

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2014

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.16159 of 2011

and

M.P.No.2 of 2011

S.Jayakumar

... Petitioner

vs.

1.The Secretary to Government

of Tamil Nadu  
Housing and Urban Development  
Department  
Fort St.George, Chennai-600 009

2.The Member Secretary

Chennai Metropolitan Development  
Authority  
No.1, Gandhi Irwin Road, Egmore  
Chennai-600 008

3.The Chief Executive Officer

Tamil Nadu Housing Board  
Chennai Metropolitan Development  
Authority  
No.1, Gandhi Irwin Road, Egmore  
Chennai-600 008

4.The Special Tahsildar (Land Acquisition)

M.N.Nagar Schemes  
Maraimalai Nagar

Kancheepuram District सत्यमेव जयते...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for a Writ of Certiorarified Mandamus to call for the records pertaining to the Letter No.NT1/9596/2008, dated 23.11.2010, issued by the Chief Executive Officer, Chennai Metropolitan Development Authority, third respondent herein, quash the same and further directing the respondents particularly the Chief Executive Officer, Chennai Metropolitan Development Authority, third respondent herein to re-convey the vacant land, measuring an extent of 0.92 Cents, comprised in Survey No.233/2, in Sengundram Village, Chengalpattu Taluk, Kancheepuram District, to the petitioner and to execute the re-conveyance deed in favour of the petitioner.

For Petitioner : Mr.K.Balakrishnan

For Respondents : Mr.M.S.Ramesh, A.G.P. for R1 & R4  
Mr.A.Kumar for R2

O R D E R

Reserved on : 10.12.2014

Pronounced on: 23.12.2014

The prayer in the writ petition is for issuance of a writ of certiorarified mandamus to quash the order, dated 23.11.2010, sent by the third respondent, Chief Executive Officer, Chennai Metropolitan Development Authority, to the petitioner and to direct the third respondent to re-convey the vacant land, comprised in Survey No.233/2, in Sengundram Village, Chengalpattu Taluk, Kancheepuram District, measuring an extent of 92 Cents and to execute a re-conveyance deed in favour of the petitioner in respect of the said property.

2. The short facts of the case are as follows:

The petitioner submits that the land, comprised in Survey No.233/2, in Sengundram Village, Chengalpattu Taluk, Kancheepuram District, measuring an extent of 92 Cents was originally belonging to him and the same was acquired by the respondents for the development of Satellite Town at Maraimalai Nagar Scheme, during 1986 and an Award bearing No.5 of 1986 was passed on 11.09.1986 in respect of the said acquisition. Though the said land was acquired for the above purpose, the same was not utilized for the said purpose and the land has been kept idle from the date of acquisition. Hence, he sent a representation, dated 01.03.2009, to the respondents, seeking reconveyance of the said land. Since there was no response to the said representation, he approached this Court by filing W.P.No.12046 of 2009 seeking direction upon the respondents to dispose of the said representation and this Court, by Order dated 02.07.2009, directed the first respondent to dispose of the petitioner's representation, dated 01.03.2009, on merits and in accordance with law, within a stipulated period of three months from the date of receipt of a copy of the Order.

3. Further, he submits that in compliance with the Order passed by this Court, the second respondent sent a letter on 19.08.2009 requesting the petitioner to furnish a copy of the representation, dated 01.03.2009, for taking necessary further action on priority. Accordingly, the petitioner sent a copy of the said representation to the second respondent and the second respondent, on 24.09.2009 forwarded the same to the first respondent. The first respondent sent a letter, dated 12.11.2009 to the petitioner informing that the request for reconveyance of

the said land, comprised in Survey No.233/2, in Sungundram Village, Chengalpattu Taluk, Kancheepuram District, measuring an extent of 92 Cents, has been examined and found that it is not feasible for compliance and hence the request of the petitioner stands rejected.

4. He further submits that on 18.12.2009, the third respondent sent a letter to the fourth respondent for taking necessary further action in respect of the acquired land and on 22.11.2010, the fourth respondent forwarded a copy of the petitioner's representation, dated 01.03.2009, to the third respondent for further action. The third respondent by the impugned order, dated 23.11.2010, rejected the petitioner's request on the ground that the land is very much needed for the implementation of the project as the said land is identified for development of institutional purposes. The grievance of the petitioner is that though the said land was acquired for such purpose, till date the said land is kept vacant and not utilized for any other purpose and the Government re-conveyed the other vacant land, comprised in Survey No.233/2. The Government, by G.O.Ms.No.254, Housing and Urban Development Department, dated 06.10.2003, taken a decision to reconvey all the vacant, undeveloped and unused lands to the respective owners and as per the said Government Order, the petitioner is entitled for reconveyance of his land, which is not utilized for any purpose. Therefore, he has filed this writ petition seeking the relief as stated above.

