

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.05.2015

CORAM:

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

W.A.Nos.404, 870 and 1208 of 2014

W.A.No.404 of 2014 :

1. The Commissioner,
Ambattur Muunicipality,
Ambattur, Chennai 600 053.
 2. The Commissioner,
Corporation of Chennai,
Ripon Buildings, Chennai 600 003. ... Appellants
- vs.
1. The Government of Tamil Nadu,
rep. by its Secretary,
Housing and Urban Development Department,
Fort St. George, Chennai 600 009.
 2. The Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai 600 035.
 3. A.S.Dilipan
rep. by his Power Agent Mr.D.Nandakumar
 4. T.S.Krishna Nagar Welfare Association,
(Regn. No.94/1985) rep. by its President,
S.K.Babu, having Office at No.1488, T.S.Krishna Nagar,
Anna Nagar West Extn., Chennai 600 037.
 5. T.Adilakshmi
 6. K.Vimala
 7. R.Ramani
 8. R.Latha
 9. Shanthi
 10. D.Saravanan
 11. Samuel
 12. Alamelu
 13. Karthi

14. Rathnam
E.Krishnaveni (Died)
15. E.Raghupathy
E.Lakshmipathy (Died)
E.Jagadeswaran (Died)
16. V.Aravindan
17. E.Sulochana
18. Anandhi
19. Vignesh
20. Ashok
21. Master Elumalai
(rep. by his natural guardian as Mother Anandhi)
22. Master Srinivasan
(rep. by his natural guardian as Mother Anandhi)
23. Kannammal
24. Saradhammal ... Respondents

(R23 & R24 impleaded as party respondents vide order dated 24.03.2015 made in M.P.No.1/2015 in W.A.No.404 of 2014)

R-15 to R-25 are rep. by their Power Agent Mr.P.Sidda Reddy.

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W.A.No.870 of 2014:

T.S.Krishna Nagar Welfare Association,
(Reg.No.94/1985),
rep. by its President Mr.S.K.Babu
having office at No.1488, T.S.Krishnanagar,
Anna Nagar West Extn., Chennai 600 037.

... Appellant

vs.

- E.Krishnaveni (Died)
1. E.Raghupathy
E.Lakshmipathy (Died)
E.Jagadeswaran (Died)
2. V.Aravindan
R1 and R2 rep. by their Power Agent
Mr.P.Sidda Reddy.
3. E.Sulochana
4. Anandhi
5. Vignesh
6. Ashok
7. Master Elumalai
(rep. by his Natural Guardian as Mother Anandhi)
8. Master Srinivasan
(rep. by his Natural Guardian as Mother Anandhi)

9. The Government of Tamil Nadu,
rep. by its Secretary,
Housing and Urban Development Department,
Fort St. George, Chennai 600 009.
10. The Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai 600 035.
11. A.S.Dilipan
12. The Commissioner,
Ambattur Municipality, Ambattur,
Chennai 600 053
(now merged with Chennai Corporation)
13. The Commissioner,
Corporation of Chennai,
Chennai 600 035.
14. T.Adilakshmi
15. K.Vimala
16. R.Ramani
17. R.Latha
18. Shanthi
19. D.Saravanan
20. Samuel
21. Alamelu
22. Karthi
23. Rathnam
24. Kannammal
25. Saradhammal

... Respondents

(R24 & R25 impleaded as party respondent vide order of Court, dated 24.03.2015 made in M.P.No.1/2015 in W.A.No.870 of 2014)

W.A.No.1208 of 2014 :

The Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai 600 035.

... Appellant

vs.

1. E.Krishnaveni (died)
2. E.Raghupathy
3. E.Lakshmipathy (died)
4. E.Jagadeeswaran (died)
5. V.Aravindan

(R1 to R5 are rep. by their Power Agent
P.Sidda Reddy)

6. E.Sulochana
7. Anandhi
8. Vignesh
9. Ashok
10. Master Elumalai
(rep. by his natural guardian as mother Anandhi)
11. Master Srinivasan
(rep. by his natural guardian as mother Anandhi)
12. The Government of Tamil Nadu,
rep. by its Secretary,
Housing and Urban Development Department,
Fort St. George, Chennai 600 009.
13. A.S.Dilipan
14. The Commissioner,
Ambattur Municipality,
Ambattur, Chennai 600 053.
15. T.S.Krishna Nagar Welfare Association,
(Reg.No.94/1985),
rep. by its President Mr.S.K.Babu
having office at No.1488, T.S.Krishnanagar,
Anna Nagar West Extn., Chennai 600 037.
16. The Commissioner,
Corporation of Chennai,
Chennai 600 035.
17. T.Adilakshmi
18. K.Vimala
19. R.Ramani
20. R.Latha
21. Shanthi
22. D.Saravanan
23. Samuel
24. Alamelu
25. Karthi
26. Rathnam
27. Kannammal
28. Saradhammal

... Respondents

(R27 & R28 impleaded as party respondent vide order of Court, dated 24.03.2015 made in M.P.No.1/2015 in W.A.No.1208 of 2014). Petition lfiled for a Writ of Certiorarified Mandamus calling for the records of the first respondent letter No.7189/L.A.(1)/07-4 dated 3.8.2007,

for the property in relation to the property bearing Survey No.296/2, Mugappair Village, measuring an extent of 1 acre 17 cents and quash the same and direct the 2nd respondent to reconvey the Land in Survey No.296/2, Mugappair village, measuring an extent of 1 acre 17 cents to the petitioners herein.

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Writ Appeals filed under Clause 15 of the Letters Patent against the order dated 29.01.2014 passed by the learned Single Judge in Writ Petition No.32034 of 2007.

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For Appellant in W.A.No.404/2014 For R12 & R13 in W.A.No.870/2014 and For R14 & R16 in W.A.No.1208/2014	Mr.P.H.Arvinth Pandian, Addl. Advocate General for Mrs.Karthika Ashok
For Appellant in W.A.No.870/2014 For R4 in W.A.No.404/2014 and For R15 in W.A.No.1208/2014	Mrs.G.Devi
For Appellant in W.A.No.1208/2014 For R2 in W.A.No.404/2014 and For R10 in W.A.No.870/2014	Mr.C.Kasirajan
For R1 in W.A.No.404/2014 For R9 in W.A.No.870/2014 and For R12 in W.A.No.1208/2014	Mr.R.Rajeswaran, Special Govt. Pleader
For R5 to R22 in W.A.No.404/2014 For R1 to R8, R14 to R23 in W.A.No.870/2014	Mr.R.Thiyagarajan, Senior Counsel for Mr.G.Sankaran
For R23 & R24 in W.A.No.404/2014 For R24 & R25 in W.A.No.870/2014 and For R27 & R28 in W.A.No.1208/2014	Mr.R.Muthukumaraswamy, Senior Counsel for Mr.Subba Reddy
For R2 to R11, R17 to R26 in W.A.No.1208/2014	Mr.R.Thiyagarajan, Senior Counsel for Mr.R.N.Amarnath
For R3 in W.A.No.404/2014 For R11 in W.A.No.870/2014 For R13 in W.A.No.1208/2014	Mr.R.Dhilipan

Judgment Reserved on : 28.04.2015
Judgment Pronounced on : 21.05.2015

C O M M O N J U D G M E N T

V.DHANAPALAN, J.
AND
R.S.RAMANATHAN, J.

As the issue involved in all these cases is one and the same, the Writ Appeals are taken up for disposal by a common judgment.

2. The writ petitioners, who are the respondents herein belong to Adi-Dravida Community. One of the writ petitioners, viz., E.Krishnaveni's father-in-law (since deceased), one Mr.A.Rathinam, son of Annamalai held an extent of 10.03 acres in Mugappair and Padi Village in different Survey Numbers. There was a family partition among the family members with regard to the above mentioned properties and thereafter, the lands were acquired by the Government. In Survey No.296/2, an extent of 1 acre and 52 cents stands in the name of the writ petitioners. The said lands were also acquired by the Government vide 4(1) Notification issued on 06.04.1966. In the total extent of 1 acre and 52 cents, 0.33 cents were utilized by the Government and the remaining extent of 1 acre and 17 cents are still lying unutilized. As the writ petitioners have not received any compensation for the above said lands acquired by the Government, by representations dated 24.11.2006 and 06.12.2006, they sought re-conveyance of the lands, as the same were not at all utilized and still lying vacant. Since there was no response, they filed a writ petition in W.P.No.10599 of 2007 and on 22.03.2007, this Court directed the respondents to dispose of their representations in accordance with the principles laid down in a First Bench judgment of this Court in the case of R.Shanmugam vs. State of Tamil Nadu and pass appropriate orders within a period of four months. By an impugned order dated 03.08.2007, the first respondent therein, i.e. the Government rejected the representations of the writ petitioners for re-conveyance.

