

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON 22/12 /2014

DATED: 01/09/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.13107 of 2014

K.Sivakumar

... Petitioner

Vs.

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

2.The Tamil Nadu Housing Board,
Rep. by its Chairman,
Annasalai, Chennai - 600 0035.

3.The Special Officer (LA) IX,
Tamil Nadu Housing Board Schemes,
Thirumangalam,
Chennai - 600 101.

4.The Executive Engineer & Administrative Officer,
Besant Nagar Division,
Tamil Nadu Housing Board,
48, Dr.Muthulakshi Salai,
Adyar, Chennai - 600 020.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for a Writ of Certiorari, to call for the records relating to the Letter dated 28.02.2014 in No.HS/2690/2008-2, on the file of the Executive Engineer & Administrative Officer, Besant Nagar Division, Tamil Nadu Housing Board, the fourth respondent herein and quash the same.

For Petitioner

: Mr.R.Muthukumarasamy
Senior Counsel
For Mr.A.V.Arun

For Respondents: Mr.A.L.Somayaji
Advocate General
Assisted by Mr.B.Vivekavanan
for R2 and R3

Mr.P.H.Aravind Pandian
Additional Advocate General
Assisted by
Mr.M.S.Ramesh
Additional Government Pleader for R1 & R4

O R D E R

The petitioner submits that he is the owner of land comprised in Survey Nos.296/2 to an extent of 2400 sq.ft. in Sholinganallur Village. The said land is a portion of layout viz., Lakshmi Nagar Layout and he has purchased Plot No.45 in the layout admeasuring 2400 sq.ft. by a sale deed dated 30.08.1983, registered as Document No.2416 of 1983 in the Office of the Sub Registrar, Adayar. The said land along with the other lands comprised in the Lakshmi Nagar Layout was subjected to Land Acquisition Proceedings in the year 1990. The first respondent herein issued a notification under Section 4(1) of the Land Acquisition Act 1894 hereinafter called "the Old Act" in G.O.Ms.No.454, dated 23.05.1990 followed by a declaration issued under Section 6 of the Act in G.O.Ms.No.996, Housing & Urban Development Department, dated 17.06.1991. Thereafter, an award came to be passed in Award No.2/1993, dated 18.06.1993 by the third respondent herein. The petitioner has declined to receive any compensation amount pursuant to the award and the amount is deposited in the Revenue Deposit. Aggrieved by the Land Acquisition Proceedings, the petitioner has filed a writ petition before this Court in W.P.No.14353 of 1993. The said writ petition came to be disposed by an order dated 05.02.1996 with the direction to the second respondent to allot the plot on a preferential basis. The land was acquired by the first respondent at the instance of the second respondent for the purpose of a housing scheme called "Sholinganallur Neighbourhood Scheme Phase-II". Though the land was acquired at the request of the second respondent as early as in the year 1990 by the first respondent, the second respondent did not take any steps to use the land for any housing scheme or otherwise. The land is still kept vacant and no physical possession has been taken by the second respondent in the manner known to law.

2. The petitioner further submits that though the second respondent issued publication calling for applications to develop the scheme in the said locality, there is only poor response and so against 1500 flats proposed by the second respondent, there were only about 254 applicants registered for the flats in different categories, viz., HIG, MIG and LIG as such, the purpose for which the land acquisition proceedings were initiated is lost. It is a

fact that there are no takers from the second respondent and the second respondent has also not taken any steps for the past 24 years to develop the acquired land. The petitioner further submits that the respondents have reconveyed the Plot No.6 in the layout admeasuring 5 1/2 cents in the very same Lakshmi Nagar layout to the owner of the land viz., Mrs.Kalaiselvi by order dated 26.05.1993. The petitioner further submits that he along with others made several representations to the first respondent to re-convey the land to them, but it was of no avail. It is also further mentioned that the Government has released another extent of 51 cents of land covered under the very same acquisition notice to one Mr.Ramakrishnan. Not only small extent, but also a large extent of 51 cents was released by the Government to a few. The petitioner further submits that since the land is not used for the housing purpose, he has made representations to the respondents to re-convey the land to him as done in the case of Mrs.Kalaiselvi and others. In fact, while disposing of his writ petition, by an order dated 05.02.1996, this Court directed the second respondent to consider his application along with other applications, seeking allotment of the plots on preferential basis. However, the second respondent has not so far developed the property constructively and the large chunk of land is lying waste paving way for the encroachers and interlopers to meddle with the vacant land, available to a vast extent.

