(2011) 08 MAD CK 0078

In the Madras High Court

Case No : Writ Petition No. 24093 of 2009 and M.P. No. 2 of 2009

Ramathal APPELLANT

Vs

The State of Tamil Nadu and Others RESPONDENT

Date of Decision : 18-08-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 4(1), 5(A), 6

Citation : (2011) 08 MAD CK 0078

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : D. Krishnakumar, for the Appellant; R.M. Muthukumar, GA for R1 to R3 and A. Vijayakumar, for R4, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The Petitioner has come forward to challenge a notification issued u/s 4(1) of the Land Acquisition Act, 1894 dated

13.09.1995 as well as the Declaration made u/s 6 and published in the Government Gazette on 27.09.1996 and the Award passed in Award No.

4/98 dated 28.09.1998 relating in Survey No. 12/1 and 13/1 of Vellakinar village, Coimbatore Taluk on the file of the 3rd Respondent - Land

Acquisition Officer, Coimbatore.

2. The writ petition was admitted on 24.11.2009. Pending the writ petition, this Court granted an interim stay of dispossession if the Petitioner had

not already been dispossessed.

3. On notice from this Court, the third respondent has filed a counter affidavit dated 01.10.2010 together with supporting documents. The 4th

Respondent namely, Executive Engineer, TNHB has also filed a counter affidavit dated 29.01.2010.

4. In normal circumstances, the Petitioner''s attempt to challenge a land acquisition notification of the year 1995 as well as the Award of the year

1998 will never be allowed to be challenged after a period of one decade. But however, the Petitioner contended that the lands in question were

covered by Tamil Nadu State Boodan Board.

5. The Petitioner claimed that the lands in S. Nos. 12/1 and 13/1 to the extent of 4.87 acres in Vellakinar Village, Coimbatore Taluk was assigned

in her favour under the Vinoba Boomi Dhana Scheme in the year 1964. She had been in possession of the land and cultivating crops ever since the

date of assignment. She was also granted Patta Pass Book in the year 1994. She has no other property other than this agricultural land. She has

been paying kist and receipts were also issued in favour of the Petitioner. The ownership certificate was also given in respect of the said land.

When the 4th respondent attempted to interfere in the aforesaid property during July 2009, she made representations. On receipt of the

representation, the District Backward and Minority Welfare Officer, Coimbatore forwarded a communication dated 21.08.2009 to the 4th

Respondent Housing Board to take action on the representation. It is only thereafter, the Petitioner came to know that land acquisition proceedings

were initiated in respect of the said land by G.O. Ms. No. 670 dated 31.07.1995 and subsequently, Declaration u/s 6 was made on 26.06.1996

and an Award was passed on 28.09.1998. The notification issued by the Respondents stands in the name of Tamil Nadu Boodan Board.

6. It was contended by the Petitioner that since no notice was served u/s 4(1) and Section 6 Declaration of the Act, any proceedings initiated will

be invalid. No opportunity was also given to raise objections during u/s 5A of the Land Acquisition Act. No prior approval from the Government

as contemplated u/s 11 of the Act was also obtained.

7. The third Respondent in his counter affidavit stated that the lands in question were acquired for the purpose of building houses for Low and

Middle Income Group people under Vellakinar Neighbourhood Scheme on behalf of the Tamilnadu Housing Board and the land comes within the

larger extent of 761.41 acres. The lands in S. Nos. 12/1, 12/2 and 13/1, an extent of 4.87 acres were covered by Section 4(1) notification and the

same was also published in the Government Gazette and widely published in

""Makkal Kural"" dated 15.09.1995 and in ""Pirpagal"" dated

16.09.1995. The substance of the notification was also published on 06.10.1995 in the locality. An enquiry u/s 5-A of the Act was conducted by

the Special Tahsildar on 28.11.1995. Intimation notices was served on the land owners and interested persons as found in the Revenue Records.

Chitta notices were also published in the Village and Taluk Offices as prescribed under the Rules. This particular land was registered in the name of

Boodhan Board, Chennai as per revenue records and no objection was received from any person. But pursuant to the enquiry notice u/s 5(A), the

Secretary, Boodhan Board submitted a letter dated 12.09.1995 and gave his consent to acquire the land and also requested to send the

compensation amount in the name of Boodhan Board. The letter sent by the Special Officer and Director of Rural Development, Tamil Nadu

Boodhan Board was also enclosed along with the typed set, wherein, survey numbers referred to by the Petitioner finds a place. The statement

recorded from the Village Administrative Officer, Vellakinar was also enclosed. In that statement, he had stated that the survey numbers belong to

the Boodhan Board. It was thereafter, an Award No. 4/98 was passed and compensation was declared in favour of the President, Boodhan

Board, Chennai.