3. Aggrieved by the said order, the writ petitioners filed W.P.No.32034 of 2007 seeking to call for the records of the first respondent vide Letter No.7189/L.A.(1)/07-4, dated 03.08.2007, in relation to the property bearing Survey No.296/2, Mogappair Village, measuring an extent of 1 acre 17 cents and quash the same and for a consequential direction to the second respondent/Managing Director, Tamil Nadu Housing Board (TNHB) to reconvey the said extent of land in Survey No.296/2, Mogappair Village to them. The learned Single Judge of this Court, by an order dated 29.01.2014, allowed the Writ Petition. Relevant portion of the said order would read thus:

"22. A copy of the report of the Advocate Commissioner who was appointed by the District Munsif Court, Ambattur was made available by the learned counsel appearing for the petitioners. This report was submitted on 04.10.2007, wherein the Advocate Commissioner, one Mr.Krishnamurthy made it very clear

that the subject lands are lying vacant.

23. Similarly, a copy of the written statement filed by the Executive Engineer, Sub-Division, Anna Nagar, Chennai-40 in O.S.No.418/2003 on the file of the District Munsif, Ambattur was also filed along with the typed set of papers submitted by the learned counsel for the petitioners. In this written statement, the Executive Engineer stated that the Association i.e., the plaintiff is not entitled to the relief and it is further stated that the Tamil Nadu Housing Board proposed to utilize the above said lands as commercial and they proposed to get the conversion of the open space and they had already moved the CMDA.

24. In the affidavit filed by Sankaranarayanan, son of Suryanarayanan, the Executive Engineer, Anna Nagar Division, TNHB, in I.A.No.1969/2003 in O.S.No.418/2003 on the file of the District Munsif Court, Ambattur, it is stated that an excess of 1.5 acres of land is kept for future development and commercial conversion and therefore, the plaintiff i.e. the Association could not be handed over the lands. In the counter, they also requested the permission from the Court to safeguard the suit schedule property to construct a compound wall immediately.

25. In another suit i.e. O.S.No.64 of 2007, the Commissioner, Ambattur Municipality has filed a written statement stating that the land has not yet been handed over by the Housing Board to and in favour of the Ambattur Municipality.

26. The joint report filed by the Advocate Commissioners appointed by this Court also confirms that the lands are lying vacant.

27. In the light of the above, I am of the considered view that the reasons given by the first respondent in the impugned order are not true and are unsustainable.

28. However, after receiving a copy of the report of the Advocate Commissioners, an affidavit has been filed by the Managing Director, Tamil Nadu Housing Board.

29. In the affidavit sworn to by Mr.K.Chellamuthu, Managing Director on 13.12.2013, it is stated that Block Nos.I & II referred to in Green and Sky Blue colours are completely vacant as mentioned in the Joint Advocate Commissioners report, have already been given to the Ambattur Municipality for park through a Gift Deed dated 23.07.2009 in Doc.No.2758/2009 and the same was executed by the Executive Engineer and Administrative Officer, Anna Nagar Division, TNHB in favour of the Commissioner, Ambattur Municipality. Hence, according to him, the entire land covered in S.No.296/2 measuring an extent of 1.87 acres are not in the possession of the Tamil Nadu Housing Board at present and the same were already utilized as detailed in the affidavit.

30. In the reply affidavit filed by the petitioners to the counter affidavit filed on behalf of the second respondent Board, it is stated that even after 45 years, the lands were not at all utilized. They pointed out that acquisition proceedings were initiated on 06.04.1966 and 4(1) Notification was published on 25.05.1966. the award was passed on 23.03.1973. With regard to the W.P.No.12176 of 2004 filed by one A.S.Dilipan, it is stated that the said Dilipan is not a member of their family. The said Dilipan is concerned with S.No.289/1 and 291/1 for an extent of 0.80 cents. In the Re-conveyance Deed executed by the Tamil Nadu Housing Board on 22.10.2007, the survey number is mentioned as 289/1 and 291/1 Part. However, what was re-conveyed is an extent of 0.36 cents in S.No.296/2 which belongs to the petitioners. Even in W.P.No.12176 of 2004, the said Dilipan sought for re-conveyance in S.No.289/1 and 291 Part. Hence, the petitioners contended that the Re-conveyance Deed executed in favour of the said Dilipan by the respondent is not proper.

31. It is also pointed out in the reply affidavit that when the writ petition is pending, it is not proper on the part of the respondents to execute the Gift Deed dated 23.07.2009 to the local body. Out of the total extent of 1.87 acres in S.No.296/2, an extent of 35 cents had gone to the road widening purpose and the remaining extent is only 1 acre and 52 cents.

32. These facts mentioned in the reply affidavit by the petitioners in November 2011 are uncontraverted and I find valid reasons in their contentions that the

Gift Deeds made by the Board in favour of the Municipality when the writ petition was pending is unwarranted and is invalid.

33. Further, it is the case of the first respondent that there is absolutely no vacant lands which are lying in S.No.296/2 and absolutely re-conveyance is not possible. As per the impugned order, all the lands were converted into plots, flats and roads and were handed over to the public and also to the local bodies. However, even according to the first respondent and the second respondent Board, the Gift Deed was made after the writ petition was filed, which goes to show that the impugned order does not contain the real reasons to reject the petitioners representation. Further, the reports submitted by the Advocate Commissioners in the District Munsif Court, Ambattur and the reports submitted by the Advocate Commissioners before this Court would clearly point out that the lands are still lying vacant and unutilized even after a period of more than 45 years.

34. When the representation was made by the petitioners to the Government, the Government instead of considering the same on the basis of the facts and the figures available as on that date, it simply rejected the petitioners representation on the grounds which are untrue and unavailable to them at that time. Only after the writ petition has been filed challenging the impugned order, urgent steps have been taken to gift the lands to the Municipality and to create a picture as if there was no vacant land as contended by the petitioners.

35. I am not at all happy with the way the Government has passed the impugned order and thereafter trying to cover up their mistakes. It is a trite law that an order under challenge is to be decided by a Court of law on the basis of the reasons given in that order and not on the basis of the developments that took place subsequently. In this case, admittedly, the land owners who are deprived of their lands, approached the Government for re-conveyance of the unutilized lands even after a period of 45 years. Instead of considering their representation on the basis of the provisions contained in the Land Acquisition Act and on the basis of the order passed by this High Court, they chose to reject their representation containing reasons which are now proved to be false. In such circumstances,

though it is a normal practice to direct the Government to consider the representation afresh, considering the fact that the writ petition has been filed in the year 2007 and considering the fact that more than 45 years have gone by and in the light of the cover up action taken by the Government to camouflage their mistakes, I am directing the first respondent to take immediate steps to re-convey an extent of 1 acre and 17 cents in S.No.296/2 of Mugappair Village to the petitioners herein after taking necessary steps for re-conveyance including cancellation of the Gift Deeds made by the Board in favour of the Municipality and this exercise should be undertaken within a period of three months from the date of receipt of a copy of this order.

36. Even though a number of decisions have been cited by all the learned counsel appearing for the parties in support of their contentions, I am not referring to any one of them, as the issue involved in this writ petition can easily be settled and decided on the basis of its own facts and circumstances and without reference to any judgment.

37. In the light of the above, the writ petition is allowed as prayed for. No costs. Consequently, connected miscellaneous petition is closed.

38. It is represented by the Advocate Commissioners who had been entrusted with the job of inspecting the property and filing a report, I am satisfied that the detailed report filed by the Advocate Commissioners along with the enclosures and photographs, helped this Court to arrive at a just decision. Therefore, the petitioners are directed to pay an additional sum of RS.20,000/- each to both the Advocate Commissioners immediately, not later than one month from today."

Challenging the said order of the learned Single Judge, the present Writ Appeals are filed.

4. Learned Additional Advocate General appearing for the Corporation of Chennai would submit that an extent of 1 acre and 87 cents in S.No.296/2 along with other lands, totally an extent of 10 acres and above had been acquired by the Government vide its Award dated 23.03.1973 and possession had also been handed over in the same year to the Tamil Nadu Housing Board. Since then, possession of the said lands is with Tamil Nadu Housing Board. It is his contention that once the land is vested with the State, the original owners

cannot have concern on the usage of the land and that if the acquired land had already been transferred to other agency, the Government cannot exercise power under Section 48-B of the Act and re-convey the same to the original owner. He would submit that in the present case, though the Advocate Commissioner evidences the availability of vacant land, nowhere it whispers about the accuracy of an extent of plots available in S.No.296/2 in Block Nos.I, II, III, IV, V and VI, whereas, it is simply stated that the land is vacant entirely.

