

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON 11/12/2014

DATED: 26/10/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.23825 of 2011

- 1.S.Elumalai
- 2.Kasturi
- 3.Dharmalingam
- 4.Panjatcharam
- 5.Viswanathan
- 6.Sivalingam

... Petitioners

Vs.

- 1.The Government of Tamil Nadu,
Represented by the Secretary,
Housing & Urban Development Department,
Fort St. George, Chennai-600 009.
- 2.The Chairman & Managing Director,
Tamil Nadu Housing Board,
No.493, Anna Salai,
Nandanam, Chennai-600 035.
- 3.The Executive Engineer-cum-Administrative
Officer,
K.K.Nagar Division,
Tamil Nadu Housing Board,
Ashok Nagar, Chennai-600 083.
- 4.M/s.Dharani Developers Private Limited,
Rep. by its Director,
Mr.C.Konguvel
Having registered Office at No.1,
Venus Colony, IInd Sreet, Alwarpet,
Chennai-600 018.

...Respondents

(R-4 impleaded as per order
dated 08.07.2013 in
M.P.No.1 of 2013 in W.P.No.23825 of 2011)

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for a Writ of Certiorarified Mandamus, to call for the records of the first respondent in Letter No.13199A/LA 2(1) 08-18, dated 22.09.2011 and quash the same and consequently direct the respondents herein to forthwith reconvey the lands in S.Nos.352/1B, 352/4, 353/1 & 353/2 of an extent of 1.30 acres in Kodambakkam Village, Jafferkhanpet, Chennai District to the petitioners.

For Petitioners: Mr.P.Srinivas

For Respondents: Mr.M.S.Ramesh

Addl. Govt. Pleader for R1

Mr.B.Vivekavanam (HB) for R2 and R3

Mr.V.Bharathidasan for R4

O R D E R

The petitioners submit that they are the original owners of the land measuring about 8.0 acres in S.Nos.352/1B, 352/4 & 353/2 situated in Chengleput District, Saidapet Taluk, Kodambakkam Village, in all measuring 142.31 acres that were acquired vide section 4(1) of the Land Acquisition Act vide Fort St. George Gazette Notification bearing No.41, dated 25.10.1961 by the then Department of Industries, Labour and Co-operation Department for "The West Madras Neighbourhood Project". Section 6 declaration has also been made in the Gazette bearing No.29, dated 28.07.1965 in respect of the land measuring 12.54 acres, which were acquired for "Kodambakkam Pudur Neighbourhood Scheme". The petitioners further submit that the lands were acquired in the year 1971 and till date the land measuring to an extent of 1.30 acres was not utilized and more over the land measuring 1.70 acres bearing S.Nos.352/3B, 352/4 and 352/2 which were acquired by the respondents for the same scheme were reconveyed to Subramania Naicker vide Document No.3968 of 1985, dated 24.12.1985 itself and as such, there will not be any legal impediments for the respondents to re-convey the balance lands to them. The petitioners further submit that they were in possession and enjoyment of the said lands and their family deity Muneeswarar Temple is situated in the midst of the utilized lands and since the acquired lands are not utilized by the Tamil Nadu Housing Board, they are claiming reconveyance of the same so as to live near the temple and to do the day-to-day rituals and prayers as per their customs and practices. The petitioners further submit that the acquired land is unfit for construction of multi-storied buildings or for heavy construction. The petitioners further submit that as per the provisions of the Land Acquisition (Tamil Nadu Amendment) Act, 1996 (Act XVI of 1997), the respondents are bound to transfer the lands acquired to the original owners if they are not required for the purpose for which it was acquired.

