

(2002) 04 MAD CK 0086

In the Madras High Court

Case No : Writ Petition No. 11624 of 1997 and W.M.P. No's. 18693 and 27261 of 1997

T. Amutham Anthony

APPELLANT

Vs

The State of Tamil Nadu and C.S. Balakrishnan

RESPONDENT

Date of Decision : 12-04-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1984 — Section 4(1), 6

Citation : (2002) 2 MLJ 298

Hon'ble Judges : D. Murugesan, J

Bench : Single Bench

Advocate : Krishnappan, for the Appellant; M.G.H. Varadarajan, Additional Government Pleader, D. Veerasekaran, A.L. Somayaji and Senior Counsel for G. Devadoss, for the Respondent

Final Decision : Dismissed

Judgement

D. Murugesan, J.—The petitioner has filed the above writ petition, challenging the order of the Government made in G.O.Ms.No.1562

Housing and Urban Development Department dated 24.12.1990 in making allotment to the fourth respondent pursuant to G.O.R.No.1390

Industries, Labour and Co-operation Department dated 10.10.1961 published in the Tamil Nadu Gazette Part II Section 1 dated 01.11.1961 in

publishing the notification u/s 4(1) of the land Acquisition Act and G.O.Ms.No.4839 Industries, Labour and Co-operation (Housing) Department,

dated 13.10.1965 published in the Tamil Nadu Government Gazette Part II Section 1 dated 17.11.1965 in publishing the declaration u/s 6 of the

Land Acquisition Act issued by the first respondent herein and to quash all the Government orders referred above in sofaras Survey No.207/13

Part, Thirumangalam Village and patta No.176 of West Madras Neighbourhood Scheme, Plot No.2155 measuring an extent of 18 cents and

forbear the respondents 1 to 3 herein from in any manner acquiring the land owned by the petitioner and allotting third parties.

2. The facts leading to the filing of the writ petition are as follows:-

According to the petitioner, the land covered in S.No.207/13 Part of Thirumangalam Village, Saidapet Taluk, covering an extent of 18 cents was

originally belonged to the grandfather of the petitioner by name Mr. Vaithan. After the death of the grandfather of the petitioner, the properties

devolved upon the father of the petitioner by name Thirumani. Patta was also issued in favour of said Thirumani in S.No.176. All the revenue

records carries the name of the petitioner's grandfather and thereafter the name of the petitioner's father in respect of the above survey number.

Adangal as well as other revenue records stood in the name of the petitioner's father. Encumbrance Certificates issued for the period from 1960-

71, 1971-82, 1982-96 and 1996-97 show that there was no encumbrance in respect of the said extent of land in S.No.207/13. According to the

petitioner, he is in possession of the said land and during the year 1995, his possession was sought to be interfered with by one P.Arjunan and

Murali and hence, the petitioner filed a suit in O.S.No.8859 of 1995 on the file of the fourth Assistant Judge, City Civil Court, Chennai for a bare

injunction. The Civil Court, in fact granted injunction by a judgment and decree dated 17.04.1996. Thereafter, the fourth respondent made an

attempt to dispossess the petitioner from the land, which necessitated the petitioner to file a suit in O.S.No.188 of 1996 for permanent injunction.

The petitioner also filed W.P.No.4190 of 1997 for a direction to the respondents therein not to interfere with the peaceful possession of the

petitioner over the property in question.

3. The petitioner, thereafter made enquires and came to know that the first respondent published the notification u/s 4(1) of the Land Acquisition

Act 1984 dated 11.11.1961 to acquire the land including the land belonging to the petitioner. However, in the said notification, neither the name of

the petitioner nor the name of his father was mentioned and therefore, the petitioner was not aware of the land acquisition proceedings. Only when

the respondent filed an affidavit to vacate the interim stay in W.P.No.4190 of

1997, he came to know of the allotment of the land in question made in favour of the fourth respondent. Hence, the present writ petition.

4. Even before learned counsel for the petitioner was heard, Mr.A.L.Somayaji, learned Senior Counsel appearing for the fourth respondent raised a preliminary objection on the ground that the writ petition has to be dismissed in limini on the ground of laches since the land acquisition proceedings, culminated in notification u/s 4(1) of the Act was published as early as on 11.11.1961 and the writ petition, challenging the said notification was filed only on 28.07.1997.

5. Learned counsel for the petitioner, on the other hand would submit that the petitioner came to know of the land acquisition proceedings only in the year 1995 and immediately, the petitioner has approached this Court in the year 1997 and there is no laches on the part of the petitioner in challenging the land acquisition proceedings.

6. In view of the rival submissions, it has to be first decided as to whether the petitioner is entitled to maintain the writ petition filed on 28.07.1997, challenging the notification u/s 4(1) of the Act published on 11.11.1961.

7. The land acquisition proceedings were initiated in the year 1961 by publishing a notification u/s 4(1) of the Act on 11.11.1961. Declaration u/s 6 of the Act was made on 13.10.1965 and the award was passed on 25.02.1967 and the Government took possession of the land on 02.03.1967.

The Government issued G.O.Ms.No.1562 Housing and Urban Development Department dated 24.12.1990 allotting the plot No.2155 at Anna

Nagar in favour of the fourth respondent. The Tamil Nadu Housing Board, pursuant to the said allotment made a provisional allotment order of the

said plot in favour of the fourth respondent by order dated 21.03.1991. A regular allotment order was issued in favour of the fourth respondent on

03.05.1991 and the possession was handed over to the fourth respondent by the Executive Engineer of the Tamil Nadu Housing Board of Anna

Nagar Division on 13.03.1992. The sale deed was executed on 15.05.1996.