8. In the Award, in respect of the survey numbers for which the Petitioner claims ownership, the same was dealt with in the Award in paragraph

22, which is as follows:

22(1) Apportionment to President, Boodhan Board, Chennai

Land S.F.No. Extent (In Hecatares)

12/1 1.48.0

12/2 0.08.5

13/1 0.40.5

16 1.64.5

17/2B 0.04.0

Total 3.65.5

The Director of Rural Development and Special Officer Tamil Nadu Boodhan Board Secretary, Chennai in his letter No. 2740/93 B.B.1 dated

25.06.1998 has stated that the Board in its letter even no.dated 12.09.95 has already given its consent for the acquisition and also requested to

pay the amount of compensation in favour of the President, Tamil Nadu Boodhan Board, Chennai.

9. It was further claimed by the third Respondent that after duly following the procedure under the Central Act, the lands were acquired and the

Petitioner cannot deny her knowledge about these proceedings. If she had been a resident of the said village, she would have come to know about

these proceedings. The Patta Pass book claimed by her and the Land Patta Certificate issued shall be appropriately explained by the District

Collector, Coimabtore. It was stated that the third respondent had taken over the land on 30.10.1998 after being handed over by the acquiring

authority. The revenue authority also had carried out the necessary changes in the village accounts on 24.11.1999 in the name of the Tamilnadu

Housing Board. It was also claimed that the issuance of Patta Pass Book had commenced in the year 1995. The Kist receipt do not reflect the

Patta Nos. 240 and 242. The Petitioner did not produce any kist receipt after the Fasli 1411 (2001). The compensation amount of Rs. 3,74,136/-

was also sent to President, Boodhan Board, Chennai.

10. In the counter affidavit filed by the 4th respondent, Housing Board, apart from repeating the stand taken by the third Respondent, it was stated

that an extent of 1.48.0 Hectares in S.F. No. 12/1, and an extent of 0.40.5 in S.F. No. 13/1 Hectares is vested with the Tamil Nadu Housing

Board and necessary approval was also obtained from the State Government as contemplated u/s 11 of the Act. The lands were required for a

comprehensive Vellakinar Neighbourhood Housing Scheme.

11. The Tahsildar, Kovai North in his letter dated 01.10.2010 addressed to the second Respondent District Collector had stated that on perusing

the Patta Pass book and the Land Ownership Certificate, it was found that the said certificates were not genuine. There was no ''A'' Seal in the

Kovai North Tahsildar Office during the year 1994 and 2002. The Certificate was not given in a proper manner. The signature which stands in the

name of one P. Saminathan, who was the then Tahsildar of Kovai North Taluk does not tally with the signature found in the Certificate produced

by the Petitioner. In respect of Patta Nos. 240 and 242, village records were produced. Patta No. 240 stands in the name of Tmt.Marudhathal

W/o. Nagamuthu Gounder, V.S. Kuzhandhaivelu S/o.Subbiah Gounder, Gardiner Export Private Limited, Chalukya Investment Private Limited.

Patta No. 242 stands in the name of Vellingiri S/o Nanjukutty Gounder. It was stated that Survey Nos. 12/1, 12/2, and 13/1 from the beginning

stood in the name of the President, Boodhan Board. These lands were given only for maintenance by the Petitioner. There was no document

available for change of patta in her name. After the UDR scheme was completed on 20.07.1987, Patta Nos. 240 and 242 were converted as

Patta No. 159 and continued in the name of Boodhan Board. The document alleged to have been obtained on 15.06.2002 was forged documents

and there was no scope for the Tahsildar office to grant patta since already S. No. 159 has come into force after UDR scheme. Further, Patta

Bass Book was given from the year 1995-1996. There was no representation from the Petitioner for issuance of any Patta pass book. Since the

land tax receipts produced showed that the Patta No. 159, therefore, there was no scope after 1996 to have old Patta Nos. 240 and 242. Hence,

the document was not a genuine document.

12. The District Collector, Coimbatore in his written communication to the Additional Government Pleader dated 06.12.2010 after referring to the

letter of the Tahsildar letter stated that the certificate produced by the Petitioner was not genuine.

