

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2015

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.5147 of 2011

And

M.P.Nos.1 and 2 of 2011

I Dreams Builders
A Partnership Firm Rep by its Partner
Mr.Girish Kumar
Coimbatore

... Petitioner

Vs.

1. The Chairman
Tamil Nadu Housing Board
No.493, Anna Salai,
Nandanam, Chennai - 600 035.
2. The Executive Engineer and Administrative Officer
Tamil Nadu Housing Board
Tatabad, Coimbatore - 12.
3. The Director of Town and Country Planning
Anna Salai, Chennai - 600 002.
4. The Joint Director
Coimbatore Planning Commission
Coimbatore.
5. The Commissioner,
Coimbatore Municipality
Coimbatore.

... Respondents

Prayer:

Petition filed under section 226 of the Constitution of India to issue a Writ of Certiorari to call for the entire records in connection with the impugned proceedings of the 2nd respondent in Notice No.LA.1/2795/09 dated 31.8.2009 and the subsequent Notice No.LA/2795/09 25.9.2009 and quash the said proceedings.

For Petitioner : M/s.R.Maheswari

For Respondents : Mr.V.Anandha Murthy for R1 and R2
Mr.S.Gunasekaran for R3 and R4
Government Advocate
Mr.R.Sivakumar for R5

O R D E R

Heard the learned counsel appearing for the petitioner and the learned Government Advocate and learned counsels appearing for the respondents.

2.The petitioner is a developer of residential flats and he has filed this writ petition praying for issuance of Writ of Certiorari to quash the notice issued by the second respondent / Executive Engineer and Administrative Officer, Tamil Nadu Housing Board, Tatabad, Coimbatore dated 31.08.2009 and the subsequent notice dated 25.09.2009. By the said notice, the petitioner was treated as an encroacher of the land owned by the Tamil Nadu Housing Board and the petitioner was asked to vacate and hand over possession within a period of seven days.

3.The petitioner's case is that the lands measuring an extent of 22 cents comprised in S.No.5/3 of Vadavalli village has been purchased by the petitioner for the purpose of development and the petitioner filed application before the Deputy Director of Town and Country Planning and obtained planning permission in 1979 vide LP/R [CN] No.350 of 1979 and after which he has put up construction by constructing 16 flats measuring a total area of 4916 Sq.ft.

4.It is stated that the construction was completed after obtaining proper approval from the Director of Town and Country Planning vide letter dated 27.04.2007 and all the Authorities granted permission. That apart, they have also secured electricity connection for the flats and all the purchasers are peacefully residing in the property. At this stage, petitioner was shocked to receive the impugned notice and therefore, they have approached this Court.

5.It is stated that the property purchased by the petitioner forms part of Thillai Nagar. Originally, the lands were subject matter of land acquisition proceedings for housing scheme of the Tamil Nadu Housing Board. It is stated that the residents Association filed writ petition before this Court; that several parts of the land were excluded from the acquisition proceedings and those

persons have not been disturbed and the petitioner alone has been issued with the impugned notice.

6.The learned counsel appearing for the Tamil Nadu Housing Board has produced written instructions given by the second respondent from which it is seen that the second respondent is aware of the fact that the petitioner is a developer of residential flats and put up construction of 16 flats. However, it is stated that the land acquisition proceedings attained finality and there was no prayer made by the petitioner seeking to exclude from the acquisition proceedings of the lands in question.

7.It is to be noted that the Tamil Nadu Housing Board published notification in the Tamil Dailies which was pursuant to the orders passed by the Government releasing from the acquisition proceedings various lands which form part of various schemes of the Tamil Nadu Housing Board at Coimbatore. In the said notification, one of the villages covered is Vadavalli Village and the land in S.No.5/3 has been excluded. It is seen that the petitioner has not purchased the entire extent of S.No.5/3, but has purchased about 22 cents of land. Therefore, if the Government has already excluded S.No.5/3 from the acquisition proceedings, there is no reason as to why such benefit should not be extended to the petitioner also. If such benefit is not extended, then the same will be in violation of Article 14 of the Constitution of India.

