

(2008) 10 MAD CK 0063

In the Madras High Court

Case No : Writ Petition No"s. 10236 of 1998 and 7110 of 1999 and 9437 of 2006 and WMP. No"s. 10216 of 1999, 10451 and 10452 of 2006

Uttamchand Galada, Vasanth Bala Galada, Manish Galada
and P. Vasantha Kumari

APPELLANT

Vs

The State of Tamil Nadu and The Chennai Metropolitan
Development Authority

RESPONDENT

Date of Decision : 17-10-2008

Acts Referred:

General Clauses Act, 1897 — Section 21

Land Acquisition Act, 1894 — Section 36, 4, 4(1), 48, 48(1)

Citation : (2008) 10 MAD CK 0063

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : P. Seshadri, in WP. 10236 of 1998, K.P. Gopalakrishnan, in WP. 7110/99 and C. Selvaraju, SC for P.G. Padmanabhan, in WP. 9437/2006, for the Appellant; A. Arumugam, Spl. G.P. for R1, R. Gowthamanarayanan, for R2 in WP. Nos. 10236 of 1998 and 7110/1999 and C. Kathiravan, for R2 in WP. 9437/06, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—Since all the three writ petitions challenges the same order of the Government in G.O. Ms. No. 134, Housing and Urban

development Department, dated 23.4.1998, the writ petitions were heard together and a common order is passed.

2. Heard the arguments of Mr. C. Selvaraju, learned Senior Counsel appearing for the petitioner in W.P. No. 9437 of 2006; Mr. P. Seshadri,

learned Counsel appearing for the petitioner in W.P. No. 10236 of 1998; Mr. K.P. Gopalakrishnan, learned Counsel appearing for the petitioner

in W.P. No. 7110 of 1999; Mr. A. Arumugam, learned Special Government Pleader

appearing for the first respondent in all the writ petitions; Mr.

R. Gowthama Narayanan, learned Counsel appearing for the second respondent in W.P. Nos. 10236 of 1998 and 7110 of 1999 and Mr. C.

Kathiravan, learned Counsel appearing for the second respondent in W.P. No. 9437 of 2006 and perused the records.

3. The petitioner in W.P. No. 10236 of 1998 was a purchaser of the land to an extent of 3.07 acres in S. No. 534/2 and 535/1 in Thirukachur

Village, Chingleput District. Originally, the said land formed part and parcel of a larger extent of land measuring 25.92 acres and belonged to three

persons, by name, Natarajan, Vasantha Natarajan and Viswanathan. These lands were acquired by the first respondent under the Land

Acquisition Act, 1894 (hereinafter will be referred to as "the Act" for short) for the establishment of ""Maraimalainagar New Town"" by the second

respondent (CMDA). The acquisition proceedings started in the year 1974. Section 4(1) notification was issued in the year 1974 and draft

declaration was approved by the Government by G.O. Ms. No. 868, Housing and Urban Development Department, dated 28.8.1982 and it was

also published in the Government Gazette, dated 05.9.1982.

4. The entire extent of the land comprised of 103.97 acres in Thirukachur Village, which formed part of the acquisition proceedings. Compensation

amount was also computed and since the original owners of the land did not challenge the acquisition proceedings, the award proceedings became

final. The petitioners in W.P. No. 10236 of 1998 had purchased the land only subsequent to the Award. It transpires that subsequently erstwhile

owners sought for exclusion of their lands measuring 41.08 acres, as they were using the said land allegedly for agricultural purpose. The

Government on the basis of their representation and on getting a letter from the Chief Executive Officer of the second respondent CMDA, directed

the exclusion of 25.92 acres, as set out in the annexure to the G.O., from the acquisition proceedings for Maraimalai Nagar Scheme by its order in

G.O. Ms. No. 497, Housing and Urban Development Department, dated 23.3.1987.

5. The District Revenue Officer, Kancheepuram was requested to send necessary draft withdrawal notification in respect of the lands ordered to

be excluded. It transpires from the records that there was no such proposal sent

by the District Revenue Officer, Kancheepuram and no

withdrawal notification was published in the Gazette as per law. Strangely on the strength of the exclusion G.O. there were some land transfers by

the erstwhile owners and the petitioner in W.P. No. 10236 of 1998 is one such person.

6. The petitioner in W.P. No. 7110 of 1999 also claims that he had purchased the land from the original owner Velu Mudaliar and others in the

year 1983. Similarly, in W.P. No. 9437 of 2006, the petitioner claims to have purchased the said land by a registered sale deed in the year 1983.

7. But, however, it is admitted by the petitioners in all the three writ petitions that an Award has been passed and compensation amounts have

been deposited. The writ petitioners have not stated as to when the petitioners were put in possession of the land. It is also admitted that the

withdrawal decision of the Government in terms of G.O. Ms. No. 497, Housing & Urban Development Department, dated 22.3.1987 was not

completed.

