

M. Dhanalakshmi Vs. Government of Tamil Nadu by the Commissioner and Secretary Housing and Urban Development Department and anr.

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SooperKanoon Citation : sooperkanoon.com/828732

Court : Chennai

Decided On : Aug-21-1997

Reported in : (1998)1MLJ294

Appellant : M. Dhanalakshmi

Respondent : Government of Tamil Nadu by the Commissioner and Secretary Housing and Urban Development Department

Judgement :

ORDER

Padmanabhan, J.

1. The petitioner seeks for the issue of a writ of certiorarified mandamus calling for the records connected with the Notification dated 4.4.1979 issued under Section 4(1) of the Land Acquisition Act published in Government Gazette No. 13-A, G.O. Ms. No. 517, Housing and Urban Development and the declaration issued under Section 6 of the Act published in Government Gazette dated 1.5.1982 in so far as it relates to the petitioner's land in S. No. 225y2 in Makakulam village, Madurai South Taluk, Madurai District and quash the same.

2. Admittedly, a Notification under Section 4(1) of the Land Acquisition Act (thereinafter referred to as the Act) was issued in G.O. Ms. No. 517 Housing and

Urban Development dated 4.4.1979 for the purpose of Tamil Nadu Housing Board. Even according to the petitioner, no objection had been raised. There-after, a declaration under Section 6 of the Act was made in G.O. Ms. No. 286 Housing and Urban Development dated 30.3.1982 and the same was also published in the Tamil Nadu Government Gazette dated 1.4.1982.

3. Challenging the said Notification under Section 4(1) of the Act dated 4.4.1979 and the said declaration under Section 6 of the Act dated 1.4.1982, the present writ petition has been filed.

4. The petitioner refers to earlier writ petitions filed by the third parties with respect to some other lands which was the subject matter of acquisition for Ellis Nagar Scheme. It is true that W.P. No. 11796 of 1984 was allowed on 17.9.1991 in respect of particular lands in question subsequently, action has been taken and the Tamil Nadu Housing Board had executed the Ellis Nagar Scheme and in fact, the petitioner's land as well as adjacent lands have also been acquired and the housing scheme has been executed by the Housing Board. In the writ petition, the petitioner had been making a demand by the representations dated 12.11.1990, 4.3.1991 and 11.3.1991. The petitioner had been making a demand only for payment of Compensation while expressing certain difficulties due to non-payment of compensation even after award enquiry.

5. According to the petitioner, no action has been taken by the respondents and there is no justification to allow the Notification under Section 4(1) of the Act and the Declaration under Section 6 of the Act to continue and they are liable to be quashed.

6. The learned Counsel for the petitioner contended that the purpose for which the lands has been acquired is vague as seen from the Notification under Section 4(1) of the Act, that there has been inordinate delay in the execution of the scheme and that the impugned Notification under Section 4(1) of the Act and the Declaration under Section 6 of the Act are liable to be quashed.

7. It has to be pointed out that in the present case, the Notification under Section 4(1) of the Act has been made on 4.4.1979 and the Declaration under Section 6 of

the Act has been published on 1.4.1982. The present writ petition has been filed on 14.8.1997, after a period fifteen years from the date of declaration under Section 6 of the Act. This writ petition is liable to be dismissed on the short ground of laches on the part of the petitioner. Except making representations every now and then, claiming payment of compensation, the petitioner had not taken any action on the earlier occasions to challenge the acquisition. In fact the petitioner had just demanded payment of compensation and had not even objected to the acquisition under-taken for the purpose of Tamil Nadu Housing Board.

8. If the petitioner had not been paid compensation, it is always open to the petitioner to institute appropriate proceedings or appropriate writ. This was pointed out by this Court at the time of admission. However, the learned Counsel for the petitioner insisted for a decision on this writ petition.

9. The laches on the part of the petitioner cannot be complained at all and the petitioner had kept quiet for more than 45 years from the date of declaration under Section 6 of the Act.