8.The Hon'ble First Bench of this Court considered somewhat an identical issue in the case of Tamil Nadu Housing Board versus Uma Maheswari Ramasamy and others (CDJ 2011 MHC 4498). The appeal was filed by the Tamil Nadu Housing Board challenging an order passed in a batch of writ petitions which were allowed excluding the lands from acquisition proceedings. The only difference between this writ petition and the other matter is that the lands which was subject before the Hon'ble First Bench of this Court was in Kalapatti Village in Coimbatore district and in the instant case it is Vadavalli Village in Coimbatore district. The Hon'ble First Bench of this Court considered the entire aspect including the scope of Section 48 B of the Act and held that the State cannot give different treatment to the land owners who are similarly placed and if the same is done, it will be in violation of Article 14 of the Constitution of India. Therefore, the the Hon'ble First Bench of this Court upheld the decision of the learned Single Judge.

9.At this stage, it is worthwhile to refer to the operative portion of the decision of the Hon'ble First Bench of this Court which reads as under:

"12.Elaborate submissions were made by the learned

Additional Advocate General stating that in terms of the law laid down by the Hon'ble Supreme Court in the case of Keeravaniammal and L.Chandrasekaran referred supra, the writ petitioners cannot compel the Government or the Board to re-convey the lands. In the preceding paragraphs, we have mentioned about the various orders passed by the Division Benches and learned Singles Judges of this Court, quashing the acquisition notifications in respect of the same scheme and specifically observing that it is not in dispute that the entire scheme, namely Kalapatti Neighbourhood Scheme, has been dropped in view of several orders passed by this Court. Therefore, on the facts of the present case, it cannot be stated that the respondent/writ petitioners were not justified in calling upon the Government of the Board to treat them on par with Tmt.K.Palaniammal.

13.At this stage, it would be relevant to refer to the decision of the Hon'ble Supreme Court in Hari Ram vs. State of Haryana, (2010) 3 S.C.C. 621. In that case, the question which fell for consideration before the Hon'ble Supreme Court was whether the action of the State of Haryana in rejecting the representation of the appellant tgherein for withdrawal from acquisition of their land is discriminatory and their Lordship's found that the action of the respondent State was discriminatory and held as follows:-

"41.The Government has obligation of acting with substantial fairness and consistency in considering the representations of the landowners for withdrawal from acquisition whose lands have been acquired under the same acquisition proceedings. The State Government cannot pick and choose some landowners and release their land from acquisition and deny the same benefit to other landowners by creating artificial distinction. Passing different orders in exercise of its power under Section 48 of the Act in respect of persons similarly situated relating to the same acquisition proceedings and for the same public purpose is definitely violative of Article 14 of the Constitution and must be held to be discriminatory.

42.More so, it is not even the case of the respondents that release of land from acquisition in favour of various landowners, as noticed above, was in violation

of any statutory provision or actuated with ulterior motive or done due to some mistake or contrary to any public interest. As a matter of fact, vide order dated 19-8-2008, this Court gave an opportunity to the State Government to consider the representations of the appellants for release of their land and pass appropriate order but the State Government considered their representations in light of the policy dated 26.10.2007 ignoring and overlooking the fact that for none of the landowners whose lands have been released from acquisition, the policy dated 26.10.2007 was applied. The State Government has sought to set up make-believe grounds to justify its action that development planning has been kept into consideration and that the appellants have been offered developed plots of double the area of construction while the fact of the matter is that in some cases where the plots were vacant and had no construction, the entire plot has been released from acquisition and also the cases where one room or two rooms construction was existing, the whole of plot has been released. While releasing land of more than 40 landowners having plots of size from 150 sq yd to 1500 sq yd, if development plan did not get materially disturbed in the opinion of the State Government, the same opinion must hold good for the appellants' lands as well."

43. It is unfair on the part of the State Government in not considering representations of the appellants by applying the same standards which were applied to other landowners while withdrawing from acquisition of their land under the same acquisition proceedings. If this Court does not correct the wrong action of the State Government, it may leave citizens with the belief that what counts for the citizens is right contacts with right persons in the State Government and that judicial proceedings are not efficacious. The action of the State Government in treating the present appellants differently although they are situated similar to the landowners whose lands have been released can not be countenanced and has to be declared bad in law.

14. Following the decision of the Hon'ble Supreme Court in Hari Ram, supra, this Bench allowed the appeals filed by a land owner in L.Selvam Vs. Government of Tamil Nadu 2010 (5) C.T.C.261 and the decision of this Bench in the case of L.Selvam, supra, was taken note of

by another Division Bench of this court in W.A.1926 of 2010 which was filed by the Tamil Nadu Housing Board and the Division Bench dismissed the appeal filed by the Board and directed re-conveyance of the land, by judgment dated 19.11.2010. The Special Leave petition being S.L.P.No.4024 of 2011 filed against the said judgment has been dismissed by the Hon'ble Supreme Court, by order dated 14.03.2011.

