

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2015

CORAM:

THE HONOURABLE MR.JUSTICE V.DHANAPALAN
AND
THE HONOURABLE MR.JUSTICE R.S.RAMANATHAN

Writ Appeal No.1538 of 2014 & M.P.No.1 of 2014

The Member Secretary,
Chennai Metropolitan Development Authority,
No.2, Gandhi Irwin Road,
Egmore, Chennai-8.

.. Appellant

Vs.

1. B.Rukmani
2. B.Kanchana @ Sreedevi
3. Sugendran
4. Anuradha

They are represented herein by their
General Power Agent, the fifth respondent herein

5. S.M.H.Sheik Mohamed
6. Tamil Nadu Housing Board,
Rep. by its Chairman,
Nandanam, Chennai-600 035.

.. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent
against the order dated 27.06.2014 passed by the learned single Judge
of this Court in W.P.No.10010 of 2014.

Prayer :-Presented to this Court under Article 226 of the
Constitution of India, to issue a Writ of Mandamus, directing the
respondents to issue no objection certificate to enable the
petitioners to deal with the property comprised in Survey No.90/2
measuring an extent of 79 cents and survey No.91 measuring an extent
of 1.53 acres, Nerkundram village, Purasaivakkam Taluk, Chennai
District in the manner they deem fit.

For appellant : Mr.V.S.Sethuraman, Addl. Advocate General
assisted by Mr.C.Johnson

For respondents : Mr.R.Muthukumarasamy, Senior Counsel for
Mr.R.Thiyagarajan for RR-1,2,4 and 5
Mr.V.Thillaisamy for R-3
Mr.C.Kasirajan for R-6

JUDGMENT

(The Judgment of the Court was delivered by V.Dhanapalan,J)

Heard Mr.V.S.Sethuraman, learned Additional Advocate General, assisted by Mr.C.Johnson, learned counsel for the appellant-CMDA, Mr.R.Muthukumarasamy, learned Senior Counsel appearing for Mr.R.Thiyagarajan, learned counsel for the respondents 1, 2, 4 and 5, Mr.V.Thillaisamy, learned counsel appearing for the third respondent and Mr.C.Kasirajan, learned counsel appearing for the sixth respondent/TNHB.

2. The Member Secretary of the Chennai Metropolitan Development Authority (CMDA) has called in question the order of the learned single Judge in W.P.No.10010 of 2014, dated 27.06.2014, wherein, in respect of the prayer sought for by the writ petitioners (respondents 1 to 5 herein) for issuance of a Writ of Mandamus to direct the respondents therein (i.e. CMDA and TNHB) to issue the No Objection Certificate (NOC) to enable the writ petitioners to deal with the property comprised in Survey No.90/2, measuring an extent of 79 cents and Survey No.91, measuring an extent of 1.53 acres, Nerkundram Village, Purasawalkam Taluk, Chennai District in the manner they deem fit, the learned single Judge allowed the Writ Petition by directing the appellant-CMDA to issue the NOC to the writ petitioners to deal with the property comprising in S.No.91, measuring an extent of 1.53 acres and in S.No.90/2, measuring an extent of 0.79 cents excluding 0.36 cents, which is the subject matter of fresh land acquisition proposal in Nerkundram Village, Purasawalkam Taluk, Chennai District, within a period of four weeks from the date of receipt of a copy of the order.

3. There is a chequered history in respect of the subject lands, which the Writ Petitioners sought for issuance of the NOC and in the past, the matter went upto the Supreme Court, which was reported in 2010 (2) SCC 801 (A.S.Naidu Vs. State of T.N), in the following background of the facts and circumstances of the case.

4. It is the case of the respondents 1 to 5/writ petitioners that they have filed the present Writ Petition in W.P.No.10010 of 2014, stating that the lands comprised in S.No.90/2, measuring an extent of 79 cents and S.No.91, measuring an extent of 1.53 acres, Nerkundram Village, Purasawalkam Taluk, Chennai District, originally belonged to one K.Babu Reddiyar, from whom it devolved upon the writ petitioners on legacy; the land acquisition proceedings were initiated in respect of the said lands and surrounding areas; after issuance of the Notification under Section 4(1) and the Declaration under Section 6 of the Land Acquisition Act, 1894 (for short, 'the Act'), it culminated in passing of the Award on 28.03.1983; the Award amount was kept in Revenue Deposit, which is evident from the

communication of the sixth respondent/TNBH, vide D.O. Letter No.LA.3.4/39160/03, dated 04.08.2003 to the Government; at this stage, a batch of Writ Petitions in W.P.Nos.10351 of 1982, 6625 of 1983, etc. was filed and by order dated 08.01.1988, this Court quashed the Declaration issued under Section 6 of the Act, which attained finality before the Supreme Court in S.L.P.Nos.11353-55 of 1988, by order dated 21.08.1990, reported in 2010 (2) SCC 801 (A.S.Naidu Vs. State of T.N), holding that the acquisition itself stood quashed, by making it clear that it was open for the State Government to make a fresh preliminary Notification if it was satisfied that it was necessary in public interest to acquire the lands; till date, the State Government did not proceed in the matter; the said Babu Reddiar died and his legal heirs, namely the respondents 1 to 4 herein executed Power of Attorney in favour of the fifth respondent herein, who sworn to the affidavit before the Writ Court; pursuant to which, he wrote to the appellant/CMDA for issuance of the NOC enabling to deal with the property, followed by representations, one of which is dated 02.12.2013, following by applications dated 24.12.2013 and 08.01.2014; as there was no response, the Power of Attorney Holder, the fifth respondent herein, invoked the provisions of the Right to Information Act, through which he was informed by letter dated 05.02.2014 that S.No.90/2 part of Nerkundram Village is covered under the land acquisition proceedings, for which, draft Section 4(1) Notification proposals have been sent by the CMDA; that since in the subject land S.No.91, dumping activities have been going on, the fifth respondent-Power Agent filed W.P.No.49809 of 2006, in which interim order was granted and the said Writ Petition was kept pending and the sixth respondent-TNHB referred to the pendency of the said writ proceedings and since the appellant/CMDA did not reply, the present Writ Petition came to be filed by the Writ Petitioners praying for issuance of a Writ of Mandamus to direct the appellant/CMDA and the sixth respondent/TNHB to issue the NOC to enable the writ petitioners to deal with the property comprised in S.No.90/2, measuring an extent of 79 cents and S.No.91, measuring an extent of 1.53 acres, Nerkundram Village, Purasawalkam Taluk, Chennai District, in the manner they deem fit, and the present Writ Petition was filed on the ground that fresh acquisition proceedings have not been initiated by the State Government, that the compensation amount has been kept in Revenue Deposit, resulting in lapsing of the proceedings in view of the promulgation of the new Land Acquisition Act, 2013, namely the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, repealing the earlier Land Acquisition Act of 1894, as the statutory mandate is that if the compensation amount in respect of an Award made more than five years ago was not paid, then the proceedings will stand lapsed; that in this case, as the Award was passed in 1983, the proceedings stood lapsed; that the appellant and the sixth respondent herein cannot with-hold the issuance of the NOC on the premise that the draft

