

The Chairman and Managing Director. Vs. C.K.Namasivayam

The Chairman and Managing Director. Vs. C.K.Namasivayam

SooperKanoon Citation : sooperkanoon.com/922682

Court : Chennai

Decided On : Nov-23-2011

Judge : K.CHANDRU, J.

Acts : [Land Acquisition Act, 1894](#) - Sections 48-B, 18

Appeal No. : Review Application (MD)No.18 of 2007 And W.P.(MD)No.8320 of 2006 and M.P.(MD)Nos.1 and 1 of 2007

Appellant : The Chairman and Managing Director.

Respondent : C.K.Namasivayam

Judgement :

1. The Review Application arose out of the order passed by this Court in M.P.(MD)No.1 of 2007 in W.P. (MD)No.8320 of 2006. The Review Application is filed by respondents 4 to 6 in the original Writ Petition. Aggrieved by the order dated 11.06.2007, the Review Application came to be filed. Since the Review Application is directed only against an interim order passed by this Court, this Court directed the main Writ Petition itself to be listed along with the Review Application and accordingly, the main Writ Petition also was listed. The disposal of the main Writ Petition will also decide the fate of the Review Application. Therefore, the Writ Petition is taken up for final disposal.

2. One C.K.Namasivayam, S/o.Kanniah Chettiar filed a Writ Petition with a prayer seeking for a direction to the respondents therein to re-convey the lands measuring 1 Acre and 9.25 cents comprised in Survey No.G-3-12/8 situated in Vadasery Village, Kanyakumari District, which were acquired by the State Government by a notification dated 02.03.1983 and to pass appropriate orders. That Writ Petition came to be admitted on 13.09.2006. When the matter came up on 24.04.2007, the writ petitioner stated that as a condition for re-conveyance, he was willing to deposit the value of Rs.10 lakhs and as regards the re-conveyance of land, the learned counsel for the BSNL took time. Subsequently, on 11.06.2007, this Court recorded the statement of the counsel for the writ petitioner that he was willing to deposit the amount within a period of two weeks and thereafter, the matter was adjourned. Aggrieved by the direction to deposit the amount, without there being any order of re-conveyance, the contesting respondents, viz., Bharat Sanchar Nigam Limited [for short BSNL] filed the Review Application. In the Review Application, notice has been ordered.

3. The contention raised by the original writ petitioner was that the acquisition was made in the year 1994 and the possession was handed over to the BSNL. But the BSNL never constructed any staff quarters, for which, the land was acquired and the same has been kept unused. Therefore, the lands are not put to use for the purpose of which acquisition has been made. Under Section 48-B of the [Land Acquisition Act, 1894](#), as amended by the Tamil Nadu Act, the land owner is entitled to seek for re-conveyance. Therefore, he sent a representation on 29.02.2005 to re-convey the land. Since no orders were passed, the Writ Petition came to be filed.

4. On notice from this Court, the sixth respondent has filed a counter-affidavit dated 06.09.2007, which was adopted by respondents 4 and 5 and additional counter-affidavit was also filed by the sixth respondent.

5. It is seen from the records that the land in question was acquired by the BSNL for construction of staff quarters. The said land was purchased by the petitioner's father viz., P.C.Kanniah Chettiar and his four daughters during the year 1980 and no construction of houses were done and sub-division was also not made. They are settled at Trivandrum. The objection raised by them was rejected and a draft declaration was made on 08.02.1993, which was also published in the Gazette as well as in two local dailies. The substance of the notification was also published in the locality. After the draft declaration was approved under Section 6, order was passed and Gazetted on 22.02.1993. Notices were issued under Sections 9(1) and 10 and published in the locality on 26.05.1994 and served on the land owners on 02.06.1994 and enquiries were conducted on 27.06.1994 and 08.07.1994. Ultimately, an award was passed on 14.07.1994. The acquired lands were handed over to the BSNL, which is the requisitioning authority and they also took possession on 28.07.1994.

6. Aggrieved by the same, the present petitioner on behalf of his father, who, by then, had passed away, filed a Writ Petition before the Principal Bench in W.P.No.12155 of 1994 challenging the acquisition proceedings and obtained an order of interim stay of dispossession. Because of the interim order of the Principal Bench, the construction work could not be proceeded. Subsequently, the Writ Petition came to be disposed of by the Principal Bench by giving permission to the land owner to apply for reference with the District Collector for higher compensation. Aggrieved by the order passed by the learned Judge, the petitioner preferred a Writ Appeal being W.A.No.950 of 2002 before the Principal Bench and the said Writ Appeal was dismissed on 24.06.2002. It was also stated that the petitioner can make an application seeking for a reference under Section 18 of the [Land Acquisition Act, 1894](#) for enhanced compensation. On the basis of the reference made under Section 18, the jurisdictional Reference Court, viz., the Sub Court, Nagercoil, took up the reference as L.A.O.P.No.3 of 2003. Therefore, the petitioner having filed a one round of litigation and also gone before the Reference Court for higher compensation, cannot set up a new case seeking for re-conveyance.