5. He would further go on to state that the insistence of the writ petitioners for the original lay-out Plan has no essence as they have not denied the scheme developed by the TNHB and as such, any Housing Development by the TNHB would definitely have an approval. And, as per approval, the plot R.30-B is the plot ear-marked for open space reservation. The TNHB, on realising that open space once reserved could not be converted into any kind of building, turned down to gift the land to an extent of 53 cents, bearing Plot No.R-30B, earmarked as open space and the same had been executed by a Gift Deed dated 23.07.2009, registered as Document No.2758/2009 on the file of SRO, Konnur.

6. Learned Additional Advocate General would highlight that even prior to the handing over of the plot to the erstwhile Municipality, the residents in that area had been utilizing it as a Park with the funds procured among them and they were continuously approaching the Corporation of Chennai to maintain the plot as a Park to enable the public for walking, jogging and other useful exercises. Lastly, he would submit that the Corporation in the nature of its constitution, is liable to safeguard the interest of the public.

7. In support of his case, the learned Additional Advocate General has relied on the following decisions:

(i) The Special Tahsildar, Tamil Nadu Magnesite Ltd., Salem and another vs. T.Nagendran and others [(2003) 2 L.W. 414]

"15. Even assuming for a moment that the reference Court can entertain the application to consider the prayer, the question would arise for consideration as to whether the application has been properly made and whether the appellants have made out a prima facie case, which alone would enable the Court to grant the relief. If one looks at Section 48(B) of the Act, which has been inserted by the Tamil Nadu Amendment Act XVI of 1997, it clearly lays down that the first and foremost requirement is the satisfaction by the State Government. But as far as the present case is concerned, these applications are filed by the Land Acquisition Tahsildar of the Requisitioning Body. There is nothing to show that the State Government

examined and satisfied itself that the lands vested in the Government are not required for the purpose for which they were acquired. There is not even a pleading in the affidavit. No material has been placed before the Court in this regard.

16. This Act came into force in the year 1997. Admittedly, vesting of the lands with the State Government took place during 1983/1984 mostly and in the remaining one or two cases in the year 1986. In the Act, there is nothing to show that it is retrospective in operation. Of course, learned Government Pleader would contend, that the relevant date is the date when the State Government considers and satisfies and not the date when the land vested with the Government. According to the Government Pleader, the Government decided only after 1997 that being so the provisions of the Section can be applied to the instant case. We are not able to accept this submission. Admittedly, the land vested with the Government way back in the year 1984 in most of the cases and in one or two remaining cases in 1986 (i.e.) about 16 years before. The crucial date for consideration is the date when the lands vested with the Government and not the date when the Government considered and decided. Or in other words, Section 48 (B) cannot be applicable only in respect of the cases where the acquired lands vested with the Government after the said amendment Act XVI of 1997 came into force. We are of the view that Section 48(B) of the Act would not be available for the Government to be invoked."

(ii) R. Shanmugam and others v. The State of Tamil Nadu [2006 (4) CTC 290]

"21. Section 17-A of the Tamil Nadu Amendment Act which was later repealed, contemplates payment of cost of acquisition by the Board constituted under City Improvement Trust Act. However, there is no such provision for payment of cost of acquisition by Housing Board to the Government as the entire cost of acquisition is borne by the Government. The provisions of Section 16-B must also be considered in this context. The lands are acquired under the Central Act only on the proposal of Housing Board. On acquisition, the land vest in Government under Section 16 of the Act and thereafter, it is transferred to Housing Board only for the limited purpose of implementation of the Scheme. In the event, the State Government is satisfied that the land acquired and transferred to the

Housing Board is not utilized for housing or improvement scheme for the purpose for which it was acquired, in exercise of the provisions of Section 16-B, it shall forfeit the land as penalty and thereafter the land shall vest with the Government in Revenue Department free from all encumbrances.

35. In order to apply the provisions of Section 48- of the Tamil Nadu Amendment Act, 1996, firstly, the land must vest with the Government under the Act in Revenue Department, and secondly, in the opinion of the State Government, such land is not required for any other public purpose and thirdly, the said land can be re-conveyed to the original owner who is willing to repay the amount that was paid to him under the Act for the acquisition of such land inclusive of the amount referred to in sub-sections (1-A) and (2) of Section 23, if any, paid under the Act. The power of the Government to transfer such land to the original owner is only discretionary. Where the lands are forfeited by the Government from the Housing Board, it can be utilized by the Government for any other public purpose. In the event, the Government is of the opinion that the lands are not required for any other public purpose, then it must consider re-conveyance of the land under Section 48-B. Only in the event, the Government is of the view that the lands cannot be re-conveyed, it may resort to dispose the land by public auction. However, the exercise of the power under Section 48-B cannot be mechanical and whenever the discretion to take a decision is conferred on the authority by a statute, concept of fairness inherent in the guarantee of equality under Article 14 of the Constitution of India must be ensured. Exercise of such discretion could be tested on fairness and reasonableness. This is more so when such authority is bound to determine the questions affecting the right to property of individual. The decision must be supported by reasons with materials and necessarily be an informed one. In this context, the exercise of such discretionary power as to whether the land should be re-conveyed to the original owner or should it be sold by public auction, should not be arbitrary and unreasonable and fairness must prevail in such decision. Though the land owners cannot have any vested or absolute right to seek for automatic re-conveyance of the land, they have an element of right for consideration of their claim for re-conveyance in terms of Section 48-B.

36. In view of the above discussions, we hold that the Government in exercise of the power under Section 16-B of the Act can forfeit the land from the Tamil Nadu Housing Board as penalty and on such forfeiture, the land shall vest in the Government in Revenue Department free from all encumbrances. Once such vesting takes place, the Government shall consider the request, if any, received from the land owners expressing their willingness for re-conveyance and may accept or reject. Such exercise of power is discretionary and the owners have no right to seek for automatic reconveyance of land. The Tamil Nadu Housing Board has no power under Section 72 of the Act to dispose of unutilized land and such power shall only vest with the Government under Section 16-B of the Land Acquisition Act."

(iii) T.N. Housing Board v. Keeravani Ammal and others
[(2007) 9 SCC 255]

"9. On the facts pleaded it is doubtful whether the Government can withdraw from the acquisition, since the case of the State and the Housing Board is that possession has been taken and plans finalised to fulfil the purpose for which the acquisition was made. There is no plea in the writ petition that a request for reconveyance was made in terms of Section 48-B of the Act as amended in the State of Tamil Nadu. The said provision reads:

"48-B. Transfer of land to original owner in certain cases.—Where the Government are satisfied that the land vested in the Government under this Act is not required for the purpose for which it was acquired, or for any other public purpose, the Government may transfer such land to the original owner who is willing to repay the amount paid to him under this Act for the acquisition of such land inclusive of the amount referred to in sub-section (1-A) and (2) of Section 23, if any, paid under this Act."

13. It is clearly pleaded by the State and the Tamil Nadu Housing Board that the scheme had not been suspended or abandoned and that the lands acquired are very much needed for the implementation of the scheme and the steps in that regard have already been taken. In the light of this position, it is not open to the Court to assume that the project has been abandoned merely

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

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

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

"The question emerges whether the Government can assign the land to the erstwhile owners? It is settled law that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. In case there is no other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public auction can be

better utilised for the public purpose envisaged in the Directive Principles of the Constitution. In the present case, what we find is that the executive order is not in consonance with the provision of the Act and is, therefore, invalid. Under these circumstances, the Division Bench is well justified in declaring the executive order as invalid. Whatever assignment is made, should be for a public purpose. Otherwise, the land of the Government should be sold only through the public auctions so that the public also gets benefited by getting a higher value."

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

17. We are thus of the view that the writ petitioners, the contesting respondents, have not made out any case for interference by the Court or for grant of any relief to them. It is therefore not necessary for us to go into the further contention raised on the scope of Section 48-B of the Act, whether the writ petitioners have established any claim to the lands, whether the reconveyance can only be to the original owners and not to others and whether if possession has already been made over to the Housing Board, the State could exercise its power under that provision. We leave open those questions for the High Court to consider as and when the occasion arises on it being approached in the context of Section 48-B of the Act. Suffice it to say that the decision of the High Court in the writ petition in question is totally unsustainable and deserves to be set aside."