13. Mr. D. Krishnakumar, Learned Counsel for the petitioner referred to the following judgments of this Court in support of his contentions.

a) Mrs. Goundathal and Ors. v. Government of Tamil Nadu, rep. By its Secretary (W.P. No. 18195 of 1998 dated 24.11.2006) to contend that

impugned notification u/s 4(1) and Section 6 Declaration was set aside by this Court as no proper publication was made by the Respondents and

no opportunity was given u/s 5A.

b) Mrs. Goundathal and Ors. v. Government of Tamil Nadu, rep. By its Secretary (W.P. No. 18272 of 1998 dated 17.03.2008), wherein this

Court set aside the notification issued u/s 4(1) as well as the consequential Section 6 declaration since it was issued in the name of a dead person

even after having the knowledge about the death of the owner of the lands.

c) A. Unnikrishnan v. State of Tamilnadu rep. By its Secretary (W.P. No. 9241 of

1998 dated 03.06.2008), wherein this Court allowed the writ

petition and set aside the order of acquisition on the ground that prior approval from the Government before initiating acquisition was not obtained.

Hence, notification u/s 4(1) and 6 were set aside.

d) Kuppusamy v. The State of Tamil nadu rep. By its Secretary to Government (W.P. No. 18322 of 2008 dated 13.04.2009, wherein this Court

allowed the writ petition on the ground of non-obtaining prior approval from the Government.

14. It is not clear as to how these judgments will have any relevance to the case on hand. In the counter affidavit, it was clearly stated that entire

procedure has been followed as per law and the Petitioner is not one such person whose name is found in the revenue records. Prior approval of

the Government has also been obtained as set out in the counter affidavit filed by the 4th Respondent dated 29.01.2010.

15. Per contra, Mr. Vijayakumar, learned Standing Counsel for the Housing Board brought to the notice of this Court a judgment of the Supreme

Court in Star Wire (India) Ltd. Vs. State of Haryana and Others, for contending that the subsequent purchaser has no right to challenge the legality

of the acquisition proceedings and a writ petition challenging the acquisition proceedings long after passing of the Award and vesting on the state

was not maintainable.

16. He also referred to another judgment of the Supreme Court in Haryana State Handloom and Handicrafts Corporation Limited and Anr. v. Jain

School Society reported in (2004) MLJ 66 (S.C) to contend that a writ petition to quash the notification u/s 4 filed after 20 years after the

notification was not valid on the ground that the lands were not put to use for the purpose for which the acquisition has been made.

17. He also referred to another judgment of the Supreme Court in S. Palani Velayutham and Others Vs. The District Collector, Tirunelveli, Tamil

Nadu and Others, and to contend that the Collector is not expected to conduct a roaming enquiry and it is suffice if he goes by the revenue

records. He relied upon the following passages found in paragraphs 8 and 12:

8. There is no obligation on the part of the Collector to hold an enquiry to find out whether there are any other persons interested in the land or

whether there are any vested remain dermen, in addition to those whose names are entered as the owners/holders/occupiers of the acquired land.

Nor does the Collector have any obligation to issue notices to persons whose names are not entered in the revenue records. This does not mean

that the persons whose names are not entered in the revenue records do not have any right in the acquired land or that they lose their claim to

compensation. Their interests and rights in regard to compensation are protected by the provision relating to apportionment of compensation and

provision for referring the disputes to a civil court for apportionment of compensation.

12. Therefore we agree with the Division Bench that notice of acquisition has to be issued only to those whose names are entered or recorded as

owners/ holders/ occupiers in the revenue records and not to others.

18. The Learned Counsel also referred to a judgment of a Division Bench of this Court in The Chairman, Tamil Nadu Housing Board v. P.

Karuppa Konar and Ors. reported in 2007 (5) CTC 355 for contending that a writ petition filed after the possession handed over to the

requisitioning body, the right, title and interest of the erstwhile owners will get extinguished and the Government becomes absolute owner of the

property. The delay in preferring a writ petition can be a ground to disqualify if the Petitioner urges any other grounds.

19. In view of the above factual matrix and the legal precedents set out above, there is no case made out to interfere with the impugned acquisition

proceedings. The writ petition is misconceived. Accordingly, it stands dismissed. However, there will be no order as to costs. Consequently,

connected miscellaneous petition is closed.