proposals are submitted covering the subject area, that the writ petitioners are in possession of the subject lands in which the proceedings were initiated as early as in 1975 and that the patta in respect of the subject land continues to be in the names of the writ petitioners, that in 2006, this Court granted interim injunction against the appellant/CMDA and the sixth respondent/TNHB in M.P.No.1 of 2006 in W.P.No.49809 of 2006, which was made absolute and when W.P.No.49809 of 2006 was posted along with the present Writ Petition, the petitioners in W.P.No.49809 of 2006 withdrew the same, so that they can pursue their remedy in the present Writ Petition in W.P.No.10010 of 2014; that the materials on record conclusively show that the possession continued to remain with the land owners and at no point of time, it was parted with or taken over by the CMDA or TNHB, that when similarly placed persons succeeded in their challenge to the acquisition proceedings and the same was allowed to become final, in the case of the writ petitioners alone, the appellant/CMDA is adopting different yardstick, as the stand of the appellant/CMDA is contrary to their own proceedings, dated 16.07.2013, in which it has been resolved that the land acquisition proposal may be dropped for the balance lands in Nerkundram Village other than the lands required for proposed extension of 28.18 m wide KWMC "A" Road and the proposed 24.0 m wide link road to CMRL lands, which is the reason why the writ petitioners conceded to the extent of 36 cents; that when G.O.Ms.No.288, Housing and Urban Development Department, dated 29.11.2013, had been issued pursuant to the aforesaid communication, dated 16.07.2013, incorporating the same stand, that the Constitutional right of the writ petitioners to deal with the property is being infringed, that the principle of equality enshrined in Article 14 of the Constitution of India has been violated and the authorities are acting in arbitrary and capricious manner.

5. The appellant-CMDA filed counter affidavit before the Writ Court, inter-alia stating that the lands bearing S.Nos.40, 42, 43, 44, 45, 46, 47, 48, 49, 50/1, 50/2, 85, 86/1, 86/2, 87/1A, 88/1, including 90/1, 90/2 and 91 passed in Award No.3 of 1983, dated 28.03.1983, were already acquired by the Special Tahsildar, Unit-IV, Land Acquisition, TNHB, Nandanam, Chennai and handed over to CMDA on 31.07.1985 and they are in possession of CMDA for utilisation of the formation of "A" Road of Koyambedu Wholesale Market Complex (KWMC) and other related activities, that the TNHB already acquired the lands in S.Nos.90/2 and 91 of Nerkundram Village, which were utilised for the purpose of KWMC Garbage Transfer Station for more than a decade under the possession of CMDA, that the land owner Saraswathi Ammal and others (of S.Nos.90/2 and 91 of Nerkundram Village) earlier filed W.P.N.49809 of 2006 for restraining the TNHB and CMDA from interfering with peaceful possession and enjoyment of the lands, that the present writ petitioners never claimed re-conveyance of the lands which belong to the petitioners in W.P.No.49809 of 2006, that this Court granted the interim order in favour of the petitioners and

directed not to interfere with the peaceful possession of the said petitioners, since the lands in S.Nos.90/2 and 91 are in possession of the CMDA and put into use as Garbage Transfer Station, which comes within the boundary of KWMC, the request of the present writ petitioners for issuance of the NOC to enable them to deal with the properties in S.Nos.90/2 and 91 (79 cents and 1.53 acres respectively), may not be considered, that the judgment of the Supreme Court of India in S.L.P.Nos.11353-55 of 1998 related to Mogappair Village and hence, the present writ petitioners cannot claim any relief by quoting the said judgment of the Supreme Court, that the State Government required large chunk of lands in Nerkundram and Koyambedu Villages for the larger public purpose, that the TNHB, the acquisitioning body, handed over the area of Nerkundram Village to the CMDA for construction of KWMC and other allied projects, that the acquired areas are now developed and utilised for public purpose, that the compensation amount for the present writ petitioners in respect of the lands in question, was already deposited in the Revenue Deposit by the TNHB and hence, the NOC cannot be issued to the writ petitioners and that the possession is with the CMDA, that S.No.91 is being used as dumping yard and S.No.90/2 of Nerkundram Village lies under the peaceful possession of the CMDA and since the lands are acquired through the old Land Acquisition Act, 1894 and had been continuously under the possession of the CMDA, which comes within KWMC boundary and hence, they prayed for dismissing the Writ Petition.