15.The learned Single Judge also took note that 'right to shelter' is part of the fundamental right guaranteed under Article 21 of the Constitution and relied on the decisions of the Hon'ble Supreme Court in (1990) 1 SCC 520, 1995 supplementary 3 SCC 456, (2008) 4 SCC 141.

16.Ultimately, the learned Single Judge concluded with the following findings, which are quoted with approval:-

"77.If the issues are analysed in this angle, certainly the writ petitioners have made out a case in their favour. Though an opportunity was given by the court for the Government to set right after noting the ground realities, they have not come forward to redress the grievance of the present petitioners and they themselves gave relief to certain individuals. The basis of which was not explained to the satisfaction of this court. Therefore, this court will have to be proceeded on the basis of the following findings:

a)Unimaginable and unrealistic extent of lands were initially notified;

b)Substantial areas have been excluded either before Section 4(1) notification or after 4(1) notification and in some cases even after the Award was passed;

c)Resort to exercise power under Section 48B to reconvey the properties to certain individuals;

d)On the basis of recommendation made by the High Level Committee, some lands were excluded;

e)This court had quashed many proceedings under Section 4(1) notification and Section 6 declaration and did not give any liberty to proceed afresh. They were not challenged either in hisgher forums or no fresh notifications were issued to retain the so-called composite nature of scheme. f) When this court

recorded that proceedings have been dropped in Kalapatty village in two of the reported judgments, no attempt was made either to seek for clarification or deny the statements recorded by this court; g) When this court instead of dealing with the validity of Section 4 (1) and 6 in the cases which are filed on time gave liberty to the petitioners to move the Government with the fond hope that the Government will redress the grievances of the land owners, the Government not only did not deal with the case but denied the relief, thereby drove the petitioners to approach this Court. In this process, they have lost their valuable right to question and succeed in assailing the Section 4(1) notification and Section 6 declaration.

78. This Court in many cases relating to Kalapatty village found that there were approved layouts with the sanction of authorities and the Government Order itself had directed to refrain from acquiring the land which are covered by the approved layouts. Finally, after finding that there were lots of law and order problem in the area when this court directed the State Government to take a pragmatic stand, that was also rejected. Considering the fact that in some cases, there were procedural lapse and in some cases, there were acquisition proceedings in respect of a college property which is in existence for over 10 years catering to the needs of about 3000 students, it will be unrealistic to destroy such edifice especially when the right to education is guaranteed as a fundamental right. Many of the petitioners with their hard earned money have purchased plots and put up constructions to have a shelter of their own. The Housing Board in the name of providing houses cannot destroy the existing shelters put up by individual endeavors.

79. In the present case, it is not a mere negative equality the petitioners are pleading. Because the State never attempted to justify the reconveyance and exclusions on the ground of either they were isolated instances or they were based on erroneous assumptions. On the contrary, the counter affidavits filed were vague and did not deal with the contentions raised by the petitioners in these batch of writ petitions. Under these circumstances, this court has no hesitation to set aside the orders passed against the petitioners.

80. Even though it is claimed that lands covered in the present writ petitions were only 35.48 acres, yet this court having found that original scheme had become fractured and the present holding of the Housing Board is only on patches of land in the village, the petitioners are entitled to retain their lands, but with one rider i.e. That on being notified by the Government and the Housing Board, the petitioners shall return the compensation received by them together with interest at the rate of 6% per annum. In cases where they have not withdrawn the deposits, it is for the State to withdraw the amounts lying either in revenue deposit or in court deposit. The lands even after being fractured, if the Housing Board as per revised scheme wants to go ahead with building houses this exclusion will in no way hamper it."

17. As discussed above, initially the Government issued notification under Section 4(1) of the Land Acquisition Act for acquiring 1973.74 acres of land. Subsequently, the Government decided to drop the acquisition proceedings to an extent of 1186.38 acres. The notification, therefore, covered 787.36 acres, and out of the said extent 7.57 acres were excluded by the Government, and to the extent of 22.46 acres the Government allowed the acquisition to lapse. Curiously enough the Government on their own volition again dropped the acquisition to an extent of 30.21 acres, and ultimately, the award was passed only to an extent of 671.10 acres of land. Thereafter, from time to time, the Government on their own or pursuant to the directions of this Court in several writ petitions excluded the lands from acquisition. It is not only that, the notification under Section 4(1) of the Act in respect of certain extent of land was also quashed. The learned single Judge also found that one of the land owners viz., K. Palaniammal, who had purchased the land from the legal heirs of ex-land owner, moved the Government to re-consider the request of re-conveyance of land and the High Level Committee recommended her case on the plea that she was an innocent purchaser. The Government had accepted the recommendation and re-conveyed the land after ordering collection of compensation paid together with interest.