(iv) Tamil Nadu Housing Board vs. L.Chandrasekaran (Dead) by Lrs. And others [(2010) 2 SCC 786]

"28. It need no emphasis that in exercise of power under Section 48-B of the Act, the Government can release the acquired land only till the same continues to vest in it and that too if it is satisfied that the acquired land is not needed for the purpose for which it was acquired or for any other public purpose. To put it differently, if the acquired land has already been transferred to other agency, the Government cannot exercise power under Section 48-B of

the Act and reconvey the same to the original owner. In any case, the Government cannot be compelled to reconvey the land to the original owner if the same can be utilized for any public purpose other than the one for which it was acquired.

(v) Commissioner, Corporation of Chennai vs. R.Sivasankara Mehta and another [(2011) 13 SCC 285]

"10. Under the provisions of Section 48 of the principal Act, we are afraid, the respondent(s) has no right of asking for reconveyance in 1995 inasmuch as it is an admitted case of the parties that possession of the property was taken over by the State as early as in 1949 when the award was passed and the land vested in the State Government in 1962. Thereafter it was transferred to the Corporation. This aspect of the case, which goes to the root of the question, was totally missed by the High Court. Even if we accept, for the sake of argument, that Section 48-B was available in 1995 when reconveyance was ordered even then the respondent(s) has no case.

11. In a recent judgment rendered by this Court in T.N. Housing Board v. L. Chandrasekaran, it has been held that before an order of release can be made under Section 48-B, the Government must be satisfied that the land which is sought to be released is not required for the purpose for which it was acquired or for any public purpose. Admittedly, in the instant case, such condition has not been satisfied in view of the representation of the appellant Corporation that they need the land for utilising it as parking space in view of ever increasing growth of car population in the city of Chennai. This is certainly a public purpose.

12. The learned counsel for Metro Rail has filed an affidavit to the effect that the Government is contemplating the use of the said land for its ongoing project which is again, very much a public purpose.

13. The second question is that the land is no longer vested in the Government as it divested itself by giving it over to the Corporation. Therefore, the conditions stated in L. Chandrasekaran are not satisfied herein. So the exercise of power by the State Government in cancelling its previous order of reconveyance cannot be faulted.

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14. No case of mala fides or perversity has been made out in the writ petitions. The learned counsel for the respondent(s) stated that its only case of alleged mala fides has been made out in Ground (c) at p. 35 of the paper book. The said ground is set out hereinbelow:

"Cancellation of reconveyance order is colourable exercise of power. All materials have been considered including the views of the Corporation in detail in GOMs No. 48 dated 10-3-1995. The Corporation stated that there is a proposal to construct a fully air conditioned office-cum-shopping complex. However, the Government has rejected the proposal and ordered reconveyance. As per the impugned order, the Corporation has given a proposal for using it as parking space. It is submitted that the above proposal is dated 5-6-1998, long after bankers' pay order has been received from the petitioner. It is submitted that facts set out above make it very clear that the impugned order is based on extraneous considerations and purely colourable exercise of power."

15. Unfortunately we are of the opinion that the said ground does not make out any case of mala fide exercise of power by the Government. Specific pleadings with particulars must be there to make out a case of mala fides and the person against whom mala fides is alleged must be impleaded. No such pleadings are at all present in this case.

16. Apart from the aforesaid question, in L. Chandrasekaran, this Court held that if any reconveyance is to be made that has to be done on the basis of the present market value. The purported order of reconveyance initially made by the Government was not made on that basis either.

17. In the facts of this case there can be no question of promissory estoppel which is an equitable doctrine. In the context of the clear provision of Section 48 of the principal Act which was governing its field in 1995, when reconveyance was purportedly ordered, equity has no application. Nor is there any scope for the principle of natural justice to operate when the person complaining of its infraction cannot show any right of his which has been violated. In the given facts of the case and the clear mandate of Section

48 of the principal Act, we do not discern any right of the landowners to apply for reconveyance in respect of a land which had vested in the Government long ago.

(vi) V.Chandrasekaran and another vs. Administrative Officer and others [(2012) 12 SCC 133]

"19. The relief obtained by some persons, by approaching the Court immediately after the cause of action has arisen, cannot be the basis for other persons who have belatedly filed their petition, to take the benefit of earlier relief provided, for the reason that, such persons cannot be permitted to take impetus of an order passed by the court, at the behest of another more diligent person. (Vide Ratan Chandra Samanta v. Union of India, State of Karnataka v. S.M. Kotrayya and Jagdish Lal v. State of Haryana.)

20. In Abhey Ram v. Union of India a three-Judge Bench of this Court dealt with an issue similar to the one involved herein. The question that arose was whether the quashing of the notification/declaration under the Act by the court in respect of other matters, would confer benefit upon non-parties also. The Court held as under: (SCC p. 429, paras 10-11)

"10. The question then arises is whether the quashing of the declaration by the Division Bench in respect of the other matters would enure the benefit to the appellants also. Though, prima facie, the argument of the learned counsel is attractive, on deeper consideration, it is difficult to give acceptance to the contention....

11. ... If it were a case entirely relating to Section 6 declaration as has been quashed by the High Court, necessarily that would enure the benefit to others also, though they did not file any petition, except to those whose lands were taken possession of and were vested in the State under Sections 16 and 17(2) of the Act free from all encumbrances."

21. In H.M.T. House Building Coop. Society v. Syed Khader, this Court quashed the land acquisition proceedings in toto, wherein the land had been acquired by the Government for the use of the cooperative society which had planned a housing scheme upon it, in view of the conclusion that it could not be called a

"public purpose", within the meaning of the Act. The Court further directed the respondents therein to restore the possession of the land to the tenure-holders/persons interested, and such persons were thereafter directed to refund the amount received by them as compensation. (See also H.M.T. House Building Coop. Society v. M. Venkataswamappa) "

(vii) Kirubakaran and others v. The Commissioner (East), Corporation of Coimbatore, Coimbatore [2013 (6) CTC 441]

"9. The Division Bench of this Court in (2007) 3 MLJ 990 (supra) considered the earlier decisions of the Supreme Court and held that "public purpose", though cannot be precisely defined, broadly means the general interest of the community as opposed to the interest of an individual. In the Judgment of the Supreme Court reported in AIR 1952 SC 252 (*State of Bihar v. Kameshwar Singh*) it is held that public purpose will be construed to promote the welfare of the people at large and if there is dispute regarding public purpose, the Courts have jurisdiction, and it is their duty to determine the matter whenever a requisition is made to acquire the land according to the spirit of the times in which particular legislation is enacted. The Supreme Court in the decision reported in AIR 1956 SC 294 (*State of Bombay v. R.S.Nanji*) also took a similar view. When the use of land earmarked for public purpose was unauthorisedly allotted to a School, the Supreme Court set aside the same and the said decision is reported in AIR 1996 SC 253 : (1995) 5 SCC 762 (*G.N.Khajuria (Dr) v. Delhi Development Authority*). The Division Bench in the above referred judgment held that, "a portion of land reserved for public purpose in a layout or in a development plan or master plan approved by the Local Body cannot be used for any other purpose, than the one specified therein."

10. In the decision reported in 2010 (4) CTC 737 (*R.Chandran v. State of Tamil Nadu*) the First Bench of this Court considered the proposal for conversion of public park and play ground into an underground car park by the Corporation of Chennai, under the Tamil Nadu Country Planning Act, 1971 and Section 2(34) of the Development Control Rules, etc., and held that if an area is specified as a open space, the Corporation may at best get a right as a "custodian of public interest" to manage it in the interest of society in general and in breach of this

custodianship, any attempt to change the user of such land would be impermissible under law and would be against the public interest and thus restrained Corporation of Chennai from constructing underground car park in the playground in question situated at Venkatnarayana Road, T.Nagar, Chennai-17. The SLP filed against the said order was also dismissed by the Hon'ble Supreme Court.

11. In the decision reported in 2011 (1) CTC 257 (K.Rajamani v. Alamunagar Residents' Welfare Association) similar issue arose and the Division Bench set aside the Government Order granting permission to change the user of the land from public purpose to housing plot in respect of a land in Coimbatore and in paragraph 22 held thus, "22. The contention of Mr.K.M.Vijayan, learned Senior Counsel for the Appellants is that the law relating to open space would be available only in case of apartments, where the purchaser of an apartment would have right to seek for maintenance of public space as such, as he/she has an undivided share in the open land as well and that law is not applicable to a layout. In our opinion, the said contention is totally on a misconception. The purpose for leaving open space is not only to meet the future developmental activity, but also to meet the recreational activity of the inhabitants. The provision of open space in a development plan is to provide green space as well which is an essential feature in the development of an area. In a layout leaving of certain area of land as open space for use of park is in conformity with the Development Control Rules. Hence, there cannot be a different yardsticks to the de-reservation of land left for open space in the case of an apartment and layout. Only in this context, the provisions of Section 432(10)(b) of the Coimbatore City Municipal Corporation Act relating to the power of the Municipal Corporation to make bye-laws in respect of protection of avenues, trees, grass, other appurtenances of public streets and other places was referred to by the learned Judge which, in our considered view, requires no interference. Hence, the learned Judge has rightly quashed the order of the Government in de-reserving the land earmarked for public purpose in the layout into housing plots and we are not inclined to interfere with the same."

