

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.7.2007

CORAM:

THE HONOURABLE MR.JUSTICE ELIPE DHARMA RAO
AND
THE HONOURABLE MR.JUSTICE S.PALANIVELU

WRIT APPEAL No.1525 OF 2001

T.N.Rajasekaran ... Appellant/Petitioner

-vs-

- 1.State of Tamil Nadu,
rep.by the Secretary to Government,
Housing and Urban Development Department,
Fort St.George, Chennai-600 009.
 - 2.The Spl.Deputy Collector, (L.A.),
Tamil Nadu Housing Board Schemes,
Nandanam, Madras-35.
 - 3.The Chief Executive Officer,
Madras Metropolitan Development Authority,
Race Tower Buildings,
Mount Road, Guindy,
Madras-32.
- ... Respondents/Respondents

Appeal against the order dated 07.12.2000, made in W.P.No.81 of 1991, on the file of this Court writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records in G.O.Rt.No.124, Housing Department dated 08.05.1975 published in the Tamil Nadu Gazette on 11.06.1975 on the file of the first respondent herein and quash the notification issued under Section 4(1) of the Land Acquisition Act relating to the property in Survey Nos.36, 37, 38, 39, 53/1A, 53/1B, 53/2 and 54 measuring 1.90 acres from and out of the total extent of 6.94 acres in Nerkundram Village, Saidapet Taluk, Chingleput District.

For appellant	: Mr.S.David Tyagaraj
For respondents 1 & 2	: Mr.K.Balakrishnan, Addl.Govt.Pleader.
For respondent 3	: Mr.J.Ravindran

JUDGMENT

S.PALANIVELU, J.

The appellant herein has filed W.P.No.81 of 1991 for a Writ of Certiorari to call for the records in G.O.Rt.No.124, Housing Department, dated 8.5.1975 published in the Tamil Nadu Gazette on 11.6.1975 on the file of the first respondent and quash the notification issued under Section 4(1) of the Land Acquisition Act relating to the property in S.Nos.36,37,38,39, 53/1A, 53/1B, 53/2 and 54 measuring 1.90 acres from and out of the total extent of 6.94 acres in Nerkundram village, Saidapet Taluk, Chingleput District. Since the said writ petition was dismissed by the learned single Judge, this Writ Appeal has been preferred.

2. The case of the appellant/petitioner is that the lands comprised in Survey Nos.36,37,38,39,53/1A, 53/1B,53/2 and 54, sprawling to an extent of 6.94 acres in Nerkundram Village, Saidapet Taluk, were acquired by the appellant through a partition deed of the year 1964 and a release deed of the year 1972. He laid out the entire land into 83 house site plots, providing sufficient land for public purpose and road, naming the lay-out as Neelamegamnagar, in memory of his father. The lay-out was duly approved and sanctioned by the Director of Town and Country Planning, in his proceedings No.273/73, dated, 01.10.1973. He set apart a portion of the land for laying roads and spent a considerable amount of money in leveling and developing the plots. Such portion, earmarked for laying roads and streets, would come to an extent of 1.90 acres, out of 6.94 acres, after selling of some of the plots in the approved lay-out.

3. The further case of the appellant/petitioner is that on 6.10.1972, the Chairman, Tamil Nadu Housing Board, Chennai, sent a requisition for acquisition of lands in Nerkundram village, for formation of New Neighbourhood Scheme, known as Kalaignar Karunadhi Nagar Further Extension Scheme. Accordingly, a draft notification under Section 4 (1) of the Land Acquisition Act (in short, "the Act") was issued for an extent of 460.08 acres of land in the said village and the same was approved by the Government in G.O.Rt.No.124, Housing Development, dated 08.05.1975, which was published in the Gazette, dated 11.06.1975. Section 5-A enquiry was also undertaken under the said Act, after observing all formalities. Thereafter, Notification under Section 6 of the Act was issued in G.O.Ms.No.989, Housing and Urban Development Department, dated 07.06.1978. On the ground that there were procedural irregularities in the acquisition of lands, the appellant filed W.P.No.1080 of 1986 before this Court for quashing the above said two notifications under Sections 4(1) and 6 of the Act, in which a Division Bench of this Court passed an order on 21.01.1988, quashing the Declaration under Section 6 alone, observing that since the petitioner claimed the right of ownership by a partition deed of the year 1964 and release deed of the year 1972, the reliefs were granted subject to his proving the ownership at the time of enquiry under Section 5-A of the Act. There was no appeal against the said order and the same has become final.

