
(2008) 02 MAD CK 0252
In the Madras High Court
Case No : Writ Appeal No. 77 of 2006

T. Jayanandan

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 07-02-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 300A

Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 — Section 4(1), 4(2), 5A, 6, 8

Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Rules, 1979 — Rule 5(1)

Citation : (2008) 02 MAD CK 0252

Hon'ble Judges : K. Raviraja Pandian, J;Chitra Venkataraman, J

Bench : Division Bench

Advocate : S. Sundaresan, for the Appellant; Edwin Prabhakar, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.—The appeal filed against the order of the learned single Judge dated 28.02.2005 made in writ petition No. 1940 of 1998 wherein the relief sought for by the appellant for issuance of writ of mandamus forbearing the respondents from proceeding further in pursuance of the notice of the third respondent, the Special Tahsildar, Adi Dravidar Welfare Department, Ramanathapuram in Na. Ka. No. A/256/95 dated 07.01.1997 and in furtherance of Government Gazette notification of Ramanathapuram district in Gazette No. 8 page 3, dated 17.07.1996 without issuing proper notice and enquiry as contemplated under the Tamil Nadu Act 31 of 1978, has been rejected.

2. Before the learned single Judge two contentions have been raised on behalf of the appellant to sustain the relief of mandamus and against the proceedings initiated by the respondent to acquire the petitioner's land under the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1978 ("the Act" for short),. The first contention was that the objections raised by the appellant to the notice issued u/s 4(2) of the Act was not properly considered by the respondents and

the other contention was that when the poromboke lands are available very adjacent to the land of the appellant, the authorities should have preferred the poromboke land instead of acquiring the land of the appellant.

3. The learned single Judge rejected the writ petition by pointing out that the appellant has not chosen to challenge the notification u/s 4(1) of the Act dated 17.07.1996. The relief sought for in the writ petition was forbearing the respondent from proceeding further pursuant to the notice dated 07.01.1997 issued under Rule 5(1) of the Tamilnadu Acquisition of Land for Harijan Welfare Scheme Rules, 1979, which is a notice for determination of compensation payable for the land acquired u/s 4(1) of the Act. What is required u/s 4(2) of the Act is only a subjective satisfaction of the respondents and ordinarily it was not open to the Court to take a scrutiny of the propriety of that satisfaction on an objective appraisal of facts. When the Government takes a decision, taking all relevant consideration into account and issued notification accordingly, the same should not be interfered with by the Court unless the Court comes to the conclusion that the appropriate authority had not applied its mind to the relevant factors or that the decision has been taken by the appropriate authority mala fide. Therefore, over-ruling of the objection raised by the appellant by itself would not vitiate the proceedings.

4. In respect of the second contention, the learned single Judge also observed that it is a trite law that it is the absolute discretion of the State to select a particular site under the power of eminent domain for the provision of the house sites to the poor and downtrodden of any community, and neither the owner of the land nor the beneficiaries can have any say in the matter.

5. The learned Judge also took note of the fact that the writ petitioner had not chosen to challenge the notification u/s 4(1) till date and without challenging the said notification which was issued as early as 17.07.1996, it might not be proper for the Court to grant the relief as prayed for, as the same would otherwise nullify the proceedings dated 17.07.1996, which had become final. That order of the learned single Judge is put in issue in this appeal by contending that the provisions of Section 4(2) have not been followed which is mandatory in nature.

6. Learned Counsel for the appellant relied on the decision of a Full Bench of this Court in the case of R. Pari v. The Special Tahsildar, Adi-Dravidar Welfare, Devakottai 2006 (4) CTC 609 to contend that in each and every stage of the acquisition proceedings notice has to be issued to the land owner, but no such notice has been issued at any stage of the proceedings to the appellant. However, the learned Government Advocate contended that Section 4(2) notice dated 06.11.1995 has been served on the appellant for which objections have been raised by him. The objections have been considered and over ruled by the authority and subsequent to the same award has been passed on 16.09.1997. Possession of the land has been taken over on 17.09.1997 and thereupon patta has been issued to 14 beneficiaries on 07.12.1997. The appellant, without raising his little finger right from 1995 to 1997, after the pattas were issued to the

beneficiaries and after the purpose of acquisition has been served, thought it fit to challenge the action of the respondents in the year 1998 by filing the writ petition on 31.01.1998, that too, for a mandamus directing the respondent not to proceed further pursuant to the notice for determination of compensation. The relief sought for has become virtually infructuous. Even in the writ appeal the appellant has not corrected himself as pointed out by the learned single Judge.

7. Heard the learned Counsel on either side and perused the materials available on record.

8. It is trite law that appeal is a continuation of the original proceedings. In the appellate stage, a totally different relief cannot be sought for. Though the learned Counsel for the appellant has submitted that he filed an application to amend the prayer, till date as contended by the learned Government Pleader, the prayer has not been amended. No such application is available on record.

