

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30-11-2012

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.5959 of 2012 and
M.P.No.1 of 2012

S.VEERAPPAN

[PETITIONER]

Vs

- 1 THE STATE OF TAMIL NADU
REP.BY ITS SECRETARY TO GOVERNMENT
HOUSING AND URBAN DEVELOPMENT DEPARTMENT
SECRETARIAT, CHENNAI-9
- 2 THE DISTRICT COLLECTOR
NAMAKKAL DISTRICT, NAMAKKAL
- 3 THE SPECIAL TAHSILDAR
LAND ACQUISITION
NEIGHBOURHOOD SCHEME,
NAMAKKAL
- 4 THE TAMILNADU HOUSING BOARD
REP.BY ITS EXECUTIVE ENGINEER AND
ADMINISTRATIVE OFFICER, SALEM HOUSING UNIT
AYYAN THIRUMALAI ROAD
SALEM-6

[RESPONDENTS]

This writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Declaration declaring that the Land Acquisition Proceedings in respect of the petitioner's lands measuring an extent of 2.93 acres in survey NO.37/1 and 3.15 acres in survey No.37/1 of Kondichettipatty Village, Namakkal Taluk and District have lapsed in view of the provisions under Section 11(A) of the Land Acquisition Act 1896.

For petitioner : Mr.R.Krishnamurthy
Senior Advocate for
Mr.R.Karthikeyan

For Respondents : Mr.S.P.Prabakaran
AGP for R1 to R3
Mr.S.Diwakar for R4

O R D E R

Heard the learned counsel appearing for the petitioner and the learned counsels appearing on behalf of the respondents.

2. This writ petition has been filed praying that this Court may be pleased to issue a Writ of Declaration, declaring that the land acquisition proceedings, relating to an extent of 2.93 acres of land, in survey No.37/1 and 3.15 acres of land, in survey No.37/2, in Kondichettipatty Village, Namakkal Taluk, Namakkal District, belonging to the petitioner, had lapsed, in view of the provisions contained in Section 11(A) of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act').

3. It has been stated that the parents of the petitioner had been residing in the lands in question, along with their family members, and they had been carrying on agricultural activities therein. While so, a notice, dated 4.1.1983, had been published, under Section 4(1) of the Act, in the Gazette, dated 26.1.1983, notifying that the land in question were needed for the construction of houses, under the Neighbourhood Scheme. The parents of the petitioner had submitted their objections, under Section 5A of the Act. Thereafter, the first respondent had issued, G.O.Ms.No.704, Housing and Urban Development Department, dated 18.7.1985, making a declaration, under Section 6 of the Act, in the Gazette, dated 31.7.1985.

4. It has been further stated that the land owners of the lands in question, which were being acquired for the Neighbourhood Scheme, had filed a number of writ petitions before this Court challenging the said proceedings, raising various grounds. The parents of the petitioner had filed a writ petition, in W.P.No.11489 of 1985, challenging the land acquisition proceedings, on the ground that the respondents had not passed any Award, for a period of more than two years and that the lands in question were being utilised for agricultural purposes and that the said lands cannot be converted into house sites for the purpose of of the Neighbourhood Scheme.

5. This Court, by its order, dated 20.11.1985, had partly allowed the writ petition, directing the District Collector, Salem, to inspect the lands in question, after giving due notice to the land owners, to find out the actual extent required for the

implementing of the said scheme, taking into consideration the usage of the lands, by the land owners, for agricultural purposes. Pursuant to the said order, the District Collector, Salem, had conducted an inspection, on 25.12.1985. He had submitted his report, on 30.12.1985, stating that the parents of the petitioner were having a poultry farm, tile sheds, a well, and a residential house, located in 82 cents of the lands in question and that the said extent of 82 cents could be excluded from the land acquisition proceedings and that the remaining extent of 5.26 acres of lands, in survey Nos.37/1 and 37/2, could be acquired for the purpose of the Neighbourhood Scheme.

6. It had been further stated that the third respondent, without excluding the 82 cents of lands, as stated in the report of the District Collector, Salem, dated 30.12.1985, had issued notices, under Sections 9(3) and 10 of the Act, on 6.8.1987, for the entire extent of 6.08 acres. It had also been stated that an award enquiry would be conducted, on 29.7.1987. In such circumstances, the parents of the petitioner had challenged the notices, issued under Sections 9(3) and 10 of the Act, before this Court, in W.P.No.7770 of 1987. This Court had granted an interim order relating to the dispossession of the lands in question, by the respondents therein.

