate, from the petitioner.

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