4. Pursuant to the said judgment of the Division Bench, notices for enquiry under Section 5-A were issued in the year 1989 and the appellant put forth his objections, stating that though the Government, in its letter dated 27.05.1982, decided to withdraw the lands from acquisition to an extent of 5.24 acres in the above said survey numbers, at the instance of certain purchasers of the plots, the said land was not excluded and a fresh declaration under Section 6 was issued in the year 1990 and an award passed; the compensation assessed on the strength of market value was paltry; after disposal of the above writ petition, the respondents had not taken any steps pursuant to the notification under Section 4 (1); the declaration under Section 6 of the Act ought to have been made within one year as per the amendment Act 68 of 1984 and hence the petitioner has prayed for the relief extracted supra.

5. Second respondent filed a counter affidavit, stating that by means of a letter, dated 25.05.1994, the Government addressed the Tamil Nadu Housing Board, stating that the actual requirements of the land should be restricted, in view of the increased land value, and, in spite of his sending a fresh requisition, no fresh 4 (1) proposal was initiated.

6. In the counter of third respondent, it was mentioned that in order to decongest the Central Business District of Chennai, it was planned to construct a market at Chennai Urban Agglomeration Area at Koyambedu, for which it was planned to acquire the land to an extent of about approximately 295 acres for the proposed perishable markets (vegetable, fruit and flower), textile and foodgrains; a proposal was sent to the Government and the Government also accepted the same; the perishable market was successfully brought out and started functioning from 1996 and the remaining textile and foodgrain market was delayed due to various litigations arising out of land acquisition proceedings; the subject matter in the present writ petition proceedings regarding 1.90 acres is in the proposed foodgrain market at Koyambedu; the writ petitioner had no right to claim any compensation, because the lands, which form road and street, belong to the plot owners for their ingress and egress to their sites; having promoted the land as lay-out and sold the plots to the respective purchasers, the promoter, namely, writ petitioner was divested of his rights in respect of the land, earmarked for road and street and that he was not an interested person in the acquisition proceedings.

7. The learned single Judge, having observed that having promoted the lands as layout and sold the plots to respective purchasers, the promoter is divested of all his rights in respect of the lands earmarked as roads and streets, has dismissed the writ petition. Aggrieved, this writ appeal has been filed.

8. We heard Mr.Ss.David Tyagaraj, learned counsel for the appellant, Mr.K.Balakrishnan, learned Additional Government Pleader for respondents 1 and 2 and Mr.J.Ravindran, learned counsel for the third respondent.

9. The main stay of the appellant is that he is still entitled for claiming portions of land, admeasuring 1.90 acres in the above said survey numbers, which is earmarked for streets and roads and that the prayer is restricted to 1.90 acres in the total extent of 6.94 acres.

10. The crucial aspect to be ascertained in this case is, whether the appellant is still holding ownership over 1.90 acres ?

11. Even though a feeble attempt was made by the appellant in his affidavit in the writ petition that an extent of 5.25 acres of his land was excluded by the Government vide a letter dated 27.05.1982, on a perusal of the records, it transpires that subsequently the decision for exclusion of the said land was revoked by an order dated 14.09.1984.

12. Mr.S.David Tyagaraj, learned counsel for the appellant, has laboured hard to maintain his contention that the appellant is entitled for quashing of the proceedings with regard to 1.90 acres.

