

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2015

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P.No.5647 of 2013

V.N.Manohar

... Petitioner

Vs

1. The Tamil Nadu Housing Board,
Rep. by its Managing Director,
No.493, Anna Salai, Nandanam,
Chennai - 35.

2. The Special Deputy Collector, (Land Acquisition)
The Tamil Nadu Housing Board Scheme,
No.493, Anna Salai, Nandanam,
Chennai - 35.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order No.Ne.A3(1)/7853/11 dated 01.07.2011 issued by the 1st respondent and quash the same as illegal, unsustainable in law and against all principles of natural justice and consequently direct the respondents to re-convey the petitioner's land being Plot Nos.5 & 6 measuring 11 cents in S.No.197/1A, Naidu Street, comprised in S.No.197/1A situated at No.102, Ramapuram Village, Saidapet Taluk to him and also to issue 'No Objection' Certificate for issuance of patta.

For Petitioner : Mr.C.P.Sivamohan

For Respondent 1 : Mr.B.Vivekavanam

For Respondent 2 : Mr.R.Rajeswaran
Special Government Pleader

ORDER

Heard Mr.C.P.Sivamohan, learned counsel appearing for the petitioner; Mr.B.Vivekavanan, learned counsel appearing for the first respondent and Mr.R.Rajeswaran, the learned Special Government Pleader appearing for the second respondent and with their consent, this Writ Petition is taken up for final disposal.

2. The petitioner seeks for issuance of a Writ of Certiorarified Mandamus, to quash the proceedings of the first respondent dated 01.07.2011 and to direct the respondents to re-convey the lands. By the impugned proceedings, the first respondent informed the petitioner that "No Objection Certificate" cannot be granted for registering the property, since the property in question has been acquired by the Government for the Scheme of Tamil Nadu Housing Board.

3. The petitioner challenges the said order by contending that the petitioner's mother purchased the property vide a Registered Sale Deed dated 20.01.1982 registered as Document No.80 of 1982 on the file of Sub Registrar, Alandur and therefore, without notice to hearing, the property could not have been taken over.

4. From the counter affidavit filed by the learned counsel appearing for the first respondent, it is seen that the land acquisition proceedings were initiated and Government had approved the proposal. Notification under Section 4(1) of the Land Acquisition Act was issued on 14.05.1975 and the Declaration under Section 6 was issued on 07.06.1978 and the award has been passed in the year 1986. Thus, it is clear that the petitioner's mother has purchased the property after Declaration under Section 6, which is made in the year 1978. Therefore, the petitioner has no vested right in the property in question, since the property stood vested with the Tamil Nadu Housing Board, based on the Declaration under Section 6 of the Land Acquisition Act having been issued on 07.06.1978.

5. This leaves us with the second limb of the prayer, wherein the petitioner seeks for re-conveyance. Re-conveyance cannot be done by the Tamil Nadu Housing Board or the Special Tahsildar, but only by the Government. In the absence of the Government, implementing the scheme framed by the Tamil Nadu Housing Board, such relief cannot be granted. One more plea

raised before this Court is that the lands comprised in Survey No.197/1A, the total extent of which is about 50 cents and the petitioner had purchased only an extent of 11 cents. If the remaining extent had also been acquired, then obviously, private parties cannot put up construction. However, the petitioner has demonstrated before this Court by producing photographs stating that buildings have come up adjoining the petitioner's plot and approval has also been granted by the CMDA and there is a school functioning in the land beyond the petitioner's property. With regard to this contention, an averment has been made by the first respondent in his counter affidavit, stating that the construction might have come up in the transition period after filing of a batch of Writ Petitions challenging the land acquisition proceedings and the same were allowed. Further it is stated that action has also been taken for vacating the existing structures in the adjoining land in Survey Nos. 197/2, 197/3 and proceedings are pending under Section 47 of the Land Acquisition Act.

6. In my view, the averments made in the counter affidavit is vague. The petitioner is entitled to know as to on what basis the neighbouring owners have put up construction when the entire extent of land in Survey No.197/1A has been acquired by the Housing Board. In the light of the above, while declining the relief sought for, the first respondent is directed to inform in writing to the petitioner as to under what circumstances construction have been put up in the neighbouring lands adjoining the petitioners property, when it is the case of the Housing Board that entire extent of Survey No.197/1A has been acquired by the Housing Board. Such information shall be furnished to the petitioner within a period of eight weeks from the date of receipt of a copy of this order. On receipt of such information, the petitioner is entitled to work out his rights in the manner known to law. The Writ Petition is disposed of in the above terms. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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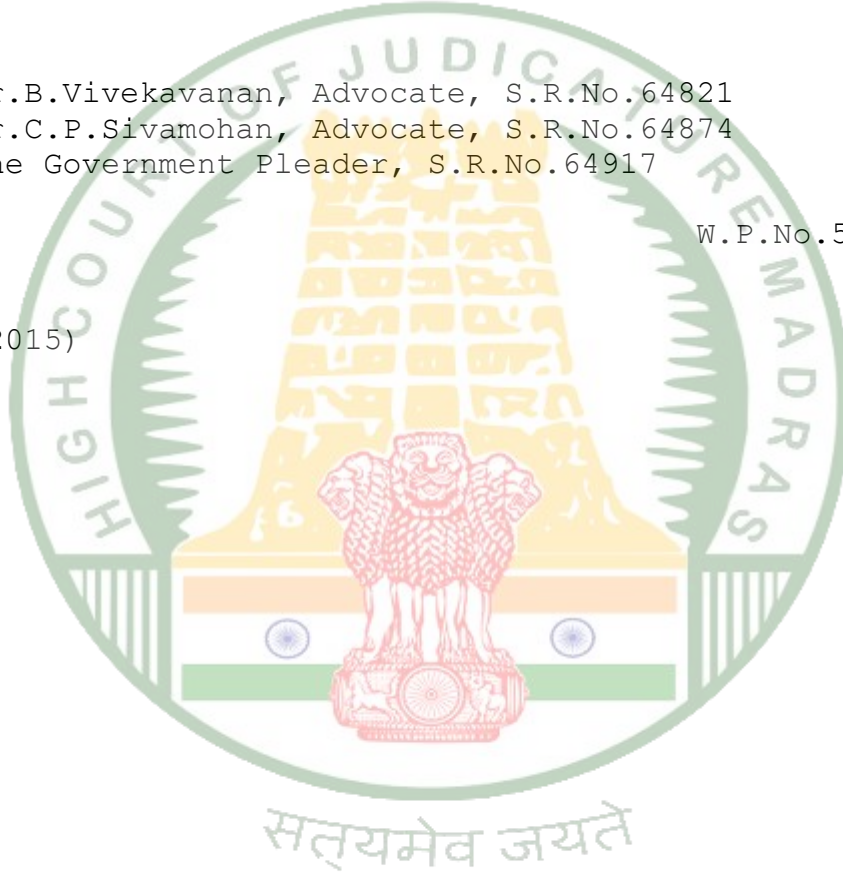
To

1. The Managing Director,
Tamil Nadu Housing Board,
No.493, Anna Salai, Nandanam,
Chennai - 35.
2. The Special Deputy Collector, (Land Acquisition)
The Tamil Nadu Housing Board Scheme,
No.493, Anna Salai, Nandanam,
Chennai - 35.

+1cc to Mr.B.Vivekavanam, Advocate, S.R.No.64821
+1cc to Mr.C.P.Sivamohan, Advocate, S.R.No.64874
+1cc to the Government Pleader, S.R.No.64917

W.P.No.5647 of 2013

VSN(CO)
CA(11/12/2015)



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