

(2010) 01 MAD CK 0093
In the Madras High Court

Case No : Writ Petition No. 20628 of 2009 and M.P. No's. 1 and 2 of 2009

V. Lakshmi, R. Uthrammal and S. Yasodha APPELLANT

Vs

The District Collector, Adi Dravidar Welfare Officer,
Department of Adi Dravidar Welfare and The Special
Tahsildar, Department of Adi Dravidar Welfare RESPONDENT

Date of Decision : 21-01-2010

Acts Referred:

Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 — Section 17,
3, 4(1), 5

Citation : (2010) 01 MAD CK 0093

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : AR. L. Sundaresan, SC for P. Valliappan, for the Appellant; R. Neelakantan, GA, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—Heard both sides. The three petitioners herein have filed the present writ petition seeking for writ in the nature of

mandamus forbearing the respondents from interfering with peaceful possession and enjoyment of the property situated in survey No. 38,

Sankarapalayam Village, Bhavani Taluk, Erode District.

2. Heard the arguments of Mr. AR. L. Sundaresan, learned Senior Counsel leading for Mr. P. Valliappan, learned Counsel appearing for

petitioners and Mr. R. Neelakandan, learned Government Advocate taking notice for respondents.

3. When the matter came up on 07.10.2009, this Court without admitting the writ petition, granted an interim injunction. The respondents have

come forward with a vacate injunction petition in M.P. No. 2 of 2009 supported

by a counter affidavit. However, the main matter itself was heard by this Court.

4. The petitioners claimed that the land measuring an extent of 6.18 acres in R.S. No. 38, Sankarapalayam Village, Bhavani Taluk, was a joint

family property belonging to late Viswanathan, the husband of the first petitioner. The second and third petitioners were daughters of late

Viswanathan. It is claimed that there was a registered partition deed on 12.12.1978 and "B" schedule property was allotted to the first petitioner's

husband. On 25.11.2000, the said Viswanathan died intestate leaving behind the petitioners and one Murugan as his legal heirs. On account of the

death of the said Viswanathan, the petitioners claimed that they were entitled to 3/8th share of the property and that his son Murugan and grandson

minor Vignesh were entitled to 5/8th share. The petitioners came to know that their lands were already acquired under the Tamil Nadu Acquisition

of Land for Harijan Welfare Schemes Act, 1978 (Tamil Nadu Act 31/78).

5. Therefore, they filed a suit before the Sub Court, Bhavani in O.S. No. 184 of 2003. In the said suit apart from other two legal heirs, the

petitioners have also impleaded the respondents herein as defendants 3 to 5. The suit is for a partition and for grant of permanent injunction from

taking over the 3/8th share of the property. In the suit, the fifth defendant (The Special Tahsildar, Adi Dravidar Welfare, Erode), who is the third

respondent herein, filed a written statement, dated Nil (January, 2005). In that, he took the stand that the subject matter of the suit land was

acquired under the Tamil Nadu Act, 31/78. Since the patta stood in the name of Viswanathan (the husband of the first petitioner), notice was

served on him. The said Viswanathan had appeared for an enquiry and gave his statement. He had also agreed for the acquisition of the land and

to receive the due compensation.

6. After the statement given by the said Viswanathan, a notification u/s 4(1) was issued in the Government District Gazette on a direction being

given by the District Collector on 22.12.1995. The said Notification had appeared in the special Villupuram District Gazette No. 5, dated

25.1.1996. Thereafter, an award was passed ordering compensation and the award enquiry was duly notified. Despite notice being served, the

said Viswanathan did not appear for the award enquiry. Therefore, an award was

passed on 26.3.1996. A sum of Rs. 80,937/- payable as compensation for the acquisition of land was kept under revenue deposit. The land records were also duly mutated in respect of 0.56.0 hectares (1.38 acres) as AD Natham in the village accounts on 2.4.1998. Therefore, it was stated that the suit itself was not maintainable.

7. A preliminary decree was passed on 27.4.2005 by the Sub court, stating that the petitioners were entitled for their 3/8th share. Pending final decree, the respondents were injuncted from interfering with the possession of the property of the petitioners. Further, the Subordinate Judge held that since it is a joint family property, the land could not have been acquired and the statement alleged to have been given by Viswanathan cannot be accepted as there is dispute regarding its authenticity. Since the petitioners were not notified by the authorities, the land acquisition was not valid.

8. Based upon the decree, the petitioners had been sending representations to the respondents and also continue to claim that they are in possession of the said land. When they did not get any reply, they have come forward to file the present writ petition with a prayer already extracted above. In order to prove that they are in possession of the acquired land, they have also enclosed a copy of the certificate issued by the Village Administrative Officer without indicating any date on which such certificate was issued.

9. On the writ petition, notice was given to the respondents to be privately served and an interim injunction was granted. The respondents have come forward to file a vacate injunction application in M.P. No. 2 of 2009 supported by a counter affidavit, dated 29.10.2009. When that application came up for hearing, the main writ petition itself was taken up for hearing.

10. In the counter affidavit, it was stated that the land in question was already acquired in the year 1996 and free pattas were given to the beneficiaries, who are Adi Dravida people of the village, in 1996 itself. The petitioners, in the guise of the interim order passed by the civil court, were trying to restrain the beneficiaries from entering into their land. The Government had taken possession of the said land and also handed over its possession to the Adi dravida beneficiaries on 03.10.2009 itself. The

beneficiaries have put up thatched sheds in the property and are residing in the property from then onwards.