13. In order to unearth the real state of affairs, this Court called for relevant files from first respondent and, accordingly, they are produced. On a scrutiny of the same, it is found that the claim of the appellant would no longer survive. It is stated therein that while converting the land into house site plots, the appellant did not relinquish the road portion for local panchayat, for maintenance. At the time of enquiry, the appellant stated that he sold away 42 house site plots to General Insurance Employees Cooperative Housing Society. However, he could not furnish the details of persons to whom he sold away the remaining plots. He had also requested to pay compensation for an extent of 1.86 acres, left for road portion. But, his request was turned down by the Chief Executive Officer of Madras Metropolitan Development Authority, by means of his letter, dated 25.11.1985 stating that the land owners sold the plots to the dwelling owners, including the road, and an objection was made to the payment of compensation with regard to the unoccupied area to the ex-land owners; the compensation claimed by the appellant cannot be paid to him, for the reason that the entire extent covered under the award has been laid into house site plots, duly approved by the Director of Town and Country Planning, and sold out to several persons, after making provision of amenities, such as road, public purpose etc.; inasmuch as he sold the entire extent of land covered by house site plots, he cannot claim compensation for the area covered by the road portion; the lay-out cannot be approved, without making any provision for road; normally, the area covered by road portion should be handed over to the civic authorities, for being maintained as road; in this case, the land owner has not handed over possession of the area covered by road to local panchayat; the Chief Executive Officer of MMDA, in his letter dated 21.11.1985, maintained that compensation for the road portion in Neelamegam Nagar lay-out, which is covered by the award, should be paid to the above local body alone and not to the original land owner and if there is any dispute, the matter may be referred to a civil court under

Section 31 (2) of the Act. Since there are rival claims between the original land owner (appellant herein) and the MMDA, represented by its Chief Executive Officer, Madras, the entire compensation for 1.86 acres of land (being the area covered by the road in this lay-out) be kept in court deposit under Sections 31 (2) of the Act in the names of the appellant and the MMDA, represented by its CEO, Madras, and a reference made to Court accordingly.

14. The above portions throw much light and are very much helpful to understand the nature of the course of acquisition proceedings as well as the intention of the appellant herein.

15. Once a lay-out has been approved by the appropriate authority, the portions earmarked for road and street would be left to the benefit of the plot owners, who purchased the plots from the original owner or promoter, as the case may be, and after the said approval, all the roads and streets shall become public and, thereafter, the original land owner cannot lay his hands on the portions left out for the purpose of laying roads and streets, claiming that he is still holding ownership over them since there cannot be any approved lay out without making any provision for road. Thus, in case, any plea has to be raised either objecting the acquisition or the quantum of compensation, it should be either by the local authority or the purchasers of the plots, but not the petitioner, since has sold away the lands.

16. In a matter regarding leaving of space for the purpose of street and road, a Bench of three Hon'ble Judges of the Supreme Court, in M/s.Gobind Pershad Jagdish Pershad v. New Delhi Municipal Committee, AIR 1993 SUPREME COURT 2313, had an occasion to discuss the legal implication of the circumstance. The decision, which contains the legal principle, is as follows :

"Where it is established that a verandah in front of a shop was a passage accessible to the public and it was being used for about two decades by the public for passing and re-passing, it must be held that the owner of the shop has dedicated the verandah to the public use. It is being used for passing and re-passing by the public at large and as such is a "street" in terms of S.3 (13) (a) (of the Punjab Municipal Act). The owner has, thus, surrendered his rights in the property for the benefit of the public. The user of the property is and always shall be with the public. Any space, passage, verandah, alley, road or footway dedicated to public by the owner for passing and re-passing, partakes the character of a "street", and no longer remains under the control of the owner. The owner has no right at all times to prevent the public from using the same. When the owner of the property has, by his own volition, permitted his property to be converted into a "street", then he has no right to claim any compensation when the same property is made a "public street"..."

