

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02/12/2014

DELIVERED ON :09/04/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.11250 of 2010 &
M.P.No.1 of 2010

C.Ponnurangam Petitioner

Vs.

1. The Secretary to Government,
Housing and Urban Department,
Fort St. George,
Chennai - 600 099.

2. The Chairman,
Tamil Nadu Housing Board,
Nandanam, Chennai - 600 035.

3. The Executive Engineer,
Vellore Housing Board Section,
Tamil Nadu Housing Board,
Sathuvaachari, Vellore - 632 009.

.... Respondents

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.1941/LA2(1)/10-3, dated 25.03.2010 and the consequential order of the third respondent in letter No.TS-1/6048/91, dated 30.04.2010 and quash the same and direct the respondent to exclude the petitioner's land from the acquisition under Section 48 of the Land Acquisition Act.

(Prayer amended as per order dated 05.07.2010 in M.P.No.2 of 2010 in W.P.No.11250 of 2010)

For Petitioner	: Mr.G.Ilamurugu
For Respondents	: Mr.S.Gomathinayagam Additional Advocate General Assisted by Mr.M.S.Ramesh Additional Government Pleader for R1 &

Mr.S.Vanchinathan, Housing Board
for R2 and R3

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O R D E R

The brief facts of the case are as follows:-

The petitioner submits that he is hailing from a very poor background and he belongs to the Scheduled Caste Community and his father had purchased the land to an extent of 6.8 acres comprised in Survey No.59, situated at Pallipattu Village and land comprised in Survey No.170 of Tirupattur Village, Vellore District, on 27.07.1959. His father had expired in the year 1972. Thereafter, he and his brothers and sisters are in possession of the said property as absolute owners.

2. The petitioner further submits that the above said lands in Survey No.59 of Pallipattu Village and in Survey No.170 of Tirupattur Village, Vellore District, in all measuring about 6.68 acres were acquired by the Government in 1987 and consequently respective awards have been passed during 1988 vide:

(i) Land Acquisition Award No.3/87-88A1/83/15708/83 dated 05.02.1988 pertaining to Survey No.59 of Pallipattu Village.

(ii) Land Acquisition Award No.5/88-89A1/16955/83, dated 25.11.1988 pertaining to S.No.170 of Tirupattur Village, Vellore District.

The petitioner further submits that the above said lands are Agricultural lands and the Government has not paid any compensation whatsoever. The petitioner further submits that no notice of Land Acquisition Proceedings as contemplated under Section 5 of the Act had been issued to him and he is not aware of the Enquiry Proceedings under Section 5(a) of the Act. The entire Land Acquisition Proceedings and the consequent awards had been passed by the Government without issuing notice to him. He was not a party to any of the above mentioned proceedings. The petitioner further submits that G.O.Ms.No.6300/HWX77-2, dated 06.05.1977 states as follows:-

"Lands belonging to Harijans should not be acquired except where it becomes absolutely inevitable. In such a case the Collector should obtain the prior permission of the Government for including such lands in the Land Acquisition Proposals."

3. The petitioner further submits that G.O.No.563, dated 28.04.1995 (Revenue Department) reiterates the same. Though he has given several representations to the respondents right from the year

1988 till date stating that he belongs to the Scheduled Caste and that as such, he is entitled to the benefit of the above mentioned Government Order, the respondents have failed to consider the same. In fact, his elder sister has filed a writ petition in W.P.No.11231 of 2007 seeking the following prayer:-

"To direct the respondents to exercise the powers vested with Government under Section 48 of the Land Acquisition Act to withdraw the Land Acquisition Proceedings and to release my share in the land in Survey No.59 of Pallipattu Village District, measuring to an extent of 0.83 acres and my house at No.31, Krishnagiri Road, Tirupattur from acquisition proceedings."