3. The petitioner made various representations to the second respondent followed by reminders seeking allotment of plots as per the order dated 05.02.1996 in W.P.No.14354 of 1993. Since the second respondent failed to pass orders on his representation, he has filed W.P.No.1667 of 2000 seeking a writ of mandamus directing the second respondent to pass orders on his representation and this Court by order dated 02.02.2000 was pleased to direct the respondents to pass orders on his representation within a period of one month from the date of receipt of the order. However, the second respondent did not pass orders on his representation. The second respondent has not taken any steps to develop the acquired land and has not at all taken physical possession of the acquired land to develop it as planned. The petitioner further submits that since the respondent dropped the scheme and kept the property idle from 1996, he made several representations in person and as well through an association viz., "Sholinganallur Plot Owners Association", dated 19.08.1995, 02.01.1996, 18.08.1998 and 20.12.1998 along with others to the first respondent seeking re-conveyance of the land to him by exercising their powers under Section 48(B) of the Old Act. As the said representation was kept pending, this Court in W.P.No.1667 of 2000, dated 02.02.2000 directed the respondents to dispose of the same within a period of 12 weeks from the date of receipt of the order by giving suitable relief to him and others, if they are so entitled.

4. The petitioner further submits that the first respondent did not dispose of the representation as directed by this Court. However, the second respondent communicated a letter

dated 10.12.2008 stating that the land is included in Shollinganallur Phse-II Scheme for which a layout has been prepared and submitted to Chennai Metropolitan Development Authority for approval and the same is under process and hence, his request cannot be complied with. Since the second respondent stated that a layout scheme is pending before the Chennai Metropolitan Development Authority, he has made an application under the Right to Information Act 2005, requesting the particulars of the development allegedly proposed by the second respondent. The Chennai Metropolitan Development Authority informed him that till date no approval is granted for any housing scheme. The petitioner further submits that the planning permission sought for by the second respondent for the proposed layout was returned unapproved. Subsequently, the second respondent did not take any steps to resubmit the application seeking planning permission. At that juncture, another writ petition in W.P.No.7606 of 2012 was filed by him before this Court and this Court here again directed the respondents to consider the representation to re-convey the land within a period of eight weeks by an order dated 26.03.2012. The Government sent a reply stating the Housing Board was proposing to construct flats and thereby rejected the claim. As already submitted, as the proposal to construct 1500 flats and allot them to general public yielded no response from general public, he made a representation dated 04.02.2014 to the respondents. The petitioner further submits that on information under RTI Act from the CMDA, it is clear that there was no proposal submitted by TNHB for construction of flats and no planning permission is obtained so far. Further, there is no Environment impact Assessment Certificate obtained for construction of the said 1500 flats. The petitioner further submits that one Mrs.Kalaiselvi had made a representation to the Government seeking re-conveyance of the 5 1/2 cents of land in Survey No.297/2A 22 in Shollinganallur Village. Her application was allowed and the land was re-conveyed to her. Moreover, her land was re-conveyed to her without even collecting any development charges and it is thus obvious that there was no development made by the respondents after acquisition. Similarly, in the case of one Mr.Ramakrishnan, the Government by order dated 27.05.1993, 51 cents of land was re-conveyed to him.

5. The petitioner further submits that the respondents are acting arbitrarily in the matter of re-conveyance of the land to the erstwhile landowners. The respondents are keeping the land without any public use. The petitioner is not having any immovable property in the city. His right to decent life with a dwelling unit is arbitrarily interfered by the respondents by not re-conveying the land to him. The respondents are not obeying the orders passed by this Court in the earlier three writ petitions filed by him. In the case of the above said Mrs.Kalaiselvi and Mr.Ramakrishnan and others who have not approached this Court, they were able to get their land re-conveyed for extraneous considerations. The action of the Government lacks bona-fide. The petitioner further submits that the statutory power conferred for public purpose on the first respondent is upon a trust and not absolute. It can be validly used only in the right and proper direction which the legislature would

confer in it, is presumed to be intended. Though the first respondent issued notification for acquisition of the already laid out residential plots for the so called public purpose of developing into housing flats through the second respondent in 1990, so far no worthwhile action has been taken by the respondents for utilizing the acquired land. It is now almost 24 years from the date of 4(1) Notification and the Government has neither used the acquired land nor allowed the landowners to make use of their land for putting up residential houses. Added to that, it is unfortunate that the Government was partial and discriminatory in considering the representation for release of land by the landowners.