11. Mr. AR. L. Sundaresan, learned Senior Counsel leading Mr. P. Valliappan for the petitioners submitted that the petitioners are safeguarded by the preliminary decree passed by the civil court, in which the respondents were also parties. Until such time the said judgment and decree are set aside by an higher forum, the petitioners are entitled to invoke the benefits of the preliminary decree. He also submitted that the contentions raised by the respondents were put forth before the civil court and the civil court had rejected the same. Further, the petitioners, who are the joint owners of the properties, were not issued with any notice during the land acquisition proceedings. Therefore, they need not challenge the proceedings initiated by the State. He further submitted that the petitioners are in possession of the property as evidenced by the certificate issued by the Village Administrative Officer.

12. This Court is unable to agree with any one of the submissions made by the petitioners. As the proceedings were initiated under Tamill Nadu Act 31/78, which had culminated into an Award, the parties who are aggrieved should not have challenged indirectly the acquisition before the civil court since there is a complete bar of jurisdiction of the civil court u/s 17 of the Act. Section 17 of the Act reads as follows:

17. Bar of jurisdiction of Civil Court.- Save as otherwise expressly provided in this Act, no Civil Court shall have jurisdiction in respect of any matter which the Government or the District Collector or the prescribed authority is empowered by or under this Act, to determine and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

13. Further when proceedings are initiated under Tamil Nadu Act 31/78, notice will have to be given to the owners. The term "owner" has been defined u/s 3(h) of the Act, which reads as follows:

3(h) "owner" includes any person, who is receiving or is entitled to receive the rent of any land or building, whether on his own account or on behalf of himself and others or as an agent, trustee, executor, administrator, receiver or guardian or who would so receive the rent or be entitled to

receive the rent, if the land or building were let to a tenant.

14. In the present case, the third respondent had clearly put forth his defence before the civil court. The civil court without any rhyme or reason did

not go into the issue. In the acquisition proceedings, the first petitioner's husband was given due notice and he had only wanted an appropriate

compensation. Though the said admission was disputed, but it cannot be done by a collateral attack. The petitioners have not come forward to

challenge the acquisition proceedings. In the absence of such a challenge, this Court cannot go into the issue raised by the petitioners.

15. But it is suffice to state that once a notification was issued u/s 4(1), then u/s 5, the land vests with the Government free from all encumbrances.

Section 5 of the Act reads as follows:

5. Land acquired to vest in Government free from all encumbrances. - When a notice under Sub-section (1) of Section 4 is published in the District

Gazette, the land to which the said notice relates shall, on and from the date on which the notice is so published, vest absolutely in the Government

free from all encumbrances.

16. Therefore, the petitioners cannot file a suit contrary to Section 5 read with Section 17 of the Act. Though the preliminary decree was passed

by the civil court on the partition issue, the injunction prayer cannot have any bearing in the light of the legal provisions set out above. If at all, the

decree is only a nullity. Whenever such decree is produced, the question of nullity can always be raised.

17. The last submission that the possession is still in the hands of the petitioners also cannot be accepted in view of the assertion made in the

counter affidavit filed by the third respondent. Even otherwise u/s 5 of the Act, possession of the land vest with the State Government the moment

a notification u/s 4(1) is published. In the present case, the award enquiry has been completed and due compensation has been kept in the revenue

deposit in the name of the first petitioner's husband.

18. As already set out, notice has been given to the husband of the first petitioner. If at all, there is any grievance, they should have logically

questioned the acquisition in a manner known to law before an appropriate forum. Further, the term ""owner"" has been defined u/s 3(h) of the Act.

It clearly talks about even the trustee or administrators or guardians being the

owner. If the property is a joint family property and the husband of the first petitioner is a karta, even then he will be a owner in terms of the Act. If there are strangers who institutes a suit due to lack of knowledge about the acquisition proceedings, it can be understandable. But, in the present case, the first petitioner is the wife and the second and third petitioners are the children of the deceased. Therefore, they cannot feign ignorance about the proceedings initiated by the respondents. As the certificate issued by the Village Administrative Officer has no evidentiary value in the eye of law, on the strength of the said certificate, no one can claim to be in possession.

19. With reference to claims for possession of the land by the petitioners, it must be stated such a claim is illegal in the teeth of the Tamil Nadu Act

31/78. Further regarding the claim for possession, it is also necessary to refer to the judgment of the Supreme Court in Tamil Nadu Housing Board

Vs. A. Viswam (Dead) by Lrs., . In that case, after considering the judgment in Narayan Bhagde's case, this Court observed that while taking

possession of a large area of land (in this case 339 acres) a pragmatic and realistic approach had to be taken. This Court then examined the

context under which the judgment in Narayan Bhagde's case had been rendered and held as under:

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 or Panchanama 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 cooperative in taking possession of the land.

20. The said judgment came to be quoted with approval and followed by the Supreme Court recently in Sita Ram Bhandar Society, New Delhi

Vs. Lt. Governor, Govt. of N.C.T. Delhi and Others, , where after referring to Viswam's case (cited supra), in paragraph 9, it was observed as

follows:

9. It would, thus, be seen from a cumulative reading of the aforesaid judgments, that while taking possession of a large area of land with a large

number of owners, it would be impossible for the Collector or the Revenue

Official to enter each bigha or biswas and to take possession thereof

and that a pragmatic approach has to be adopted by the Court. It is also clear that one of the methods of taking possession and handing it over to

the beneficiary department is the recording of a Panchnama which can in itself constitute evidence of the fact that possession had been taken and

the land had vested absolutely in the Government.

21. Hence the claim of possession of the land in the teeth of the legal provision cannot be accepted. In the light of the above, the contentions of the

petitioners cannot be accepted. Hence the writ petition will stand dismissed. No costs. Consequently, connected miscellaneous petitions also stand

dismissed.