8. It is at this stage the second respondent being the requisitioning department wrote to the Government on 21.9.1989 objecting to the withdrawal

notification as the lands which are claimed by the original owners are no longer agricultural lands and they are not fit for cultivation and it is only for

the purpose of urban use, the lands are required. Since the land which is sought to be excluded will destroy the development activities of the

second respondent, the Government was requested to drop the proceedings. A resolution was also passed by the second respondent - CMDA on

30.8.1994 requesting the Government to cancel the earlier decision. In anticipation of the Government's Order, the second respondent also

passed another resolution, dated 14.3.1997 and decided to go ahead with the development activities in the land, which was originally acquired.

9. In terms of the request made by the second respondent, the State Government issued G.O. Ms. No. 134, Housing and Urban Development

Department, dated 23.4.1998 and cancelled the earlier exclusion of the land to an extent of 25.92 acres. In that order, it was stated that out of

35.92 acres, only 16.47 acres were published in the Government Gazette as withdrawal notification on 11.11.1997. In the balance of 19.45 acres,

5.66 acres have been already handed over to the requisitioning authority,

namely, CMDA (second respondent). The balance of 13.79 acres was not handed over to them. It is only when remarks were sought for from the District Revenue Officer by the Commissioner for Land Administration, they were informed that there is no legal objection in cancelling the provisional exclusion made u/s 48(1) of the Act. The Government was also informed that even if the second respondent - CMDA does not put to use the land as per law, it could be utilised for other public purposes.

10. In para 3 of the impugned order, the petitioners in W.P. No. 10236 of 1998 were clearly told that they are only subsequent purchasers and, therefore, they have no locus standi to claim exclusion as a matter of right. Since the lands were required for public purpose for which the original acquisition proceedings were initiated, it cannot be granted. If the petitioners want to possess any land, they can purchase developed plots from the second respondent. It is this G.O. which is under challenge by the petitioners.

11. Mr. C. Selvaraju, learned Senior Counsel appearing for the petitioners in W.P. No. 10236 of 1998, submitted that once there is an exclusion of the lands from the acquisition proceedings in terms of Section 48 of the Land Acquisition Act, there is no scope for cancelling the said G.O. that too, after a period of 11 years from the original decision of the Government. In such cases, the Government will have to go through the acquisition proceedings. In support of the same, he also relied upon an unreported decision of this Court in W.P. No. 9531 of 1998, dated 26.4.2007 (S. Udayashankar and two Ors. v. State of Tamil Nadu and Ors.). In that decision, reliance was placed upon the judgment of the Delhi High Court reported in AIR 1976 Delhi 166 (Jai Narain v. L.A. Collector, New Delhi), wherein it has been held that once the exclusion process u/s 48(1) of

the Act is completed, the power of the Government gets exhausted and further any attempt to deal with the said land can only be by way of a fresh acquisition proceedings. It is also submitted by the learned Senior Counsel that the present land owners (who are the petitioners) have not been given any notice before the cancellation was made by the Government.

12. The learned Special Government Pleader placed reliance upon the counter affidavit filed by the first respondent dated 20.2.2003 in W.P. No. 7110 of 1999. Likewise, the counsel for the second respondent also placed reliance upon the counter affidavit filed in the same writ petition, dated

20.12.2002. In the light of the rival contention, it has to be seen whether the impugned order of the Government is liable to be set aside on the ground raised by the petitioners.

13. Since reliance is placed upon Section 48 of the Land Acquisition Act, 1894, the said provision may be usefully extracted below:

48. Completion of acquisition not compulsory, but compensation to be awarded when not completed- (1) Except in the case provided for in

Section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage

suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together

with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.

14. Though Section 48(1) gives power to the State to withdraw from the acquisition proceedings, it does not specify any particular procedure for

making the exclusion. In the present case, G.O. Ms. No. 497, dated 23.3.1987 only expresses the Government's intention and the said decision is

not published in the government gazette. Further, the said order itself shows that the District Revenue Officer has been asked to send proposals for

denotification. It is an admitted case that no such proposal has been sent to the Government and no such notification has ever been published in the

gazette. But, however, taking advantage of Section 48(1) of the Act, the learned Counsel pointed out that Section 48(1) does not contemplate any

procedure and G.O. Ms. No. 497, dated 23.3.1987 is sufficient compliance of Section 48(1) of the Act.