7. It has been further stated that a counter affidavit had been filed on behalf of the respondents, in the said writ petition, in W.P.No.7770 of 1987, stating that an Award had already been passed, on 13.8.1987. However, this Court, by an order, dated 10.2.1997, had allowed the writ petition, by quashing the notice, dated 6.7.1987, issued under Sections 9(3) and 10 of the Act.

8. It has been further stated that, notwithstanding the objections raised by the parents of the petitioner, the third respondent had passed an Award ignoring the fact that, when the award notice issued, under Sections 9(3) and 10 of the Act is quashed, any Award passed would have no effect, as it would be invalid in the eye of law. However, even after the passing of the Award, no notice of the Award had been issued. As no such notice had been issued, under Section 12 of the Act, the parents of the petitioner did not seek a reference, under Section 18 of the Act, as provided therein.

9. It had been further stated that in view of the quashing of the award enquiry notice, dated 6.7.1987, issued under Sections 9 (3) and 10 of the Act, by this Court, by its order, dated 10.2.1997, in W.P.No.7770 of 1987, the third respondent ought to have initiated appropriate steps to issue an award notice afresh and thereafter, to proceed with the land acquisition proceedings.

As the lands in question were in the possession of the parents of the petitioner and in view of the interim order passed by this Court, the petitioner has been in possession of the said lands, till date, after the death of his parents. While so, the petitioner had made representations to the second and the third respondents, on 1.10.2003, and 23.2.2006, requesting them to issue the patta in the name of the petitioner, as the acquisition proceedings had lapsed. However, there was no response from the respondents. Therefore, the petitioner was constrained to seek the necessary information, under the Right to Information Act, 2005, from the Chairman, Tamil Nadu Housing Board, with regard to the proceedings initiated, if any, pursuant to the order passed by this Court, dated 10.2.1997, in W.P.No.7770 of 1987.

10. It had been further stated that the Public Information Officer of the third respondent had informed the petitioner, by a letter, dated 15.9.2009, that the Board had sent for proposals for the exclusion of 0.82 acres, out of the 6.08 acres, belonging to the petitioner and to acquire the remaining 5.26 acres for the purpose of the Neighbourhood Scheme. However, no steps had been initiated for the purpose of acquiring the lands in question, by the respondents, till date. However, the respondents had not passed any order, releasing the lands in favour of the petitioner, or for the issuance of the patta in the name of the petitioner. In such circumstances, the petitioner has preferred the present writ petition before this Court, under Article 226 of the constitution of India.

11. In the counter affidavit filed on behalf of the third and the fourth respondents, it has been stated that a notification, under Section 4(1) of the Act had been approved, in G.O.Ms.No.21, Housing and Urban Development Department, dated 4.1.1983. It was published in the Tamil Nadu Government Gazette No.3A, supplement to part II, Section 2, dated 26.1.1983. The Draft Declaration, under Section 6 of the Act, had been approved by the Government in their order, in G.O.Ms.No.704, Housing and Urban Development Department, dated 18.7.1985 and it had been published in the Tamil Nadu Government Gazette No.300, dated 31.7.1985.

12. It has been further stated that all the other requirements under the provisions of the Act had been followed by the respondents, while acquiring the land in question. The necessary notices, under Sections 9(1), 9(3) and 10 of the Act had been issued to the land owner on 6.7.1987 and for the publication in the locality, fixing the award enquiry, on 29.7.1987. The award enquiry was conducted, on 29.7.1987, as per schedule and the award proceedings were approved on 3.8.1987. Award No.3/87-88, dated 3.8.1987, had been submitted to the Special Commissioner and Commissioner of Land Administration, Chennai, through the

Additional Collector, Salem, in Roc.No.206640/83.B4, dated 9.8.1987, and approved in the proceedings, in D.Dis.H.51397/87, dated 10.8.1987, and the information about the award proceedings had been given to the Court.

13. It has been further stated that the petitioner's father had filed a writ petition before this Court, in W.P.No.7770 of 1987, challenging the land acquisition proceedings. An order had been passed by this Court in the said writ petition, on 10.2.1997, directing the first respondent to give effect to the report of the second respondent, dated 30.12.1985, to exclude an extent of 82 cents, in S.Nos.37/1 and 37/2 in Kondichettipatti Village, Namakkal Taluk, and to proceed further in accordance with law, after giving an opportunity to the petitioner.

14. It has been further stated that the land in question was required for the Comprehensive Housing Scheme of the Tamil Nadu Housing Board. The land in question, excluding the built up portion in an extent of 82 cents, is to be taken over under Section 47 of the Act. The District Collector, Namakkal, and the Tahsildar concerned have been addressed for taking over the land, under Section 47 of the Act.