8. From the dates narrated above, it would be clear that the award was passed in respect of land as early as on 25.02.1967 and the writ petition

has been filed only on 28.07.1997, nearly after a period of 30 years and five months. The reasons adduced by the petitioner for not approaching

this Court in challenging the land acquisition proceedings is that the petitioner came to know of the land acquisition proceedings only during the year 1995 when a counter affidavit was filed on behalf of the respondent / Housing Board in W.P.No.4190 of 1997, disclosing the land acquisition proceedings. Hence, there is no laches on the part of the petitioner in approaching the Court.

9. I am unable to accept the said submission of the learned counsel for the petitioner. After the Government took possession of the land, the plot

No.2155 was allotted in favour of the fourth respondent as early as on 24.12.1990. Pursuant to the said allotment, Housing Board issued

provisional and regular allotment orders in favour of the fourth respondent and the possession was given to the fourth respondent on 13.03.1992.

Since the possession was handed over to the fourth respondent as early as on 13.03.1992, the contention of the petitioner that he is in possession

and he is not aware of the land acquisition proceedings, pursuant to which the possession was handed over to the fourth respondent cannot be

accepted.

10. More over, the Apex Court in the judgment reported in The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others,

has rejected the challenge to the land acquisition proceedings after 21 long years after issuance of notification u/s 4(1) of the Act and 16 long years

from the date of making over possession and passing of the award and held that the petition was belated and accordingly, rejected the challenge to

the land acquisition proceedings.

11. In the judgment reported in Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd., and others, ,

the Supreme Court has held as follows:-

It is thus well settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have

become final, the Court should be loathe to quash the notifications. The High Court has, no doubt, discretionary powers under Article 226 of the

Constitution to quash the notification u/s 4(1) and declaration u/s 6. But, it should be exercised taking all relevant factors into pragmatic

consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is

a material factor to be taken into consideration before exercising the power under Article 226.

12. Further, the Apex Court in the judgment reported in C. Padma and Others Vs. Dy. Secretary to the Govt. of T.N. and Others, has held that

once the award has been passed and possession also has been taken, this Court cannot interfere in the land acquisition proceedings.

13. Therefore, I find every force in the contention of Mr.A.L.Somayaji, learned Senior Counsel appearing for the fourth respondent that the writ

petition is liable to be dismissed in limini solely on the ground of laches. In addition to the above, the writ petition is also liable to be dismissed on

the ground that award was passed on 25.02.1967 and possession was taken on 02.03.1967. Accordingly, I hold that the writ petition challenging

the notification u/s 4(1) of the Act published on 11.11.1961 is liable to be dismissed on the ground of laches.

14. Learned counsel for the petitioner, on merits would submit that an extent of 18 cents of land in S.No.207/13 part belonged to the father of the

petitioner Thirumani. In the notification u/s 4(1) of the Act, the name of the petitioner's father was not included and therefore, the land in the said

survey number is not covered under notification u/s 4(1) of the Act. Hence, the question of laches does not arise.

15. The said submission of the learned counsel for the petitioner is also liable to be rejected as the writ petition, challenging the notification and the

consequential declaration has been filed only on the ground that the land belonging to the petitioner has also be acquired under the land acquisition

proceedings. Moreover, the petitioner had earlier filed writ petition before this Court in W.P.No.4190 of 1997, seeking for a writ of mandamus,

forbearing the respondents more particularly the Secretary to Government, Housing Department, the Chairman, Tamil Nadu Housing Board, the

Inspector of Police, Law and Order and the fourth respondent C.S.Balakrishnan from interfering with the peaceful possession of the petitioner

over the properties in S.No.207/13 part of Thirumangalam Village, Saidapet Taluk, Chennai. The said writ petition was dismissed on 04.02.2000.

While dismissing the said writ petition, this Court did not give liberty to the petitioner to challenge the land acquisition proceedings. In the affidavit

filed in support of the above writ petition, the petitioner had prayed for writ of mandamus only on the ground that the State Government acquired

the lands under the provisions of the Land Acquisition Act. Having made such averment in the writ petition and invited an order of dismissal

without reserving any right to pursue the remedy in the appropriate forum and proceedings, it will not be open to the petitioner to once again

challenge the land acquisition proceedings by a separate writ petition.

16. However, the learned counsel for the petitioner disputed the very identification of property as not covered under the land acquisition

proceedings. It is for the petitioner to work out his remedies as to the identification of the properties namely an extent of 18 cents at S.No.207/13

part of Thirumangalam Village, Saidapet Taluk, Chennai and whether the property belongs to the petitioner and to what relief the petitioner is

entitled to from the Tamil Nadu Housing Board for having taken possession of the said land as if the land was taken over pursuant to the land

acquisition proceedings. Those disputed questions are to be gone into only by the Civil Court and not by this Court, by exercising Article 226 of

the Constitution of India.

17. In view of the above, I am not inclined to go into the submission of the learned counsel for the petitioner as to whether the land in question was

included in 4(1) notification or not and whether the petitioner was deprived of his right to possess the land without there being any proceedings

initiated under the Land Acquisition Act of the land.

18. In view of the above, I do not find any merit to entertain the writ petition since the writ petition has to fall on the ground of laches and also on

the ground that the land acquisition proceedings cannot be challenged after the award was passed and possession was taken.

19. Accordingly, the writ petition fails and the same is dismissed. No costs. Consequently, the connected W.M.Ps are closed.