

(2010) 11 MAD CK 0011

In the Madras High Court

Case No : Writ Petition No"s. 6108 and 20896 of 2009 and M.P. No"s. 1 and 2 of 2009

V. Chandrasekaran and Another

APPELLANT

Vs

Administrative Officer, Special Project Division, Tamil Nadu
Housing Board

RESPONDENT

Date of Decision : 01-11-2010

Acts Referred:

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

Citation : (2011) 2 MLJ 715

Hon'ble Judges : K.B.K. Vasuki, J

Bench : Single Bench

Advocate : Sathish Parasaran and T.T. Ravichandran, for the Appellant; A. Vijayakumar and C. Devi, for the Respondent

Judgement

K.B.K. Vasuki, J.—Both the writ petitions are arising out of the land acquisition proceedings initiated for the formation of Tambaram

Neighborhood Housing Scheme by issuance of Section 4(1) notification of the Land Acquisition Act in G.O. Ms. No. 826 dated 15.5.1978

pertaining to the lands situate in survey numbers 282/1, 282/2, 282/3, 283/1, 283/2, 283/3, 284/1, 284/2, 284/3, 284/4. Out of the total extent

sought to be acquired 0.57 acres was deleted and Section 6 declaration was published in respect of the lands to an extent of 58.02 acres and after

Section 6 declaration made on 6.6.1981, few land owners challenged Section 4(1) notification and Section 6 declaration by way of batch of writ

petitions in W.P. No. 8895 of 1983 etc. on two grounds i.e. (i) the land owners have not been given opportunity to submit their explanation and

(ii) Rule 3(b) was not complied with. The batch of writ petitions were disposed of by common order dated 16.12.1983 wherein the learned single

judge has quashed the declaration u/s 6 on the ground that there is serious flaw in not conducting the enquiry on the objections as well as the

remarks of the Housing Board as contemplated under Rule 3(b) and non-compliance of the procedure vitiates subsequent Section 6 declaration.

While doing so, the learned single judge has allowed Section 4(1) notification to standy, with liberty given to the government to take fresh

acquisition proceedings from the stage of Section 4(1) if desired.

2. As against the order of the learned single Judge rejecting the Petitioners claim for quashing 4(1) notification, the Petitioners preferred batch of

writ appeals in W.A. Nos. 215 to 222, 1435 of 1984 and the Hon''ble Division Bench has after detailed discussion, allowed the writ appeals by

common judgment dated 23.8.1985 by setting aside Section 4(1) notification In so far as the lands of the Appellants therein Is concerned on the

ground that Section 4(1) notification was published In the Gazette on 7.6.1978 and the publication In the locality was made only on 19.12.1978

more than six months later and there was no continuity of action. While doing so, the Hon''ble Division Bench has at para 12 of the judgment

observed that ""the learned single Judge had quashed the declaration u/s 6 of the Act and the subsequent proceedings and the Government had not

filed any appeal and that had become final"". Aggrieved against the same, the Government and the Housing Board have preferred SLP Nos. 7277

to 7289 of 1986 before the Hon''ble Supreme Court and the Hon''ble Supreme Court was by order dated 6.5.1992 pleased to dismiss the SL Ps

and confirmed the quashing of Section 6 declaration and subsequent proceedings and also quashed insofar as the Petitioners lands are concerned,

Section 4(1) notification.

3. Following the same, the second batch of writ petitions In W.P. Nos. 7645 of 1985 and 2167 of 1986 etc were filed by different land owners to

quash Section 4(1) notification and the same were by common order dated 22.12.1986 allowed in view of the earlier orders passed in the batch of

writ petitions thereby quashing Section 4(1) notification and subsequent proceedings insofar as the land of the Petitioners therein is concerned.

4. Thereafter, the government had not initiated any fresh Section 4(1) notification either in respect of the lands in respect of which Section 4(1)

notification was quashed or in respect of the entire remaining lands covered

under earlier Section 6 declaration and subsequent proceedings.

However, proceedings were initiated for determining the compensation for the remaining lands and the award proceedings was completed on 1983

and the compensation was also received by the erstwhile land owners. But, the actual possession was continued to be with the land owners.

