

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23-12-2005

Coram

The Honourable Mr.Justice R.BALASUBRAMANIAN
and
The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

Writ Appeal Nos.2584, 2585, 2586 of 2002
W.A.M.P.Nos.4374, 4375, 4376 of 2002

N.D.Ramanujam ... Appellant in W.A.2584/2002/
Petitioner in W.P

N.D.Rangan ... Appellant in W.A.2585/2002
Petitioner in W.P

N.D.Raghavan ... Appellant in W.A.2586/2002
Petitioner in W.P

Vs.

1. The State of Tamil Nadu,
rep.by its Secretary to Government,
Revenue Department,
Fort St.George,
Chennai - 600 009.
2. The Secretary
Housing and Urban Development Department,
Fort St.George,
Chennai - 600 009.
3. The Collector of Madras,
Chepauk,
Chennai - 600 005.
4. The Special Tahsildar (L.A-III),
Tamil nadu Housing Board Scheme,
Nandanam,
Chennai - 600 035
5. The Executive Engineer and Administrative Officer,
K.K.Nagar Division,
T.N.H.B., Ashok Nagar,
Madras - 83. ... Respondents in all appeals/
Respondents in all WPs

Writ appeals filed under Clause 15 of the Letters Patent, against the common order of the learned single Judge dated 31.7.2002 made in W.P.Nos.15453/1995, 15455/1995 and 15454/1995 respectively.

W.P.Nos.15453 to 15455/95

Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for all the records of the respondents herein connected with the Award enquiry proceedings challenged herein and quashing the entire proceedings in Award No.1/94 dt. 19.8.1994 of the fourth respondent in respect of the property in Question situated in T.S.Nos.3/1, (Part) 3/3. and 3/5 Block No.31, Mambalam Village, Mambalam, Guindy Taluk, Madras District, Madras respectively.

For Petitioners in all W.As. ... Mr.G.Masilamani,
Senior Counsel for
Mr.T.Maikandan

For Respondents 1 to 3 in all W.As... Mr.S.Kandasamy
Spl. Govt. Pleader.

For Respondents 4 and 5 in all W.As... Mr.D. Veerasekaran.

COMMON JUDGMENT

(Judgment of the Court was made by N.PAUL VASANTHAKUMAR, J.)

These writ appeals are filed against the common order passed by the learned single Judge in W.P.Nos.15453 to 15455 of 1995 dated 31.7.2002. The appellants/writ petitioners, in their respective writ petition, challenged the Award dated 19.8.1994, passed under the Land Acquisition Act, 1894. The learned single Judge negatived the contentions of the writ petitioners and consequently dismissed the writ petitions, against which the present writ appeals are preferred.

2. (a) Mr.G.Masilamani, learned Senior Counsel appearing for the appellants/writ petitioners made two legal submissions. Firstly the learned Senior counsel contended that the Land Acquisition Officer, who passed the Award, failed to follow the procedures contemplated under Section 9(2) of the Land Acquisition Act in respect of giving 15 days time to appear for the award enquiry. The second contention is that prior approval was not obtained by the Officer from the appropriate Government or of such officer as the appropriate Government may authorise in this behalf, since the compensation amount in each of the Award is more than Rs.10/- lakhs. The learned Senior Counsel further submitted that

Section 4(1) notification was issued on 30.7.1987; Section 6 declaration was published in the gazette on 14.9.1988; local publication was made on 16.9.1988; and a notice under Section 9 and 10 was issued on 9.3.1990. It is further submitted that the acquisition proceedings were challenged on 24.4.1990 by filing W.P.No.5375 and 5376 of 1990 and an interim stay from this Court was obtained on 30.4.1990. This Court dismissed the said writ petitions on 5.4.1994.

(b) The learned Senior Counsel argued that on 11.8.1994, notice under Sections 9 and 10 of the Land Acquisition Act, for award enquiry was issued with a direction to appear for award enquiry on 18.8.1994 and on 18.8.1994, a counsel appeared on behalf of the writ petitioners and prayed for time, but however, award was passed on 19.8.1994. According to the learned Senior Counsel, as such the notice issued to appear for award enquiry, giving less than 15 days time, is vitiated, as it is in contravention of section 9(2) of the Land acquisition Act. The appellants were not given sufficient time to effectively represent in the award enquiry, which caused prejudice to the appellants.

(c) In support of his second contention, the learned Senior Counsel drew our attention to ground (c) raised in the affidavit filed in support of the writ petitions, which reads as follows,

"The approval of the appropriate Government has not been accorded which is apparent from a perusal on the Award by its conspicuous absence. The prior approval of the appropriate Government is to be obtained within the statutory period prescribed under first proviso to section 11(1) of the Land Acquisition Act and the Award is lapsed if no approval is obtained."

This is one of the common ground raised in all the writ petitions, against which the present writ appeals are preferred.

3. Mr.S.Kandasamy, learned Special Government Pleader even though pointed out the defence raised in paragraph 13 of the counter affidavit that the award was passed by the Land Acquisition Officer only after getting approval of the Government in each stage, no specific date is mentioned in the counter affidavit with regard to the date on which the approval from the competent authority was obtained prior to passing of the award on 19.8.1994.