The above said writ petition is pending before this Court. The petitioner further submits that the third respondent in his proceedings in Letter No.T.S-1/6048/91, dated 24.12.2009, had asked him and his family to vacate from Survey No.170/1 at Tirupattur and 59/3A at Pallipattu Village within a period of 15 days, failing which, the third respondent would acquire the land without notice. The petitioner further submits that in the order, several cases filed by him and his family members have been enlisted. It is pertinent to state that in none of the cases listed in the impugned order, the above mentioned G.O.Ms.No.6300/HWX7-2, dated 06.05.1977 and G.O.No.563, dated 28.04.1995 were discussed. The subject matter of W.P.No.11231 of 2007 is the above said Government Orders and the same is pending before this Court. When the issue is pending before this Court,, the third respondent had preferred to take a drastic step of evicting him and his family. Hence, he filed a writ petition in W.P.No.509 of 2010, challenging the order of the third respondent and this Court by an order dated 11.01.2010 disposed of the writ petition by granting him liberty to make a representation to the first respondent herein.

4. The petitioner further submits that in accordance with the order of this Court, he had submitted a representation to the first respondent on 21.01.2010. In his representation, he had drawn attention to the various Government Orders, which exempted lands belonging to schedule caste persons from acquisition. He had also brought to the attention of the first respondent the pendency of W.P.No.11231 of 2007, pending before this Court. In the said writ petition which had been filed by his elder sister, the very same issue is subject matter. The petitioner further submits that the first respondent by the impugned order dated 25.03.2010 has rejected his representation stating that the issues raised by him had already been considered by the Land Acquisition Officer at the time of passing of the award. The first respondent had also on a misconception of law and various judgments had incorrectly applied the ruling of the Hon'ble Supreme court to the effect, that once an award had been passed the acquisition proceedings could not be

challenged. The petitioner further submits that he had not challenged the acquisition proceedings, but on the contrary, he had sought for exclusion of his lands from the acquisition under Section 48 of the Land Acquisition Act. The petitioner further submits that the third respondent has thereafter by a proceedings dated 30.04.2010 received on 15.05.2010, called upon him to vacate the lands within a period of 7 days, failing which, he would be forcefully evicted without any further notice. Hence, the petitioner has filed the above writ petition.

5. The third respondent has filed a counter statement on behalf of the second respondent and on behalf of him. The third respondent submits that the land in S.No.170/1, 2, 3, 4 of Tirupattur village to an extent of 1.28.00 Hec. and S.No.59/3A, 3B, 3C, 4A, 4B & 4C of S.Pallipattu Village to an extent of 0.88.0 Hec. have been acquired by Tamil Nadu Housing Board under Land Acquisition Act for implementation of Tirupattur, Phase-II Scheme vide Award No.3/87-88 dated 05.02.1988 and 5/88-89, dated 25.11.1988 respectively. After completion of all Land Acquisition Proceedings, the above lands were handed over to Tamil Nadu Housing Board by the Land Acquisition Officer on 14.03.1991. As per award, the above lands were acquired from the following persons:-

Award No.	S.No.	Extent in Hectare	Name of the person
3/87-88, dated 05.02.1988	170/1	0.00.5	Nagarajan, S/o. Chinnaiya Chetty
	170/2	0.38.0	Ponnurangam, S/o.Chinnaiya Chetty
	170/3	0.42.0	Ramakrishnan, S/o.Chinnaiya Chetty
	170/4	0.47.5	Raji, S/o. Chinnaiya Chetty
	Total	1.28.0	
5/88-89, dated 25.11.1988	59/3A	0.02.5	Raji, S/o.Chinnaiya Chetty Ramakrishnan, S/o. Chinnaiya Chetty Nagarajan, S/o. Chinnaiya Chetty Venkatasamy, S/o. Muniraj Ponnurangam, S/o.Chinnaya Chetty
	59/3B	0.38.0	Nagarajan, S/o.Chinnaiya Chetty
	59/3C	0.13.5	Ponnurangam, S/o.Chinnaiya Chetty
	59/4A	0.07.5	Raji, S/o.Chinnaiya Chetty Ramakrishnan, S/o.Chinnaiya Chetty Nagarajan, S/o.Chinnaiya Chetty Venkatasamy S/o.Muniraj Ponnurangan, S/o.Chinnaya Chetty

