

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE SATISH K. AGNIHOTRI

AND

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
W.A.Nos.1228 and 1419 of 2015

W.A.No.1228 of 2015

M/s.Selvaradjulu Chetty Trust,
rep. By its Chairman,
Dr.H.B.N.Shetty I.A.S (Retd.) ... Appellant
versus

1.M/s.Ramcons (India) Properties Pvt. Ltd.,
rep. By its Managing Director,
K.Ramanujam

2.The State of Tamil Nadu,
rep. By its Secretary to the Department of
Housing & Urban Development,
Secretariat, Fort St.George, Chennai 9.

3.The Tamil Nadu Housing Board
rep. By its Chairman and M.D.,
No.493, Anna Salai, Nandanam,
Chennai 35. Respondents

Appeal filed under clause 15 of Letters patent against the order passed by this Court dated 1.6.2015 passed in W.P.No.25299 of 2012.

Petition filed under Article 226 of the constitution of India for a writ of mandamus to direct the respondents herein to re-convey the lands in admeasuring 77 cents in Survey No.87/1 Block No.24 AIBEA Nagar Thiruvanmiyur Village Chennai District to the petitioner herein within a time frame.

For appellant : Mr.P.Srividhya

For Respondents : Mr.AR.L.Sundaresan, Senior counsel,
for Mr.J.Ravi Kumar, for R-1

Mrs.A.Srijayanthi, Spl.G.P., for R-2
Mr.V.Ananda Moorthy, for R-3

W.A.No.1419 of 2015

The Tamil Nadu Housing Board
rep. By its Chairman and M.D.,
No.493, Anna Salai, Nandanam,
Chennai 35.

... Appellant

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rep. By its Managing Director,
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For appellant : Mr.V.Ananda Moorthy

For Respondents : Mr.AR.L.Sundaresan, Senior counsel,
for Mr.J.Ravi Kumar, for R-1
Mrs.A.Srijayanthi, Spl.G.P., for R-2

COMMON JUDGMENT

(made by K.K.SASIDHARAN, J.)

The facts summarized:-

The land ad-measuring 77 cents in S.No.87/1 Block No.24, AIBEA Nagar, Tiruvannamiyur, was acquired by the Government on behalf of the Tamil Nadu Housing Board, invoking the provisions of the Land Acquisition Act. The land acquisition proceedings has become final. The request made by the erstwhile land owners for re-conveyance of land was negatived by the Government. The land owners have filed writ petition to direct the Government to handover the land to them. The direction issued by the learned Single Judge for consideration of the case for reconveyance was set aside by the Division Bench in W.A.No.1522 of 2007, with a factual finding that the Government has already taken possession and handed over to the Tamil Nadu Housing Board. The judgment was upheld by the Hon'ble Supreme Court vide order dated 16 July 2009 in SLP (Civil) No.267 of 2010. The first respondent purchased the acquired property after completion of acquisition proceedings, and making use of the liberty given by the Supreme Court in the order in S.L.P.No.267 of 2010, to the effect that the dismissal of the SLP would not stand in the way of third

parties from pursuing their right, filed a writ petition once again in 2012, for re-conveyance and the same was allowed by the learned Single Judge. This is the sum and substance of the intra court appeal filed by the Tamil Nadu Housing Board.

The background:-

2. The first respondent, long after the completion of land acquisition proceedings, purchased 77 cents of acquired land in S.No.87/1 Block No.24, AIBEA Nagar, Tiruvanmiyur Village, Chennai, from A.S.D.Natarajan, as per sale deed dated 24 September 2004. The first respondent thereafter, requested the Government to re-convey the land on the ground that it was not used for the purpose for which it was acquired. Since action was not taken by the Government for re-conveyance, the first respondent filed a writ petition in W.P.No.25299/2012 for a writ of Mandamus to direct the Government of Tamil Nadu and Tamil Nadu Housing Board to re-convey the land, acquired from the erstwhile land owners.

3. Before the writ court, the appellant in W.A.Nos.1228/2015 filed a petition for impleading, on the ground that the property belongs to a charitable trust, formed by Mrs.Padmini Chandrasekaran. The request was negatived by the writ Court.

4. The Tamil Nadu Housing Board (hereinafter referred to as the Housing Board), filed a detailed counter affidavit before the writ court, indicating the factual position. The Housing Board explained the various process of acquisition and the finality reached to the proceedings in the year 1986. The Housing Board contended that as per land records, the property belongs to Mrs.Padmini Chandrasekaran, who formed a trust, the appellant in W.A.Nos.1228 of 2015. The Housing Board further contended that the land was used for construction of 112 flats. The Housing Board is in possession of the land. The Housing Board has referred to the earlier proceedings, including the dismissal of special leave petition by the Hon'ble Supreme Court.