6. The petitioner further submits that the Government have consented to release lands of other few who are influential persons but turning down the genuine request of the other landowner's even after a lapse of 24 years on the alleged ground that the second respondent is proposing a project of putting up 1500 flats in the so called "Sholinganallur Neighbourhood Scheme Phase-II". The petitioner further submits that the Government has not taken possession as per the provision contained under Section 16 of the Land Acquisition Act, 1894. Though the Housing Board claims to have taken possession of the acquired lands in the year 1996 itself, there was no notice issued to the landowners for taking possession as contemplated under the Rules. The petitioner further submits that for taking possession of the acquired land, a memorandum or a panchanama shall be drawn by the Land Acquisition Officer in the presence of witnesses signed by them. In his case, there was no such procedure adopted by the Land Acquisition Officer and no notice was given to him before taking the alleged possession by the Tamil Nadu Housing Board. The petitioner further submits that the award amount was not received by him and the respondents have not deposited the same into the Court on his refusal to receive the same and the same award amount was ordered to be kept in the revenue deposit. In one and all the applications made by him about the award under RTI Act, the second respondent has categorically stated in answer to the query that the award amount is kept in the revenue deposit.

7. The petitioner further submits that as per the New Act, viz., The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, (Act 30 of 2013), hereinafter referred to as the "New Act" if the award amount has not been paid, the land acquisition proceedings initiated under the Old Act, viz., Land Acquisition Act 1 of 1894 shall be deemed to have lapsed. In view of Section 24(2) of the New Act, if the possession is not taken by the Land Acquisition Officer as contemplated under the Old Act or the award amount has not been paid, the proceedings covered under any notification preceding 5 years should lapse. As such, the acquisition of his land is covered under a notification dated 23.05.1990 and as stated above the possession of the same has not been taken as contemplated under the Act and the award amount has not been paid and it was kept only in the revenue deposit which would not amount to payment, the proceedings shall stand lapse and on this ground alone, the

petitioner is entitled to get back his land. The respondents have not deposited the compensation amount and they have kept the same in the revenue deposit, it would not amount to payment as defined under Section 31 of the Old Act, hence, the Land Acquisition Proceedings are hit by Section 24(2) of the New Act and the respondents are bound to return the lands to the original owners. Though the notification under Section 4(1) of the Act was published on 23.05.1990 and declaration was made on 17.06.1991 and the award was passed on 18.06.1993, the lands are kept vacant as it is without any development.

8. The petitioner further submits that his representation after the New Act came into force with effect from 01.01.2014. The petitioner submitted his representation on 04.02.2014 to the respondents herein and to the Executive Engineer, Tamil Nadu Housing Board. However, the Executive Engineer, Tamil Nadu Housing Board, the fourth respondent alone sent a reply dated 28.02.2014 expressing inability to re-convey the land to him. As submitted above, the Land Acquisition Proceedings themselves have lapsed in view of the New Act coming into force and hence, the respondents have to be necessarily directed to restore the lands to the petitioner.

9. The highly competent senior counsel Mr.R.Muthukumarasamy appearing for the petitioner submits that he is the owner of the land to an extent of 2400 sq.ft, at Sholinganallur Village. The petitioner has purchased the said property under a registered sale deed in the year 1983 for his own use. The said land is a portion of layout viz., Lakshminagar Layout. The highly competent senior counsel further submits that the petitioner had filed the writ petition and challenged the Land Acquisition Notification issued by the respondents. The same was disposed of with a direction to the second respondent to allot the plot in a preferential basis. The first respondent had acquired the land on the request of the second respondent for the purpose of forming Neighbourhood Scheme. However, the second respondent had not taken any steps for executing the said purpose. The second respondent had given publication, calling for applications from the public to develop the scheme. However, 254 applications have been received against 1500 flats under various categories, viz., HIG, MIG and LIG. It clearly proves that the Neighbourhood Scheme is not successful even after a lapse of 25 years.

