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Court : Chennai

Decided On : Feb-18-2005

Reported in : (2005)2MLJ65

Judge : D. Murugesan, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : W.P. No. 10911 of 2003

Appellant : Sivanandam and ors.

Respondent : The Government of Tamil Nadu Represented by the Secretary to Government, Housing and Urban Developme

Advocate for Def. : M.G.H. Varadarajan, Addl. Govt. Pleader for respondents 1 and 3, ;A.L. Somaiyaji, Addl. Adv. General for D. Veerasekaran, Adv. for 2nd respondent and ;K.N. Pandian, Adv. for 4th respondent

Advocate for Pet/Ap. : AR. L. Sundaresan, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

D. Murugesan, J.

1. The Government approved the draft Notification under Section 4(1) of the Land Acquisition Act (hereinafter referred to 'The Act') in G.O. Rt. No.26 Housing and Urban Development Department dated 23.10.1975 to acquire an extent of 513.52 acres of land comprised in various Survey Numbers including the Survey Numbers in question for implementing Ambattur Neighbourhood Scheme. The said Notification was published in the Tamil Nadu Government Gazette dated 12.11.1975. An enquiry under Section 5-A of the Act was conducted after serving notices to the land owners. Subsequently, the Tamil Nadu Housing Board decided to exclude an extent of 81.45 acres. The lands belonging to the petitioners are not covered in the excluded lands. The petitioners participated in 5-A enquiry. Section 6 Declaration was made in the Tamil Nadu Government Gazette dated 10.11.1978. The Award was passed on 30.7.1981. The lands were taken possession by the Tamil Nadu Housing Board on 11.8.1981 and 19.8.1981. The petitioners also received compensation.

2. The petitioners, Sixteen in Number, claiming to be the owner of the lands in S.F.Nos. 331/2, 332 333, 334/1, 334/2 Part of 319, 326/1, 320/2a, 327 to 329 of an extent of 7.61 acres of land, approached the Government through their Advocate, some time during 2000, seeking for re-conveyance of the lands under Section 48-B of the Act. The said request was rejected by order dated 15.5.2001. Questioning the same, present Writ Petition has been filed.

3. Mr. AR. L. Sundaresan, learned counsel appearing for the petitioners submitted that Declaration made under Section 6 of the Act was quashed by a Division Bench of this Court on the ground that Declaration was not made within a period of three years from the date of preliminary Notification. Infact, in S.L.P. No. 11353 to 11355/1988, the Supreme Court quashed Notification published under Section 4(1) of the Act as well, with liberty to the State to exercise its power of eminent domain and make fresh preliminary Notification. The said order has become final. Based upon the said order, this Court in W.P. No. 13582/1995 by order dated 1.2.1996, quashed the Land Acquisition proceedings in respect of two petitioners and had directed the refund of the amount of compensation received by the

petitioners together with interest. He would also submit that a Division Bench of this Court in W.A. Nos.2629,2935 and 2936/2001 had directed re-conveyance of the land under similar circumstance. He would further submit that once 4(1) notification itself was quashed by the Supreme Court, the respondent is duty bound to re-convey the land to the land owners viz., the petitioners. In the circumstances, the learned counsel would submit that the impugned order rejecting the request for re-conveyance is liable to be set aside and consequently, the petitioners are entitled to re-conveyance.

4. Mr. A.L. Somaiyaji, learned Additional Advocate General, appearing for the Tamil Nadu Housing Board submitted that inasmuch as the award was passed as early as on 30.7.1981 and possession was taken on 11.8.1981 and 19.8.1981 and the lands were utilised, the Writ Petition filed in the year 2003, is liable to be dismissed on the ground of laches. The lands absolutely vest with the State from the date of taking possession and there is no right vested in the erstwhile owners to seek for re-conveyance. In support of the above submission, the learned counsel would rely upon the recent judgment of the Supreme Court reported in Government of Andhra Pradesh and Anr. v. Syed Akbar . He would also submit that various orders relied upon by the petitioners would apply to the petitioners in that case and cannot be cited as a precedent especially when the lands were already utilised by the Tamil Nadu Housing Board and no lands are available for re-conveyance.