4. Among the two points raised for consideration in these writ appeals, first we take up the second point.

5. Proviso to Section 11(1) of the Land Acquisition Act clearly states that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may

authorise in this behalf. It is further stated that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf. The appropriate authority to approve the award is notified in G.O.Ms.No.2003, Revenue, dated 30.12.1984, in which it is stated that the Commissioner of Land Administration has to approve every award, in which the total compensation exceeds Rs.10/- lakhs.

6. The learned Single Judge, as regards the prior approval of the Commissioner of Land Administration, held in the order that the learned Special Government Pleader produced the original file No.Pa.Mu/21657/89, dated 29.5.1990 from the Office of the Commissioner, Land Administration and observed that after going through the file it is seen that the Note Order was signed by the Special Commissioner and Commissioner of Land Administration and in the copy communicated to the District Collector, the same was signed by the lower officer. After observing so, the learned Single Judge came to the conclusion that the Award in question got the prior approval of the Commissioner of Land administration as per Section 11(1) of the Act.

7. The learned Senior Counsel for the appellants reiterated the above point and requested this Court to peruse the file to find out as to when actually the prior approval was given as the prior approval could have been given on 18.8.1994 or on 19.8.1994 only.

8. On the basis of the above submission, this Court directed the learned Special Government Pleader to produce the file, for which the learned Special Government Pleader submits that he has received a communication from the Government that the said file was destroyed on 2.6.2003 itself, after the passage of ten years, as a routine office procedure. The said submission of the learned Special Government Pleader is hereby recorded. It is needless to point out at this juncture that the writ petitions challenging the award was filed in September, 1995 and the writ petitions were disposed of by the learned Single Judge on 31.7.2002. The writ appeals were filed on 20.8.2002 and admitted on 22.8.2002. Even according to the learned Special Government Pleader, the file was destroyed on 2.6.2003, that is, long after the admission of the writ appeals. Hence the non-production of the file for perusal of this Court to verify the actual date of prior approval of the Commissioner of Land Administration is to be taken as an adverse inference, as the date of prior approval of the Commissioner of Land Administration is not stated or disclosed anywhere for satisfying the compliance of Section 11(1) of the Act.

9. In view of the above said fact and as no record to show that the prior approval had in fact been obtained before passing the award dated 19.8.1994, clearly established the failure on the

part of the respondents in not following the mandatory requirements under section 11(1) of the Land Acquisition Act.

10. (a) The learned Senior Counsel relied on 1999 (III) CTC 715 (T.Paramaraj v. State of Tamil Nadu), wherein a learned Single Judge of this Court in para 5 held that as per the first proviso to section 11 of the Land Acquisition Act, before passing of an award, prior approval of the appropriate Government or such authority as prescribed, is a mandatory one. In that case, the approval was given by an incompetent authority, namely, the District Revenue Officer. The said approval was not considered as a valid approval and consequently this Court quashed the award.

(b) In yet another decision relied on by the learned Senior Counsel reported in 2001(3) Law Weekly 518 (Venkatesan P. & Others v. The Government of Tamil Nadu & Others), another learned Single Judge of this Court held that prior approval of the award, if the amount exceeds Rs.10 lakhs, is mandatory. In that case as the prior approval having not been obtained as required under section 11(1) of the Land Acquisition Act, the award was declared as null and void and the same was set aside.

11. As stated supra, since the respondents have not proved the prior approval of the award dated 19.8.1994 by the Commissioner of Land Administration, which is a mandatory one as per Section 11 (1) of the Land Acquisition Act, the impugned award No.1 of 1994 is liable to be set aside and is accordingly set aside. In view of our above findings and consequential setting aside of the award dated 19.8.1994, this Court is of the opinion that the first point raised by the learned Senior Counsel need not be taken up for consideration.

12. In the result, the writ appeals are allowed by setting aside the common order of the learned single Judge dated 31.7.2002 and the writ petitions are allowed.

Sd/-

Asst. Registrar.

/true copy/

Sub Asst. Registrar.

vr

To

1. The Secretary to Government,
State of Tamilnadu,
Revenue Department,
Fort St.George,
Chennai - 600 009.
 2. The Secretary
Housing and Urban Development Department,
Fort St.George,
Chennai - 600 009.
 3. The Collector of Madras,
Chepauk,
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 4. The Special Tahsildar (L.A-III),
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Nandanam,
Chennai - 600 035
 5. The Executive Engineer and Administrative Officer,
K.K.Nagar Division,
T.N.H.B., Ashok Nagar,
Madras - 83.
 6. The Section Officer, V.R. Section, High Court, Madras
- 1 cc to Govt. Pleader, SR. 50917
1 cc to Mr.T.Maikandan, Advocate, SR. 50768
1 cc to Mr.D. Veerasekaran, Advocate, SR. 103/06

W.A.Nos.2584 to 2586 of 2002

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