5. The appellant in W.A.Nos.1228 of 2015 in its affidavit before the writ court contended that Mrs.Padmini Chandrasekaran purchased larger extent of land in Tiruvanmiyur. The subject property was part of the land purchased by Mrs.Padmini Chandrasekaran. The trust is in possession of the property bequeathed by Mrs.Padmini Chandrasekaran. The trust has filed an application before the Government for re-conveying the subject land. The Government is now seized of the matter. It was only during the currency of the application, the first respondent who is a total stranger, filed the writ petition on the basis of concocted documents for re-conveyance.

The order under appeal:-

6. The learned Single Judge without discussing the question as to whether the first respondent is entitled to an order to reconvey the property, issued a Mandamus to the Government to handover the property to the company within a period of two months. Feeling aggrieved, the Housing Board has come up with the intra court appeal in W.A.Nos.1419 of 2015.

7. The learned Single Judge negatived the claim made by the trust and the same resulted in filing intra court appeal in W.A.Nos.1228 of 2015, by Mrs.Selvarajulu Chetty Trust, represented by its Chairman.

Submissions:-

8. The learned Standing Counsel for the Housing Board took us through various proceedings, including the award passed by the competent authority, the order passed by the writ court dated 30 August 2007 in W.P.No.87 of 2006, related appellate judgment dated 16 July 2009 in W.A.No.1522 of 2007, and the order passed by the Hon'ble Supreme Court dated 5 September 2011 in SLP (C) No.267/2010 and contended that the first respondent purchased the property from a dead person, having no title. According to the learned counsel, name of Mrs.Padmini Chandrasekaran was recorded in all the land records and as such, she was shown in the land acquisition proceedings as the registered owner of the acquired land. The learned counsel contended that the first respondent purchased the property long after the conclusion of land acquisition proceedings and construction of residential flats. The sale made in favour of the first respondent is void, without admitting the factual position that the purchase was made from a person having no title. The learned counsel contended that the learned Single Judge failed to consider the background facts and allowed the writ petition by a brief order, which is legally unsustainable.

9. The learned Senior counsel for the first respondent justified the impugned order. The learned Senior counsel admitted the factual position that it was only after the conclusion of land acquisition proceedings and delivery of possession to the Housing Board, the first respondent purchased the property. According to the learned counsel, the first respondent is entitled to initiate proceedings by stepping into the shoes of the original land owner and as such, the proceedings for re-conveyance is maintainable.

10. The learned counsel for the appellant in W.A.Nos.1228 of 2015 submitted that the application submitted by the trust for re-conveyance is pending before the Government. The learned counsel submitted that the compensation amount was received by Mrs.Padmini Chandrasekaran as her name was shown in the award as the interest person. According to the learned counsel, the land originally belonged to Mrs.Padmini Chandrasekaran. It was subsequently given to the Trust formed by her for charitable purpose. The first respondent created a fraudulent document and made a false claim to snatch away a valuable property, situated in a prominent locality. According to the learned counsel, the first respondent has absolutely no right to claim re-conveyance.

Analysis:-

11. The Government of Tamil Nadu at the instance of the Tamil Nadu Housing Board acquired large extent of land in Tiruvanmiyur village. The Land Acquisition Officer, with notice to the land owners including Mrs.Padmini Chandrasekaran, passed an award. The land owners have received the compensation. The land was handed over to the Tamil Nadu Housing Board.

12. The award in respect of the subject land was passed on 23 September 1986. The land was taken over by the Tamil Nadu Housing Board on 30 October 1986. Thiru.M.Kirubakaran, and others claiming to be the legal representatives of Thiru.K.Munusamy, submitted a representation to the Government seeking re-conveyance of land. The Government by order dated 13 December 2005 rejected the request. The said order was challenged before the writ court in W.P.No.110/2006. The learned Single Judge by order dated 30 August 2007, allowed the writ petition and after quashing the impugned order, issued a mandamus to the Government to re-consider the matter. The said order was challenged by the Housing Board before the Division Bench in W.A.No.1522/2007. The Division Bench by judgment dated 16 July 2009 allowed the writ appeal. The Division Bench recorded a factual finding that the land was taken possession by the Housing Board. The Division Bench opined that there is no question of directing the Housing Board or the Government to re-convey the land. The unsuccessful writ petitioners filed an appeal before the Supreme Court in SLP (C) No.267 of 2010. The Supreme Court dismissed the Special Leave Petition by order dated 5 September 2011.