10. The highly competent senior counsel appearing for the petitioner further submits that the same respondents had re-conveyed the land to an extent of 5 1/2 cents to and in favour of Mrs.Kalaiselvi by order dated 26.05.1993. The petitioner also is on par to receive a similar relief. Besides, the Government had released 51 cents to one Mr.Ramakrishnan and this also clearly proves that if a portion of the land is released to owners, the scheme will not be affected. Further, the petitioner made representation to the second respondent and requested him to re-convey his land. The same was rejected by the second respondent without assigning any reasons. Hence, the highly competent senior

counsel entreats the Court to set-aside impugned order and grant relief under the New Act.

11. The highly competent Advocate General Mr.A.L.Somayaji appearing for the respondents 2 and 3 submits that the first respondent had issued G.O. for acquiring the lands of the petitioner and others for the purpose of forming Neighbourhood Scheme at Sholinganallur Village at the request of the second respondent. Following the said G.O., the Land Acquisition Officer had acquired the said land after adhering to all legal formalities under the Old Act. A portion of land had been released in favour of Kalaiselvi and Ramakrishnan in the year 1993. Now, after 25 years, the land cannot be re-conveyed to the petitioner since the land had been developed by the Housing Board to execute the purpose of formation of Neighbourhood Scheme. Under the circumstances, the New Act will not be applicable in the instant case. The Executive Engineer had assigned valid reasons and rejected the petitioner's application stating that it is proposed to construct 1500 multi-storied building flats, for which application forms had been issued. The same was informed in the Tamil Nadu Assembly. Thereafter, the Government have to maintain the statement announced in the Assembly. Hence, the highly competent Advocate General entreats the Court to dismiss the above writ petition.

12. The highly competent Additional Advocate General Mr.P.H.Aravind Pandian appearing for the first and fourth respondents submits that on the request of the Housing Board, the first respondent had issued G.O. for acquiring the lands in order to form Neighbourhood Scheme at Sholinganallur. The said G.O. was issued in the year 1990. After a lapse of 24 years, the petitioner's request cannot be considered under the New Act or in any other manner. Now, the Housing Board had issued applications to the general public for providing flats under various categories, viz., HIG, MIG, LIG and economically weaker sections. A small portion of the land was released to one Mrs.Kalaiselvi and Ramakrishnan in the year 1993 at the initial stage before starting the scheme. Now, the scheme is about to be completed. Under, the circumstances, the petitioner's request cannot be entertained. Hence, the highly competent Additional Advocate General entreats the Court to dismiss the above writ petition.

13. On considering the facts and circumstances of the case and arguments advanced by the highly competent counsels on all sides and on perusing the typed-set of papers, this Court is of the view that the respondents / Government have announced in the Assembly in the year 2013 stating that the flats will be allotted to the general public. As this is a solemn promise announced in the Assembly and therefore, this Court cannot interfere with it. The Assembly / Legislature is equally important to the Judiciary. Further, the acquired land lies under the occupation and care of the respondents. Therefore, Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, (Act 30 of 2013) is not squarely applicable

in the instant case. Hence, the above writ petition is dismissed.
There is no order as to costs.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

r n s

To

- 1.The Secretary to Government,
Government of Tamil Nadu,
Housing & Urban Development Department,
Fort St. George,
Chennai - 600 009.
- 2.The Chairman,
Tamil Nadu Housing Board,
Annasalai, Chennai - 600 0035.
- 3.The Special Officer (LA) IX,
Tamil Nadu Housing Board Schemes,
Thirumangalam,
Chennai - 600 101.
- 4.The Executive Engineer & Administrative Officer,
Besant Nagar Division,
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48, Dr.Muthulakshi Salai,
Adyar, Chennai - 600 020.

+1 cc to Mr.A.V.Arun, Advocate, sr.47538

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