
(2010) 12 MAD CK 0324

In the Madras High Court

Case No : W.A. No. 331 of 2008 and M.P. No's. 1 and 2 of 2008

S. Jaya Mohan

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 16-12-2010

Acts Referred:

Constitution of India, 1950 — Article 14

Land Acquisition Act, 1894 — Section 11, 17, 23, 4, 48

Citation : (2011) 2 CTC 624

Hon'ble Judges : D. Murugesan, J;B. Rajendran, J

Bench : Division Bench

Advocate : K.M. Vijayan, for La Law, for the Appellant; P. Gurunathan, Government Advocate for R1, P.S. Raman, General assisted by S. Kasikumar, for RR2 and 3 for K. Chelladurai, for the Respondent

Final Decision : Dismissed

Judgement

B. Rajendran, J

1. The unsuccessful writ Petitioner in WP No. 2198 of 2008 is the Appellant before us. The Appellant had filed the writ petition praying for a Writ of Mandamus forbearing the Respondents from dispossessing him from the land and building in Survey Nos. 10/1 and 10/2 of Ramapuram Village except by due process of law.

2. According to the Appellant, the Government has issued notification u/s 4(1) of the Land Acquisition Act, hereinafter referred to as the Act, for the purpose of implementing Ramapuram Neighbourhood Scheme in G.O. Ms. No. 138 dated 14.05.1975 in respect of the lands to an extent of 338.28 acres. Subsequently, an award was passed in Award No. 10 of 1986 dated 23.09.1986 and a sum of Rs. 3,077/- was deposited in Sub Court, in the name of the vendor of the Appellant. Thereafter, challenging the validity of the notification u/s 4(1) of the Act, the Appellant's vendor filed W.P. No. 11394 of 1990 before this Court and the same was dismissed on 10.02.1999. During the pendency of that writ

petition, the Appellant, his mother and his brother have purchased the property to an extent of 11 cents in Survey No. 10/1 and Anr. 11 cents in Survey No. 10/2. According to the Appellant, right from the year 1986, many writ petitions came to be filed before this Court either challenging the notification u/s 4(1) of the Act or the acquisition proceedings itself. Originally, those writ petitions were allowed by the learned single Judge of this Court in the year 1991. As against the same, the Housing Board filed writ appeals and the appeals were allowed on 16.11.1996 upholding the validity of the notification issued u/s 4(1) of the Act. According to the Appellant, even after the writ appeals were allowed, the Housing Board did not take any further steps to proceed with the acquisition of the lands. While so, on 01.08.2007, a general Circular was issued by the Government directing the Housing Board to drop the acquisition proceedings in respect of those lands where implementation of the scheme is not feasible or not implementable in the present condition. Pursuant to the said Circular issued by the Government, some of the lands were excluded from the purview of acquisitions, however, the Appellant's land in Survey No. 10/1 to an extent of 11 cents was taken possession by the Land Acquisition Tahsildar on 06.11.2007. The Appellant would contend that the so-called possession taken by the Land Acquisition Tahsildar is only a paper possession, but physically, he is in possession and enjoyment of the land in Survey No. 10/1. Under those circumstance, the Appellant had filed W.P. No. 2198 of 2008 before this Court for a Mandamus to forbear the Housing Board from dispossessing him without following due process of law.

3. The Appellant would further contend that he had filed an application invoking the Right to Information Act to the Housing Board on 18.02.2008 for which on 19.01.2009, the Housing Board had sent a reply stating that for the purpose of implementation of the Neighbourhood Scheme, a total extent of 338.28 acres of land was acquired but as on 19.01.2009, possession of land to an extent of 21.26 alone was taken. It was also replied that in Block No. 1, except the land in Survey No. 10/2, all the other lands in Survey Nos. 10/3, 4, 5, 6, 7, 7A and 7B have been taken possession, which according to the Appellant is incorrect since, the encumbrance certificates do not reveal the subsequent encumbrance made by the Housing Board. When major portion of the lands having not been utilised and only a small portion is sought to be utilised by taking a paper possession by the Respondents in respect of the lands of the Appellant, which is nothing but discrimination and it is violative of Article 14 of the Constitution of India.