6. The sixth respondent-TNHB also filed counter affidavit before the Writ Court stating that the TNHB proposed an extent of 460.08 acres of lands in Nerkundram Village, Saidapet Taluk Chengalpattu District (now Ambattur Taluk, Thiruvallur District) for formation of a new Neighbourhood Scheme known as Kalaignar Karunanithi Nagar Further Extension Scheme, that a draft Notification under Section 4(1) of the Act was approved by the Government in G.O.Ms.No.124, Housing and Urban Development Department, dated 08.05.1975 and published in the Tamil Nadu Government Gazette, dated 11.06.1975 as Notification No.II(2)/HOU/1861/75, that the Special District Collector/LA was authorised to perform the functions of the Collector under Section 5-A of the Act, that the enquiry under Section 5-A of the Act was conducted on 19.08.1975 and 27.08.1975 after observing the prescribed formalities, that an extent of 37.68 acres of lands were excluded from the land acquisition, as per Board's Resolution No.309, dated 22.04.1978, that the entire extent was split up into 9 blocks for the purpose of convenience and to pursue further proceedings under the Act, that the objections raised by the land owners were over-ruled by the Government and the draft Declaration under Section 6 and the direction under Section 7 of the Act was approved in Memo No.29882/A2/75-2, Housing and Urban Development Department, dated 25.11.1978 and published in the Tamil Nadu Government Gazette, dated 20.12.1978, that the names of the land

owners for S.Nos.90/2 and 91 are Babu Reddiar and Saraswathi Ammal respectively, that in G.O.Ms.No.837, Housing Department, dated 15.06.1976, the Government approved the policy decision for exclusion from acquisition all the areas covered by lay-outs approved by the Director of Town Planning, all built-up areas, all village sites and all the areas covered by factories and in G.O.Ms.No.125, Housing Department, dated 29.01.1978, the Government issued orders to amend the policy to exclude from acquisition all the areas covered by lay-outs, which were approved by the Director of Town Planning to the limited extent of its applicability to Koyambedu and Nerkundram Villages under the K.K.Nagar Further Extension Scheme, so that the extent of about 250 acres of lands in Koyambedu and Nerkundram Villages required by the CMDA for locating the peripheral outstation bus terminal for the PTC and the wholesale market complex, be acquired under the provisions of the Act in view of the urgency of the land acquisition to be processed and completed before August 1978, that as per the above G.O., the land acquisition in Nerkundram Village was processed by the Land Acquisition Officer and an extent of 49.65 acres of lands in Nerkundram Village was set apart to CMDA for Koyambedu Wholesale Market Complex, in which S.No.90/2 with an extent of 0.79 acres and S.No.91 with an extent of 1.53 acres were also included, both of which vested with the CMDA, that in the above circumstances, it is not possible to issue the NOC in favour of the present writ petitioners, that certain lands with an extent of 49.65 acres in Nerkundram Village, were set apart for the wholesale market complex by the CMDA, which includes S.Nos.90/2 and 91 and the CMDA is the authority for the said lands, as they lie in the jurisdiction of the CMDA, that therefore, the CMDA is the competent authority in deciding the matter, that the lands in S.Nos.90/2 and 91 of Nerkundram Village are inclusive of the extent of 460.08 acres of lands notified under Section 4(1) of the Act for formation of new Neighbourhood Scheme known as K.K.Nagar Further Extension Scheme, that at a later stage and as per G.O.Ms.No.125, Housing and Urban Development Department, dated 20.01.1978, the extent of 49.65 acres of lands in Nerkundram Village were set apart to Koyambedu Wholesale Market Complex, in which S.No.90/2 with an extent of 0.79 acres and S.No.91 with an extent of 1.53 acres, were also included and as such, these lands vest with the CMDA, which is the authority to deal with the said lands and the TNHB has not given any NOC for the said lands, that some of the petitioners herein already filed W.P.No.49809 of 2006 on 19.12.2006 praying for issuance of a Writ of Mandamus to forbear the respondents therein from interfering with peaceful possession and enjoyment pertaining to the lands measuring 2 acres 49 cents in S.Nos.90/2 and 91 in Nerkundram Village, which was pending before this Court and hence, the present Writ Petition in W.P.No.10010 of 2014 has no valid ground to be entertained by this Court, that the earlier Writ Petition in W.P.No.49809 of 2006 was liable to be dismissed since the Power of Attorney Holder, namely S.M.H.Sheik Mohammed had been registered only on 20.12.2006, while

the said W.P. was filed on 19.12.2006, that the present writ petitioners failed to produce the copy of the Death Certificate of Late Babu Reddiar and Late Saraswathi Ammal, that the copy of the Legal Heirship Certificate for Saraswathi Ammal has also not been produced, coupled with the fact that no proper Revenue Records and other relevant records are produced by the writ petitioners to prove their possession and clear title over the properties in question, that the present Writ Petition in W.P.No.10010 of 2014 is filed for the same remedy sought for in the earlier Writ Petition in W.P.No.49809 of 2006, which was kept pending, that the documents filed by the present writ petitioners are entirely contradictory to the earlier Writ Petition and hence, the present Writ Petition is not maintainable on law and facts and therefore, they prayed for dismissal of the present Writ Petition.

7. The learned single Judge, upon consideration of the above pleadings of the parties and the submissions made by the counsel on both sides, allowed the Writ Petition and directed the appellant-CMDA to issue the NOC to the writ petitioners to deal with the property comprised in S.No.91, measuring an extent of 1.53 acres and in S.N.90/2, measuring an extent of 0.79 cents, excluding 0.36 cents, which is the subject matter of fresh land acquisition proposal in Nerkundram Village, Purasawalkam Taluk, Chennai District, by fixing the time limit for complying with the order as four weeks from the date of receipt of a copy of the order.