10. In *State of Tamil Nadu and Anr. v. Rajendran and 23 others* (1993) 2 1 W. 352 a Division Bench of this Court, while negating the petitioners' claim on ground of laches, has held thus:

We are of the view that the proposition laid down in that case is squarely applicable to the facts of the case on hand. It is not as if the petitioners were not aware of the acquisition proceedings, for, they have filed objections to the notification published under Section 4(1) and have also participated in the enquiry under Section 5-A of The Act. Nevertheless, they waited in some cases for three years and in another case for five years. In between it may be pointed out that two writ petitions had been filed by the owners of other lands acquired under the same Notification to which we have already adverted. One matter was taken up in writ appeal, of course, before that writ appeal was decided, these writ petitions came to be filed. In addition to this, there is no explanation for this long delay. Hence, we are of the view that the learned single Judge is not correct in holding that the petitioners are not guilty of laches in approaching this Court. It is to be noted that in *Vijayaraghavan's case*, referred to above, the petitioners who approached the

court in the year 1985 itself were found to be guilty of laches. Consequently, we hold that the petitioners are guilty of laches and as such they are disentitled to seek relief under Article 226 of the Constitution of India.

11. In *Pauline Tatchaganathan v. Land Acquisition Officer Sub. Collector* : (1995)1MLJ535 identical question was considered by Srinivasan, J. (as he then was) and it has been held thus:

In reply to this, learned Counsel for the petitioners submits that in the present case on account of order of stay granted in the first writ petition, the petitioners continued to be in possession. So long as possession is not taken by the Government, the property does not vest in the Government. My attention is drawn to Section 16 of the Land Acquisition Act which provides that when the Collector has made award under Section 11 of the Act, he may take possession of the land which shall there-upon vest absolutely in the Government free from all encumbrances. Learned Counsel contends that unless the property has vested in the Government, the delay in filing the writ petition cannot be put against the writ petitioner and the writ petition cannot be thrown out on that ground. I am unable to accept this contention in view of the pronouncements of the Supreme Court in the *Ramjas Foundation v. Union of India* 1993 L.A.C.C. 327. There, the award had not been passed and possession had not been taken. Yet the Supreme Court dismissed the writ petition holding that there was inordinate delay in filing the same and it was not maintainable. Hence, the plea on the ground that the property has not vested in the Government is not available to the petitioners.

It is next contended that the delay is not so inordinate as to warrant the dismissal of the writ petition. According to learned Counsel, the delay is only of a period of two years and odd and that cannot be considered to be an inordinate delay. I am unable to accept this plea also. The declaration under Section 6 of the Act is made in 1986. Award is passed in 1988. What is challenged before me is not only the award but also the validity of the declaration. The very basis of the challenge in the writ petition is that the proceedings under Section 5-A of the Act, notice was not given to the petitioners herein and notice was issued only to the persons who were abroad and who were represented by the second petitioner as power agent.

Hence, there is a delay of four years in challenging the declaration under Section 6 of the Act. There is no explanation for this delay. No doubt the petitioners have stated in the affidavit that because of the tendency of the earlier writ petition, they thought that their rights were quite safe and would be protected. That is hardly an explanation for the delay.

12. In *Gania alias Lakshmiammal v. State of Tamil Nadu* : (1995)1MLJ522 this Court also rejected the writ petition challenging the land acquisition proceedings on ground of laches though the laches in that case was only two years. But in the present case, the delay is more than 15 years and there would be no question at all.

13. The Apex Court in *State of Tamil Nadu v. L. Krishnan* : AIR 1996 SC497 considered the question of laches in invoking the jurisdiction under Article 226 of the Constitution and declined to interfere on the facts of the said case. It has been held thus:

We do not think it necessary to go into the merit of this submission on account of the laches on the part of the writ petitioners. As stated above, the declaration under Section 6 were made some time in the year 1978 and the writ petitioners chose to approach the court only in the year 1982-83. Had they raised this objection at the proper time and if it were found to be true and acceptable opportunity could have been given to the Government to comply with the said requirement. Having kept quiet for a number of years, the petitioners cannot raise this contention in the writ petitions filed at a stage when the awards were about to be passed.

14. In the light of the said pronouncements of this Court as well as Apex Court, this Court finds that there is no justification at all to entertain this writ petition and this Court declines to interfere at the instance of the petitioner who had slept over with the matter for more than fifteen years. Hence, the writ petition is dismissed in limine. No costs. Consequently, W.M.P. No. 20072 of 1997 is also dismissed.