15. It has been further stated that all the necessary formalities had been completed and an Award had also been passed, in respect of the land in question. The award amount had also been disbursed, as per the statements and the records submitted by the land owners. The land owners had also received the award amount, after having appeared for the award enquiry, on 29.7.1987. After the Award had been passed, the patta has also been issued in the name of the Tamil Nadu Housing Board, vide patta No.241. The relevant revenue records had also been changed in the name of the Tamil Nadu Housing Board and the land tax had also been paid, till date.

16. It has been further stated that the writ petitions, in W.P.No.11489 of 1985 and W.P.No.7770 of 1987, had been disposed of directing the respondents therein to exclude the constructed portion of 82 cents, in S.Nos.37/1 and 37/2, in Kondichettipatty Village, Namakkal Taluk, Namakkal District. In fact, the petitioner had disposed of the property in question, when the land acquisition proceedings were in progress. As such, the disposal of the property, by the petitioner, is illegal. As per the decisions of the Supreme Court, it is not open to the petitioner to challenge the land acquisition proceedings, once an Award has been passed, in respect of the lands in question. The writ petition is devoid of merits and therefore, it is liable to be dismissed.

17. The learned counsel appearing on behalf of the petitioner had submitted that the land acquisition proceedings, in respect of 6.08 hectares had been initiated, on 4.1.1983. This Court, by its order, dated 20.11.1985, made in W.P.No.11489 of 1985, had issued certain directions to the District Collector, Salem District, and had held that there was no justification on the part of the respondents therein for inspecting the property in question to find out as to whether the constructions, put up by the petitioners in the writ petition, would, in any way, interfere with the alignment of the proposed housing scheme. If the constructions put up by the petitioners, in the property in question, do not interfere with the alignment of the scheme, he should submit a report to the Government recommending the retention of the residential buildings in the land proposed to be acquired by the respondents therein.

18. The learned counsel appearing on behalf of the petitioner had further submitted that the report had been submitted by the District Collector, Salem District, stating that the built up area, measuring 82 cents, may be excluded from the acquisition proceedings, as the constructions put up by the petitioners do not interfere with the alignment of the scheme. However, as the State Government had proceeded with the acquisition proceedings, without considering the report submitted by the District collector, this Court had, by its order, dated 10.2.1997, in W.P.No.7770 of 1987, had quashed the impugned notice issued by the Special Tahsildar (LA) Neighbourhood Scheme, Namakkal, under Section 9(3) and 10 of the Land Acquisition Act, 1894. The State of Tamil Nadu, the first respondent in the said writ petition, had been directed to give effect to the report of the District Collector, Salem District, dated 30.12.1985, to exclude 82 cents, in S.Nos.37/1 and 37/2, which formed a part of 6.08 acres, in No.73, Kondichettipatti Village, Namakkal Taluk, Salem District. It had also held that the respondents may proceed further, after having undertaken such an exercise, in accordance with law, after giving an opportunity of hearing to the petitioners therein. However, the respondents had not proceeded further with the acquisition proceedings, as permitted by this Court. In such circumstances, the land acquisition proceedings relating to the petitioner's lands, measuring an extent of 2.93 acres, in S.No.37/1 and 3.15 acres, in S.No.37/2 of Kondichettipatti village, ought to be declared as lapsed, in view of Section 11A of the Land Acquisition Act, 1894.

19. The learned counsel appearing on behalf of the petitioner had relied on the decision reported in Vyalikaval House Building Coop. Society Vs. V.Chandrappa, (2007) 9 SCC 304, in support of his contention.

20. Per contra, the learned counsels appearing on behalf of the respondents had submitted that the land acquisition officer had observed all the necessary formalities, while acquiring the lands belonging to the petitioner. Thereafter, an Award had been passed, in Award No.3/87-88, dated 13.8.1987. The petitioner's father late Subbroya Gounder and his wife Kaliyammal had appeared during the award enquiry held, on 29.7.1987. As per the statements made by them, the award amount had been paid to settle their loan obtained by them from the Syndicate Bank. The balance of the award amount had been paid to the land owner.

21. The learned counsels appearing for the respondents had also submitted that, as per the directions issued by this Court, by its order, dated 20.11.1985, made in W.P.No.11489 of 1985, the District Collector, Salem, had inspected the lands, in S.Nos.37/1 and 37/2, in Kondichettipatti Village, Namakkal Taluk, and had recommended the exclusion of the constructed portion of 82 cents. The said recommendation had also been sent to the Tamil Nadu Housing Board, which, in turn, had sent the recommendation to the Secretary, Housing Department, Chennai. The said proposal is still pending final decision.

