

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2015

CORAM

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND
The Hon'ble MR.JUSTICE T.S.SIVAGNANAM

W.P.No.7871 of 2007

1.Gowri Shanmugasundaram
2.S.Senthilnathan
3.Sengamalamm .. Petitioner

-vs-

1. The State of Tamil Nadu,
rep. by the Commissioner &
Secretary to Government,
Revenue Department,
Fort St. George,
Chennai-9.
2. The Assistant Commissioner,
Urban Land Ceiling & Urban Land Tax,
Egmore,
Chennai-8.
3. The Chairman and Managing Director,
Tamil Nadu Housing Board,
No.493, Anna Salai,
Nandanam, Chennai-600 035. .. Respondents

(Respondent No.3 impleaded as per the
order of the Court in this petition dt. 14.10.2015)

Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus calling for the records of the 2nd respondent made in their proceedings bearing No.A3/4878/79 and notification No.VI(1) 743/82 dated 02.07.1982 and published in the Tamil Nadu Government Gazette Part IV Section 1 dated 14.07.1982 and the consequent notification No.VI (1)844/82 dated 29.08.1982 and published in the Tamil Nadu Government Gazette Part VI Section 1 dated 11.08.1982, as confirmed by order passed by the Tamil Nadu Land Reforms Special Appellate Tribunal, Santhome, in T.R.P.No.376 of 1999 dated 17.09.2001 quash the same and further

direct the respondents to pay adequate compensation for the land illegally acquired.

For Petitioners : Mr.V.Ramesh

For Respondents : Mr.P.H.Arvinth Pandian
Addl. Advocate General
assisted by
Mr.STS.Moorthy, Govt. Pleader
Mr.V.R.Kamalanathan, Addl. G.P.
Mr.V.Shanmugasundar, Govt. Advocate

* * * * *

ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

We have heard the elaborate submissions yesterday on the matter in issue. The petitioner and the other co-owners' lands were acquired on account of the then existence of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1976, which was subsequently repealed, but they have not been able to avail of the benefit of the repeal on account of the fact of possession having been taken over.

2. The learned counsel for the petitioners, on instruction from the petitioners present in Court states that the petitioners are willing to give quietus to the issues raised in the present matter, provided the judgment of the Division Bench of this Court in the case of the petitioners in W.A.No.389 of 2006 dated 10.7.2009 (Gowri Shanmugasundaram and others v. Government of Tamilnadu, rep. by its Secretary, Housing & Urban Development Department, Fort St. George, Chennai-9 and another) is followed in letter and spirit. It is his case that the order passed in pursuance to this judgment by the Chairman and Managing Director of the Tamil Nadu Housing Board in Letter No.LA1(3)/58173/2003, dated 22.07.2011 is not in conformity with the judgment, though that order has not been specifically assailed in the present writ petition.

3. In so far as the aforesaid grievance is concerned, it is quite apparent that after the initial recital of the facts, the rest of the order dated 22.07.2011 sets out the requirement of the lands for the scheme, while the Division Bench judgment dated 10.07.2009 categorically observed that in consideration under Section 48B of the Land Acquisition Act, 1992, it would not suffice to merely observe that the lands are required for the scheme.

4. The learned counsel for the petitioners has drawn our attention to the Division Bench judgment in W.A.No.389 of 2006, dated 10.07.2009 where the directions of the learned Single Judge were extracted as under:-

"5. It is not in dispute that the acquisition proceedings had become final, now in the counter it is stated that possession has been taken over by the Government on 15.12.2000, after passing the impugned order. The only ground on which the Government has rejected the petitioner's request is that their lands are required for integral housing scheme. From the affidavit filed before this Court, I am able to see that though vast extent of lands had been taken over from the petitioners, the same had not been utilized for integral housing scheme, but they were given to various institutions, not only to the public but also for private institutions. When the Government did not think of the said scheme while allotting those lands to the other institutions including private institutions, I am not able to understand as to how such integral housing scheme can be implemented only with those 6 grounds.

6. Moreover, the Special Deputy Collector, Tamil Nadu Housing Board Scheme himself in his report dated 24.12.1995 recommended for withdrawal of the acquisition proceedings exercising powers under Section 48 of the Land Acquisition Act. On inspection has stated that "the land bearing S.No.145/1 is with a completely dilapidated old building reduced to rubbish and nothing else. This portion lies on the north-east corner of the land handed over to Tamil Nadu Housing Board and the Tamil Nadu Housing Board has raised pucca compound wall segregating the land in S.No.145/1 A6. The land in S.No.145/1 is used as link road from Taylore Road to S.No.145/1.

7. It is also stated by the Special Deputy Collector that the head of family Thiru.Shanmugasundaram passed away on 19.12.1990 leaving his wife and one son and daughter. They are unmarried and are at the thresholds of life and the entire family is in lurch due to the acquisition of retainable area given by the government. It is fit case for kind consideration of the Tamil Nadu Housing Board and Government to withdraw the land under Section 48 of the Land Acquisition Act.

.....
9. In view of the fact that the Government has not taken into consideration the above said facts which are very much relevant for the purpose of consideration of the petitioners representation, the impugned order cannot be sustained in law, and so the same is set aside and the petitioners are permitted to approach the Government again under Section 48 of the Land Acquisition Act, as possession had already been taken, and the Government is directed to consider the same and pass orders on merits, taking into consideration the above said facts and the report of the Special Deputy Collector. Such an order should be passed within three months from the date of receipt of the said representation. Meanwhile, the Tamil Nadu Housing Board is directed not to deal with the lands in question."