4. The learned Senior counsel appearing for the Appellant mainly contend that the Appellant's land alone was isolated. In fact, the Appellant, his mother and brother have purchased the property by virtue of a sale deed dated 24.12.1990, 24.12.1990 and 31.12.1990 respectively and they are in possession and enjoyment of the lands till date. They have also put up construction in the property. While so, suddenly, the officials of the Housing Board came to evict the Appellant and their family members and only then, they came to know about the issuance of notification u/s 4(1) of the Act and also the acquisition proceedings.

Immediately, the Appellant had submitted a representation to the Housing Board, but there was no semblance of consideration to the request made by the Appellant. Thereafter, the present writ petition was filed by the Appellant. The learned Senior counsel contended that the Housing Board is only attempting to take possession of the property of the Appellant to an extent of 3 grounds, out of the total extent of 338 acres, which forms a fraction of the total extent of the property acquired, leaving all the other properties to be enjoyed by the individual land owners. Therefore, the action of the Respondents would amount to discrimination. In any event, even though the land claimed to have been acquired by the Respondents, till date, the Appellant is in possession and enjoyment of the property and therefore, the Appellant is entitled to protection on par with other similarly placed land owners.

5. The learned Advocate General appearing for the Housing Board would contend that the Appellant has no locus standi to file the writ petition at all inasmuch as the Appellant is only a subsequent purchaser of the land during the pendency of the writ petition before this Court, which was filed by the original owner questioning the validity of the notification u/s 4(1) of the Act. According to the learned Advocate General, the notification u/s 4(1) of the Act was issued as early as on 14.05.1975 and the Appellant had purchased the lands on 24.12.1990, much after the award passed on 23.09.1986. Further, the vendor of the Appellant had filed a writ petition before this Court in WP No. 11394 of 1990 challenging the validity of the notification u/s 4(1) of the Act and the same was dismissed by this Court. Therefore it is clear that the Appellant had purchased the land in question pending the litigation before this Court, but after purchase, he had not chosen to implead himself as a party to the writ petition. Inasmuch as the writ petition No. 11394 of 1990 filed by the Appellant's vendor having been dismissed by this Court on 10.02.1999 and it has become final as the Appellant's vendor did not choose to file an appeal, it is not now open to the Appellant to file the present writ petition. Further, a subsequent purchaser, under Law, can be termed only as a trespasser and he will have no legal right to question the acquisition proceedings initiated against the owner of the land. When once the notification u/s 4(1) of the Act was issued, declaration u/s 6 of the Act was made and award was also passed on 23.09.1986, the Government becomes the absolute owner of the land free from any encumbrance and if any one purchase the lands thereafter, they will have no legal right or interest over such property. The learned Advocate General further pointed out that there is no discrimination in acquiring the subject matter of the lands, as alleged by the Appellant. It is not the case of the Government that they are not going to take any steps in respect of the other lands. The other lands which are occupied by various persons could not be taken possession due to pendency of writ petitions. In some cases, this Court granted interim stay and in some other case, the notification u/s 4(1) of the Act was quashed. In any event, the project is likely to be implemented and the Respondents are taking necessary steps to evict those unauthorised occupants, at least in respect of the lands to an extent of 21 acres barring those

lands against which the notification u/s 4(1) of the Act had been set aside by this Court. In any view of the matter, the Appellant cannot maintain the writ petition on the ground of discrimination. Merely because there is a delay in taking physical possession of the lands, that by itself will not entitle the Appellant to seek for a relief of Mandamus to forbear the Respondents from taking possession of the lands.