22. It had also been stated that, after excluding 82 cents of the built up portion of the lands in question, the remaining lands are to be taken over, under Section 47 of the Land Acquisition Act. The said process is under progress, as the land owner had occupied the lands in question, by putting up a wall around the area. In such circumstances, the writ petition filed by the petitioner to declare the entire land acquisition proceedings, in respect of the lands in question, is liable to be dismissed.

23. In view of the averments made in the affidavit filed in support of the writ petition and in view of the submissions made by the learned counsels appearing on behalf of the petitioner, as well as the respondents, and on a perusal of the records available, this Court finds that an order had been passed, by this Court, on 10.2.1997, in W.P.No.7770 of 1987, holding that the respondents therein were not justified in proceeding with the acquisition proceedings, in respect of the constructed area, when the District Collector, Salem, had submitted, in his report, dated 30.12.1985, pursuant to the earlier order passed by this Court, dated 20.11.1985, in W.P.No.11489 of 1985, that the built up area measuring about 82 cents, as against the total extent of 6.08 acres, may be excluded from the acquisition proceedings, in view of the fact that the construction in question does not interfere with the alignment of the scheme.

24. It had also been held that the State Government had proceeded with the acquisition proceedings, without considering the report of the District Collector, Salem. Accordingly, the writ petition had been allowed quashing the impugned notice issued by the Special Tahsildar (LA) Neighbourhood Scheme, Namakkal, under Sections 9(3) and 10 of the Land Acquisition Act, 1894, dated 6.7.1987. Further, the first respondent therein had been directed to give effect to the report of the District Collector, Salem District, dated 30.12.1985, to exclude 82 cents of land in S.Nos.37/1 and 37/2, out of the total extent of 6.08 acres, in No.73, Kondichettipatti Village, Namakkal Taluk, Salem District, after giving an opportunity of hearing to the petitioner and to proceed further in accordance with law.

25. It is further noted that after this Court had passed the order, on 10.2.1997, in W.P.No.7770 of 1987, no further proceedings had been initiated by the respondents, to proceed with the acquisition proceedings. In fact, in the counter affidavit, filed on behalf of the fourth respondent, dated 28.3.2012, it has been stated that, as per the directions issued by this Court, by its order, dated 10.2.1997, in W.P.No.7770 of 1987, the District Collector, Salem District, had inspected the land, in S.Nos.37/1 and 37/2 and had recommended to exclude the constructed portion of about 82 cents, from the total extent of 6.08 acres of the lands sought to be acquired. The said recommendation had also been sent to the Tamilnadu Housing Board to be forwarded with its recommendation. It had also been forwarded to the District Collector concerned, for the exclusion of 82 cents of land from the acquisition proceedings. The matter is still pending with the Secretary, Housing Department, Chennai.

26. Further, in the counter affidavit filed on behalf of the third respondent, it has been stated that the land under reference, was required for the Comprehensive Housing Scheme, for having a clear approach from the existing road to the surrounding lands, which had already been developed by the Tamilnadu Housing Board. Therefore, the land under reference, excluding the built up portion of 82 cents is to be taken over, under Section 47 of the Act, and that the District Collector, Namakkal and the Tahsildar, Namakkal, had also been addressed in that regard. Further, from the information gathered, by the petitioner, under the Right to Information Act, 2005, by way of a communication, dated 15.9.2009, it could be seen that the remaining extent of 5.26 acres of lands, in S.Nos.37/1 and 37/2, excluding the extent of 82 cents of land would be taken over, by way of further proceedings. As such, it is clear that the land acquisition proceedings, relating to the 6.08 acres of lands, in S.Nos.37/1 and 37/2, Kondichettipatti Village, Namakkal Taluk, Salem District, had not been completed, till date.

As such, the contentions raised on behalf of the petitioner are held to be valid and sustainable in the eye of law. Accordingly, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

lan/csh

Sd/-

Deputy Registrar(J)

//True Copy//

Sub Asst. Registrar

To

- 1 THE SECRETARY TO GOVERNMENT
HOUSING AND URBAN DEVELOPMENT DEPARTMENT
SECRETARIAT, CHENNAI-9
- 2 THE DISTRICT COLLECTOR
NAMAKKAL DISTRICT, NAMAKKAL
- 3 THE SPECIAL TAHSILDAR
LAND ACQUISITION
NEIGHBOURHOOD SCHEME,
NAMAKKAL
- 4 THE EXECUTIVE ENGINEER AND
ADMINISTRATIVE OFFICER,
TAMILNADU HOUSING BOARD
SALEM HOUSING UNIT
AYYAN THIRUMALAI ROAD
SALEM-6

CES(CO)
SR/17.12.2012.

सत्यमेव जयते

W.P.No.5959 of 2012

WEB COPY