5. The second respondent filed a counter affidavit stating that the land, comprised in Survey No.233/2, in Sungundram Village, Chengalpattu Taluk, Kancheepuram District, measuring an extent of 92 Cents, was acquired by the Chennai Metropolitan Development Authority and is in their possession. During the process of land acquisition, it was ascertained that the said land was registered in the name of one Muniammal under Patta No.103 and the said Muniammal did not attend the Award enquiry. Since all the original land owners in respect of the land, comprised in Survey No.233/2 of Sengundram Village did not attend the Award enquiry, the compensation payable to them could not be apportioned and hence the compensation amount of Rs.4,943.15 awarded by the Court in respect of the said land was ordered to be kept under the Civil Court deposit under Section 31(2) of the Land Acquisition Act. After acquisition, the said land has been registered in the name of the Member Secretary, Chennai Metropolitan Development Authority, under Patta No.2194.

6. He further submits that the petitioner, who purchased the subject land, on 05.05.2008, vide document No.3928 of 2008, filed a writ petition in W.P.No.12046 of 2009, before this Court, seeking a direction to the first respondent to consider his representation, dated 01.03.2009, for reconveyance of the said land and this Court, by Order dated 02.07.2009, directed the first respondent to dispose

of the petitioner's representation on merits and in accordance with law, within a period of three months from the date of receipt of a copy of the Order. Accordingly, the Government, vide letter, dated 12.11.2009, disposed of the petitioner's representation by way of rejecting his request for reconveyance on the ground that his request is not feasible for compliance. Again, he made a request to the Chennai Metropolitan Development Authority for the same request of reconveyance and the same was also rejected and once again he made the same request of reconveyance to the third respondent and the same has also been rejected by the impugned order, dated 23.11.2010, stating that the subject land is very much needed for the implementation of the project as the said land is identified for development of institutional purpose.

7. Further, he submits that as per the Award, it is ascertained that the land under reference was registered in the name of one Muniammal under Patta No.103 and the petitioner is the subsequent purchaser of the said land and he is not the original owner when the subject land was acquired under Land Acquisition Act. Further, the contention of the petitioner that the acquired subject land has been kept vacant and idle without any progress for many years is incorrect. In fact, works of laying out such a large extent of lands about 2000 Acres, acquired by the Chennai Metropolitan Development Authority for M.M.Nagar New Town Scheme is a herculean task and it has to be carried out on a phased programme. Till then, it is natural to keep the land idle. However, the petitioner's land has been identified for proposed development of institutional purposes and hence the land under reference cannot be re-conveyed. Further, no such land, comprised in Survey No.233/2 of Sengundram Village has been re-conveyed by the respondents and that apart G.O.Ms.No.254, Housing and Urban Development Department, dated 06.10.2003, referred by the petitioner, is not applicable for the lands acquired by the Chennai Metropolitan Development Authority and it is applicable only for the lands acquired by the Tamil Nadu Housing Board. Therefore, the writ petition filed by the petitioner seeking the relief as stated above is not maintainable and the same is liable to be dismissed.

8. The highly competent counsel Mr.K.Balakrishnan appearing for the petitioner has submitted that the petitioner is the owner of the land, comprised in Survey No.233/2, in Sungundram Village, Chengalpattu Taluk, Kancheepuram District, measuring an extent of 92 Cents. The respondents acquired the said land and adjacent lands for the implementation of a Satellite Town at Maraimalai Nagar Scheme. The said lands have been acquired without following the provisions of the Land Acquisition Act and also an Award No.5 of 1986, dated 11.09.1986, had been passed. Further, he submitted that the scheme has not been implemented so far and hence the acquisition proceedings have become defunct. Therefore, the petitioner made an application to the respondents for re-conveying

the subject land in favour of him after receiving the compensation amount, since the subject land is kept idle.

9. The highly competent counsel further submits that the petitioner sent a representation to the respondents on 01.03.2009 seeking re-conveyance, but the same was not disposed of by the respondents and hence the petitioner filed a writ petition in W.P.No.12406 of 2009 before this Court seeking direction upon the respondents to dispose of his representation, dated 01.03.2009, and this Court, by Order dated 02.07.2009, directed the respondents to dispose of the representation, dated 01.03.2009, on merits and in accordance with law. Thereafter, the first respondent passed an order, dated 12.11.2009, rejecting the request of the petitioner for reconveyance on the ground that the reconveyance of the subject land is not feasible for compliance. Similar order had been passed by the third respondent also stating that the subject land is very much needed for development of institutional purposes instead of the original scheme. The same respondents re-conveyed a portion of the said land to the land owners and therefore the petitioner is also entitled for the similar relief. Further, the Government, by G.O.Ms.No.254, dated 06.10.2003, taken a decision to reconvey the vacant, undeveloped and unused lands to the respective owners of lands. The said Government Order is operating across the State. Accordingly, the petitioner is entitled to secure similar remedy from the respondents under the said Government Order, since the subject land is still vacant. Further, the petitioner is in possession and also having care and custody of the said land and the respondents have not taken the said lands. Therefore, the very competent counsel made a deep request to allow the writ petition.

