

In the High Court of Judicature at Madras

Dated: 31.10.2008

Coram:

The Honourable Mr. Justice S.J. Mukhopadhyaya  
and  
The Honourable Mr. Justice V. Dhanapalan

Writ Appeal No. 1458 of 2001

1. The State of Tamil Nadu, rep. by  
Secretary to Government,  
Housing and Urban Development Department,  
Madras-9.
2. The Collector of Tanjore.
3. Special Tahsildar for Land Acquisition,  
Tamil Nadu Housing Board Collector's Office,  
Tanjore. .. Appellants

vs.

Thambayyan by Power Agent and  
Wife Pavalakkodi,  
168, I Lakshatope Maharajasamudram,  
Pattukkottai,  
Town and Munsifi. ... Respondent

Writ Appeal against the order dated 12.2.1996 passed by the  
single Judge of this Court, in Writ Petition No. 3257 of 1986.

For appellants : Mr. D. Sreenivasan, Addl. G.P.

For respondent : Mr. N. R. R. Arun Natarajan for M/s. Gladys Daniel

Judgment

(The Judgment of the Court was delivered by S.J. Mukhopadhyaya, J)

This Writ Appeal has been preferred by the State of Tamil Nadu against the order dated 12.2.1996 in Writ Petition No. 3257 of 1986, whereby and whereunder, the learned single Judge set aside the order passed by the first appellant in G.O. Ms. No. 1193, dated 18.1.1985 issued from Housing and Urban Development Department, which was under challenge before the Writ Court and remanded the matter to the appellants-State for fresh disposal in accordance with law.

2. The main plea taken by the appellants-State is that the impugned order dated 12.2.1996, has been passed by the learned single Judge without discussion of claim(s) and counter-claim(s) of the parties and without deciding the case on merits, and that too, after the Award was passed in the acquisition of the land(s) in question.

3. The Writ Petition in question was filed by the wife and Power Agent (Pavalakkodi) of the writ petitioner-Thambayyan (respondent), as her husband (respondent herein) was residing at Singapore. It was pleaded that the third appellant- Special Tahsildar for Land Acquisition, proposed to demolish their four houses constructed at a great cost after due permission from Pattukkottai Municipality in Building Permission No.196/85, dated 30.9.1985. The respondent-writ petitioner has already submitted the plan and petition for construction of four houses to the Municipality and four houses are facing East abutting Pattukkottai Pannavayal Main Road. The houses were constructed with cement, granite stones and firm materials at a cost of nearly Rs.1 lakh. The land(s) concerned are in R.S.No.241/4, formerly 241/2, situated in Lakshatope part of 204 Maharajasamudram Village in Pattukkottai Taluk. The total extent of R.S.No.241/4 is 1.51.0 hectares. Her husband was allotted 1 acre 77 cents in former R.S.No.241/2, which has since been measured as R.S.No.242/4 and the extent allotted to the husband was under a Registered Partition Deed, dated 29.11.1979.

4. It was further pleaded by the respondent-writ petitioner that there was no bona-fide on the part of the appellants-State in continuing with the impugned land acquisition proceedings regarding the land(s) having pucca buildings, as set out in the Notification in G.O.Ms.No.1193, dated 8.11.1985 issued from Housing and Urban Development Department. Prayer was made in the Writ Petition, for issuance of a Writ of Certiorari, to set aside the said Notification (G.O.Ms.No.1193, Housing and Urban Development Department, dated 8.11.1985) insofar as it relates to R.S.No.241/4 of Village No.204 of Pattukkottai Taluk, situated within the limits of Pattukkottai Municipality, Thanjavur District.

5. It will be evident that though the learned single Judge noticed the fact that the acquisition notice was published in the Tamil Newspaper "Dina Thanthi", dated 10.12.1985 regarding the impugned land acquisition, but without deliberating on the issue and without discussing the material facts, set aside the impugned land acquisition proceedings and remanded the matter to the first appellant-State of Tamil Nadu, Secretary to Government, Housing and Urban Development Department, Chennai-9, for fresh disposal in accordance with law.

6. Learned counsel appearing on behalf of the appellants-State submitted that objections as were raised by the land owners, were considered by the Government in enquiry under Section 5-A of the Land Acquisition Act, 1894 and subsequently, Notification under Section 6 of the said Act was issued in respect of the impugned acquisition of lands for the Neighbourhood Scheme of the Tamil Nadu Housing Board and published in the Government Gazette on 4.12.1985; by the time the Writ Petition in question was taken up, the Award in respect of the impugned land acquisition proceedings, has already been passed on 23.5.1986 in Award No.1 of 1986; the respondent-writ petitioner never

challenged the Notification issued under Section 6 of the said Act, or the said Award dated 23.5.1986 and without looking into the aforesaid facts, the impugned order dated 12.2.1996 was passed by the learned single Judge.

