
(2011) 08 MAD CK 0250

In the Madras High Court

Case No : Writ Petition No's. 7492 of 2010

V. Senthil Kumar and Others

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 03-08-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 21, 46
Land Acquisition Act, 1894 — Section 48B

Citation : (2011) 08 MAD CK 0250

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : Nalini, Chidambaram, for C. Uma and Kavitha Deenadayalan, for the Appellant; V. Subbiah, Spl. G.P. for R1 and R3 and A. Vijaya Kumar, for R2, for the Respondent

Judgement

1. The first writ petition (W.P. No. 7492 of 2010), is filed by 29 Petitioners, who are the residents of Anjugam Nagar, Chennai -99, seeking for a writ of Declaration, declaring that the action of the Respondents in taking possession of the Petitioners' property in Survey No. 144/2 at Anjugam Nagar, after the scheme for which the lands were acquired by the first Respondent State under the Central Act on behalf of the second Respondent had lapsed, is arbitrary and violative of Article 14 of the Constitution and for a consequential order to forbear the second Respondent from taking possession of the Petitioners' properties.

2. The writ petition was not admitted, but however, it was recorded that the Petitioners, claimed to be the owners of the property constructed houses on the basis of the plan sanctioned by the CMDA and it was an approved lay out issued by the Directorate of Town and Country Planning. The Petitioners have also produced documents for having paid Property Tax, Water and Sewerage Tax issued by the competent authorities. Since the third Respondent - Special Tahsildar, Purasawalkam at the instance of the second Respondent was attempting to demolish the residential premises owned by the Petitioners and were also attempting to evict them without due process, an order of injunction

was granted restraining the Respondents from proceeding with demolition.

3. Subsequently, the other five writ petitions (W.P. Nos. 9364 to 9368 of 2010) came to be filed who are also residents of the same area and were original owners of the land filed the said writ petitions. When those writ petitions came up for admission on 29.04.2010, it was directed to be posted with the first writ petition and an order of interim injunction was also granted.

4. The contention raised by the Petitioners in the first writ petition was that they all belong to the low income group. They had purchased the land in S. No. 144/2 in Anjugam Nagar several years ago. They had also constructed residential building in their lands after getting the building plan sanctioned from the CMDA. Some of the Petitioners have also purchased the land along with the building. They had also enclosed the copies of the sale deed, plan approval obtained by them, proof of their having paid property tax assessed by the Corporation and also proof of having paid Water and Sewerage Tax. They had also produced the family Ration Card issued to them in the relevant address. However, without any prior notice, on 01.04.2010, the officials of the third Respondent along with the revenue authorities came to the area with Police support and forcibly entered into the 3rd Cross Street and 4th Street in Anjugam Nagar, Kolathaur with bulldozers and tried to demolish the Petitioners' houses. They were informed that the lands were acquired under the Land Acquisition Act for implementing a Housing Scheme for the Thiru. Vi. Ka. Kudiyruppor Sangam by the second Respondent Housing Board even in the year 1975. It was claimed that most of the lands adjacent to the 3rd Cross Street and 4th Street were acquired several years ago on behalf of the Housing Board for the Housing Scheme and the Housing Board had constructed houses for implementation of the said Scheme. However, the houses constructed by the second Respondents were not allotted to the members of the Sangam as the members of the Sangam had already constructed their own houses elsewhere and settled there. Hence, the Housing Board was forced to sell the houses built already to the public. Therefore, the housing Scheme conceived by the second Respondent for which the lands were acquired had lapsed. It was also stated that it was unreasonable on the part of the Housing Board to demolish the houses already constructed by the Petitioners and again build houses for the purpose of executing a Scheme, which does not exist any more. The Petitioners themselves who belong to low/middle income groups, had mobilized their own resources to purchase the property and built houses, it will be unreasonable for the Housing Board to demolish their houses and again build houses for low/middle income group in the same property.

5. In the subsequent writ petitions, the Petitioners had admitted that they had filed a writ petition in W.P. No. 610 of 1984 at the time of land Acquisition and the same was also dismissed by this Court on 26.11.1981. It was claimed that the Court gave liberty to make representation to the Government setting forth all the facts in detail for dropping the acquisition proceedings. However, the Petitioners did not make any representation to the State Government for

dropping the proceedings. It was stated that since the second Respondent did not disturb their possession, they continued to reside in the property along with their family without any interference and it was only in April 2010, the authorities had attempted to forcibly evict them.

6. On notice from this Court, the second Respondent Housing Board had filed a common counter affidavit dated 20.06.2011. In the counter affidavit, it was stated that in S. No. 144/2 of Kolathur Village, an extent of 1.33 acres were acquired by Award No. 10/83 dated 29.07.1983. Some of the Petitioners had earlier filed a writ petition being W.P. No. 610 of 1984 against the acquisition proceedings and it was also dismissed by this Court. The lands were acquired after following due procedure under the Land Acquisition Act and it belongs to the Tamil Nadu Housing Board. The Petitioners have encroached the lands of the Housing Board. It was also claimed that the Housing Board had constructed houses under the said Scheme and sold out the houses to the members of the Thiru. Vi. Ka. Kudiyiruppor Sangam as well as to the general Public. Since the land belonged to the Housing Board, the Petitioners, who are encroachers are liable to be evicted.