13. The core question is whether the writ petition filed by a subsequent purchaser for re-conveyance is maintainable in view of the judgment in W.A.No.1522 of 2007 and the related order passed by the Supreme Court in SLP (C) No.267 of 2010, negating the request made by the erstwhile landowners for re-conveyance.

14. The subsequent orders passed by the Government shows that Mrs.Padmini Chandrasekaran was shown as the owner of the property having an extent of 77 cents in S.No.87/1.

15. The order passed by the Division Bench negating the request made by the predecessor-in-interest of the first respondent has become final. There is no question of initiating a fresh proceedings at the instance of the first respondent solely on account of the fact that the acquired land was purchased subsequently by the company by document dated 24 September 2004.

16. We have perused the original file. We are satisfied that the land was allotted to Housing Board long back and it was used for the purpose for which it was acquired.

17. The land acquisition proceedings has attained finality. The possession of the property was handed over to the Housing Board in the year 1986. Any subsequent sale of the acquired property is legally invalid. No right would accrue to the first respondent on account of the purchase by sale deed dated 24 September 2004.

The Authorities:-

18. The Supreme Court in Jaipur Development Authority vs. Mahesh Sharma & Another, 2010(10) Scale 84, referred to the earlier decision in Secretary, Jaipur Development Authority vs. Daulat Mal Jain (1997 (1) SCC 35) and observed that subsequent purchasers possess right viz-a-viz, the original vendor only and not against the State. The Supreme Court in the referred decision, Daulat Mail Jain, made the legal position clear that purchase after notification

under Section 4(1) would not clothe the subsequent purchaser with any colour of right or title as against the State.

19. The Supreme Court in Rajasthan State Industrial Development and Investment Corporation vs. Subash Sindhi Cooperative Housing Society, Jaipur and others, 2013(2) Scale 434, observed that subsequent purchaser has no right in respect of the land acquired by the Government. The observation reads thus :-

"7. There can be no quarrel with respect to the settled legal proposition that a purchaser, subsequent to the issuance of a Section 4 notification in respect of the land, cannot challenge the acquisition proceedings, and can only claim compensation as the sale transaction in such a situation is void qua the Government. Any such encumbrance created by the owner, or any transfer of the land in question, that is made after the issuance of such a notification, would be deemed to be void and would not be binding on the Government."

20. Most recently, the Supreme Court in Chairman & Managing Director, T.N.H.B., & Anr., vs. S. Saraswathy & Ors., 2015(6) Scale 229, observed that any agreement or sale after the acquisition is not binding on the State.

12. It has been repeatedly reiterated by this Court that those who have missed the boat in challenging the acquisition proceedings, who sat idle and have let the grass grow under their feet cannot, thereafter, be permitted to jump on the bandwagon of others who entered the portals of the Court at the appropriate time and thereafter obtained favourable orders. Significantly, in Chandrasekaran the Court was alive to the reality of utilisation of large chunks of land by the State for housing scheme; and in this scenario, it was obviously and rightly reluctant and facially hesitant to quash the acquisition proceedings in toto, knowing that that would result in grave consequences to society.

15. The second factor, detaching the case of the contesting respondents even farther, is that since the respondents had purchased the suit land after the award had been passed and possession of the land had been taken by the State, they could not have acquired any rights against the State. P. Velu did not bring down the acquisition proceedings qua his land, but on the contrary, by accepting compensation, had manifested his acceptance of the award. In these circumstances, once the land stood vested in the State under Section 16 of the Act, P. Velu and his vendees, namely, the respondents, could not have created and engineered rights or interests in the property against the State, except the right of seeking and receiving enhanced

compensation. We are mindful that the Land Acquisition Act, 1894 as applicable to the State of Tamil Nadu does not specifically preclude the landowners from entering into sale transactions during an ongoing acquisition proceeding. But as long as the acquisition proceedings are not invalidated, any agreement creating or altering or extinguishing rights with respect to the land under acquisition will not be effective or efficacious against the State.

21. The first respondent was fully aware of the acquisition of land by the Government. In paragraph 3 of the affidavit filed in support of the writ petition in W.P.No.25299 of 2012, the first respondent very clearly stated that the property was acquired by the Government and substantial portion of the land was used for construction of flats. Even then, the first respondent prayed for an order to direct re-conveyance.