6. We have heard the counsel for both sides and perused the materials placed. At the outset, the argument of the learned senior counsel for the Appellant cannot be accepted for the simple reason that the writ petition was filed not by the original owner, but by the subsequent purchaser. In fact, the original owner had earlier filed W.P. No. 11394 of 1990 challenging the validity of the notification issued u/s 4(1) of the Act and that writ petition was dismissed on 10.02.1999. As against that order, no appeal was filed and it reached a finality. In the meantime, during the pendency of the writ petition and after an award was passed on 23.09.1986, the Appellant purchased the property from his vendor on 24.12.1990 and therefore the writ petition filed by the Appellant itself is not maintainable.

7. In the affidavit filed in support of the writ petition, it was pleaded that the Appellant was in possession and enjoyment of the property and pursuant to the acquisition proceedings, possession of the land in Survey No. 10/1 alone was taken leaving the land in Survey No. 10/2 undisturbed. It was further contended that the Appellant alone was singled out and the adjacent properties were left untouched. It was also contended that land to an extent of 338 acres are allowed to be enjoyed by third parties and the Government has chosen to drop the acquisition proceedings against those lands, but only the lands of the Appellant are sought to be acquired. Further, the Encumbrance Certificate do not denote the taking over of the possession by the Housing Board and their name does not find place.

8. The learned Senior counsel for the Appellant relied on the decision reported in Hari Ram and Another Vs. State of Haryana and Others, to contend that the action of the Respondents is nothing but discrimination. By placing reliance on the above said decision of the Honourable Supreme Court, the learned senior counsel for the Appellant would contend that this decision of the Honourable Supreme Court is applicable to the facts of the case inasmuch out of 338 acres of land, only 21 acres of land is now sought to be acquired by the Respondents leaving the other lands untouched. It is further contended that in that case, even after passing of the award, the Honourable Supreme Court held that merely because the award is passed, it will not be a bar for the Appellant to claim ownership over the land as the Government has not utilised the property for the purpose for which it was acquired for the past 30 years. The learned senior counsel would further contend that in this case, till date, the original acquisition proceedings have not been modified, altered, varied or rescinded and the Appellant is in possession of the subject matter of the property for the past 18

years, even after issuance of the notification u/s 4(1) of the Act and the passing of the award. Therefore, according to the learned Senior counsel for the Appellant, the decision of the Honourable Supreme Court is squarely applicable to the facts of this case.

9. In *Hari Ram and Another Vs. State of Haryana and Others*, relied on by the learned senior counsel for the Appellant, the lands of more than 40 land owners, who were similarly situated on identical facts and circumstances were released, but the lands of the Appellants was not excluded from the purview of acquisition proceedings. It was contended on behalf of the Appellants therein that no uniform policy concerning withdrawal of the lands from the acquisition proceedings is being followed and that the same policy was not applied in the case of the land owners whose lands were released. Under those circumstance, the Supreme Court held that the State erred in applying different standards of norms for withdrawal of the lands from the purview of acquisition proceedings, which amounts to discrimination. It was also held that adopting different yardstick against various land owners is legally not sustainable. In the case on hand, the writ petition has not been filed by the land owner, but by the Appellant, who is the subsequent purchaser. In this case, the Appellant is not seeking any exemption for his lands or he is alleging any discrimination in the matter of application of exemption. The Appellant only contends that his possession over the property should not be disturbed by the Respondents, that too when admittedly possession was taken over by the Respondents, which according to the Appellant is only a paper possession. When such being the case, the prayer sought for by the Appellant in the writ petition itself is not maintainable. Therefore, the decision of the Honourable Supreme Court cited *supra* cannot be made applicable to the facts and circumstances of the case.