Award No.	S.No.	Extent in Hectare	Name of the person
	59/4B	0.18.5	Nagarajan S/o.Chinnaiya Chetty
	59/4C	0.08.0	Ponnurangam S/o.Chinnaiya Chetty
	Total	0.88.0	

The third respondent further submits that before passing the award, the landowner Thiru.Ponnurangam, Raji and Nagarajan have issued a telegram to the Sub-Collector, Tirupattur on 22.05.1987 stating that as their lands were going to be taken by the Housing Board, they have decided to go on hunger strike as they belong to Schedule caste with their lively hood at stake and prayed for immediate action. In this regard, a detailed report has been sent to Government by the Land Acquisition Officer. The Government in their reference No.45105/A1/88-9, dated 24.07.1989 have negatived the request of above petitioners for the exclusion of their lands for the reason that the formation of the Housing Scheme will be affected if the lands are excluded. At the time of acquisition, 2 huts, 1 well and 19 numbers of trees only were in existence in the above mentioned lands and necessary compensation was also awarded in the respective awards. After taking over of lands by the Tamil Nadu Housing Board, Tmt.Alameluammal, W/o.Chinnaiya Chetty has filed W.P.No.6946 of 1991 before the High Court, Madras against the acquisition of lands in S.No.170 of Tirupattur Village and the same was dismissed by this Court on 07.01.1999. As against the High Court Order, Tmt.Alameluammal has filed the Writ Appeal SR No.67264 of 2000 with delay petition before this Court, and the same was also dismissed by this Court on 24.01.2001.

6. The third respondent further submits that another W.P.No.7748 of 1991 has been filed by Thiru.Ponnurangam and his three brothers, viz., Thiru.Raji, S/o.Chinnaiya Chetty, Thiru.Ramakrishnan and Thiru.Nagarajan before this Court against the acquisition of lands in S.No.170 of Tirupattur Village and in S.No.59 of S.Pallipattu Village and the same was dismissed by this Court, on 11.02.1999. After dismissal of both writ petitions on 07.01.1999 and 11.02.1999, demand assessment was made for the above mentioned land during December 1999. A scheme proposal was prepared and submitted to Board during January 2000. The Board had approved the Scheme proposal for construction of 92 MIG Houses vide B.R.No.4.02, dated 29.02.2000 for Rs.399.65 lakhs. At this stage, Thiru.Ponnurangam and his three brothers filed W.A.No.2192 of 1999 before High Court, against the High Court order made in W.P.No.7748 of 1991. In the meantime, the petitioner and three others have executed construction activities with pucca R.C.C. columns and the same was removed on 12.08.2000 partly with the help of Police Protection. Meanwhile, the W.A.No.2192/99 filed by the petitioner and his three brothers was

dismissed by this Court on 28.09.2000. In turn, necessary Caveat Petition has been filed before the Hon'ble Supreme Court of India, New Delhi. After dismissal of the above writ appeal, eviction was proposed on 22.11.2000. But on 22.11.2000, eviction could not be conducted due to non-availability of sufficient Police personnel. The third respondent further submits that in the meantime Thiru.Venkatasamy and another (relatives of the petitioner) had filed O.S.No.205/2000 before Sub Court, Tirupattur against the petitioner and their relatives. Again eviction was proposed on 22.12.2000. But the Tirupattur Sub-Judge had asked the Tamil Nadu Housing Board staff to avoid eviction, since the case is pending in the Court at Tirupattur. Hence, eviction could not be conducted on 22.12.2000. Tmt.Yasodha, wife of the petitioner and others filed O.S.No.304 of 2000 before the District Munsif Court, Tirupattur. Again eviction was proposed on 20.04.2001. But, the Additional Government Pleader, Thiru.T.C.Arumugam had informed that the eviction should not be conducted since the case is pending in the Court. O.S.No.205/2000 filed by Thiru.Venkatasamy and others was transferred to District Principal Judge Court, Vellore and renumbered as 33/2005 and the same was dismissed on 05.04.2005 for default of the petitioner. O.S.No.304/2000 filed by Tmt.Yasodhammal wife of the petitioner and others is still pending in the District Munsif court, Tirupattur. Further, it is submitted that the petitioner Thiru.Ponnuramgam had filed O.S.No.81 of 2006 before the District Munsif Court, Tirupattur and case was disposed on 01.08.2006 as the petitioner did not press the case. But again Thiru.Ponnuramgam had filed O.S.No.212/2006 and I.A.No.542/2006 in O.S.No.212 of 2006 before District Munsif Court, Tirupattur and the same was disposed on 11.12.2007.