8. The said order of the learned single Judge is challenged by the appellant-CMDA in this Writ Appeal on the ground that the lands bearing S.Nos.91 and 90/2 were already acquired by the Special Tahsildar, Unit-IV, Land Acquisition, TNHB, Nandanam, Chennai and handed over to them (CMDA) for utilisation of the formation of "A" Road of Koyambedu Wholesale Market Complex and reserved for food grains market and other related activities, that the sixth respondent-TNHB already acquired these lands in Award No.3 of 1983, dated 28.03.1983 and the same is utilised for the purpose of Koyambedu Wholesale Market Complex Garbage Transfer Station for more than a decade and hence, both the above lands are well within the possession of the appellant/CMDA ever since 31.07.1985, the date on which the Special Revenue Inspector handed over the lands to the appellant-CMDA, that S.Nos.90/2 and 91 of Nerkundram Village, Ambattur Taluk are not coming under the purview of the Land Acquisition (Cell) of the CMDA proposal under Section 4(1) of the Act; that in respect of Nerkundram Village in S.No.24/2, etc., for an extent of 11.05.0 hectares, the same were dealt with in Rc.LA/575/94 and the same is pending before the Government for approval regarding acquisition, that S.Nos.90/2 and 91 of Nerkundram Village were acquired by the TNHB and the above said lands are well within the possession of the CMDA, that it is not correct on the part of the writ petitioners to contend that no acquisition proceedings had been

initiated against the said lands, that the lands bearing S.Nos.40, 42, 43, 44, 45, 46, 47, 48, 49, 50/1, 50/2, 85, 86/1, 86/2, 87/1A, 881/, including 90/1, 90/2 and 91 - Award passed in Award No.3 of 1983, dated 28.03.1983, were already acquired by the Special Tahsildar, Unit-IV, Land Acquisition, TNHB, Nandanam, Chennai and handed over to the appellant/CMDA on 31.07.1985, and the same are in possession of the appellant for utilisation of the formation of "A" Road, etc., as stated supra, that the judgment of the Supreme Court in S.L.P.Nos.11353-55 of 1998 relates to Mogappair Village and hence, the writ petitioners cannot claim any relief by citing the said judgment of the Supreme Court, that the State Government acquired the chunk of lands in Nerkundram and Koyambedu Villages for the larger public purpose, that the TNHB handed over the area of Nerkundram Village after acquisition to CMDA for construction of KWMC and other allied projects and the acquired areas are developed and utilised for the public purposes, that the compensation amount was deposited in the Revenue Deposit by the TNHB under the provisions of the Act, and if at all they want to claim any relief, the writ petitioners could only request the Court for higher compensation, that the writ petitioners have got no right to seek for issuance of the NOC, as the subject lands were already acquired and are still continuously under the peaceful possession of the appellant/CMDA, that S.No.91 is used as dumping yard and S.No.90/2 of Nerkundram Village lies under the possession of the appellant/CMDA, that since the Government have acquired the lands under the old Land Acquisition Act, the basic rights guaranteed under Article 14 of the Constitution of India are not disturbed by the appellant-CMDA, that issuance of the NOC would complicate the matter further and will hamper the development over the lands and ultimately it would affect both the public projects planned for two decades and definitely, the object and purpose of long term planning to de-congest the city would be defeated and hence, they prayed for allowing the Writ Appeal, thereby dismissing the Writ Petition.

9. It is pertinent to note that in this case, earlier, the matter went upto the Supreme Court and in S.L.P.Nos.11353-55 of 1988, by order dated 21.08.1990, reported in 2010 (2) SCC 801 (A.S.Naidu Vs. State of T.N) (stated supra), the Supreme Court held as follows:

"2. Notice under Section 4(1) of the Land Acquisition Act was issued on 12.11.1975 and declaration under Section 6 was made on 10.11.1978. The High Court on the basis of a writ petition of the petitioners quashed the declaration under Section 6 by its order dated 08.01.1988 leaving the preliminary notification intact.

3. The State has not challenged the order of the High Court and the land owners are the petitioners before this Court. The short question raised is that the Tamil Nadu

Amendment to the Land Acquisition Act which came into force in 1967 required the declaration to be made within three years from the date of the preliminary notification.

4. On the date the declaration was made there were nearly two days left for completion of three years and after the High Court order on 08.01.1988, the period has already lapsed but no declaration has been published and the same can no longer be made on the basis of preliminary notification at present. In the absence of challenge by the State, the order of the High Court against it has become final.

5. We are of the view that in these circumstances, it would no more be available to the State to make the requisite declaration under Section 6 of the Act. The acquisition itself is quashed but we make it clear that it is open to the State Government in case it is satisfied that acquisition is necessary in public interest, it is free to exercise its power of eminent domain and make a fresh preliminary notification. The special leave petitions are disposed of accordingly. No costs."

10. Thereafter, the matter has been kept in cold storage and at last, on 29.11.2013, the Government, has taken decision, through its Housing and Urban Development Department, in G.O.Ms.No.288 and proceeded to acquire the lands for extension of "A" Road and Link Road and also for S.No.24/1 part of Nerkundram Village and after the administrative sanction was issued thereunder, by accepting the proposal of the CMDA, the matter in question as to the acquisition of the said lands, is in process.

11. While that being so, the respondents 1 to 5/writ petitioners claim that they enjoyed the properties and a portion of the land in S.No.90/2 of an extent of 0.79 cents, had now been proceeded with for acquisition of 0.36 cents alone and in respect of S.No.91 of an extent of 1.53 acres, the acquisition made prior to 1990 as culminated in quashing of the Declaration issued under Section 6 of the Act, which was quashed by this Court, and the Supreme Court, while disposing of the SLPs, observed that the acquisition itself was quashed, making it clear that it was open for the State Government in case it is satisfied that the acquisition is necessary in public interest, it was free to exercise its power of Eminent Domain and make a fresh preliminary notification.

12. Now, the Government has taken a decision to acquire the extent of land as indicated in the said G.O.Ms.No.288, dated 29.11.2013 issued from Housing and Urban Development Department and the respondents 1 to 5/writ petitioners represented to the

appellant/CMDA on 08.01.2014 requesting them to issue the NOC for the development of the other lands, which are not the subject matter, i.e. except 0.10.80 hectares of S.No.90/2, now covered under acquisition as per the said G.O. The writ petitioners also claim that as regards the acquisition of land in S.No.91 of an extent of 1.53 acres, the acquisition ended in quashing of the proceedings, which was confirmed by the Supreme Court in the said decision reported in 2010 (2) SCC 801 (cited supra) and therefore, they prayed for issuance of the NOC to deal with the subject land(s), as sought for in the Writ Petition before the learned single Judge, which was disposed of with the direction as stated above.