5. Insofar as the Petitioners are concerned, they become the owners of the lands in survey numbers in question through different sale deeds

executed during 2004-05. The Petitioners before and after their purchase and few other land owners in respect of the lands covered under, the

land acquisition proceedings, have sought certain clarifications during 2004 as to whether any acquisition proceedings are pending in respect of the

survey numbers in question including that of the lands in question herein and the Special Tahsildar, TNHB scheme who is the competent authority

in so far as the acquisition proceedings is concerned, has by his communications dated 4.3.2004, 7.7.2005 and 11.8.2005 categorically stated that

no acquisition proceedings are pending in respect of those lands and no fresh proceedings will be initiated. Only after making due enquiry and after

getting satisfied that no acquisition proceedings are pending in respect of the lands in question, the Petitioners purchased the property for valuable

consideration and applied for planning permission and obtained due planning approval from all other authorities concerned and entered into

development agreement with the reputed builder viz., Doshi Estates, Chennai to put up a residential apartment complex and also through power of

attorney agent, proceeded with the construction of residential flats after obtaining building construction permission from local authorities and

transfer of patta from the Deputy Tahsildar, Tambaram. Thereafter, there was an attempt on the part of the third Respondent/Housing Board to put

up sign board as if the lands belong to them, which compelled the Petitioner to take due action and the authorities concerned removed the name

board. In the mean while, the erstwhile land owners and other land owners have also sought for reconveyance of the property on the ground that

as Section 4(1) notification in respect of portion of the lands in the survey numbers in question and Section 6 declaration in entirety were quashed

and as there was no further proceedings for which the acquisition proceedings initiated become lapsed. The Petitioners herein who are the

subsequent purchasers, have also filed an application before Chairman, High level committee, TNHB for reconveyance and issuance of NOC.

While the representation made for reconveyance by the erstwhile land owners and others was ordered in favour of some of the land owners and

rejected in respect of some of the land owners including erstwhile land owners and the Petitioners in the capacity of subsequent owners of the property, challenged such rejection in W.P. No. 20896 of 2009.

6. The Petitioners have made a representation dated 30.3.2009 to the Chairman of High level committee for reconvening the land and issuance of

NOC and as per the document enclosed at pages 4 to 7 of the typed set of papers, the request for reconveyance of the lands and NOC made by

the Petitioners is recommended by the Executive Engineer, TNHB and High level Committee, TNHB by proceedings dated 11.5.2009 and

16.6.2009 respectively, wherein it is categorically stated that as the batch of earlier writ petitions against the acquisition proceedings were decided

against the department and no appeal was preferred questioning the same and since 23 years have lapsed, filing of appeals is not possible at this

stage and though possession of some of the lands was handed over to TNHB, there is no approach road to the above lands and hence the above

lands could not be utilized. Since there is no access to the above lands, the same cannot be utilized for any purpose by TNHB and the lands may

be hence, released to the Petitioners on payment of compensation amount received by the land owners, land acquisition charges, development

charges if any. However, as there was no further progress in this regard, the same compelled the Petitioners to file, on the strength of the

recommendation made by the Engineer Engineer and High Level Committee, TNHB referred to above, W.P. No. 6108 of 2009 for declaring

Section 4(1) notification issued by the Government in respect of the lands belonging to the Petitioners as lapsed, abated and inoperative and to

consequently forbear the Respondents, their men, agents, subordinates in any manner interfering with the peaceful enjoyment/development of the

properties belonging to the Petitioners.

7. The short point which arises for consideration herein is as to whether quashing of Section 4(1) notification in respect of the lands in question and

Section 6 declaration in respect of the entire lands and failure on the part of the

Respondents to initiate fresh acquisition proceedings will render

Section 4(1) notification in respect of the remaining lands as lapsed and as to whether the determination of compensation and payment of

compensation to the erstwhile land owners without Section 6 declaration is illegal or whether the same will disentitle the Petitioners who are the

subsequent purchasers to challenge the acquisition proceedings if any.