7. The third respondent further submits that in order to implement Housing Scheme, a letter has been sent to the petitioner to vacate the encroachment made in TNHB land vide TS1/6048/81, dated 24.12.2009. But, the petitioner filed W.P.No.509 of 2010 and the same has been disposed on 11.01.2010 directing the writ petitioner to make representation to the first respondent / Government with regard to relief sought for by the petitioner in the writ petition within a period of ten days from that day and on receipt of such representation, the first respondent is directed to dispose the same on merits and in accordance with law, within a period of eight weeks thereafter. As such, representation was received from the petitioner to re-convey the land referred by the petitioner. The Government in letter No.1941/LA2 (1)/10-3, dated 25.03.2010 have rejected the request of the petitioner. Hence, a letter has been sent to the petitioner to vacate the encroachment made in TNHB's land again on 30.04.2010. Previously, one Mrs.Saroja, who is the sister of the writ petitioner had filed W.P.No.11231 of 2007 and seeking direction to reconvey the land under Section 48(B) of the Land Acquisition Act and the same was dismissed on 27.04.2010. From the above, it is clear that the petitioner is very much interested in retaining the land acquired from the petitioner for TNHB and has filed cases one after

another in the Lower Court and High Court. Further, it is informed that the Tamil Nadu Housing Board has implemented the Housing Scheme at Tirupattur, Phase-II for an extent of 52.01 acres inclusive of 0.84 Acres of Government lands and allotted to the public. Due to pendency of the above O.S.No.304 of 2000 filed by Tmt.Yasodhammal, wife of the petitioner and others, the scheme was not implemented in the above mentioned 5.33 acres. Now, the writ petitioner filed this writ petition in W.P.No.11250 of 2010, challenging the letter sent by the Tamil Nadu Housing Board on 30.04.2010 to the writ petitioner against the eviction proceedings. The land referred by the petitioner is essentially required by TNHB for implementing compact Housing Scheme.

8. The third respondent further submits that as per the contention of the writ petitioner in para No.2, it is stated that as per award No.3/87-88, dated 05.02.1988 and 5/88-89, dated 25.11.1988, the above said lands were acquired and land possession handed over to TNHB on 14.03.1991. Further, as per the award No.3/87-88, dated 05.02.1988, the petitioner had refused to receive the 5A enquiry notice and also not appeared for the Award enquiry on 22.05.1987 and on the same day, the petitioner and his brothers had given Joint Telegram to the RDO/Tirupattur requesting to stop the Land Acquisition Proceedings as they belonged to Schedule Caste or otherwise, they proposed to go on a Hunger strike. But as per the direction of the Revenue Divisional Officer / Tirupattur a detailed report was submitted by the Special Tahsildar (LA), Tirupattur in his letter No. RC A1.15708/83, dated 22.05.1987 explaining that their request cannot be considered at this stage. Based on this, the Additional Collector, Vellore in his letter Rc.D7.51134/82, dated 26.12.1987 has directed to proceed further in the matter as the deletion of the land was not recommended to the Government. Accordingly, Land Acquisition Proceedings were completed and the land possession was handed over to TNHB on 14.03.1991. The petitioner encroached the TNHB land. Hence, the contention of the petitioner is not maintainable. The third respondent further submits that for the contention of the petitioner in para No.3, it is stated that as per the Award No.3/87-88 and 5/88-89, the lands in S.F.No.59 and 170 in Su.Pallipattu & Tirupattur Village was acquired by the Government for formulation of compact Housing Scheme by TNHB under Tirupattur Phase II Scheme.