13. The learned Additional Advocate General appearing for the appellant-CMDA vehemently contended that the land acquired for the public purpose, cannot be called in question, unless the purpose for which it has been acquired, is not in accordance with the principles laid down by the Supreme Court in various land acquisition matters and the time taken by the appellant-CMDA as to the acquisition of the land is in public interest and for public purpose, by exercising its power of Eminent Domain as observed by the Supreme Court for making preliminary Notification and therefore, the claim of the writ petitioners as to the issuance of the NOC to the lands, which are covered under the acquisition proceedings, cannot be entertained.

14. On the other hand, Mr.R.Muthukumarasamy, learned Senior Counsel appearing for the respondents 1, 2, 4 and 5 and Mr.V.Thillaisamy, learned counsel appearing for the third respondent (all of whom are the land owners/writ petitioners) submitted that the land acquisition proceedings are in respect of larger extent of lands, which includes S.No.90/2 as well as S.No.91 and they ended in finality as per the order of the Supreme Court in the abovesaid S.L.Ps. They also pointed out that even today, no compensation has been paid to the land owners, and therefore, the prayer sought for issuance of the NOC has to be necessarily considered and the learned single Judge has rightly noticed all the above facts and allowed the Writ Petition to the extent indicated therein, as quoted above. They also raised a plea that the acquisition body (Government) has not come up in appeal and only the requisitioning body (CMDA) has filed the appeal before this Court and the possession of the subject property vests with the writ petitioners/land owners.

15. We have also heard the learned counsel appearing for the sixth respondent/TNHB on the above aspects.

16. Heard the learned counsel appearing for the parties and given our thoughtful consideration to the questions raised by the learned counsel for the parties and perused the materials available on record.

17. A circumspection of facts reveals that the land acquisition proceedings had been initiated for the purpose of formation of new Neighbourhood Scheme known as Kalaignar Karunanidhi Nagar Further Extension Scheme and the authorities have proceeded to acquire the following lands:

Survey or Paimash Number	Extent	Name of registered holder or occupier	Boundaries of the land			
			North	East	South	West
40	1-00	V.S.Perumal Naidu	38, 39 & 43	41	41 88	42 43
42	0-68	N.H.Channaveerappa	43	40	85 88	46
43	0-86	V.S.Perumal Naidu	3B 5A	40	40 42	44
44	0-79	V.S.Perumal Naidu	53, 54	43	42 46	45
45	1-15	V.S.Perumal Naidu	53	44	46	47
46	0-75	N.H.Channaveerappa	45, 44	44 42	85 88	47 84
47	1-68	V.S.Perumal Naidu	52	53 45 46	84 48	48 49 50
48	0-67	V.S.Perumal Naidu	49	47 84	84	81
49	0-59	V.S.Perumal Naidu	50	47	48	81
50-1/2	0-65	V.S.Perumal Naidu	51 & 52	47	49	50/2
	0-48	V.S.Perumal Naidu	58 & 69	50/1	81	81
85	0-74	N.H.Channaveerappa	46	88	86	84
86/1	0-46	N.H.Channaveerappa	84 & 85	86/2	92	83
86/2	0-98	N.H.Channaveerappa	85	87	92	86/1
87/1A	0-92	N.H.Channaveerappa	88	87/1B	92	86
88/1A	0-73	N.H.Channaveerappa	42 & 40	88/1B	87 86	85 & 46
90/1	0-17	Lakshmikanthamma	89	Koyamb edu	90/2	87

Survey or Paimash Number	Extent	Name of registered holder or occupier	Boundaries of the land			
			North	East	South	West
90/2	0-79	N.K.Babu Reddiar	98/1	-do-	91	90/1
91	1-53 16-42	N.K.Babu Reddiar	90	-do-	92	92

18. The Land Acquisition Officer also indicated the persons to whom the compensation is due as follows and the compensation is due to the original owner from whom the writ petitioners devolved upon the properties in question, by legacy:

Sl.No.	Name	Amount
1	Thirumathi Lakshmi Kanthammal	1368.50
2	Thiru N.K.Babu Reddiar	23730.25
3	Under Section 30 & 31(2) in the names of (1) Vasu Perumal Naidu Ayyavu and legal heirs of Perumal Naidu	4005.05
4	Under Section 30 & 31(2) of the L.A. Act in the names of N.H.Copna Veerappa and State Bank of Mysore, N.S.C.Bose Road, Madras-1	27085.95
	Total	56990.55

19. The matter was in contest in legal forum, and ultimately, it has been finally decided in the abovesaid SLPs before the Supreme Court with certain observations as quoted above. Subsequently, in a letter of communication addressed by the TNHB to the Joint Secretary to Government, Housing and Urban Development Department, Fort St.George, Chennai, dated 04.08.2003, it was informed that the Special Tahsildar (LA), Unit IV reported that the lands in S.No.90/2 and 91 of Nerkundram Village, measuring 0.79 acres and 1.53 acres respectively, which were owned by Thiru.N.K.Babu Reddiar, were acquired in Award No.3 of 1983, dated 28.03.1983 along with the other lands for formation of K.K.Nagar Further Extension Scheme and the amount of compensation of Rs.23,730.25 was ordered to be paid to the said Thiru.N.K.Bau Reddiar, and as he did not receive the compensation amount, though Section 12(2) Notice under the Act was sent to him on 13.05.1983, acknowledged on 16.05.1983, the compensation amount was kept in the Revenue Deposit and the said land (s) had also been handed over to the CMDA on 31.07.1985 itself and

further, since the Award was already passed and the lands were handed over to the CMDA, the further report with reference to the petitioners' request for withdrawal of the lands from the land acquisition proceedings, may be obtained from the CMDA.