9. It is an admitted case that the third respondent, the Special Tahsildar issued a notice to the appellant u/s 4(2) of the Act calling upon him to file his objections, if any, for the proposal to acquire his land in an extent of 0.22 hectare out of the total extent of 0.97 hectare. The appellant appeared and submitted his objections on 28.11.1985 on which date the enquiry was fixed. The objections so raised by the appellant have been considered and over-ruled and the proposal has been submitted to the Collector. Pursuant to the same notification u/s 4(1) of the Act has been published on 17.07.1996. So, the first contention that the notice u/s 4(2) of the Act has not been served on the appellant is not correct which was also not the contention raised before the learned single Judge. It is an admitted fact that all further proceedings such as award was passed on 16.09.1997, the land has been taken possession on 17.09.1997 and thereupon pattas had been granted to 14 beneficiaries on 07.12.1997. After the public purpose for which the land has been acquired has been duly served, the appellant filed the present writ petition on 31.01.1998 by contending that no notice whatsoever has been served on the appellant, which is factually incorrect.

10. Learned Counsel placed reliance on the Full Bench decision of this Court in the case of R. Pari v. The Special Tahsildar, Adi Dravidar Welfare, Devakottai 2006 (4) CTC 609 to contend that the appellant should be given second opportunity to put forth his objections to the correctness of over ruling his objections by the Land Acquisition Officer, before the District Collector. Though such a ground has not been taken by the appellant before the learned single Judge, we heard him on the issue.

11. From the details stated supra, it is clear that the writ petition has become infructuous even when the writ petition was filed. A mandamus in futility cannot be issued. When the respondents are conferred with the power to acquire lands in accordance with the statutory provisions and such exercise has been carried out by the respondents, the relief of mandamus against the respondents not to perform the statutory function cannot be granted. Further, as contended by the

learned Government Advocate, the writ petition filed by the appellant cannot be maintained as the same has been filed after the entire process for which the land has been acquired was accomplished.

12. A Division bench of this Court in the case of Ramalingam and Others Vs. The State of Tamil Nadu and Others, , has held as follows:

It has been repeatedly held by the Supreme Court that no writ petition should be entertained after the award under the Land Acquisition Act has been passed - vide Tej Kaur and Others, etc. Vs. State of Punjab and Others, ; The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others, , Executive Engineer, Jal Nigam Central Stores Division, U.P. Vs. Suresha Nand Juyal alias Musa Ram (Deceased) by LR"s and others, ; State of Tamil Nadu v. L. Krishnar, (1996) 1 SCC 250 . Following the aforesaid decision, we are of the opinion that the writ petition itself were not maintainable and they should have been dismissed on this ground itself.

In the case of S. Harshavardhan and Another Vs. State of Tamil Nadu and Others, , a Division bench of this Court has held as follows:

It has been repeatedly held by the Supreme Court vide Tej Kaur and Others, etc. Vs. State of Punjab and Others, that writ petition challenging the land acquisition proceedings should not be entertained after the award has been passed. In that case, the award was passed on 15.03.1994 whereas the writ petition was filed on 12.04.1994, i.e., after the award was given. Hence, the writ petition was dismissed as belated. Similarly in The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others, , the Supreme Court observed vide paragraph 17:

In any event, after the award is passed, no writ petition can be filed challenging the acquisition notice or against any proceedings thereunder.

The Supreme Court also observed in that decision that this has been the consistent view of the Court, e.g., C. Padma and Others Vs. Dy. Secretary to the Govt. of T.N. and Others, ; Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd., and others, , etc. Hence, without going into the merits of the case, we are of the opinion that the writ petition was rightly dismissed on the ground of laches.

13. Learned Counsel for the appellant half-heartedly made a submission that these judgments relate to the Central Act and not rendered with reference to the State Act. We are afraid to accept the said contention. The law laid down by the Supreme Court is the general proposition and it is not pertaining to the Central Act alone. Further, another Division bench of this Court in the case of Soundaravalli Ammal v. Government of Tamil Nadu 2007 (5) CTC 241, in respect of the State Act, after referring to the decision in the case of Ramalingam and Others Vs. The State of Tamil Nadu and Others, , has held that a writ petition filed after passing of the award, is not maintainable.

14. In *The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others*, it has been held as follows:

While it is true that this extraordinary jurisdiction is available to mitigate the sufferings of the people in general, but it is not out of place to mention that this extra-ordinary jurisdiction has been conferred on to the law Courts under Article 226 of the Constitution on a very sound equitable principle. Hence, the equitable doctrine, namely, "delay defeats equity" has its fullest application in the matter of grant of relief under Article 226 of the Constitution. The discretionary relief can be had provided one has not by his act or conduct give a go-bye to his rights. Equity favours a vigilant, rather than an indolent litigant and this being the basic tenet of law, the question of grant of an order as has been passed in the matter as regards restoration of possession upon cancellation of the notification does not and cannot arise.