5. In view of the above rival submissions, the following question arises for consideration. Whether the petitioners have any right to seek for re-conveyance of land under Section 48-B of the Act

6. Section 48-B was introduced to the Land Acquisition Act, 1894 by the Land Acquisition (Tamil Nadu Amendment) Act, 1996- Act 68/1984). The said Section reads as under:

'48-B - Transfer of land to original owner in certain cases:- Where the Government are satisfied that the land vest in the Government under this Act is not required for the purpose for which it was acquired, or for any other public, the Government may transfer such land to the original owner who is willing to repay the amount

paid to him under this Act for the acquisition of such land inclusive of the amount referred to in sub-section (1-A) and (2) of Section 23, if any, paid under this Act'

7. A reading of Section 48-B of the Act shows that in the event, the Government is satisfied that the land vests in the Government is not required for the purpose for which it was acquired or for any other public purpose, it may transfer such land to the original owner who is willing to repay the amount paid to him under the Act for the acquisition of such land inclusive of the amount referred to in sub-section (1-A) and (2) of Sub Section 23, if any, paid under the Act. In order to exercise the power under Section 48-B of the Act, firstly the land must be vested in the Government, secondly, the Government must be satisfied that the said land is not required for the purpose for which it was acquired or for any other public purpose and thirdly, the owner is willing to repay the amount paid to him for the acquisition. Only when the land, after vesting in the Government, was not utilised for the purpose for which it was acquired or for any other public purpose, it must be held that the lands are vacant and must be available for re-conveyance.

8. Satisfaction of the Government either for re-conveyance or for refusal must be supported by materials. In this context, the stand of the respondent needs a reference. It is the specific case of the respondent that the land in S.F. No. 331/2 has been utilised by the Tamil Nadu Housing Board for construction of 160 HIG Flats and allotted roads and parks portion are handed over to the Ambattur Municipality. The bus stand has also been constructed in the said land which was handed over to the Pallavan Transport Corporation. The land in S.F.No.332 Part was utilised for bus stand which was handed over to the Transport Corporation. Part of the lands were utilised for Telephone Exchange which was handed over to the Telephone Department. Public purpose sites were handed over to the Tamil Nadu Electricity Board and also a portion of the land was utilised for Deaf and Dumb School. Part of the lands were utilised for roads and park and the same were handed over to the Ambattur Municipality. Major portion of the lands were utilised for residential plots and the same were allotted. The land in S.F. No. 334/1, 2 were fully utilised for residential plots and roads. The land in S.F.No.320/2A, 326/1, 327,328 and 329 were utilised for residential plots, roads and school site and they were allotted and handed over. A portion of the land which was

earmarked for public park is alone kept vacant. It is the case of the learned counsel for the petitioners that the said land which is kept vacant can be re-conveyed. This argument is totally a misconception. When the scheme was drawn for plotting out the acquired lands, a portion of the land was shown as the place meant for 'park'. The space earmarked for park is part and parcel of the Scheme and as a necessary corollary the said land must be kept vacant for usage as 'park'. On the ground that the portion of the land earmarked for 'park' is kept vacant, it cannot be said that the said lands are not utilised. The entire extent of lands acquired from the petitioners have been utilised and no land is available for re-conveyance. Satisfaction as contemplated under Section 48-B of the Act has been arrived only at the above facts and such satisfaction for rejecting the request of the petitioners for re-conveyance cannot be held to be arbitrary or unsupported by any material or unjustified. In the circumstances, invocation of Section 48-B of the Land Acquisition Act cannot be permitted.

9. That apart, the matter should be looked into in regard to the right of the land owners to insist for re-conveyance when the lands vested in the Government. The issue as to the re-conveyance came up for consideration before the Supreme Court in the judgment reported in *State of Kerala v. M. Bhaskaran Pillai* and the Supreme Court has held as follows:

'4. In view of the admitted position that the land in question was acquired under the Land Acquisition Act, 1894 by operation of Section 16 of the Land Acquisition Act, it stood vested in the State free from all encumbrances. The question emerges whether the Government can assign the land to the erstwhile owners? It is settled law that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. In case there is no other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public auction can be better utilised for the public purpose envisaged in the directive principles of the Constitution. In the present case, what we find is that the executive order is not in consonance with the provision of the Act, and is, therefore, invalid. Under these circumstances, the Division Bench is well justified in declaring the executive order as invalid.