20. While so, the appellant-CMDA wrote to the Secretary to Government, Housing and Urban Development Department, Secretariat, Chennai on 16.07.2013 stating that due to closure of "F" and "G" Roads at KWMC, it is very much essential to link the KWMC "A" Road with Poonamallee High Road to relieve the traffic congestion in KWMC, and however, as the land cost for the land acquisition is very high, the following revised proposal in Nerkundram Village was placed before the authority for suitable decision:

(i) the land acquisition proposal may be restricted for extension of 28.18 m wide KWMC "A" Road and the proposed 24.0 m wide link road upto CMRL lands so as to link KWMC "A" Road and Poonamallee High Road;

(ii) the land acquisition proposal may be dropped in the balance lands in Nerkundram Village other than the lands required for proposed extension of 28.18 m wide KWMC "A" Road and the proposed 24.0 m wide link road upto CMRL lands;

(iii) the administrative sanction for the land acquisition may be obtained from the Government for extension of "A" Road and the link road proposed and also for S.No.24/1 part of Nerkundram Village, which was not originally covered under KWMC acquisition boundary and

(iv) the land acquisition cost for the lands falling outside CMRL lands may be borne by CMDA,

and that the authority in A.R.No.68/2013, dated 01.07.2013 resolved to approve the above proposals and decided to meet the cost of the land acquisition from the Development Fund of CMDA. The details of survey numbers and the extent of private lands in Nerkundram Village proposed for land acquisition as approved by the authority, are given below:

Sl.No.	Survey No.	Extent in Hectares (Hec/Are/Sq.m)
1	24/1 part	0.06.20
2	45 part	0.04.10
3	46 part	0.10.30
4	47 part	0.19.40
5	50 part	0.05.80

Sl.No.	Survey No.	Extent in Hectares (Hec/Are/Sq.m)
6	85 part	0.11.80
7	86 part	0.07.0
8	87 part	0.32.40
9	89 part	0.00.30
10	90 part	0.14.60
	Total	1.11.90 Hec.

As resolved by the authority, the Government was requested by the CMDA to issue administrative sanction for the land acquisition of the abovesaid 1.11.90 hectares in respect of the said survey numbers for the proposed extension of KWMC "A" Road and 24.0 m wide link road proposed, including S.No.24/1 part of Nerkundram Village, which was not originally covered under the KWMC acquisition boundary.

21. Ultimately, the Government, on a consideration of the abovesaid request of the CMDA, issued G.O.Ms.No.288, dated 29.11.2013, from Housing and Urban Development Department, accepting the above proposal of the CMDA and accorded administrative sanction for the land acquisition at an approximate cost of Rs.34 crores for extension of "A" Road and link road proposed and also for S.No.24/1 part of Nerkundram Village to relieve traffic congestion in Koyambedu Wholesale Market Complex. Accordingly, the proceedings for acquisition were initiated and the matter was proceeded further.

22. At this stage, the respondents 1 to 5/writ petitioners moved the Writ Court for issuance of a direction to permit them to deal with the properties in S.Nos.90/2 and 91 of an extent of 79 cents and 1.53 acres respectively, and the learned single Judge allowed the Writ Petition as indicated in the previous paragraph of this judgment.

23. In the light of the above stated position, what we have to examine is as to whether the respondents 1 to 5/writ petitioners are entitled for the relief of granting NOC and they could be permitted to deal with the properties in S.Nos.90/2 and 91.

24. In this context, it is to be seen that the Supreme Court in the abovesaid SLPs., by order dated 21.08.1990, reported in 2010 (2) SCC 801 (cited supra), observed that the land acquisition proceedings have already been quashed, which includes S.Nos.90/2 and 91 and the said order of the Supreme Court has become final. Thereafter, the appellant-CMDA wrote to the Government for acquisition of the lands for public purpose for road expansion and also dropping of the land acquisition proceedings for the balance

lands in Nerkundram Village and thereafter, some of the lands they wanted to acquire as to the parts mentioned and it was requested by the CMDA in their proposals in their letter dated 16.07.2013, as stated above.

25. In the process of hearing this Writ Appeal, this Court, on 25.02.2015, passed the following order for ascertaining the status of the lands in question as on date after the acquisition of the same as confirmed/observed by the Supreme Court in the abovesaid order dated 21.08.1990:

"Heard Mr.V.S.Sethuraman, learned Additional Advocate General, assisted by Mr.C.Johnson, learned counsel for the appellant-CMDA, Mr.R.Muthukumaraswamy, learned Senior Counsel appearing for the respondents 1 to 5 and Mr.C.Kasirajan, learned counsel appearing for the 6th respondent.

2. After hearing the learned counsel appearing for the parties, this Court has passed the following order on 20.01.2015:

"Heard Mr.V.S.Sethuraman, learned Additional Advocate General, assisted by Mr.C.Johnson, learned counsel for the appellant-CMDA and Mr.R.Muthukumaraswamy, learned Senior Counsel appearing for the respondents 1 to 5.

2. It is seen from the material documents annexed in the typed set of papers that it was on 21.08.1990 in S.L.P.Nos.11353-55 of 1988, the Supreme Court observed that in respect of the acquisition of the land for public purpose, the declaration issued earlier under Section 6 of the Land Acquisition Act was quashed by the High Court, which has become final. However, liberty was granted by the Supreme Court to the State Government to exercise the power of Eminent Domain to acquire the land, if it is necessary for a public purpose. Thereafter, it could be seen from the material documents that except for a proposal for acquisition of a part of the land in S.No.90 in 2013 for administrative sanction, nothing could be seen from the documents as to whether there was any subsequent Notification issued for acquisition of the land for public purpose. If that is the position, the appellant-CMDA shall state as to what is the subject matter of the land(s) in the earlier Writ Petition in W.P.No.49809 of 2006 and the Appeal before the Division Bench, also in the present Writ Petition in W.P.No.10010 of 2014 and also in

respect of the said SLPs. earlier disposed of by the Supreme Court on 21.08.1990. The appellant-CMDA shall also state as to whether any such acquisition proceedings have been initiated by the State Government subsequently, by exercising the power of Eminent Domain, for public purpose, as observed by the Supreme Court in the said S.L.Ps. The appellant-CMDA shall verify and state as to what is the present status of the land in question as on today.