8. On the other hand, Mr.G.Sankaran, learned counsel appearing for the aggrieved land owners/writ petitioners would contend that pending writ petition, with a view to defeat the rights of the writ

petitioners, the TNHB purposely executed a gift deed in favour of the Ambattur Municipality under the guise of handing over OSR land (claimed to be earmarked as Park of an extent of 0.53 acres), out of which 0.17 acres is a part of the subject land comprised in S.No.296/2. But, the said land is not an OSR land. Learned counsel would vehemently contend that the 1.52 acres of land in S.No.296/2 is lying vacant unutilized by the TNHB, as could be seen from the report of the Advocate Commissioner. Further, he would contend that though the award was passed on 23.03.1973, till date, the compensation amount payable with regard to the subject property is neither paid to the land owners nor deposited before the competent civil court or in any other deposit maintained for the purpose.

9. Mr.R.N.Amarnath, learned counsel appearing for respondents 2, 5 to 11 and 17 to 26 in W.A.No.1208 of 2014 has relied on the following decisions:

(i) Qudrat Ullah v. Municipal Board, Bareilly [(1974) 1 SCC 202]

"27. From what we have stated above, it follows that the argument of any vested right in the defendant being taken away does not hold good; nor is there any foundation for the contention that the later Act is being applied retrospectively. All that we hold is (a) that a disability of the plaintiff to enforce his cause of action under the ordinary law may not necessarily be transmuted into a substantive right in the defendant, (b) that rights of a statutory tenant created under a temporary statute, as in this case, go to the extent of merely preventing the eviction so long as the temporary statute lasts, (c) that the provisions of s. 43 do not preserve, subsequent to repeal, any right to rebuff the plaintiff's claim for, eviction and (d) that S. 6 of the General Clauses Act does not justify anything longer or for any time longer than s. 2 of the Act confers or lasts. It is appropriate for a Court to do justice between parties to the litigation and in moulding the relief in the light of the subsequent developments, to take note of legislative changes. A court of justice should, if it could, adjudicate finally and not leave the door ajar for parties to litigate again. In the present case, it is not seriously disputed that if the plaintiff were to sue for recovery of possession today, the Rent Control Law does not stand in the way. Therefore, it is manifestly a measure of doing justice between the parties and ending litigation which has seen two decades pass, to conclude it here by taking cognizance and adjusting the relief in the light of

the later Act and repeal of the earlier Act. Nevertheless, it is contended that the present suit cannot be decreed in view of the provisions of the U. P. Public Premises (Eviction of Unauthorised Occupants) Act, 1972. This statute 'which provides for summary eviction of unauthorised occupants cannot obstruct the suit for eviction of a tenant. The far-fetched submission has hardly any substance and we reject it.

(ii) A.P. Housing Board v. Mohd. Sadatullah and others [(2007) 6 SCC 566]

"46. In our opinion, the learned counsel for the land-owners original petitioners is right in contending that when the acquisition proceedings and Award in respect of two acres of land was held bad and nullity by the High Court in previous proceedings, it was not open to the Special Court or the High Court to ignore the said order. Moreover, the Special Court was not right in observing that it was not alleged by the land-owners that the contesting respondents (private parties or A.P. Housing Board) were not land grabbers. It was expressly stated by the land-owners that they continued to remain owners of two acres of land in view of non delivery of possession of land to Housing Board and non payment of compensation thereof. The writ petition filed by them in respect of two acres of land had been allowed by the High Court in 1988 and the contention of the Housing Board was negatived that it had become owner of the land. It was also not correct to contend that the land was different, being ABCDEFGH in Ex.B-35, in possession of respondent Nos. 4 to 6 and respondent No.22. In fact, the operative part of the order extracted hereinabove in the earlier part of the judgment clearly shows that petition was partially allowed as to title of the petitioners over the 'petition schedule land' shown as ABCDEFGH in Ex. B-35 excluding the area in the occupation of respondent Nos. 4 to 6. It was, therefore, not correct to say that the petitioners-land-owners had not asserted that they were the owners of the 'petition schedule land' nor it can be contended that the land-owners had not alleged that the respondents were not land grabbers. The question then relates to claim of appellant before this Court in Civil Appeal No. 3989 of 2003 instituted by original respondent No.4. As already adverted earlier, the Special Court has held that respondent Nos. 4 to 6 had perfected their title by adverse possession and hence they could not be termed as 'land grabbers'. According to the Special Court as well as the High Court, however, they had become owners by

adverse possession in respect of 770 sq. yards of land but according to respondent No. 4 appellant before this Court, he has become owner by adverse possession of five acres of land. The contention of the land-owners, on the other hand, is that a finding as to ownership by adverse possession could not have been recorded by Special Court constituted under the Act and the Special Court was in error in recording such finding. The land- owners also contended that in case of other respondents, the Special Court held that disputed questions of fact were involved as to whether they had become owners by adverse possession or not and in the opinion of the Special Court, such question can be decided only by a competent Civil Court. Liberty was, therefore, granted to those respondents to approach an appropriate Civil Court if they desired to raise such issue. It was also contended that even in respect of respondent Nos. 4 to 6, the Special Court observed that if their case was that they had become owners by adverse possession of five acres of land, they could approach a Civil Court and the decision rendered by Special Court would not come in their way. It was, therefore, submitted by the land-owners that the Special Court ought not to have recorded any finding as regards adverse possession and ought have allowed the contesting respondents by granting liberty to approach Civil Court to establish their rights over any part of the land by adverse possession."

10. Mr.R.Thiagarajan, learned Senior Counsel has relied on a decision in the case of Forward Construction Co. and others v. Prabhat Mandal (Regd.), Andheri and others [(1986) 1 SCC 100]

"19. The second question for consideration is whether the present writ petition is barred by res judicata. This plea has been negatived by the High Court for two reasons: (1) that in the earlier writ petition the validity of the permission granted under r.4(a)(i) of the Development Control Rules was not in issue; and (2) that the earlier writ petition filed by Shri.Thakkar was not a bona fide one in as much as he was put up by some disgruntled builder, namely, of M/s. Western Builders.

20. So far as the first reason is concerned, the High Court in our opinion was not right in holding that the earlier judgment would not operate as res judicata as one of the grounds taken in the present petition was conspicuous by its absence in the earlier petition. Explanation IV to s.11 C.P.C. provides that

any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. An adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had it decided as incidental to or essentially connected with the subject matter of the litigation and every matter coming within the legitimate purview of the original action both in respect of the matters of claim or defence. The principle underlying Explanation IV is that where the parties have had an opportunity of controverting a matter that should be taken to be the same thing as if the matter had been actually controverted and decided. It is true that where a matter has been constructively in issue it cannot be said to have been actually heard and decided. It could only be deemed to have been heard and decided. The first reason, therefore, has absolutely no force."

11. We have heard the learned counsel for the parties and also gone through the records.

12. These are three appeals; the first by the Managing Director, Tamil Nadu Housing Board; the second by the Commissioner, Ambattur Municipality, now the Assistant Commissioner, Corporation of Chennai, Zone-VIII; and the third by a residential association called T.S.Krishna Nagar Welfare Association, represented by its President; calling in question the order of the learned single Judge, dated 29.01.2014, in W.P.No.32034 of 2007.

13. The main grounds urged by the appellant in W.A.No.1208 of 2014 are that the subject land, measuring an extent of 1.17 acres was required and award passed in Award No.7/73, dated 23.03.1973, after following all the procedures contemplated under the Land Acquisition Act, and once the award has been passed in the land acquisition proceedings, the land vests with the Government and also when the Government has handed over the possession of the land to the requisitioning body, namely, Tamil Nadu Housing Board, the Government has no right over the property, as the same becomes the exclusive property of the requisitioning body; as per Section 48-B, the condition precedent for the Government to reconvey the land is that the Government has to forfeit the land from the requisitioning body as a penalty for not utilising the lands, and, only after forfeiting the land under Section 16 (b), the Government has power to reconvey the lands to the land owners and, therefore, the learned single Judge was not right in allowing the writ petition and directing for reconveyance of the lands.