2. The petitioners further submit that in G.O.Ms.No.115, Housing and Urban Development Department, dated 12.08.2011, orders have been issued reconveying 85 cents of land in S.No.5/2 in Padi Village to Mr.Sivaraja and 7 others. Pursuant to the order passed by this Court in W.A.No.1926 of 2010, the same was confirmed by the Hon'ble Supreme court. The petitioners further submit that the respondents did not comply with the orders of this Court and have been sleeping over the matter without taking any action. Therefore, the petitioners aggrieved by the said inaction had filed contempt petition No.1350 of 2011 and it has been taken on file and notice has been ordered to the respondents. Now, on receiving the said notice in the Contempt Petition, the first respondent passed orders hastily on 22.09.2011 and on a totally misconceived approach has rejected the request of the petitioners. The petitioners further submit that the order has been passed with total non-application of mind on various aspects. The first respondent has not even gone through the entire files and has missed out to even consider as to what were the previous cases filed by the petitioners and has misread the pleadings and has rejected the request as if the same had already been rejected on 31.03.2008. But the fact remains that the said order is nothing but a letter that was issued during the pendency of the writ petition in W.P.No.12634 of 2006 seeking for the re-conveyance of the lands. But on the other hand, the petitioner had filed W.P.No.30954 of 2008 challenging the tender issued for the construction of the flats in the lands of the petitioner and it has nothing to do with the supposed order dated 31.03.2008. Now without properly appreciating in the case of the petitioners and in a hasty manner, the first respondent has issued the order of rejection dated 22.09.2011. Hence, the petitioners entreat the Court to allow the above writ petition.

3. The second respondent has filed a counter affidavit and resisted the above writ petition. The second respondent submits that the Land Acquisition Proceedings in Kodambakkam Village in respect of the land including the petitioners land in S.No.352/1B, 4 & 353/1 and 2 was initiated in the year 1961. The Notification under Section 4(1) of the Land Acquisition Act of 1894 in respect of the above S.Nos. together with other S.No. in Kodambakkam Village was approved by Government Memo dated 04.10.1961 and was published as a notification No.4729 of 1961 at pages 1646-1647 of Part II Section I of the Fort St. George Gazette dated 25.10.1961. The Draft Declaration under Section 6 of the Land Acquisition Act in respect of the above lands approved in G.O.Rt.No.624 (Housing) dated 07.03.1964 was published as Notification No.1542 of 1964 at Pages 582-583 of Part II Section I of the Fort St.George Gazette dated 01.04.1964. An erratum to the Declaration was also published. Consequent on this an award was passed by the Land Acquisition Officer vide Award No.8/68, dated 29.07.1968 and the compensation was also paid to the

landowners. So, it is an admitted fact that the entire land was vested with TNHB without any encumbrance.

4. The second respondent further submits that the lands to an extent of 1.70 acres adjacent to the petitioner's property was re-conveyed to the petitioner's father and fore-father by Tamil Nadu Housing Board vide re-conveyance deed dated 24.12.1985 and the same was registered under Document No.3968 of 1985. Therefore, the petitioners do not have any locus standi to invoke Section 48B of the Land Acquisition Act due to non-utilization of the land by the Tamil Nadu Housing Board. The second respondent further submits that there is a deity of Muneeswarar Temple situated in the midst of the above land and it may be retained in the proposed layout as a place of worship with adequate access from the existing road. Therefore, the alleged question of non-utilization of the land by Tamil Nadu Housing Board is obviously motivated with an ulterior motive to get reconveyance of the land under Section 48B of the Land Acquisition Act. The second respondent further submits that PWD, in its soil report, reported that the soil is fit for construction of ground + four floors buildings with group pile foundation. the contention of the petitioners that the acquired land is unfit for construction of multi-storied building is not correct.

5. The second respondent further submits that the petitioner has made representation to the second respondent for re-conveyance of the above land and the same has been examined by the High Level Committee during meeting held on 25.06.2009 and it was decided to send the request of the petitioners to the Board for further action. As such, the recommendation of the High Level Committee has been placed before the Board. The Board in its Resolution No.8.08, dated 27.09.2009 has resolved as follows:-

"Board after going through the note place before the Board, resolved to reject the request of Thiru.S.Elumalai and others for reconveyance of the lands in S.Nos.352/1B, 4 and 353/1 and 2 measuring an extent of 1.30 acres of Kodambakkam Village in order to safeguard the interest of Board.

Hence, the petitioners request for reconveyance of the said land under Section 48 B of the Land Acquisition Act could not be considered."