15. In the case of *State of Tamil Nadu v. L. Krishnar*, (1996) 1 SCC 250 , the Supreme Court has observed as follows:

40. ...It has been pointed out in *Aflatoon and Others Vs. Lt. Governor of Delhi and Others*, that laches of this nature are fatal.

The apex Court further held:

...To have sat on the fence and allowed the Government to complete the acquisition proceedings on the basis that the notification u/s 4 and the declaration u/s 6 were valid and then to attack the notification on grounds which were available to them at the time when the notification was published would be putting a premium on dilatory tactics. The writ petitions are liable to be dismissed on the ground of laches and delay on the part of the petitioners (See *Tilokchand and Motichand and Others Vs. H.B. Munshi and Another*,) and *Rabindranath Bose and Others Vs. The Union of India (UOI) and Others*,).

From the counter affidavit filed on behalf of the Government, it is clear that that the Government have allotted a large portion of the land after the acquisition proceedings were finalised to co-operative housing societies. To quash the notification at this stage would disturb the rights of third parties who are not before the Court.

41. The above observations speak for themselves - and are fatal to the writ petitioners.

The Supreme Court in *Executive Engineer, Jal Nigam Central Stores Division, U.P. Vs. Suresha Nand Juyal alias Musa Ram (Deceased) by LR's and others*, has observed as follows:

Obviously, after consideration of all the objections and rejection thereof, declaration u/s 6 was published. As stated earlier, the award was made and symbolic possession was taken on 17-12-1988. Under the circumstances, the land stood vested in the State free from all encumbrances. After the proceedings

had become final, the writ petition came to be filed on 19-5-1989. The mere fact that due to lapse of time no action was taken after the filing of the writ petition, does not give ground for interference. The further fact that public purpose must have been served by constructing the quarters for the officers elsewhere, is without any substance. The mere fact that on account of the pending litigation, no construction was made, is no ground to say that notification u/s 4(1) was vitiated by any error of law; equally, increase in the prices of the lands is no ground.

In *Tej Kaur and Others, etc. Vs. State of Punjab and Others*, , the apex Court held as under:

Moreover, Section 6 declaration was made on 18-3-1992 and the award was passed on 15-3-1994. The appellants filed the writ petition only on 12-4-1994. In spite of the Section 6 declaration having been made on 18-3-1992, the appellants allowed the acquisition proceedings to go on until the award was passed. This fact clearly indicates that the appellants did not have a genuine grievance against Section 5-A inquiry held by the Collector. Therefore, we are not inclined to interfere with the judgment on the grounds now advanced by the appellants.

16. From the above extracts, it is manifestly clear that the exposition of law made by the apex Court on the point of laches is not made with respect to the Central Act, though such enunciation was made while deciding the cases arising out of the Central Act. Hence, the contentions made to the contrary has to be rejected and is rejected.

17. A Division Bench of this Court in the case of *V. Krishnan v. Government of Tamilnadu* 2001 (4) CTC 108, has held as follows:

Coming to the case on hand, even though the relief could be granted, but because of the delay caused by the appellant in approaching this Court after a period of one year from the date of Section 8 declaration and two years after Section 4(1) notification, we are refraining ourselves from setting aside the land acquisition proceedings-, more so in view of the fact that award has already been passed. While individual interest has to be taken into consideration, particularly in view of the right of guarantee envisaged under Article 300A of the Constitution, it is well settled law that public interest shall always prevail over the individual interest.

18. The above rulings are categorical to the effect that no writ petition should be entertained after the award under the Act is passed. The appeal has to be rejected on the ground of laches alone.

19. As we have come to the conclusion that the appellant is not entitled to the relief on the ground of laches, the reliance on the decision of the Full Bench in *R. Pari's* case cited supra made by the appellant becomes inconsequence. Further, another Division Bench of this Court in the case of *Soundaravalli Ammal*,

referred to above doubted the correctness of the ratio laid down by the Full Bench by observing, -- "In the backdrop, we are of the considered view that the ratio laid down by the Full Bench of this Court, since runs contrary to the law laid down by the Hon"ble Apex Court in Ananthi Ammal's case (State of Tamil Nadu and Others Vs. Ananthi Ammal and Others, , does not seem to be good law and needs reconsideration by a larger Bench", --referred the matter to the larger Bench.

20. For the foregoing reasons, we are of the considered view that the appellant has not made out any case for interference. The appeal fails and it is accordingly dismissed. No costs.