14. Another appellant, namely, Ambattur Municipality, has raised a plea that the Tamil Nadu Housing Board had acquired the vast land comprised in various survey numbers from different owners for purpose of the Housing Development Scheme and a lay out was formed, which was duly sanctioned by the authorities; as per the Tamil Nadu Town and Country Planning Act, 10% of the total extent of the land subject to the formation of layout has to be reserved as open space and 10% of the total extent of land has to be reserved for public amenities; open space reservations are required to maintain the ecological and environmental balance; if such a requirement is not made mandatory, the Chennai city would go breathless; for the requirement of the said proviso, the Tamil Nadu Housing Board had reserved the plot R-30B as open space, which, at any event, has to be maintained open to air and light and, therefore, the order of the learned single Judge, directing the Tamil Nadu Housing Board to reconvey the extent of lands claimed by respondents 15 to 25 before the writ court is not sustainable either in law or on facts. According to them, necessity also arose for providing space for park with the Municipality, now merged with the Corporation, development of arterial roads covering the MTH Road, the public moving the Civil Court by filing a suit for permanent injunction from converting the usage of land and that the open space once reserved could not be converted into any kind of building, turning down to gift the land to an extent of 53 cents, bearing plot No.R-30B, which aspects were not taken into consideration by the learned single Judge and, therefore, the gift deed executed even during the pendency of the writ petition is a valid one.

15. T.S.Krishna Nagar Welfare Association, another appellant, raised a question that, after acquisition of the land, the requisitioning body, namely, Tamil Nadu Housing Board, was given the land by the Government for implementation of the Housing Scheme and it has gifted the remaining property to the then local body, namely, Ambattur Municipality, by way of a registered gift deed, D.No.2758 of 2009, dated 23.07.2009, and, therefore, the learned single Judge has failed to consider that the land acquired for a particular purpose can be used for other public purpose for which Section 48-B will not be applicable and, therefore, the order of the learned single Judge, allowing the writ petition, is required to be interfered with.

16. To examine the above contentions, it could be seen that the Tamil Nadu Housing Board, in order to implement a housing scheme called Anna Nagar Western Extension Scheme, has acquired the subject lands situated in Survey No.296/2, Mugappair Village, having an extent of 1.87 acres, vide award No.7/73, dated 23.03.1973. The layout was approved by Chennai Metropolitan Development Authority vide letter No.PP./LO(D) No.40/79. According to the appellants, the said site has been utilised for a public purpose site, road and park and there is no unutilised land in the said survey number.

17. It is also seen that the respondents/writ petitioners have earlier moved this Court in W.P.Nos.32034 and 10599 of 2007 for reconveyance of the lands situated in Survey No.296/2. The said writ petitions were disposed of by this Court, directing the authorities to consider the request of the petitioners in accordance with law within a time frame. The Government, in consultation with the Tamil Nadu Housing Board, has rejected the request of the petitioners, in its proceedings, dated 03.08.2007, and the same was challenged in the writ petition. The stand of the appellants is that the land in Survey No.296/2 was fully utilised for public purposes, such as residential plots, flats, park and roads. The details of the lands utilised in Survey No.296/2, Mugappair Village, according to the appellant, are as under :

S.No.	Extent (acres)	Purpose of Utilisation
1	0.10.	Already reconveyed as per the Hon'ble High Court's order in W.A.No.196/2005
2.	0.72	120' Road
3.	0.36	Allotted as Mini Theater Site which was converted as hospital by the purchaser
4.	0.17	Park, Handed over to the then Ambattur Municipality
5.	0.52	Part of Petrol Bunk, 40' Road and Tamil Nadu Housing Board Flats.
Total	1.87	

18. Therefore, according to the appellants, there is no unutilised land and when the subject land was utilised for various purposes, the question of reconveyance does not arise; the award amount of Rs.24,965.80 was ordered to be deposited in the City Civil Court under Sections 30 and 31/2 of the Act; the land acquired by the Tamil Nadu Housing Board has been utilised fully and a part of the land was originally reserved as park site in the layout which was subsequently converted as a commercial site; the required open space on the request of the public was converted as park site in the original approved layout and the same was handed over to the local body by way of gift deed on 23.07.2009 as per the direction of the Government in D.O.Lr.No.5893/LA (1)/2009-1, dated 19.03.2009, and even though the land is in prime locality, the Board decided not to get more revenue through sale, but offered to local body free of cost in the interest of public and, as such, there is no vacant land kept idle for reconveyance.

19. The above position has been disputed by the individual/private respondents, contending as follows :

19.1. Total extent of the land comprised in Survey No.296/2 is 1 acre 87 cents. The registered owner of the land was one late Rathinam. The said Rathinam had three sons, namely, R.Veeraraghavan, R.Elumalai and R.Govindaraju and two daughters, namely, Kannammal and Saradhammal. Out of the total extent of 1.87 acres, Veeraraghavan claimed ownership in respect of 0.35 acres at the time of award enquiry. Elumalai claimed ownership of an extent of 1 acre 17 cents by virtue of an oral partition entered into between the legal heirs of the abovesaid Rathinam in the presence of village panchayatars. The two daughters claimed ownership of an extent of 0.35 acres by virtue of a gift deed executed by their father late Rathinam.

19.2. According to the writ petitioners, the legal heirs of Elumalai who are petitioners 1 to 4 in the writ petition and the legal heir of Veeraraghavan, who is petitioner 5 in the writ petition, an extent of 1.52 acres of land is owned by them. In the writ petition, the petitioners, while challenging the order dated 03.08.2007, rejecting their representation, had sought for reconveyance of an extent of only 1.17 acres in S.No.296/2. Since the respondents in the writ petition claimed that they have utilised the entire lands, the learned single Judge appointed an Advocate Commissioner to inspect the subject property and to file a report after measuring the property in the presence of Taluk Surveyor and other persons concerned. The Advocate Commissioner has identified the property, measured the property with the help of the Taluk Surveyor, Ambattur, and the Head Surveyor of the Tamil Nadu Housing Board in the presence of the official of the Board and the petitioners on 17.12.2011 and filed a report with a sketch. The report and sketch clearly disclose that the subject property is lying vacant, except a small portion under encroachment.

19.3. The Managing Director, Tamil Nadu Housing Board, filed an affidavit after the Advocate Commissioner's report, wherein none of the facts recorded by the Advocate Commissioner were objected. The said affidavit contained the particulars which were already furnished by the Executive Engineer, TNHB, in the form of dates and events, and the same was placed before the learned single Judge on 19.12.2011. Though the TNHB and the Government are in possession of the records, they have not filed any documents to substantiate that the entire subject property was utilised/allotted to third parties.

19.4. In the order dated 03.08.2007, the writ petitioners' request for reconveyance was rejected by the

Government on the ground that the lands were already utilised by TNHB and that no land was available in the subject property for reconveyance. But, during the pendency of the writ petition, one Dilipan was reconveyed an extent of 0.10 acres of land in the subject property on 22.10.2007.

19.5. Pending writ petition, with a view to defeat the rights of the writ petitioners, the TNHB executed a gift deed in favour of the Ambattur Municipality under the guise of handing over OSR land, out of which 1.17 acres is a part of the subject land comprised in S.No.296/2, but the said land is not an OSR land. The approved layout plan under which the TNHB executed the Housing Scheme i.e., Anna Nagar West Extension Scheme-II was deliberately withheld by the TNHB and the Government before the Division Bench and also the learned single Judge. On the contrary, the officials of TNHB as well as the Corporation fabricated a plan and produced the same as an approved plan before the single Judge and also Division Bench. The TNHB fabricated the documents and also created a gift deed during the pendency of the writ petition to defeat the rights of the writ petitioners by misleading this Court. Such conduct of the parties to a proceeding before a court is found to be an abuse of the process of the Court. No portion is reserved as OSR in S.No.296/2 and no document is produced to show that flats were constructed, land was allotted to Petrol Bunk, Mini Theatre and for formation of Road. The Mini Theatre shown in Plot No.R30C is situated in S.No.297 which is the eastern boundary of the subject property. The said land originally belongs to one Sambanthappa from whom Frontier Lifeline Hospitals Private Limited has taken on lease. Though TNHB had furnished particulars with regard to the usage of lands in S.No.296/2, they did not produce any documents such as allotment orders, sale deeds etc., before this Court. Further, in the reconveyance deed dated 22.10.2007 to Dilipan and in the gift deed dated 23.07.2009 to Ambattur Municipality, the officials of TNHB annexed a false and fabricated sketch at the time of registration. The topo sketch produced by TNHB as well as the sketch produced by the Corporation of Chennai before the Division Bench as well as single Judge are not the original approved layout sketches. The said sketches were created for the purpose of the case in order to mislead the Court as well as to defeat the rights of the writ petitioners. Only 0.36 acres was part of the road and not 0.72 acres. The report of the Advocate Commissioner, the affidavit, written statement, additional written statement make it clear that 1.52 acres of land in S.No.296/2 is lying vacant and not utilised by the TNHB. In fact, as per the affidavit of the Executive Engineer, OSR lands in S.No.R46 and R47 were transferred to

Ambattur Municipality as early as in 2003 and the subject lands are the property of the Housing Board. In the documents filed before the DMC, Ambattur, the TNHB has clearly stated that the lands in S.No.296/2 are kept only for future development either as shopping complex or flats as may be determined by them. No OSR land is claimed in S.No.296/2 by TNHB. Though the award was passed on 23.03.1973, till date, the compensation amount payable with regard to the subject property was not paid to the land owners. Accordingly, they prayed for dismissal of the Writ Appeals.