7. A copy of the order passed by this Court in W.P. No. 610 of 1984 dated 20.11.1991 was also produced. In that writ petition, some of the Petitioners contended that they had purchased the land as an approved lay out. Since the Housing Board intended to build houses for the low income group, most of the members of the Sangam were not interested in taking the houses and hence sought to drop the proceedings initiated. This Court dismissed the said writ petition but gave liberty to the land owners to pursue their claim with the State government. The Petitioners did not make any representation to the State Government, but has come forward to file the writ petitions with the reasons set out above.

8. Ms. Nalini Chidambaran, learned Senior Counsel appearing for the Petitioners submitted that inasmuch as the very purpose of the Housing Board is to construct houses through a Scheme and lands were also acquired, but for over 20 years, as no Scheme had come into existence, the Scheme must be deemed to have lapsed. As the Petitioners, on their own resources have built houses, at this stage should not be allowed to be evicted by demolishing their houses. Constructing new houses in the very same area, no purpose will be served. Hence, the Petitioners must be allowed to reside in their own place without any disturbance from the second Respondent.

9. Per Contra, Mr. A. Vijaya kumar, learned Standing Counsel for the second Respondent TNHB submitted that the Petitioners are encroachers and the lands belonged to the Housing Board. The learned Counsel placed reliance on the judgment of the Supreme Court in U.P. Jal Nigam, Lucknow through its Chairman and another Vs. M/s. Kalra Properties (P) Ltd. Lucknow and others, for contending that a purchaser of the land subsequent to the land acquisition do not acquire any right, title or interest in the land and he cannot challenge the validity

of the notification under the Act.

10 The learned Standing Counsel further referred to a judgment of the Supreme Court in *Star Wire (India) Ltd. Vs. State of Haryana and Others*, for contending that subsequent to the issuance of notification u/s 4(1), any encumbrance created by the erstwhile owner after publication of the notification does not bind the State and the subsequent purchaser has no right to challenge the legality of the acquisition.

11. He also referred to another judgment of the Supreme Court in *Meera Sahni Vs. Lt. Governor of Delhi and Others*, for contending that a subsequent purchaser under the Land Acquisition Act cannot challenge the acquisition proceedings. In that judgment, the judgment in *U.P. Jal Nigam and Star Wire (India) Ltd* cases (cited *supra*) were referred to.

12. The learned Senior Counsel for the Petitioners produced photographs to show that the in the land in question, pucca buildings have come up and documents produced in a bulky typed set also showed that the Petitioners have been living in that area for several years and were also paying Property Tax, Water and Sewerage Tax. They are also having Ration Cards issued in their favour.

13. In this context, it has to be seen whether any relief can be given to the Petitioners. As rightly contended by the learned Counsel for the Housing Board that majority of the Petitioners are subsequent purchasers and they cannot question the land acquisition made on behalf of the Housing Board for executing their own scheme. Even some of the Petitioners who are original land owners have failed in their attempt to challenge the acquisition proceedings and this Court had rejected their case with liberty to make representation and that also has not been done.

14. Conscious of this fact, the learned Senior Counsel did not go into the validity of the land acquisition, but confined her arguments about the Housing Board Scheme having lapsed, the Petitioners must be allowed to have the lands restored to them and to continue their living in the houses built with their own funds.

15. It was submitted that the "right to shelter" is traceable to Article 21 of the Constitution. When the Petitioners themselves purchased plots and built their own houses, it will be a mockery for the State to have acquired the very same land for the purpose of a housing scheme. In this context, it is necessary to refer to the following judgments of the Supreme Court.

16. The Supreme Court in more than one decision had emphasized the "right to shelter" as part of the Fundamental Right guaranteed under Article 21 of the Constitution. The Supreme Court in *M/s. Shantistar Builders Vs. Narayan Khimalal Totame and others*, , in paragraphs 9 to 11 and 13 held as follows: "Para 9.: Basic needs of man have traditionally been accepted to be three - food, clothing and shelter. The right to life is guaranteed in any civilized society. That

would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in. The difference between the need of an animal and a human being for shelter has to be kept in view. For the animal it is the bare protection of the body; for a human being it has to be a suitable accommodation which would allow him to grow in every aspect - physical, mental and intellectual. The Constitution aims at ensuring fuller development of every child. That would be possible only if the child is in a proper home. It is not necessary that every citizen must be ensured of living in a well-built comfortable house but a reasonable home particularly for people in India can even be mud-built thatched house or a mud-built fire-proof accommodation.

Para 10.: With the increase of population and the shift of the rural masses to urban areas over the decades the ratio of poor people without houses in the urban areas has rapidly increased. This is a feature which has become more perceptible after independence. Apart from the fact that people in search of work move to urban agglomerations, availability of amenities and living conveniences also attract people to move from rural areas to cities. Industrialisation is equally responsible for concentration of population around industries. These are features which are mainly responsible for increase in the homeless urban population. Millions of people today live on the pavements of different cities of India and a greater number live animal-like existence in jhuggis.