10. The learned Advocate General appearing for the Respondents stated that there is no discrimination in taking possession of the acquired lands. According to the learned Advocate General, the Respondents are going to take steps to evict the other occupants also since the scheme is still in vogue and the delay in taking possession can only be attributable to the various writ petitions filed before this Court. He also submitted that in some writ petitions, interim stay was granted and in some writ petitions filed by the land owners, the notification u/s 4(1) of the Act itself was quashed. Under those circumstance, the learned Advocate General states that there is no discrimination as alleged by the Appellant and the Respondents are taking steps to take possession of the other land. In this connection, the learned Advocate General pointed out the decision of the Honourable Court, which the Respondents relied on in the counter affidavit, reported in *Tamil Nadu Housing Board Vs. Keeravani Ammal and Others*, for the proposition that when once the piece of land has been duly acquired under the Land Acquisition Act, the land becomes the property of the State. The State can dispose of the property thereafter or convey it to any one, if the land is not needed for the purpose for which it was acquired, only for the market value that may be fetched for the property as on the date of conveyance.

The doctrine of public trust would disable the State from giving back the property for anything less than the market value. In Para-9, it was held as follows:

It is clearly pleaded by the State and the Tamil Nadu Housing Board that the scheme had not been suspended or abandoned and that the lands acquired are very much needed for the implementation of the scheme and the steps in that regard have already been taken. In the light of this position, it is not open to the Court to assume that the project has been abandoned merely because another piece of land in the adjacent Village had been released from acquisition in the light of orders of Court. It could not be assumed that the whole of the project had been abandoned or has become unworkable. It depends upon the purpose for which the land is acquired. As we see it, we find no impediment in the lands in question being utilised for the purpose of putting up a multi-stored building containing small flats, intended as the public purpose when the acquisition was notified. Therefore, the High Court clearly erred in proceeding as if the scheme stood abandoned. This was an unwarranted assumption on the part of the court, which has no foundation in the pleadings and the materials produced in the case. The Court should have at least insisted on production of materials to substantiate a claim of abandonment.

11. In this case, the Petitioner has not stated in the affidavit filed in support of the writ petition that the entire scheme was abandoned. Therefore, merely because another piece of land in the adjacent area had been released from the purview of acquisition in the light of the Orders passed by the competent court, it cannot be assumed that the entire project had been abandoned or has become unworkable. As held by the Honourable Supreme Court, even if the lands are not utilised by the Government for the purpose for which it was acquired, that by itself will not entitle the Petitioner to seek for reconveyance of the property. Moreover, the learned Advocate General has also pointed out that the scheme is very much in force and it has not been abandoned. Therefore also, the relief sought for by the Petitioner cannot be granted.

12. In the affidavit filed in support of the writ petition, the Appellant would contend that till date, no notice was served either on the Appellant or his vendor informing that the lands were acquired. This is factually incorrect as the Appellant's vendor had challenged the acquisition proceedings before this Court and could not be successful. Further, nowhere in the affidavit filed in support of the writ petition, the Appellant has pleaded discrimination in the matter of release of lands. The Appellant has not specifically pleaded that another property was released or the project itself was totally abandoned. When such a plea was not specifically raised, it is not open to the Appellant, at this point of time, to allege discrimination. Therefore, the plea of the Appellant is untenable and it is liable to be rejected.

13. The next point for consideration is whether the purchase of the property by the Appellant after issuance of notification u/s 4(1) of the Act is valid. It is settled law that the purchase of any property, which was subjected to acquisition

proceedings, after issuance of notification u/s 4(1) of the Act is invalid inasmuch as the Government becomes the absolute owner of the property free from all encumbrance. It is also settled position that after an award is passed by the authorities under the Land Acquisition Act, no writ petition can be entertained. In this case, the Appellant purchased the property during the pendency of the writ petition filed by his vendor challenging the validity of notification issued u/s 4(1) of the Act. Therefore, the Appellant, who purchased the property knowing fully well about the acquisition proceedings, is not entitled to seek the discretionary remedy before this Court. Furthermore, the earlier writ petition filed by the Appellant's vendor was pending at the time when he purchased the property but he has not chosen to implead himself as a party to the writ petition. The Appellant's vendor has also not chosen to file any writ appeal against the order dated 10.02.1999 in WP No. 11394 of 1990. Therefore, whatever relief now sought for by the Appellant in this writ petition has to be claimed only by the Appellant's vendor and not by the Appellant himself because he is only a subsequent purchaser. As the Petitioner's vendor had already failed in his attempt, the Petitioner cannot now question the same.