The second respondent further submits that Thiru.Elumalai and 5 others have filed a writ petition in W.P.No.27314 of 2009 before this Court to reconvey the land and the same was ordered on 30.12.2009 and the Government was directed to consider the representation of the petitioners dated 23.02.1999 for reconveyance under Section 48B of Land

Acquisition Act within a period of 12 weeks from the date of receipt of copy of the order. Against the said order, the Board has preferred writ appeal in W.A.No.234 of 2011 and the same was ordered by the Hon'ble First Bench of this Court on 11.04.2011, that the representation submitted by the petitioners shall be considered and decided in the light of the recent decision rendered by the Hon'ble Supreme Court on the subject within a period of three months from the date of receipt of the copy of the order.

6. The second respondent further submits that as per the direction of this Court, the Board has discussed the matter elaborately and concluded that the judgment of the Hon'ble Supreme Court in C.A.No.5040 of 2010 dated 11.10.2010 filed by Hariram Vs.The State of Haryana, was not applicable in the case in hand, wherein it was observed by the Hon'ble Supreme Court in the above Civil Appeal that various portions of the land has been re-conveyed to the various persons except to the petitioners. But in the instant case, a part of land measuring 1.70 acres or 30.36 grounds have already been re-conveyed to the petitioner's family. Except to this petitioners re-conveyance of land was not done to any other person in this scheme and accordingly the request of the re-conveyance has been rejected and the same was recommended to the Government. Based on the Board's conclusion, the Government has also rejected the request for re-conveyance by Thiru.Elumalai & 5 others measuring 1.30 acres at Kodambakkam Village vide letter dated 02.09.2011 and the Government in its letter dated 22.09.2011 rejected the petitioners request for reconveyance of the land. Moreover, the Hon'ble Supreme Court of India in its order dated 29.01.2010 in C.A.Nos.3148 & 3149 of 2002 has observed that if the acquired land has already been transferred to any other agency, the Government cannot exercise power under Section 48B of the Act and re-convey the same to the original owner. In any case, the Government cannot be compelled to re-convey 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. The Hon'ble Supreme Court has further observed that "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 for 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 this Court.

7. The second respondent further submits that the land in S.No.52 admeasuring 85 cents of Padi Village is re-conveyed since it is not used for the purpose for which it was acquired but in case of the petitioners land, a layout got approved by the Chief Engineer, Tamil Nadu Housing Board for constructing 108 flats and the same was also approved by the

Chennai Metropolitan Development Authority vide PPSP/L.O.No.59/85 and subsequently the revised layout was prepared for accommodating 192 flats and the plan was forwarded to CMDA for approval during the year 1997. The above proposal for the construction of 192 flats was deferred due to proposed Inner Circular Corridor Rail Alignment which passes through the land and all the development was frozen by the CMDA until the finalization of rail alignment. Now, the CMDA has dropped the proposal based on the M/s.RITES (A Central Government Agency, viz., Rail India Technical and Economical Service) feasibility report and realign the ICC alignment from Velachery to Ennore and developing the Mass Rapid Transit System (MRTS) on single pillar along the central median of Inner Ring Road. The second respondent further submits that the above proposal by the CMDA was conceded by the Government by virtue of G.O.Ms.No.343 dated 20.12.2006 of Housing & Urban Development Department. Consequent on the de-freezing by the Government, the Tamil Nadu Housing Board has proposed to construct 76 residential flats on the above land and type design was derived out from the assigned consultant and got approved by Chief Engineer, Tamil Nadu Housing Board and submitted to CMDA for approval of the layout. The land in questions are in complete possession and enjoyment of the Board, without any encumbrance. In the meanwhile, a scheme proposal was prepared and got approved by the Board vide B.R.No.4.08, dated 20.10.2008 with a financial outlay of Rs.32.30 crores. Hence, the second respondent entreats the Court to dismiss the above writ petition.

