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K. Perumal, Vs. State of Tamil Nadu Rep. by Commissioner and Secretary to Government, Housing and Urban Development Department,

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Court : Chennai

Decided On : Jan-04-2008

Reported in : (2009)2MLJ231

Judge : P.D. Dinakaran and ;R. Regupathi, JJ.

Acts : Land Acquisition Act - Sections 4, 4(1), 5, 5A and 6; Constitution of India - Article 226

Appeal No. : Writ Appeal No. 2343 of 2000

Appellant : K. Perumal, ;k. Palanimuthu, ;k. Pushpam and K. Alagarammal

Respondent : State of Tamil Nadu Rep. by Commissioner and Secretary to Government, Housing and Urban Development

Advocate for Def. : K. Ilango, Spl. G.P. for Respondents 1, 2 and 4 and ;K. Chelladurai, Adv. for Respondent-3

Advocate for Pet/Ap. : W.M. Abdul Majeed, Adv.

Disposition : Appeal dismissed

Judgement :

P.D. Dinakaran, J.

1. The unsuccessful writ petitioners have preferred the above writ appeal against the order of the learned single Judge dated 16.11.2000 made in W.P. No. 5668 of 1992.

2. The brief facts which led to the filing of the writ appeal are as under:

(a) The petitioners are the owners of 2.69 acres of land in S. No. 18/3, Ponmeni Village, Madurai District. The respondents initiated land acquisition proceedings to acquire 217.20 acres of land, including the lands of the petitioners, for Ellis Nagar Housing Scheme at Madurai. The notification under Section 4(1) of the Land Acquisition Act was issued in G.O.Ms. No. 311, Housing and Urban Development, dated 17.2.1979. The declaration under Section 6 in G.O.Ms. No. 735, Housing and Urban Development, dated 7.6.1980 was published in the Gazette on 2.7.1980.

(b) According to the petitioners, no enquiry was conducted nor they received any communication about the enquiry or award. Since G.O.Ms. No. 735, Housing and Urban Development, dated 7.6.1980 was quashed by this Court by order dated 7.4.1983 in W.P. No. 10824 of 1982 and the same was confirmed by a Division Bench of this Court and the possession of the lands were not taken, the petitioners were of the opinion that the acquisition proceedings was lapsed. Hence, they filed the writ petition in W.P. No. 5668 of 1992 for Declaration declaring that the notification issued under Section 4(1) of the Act and other consequential proceedings were lapsed.

(c) The second respondent filed a counter affidavit denying the averments of the petitioners. According to them, the notification under Section 4(1) of the Act was published in the Gazette on 7.3.1979 and in the locality on 30.3.1979, enquiry under Section 5A of the Act was conducted on 23.4.1979 and declaration under Section 6 of the Act was published in the Gazette on 2.7.1980. Award enquiry was conducted on 16.4.1982, 20.4.1982, 21.4.1982 and 22.4.1982 and thereafter, award was passed on 28.4.1982. The land was taken possession on 1.12.1982 and was handed over to the Housing Board on the same day. Further, the writ

petition was not maintainable, since the petitioners had filed after 12 years from the date of declaration under Section 6 of the Act.

(d) The learned single Judge, following the earlier order of this Court dated 9.9.1997 in W.P. No. 11585 of 1988, wherein this Court has held that the affected person should not wait for long years to seek the benefit of an order, and holding that the factual particulars given by the second respondent in the counter affidavit had not been controverted by the petitioners by way of reply affidavit and therefore, there was no reason to reject the factual particulars given by the second respondent, dismissed the writ petition on the ground of laches by order dated 16.11.2000. Hence, the above appeal.

3. The only contention advanced by the learned Counsel for the appellant is that the learned single Judge has erred in dismissing the writ petition on the ground of laches, as the possession of the lands of the petitioners said to have taken on 1.12.1982 by the second respondent and handed over to the Housing Board and relied upon by the learned single Judge is nothing but a paper possession.

4.1. With respect to the maintainability of the writ petition virtually filed after long passage of time, the Apex Court has been consistently taking the view that it is not either desirable or expedient to lay down a rule of universal application but the unreasonable delay denies to the petitioner the discretionary extraordinary remedy of mandamus, certiorari or any other relief and that the High Court was not justified in interfering with the acquisition proceedings.

4.2. The Court is expected to take care in not entertaining the writ petition on the ground of delay, where the land is need for a public purpose, as it would cause serious prejudice to the persons for whose benefit the Housing Scheme is framed and also in having planned development of the area.

4.3. When there is an inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the notifications. The discretionary power under Article 226 of the Constitution of India should be exercised taking all relevant factors into pragmatic consideration. Failure on the part of the land owner to move the Court soon after

the declaration under Section 6 of the Act was made would be fatal.

4.4. The persons who approach the Court belatedly will be told that laches close the gates of the Court for him to question the legality of the acquisition proceedings. Therefore, they cannot sit on the fence and allow the State to complete the acquisition proceedings on the basis that notification under Section 4 and the declaration under Section 6 were valid and then to attack the notifications on the grounds which were available to them at the time when these were published as otherwise it would be putting a premium on dilatory tactics.

4.5. Concededly, the petitioners do not dispute the factual particulars given by second respondent as to the date of notification under Section 4(1) of the Act, enquiry under Section 5 of the Act and declaration under Section 6 of the Act. But, they emphasize only the dismissal of the writ petition on the ground of laches. The writ petition has been filed after 12 years from the date of declaration under Section 6 of the Act and there is no good reason explaining the delay in moving the High Court in exercise of its writ jurisdiction.

4.6. In the circumstances, the view taken by the learned single Judge that the long delay of about 12 years cannot be condoned as, by that time the authorities must have proceeded with the acquisition proceedings and would have taken further steps in the matter, is justified. We, therefore, do not think that the learned Single Judge erred in holding that the invocation of the extraordinary jurisdiction of the High Court was made belatedly.

The writ appeal fails and the same is dismissed. No costs. Consequently, CMP No. 20387 of 2000 is also dismissed.

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