18. It is, therefore, evidently clear that in number of cases the Government on the basis of the

recommendations of the Expert Committee accepted the requests of the land-owners and took a decision to re-convey their lands. But, at the same time, in respect of some of the representations the Government took the decision otherwise and rejected the request of re-conveyance of the land. Such action of the respondents prima facie appears to be arbitrary, capricious, discriminatory and violative of Article 14 of the Constitution of India.

19. It is well-settled that no unlimited jurisdiction is vested with any judicial or quasi-judicial forum. An unfettered discretion is a sworn enemy of the constitutional guarantee against discrimination. An unlimited jurisdiction leads to unreasonableness. No authority, be it administrative or judicial has any power to exercise the discretion vested in it unless the same is based on justifiable grounds supported by acceptable materials and reasons thereof.

20. A Constitution Bench of the Supreme Court while dealing with the 'State Action', in the case of Menaka Gandhi Vs. Union of India reported in AIR 1978 SC 597 discussed the scope of Article 14 of the Constitution and observed:- [p.624 para-56]

"56. Now, the question immediately arises as to what is the requirement of Article 14: what is the content and reach of the great equalizing principle enunciated in this Article? There can be no doubt that this is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits. We must reiterate here what was pointed out by the majority in E.P. Royappa V. State of Tamil Nadu, (1974) 2 SCR 348: AIR 1974 SC 555 namely., that 'from a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic, while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is

implicit in it that it is unequal both according to political logic and constitutional law and it therefore violative of Article 14'. Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be 'right and just and fair' and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied."

21. In *Suman Gupta Vs. State of J & K* reported in (1983) 4 SCC 339 the Supreme Court followed the principles laid down in *Menaka Gandhi's Case* (supra) and reiterated that Article 14 of the Constitution is violated by powers and procedures which in themselves result in unfairness and arbitrariness. It must be remembered that our entire constitutional system is founded in the rule of law, and in any system so designed it is impossible to conceive of legitimate power which is arbitrary in character and travels beyond the bounds of reason.

22. The concept of equality before law means that among equals the law should be equal and should be equally administered, and the like should be treated alike. There must not be discrimination among equals unless there is reasonable classification. When something is to be done within the discretion of the authorities, it must be done according to the rule of reasons and justice, and it should not be according to the whims of the authorities.

23. In a recent decision of the Supreme Court in *Radhy Shyam Vs. State of Uttar Pradesh* reported in (2011) 5 SCC 553 a notification under Section 4(1) of the Land Acquisition Act, 1894 was issued on 12.03.2008 by the U.P. Government declaring that the lands were needed for for public purpose viz., planned industrial development in the district through the Development Authority concerned viz., Greater Noida Industrial Development Authority. Emphasizing urgency, the

notification invoked Section 17 (as amended by U.P. Act 8 of 1974) of the Act and enquiry under Section 5-A was dispensed with. Writ petitions were filed challenging the acquisition on various grounds including that most of the lands were subsequently released from acquisition and that violation of Articles 14, 19 and 300-A of the Constitution. On the question of discrimination their Lordships held:-

"86. We also find merit in the appellants' plea that the acquisition of their land is vitiated due to violation of the doctrine of equality enshrined in Article 14 of the Constitution. A reading of the survey report shows that the committee constituted by the State Government had recommended release of land measuring 18.9725 ha. Many parcels of land were released from acquisition because the landowners had already raised constructions and were using the same as dwelling units. A large chunk of land measuring 4.3840 ha. was not acquired apparently because the same belonged to an ex-Member of the Legislative Assembly. The appellants had also raised constructions on their land and were using the same for residential and agricultural purposes. Why their land was not left out from acquisition has not been explained in the counter-affidavit filed by the respondents. The High Court should have treated this as sufficient for recording a finding that the respondents had adopted the policy of pick and choose in acquiring some parcels of land and this amounted to violation of Article 14 of the Constitution. Indeed it has not been pleaded by the respondents that the appellants cannot invoke the doctrine of equality because the other parcels of land were illegally left out from acquisition."