22. The learned Single Judge in a matter of this nature must have considered the background facts, including the earlier orders. The request made by the predecessor-in-interest of the first respondent for re-conveyance has already been rejected. The said order has become final, consequent to the dismissal of the Special Leave Petition, by the Supreme Court by order dated 5 September 2011 in SLP (C) No.267 of 2010. The subsequent writ petition on the basis of an illegal sale is legally not maintainable. There should be a legal right to the first respondent to claim re-conveyance. Similarly, there should be a corresponding duty on the part of the Government to re-convey the land to the first respondent. There is no right to a subsequent purchaser to claim re-conveyance and that too in a matter in which the issue of re-conveyance has become final. Similarly, there is no corresponding duty on the part of Government or Housing Board to re-convey the land to the subsequent purchaser. This legal position was not considered by the learned Single Judge.

23. The learned Single Judge recorded the facts of the case and submission of the parties and thereafter, directed the Government to re-convey the land. The following is the only paragraph dealing with the merits of the matter.

"17. On considering the facts and circumstances of the case and arguments advanced by the highly competent counsels on all sides and on perusing the tied-set of papers and the views of this Court as mentioned above (i) to (vi), this Court allows the above Writ Petition. Consequently, this Court directs the respondents herein to re-convey the lands admeasuring 77 cents in S.No.87/1, Block No.24, AIBEA Nagar, Tiruvanmiyur Village, Chennai District to the petitioner herein within a period of two months from the date of receipt of a copy of this order. There is no order as to costs. Consequently, connected miscellaneous petitions are closed."

24. There is no right even to the land owner to direct the Government to re-convey the acquired land. In case the acquired land is not required for the purpose for which it was acquired, it is open to the Government to use the land for any other purpose.

25. The Land Acquisition Act, 1894, does not contain any provision for re-conveyance. It is only in the State of Tamil Nadu, by way of amendment, vide Section 48-B, re-conveyance of the land to the original owner was introduced, in case Government is of the view that the land is no more required for the purpose for which it was acquired. Therefore, an element of discretion is vested with the Government to decide as to whether the land should be re-conveyed. There is no legal right to the land owners to direct the Government to re-convey the land.

26. The legal position with regard to reconveyance is no more res integra, in view of a string of decisions by the Supreme Court.

27. The Supreme Court in Tamil Nadu Housing Board vs. Keeravani Ammal and others, 2007(1) SCC 255, observed 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.

28. (A) The Supreme Court in Tamil Nadu Housing Board vs. L.Chandrasekaran & Ors., 2010(1) Scale 701, observed that in case the acquired land has already been transferred to another agency, the Government cannot exercise power under Section 48-B of the Land Acquisition Act, as amended by Tamil Nadu Act 16 of 1997.

(B) The decision L.Chandrasekaran and others is applicable to the case on hand in view of the fact that the acquired land has already been handed over to the Housing Board for its project. Therefore, there is no question of exercising power by the Government under Section 48-B of the Act for re-conveyance.

29. The learned Single Judge entertained the writ petition in the year 2012 at the instance of the first respondent, who is a subsequent purchaser. The order directing re-conveyance was passed without any reference to the earlier orders passed by the Division Bench and the Supreme Court. The first respondent wanted to give life to a dead litigation. We are therefore of the view that the learned Single Judge was not correct in allowing the writ petition.

30. The writ petition filed by the first respondent in W.P.No.25299 of 2012 is dismissed. We make it clear that this order would not stand in the way of the Government from considering the application filed by the appellant in W.A.Nos.1228 of 2015 on merits.

31. In the upshot, we allow the writ appeal in W.A.No.1419 of 2015. The writ appeal in W.A.No.1228 of 2015 is disposed of with the above observation. Consequently, connected M.P.s, are closed. No costs.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

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To

1.The Secretary to the Department of
Housing & Urban Development,
Secretariat, Fort St.George, Chennai 9.

2.The Chairman and M.D.,
Tamil Nadu Housing Board
No.493, Anna Salai, Nandanam,
Chennai 35.

4 cc to Mr.J. Ravikumar, Advocate, Sr. 58877 & 58876
2 ccs to M/s.P. Srividhya, Advocate, sR. 58139
2 ccs to M/s. V. Anandhamurthy, Advocate, Sr. 58393

W.A.Nos.1228 and 1419 of 2015

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