17. As far as the present case is concerned, the award shows that there was a direction for deposit of compensation amount to be kept in court deposit. It is worthwhile to note that the appellant had not whispered anything about this process in his affidavit nor was it elicited before this Court on his behalf.

18. In this connection, it is profitable to cull out the relevant portions in the "Table", appended to Part-III General Provisions in the 'Development Control Rules for Chennai Metropolitan Area', as amended up to September, 2004, which are as under:

"B. Streets and Roads:

Description (1)	Minimum width (2)	Remarks (3)
(i) Streets intended to serve not more than 10 plots and/or subject to a maximum length of 120 metres	7.2. metres (24')	All streets shall become public. The land owners/developers shall hand over these street/roads portion through a deed to the local authority concerned, after forming the roads as per specifications given under relevant section of Chennai City Municipal Corporation Act or Panchayat Act or Tamil Nadu District Municipal Act
(ii) Streets intended to serve not more than 20 plots and/or subject to a maximum length of 240 metres	9.0 metres (30')	-do-
(iii) Roads of length more than 240 metres but below 400 metres	12.0 metres (40')	-do-
(iv) Roads of length between 400 metres to 1,000 metres	18.0 metres (60')	-do-
(v) Roads of length more than 1,000 metres	24.0 metres (80')	-do-

19. From the above Rules, it is clear that all streets shall become public and the land owners/developers shall hand over these street/roads portion through a deed to the local authority concerned, after forming the roads. But, as could be seen from the original records produced before

us, the appellant/petitioner has not executed any deed in favour of the local authority handing over these street/roads portion, only with a malafide intention of making this type of fictitious claims, to illegally enrich himself at the cost of the exchequer, by violating the mandatory provisions of law.

20. Learned counsel for the appellant places reliance upon certain authorities, contending that due to lapse of considerable length of time, since the Government has not initiated any steps to proceed further after the notification under Section 4(1), further proceedings on the strength of 4 (1) Notification could not be legally proceeded with. For that proposition of law, he cited a decision of this Court in Sree Vengeeswarar Alagarperumal Devasthanam v. State of Tamil Nadu, 1984 (2) M.L.J. 427, wherein, it has been held as under :

"The Section 4 (1) Notification was published as early as 8-5-1963. Twenty long years have rolled by since then. If the award is to be passed, the petitioner would get by way of compensation, the market value as on the date of Section 4 (1) Notification. This will be making a mockery of the rights of citizens because the valuation in 1963 would be hardly the compensation to-day after 20 years. This is besides the value of the rupee itself having gone down. This is nothing but gross injustice to the citizen."

He also garnered support from the decisions of this Court in Special Deputy Collector (LA) v. Kuppu Gounder, 1985 WLR 694; Vadadri alias Chellappa v. State of Tamil Nadu, 1990 (1) M.L.J.219, and Nandakrishnan,D. & another v. State of Tamil Nadu & Others,1997 WLR 593, which enunciate the identical legal principles.

21. The principles contained in the above said decisions are authoritative judicial pronouncements and they are well settled. The main core of the argument of the appellant, relying on those judgments, as has already been adverted to supra, is that because of the long gap from Section 4(1) Notification, the same need not be proceeded with further. In the judgments relied on by the learned counsel for the appellant, though the Courts have kept Section 4(1) notification intact, while quashing the subsequent proceedings, the authorities have not initiated fresh proceedings. Therefore, the Courts held that such proceedings are invalid. But, in the case on hand, though on the earlier occasion, Section 6 Declaration has been quashed by this Court, Section 4(1) notification has been kept intact and the authorities, have, afresh, proceeded from Section 5-A enquiry. Therefore, the ratios laid down in the judgments cited by the learned counsel for the appellant are very well distinguishable and thus, cannot be applied to the facts of the case on hand.