15. The Supreme Court in the decision reported in M/s. Larsen and Toubro Ltd. Vs. State of Gujarat and Others, dealt with the scope of Section

48 of the Act. Para 30 from the said judgment may be quoted:

30. It was submitted by Mr Salve that Section 48 of the Act did not contemplate issue of any notification and withdrawal from the acquisition

could be by order simpliciter. He said that Sections 4 and 6 talked of notifications

being issued under those provisions but there was no such mandate in Section 48. It was thus contended that when the statute did not require to issue any notification for withdrawal from the acquisition, reference to Section 21 of the General Clauses Act was not correct. Section 21 of the General Clauses Act is as under:

21. Power to issue, to include power to add to, amend, vary or rescind, notifications, orders, rules or bye-laws.- Where by any Central Act, or

Regulation, a power to issue notifications, orders, rules, or bye-laws is conferred, then that power includes a power, exercisable in the like manner

and subject to the like sanction and conditions (if any) to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued.

Mr Salve said that Section 21 expressly referred to the powers being given to issue notifications etc. under an Act or Regulation and under this that

power included power to withdraw or rescind any notification in a similar fashion. It was therefore submitted that when Section 48 did not

empower the State Government to issue any notification and it could not be read into that provision that withdrawal had to be issued by a

notification. His argument, therefore, appeared to be that on correct interpretation of Section 21 of the General Clauses Act before reaching the

stage of Section 48, the State Government could withdraw notifications under Sections 4 and 6 of the Act by issuing notifications withdrawing or

rescinding earlier notifications and that would be the end to the acquisition proceedings. We do not think that Mr Salve is quite right in his

submissions. When Sections 4 and 6 notifications are issued, much has been done towards the acquisition process and that process cannot be

reversed merely by rescinding those notifications. Rather it is Section 48 under which, after withdrawal from acquisition is made, compensation due

for any damage suffered by the owner during the course of acquisition proceedings is determined and given to him. It is, therefore, implicit that

withdrawal from acquisition has to be notified.

16. Therefore, it cannot be said that the petitioners, who are the subsequent purchasers from the original land owners who suffered acquisition

proceedings, cannot contend that there is a valid order of exclusion u/s 48 of the Act. The L & T case (cited supra) also came to be referred to

and followed by a subsequent pronouncement of the Supreme Court in State

Government Houseless Harijan Employees Association v. State of

Karnataka AIR 2001 SC 437. In fact, in both the judgments, there is an emphasis that the requisitioning body's consultation is a must. In the

present case, the requisitioning body, namely, the second respondent- CMDA had objected to the withdrawal on the ground that if the lands are

excluded, it may hamper their development activities.

17. Apart from that, when questioned as to how the petitioners came into possession of the said land from the erstwhile owners, especially when

the entire acquisition proceedings had been gone through and a final Award has been passed much before the purchase made by the petitioners

and the compensation amount had also been deposited, it was contended by the petitioners that no physical possession was taken from the

erstwhile land owners. In the documents filed by them in the typed set, there is nothing to show that the original owners were given possession by

the revenue authorities after the Award was published and that the original owners were continued to be in lawful possession. The petitioners

cannot take advantage of the interim order passed by this Court, wherein it is stated that there would be a stay of dispossession pending the writ

petition. That by itself will not recognize the legal possession by the petitioners.

18. Even otherwise, the Supreme Court in the case of Tamil Nadu Housing Board Vs. A. Viswam (Dead) by Lrs., , dealt with a similar

controversy regarding physical possession being taken by the State. The following passage found in para 9 may be usefully extracted below:

9. It is settled law by series of judgments of this Court that one of the accepted modes of taking possession of the acquired land is recording of a

memorandum of panchnama by the LAO in the presence of witnesses signed by him/them and that would constitute taking possession of the land

as it would be impossible to take physical possession of the acquired land. It is common knowledge that in some cases the owner/interested

person may not cooperate in taking possession of the land.

The abovesaid passage was also quoted with approval in the Larsen & Toubro Limited v. State of Gujarat, cited supra.

19. As regards the last question whether the petitioners are entitled for any notice before cancellation of the provisional exclusion made by the

impugned order, it must be stated that the petitioners are neither original owners

of the land nor beneficiaries of the exclusion G.O. They are only subsequent purchasers. Their claim to be in physical possession is against the teeth of the Award passed by the State acquiring the land in question.

Since either u/s 48 or under any other provisions of the Land Acquisition Act, they are eligible for any exclusion, the question of any notice being

given to the subsequent purchasers or persons, who came into possession subsequently will not arise. The unreported decision referred to above,

relied on by the learned Counsel for the petitioner, does not take note of the authoritative pronouncements of the Supreme Court in this regard

and, thence, it does not help the case of the petitioner in any way.

20. In the light of the same, all the writ petitions will stand dismissed. Consequently, the connected miscellaneous petitions are also dismissed.

However, there will be no order as to costs.