8. I have considered the rival submissions made on both sides and perused the materials available on record.

9. It is not in dispute that the acquisition proceedings initiated in 1978 by issuance of 4(1) notification was quashed in respect of some of the lands

and Section 6 declaration and further acquisition proceedings were quashed as early as on 1983. But, the Government has without passing valid

Section 6 declaration, as per law, proceeded to pass compensation award and paid compensation to the land owners and in the absence of valid

fresh Section 6 declaration, the question of passing any award does not at all arise and hence, the award passed for the lands in question has to be

necessarily held nullity in the eye of law and the same renders the vesting if any of the lands in question upon Government and upon TNHB invalid

and they cannot deny the right of the owners of the land for reconveyance. In as much as the award was passed without following the procedure,

the same does not have the effect of depriving the Petitioners of their right to challenge the acquisition proceedings. As rightly argued by the learned

senior counsel for the Petitioners, by relying upon Section 11(A), Section 6 declaration cannot be made after expiry of one year from the date of

publication of the notice and no award can be passed after two years from the date of Section 6 declaration and the failure to issue Section 6

declaration and to pass award within the time specified in the Act, the entire acquisition proceedings become lapsed and no further acquisition

proceeding can be taken in respect of the lands belonging to the Petitioners notwithstanding the fact, Section 4(1) notification in respect of the

lands of the Petitioners are not quashed by the Court. On this score alone, the relief sought for herein has to be necessarily granted to the

Petitioners.

10. It is not in dispute that major portion of the lands covered under acquisition proceedings is already reconveyed to the respective land owners.

The authorities concerned have also repeatedly stated in their reply when sought for by other land owners including that of the Petitioners that no land acquisition proceedings is pending in respect of the lands in survey numbers in question. The High level committee, TNHB and the Executive Engineer, TNHB have also categorically stated in their recommendations that as the lands cannot be utilized for any other purpose by the Housing Board and as nothing is done so far insofar as the other lands are concerned, the same may be reconveyed to the land owners subject to payment of compensation and other statutory charges if any received by them. As a matter of fact, the recommendation so made in respect of the lands in question is upon the representation made by the Petitioners/subsequent purchasers. The learned Counsel for the Petitioners has also produced the copy of the letter in Ms. No. 397/LA.3(2)/07-4 dated 18.12.2007 issued by the Secretary to Government, Housing and Urban Development Department, Chennai-9 to one K. Palaniammal, whose lands also covered under land acquisition proceedings in Kalapatty village, Coimbatore District wherein Housing Board was directed to reconvey the land to Palaniammal who is the subsequent purchaser of the property. That being the factual position, the Petitioners though are the subsequent purchasers of the lands in question, have every right to maintain the writ petition and to claim reconveyance of the lands in question.

11. In view of such factual position, as referred to above that the acquired lands can no longer be utilized and is not contemplated for utilization in any other manner either by the government or by the Housing Board, the recommendations made by the High level committee, TNHB who is the competent authority is to be necessarily, accepted by the government and by Housing Board by duly reconvening the property to the Petitioners. Further, the Petitioners have also on the strength of the reply issued by the authority concerned, made considerable development after obtaining necessary planning permission from the competent local and other authorities and by entering into development agreement in respect of the property with third party and incurred huge expenditure. As rightly argued by the learned Counsel for the Petitioners, the same is done only in pursuance of the communications received from the competent authority that no land acquisition proceedings is pending in respect of the lands in

question. That being so, the authorities are also now stopped from opposing the claim of the Petitioners for reconveyance. Viewing from any angle,

the acquisition proceedings u/s 4(1) notification in respect of the lands in survey numbers in question is now held to be lapsed and abated and the

order of the fourth Respondent rejecting the claim of reconveyance which is the subject matter of the judicial review in W.P. No. 20896 of 2009 is

liable to be quashed. The Petitioners are also consequently entitled to the relief of injunction as sought for in W.P. No. 6108 of 2009.

12. In the result, Section 4(1) notification issued by the fourth Respondent in G.O. Ms. No. 826 dated 15.5.1978 in respect of the lands in survey

numbers in question is declared to be lapsed, abated and inoperative and the letter issued by the fourth Respondent in Letter No.

2899/LAI(1)/2007-6 dated 7.7.2008 is quashed as illegal and without jurisdiction. The fourth Respondent is directed to order reconveyance of

the lands in question to the Petitioners herein subject to the condition that the Petitioners deposit compensation received by the original land owners

along with other charges such as land acquisition charges and development charges etc., as contemplated under law with Interest at 15% p.a. from

the date of payment till the date of deposit within four weeks from the date of receipt of the copy of this order. The Respondents are directed to

order reconveyance of the lands in question to the Petitioners within six weeks thereafter. The Respondents are also directed to not to interfere

with the Petitioners' peaceful possession, enjoyment and development activities carried on by them in the lands in question.

13. Both the writ petitions are accordingly ordered. No costs. Consequently, connected Miscellaneous petitions are closed.