8. The highly competent counsel Mr.P.Srinivas appearing for the petitioners submits that the petitioners are the owners of the subject matter of the lands. The land had been acquired in the year 1971. The petitioners land to an extent of 1.30 acres were not utilized even after a long period. As such, the purpose of the Neighbourhood Scheme had not been implemented. Further, the petitioners have constructed a family temple in the said lands, besides as per the Amendment Act 1996, the acquired lands are bound to be transferred to the original owner if it was not utilized for the said purpose. As per G.O.Ms.No.254, dated 06.10.2003, the petitioners are entitled to get back their lands since it was not utilized as per the plan. The highly competent counsel further submits that the petitioners made representation to the second respondent to reconvey the said land and the same was not considered. The respondents had also not given written order on their representation. The Government also constituted a High Level Committee to reconvey the acquired lands, if the same is not utilized for the purpose intended. Subsequently, the petitioners made one more representation and requested the respondents to reconvey the unutilized lands. The said representation also was not properly considered even after the direction of this Court. The respondent had reconveyed the lands to other landowners. The respondent had reconveyed the lands to an extent of 85 cents

to one Mr.Sivaraja and others. Similarly, the petitioners are also on par to receive the reconveyance. The respondent rejected the petitioners representation without assigning valid reasons and passed the impugned order.

9. The highly competent counsel Mr.B.Vivekavanan appearing for the second and third respondents submits that the Land Acquisition Proceedings had been initiated in the year 1971 under the Old Act, subsequently, a draft declaration was published, award also paid to the landowners. Now the entire acquired lands are vested with the Tamil Nadu Housing Board and also utilized for the Neighbourhood Scheme. The temple is situated in the acquired land and has been retained as a place of worship. The petitioners earlier representation was rejected after being well considered. The acquired land layout for constructing flats has been approved by the CMDA. The petitioners earlier representation was examined by a High Level Committee but it was rejected. Subsequently, the petitioners made a representation dated 25.04.2011 as per the Court order and the same was rejected. As such, the entire lands had been utilized for the Neighbourhood Scheme and the same was implemented. Hence, the highly competent counsel entreats the Court to dismiss the the above writ petition.

10. The highly competent counsel Mr.V.Bharathidasan appearing for the fourth respondent submits that the fourth respondent is the owner of the property which he had purchased from the original owners viz., Subramania Naicker and V.Nataraja Naicker, sons of Velu Naicker by means of registered sale deed dated 24.12.1985. Subsequently, the legal-heirs of the original owners also alienated the said property in favour of the fourth respondent / proposed respondents. Now, all the documents including revenue records are mutated in the name of the proposed respondent who is in physical possession of the same. Hence, the highly competent counsel entreats the Court to dismiss the said writ petition.

11. From the above discussions, this Court is of the view that:- (i) The Land Acquisition Proceedings had been initiated in the year 1961. The acquisition proceedings have been completed and the subject lands were acquired in the year 1971. As such, it is seen that even after a lapse of 45 years, the said lands have not been utilized for the purpose of "Kodambakkam Pudur Neighbourhood Scheme".

(ii) The respondents reconveyed the acquired lands to an extent of 1.70 acres comprised in S.Nos.352/3B, 352/4 and 352/2 by a reconveyance deed bearing No.3968 of 1985, dated 24.12.1985 under the same notification for the same purpose. The petitioners are also entitled to receive similar relief on par since the said property has not been utilized by the respondents for implementing the Neighbourhod Scheme.

(iii) The family temple of the petitioners viz., Muneeswarar Temple is situated in the middle of the acquired lands. The respondents have no locus standi to take over the possession of the temple as it is under the custodial care and maintenance by the petitioners and as such any action is in violation of the family customs and religious ceremonies and worship of the petitioners and their family members.

(iv) The said lands are still vacant and not being utilized for a long stretch of 45 years and as such, the petitioners personal rights, fundamental rights and the civil rights over the said lands are absolutely jeopardized by the State Machinery.

(v) The above said lands were acquired to meet the current and prevailing requirement for a specific project i.e., for the year 1961 which is the date of notification for the required land. Hence, after a long lapse of around 45 years, it is not understandable as to how the feasibility has suddenly sprouted up at present.

(vi) On the basis of petitioners' representation dated 23.02.1999, the land acquisition officer had duly conducted an enquiry and submitted the same to the District Revenue Officer (Land Acquisition) who is attached to the Tamil Nadu Housing Board and this reveals that the subject lands have not been registered in the revenue records and other relevant records in the name of the respondents. As such, there is a lacuna in respect of title.