7. The first contention of the petitioner that there has been no worthwhile construction in the lands acquired itself is a misnomer, because from the year 1994 to 2002, for over a period of eight years, it was the petitioner who stalled any activity by challenging the acquisition proceedings. In the meanwhile, the BSNL have got a letter from the local M.L.A. stating that some land is to be allotted for road widening and it was felt that the said portion of the property may not hinder the entire plan for the staff quarters. Thereafter, when the building plan was submitted, the road portion was directed to be handed over to the Municipality on the basis of a gift deed, without which, the Municipality refused to maintain the roads and that question was not considered, because there is no provision, for which, the gift deed should be made in favour of the Municipality.

8. In the meanwhile, the Directorate of Town and Country Planning, by their order dated 17.11.2002, gave permission for construction subject to conditions. Since the dispute relating to execution of gift deed was under correspondence, the construction could not be started and the petitioner cannot take advantage of the delay, which was substantially caused by the petitioner and the further delay due to administrative cause.

9. In the counter-affidavit dated 06.09.2007, it was stated that BSNL has spent heavy amount in the acquisition of the property and they are in physical possession and enjoyment of the property as if the land has been already vested on them and the land is required for construction of their own building and structures and other buildings and hence, the question of any re-conveyance will not arise.

10. Under the said circumstances, it has to be seen as to whether the petitioner's prayer can be considered. The true scope of Section 48-B came to be considered by the Supreme Court in *Tamil Nadu Housing Board v. Keeravani Ammal and Ors* reported in 2007 (2) CTC 447, wherein in paragraph 11, the Supreme Court had observed as follows:-.Section 48-B introduced into the Act in the State of Tamil Nadu is an exception to this rule. Such a provision has to be strictly construed and strict compliance with its terms insisted upon. Whether

such a provision can be challenged for its validity, we are not called upon to decide here.

11. The Supreme Court in *Tamil Nadu Housing Board v. L.Chandrasekaran and Ors* reported in 2010 (2) SCC 786, dealt with the scope of Section 48-B and has considered all the cases arising out of re-conveyance. In paragraphs 28 and 29, it was observed as follows:- 28. It need no emphasis that in exercise of power under Section 48-B of the Act, the Government can release the acquired land only till the same continues to vest in it and that too if it is satisfied that the acquired land is not needed for the purpose for which it was acquired or for any other public purpose. To put it differently, if the acquired land has already been transferred to other agency, the Government cannot exercise power under Section 48-B of the Act and re-convey the same to the original owner. In any case, the Government cannot be compelled to re-convey the land to the original owner if the same can be utilized for any public purpose other than the one for which it was acquired.

(Emphasis added)

29. Before concluding, we may notice the judgment of this Court in *Tamil Nadu Housing Board v. Keeravani Ammal* (supra). The question considered in that case was whether the Division Bench of the High Court could direct release of the acquired land which had been transferred to the appellant-Board. While setting aside the impugned order, this Court observed: (SCC pp.261-62, paras 13- 16)

13.It is clearly pleaded by the State and the Tamil Nadu Housing Board that the scheme had not been suspended or abandoned and that the lands acquired are very much needed for the implementation of the scheme and the steps in that regard have already been taken. In the light of this position, it is not open to the Court to assume that the project has been abandoned merely because another piece of land in the adjacent village had been released from acquisition in the light of orders of the Court. It could not be assumed that the whole of the project had been abandoned or has become unworkable. It depends upon the purpose for which the land is acquired. As we see it, we find no impediment in the lands in question being utilised for the purpose of putting up a multi-storied building containing small flats, intended as the public purpose when the acquisition was notified. Therefore, the High Court clearly erred in proceeding as if the scheme stood abandoned. This was an unwarranted assumption on the part of the Court, which has no foundation in the pleadings and the materials produced in the case. The Court should have at least insisted on production of materials to substantiate a claim of abandonment.

14.We have already noticed that in the writ petition, there are no sufficient allegations justifying interference by the Court. Mere claim of possession by the writ petitioners is not a foundation on which the relief now granted could have been rested either by the learned Single Judge or by the Division Bench of the High Court. On the materials, no right to relief has been established by the writ petitioners.

15.We may also notice that once a piece of land has been duly acquired under the Land Acquisition Act, the land becomes the property of the State. The State can dispose of the property thereafter or convey it to anyone, if the land is not needed for the purpose for which it was acquired, only for the market value that may be fetched for the property as on the date of conveyance. The doctrine of public trust would disable the State from giving back the property for anything less than the market value. In *State of Kerala v. M.Bhaskaran Pillai*(1997) 5 SCC 432 in a similar situation, this Court observed : (SCC p.433, para 4) 4.....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.

16. Section 48-B introduced into the Act in the State of Tamil Nadu is an exception to this rule. Such a provision has to be strictly construed and strict compliance with its terms insisted upon. Whether such a provision can be challenged for its validity, we are not called upon to decide here.

12. Therefore, as there has been very little scope for judicial review, the claim made by the petitioner cannot be accepted. Hence, the Writ Petition stands dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

13. In view of the fact that the main prayer made in the Writ Petition has been negated by this Court, the question of the petitioner warranting to deposit Rs.10 lakhs as a condition for re-conveyance will not arise. Hence, the Review Application will stand allowed and the order passed by this Court in M.P.(MD)No.1 of 2007 in W.P.(MD)No.8320 of 2006, dated 11.06.2007 also will stand set aside. If the writ petitioner deposits any amount, the same will be refunded to the writ petitioner. Consequently, the connected miscellaneous petition is closed. No costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com