24. After giving our anxious consideration in the matter, we are of the definite opinion that the action of the State in giving different treatment to the landowners is highly arbitrary, capricious, discriminatory and violative of Article 14 of the Constitution of India. The learned single Judge has, therefore, rightly allowed the writ petitions. The impugned judgment of the learned single Judge, therefore, needs no interference by this Court.

25. For all the above reasons, we find no merit in these appeals and they are dismissed accordingly. No costs.

Consequently, connected miscellaneous petitions are closed."

10. It is seen that the petitioner herein has not made a specific application to execute their 22 cents of land which admittedly falls under S.No.5/3 which is already excluded by the Government and notified by the Tamil Nadu Housing Board. Therefore, there can be no difficulty for the petitioner to seek for exclusion of their lands also.

11. In the light of the above, there will be a direction to the petitioner to submit a representation to the State Government along with copy of this order setting out all the facts and also enclosing the notification issued by the Tamil Nadu Housing Board excluding S.No.5/3 in Vadavalli Village and if such application is filed, the State Government shall consider the same and pass appropriate orders taking note of the decision of the Hon'ble First Bench of this Court cited supra within a period of three months from the date of receipt of a copy of this order.

12. In the light of the above decision, it is needless to say that the possession and enjoyment of the property with that of the petitioner and that of the purchasers shall not be interfered with by the Tamil Nadu Housing Board.

13. This writ petition is disposed of with the above observation. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

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To

1. The Chairman
Tamil Nadu Housing Board
No.493, Anna Salai,
Nandanam, Chennai - 600 035.

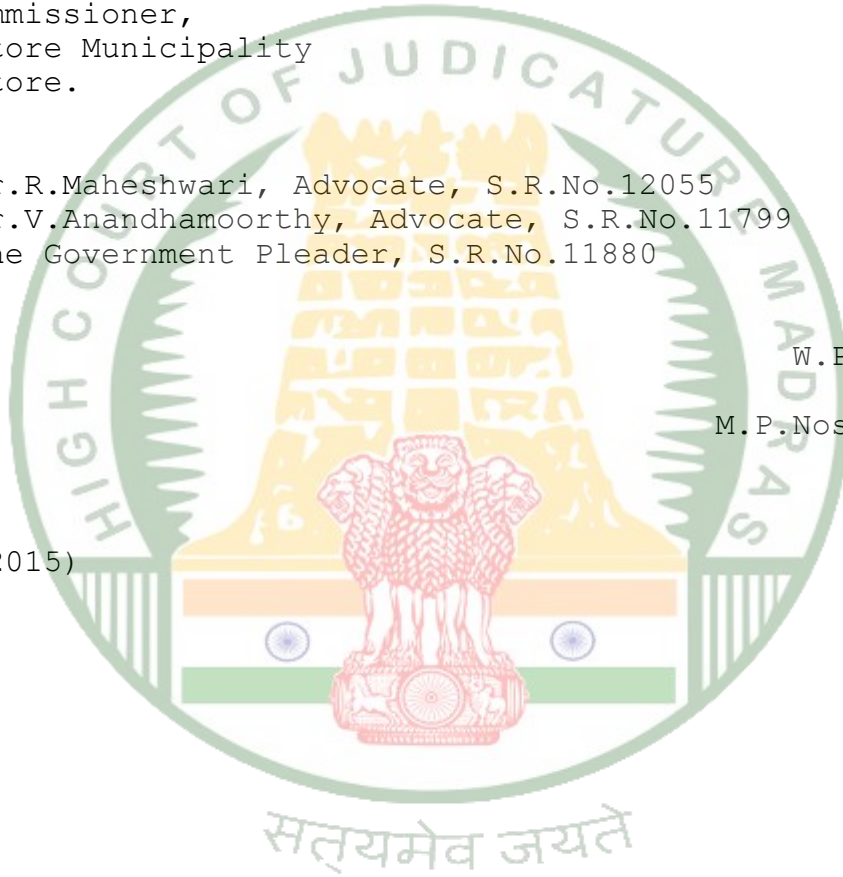
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+lcc to Mr.R.Maheshwari, Advocate, S.R.No.12055
+lcc to Mr.V.Anandhamoorthy, Advocate, S.R.No.11799
+lcc to the Government Pleader, S.R.No.11880

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RJ(CO)
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