7. Learned counsel appearing on behalf of the respondent-writ petitioner submitted that the husband (writ petitioner) of the Power Agent-Pavalakkodi (wife), constructed four houses at great cost on the land(s) prior to the possession and acquisition of the land(s) by the State, but according to the appellants-State, no building was constructed prior to the passing of the Award.

8. We have heard the learned counsel appearing for the parties and noticed the rival contentions.

9. In the present case, it would be evident that the respondent-writ petitioner has not challenged the impugned land acquisition proceedings, particularly, the Notification issued under Section 6 or the Award.

The question arises as to whether in the absence of such challenge, it was open for the learned single Judge to grant the relief as sought for by the respondent-writ petitioner in the Writ Petition.

10. Similar matter fell for consideration before a Division Bench of this Court in the case of "Ramalingam and Others vs. State of Tamil Nadu, rep. By Secretary to Industries Department, Fort St.George, Chennai-9 and Others", reported in 2005 (3) C.T.C. 1 and in the said case, while dealing with the question of maintainability of a Writ Petition, it was held that no Writ would lie after the passing of the Award.

Similar view was taken by a Division Bench of this Court in the case of "Harshavardhan.S. vs. State of Tamil Nadu", reported in 2005 (3) C.T.C. 691.

11. In the present case, as the Award was passed on 23.5.1986 and the Writ Petition was disposed of on 12.2.1996 and as the case of the appellants-State is covered by the decisions rendered supra, and the impugned order dated 12.2.1996 passed by the learned single Judge in Writ Petition No.3257 of 1986, is cryptic and based on no grounds, the same is set aside.

12. The Writ Appeal is allowed with the aforesaid observations, but there shall be no order as to costs.

Cs

Sd/  
Asst.Registrar

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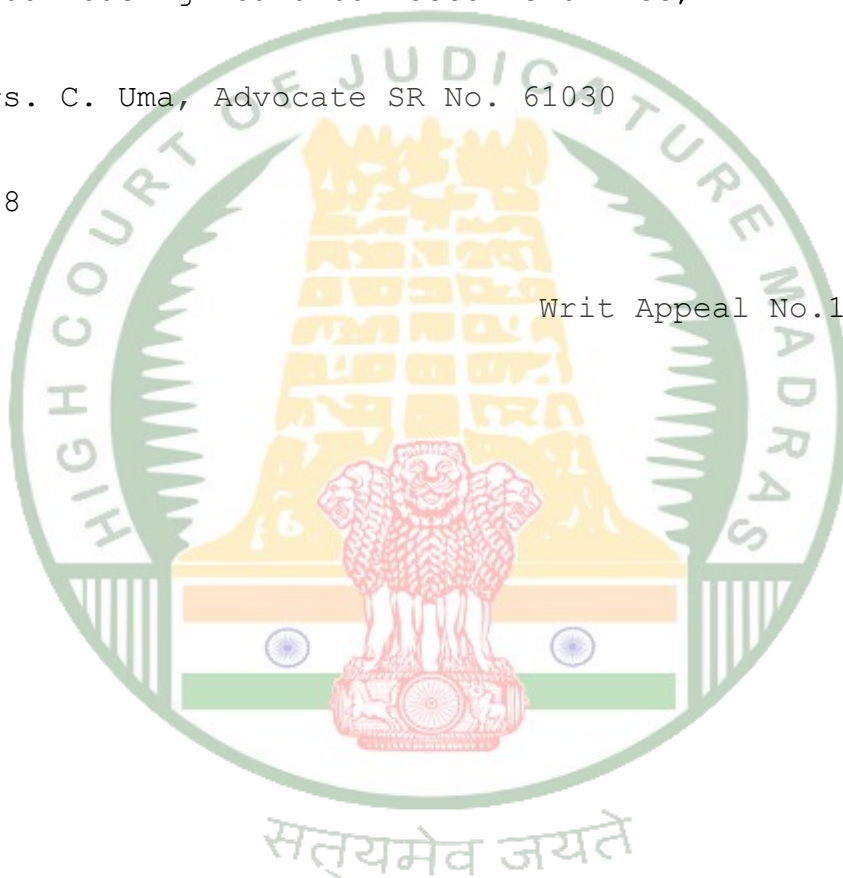
To

1. The Secretary to Government,  
The State of Tamil Nadu,  
Housing and Urban Development Department,  
Madras-9.
2. The Collector of Tanjore.
3. The Special Tahsildar for Land Acquisition,  
Tamil Nadu Housing Board Collector's Office,  
Tanjore.

+ 1 cc to Mrs. C. Uma, Advocate SR No. 61030

KG(CO)  
SR/17.11.2008

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