5. The Division Bench also observed in paragraphs 7 and 8 as under:-

"7. Mr.D.Veerasekaran, learned counsel appearing for the second respondent would submit that while it is true that the judgment reported in 2006 (1) CTC 305 (cited supra) has been over ruled, as on date, there is no representation pending before the Government for any action to be taken. In 2006 4 CTC 290 - SHANMUGAM R. v. THE STATE OF TAMIL NADU, the Division Bench held that the right to property is not a fundamental right after insertion of Article 300 A by the Constitution (Forty Fourth Amendment) Act, 1978, but yet, recent judgment of the Supreme Court held that it is human right and constitutional right and therefore, the Courts are bound to protect any deprivation of this right.

8. The petitioners are entitled to the consideration of their case under Section 48 B of the Act and to merely observe that their lands are required for the scheme will not suffice. Therefore, the writ appeal is allowed on the ground that the decision followed by the learned Single Judge for dismissing the writ petition has been overruled and we direct the petitioners to make their representation by setting out the facts. The second respondent is directed to dispose of the representation taking into account the earlier orders, in particular, the order passed in W.P.No.22006 of 2000, within a period of 6 weeks from the date of receipt of representation of the petitioners. No costs."

6. The learned Additional Advocate General, faced with the aforesaid position, states that if the petitioners are willing to give quietus to the issues raised in the present petition keeping in mind the judgment of the Division Bench dated 10.07.2009, the concerned authority will pass a fresh order.

7. In order to complete the array of parties, we implead the Tamil Nadu Housing Board, through its Chairman and Managing Director, having office at No.493, Anna Salai, Nandanam, Chennai-600 035 as respondent No.3. Memo of parties be amended accordingly. The learned Additional Advocate General accepts notice for the said respondent also.

8. In view of the aforesaid agreement, the following order is passed:-

(1) The present writ petition stands withdrawn.

(2) The order passed by the Chairman and Managing Director, Tamil Nadu Housing Board in Letter No.LA1(3)/58173/2003, dated 22.07.2011 stands quashed.

(3) Fresh orders will be passed by the competent authority of the Tamil Nadu Housing Board after hearing the parties within a period of three months from the date of receipt of the order, strictly taking into consideration the observations made by the Division Bench in W.A.389 of 2006 dated 10.07.2009, including the affirmation of what was opined by the learned Single Judge.

(4) The amount deposited towards the compensation in respect of the share of the petitioners along with the accrued interest thereon should be released to the petitioners within one month from today, which is alleged to have been adjusted towards the dues under the Tamil Nadu Urban Land Tax Act, 1966 since the said adjustment in law would not be sustainable.

9. The writ petition, accordingly, stands disposed of.
No costs.

s/d-

Assistant Registrar(Records)

True Copy

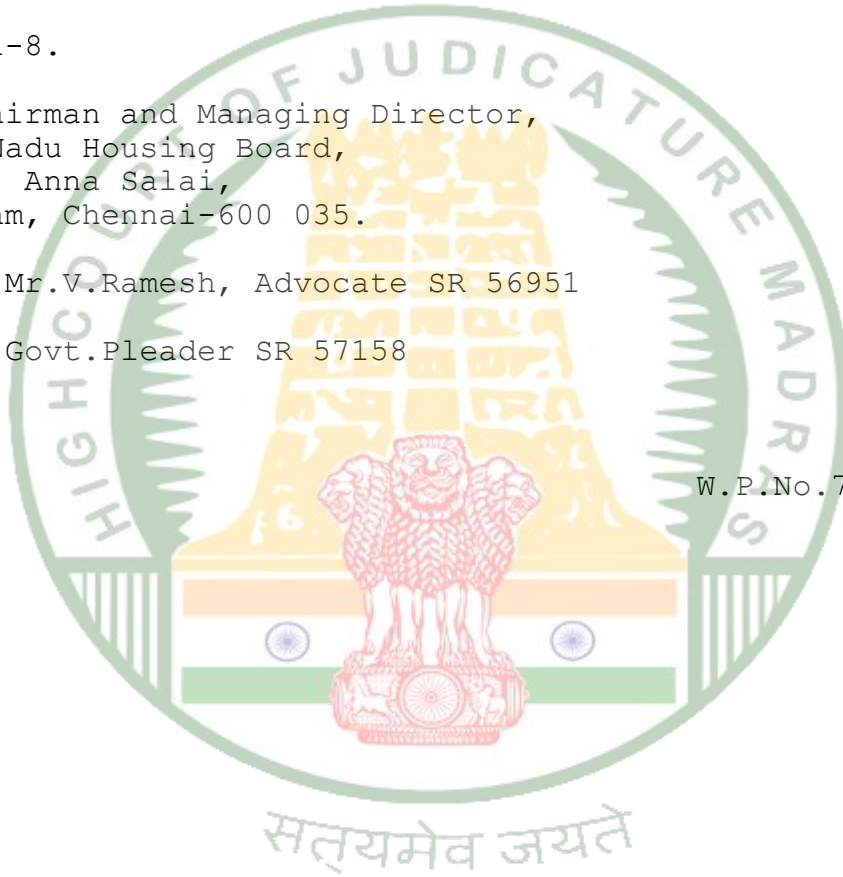
Sub-Assistant Registrar

To

1. The Commissioner &
Secretary to Government,
Revenue Department,
Fort St. George,
Chennai-9.
 2. The Assistant Commissioner,
Urban Land Ceiling & Urban Land Tax,
Egmore,
Chennai-8.
 3. The Chairman and Managing Director,
Tamil Nadu Housing Board,
No.493, Anna Salai,
Nandanam, Chennai-600 035.
- + 1 cc to Mr.V.Ramesh, Advocate SR 56951
- + 1 cc to Govt.Pleader SR 57158

cnr(co)
prk20/10

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