10. The highly competent counsel in support of his contentions has placed reliance upon the decisions in A.L.Vellaichamy v. State of Tamil Nadu, reported in (2014) 3 MLJ 840 and iGATE Global Solutions Limited v. State of Tamil Nadu, reported in (2014) 5 MLJ 663. The head notes of the case in A.L.Vellaichamy (cited supra) reads as follows:

"(A) Property Laws - Land Acquisition - Eviction - Land Acquisition Act, Section 4 - Land of Petitioner along with adjacent lands required - Petitioner challenged acquisition proceedings, dismissed - Meanwhile, Housing Board passed Resolution re-conveying lands to hand land owners, who constructed houses, even if construction made after notification - Petitioner following Resolution, filed Miscellaneous Petition for modification of order in writ and to consider re-conveyance of land - Court disposed of Miscellaneous Petition holding that it is open to Petitioner to make application to Housing Board for re-conveyance - Petitioner sent

representation to Housing Board, same rejected - Aggrieved, representation made to Government to set aside order passed by Housing Board and to exempt or reconvey land - While so, by notice Petitioner termed as encroacher and called to vacate premises failing which Petitioner was to be evicted - Writ petition - Whether Petitioner can be treated as encroacher and is liable to be evicted - Held, no record to show that appeal received by Government has been disposed of - Petitioner cannot be treated as encroacher when appeal filed against order still pending with Government - Impugned order set aside - Petition allowed.

(B) Property Laws - Land Acquisition - Reconveyance of Land - Land Acquisition Act, Sections 4 and 48B - Resolution passed by Housing Board was considered in Government of Tamil Nadu v. Rajeswari Venkatesan and Others, wherein it was held that Resolution was applicable to cases where buildings constructed after issuance of notification under Section 4(1) of Act - Petitioner claimed that construction put up after issuance of Section 4(1) notification - Whether Petitioner is entitled to get benefit of reconveyance as per Resolution of Housing Board and as per Government of Tamil Nadu v. Rajeswari Venkatesan and Others since construction put up after Section 4(1) notification - Held, from photographs of house, clear that house is fully built RCC construction and plot surrounded by compound with iron-gate - House is old construction which thick foliage and fully grown coconut trees in the plot - Petitioner put up construction immediately after notification under Section 4(1) - Petitioner's case to be considered on par with land owners in Government of Tamil Nadu v. Rajeswari Venkatesan and Others - Directions issued to Respondents to consider and allot land along with building constructed to Petitioner - Petition allowed."

11. The head notes of the case in iGATE Global Solutions Limited (cited supra) reads as follows:

"(A) Property Law - Land Acquisition - Subsequent Purchaser - Re-conveyance of land - Locus Standi - Transfer of Property Act, 1882, Section 41 - Land Acquisition Act, 1894 (Act 1894), Section 48-B - Income Tax Act, Section 269UL(1) - Guardian and Wards Act, 1925 (Act

1925) - Petitioner purchased land in question from vendor - Petitioner received notice from Housing Board to vacate and hand over possession, as land in question became subject matter of land acquisition proceedings in award - Petitioner being unaware of award - Petitioner being unaware of award, sought re-conveyance of land under Section 48-B Act 1894, same rejected - Writ petition challenging correctness of impugned order rejecting request of Petitioner for re-conveyance of property under Section 48-B Act 1894 - Whether Petitioner/Subsequent purchaser of land in question entitled to maintain writ petition - Held, Petitioner took steps by executing agreement for sale, by obtaining order under Section 269UL(1) Income Tax Act and Another order under 1925 Act seeking permission for sale of minor's share by Order - Petitioner acted in good faith as required under Section 41 Act 1882 and purchase was bono fide - Objection raised by Respondents that subsequent purchaser cannot challenge acquisition proceedings not accepted - Decision in V.Chandrasekaran and Another v. Administrative Officer and Others followed - Impugned order set aside - Writ petition allowed.

(B) Property Law - Land Acquisition - Benefit of New Act - Entitlement to - Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, Section 24(2) - Land Acquisition Act, 1894, Sections 18 and 31(2) - Whether Petitioner entitled to reap benefit of new amendment Act 2013 - Held, one of the contingency under new Act satisfied Collector neither made payment of compensation to land owner nor made any attempt to deposit as per Section 31(2) Act 1894 in reference Court under Section 18 Act 1894 - Acquisition proceedings initiated by Respondents deemed to have elapsed by legal fiction in view of enactment of 2013 Act - Petitioner entitled to benefit under new Act 2013."