Para 11.: The Planning Commission took note of this situation and was struck by the fact that there was no corresponding rise in accommodation with the growth of population and the shift of the rural people to the cities. The growing realisation of this disparity led to the passing of the Act and acquisition of vacant sites for purposes of housing. Considerable attention has been given in recent years to increasing accommodation though whatever has been done is not at all adequate. The quick growth of urban population overshadows all attempts of increasing accommodation. Sections 20 and 21 of the Act vest power in the State Governments to exempt vacant sites from vesting under the Act for purposes of being taken over if housing schemes are undertaken by owners of vacant urban lands. Section 21 specifically emphasises upon weaker sections of the people. That term finds place in Article 46 of the Constitution and Section 21 uses the same language. "Weaker sections" have, however, not been defined either in the Constitution or in the Act itself. An attempt was made in the Constituent Assembly to provide a definition but was given up. Attempts have thereafter been made from time to time to provide such definition but on account of controversies which arise once the exercise is undertaken, there has been no success. A suggestion for introducing economic criterion for explaining the term was made in the approach to the Seventh Five Year Plan (1985-1990) brought out by the Planning Commission and approved by the National Development Council and the Union Government. A lot of controversy was raised in Parliament and the attempt was dropped. In the absence of a definition perhaps a proper guideline could be indicated but no serious attention has been devoted to this

aspect.

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Para 13.: In recent years on account of erosion of the value of the rupee, rampant prevalence of black money and dearth of urban land, the value of such land has gone up sky-high. It has become impossible for any member of the weaker sections to have residential accommodation anywhere and much less in urban areas. Since a reasonable residence is an indispensable necessity for fulfilling the constitutional goal in the matter of development of man and should be taken as included in "life" in Article 21, greater social control is called for and exemptions granted under Sections 20 and 21 should have to be appropriately monitored to have the fullest benefit of the beneficial legislation....

17. Similarly, the very same view was reiterated in U.P. Avas Evam Vikas Parishad and another Vs. Friends Co-op. Housing Society Ltd. and another, . It is necessary to refer to the following passage found in para 8 of the said judgment:

Para 8: "... Right to shelter is a fundamental right, which springs from the right to residence assured in Article 19(1)(e) and right to life under Article 21 of the Constitution....

18. In the decision of the Supreme Court in Sube Singh and Others Vs. State of Haryana and Others, , is found the owners of the lands objected to the acquisition on the ground that structures in the land had already come up and therefore their lands should be excluded from the acquisition. When the Government refused to accede to their request, the Supreme Court found fault with the stand of the State Government and observed in paragraphs 11 and 12, which is as follows:

Para 11. On the facts and circumstances of the case revealed from the records, we are persuaded to accept the contention raised on behalf of the Appellants that the rejection of the request of the Appellants for exclusion of their land having structures on them was not based on a fair and reasonable consideration of the matter. We are of the view that such action of the Government is arbitrary and discriminatory. Unfortunately, the High Court failed to judge the cases in their proper perspective.

Para 12. "In the result, the appeals are allowed. The judgments under challenge are set aside, the orders passed by the State Government rejecting the representation of the Appellants are quashed. The Secretary, Urban Estates Department, State of Haryana, Respondent 1 herein, is directed to consider the objection petitions filed by the Appellants for exclusion of their properties from acquisition and pass appropriate order excluding such lands having structures on them excepting any land which is required for construction of a road or hospital. Respondent 1 shall give opportunity of hearing to the Appellants before taking the decision.

19. The said decision came to be quoted with approval in the subsequent decision of the Supreme Court in Jagdish Chand and Anr. v. State of Haryana and Anr. reported in (2005) 10 SCC 162.

20. But in the present case, since the acquisition proceedings had reached finality even three decades back, it is for the Petitioners to file representation to the State Government for exercising their power u/s 48-B of the Land Acquisition Act. If the purpose for which the lands were acquired was not fulfilled and the acquiring authority is willing to return the land to the State Government, the State Government can re-convey the land to the original owners. Though in the present case, majority of the Petitioners were not the original owners and only some of them are original owners and they can still apply to the State Government for exercising power u/s 48-B of the Land Acquisition Act. Even the subsequent purchasers can also make such application. The State Government while considering the application of the original land owners and the subsequent purchasers will consider the question of reconveyance of the lands after collecting the market value of the property. While doing so, the State Government shall take into account the nature of structures that have come up since the date of Award and as to whether the original purpose of acquisition had still survived and also the legal precedents set out above.

21. The Petitioners are directed to make applications to the State Government within a period of four weeks from the date of receipt of this order. If such applications are received, the first Respondent State Government shall consider their request in accordance with law. On receipt of the application, the State Government shall pass orders within three months from the date of the representation and communicate the result to the Petitioners. Until the communication of the result of their application to the Petitioners, status quo as on date shall be maintained.

22. The writ petitions are disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.