14. The learned Advocate General appearing for the Housing Board relied on the decision of the Honourable Supreme Court reported in *Yadu Nandan Garg Vs. State of Rajasthan and Others*, for the proposition that after publication of notification u/s 4(1) of the Act and after declaration made u/s 6 of the Act, a purchaser cannot be allowed to challenge the acquisition proceedings even if there is a delay in between the notification u/s 4(1) and the declaration made u/s 6 of the Act. It was held by the Honourable Supreme Court that the purchaser does not get any title, much less valid title to the property as the purchase was not lawful as against the State and the State is entitled to have possession of the property free from all encumbrances. In Para-3 of the order, it was held as follows:

3. We do not find any substance in any of these contentions. It is seen that long after the notification u/s 4(1) was published in the Gazette, the Appellant had purchased the property and constructed the house thereon. Therefore, as against the State his purchase was not lawful and it could not be used against the State to clothe it with a colour of title as against the State. It is an encumbrance against the State and when the acquisition was finalised and the possession is taken, the State u/s 16 is entitled to have the possession with absolute title free from all encumbrances. The Appellant cannot get any title much less valid title to the property.

15. The learned Advocate General also relied on the decision reported in *U.P. Jal Nigam, Lucknow through its Chairman and another Vs. M/s. Kalra Properties (P) Ltd. Lucknow and others*, wherein the Honourable Supreme Court has held that purchase of land after issuance of notification u/s 4(1) of the Act is void and the purchaser does not acquire any right, title or interest in the land. It was further held that the purchaser cannot challenge the validity of the notification or the

delay in taking possession. In Para-3 and 4, the Honourable Supreme Court held as under:

3. ...In this case, notification u/s 4(1) was published on March 24, 1973, possession of the land admittedly was taken on July 5, 1973 and pumping station house was constructed. No doubt, declaration u/s 6 was published later on July 8, 1973. Admittedly, power u/s 17(4) was exercised dispensing with the enquiry u/s 5A and on service of the notice u/s 9 possession was taken, since urgency was acute, viz., pumping station house was to be constructed to drain out flood water. Consequently, the land stood vested in the State u/s 17(2) free from all encumbrances. It is further settled law that once possession is taken by operation of Section 17(2) the land vests in the State free from all encumbrances unless a notification u/s 48(1) is published in the Gazette withdrawing from the acquisition. Section 11A, as amended by Act 68 of 1984, therefore, does not apply and the acquisition does not lapse. The notification u/s 4(1) and the Declaration u/s 6, therefore, remain valid....

4. The next question is whether the Respondent is entitled to compensation and, if so, from what date and at what rate? The original owner has the right to the compensation u/s 23(1) of the Act. Consequently, though the Respondent acquired no title to the land, at best he would be entitled to step into the shoes of the owner and claim payment of the compensation, but according to the provisions of the Act. It is settled law that the price prevailing on the date of the publication of the notification u/s 4(1) is the price to which the owner or person who has an interest in the land is entitled to. Therefore, the purchaser as a person interested in the compensation, since he steps into the shoes of the erstwhile owner, is entitled to claim compensation.