20. On the above background circumstances and the plea raised by the parties, we have verified the records.

21. The operative portion of the impugned order, dated 03.08.2007, passed by the Government, in the writ petition, reads thus :

"I am directed to state that your request for reconveyance of the land in S.No.296/2, measuring to an extent of 1 acre 52 cents at Mogappair village, Ambattur Taluk, Tiruvallur District, has been examined in detail in consultation with the Tamil Nadu Housing Board and as per the orders of High Court, Madras, dated 22.03.2007, in W.P.No.10599/07.

2. I am to state that the land in S.No.296/2 to an extent of 1.87 acres of Mogappair village has been acquired as per Award No.7/73, dated 23.3.73 and the possession of the lands were taken over by the Tamil Nadu Housing Board on 3.4.73. The Award amount of Rs.24,945.80 was ordered to be deposited in the City Civil Court deposit under Section 30 and 31/2 of the Land Acquisition Act. He has also stated that the lands have been divided into plots, residential flats and roads. Further, the plots and residential plots have been allotted to general public and roads have been handed over to local administration. I am also to state that the lands are being utilised for the purpose for which it was acquired and there is no vacant land available to reconvey. In view of the above reasons, your request for reconveyance of the lands in S.No.296/2 measuring to an extent of 1 acre 52 cents in Mogappair village, Ambattur Taluk, Tiruvallur District, can not be complied with and is hereby rejected."

22. According to the writ petitioners, the claim of the Tamil Nadu Housing Board that only 10 cents have been given to Mr.Dilipan

is not correct, because the relief sought by Dilipan is for 36 cents only in Survey No.289/1 and 291 Part, whereas in the sale deed of the schedule, even though it has been mentioned as 289/1 and 296/1 part and 2 part, the entire land has been only in Surey No.296/2 and the survey numbers are differing from the Court order. To substantiate the same, the writ petitioners have filed their objections, informing that in page No.9 of the sale deed, it is mentioned as Survey No.289/1- 16 cents and 296/1 part and 2 part - 20 cents but, actually, the entire 36 cents they have reconveyed is only in Surey No.296/2. Thus, it is clear that the Housing Board has not made a correct statement before the Court and, therefore, a judicial notice has to be taken for making such a false statement. As regards the 72 cents in 120 Feet Road, the total extent utilised for the road purpose is only 36 cents and not 72 cents. With regard to 36 cents allotted for Mini Theatre, which is claimed as converted to hospital, it is claimed by the writ petitioner that the said entire land is in different survey number which is S.No.297 - Plot No.R30C, originally allotted to Sampanthappa, who is in no way connected to the petitioner's family and later on he converted it into a hospital maintained by Dr.K.M.Churian called as Frontier Lifeline Hospitals Pvt.Ltd. Therefore, the entire 36 cents shown by TNHB in Survey No.296/2 is utter false and such a statement should not have been made before the Court. As for 17 cents, stated to be handed over to the then Ambattur Municipality, it is objected to, stating that as per the gift deed executed by the TNHB in favour of Ambattur Municipality, the total extent mentioned is 53 cents situated in Survey No.289/1 part, 291/1 part and 296/1 part and 2 part, but the land taken is in Survey No.296/2. By making false survey numbers, the authorities are allotting the area in Survey No.296/2. A comparison of topo sketch will show that Survey Nos.289/1 and 291/1 are situated far away and that too on the southern side and western side of Survey No.296/2, which are in no way connected to Survey No.296/2. Even though the gift deed indicates 53 cents, in the column, it is mentioned as only 17 cents. In respect of 52 cents for part of Petrol Bunk, 40 feet road and TNHB Flats, though in Column 5 it is mentioned as 52 cents, in Survey No.296/2, the Petrol Bunk area hardly touches the Petrol Bunk area on the Northern side of the road which may be approximately 50 to 60 sq.ft. The survey number 296/2 never touches 40 feet road and TNHB flats. So, the entire area shown as 52 cents as Petrol Bunk and 40 feet road is utter false, which is other side of the 120 feet road. Thus, according to them, in order to tally the figure, such manipulated and fabricated statements are made to equalise the total extent of 1 acre 87 cents.

23. To examine the above position and the prayer of the writ petitioners, to quash the order of rejection of the Government dated 03.08.2007 and a further direction to second respondent to reconvey the land in Survey No.296/2, Mugappair village, measuring an extent of 1 acre 17 cents, it is to be seen that in the impugned order, the request of the writ petitioners for reconveyance of the land has been

examined in detail in consultation with the Tamil Nadu Housing Board and as per the order of the High Court dated 22.03.2007 in W.P.No.10599 of 2007. It is stated therein by the Secretary to Government that in S.No.296/2, an extent of 1.87 acres has been acquired as per Award No.7 of 1973, dated 23.03.1973, and the possession of the lands was also taken over by the Housing Board on 03.04.1973 itself; the award amount of Rs.24,945.80 was ordered to be deposited in the City Civil Court Deposit under Sections 30 and 31/2 of the Act ; the lands have been divided into plots, residential flats and roads and the plots and residential flats have been allotted to general public and the roads have been handed over to the local administration and that the lands are being utilised for the purpose for which they were acquired and there is no vacant land available to reconvey.

24. The learned single Judge, in his order, has held that a copy of the Advocate Commissioner, who was appointed by the District Munsif Court, Ambattur, was made available by the learned counsel appearing for the petitioners. The said report was submitted on 04.10.2007, wherein the Advocate Commissioner, one Mr.Krishnamurthy, made it very clear that the subject lands are lying vacant. Similarly, a copy of the written statement filed by the Executive Engineer, Sub-Division, Anna Nagar, Chennai, in O.S.No.418 of 2003 on the file of District Munsif, Ambattur, was also filed along with the typed set of papers submitted by the learned counsel for the petitioners, wherein it is stated that the Tamil Nadu Housing Board proposed to utilise the above said lands as commercial and they proposed to get the conversion of the open space and they had already moved the CMDA.

25. It is also pointed out by the learned single Judge that in the affidavit filed by Sankaranarayanan, the Executive Engineer, Anna Nagar Division, TNHB, in I.A.No.1969/2003 in O.S.No.418/2003 on the file of District Munsif, Ambattur, has stated that an excess of 1.5 acres of land is kept for future development and commercial conversion and, therefore, the association could not be handed over the lands. In another suit in O.S.No.64 of 2007, the Commissioner, Ambattur Municipality, has filed a written statement, stating that the land has not yet been handed over by the Housing Board to and in favour of the Ambattur Municipality. It was further observed that the Joint report filed by the Advocate Commissioners appointed by this Court also confirms that the lands are lying vacant.

26. For the aforesaid reasons, the learned single Judge was of the considered opinion that the reasons given by the first respondent in the impugned order were not true and sustainable.

27. From the factual matrix and the legal position as to the reconveyance of the land, it is material that if any land is acquired for a public purpose and which has not been utilised by the authority

for the purpose for which it is acquired, a special amendment has been brought into operation especially in the State of Tamil Nadu by providing an opportunity to the land owners to ask for reconveyance of the said land, which is lying vacant and unutilised for a public purpose. As for the competent authority to decide the claim of the land owners, it is the Government alone and not any other party. The Government has rejected the request of the writ petitioners for reconveyance of the land for the reason that there is no vacant land. But, the material information, the Advocate Commissioner's report, the objections filed by the land owners and all the relevant orders would reveal that a portion of the land in Survey No.296/2 is lying vacant and the same has to be considered by the appropriate authority for reconveyance, if the land is not utilised for the purpose for which it was acquired.