12. The highly competent Additional Government Pleader appearing for the respondents 1 and 4 submits that the respondents 2 and 3 are the requesting bodies and based on their requests, the petitioner's land and the lands of others were acquired for the implementation of Satellite Town at Maraimalai Nagar Scheme. Hence, the first respondent issued a Government Order. As per the Government Order, the first respondent, the fourth respondent initiated land acquisition proceedings under the old Act and acquired the said lands, after strictly adhering to the land

acquisition procedure as per the Act. Further, the possession of the acquired land had been taken over on 30.10.1998 and the land owners filed a writ petition before this Court and the same was dismissed. Hence, the present writ petition is not maintainable.

13. The very competent counsel Mr.A.Kumar appearing for the second respondent submits that the fourth respondent acquired the said land after observing necessary formalities and possession was taken over from the land owner on 30.10.1998 and in turn, the possession of the said acquired land has been assigned to the third respondent. On an earlier occasion, the concerned land owner had challenged the acquisition proceedings before this Court by filing a writ petition and the same was dismissed. As such, now the acquired land is under the care and custody of the respondents.

14. From the above discussions, this Court is of the view that:

- i. The land acquisition proceedings had been initiated by the fourth respondent herein and the same was completed during 1986. Subsequently, an Award bearing No.5 of 1986 had been passed on 11.09.1986. The said land had been acquired for the implementation of a Satelite Town at Maraimalai Nagar Scheme by the respondents and the said scheme has not been implemented after a lapse of around 28 years. As such, the purpose for the acquisition has gone into oblivion.
- ii. The first respondent issued a Government Order in G.O.Ms.No.70, dated 01.03.2007, addressed to the second respondent herein and other three high officials. It reveals that the lands had not been utilized as of now. Therefore, the said purpose has not been fulfilled.
- iii. The petitioner made a representation to the first respondent and requested him to reconvey the said land in his favour. In reply, the first respondent states that the acquired lands are now under the possession of Chennai Metropolitan Development Authority, which are very much needed for the implementation of the project and the lands are to be allotted to the Income Tax Department and a proposal has already been sent to the Income Tax Department. The said proposal is an afterthought. Hence, the acquired lands have not been utilized for the said original purpose, namely, Satelite Town at Maraimalai Nagar. As such, the acquisition proceedings have lapsed, since the original purpose has not been come into operation. Therefore, the petitioner is entitled to secure reconveyance of the land. And

iv. The Honourable Supreme Court has quashed the 4(1) notification of the respondents in Appeal No.2226 of 1997, 03.02.2002. The said Order has become final. Thereafter, the respondents have not initiated any fresh proceedings to acquiring the said land. It clearly proves that the subject land is kept idle. Further, there is no documentary proof having been placed before this Court regarding quantum of compensation, mode of payment. As such, there is a distinct lacuna in the instant case. Therefore, the impugned order, dated 23.11.2010, is not worthy for operation and therefore it remains quashed.

15. Considering the facts and circumstances of the case and arguments advanced by the learned counsels on all side, on perusing the typed set of papers and this Court's views (I) to (iv) as mentioned above, the above writ petition is allowed and the impugned order, dated 23.11.2010, passed by the first respondent is quashed. Further, the third respondent is directed to reconvey the vacant land, comprised in Survey No.233/2, in Sungundram Village, Chengalpattu Taluk, Kancheepuram District, measuring an extent of 92 Cents and to execute a re-conveyance deed in favour of the petitioner in respect of the said land, within a period of two months from the date of receipt of a copy of this Order. The respondents are at liberty to collect the compensation amount with admissible interest from the petitioner, if already paid to the land owners. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

krk

To:

1.The Secretary to Government  
of Tamil Nadu,  
Housing and Urban Development  
Department,  
Fort St.George, Chennai-600 009.

2.The Member Secretary,  
Chennai Metropolitan Development  
Authority,  
No.1, Gandhi Irwin Road, Egmore,  
Chennai-600 008.

3.The Chief Executive Officer,  
Tamil Nadu Housing Board,  
Chennai Metropolitan Development  
Authority,  
No.1, Gandhi Irwin Road, Egmore,  
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4.The Special Tahsildar (Land Acquisition),  
M.N.Nagar Schemes,  
Maraimalai Nagar,  
Kancheepuram District.

+ 1 cc to Government Pleader Sr.63813

W.P.No.16159 of 2011

KSJ(CO)EU 30.1.15



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