22. The appellant/petitioner, in order to succeed in this case, must prove that he is the owner of the land in question. As could be seen

from the materials placed on record, the appellant herein after carving out the plots in his land, has sold them to third parties, who were compensated and dispossessed by the authorities. While selling the plots, it is mandatory on the part of any promoter/seller to carve out the roads and streets and other public utilities for the usage of purchasers and on such formation, such roads and streets would lose the character of 'private property' and gains the character of 'public road' whereupon none could claim any exclusive right, including the original owner of the land. Therefore, while selling the plots, after carving out the roads and streets, the appellant would have definitely included the cost/value of such portions left out as roads and streets in the plot cost and also would have collected the said cost from the purchasers of the plots. Therefore, at no stretch of imagination, he could be held to be the 'owner' or 'person interested' in the already sold out property. Knowing fully well that he has sold away the entire area carving out plots with roads and streets, the petitioner has made an attempt to gain wrongfully, by playing fraud, for which he shall be prosecuted.

23. Having already reaped the benefits of the land by selling it to various persons, after carving out plots with roads and streets, including the cost of the land carved out as roads and streets, by initiating these proceedings, the petitioner/appellant wants to gain wrongfully from the state exchequer. The claim of the appellant besides being illusory is also to thwart the public purpose for which the lands are sought to be acquired, after paying appropriate compensation to the owners of the plots, besides relocating them in proper place. It is also to be pointed out that in spite of direction by us, the petitioner/appellant has not produced the original lay-out to show that even after selling the plots to third parties, he is holding right or interest in the carved out roads and streets. For all these discussions, we have no hesitation to hold that the appellant has no locus standi at all to claim the relief as prayed for in the writ petition, since he has no existing ownership right at all. Therefore, it is a futile and fraudulent exercise on the part of the appellant to claim the relief over the portions, meant for streets and roads which have attained the character of 'public roads' after they were carved out for the purpose of ingress and egress of the plot owners. Knowing full well that he would not come within the ambit of the term "person interested" as defined in Section 3(b) of the Land Acquisition Act, under an illusory thought that the proposed attempt would yield his illegal desire, he preferred a writ petition and even after suffering a dismissal order from the learned single Judge, he has further jumped on to the legal proceedings, by filing this Writ Appeal, in order to fight a losing battle. It may also be stated that in order to get wrongful gain, the appellant has brought about the fictitious legal proceedings against the authorities concerned, including the Government, by unnecessarily dragging the Government and its other limbs into an unwanted court proceedings thus wasting the valuable time of the Court and the public authorities.

24. Hence, to curb such type of illegal attempt, which is rampant now-a-days, by greedy persons like the petitioner to gain wrongfully from the state exchequer and also for unnecessarily stalling the acquisition proceedings all these days, we feel, the appellant/petitioner has to be subjected to punitive action as contemplated under Section 46 of the Land Acquisition Act and any other law in force, for wilfully obstructing the authorities from carrying on their legitimate duties contemplated under the Land Acquisition Act. Accordingly, the respondents are directed to take appropriate action against the appellant/petitioner under Section 46 of the Land Acquisition Act and any other law in force, for having come before this Court with unwanted litigation based on false claim, causing wastage of valuable time of the Court and the authorities to wilfully obstruct the land acquisition proceedings initiated by the authorities concerned, that too, after paying necessary compensation to the plot owners besides relocating them.

With the above direction to the respondents, this Writ Appeal is dismissed with exemplary costs of Rs.10,000/= to be paid by the appellant/petitioner to the respondents.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

dixit/Rao

To

1.The Secretary to Government,
State of Tamil Nadu,
Housing and Urban Development Department,
Fort St.George, Chennai-600 009.

2.The Spl.Deputy Collector, (L.A.),
Tamil Nadu Housing Board Schemes,
Nandanam, Madras-35.

3.The Chief Executive Officer,
Madras Metropolitan Development Authority,
Race Tower Buildings,
Mount Road, Guindy, Madras-32.

1 CC To Mr.David Tyagaraj, Advocate, SR NO.47351.

W.A.No.1525 OF 2001

AD(CO)
RVL 22.08.2007