(vii) The counter statement filed by the respondents reveals that the compensation had been paid and the entire acquired lands is under the care and maintenance by the Tamil Nadu Housing Board. The second respondent has categorically admitted in his counter statement that the subject lands comprised in Survey Nos.352/1B, 352/4 & 353/1 and 353/2 to an extent of 1.30 acres has been kept unutilized. Now, the Tamil Nadu Housing Board has proposed to construct 76 residential flats over the subject lands as per G.O. dated 20.12.2006. It is quite obvious that the Tamil Nadu Housing Board is suddenly resorting to start a project on the said lands as a recourse to their shortcoming of keeping the lands unutilized for nearly 45 years. Logically, the lands acquired are to be put to use within a reasonable period of time, as early settlements will neither go against the interest of those who parted with their lands nor the acquisition authorities who acquired the same for a specific purpose. On the other hand, if the unutilized lands are handed over to the owners, then, no one will be put into hardship, but on the contrary a very long hold on the lands can only jeopardize the plan of the

Tamil Nadu Housing Board and this is the problem they now face. It is certainly the prerogative of the Tamil Nadu Housing Board to out-guess the need of acquired lands and perceive viability for specific projects and accordingly have the same implemented as early as possible as failure to do so can only bring irreparable loss to the original landowners.

(viii) The fourth respondent stated that the subject land earmarked for public purpose is being sought for re-conveyance and it affects the interest of the fourth respondent. In order to decide the issue, a comprehensive trial is necessary before the civil Court. As such, the fourth respondent's plea is rejected.

(ix) The fourth respondent / M/s.Dharani Developers Private Limited, is the absolute owner of the lands comprised in S.F.Nos.353/2, 352/4, 352/3B, 352/12, 352/13 and 353/8 situated at Kodambakkam Village. The said lands and other lands had been acquired by the Tamil Nadu Housing Board for the West Madras Neighbourhood Scheme in the year 1961 to 1965. Subsequently, the acquired lands were re-conveyed to the original owners viz., Subramania Naicker and V.Nataraja Naicker in the year 1985. Thereafter, the legal-heirs of the above mentioned persons sold the said lands to and in favour of the petitioners herein between the year 1999 and 2001. Some portion of the lands have been sold to third parties by the legal-heirs of the original owners as mentioned above. The third parties, in turn, sold the said property to and in favour of the fourth respondent herein under the registered sale deed. All the relevant records have been mutated in the name of the fourth respondent. It clearly proves that the Housing Board is not in need of the fourth respondent's land acquired earlier from the original owner. On this aspect, the petitioners are entitled to receive the lands from the respondents / Government by way of re-conveyance to the petitioners after collecting the compensation amount.

12. 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 and the views of this Court listed as (i) to (ix) as furnished above, this Court allows the above writ petition. Consequently, the order passed by first respondent in Letter No.13199A/LA 2(1) 08-18, dated 22.09.2011 is quashed. In the result, this Court directs the respondents herein to re-convey the land comprised in Survey Nos.352/1B, 352/4, 353/1 & 353/2 to an extent of 1.30 acres in Kodambakkam Village, Jaffer Khanpet, Chennai District to the petitioners, within a period of 60 days from the date of receipt of a copy of this order. The respondents / Government are refrained from filing an appeal against the order of this Court since the third

party / fourth respondent herein is in occupation and enjoying a portion of the acquired land as owner.

13. In the result, the above writ petition is allowed. There is no order as to costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

r n s

To

- 1.The Secretary,
Government of Tamil Nadu,
Housing & Urban Development Department,
Fort St. George, Chennai-600 009.
- 2.The Chairman & Managing Director,
Tamil Nadu Housing Board,
No.493, Anna Salai,
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- 3.The Executive Engineer-cum-Administrative
Officer,
K.K.Nagar Division,
Tamil Nadu Housing Board,
Ashok Nagar, Chennai-600 083.

+1cc to Mr.B. Viveka Vanan, Advocate, S.R.No.58022
+3 ccs to Mr.E.Vijay Anand, Advocate, S.R.No.57975,57947
+1cc to the Government Pleader, S.R.No.58653

VS(CO)
EU(1/03/2016)

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