Whatever assignment is made, should be for a public purpose. Otherwise, the land of the Government should be sold only through the public auctions so that the public also gets benefited by getting a higher value'

10. The word 'vests' employed in Section 48-B of the Act means that the property acquired becomes the property of the Government without any conditions or limitations either as to the title or possession. As per law declared by the Supreme Court in the above judgment, once the land vested in the State free from all encumbrances by virtue of the operation of Section 16 of the Act, the Government is entitled to utilise the land for any other public purpose after the public purpose was achieved and still a portion of the land was available. In the event the Government was of the view that there was no other public purpose for which the land is needed, even then, instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public auction can be better utilised for the public purpose envisaged in the directive principles of the Constitution.

11. The above judgment was quoted with approval by the Supreme Court by a recent judgment reported in Government Of Andhra Pradesh and Anr. v. Syed Akbar . The issue as to the right of the Government to deal with the property acquired after it vested in Government, as declared by the Supreme Court in Baskaran Pillai and Syed Akbar's case was not put forth before the Division Bench as no finding was rendered. In view of the above judgments of the Supreme Court, the Division Bench judgments which were rendered on the facts of those cases cannot be made applicable to the facts of this case.

12. Insofar as the orders of this Court in W.A. No.2430/1999,2629, 2935 and 2936/2001 and W.P.No.13582/1995 are concerned, it must be noted that the orders are applicable only to the petitioners therein. There is no dispute that the Land Acquisition proceedings have not been even questioned by the petitioners herein. That apart, it is evident that the Division Bench had directed re-conveyance on the ground that the scheme has not been implemented. As could be seen from the following observation of the Division Bench in W.A. Nos. 2935 and 2936/2001 dated 18.12.2001.

'The subject matter of these two Writ Appeals is covered by an order dated 3.12.2001 in W.A. No.2629 of 2001 passed by a Division Bench of this Court. The matter relates to re-conveyance of the land acquired for a particular purpose. It is brought to the notice of this Court that the said scheme has not been implemented. The facts as narrated while disposing of the W.A. No. 2629 of 2001 is equally applicable to this case. In view of the above, the Writ Appeals are allowed directing the first respondent to re-convey the lands to the appellants herein. No costs' (Italic supplied)

13. There is one more hurdle for the petitioners. As the relief under Article 226 of the [Constitution of India](#), is only discretionary, normally it is made available to a person who is diligent in approaching the Court within a reasonable time and in the event a person aggrieved does not approach this Court within a reasonable time, such relief cannot be granted and must be refused on the ground of laches. 1. Notification under Section 4(1) was published on 12.11.1975, 2) Declaration under Section 6 was made on 10.11.1978 and 3) Petitioners have participated in 5-A enquiry. The petitioners have also participated in the award enquiry and the award was passed as early as on 30.7.1981 and possession of the lands was taken on 11.8.1981 and 19.8.1981. The petitioners have also received the compensation as well. The petitioners have approached this Court only in the year 2003. Hence these petitioners are not diligent to invoke the extraordinary jurisdiction within a reasonable time.

14. In this regard usual reference can be made to the following judgment of the Supreme Court. The Supreme Court in has held as follows:

'Thus, when the Writ Petitioner was guilty of laches or undue delay in approaching the High Court, the principle of laches or undue delay disentitled the Writ Petitioner for discretionary relief under Article 226, Constitution from the High Court, particularly, when virtually no attempt had been made by the Writ Petitioner to explain his blameworthy conduct of undue delay or laches'

15. The same view has been taken by the Supreme Court in the following judgments.

1. Srinivasa Rao v. State of Karnataka ;

2. Municipal Council, Ahamed Nagar v. Shah Hyder Beig

16. Infact, P. SATHASIVAM, J., had rejected the similar request of the land owners as that of the petitioners herein in W.P.No.783/1997 by order dated 17.4.1997 on the ground of laches.

17. Further, it is also relevant to note that once the award is passed, a Writ Petition cannot be entertained questioning the land acquisition proceedings. This law is well settled by the Supreme Court in the judgments reported in Municipal Council Ahmednagar v. Shah Hyder Beig . The same view has been taken by the Supreme Court in the following judgments reported in and . As the land owners are disentitled from even questioning the acquisition proceeding itself after the award is passed, the claim for re-conveyance is certainly cannot be entertained.

18. In view of the above, the Writ Petition fails and the same is dismissed. No costs.

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