3. Place the Writ Appeal on 05.02.2015 at the end of motion list. Registry is directed to print the name of the concerned Standing Counsel appearing for the sixth respondent/TNHB."

3. However, the said order is not complied with till date. The reason for giving status report would have a serious concern about the order of the Supreme Court from 11.08.1990 to 15.07.2013 when the appellant started new proposal to acquire some portion of the land after 23 years. If that could be the position, normally, in landed properties, from the date of order of the Supreme Court, there will be an accrued right on the parties and who were in occupation of the land and who is enjoying the property is a matter for consideration. Therefore, the need for ascertaining the status of the land in between is essential and it shall be supported by a statement filed by the appellant. Therefore, the appellant is directed to comply with the order dated 20.01.2015. If not, this Court will take note of what is the position and pass appropriate orders in this appeal. Post the matter for orders on 10.03.2015."

26. Pursuant thereto, the appellant-CMDA through its Member Secretary, filed a status report, dated 09.03.2015, stating as follows:

"3. I humbly submit that the subject lands in question are covered under Government Order in G.O.Rt.No.124, Housing and Urban Development, dated 08.05.1975 as stated in Award No.3/1983. The above said Government Order seems to have been quashed by the Hon'ble Supreme Court by its order dated 21.08.1990 made in S.L.P.Nos.11353 to 11355 of 1988, wherein the acquisition itself is quashed; but the order categorically states that it is open to the State Government, in case it is satisfied that acquisition is necessary in public interest, it is free to exercise its power of eminent domain and made a fresh preliminary notification.

4. I further humbly submit that in so far as in S.No.90/2 part of Nerkundram Village is concerned, fresh acquisition proceedings have been initiated to the extent of 0.36 cents in Proceedings of CMDA dated 16.07.2013 for which administrative sanction has been accorded by the State Government vide G.O.Ms.No.288, Housing and Urban Development 3(1) Department, dated 29.11.2013. The 4(1) Notification is yet to be issued.

5. I further submit that by virtue of the injunction order issued by the Hon'ble High Court in W.P.No.49809 of 2006 dated 08.01.2007 is extended periodically and finally it was made absolute by the Hon'ble High Court on 04.06.2007 filed by Tmt.Saraswathi Ammal, Rukmani Ammal, Sugendran represented by their General Power of Attorney (GPA) Thiru S.M.K.Sheik Mohamed against the Chairman, TNHB and the Member-Secretary, CMDA. Presently this writ petition was withdrawn by the petitioner during the month of June, 2014.

6. I further submit that this writ petition in W.P.No.49809 of 2006 was filed by the above said petitioners prayed for restraining the respondents, TNHB and CMDA from interfering with peaceful possession and enjoyment of their lands bearing in S.Nos.90/2 and 91 of Nerkundram Village.

7. I further submit that the lands bearing S.No.90/2 and 91 of Nerkundram Village which after taken possession from the TNHB during the year 1985 was identified for "Food Grain Market" and part of the land was put into use for "A" road. Later the same land was utilised for "Transfer Station" for Bio-Mechanisation Plant. Presently as on date the lands are kept vacant and very much lies under the peaceful possession of CMDA.

8. I further submit that by virtue of the injunction order dated 08.01.2007 in W.P.No.49809 of 2006 the activity of dumping wastage (Garbage transfer station) has been temporarily relocated."

27. From the above status report, it is seen that the lands bearing S.Nos.90/2 and 91 of Nerkundram Village, which after taken possession from the TNHB during the year 1985, were identified for "Food Grain Market" and part of the land was put into use for "A" Road and later, the same land was utilised for "Transfer Station" for Bio-Mechanisation Plant. It is further seen that presently as on date, the lands are kept vacant and they very much lie under the peaceful possession of the appellant/CMDA.

28. Let us now look into the status of the lands in S.No.91 of an extent of 1.53 acres, which forms part of the acquisition proceedings as early as in the year 1985, which has ended in quashing of Section 6 Declaration, as observed/confirmed by the Supreme Court in the said SLPs., which were disposed of on 21.08.1990, reported in 2010 (2) SCC 801 (cited supra). Thereafter, nothing has been proceeded in respect of the acquisition of the said portion of the land and therefore, we are to conclude that no acquisition proceedings are pending against S.No.91 to the extent of 1.53 acres, which has now been confirmed by the CMDA in its above said status report, wherein it is stated that the fresh acquisition proceedings have been initiated to the extent of 0.36 cents in respect of S.No.90/2 part of Nerkundram Village, for which administrative sanction has now been accorded by the Government in G.O.Ms.No.288, as stated above. However, the injunction was granted in W.P.No.49809 of 2006 filed by some of the land owners for restraining the TNHB and the CMDA from interfering with the peaceful possession and enjoyment of their lands in S.Nos.90/2 and 91 of Nerkundram Village, which was in operation during the pendency of the present Writ Petition in W.P.No.10010 of 2014. Thus, it is clear that in respect of the land in S.No.91, as on date, there is no acquisition proceedings pending and the land is claimed to have been enjoyed by the respondents 1 to 5/writ petitioners subsequent to the quashing of the land acquisition proceedings by this Court, as confirmed/observed by the Supreme Court in the said S.L.Ps. When that is the position, the relief sought for by the respondents 1 to 5/writ petitioners for issuance of the NOC, will have to be considered in accordance with law.