28. In the above regard, if the land of 10 cents is in other survey number, then the said land, which is sought to be reconveyed, is a matter to be examined. As regards 72 cents, which is stated to be acquired for widening of road, we are of the considered view that the material information and the statement made by the Managing Director of Tamil Nadu Housing Board and the objections made by the land owners would disclose that only 36 cents of land was utilised for road widening purpose and the remaining 36 cents is in Survey No.296/2 was not utilised. As far as Mini Theatre is concerned, it is not within the subject land coming under the purview of S.No.296/2 and the same is in different survey number namely, S.No.297-Plot No.R30C and the same has been given to one Sampanthappa, who, later on, converted the said land into a hospital maintained by Dr.K.M.Churian, called as Frontier Lifeline Hospitals Pvt.Ltd. As for 17 cents stated to be allotted to Park and handed over to Ambattur Municipality, a gift deed has been executed during the pendency of the writ petition in order to defeat the claim of the writ petitioners. Therefore, that part of the land has been construed as a vacant land on the date of filing of the writ petition. Coming to 52 cents, which is stated to be a part of Petrol Bunk, 40 feet road and Tamil Nadu Housing Board flats, on verification of the sketch, the layout, the Advocate Commissioner's report and also other materials, it appears that the said land of 52 cents is in no way connected to the southern side of the land in question and it is on the northern side of the 120 feet road, touching on the other side. Therefore, it cannot be construed that the land comes under the purview of utilisation for Petrol Bunk and that part of the land is in Survey No.296/2. Therefore, the statement of the Board in this regard is not correct. Nevertheless, being the disputed question of fact, we cannot come to the definite conclusion regarding the extent of land, if any, unutilised.

29. The impugned order passed by the Government on 03.08.2007 vide Letter No.7189/L.A.1(1)/07-4, dated 03.08.2007 would read thus:

"I am directed to state that your request for reconveyance of the land in S.No.296/2, measuring to an extent of 1 acre 52 cents at Mogappair Village, Ambattur Taluk, Tiruvallur District has been examined in detail in consultation with the Tamil Nadu Housing Board as per the orders of High Court, Madras dated 22.03.2007 in W.P.No.10599/2007.

2. I am to state that the land in S.No.296/2 to an extent of 1.87 acres of Mogappair Village has been acquired as per Award No.7/73 dated 23.03.1973 and the possession of the lands were taken over by the Tamil Nadu Housing Board on 03.04.1973. The Award amount of Rs.24,945.80/- was ordered to be deposited in the City Civil Court deposit under Section 30 and 31/2 of the Land Acquisition Act. He has also stated that the lands have been divided into plots, residential flats and roads. Further, the plots and residential flats have been allotted to general public and roads have been handed over to Local Administration. I am also to state that the lands are being utilized for the purpose for which it was acquired and there is no vacant land available to reconvey. In view of the above reasons, your request for reconveyance of the lands in S.No.296/2 measuring to an extent of 1 acre 52 cents in Mogappair Village, Ambattur Taluk, Tiruvallur District cannot be compelled with and is hereby rejected."

30. From a reading of the above, it is clear that the lands acquired for the purpose are being utilised for the purpose for which it was acquired and there is no vacant land available for reconveyance. Therefore, the request for reconveyance of the lands cannot be complied with and has been rejected. The reason assigned by the Government is not as if the lands are not vested with them and therefore, the rejection has been made. It is also clear that they have consulted the Tamil Nadu Housing Board as per the orders of this Court, dated 22.03.2007 in W.P.No.10599 of 2007. It is true that unless the lands are vested with the Government, there is no question of reconveying the property to the owners and the scope of Section 48B of the Act could be construed that re-conveyance would be done only when the land has been vested with the Government and the land was not utilised for the purpose for which it was acquired or for any other public purpose and the land has been kept vacant.

31. In the instant case, it is seen that the land acquisition proceedings started in the year 1966 and the award has been passed on 23.06.1973 and thereafter the lands acquired for that purpose have been utilised and it is contended that some extent of the lands have

been kept vacant unutilised. The writ petitioners have moved this Court for re-conveying the lands. The ratio laid down by the Supreme Court in the case of Commissioner, Corporation of Chennai vs. R.Sivasankara Mehta [2011 (13) SCC 285], is that Section 48-B came on the statute book in 1997 by the Land Acquisition (Tamil Nadu Amendment) Act, 1996. The assent of the President was received on 14.03.1997. The scheme of the Amendment Act, 1996 would inform that where the Government is satisfied with the land vested in the Government under this Act is not required for the purpose for which it was acquired, or for any other public purpose, the Government may transfer such land to the original owner who is willing to repay the amount paid to him under this Act for acquisition of such land inclusive of the amount referred to in sub-section (1-A) and (2) of Section 23, if any paid under this Act. On a perusal of Section 48-B, it is clear that the same is not retrospective in operation. The said provision, which is a departure from Section 48 can apply only prospectively.

32. From the judgments of the Hon'ble Supreme Court and the Division Bench of this Court referred to above, the following principles emerge:

(i) Once the land has been handed over to the body for which it was acquired by the Government, the acquired land vests with the body for whose purpose, it was acquired and the Government cannot exercise power under section 48-B of the Act unless it exercise power under section 16-B of the Act by forfeiting the land by passing necessary order.

(ii) Even though the lands acquired were not utilised for the purpose for which it was acquired, land owners cannot claim re-conveyance as of right and the Government has got powers to utilise the lands for any other public purpose. Only when the Government takes a decision that the lands could not be utilised for any other public purpose, the question of re-conveyance of the lands to the owners will arise.

(iii) As per the judgments reported in 2011 (13) SCC 285 supra, and 2003-2-LW.414 supra, section 48-B of the Act is only prospective in operation and the same was introduced in the year to the Land Acquisition Act (Tamil Nadu Amendment Act) of 1996 (Act XVI of 1997).

33. The ruling of the Supreme Court would clearly indicate that Section 48-B will have prospective application and if the lands which have been acquired for the purpose were kept vacant, only then the land owners can claim their right for re-conveyance of the lands if the same could not be used for any other public purpose.

34. It was also reported by the Chief Revenue Officer of the Housing Board referring to the writ petition filed by one Dilipan in W.P.No.12176 of 2004, for reconveyance of the land and the case ended in favour of the land owner and thereafter, 0.16 acres in S.No.289/1 part and 0.2 acres in S.No.296/1 and 2 Part, totally measuring 0.36 acres were reconveyed as per Government Letter dated 15.10.2007.

35. It is a matter for the same Government to consider this case also as the issue in question in respect of the above subject has gone up to Supreme Court and finality has been reached. Therefore, we are of the considered opinion that a decision by the appropriate Government to be taken in accordance with law and such a decision alone will give a quietus to the issue. Therefore, we are inclined to set aside the impugned order passed by the first respondent dated 3.8.2007 rejecting the request of the owners for reconveyance as the same was passed without considering the judgment reported in 2006 (4) CTC 290 (supra) and also section 48-B of the Land Acquisition Act.

36. In the light of all the above material information, the factual position, the rival claims made by the parties, the Advocate Commissioner's report, the affidavit of the Managing Director, TNHB, and the objections made thereon, we feel it appropriate that a decision by the appropriate Government in this case applying Section 48-B of the Act and the ruling of the Supreme Court in respect of reconveyance would be justiciable. Accordingly, while setting aside the impugned order of the authorities concerned dated 03.08.2007 and also the impugned order of the learned Single Judge dated 29.01.2014 made in W.P.No.32034 of 2007 to the extent of ordering reconveyance of the lands to the writ petitioners, the matter is remanded back to the Government to consider the claim of the writ petitioners in accordance with law by applying Section 48-B of the Act and also the ruling of the Supreme Court and take a decision within a period of eight (8) weeks from the date of receipt of a copy of this judgment.

These Writ Appeals are disposed of with the above direction and observation. No costs. Consequently, the connected M.Ps. are closed.

aeb/dixit

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1. The Commissioner,
Ambattur Municipality,
Ambattur, Chennai 600 053.

2. The Commissioner,
Corporation of Chennai,
Ripon Buildings,
Chennai 600 003.
3. The Secretary,
Government of Tamil Nadu,
Housing and Urban Development Department,
Fort St. George,
Chennai 600 009.
4. The Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai 600 035.

+ 2 ccs to Mr.G.Sankaran, Advocate SR 25374, 25375.

+ 1 cc to Mr.C.Kasirajan, Advocate SR 25372

+ 3 ccs to Mr.J.Srikanth Varma, Advocate SR 25402

+ 1 cc to Mr.Karthikaa Ashok, Advocate SR 25401

+ 3 ccs to Mr.J.D.Srikanth Varma, Advocate SR 25455

ev(co)
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Common Judgment in
W.A.Nos.404, 870 and 1208 of 2014

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