9. The third respondent further submits that for the contention of the writ petitioner in para No.4, it is stated that during award enquiry, the landowners / interested persons had not turned up for award enquiry. Hence, the compensation amount payable was kept under Revenue Deposit as per rules by the Land Acquisition Officer. The third respondent further submits that the contention of the writ petitioner in para No.5, it is stated by Land Acquisition Officer in the award No.3/87-88, dated 05.02.1988, that all the pattadars refused to receive the 5A enquiry notices except one

pattadar Tmt.Beebee John. The third respondent further submits that the contention of the writ petitioner in para No.6, it is stated that the writ petitioner had refused to receive the 5A enquiry notice and also not appeared for the award enquiry on 22.05.1987 and on the same day, the petitioner and his brothers had given joint Telegram to the RDO/Tirupattur requesting to stop the Land Acquisition Proceedings as they belong to Schedule Caste or otherwise they have proposed to go on a hunger strike since their lively hood was at stare. But as per the direction of Revenue Divisional Officer, Tirupattur, a detailed report was submitted by the Special Tahsildar (LA) / Tirupattur in his letter No.Rc A1.15708/83, dated 22.05.1987 explaining that their request cannot be considered at this stage. Based on this, the Additional Collector / Vellore in his letter Rc.D7.51134/82, dated 26.12.1987 had directed to proceed further in the matter as the deletion of land was recommended to the Government. Accordingly, Land Acquisition proceedings were completed and the land possession was handed over to TNHB on 14.03.1991. The petitioner has encroached the TNHB land. The writ petition No.11231/2007 filed by the petitioner's sister was dismissed by this Court, on 27.04.2010 in favour of Board. Further, the land referred by the petitioner is essentially required by TNHB for implementing housing scheme. The land possession is vested with TNHB and hence, the petitioner has no right to compel TNHB to reconvey the land. The third respondent further submits that for the contention of the writ petitioner in para No.7, it is stated that the CRP (PD) No.3325/2008, filed by Manickammal & others was dismissed by this Court on 24.07.2009. Since there was no stay granted in O.S.No.304 of 2000 at District Munsif Court, Tirupattur, the petitioner was addressed to vacate the encroachment made in TNHB land. Hence, the contention of the petitioner is not correct.

10. The third respondent further submits that for the contention of the writ petitioner in para No.8, it is stated that the writ petition in W.P.No.11231/2007 filed by the petitioner's sister seeking re-conveyance of the said land was dismissed by this Court on 27.04.2010. Since there was no stay in the above pending case, eviction notice was sent to the petitioner to vacate encroachment. In turn, the writ petitioner has approached this court in W.P.No.509 of 2010 calling for the records of the Executive Engineer, Vellore housing Unit in his Proc.PS1/6048/91, dated 24.12.2009 and quash the same. This Court has disposed the above case on 11.01.2010 and directed the writ petitioner to make a representation to the first respondent / Government with regard to relief sought for in the writ petition within a period of ten days from that day and on receipt of such representation, the first respondent / Government is directed to dispose the same on merits and in accordance with law, within a period of eight weeks thereafter. Accordingly, the writ petitioner had given representation to the Government and the same was rejected by the Government in letter No.1941/LA2(1)/10-3, dated 25.03.2010. Hence, the contention of the writ petitioner is not correct. The third respondent further submits that for the contention of the writ