16. In the decision of the Honourable Supreme Court reported in Tika Ram and Others Vs. State of U.P. and Others etc. etc., , the Honourable Supreme Court held that any purchase of land after publication of notification u/s 4(1) of the Act would not get any right or entitlement to such purchaser to question the validity of the notification u/s 4(1) of the Act. In Para 121, it was held as follows:

121. Shri. Dwivedi, learned Senior counsel appearing on behalf of LDA also found fault with the sale deed in favour of Pratap Sahakari Grih Nirman Samiti Ltd., which is being represented by Shri. Trivedi, learned Senior Counsel. It was urged that its claim was based on the sale agreement, which was executed one day before the publication of Section 4 Notification in the gazette i.e., on 08.12.1984. It is an admitted case that the sale deed was registered on 22.01.1986, which is clearly a date beyond the date of Section 4 notification. It is already held by this Court in U.P. Jal Nigam v. Kalra Properties (P) Ltd and Star Wire (India) Ltd. v. State of Haryana that if any purchases of the land are made after the publication of Section 4(1) notification, landlords in this case would not get any right or entitlement to question the validity of the title of the State based on the acquisition. Obviously, the claim of this Society is on the basis of the agreement of sale dated 07.04.1983. It was reported by the learned Senior Counsel that

Shri. Hukum Chand Gupta also expired on 27.07.1983 and ultimately, the sale deed was executed on 07.12.1984. We do not want to go into the question of fact, but we will certainly go with an endorse the finding of the High Court in this behalf that the society had purchased the land after the issuance of notification.

17. The Division Bench of this Court in the judgment dated 10.10.2007 made in W.A. Nos. 1270 to 1276 of 2007 held that even if the land owner continuous to remain in possession of the property after the award was passed and the Government did not take possession of the lands, such possession by the erstwhile landlord or the subsequent purchaser can only be termed as illegal and unlawful and it does not bind the Government in any manner. In para Nos. 4, 5 and 6, it was held as follows:

4. As correctly found by the learned single Judge relying upon the judgment of the Supreme Court in State of Tamil Nadu and another Vs. Mahalakshmi Ammal and others, that if the award was already passed, the same is binding on the parties and it would not be possible for the Governmental agency to take possession immediately and in such circumstances, the continuous possession either by the erstwhile owner or the subsequent purchasers can only be illegal and unlawful, which does not bind the Government. In that view of the matter, the learned single Judge has dismissed the writ petitions, against which the present appeals are filed.

5. Mr. AR.L. Sundaresan, learned Senior counsel for the Appellants would vehemently contend that the Appellants were in possession for a long time and in fact they were prepared to pay the market rate as on date for the said lands and they cannot be evicted without following the procedures under the Tamil Nadu Housing Board Act.

6. We are unable to accept the said contention. When admitted fact is that the land acquisition proceedings have been completed and the lands have been vested with the Housing Board after passing the award, there is no question of maintainability of any writ petition thereafter. In the present case, the award was passed as early as on 28.03.1996, after following the entire procedure as contemplated under the Land Acquisition Act and the properties were handed over to the Housing Board. Therefore, all the rights, title or interest of the owners and occupiers stood extinguished since those rights are vested with the Board without encumbrances and any other occupant can only be treated as trespasser and such trespassers cannot claim any order of injunction.

18. From the above decisions, it is clear that the Appellant is a subsequent purchaser of the property after issuance of the notification u/s 4(1) of the Act and therefore, the Appellant can, at best, be called as a occupier and he is not entitled to challenge what the original owner cannot. The Appellant purchased the property, which was acquired by the Respondents for implementation of a scheme for public purpose, after passing an award, and therefore he cannot claim to be a legal occupier. In this case, the original owner challenged the

notification u/s 4(1) of the Act before this Court by filing writ petition and the same was also dismissed. Therefore, it is not now open to the Appellant to maintain the writ petition. Therefore, the writ petition filed by the Appellant praying for an injunction restraining the Respondents from taking possession of the property, which was acquired by the Respondents by invoking the Land Acquisition Proceedings, was rightly dismissed by the learned single Judge on the ground that he being a subsequent purchaser of the land, is not entitled to such relief. We do not find any reasons to interfere with the order passed by the learned single Judge.

19. In the result, the writ appeal is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.