29. As regards S.No.90/2, which formed part of the acquisition proceedings of the year 1985 and the Award having also been passed thereafter, the matter was seized of by the Supreme Court in the said S.L.Ps. (in 2010 (2) SCC 801 - cited supra), and the entire acquisition proceedings were quashed by this Court, as has been confirmed/observed by the Supreme Court (in 2010 (2) SCC 801 - cited supra), however, giving liberty to the State Government to exercise the power of Eminent Domain and if it is satisfied that the acquisition is necessary in public interest, it is open for the State Government to make a fresh preliminary Notification. When that is the position, as regards S.No.90/2 with an extent of 0.79 cents, it is now in the acquisition proceedings only in respect of 0.36 cents, which has been stated by the CMDA in its status report, as quoted above, and thus, it is clear that insofar as S.No.90/2 part of Nerkundram Village is concerned, fresh acquisition proceedings have been initiated in respect of 0.36 cents only out of 0.79 cents, for which administrative sanction is accorded by the State Government in the said G.O.Ms.No.288, based on the proposals of the CMDA in its letter dated 16.07.2013 and that Section 4(1) Notification is yet to be issued. Therefore, we are of the considered opinion that as to the extent of 0.79 cents in S.No.90/2 part, which was quashed by this

Court and as observed/confirmed by the Supreme Court in the earlier round of litigation in the said SLPs., reported in 2010 (2) SCC 801 (cited supra) and based on the said liberty given by the Supreme Court, the Government has proceeded with the acquisition only for 0.36 cents and for the remaining cents after deducting 0.36 cents from 0.79 cents, of the land claimed by the respondents 1 to 5/writ petitioners, which claims to be in their hands, the NOC has to be issued to the writ petitioners to deal with the property.

30. The learned single Judge, after giving due consideration to the material information available before the Writ Court and after noticing that the fresh proceedings having been initiated, held that the writ petitioners being the legal heirs of the original owner and owners of the land(s) in question as absolute owners thereof, are entitled to get the NOC from the CMDA as sought for by them in the present Writ Petition, to deal with the land(s) in question, excluding 0.36 cents, which is the subject matter of fresh land acquisition proposal culminating in the passing of the said G.O.Ms.No.288, and that the earlier Writ Petition in W.P.No.49809 of 2006 was withdrawn during the pendency of the present Writ Petition in W.P.No.10010 of 2014, and the direction as sought for by the writ petitioners could not be considered in its entirety and therefore, the Writ Court directed the CMDA to issue the NOC to the writ petitioners to deal with the properties comprised in S.No.91 measuring an extent of 1.53 acres and in S.No.90/2 measuring an extent of 0.79 cents excluding 0.36 cents, which is the subject matter of fresh land acquisition proposals in Nerkundram Village, Purasawalkam Taluk, Chennai District. Thus, it is clear that in respect of S.No.91, the entire acquisition proceedings stood quashed, which is not the subject matter and fresh land acquisition proceedings were initiated in the part of S.No.90/2 of an extent of 0.36 cents from out of 0.79 cents.

31. Therefore, we confirm the order of the learned single Judge and permit the respondents 1 to 5/writ petitioners to get the NOC for an extent of 1.53 acres in S.No.91 and for an extent excluding 0.36 cents from out of 0.79 cents in S.No.90/2. Thus, we find that there is no scope for interference by this Court in this Writ Appeal and accordingly, we dismiss this Writ Appeal, with a direction to the appellant-CMDA to comply with the direction of the learned single Judge, as stated above, within a period of four weeks from the date of receipt of a copy of this judgment. No costs. The Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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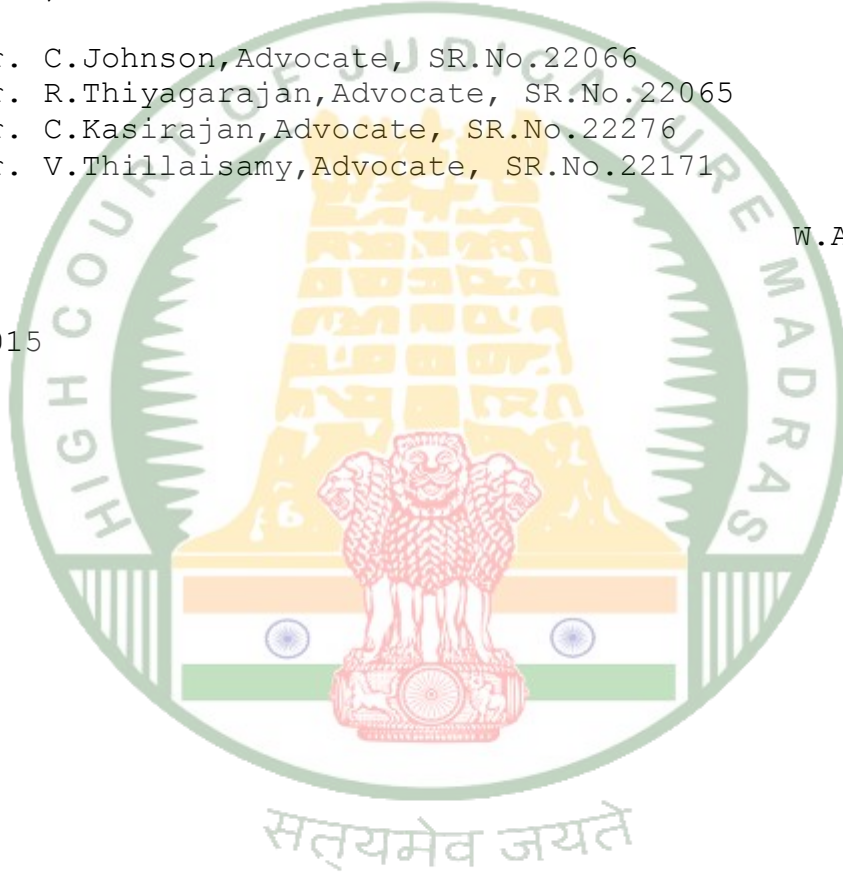
Copy to

1. The Member Secretary,
Chennai Metropolitan Development Authority,
No.2, Gandhi Irwin Road, Egmore, Chennai-8.
2. Tamil Nadu Housing Board,
Rep. by its Chairman,
Nandanam, Chennai-600 035.

- 1 cc to Mr. C.Johnson, Advocate, SR.No.22066
1 cc to Mr. R.Thiyagarajan, Advocate, SR.No.22065
1 cc to Mr. C.Kasirajan, Advocate, SR.No.22276
1 cc to Mr. V.Thillaisamy, Advocate, SR.No.22171

W.A.No.1538 of 2014

rsy(co)
pmk.5.5.2015



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