petitioner in para No.9, it is stated that according to the Hon'ble High Court direction, the representation was received by the Government from the writ petitioner seeking re conveyance of land and the same was negated by the Government in letter No.1941/LA2(1)/10-3, dated 25.03.2010. As the Government had rejected the request of the writ petitioner, the Executive Engineer, Vellore Housing Unit issued eviction notice on 30.04.2010. Against the eviction notice, the writ petitioner filed this writ petition. The third respondent further submits that for the contention of the writ petitioner in para No.10, it is stated that as per the Award No.3/87-88 and 5/88-89, the lands in S.F.No.59 and 170 in Thirupattur was acquired by the Government for formulation of Housing Scheme in Thirupattur. The land referred by the petitioner is essentially required by TNHB to implement compact Housing Scheme. Further, as per the order of Hon'ble Supreme Court of India in Civil Appeal Nos.3148 and 3149 of 2002, dated 29.01.2010, neither the petitioner nor the Government have the right to compel the TNHB to reconvey the land. Hence, the contention of the petitioner is not maintainable. The third respondent further submits that as per the contention of the writ petitioner in para No.11., it is stated that the land referred by the petitioner is essentially required by TNHB for implementing compact Housing Scheme. Further, as per the latest order of the Hon'ble Supreme Court of India in Civil Appeal Nos.3148 and 3149 of 2002, dated 29.01.2010, neither the petitioner nor the Government have the right to compel the TNHB to reconvey the land. The third respondent further submits that the land referred by the petitioner was handed over to TNHB on 14.03.1991. The petitioner has encroached the TNHB's land. Hence, the third respondent entreats the Court to dismiss the above writ petition.

11. The highly competent counsel Mr.G.Ilamurugu appearing for the petitioner submits that the petitioner and his sisters and brothers are absolute owners of the subject matter of the land. The respondents had initiated Land Acquisition Proceedings, for acquiring the petitioner's lands for a Neighbourhood Scheme. The respondents had passed an award in the year 1988. However, the compensation had not been paid to the petitioner. Further, the petitioner and other co-owners are still occupying the said property and enjoying the same as of now. Under the circumstances, the respondents had issued a final notice and directed the petitioner to vacate the subject matter of the property and hand over the same within 7 days. The highly competent counsel further submits that the award was passed in the year 1988 and eviction notice had been issued in the year 2010, as such, after passing the award, the petitioner is in possession of the land for around 22 years, which clearly proves that the subject matter of the land is not required for the said purpose and relegated to oblivious.

12. The highly competent Additional Advocate General appearing for the first respondent submits that after passing the

award, the petitioner had filed several cases, viz., civil suits before the District Munsif Court, Tirupattur and several writ petitions before this Court. After the disposal of all cases, the eviction notice had been issued and as such, there is no delay for issuing of the eviction notice.

13. The very competent counsel Mr.S.Vanchinathan appearing for the respondents 2 and 3 submits that the respondents have been implementing the Neighbourhood Scheme. Now, the Housing Board has proposed to construct 92 houses for the Middle Income Group Category and as such, the subject matter of the land is required to the Housing Board. Further, the petitioner and others had filed several cases in the Court on the same issue, but all the cases have been negatived against them.

14. On considering the factual position of the case and arguments advanced by the learned counsels on all sides, this Court is of the view that the same writ petitioner has filed connected writ petition in W.P.No.25201 of 2014, wherein this Court granted an adequate relief and as such, the above writ petition is dismissed since no order is required in the instant case.

15. In the result, the above writ petition is dismissed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.
r n s

s/d-
Assistant Registrar(R)
Dt:10/4/2015

True Copy

Sub-Assistant Registrar

To

1. The Secretary to Government,
Housing and Urban Department,
Fort St. George,
Chennai - 600 099.
2. The Chairman,
Tamil Nadu Housing Board,
Nandanam, Chennai - 600 035.
3. The Executive Engineer,
Vellore Housing Board Section,
Tamil Nadu Housing Board,
Sathuvaachari, Vellore - 632 009.

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W.P.No.11250 of 2010 &
M.P.No.1 of 2010