

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

W.P. No.32455 of 2015

Kiliyambal

... Petitioner

Vs.

1.The Secretary to Government,
Housing and Urban Development
Department, Fort St.George,
Chennai - 600 009.

2.The Managing Director,
Tamil Nadu Housing Board,
No.493, Anna Salai,
Nandanam,
Chennai - 600 035.

3.The Member Secretary
Chennai Metropolitan
Development Authority,
Gandhi Irwin Road,
Thalamuthu Natarajan Building
Egmore,
Chennai - 600 008.

.... Respondents

PRAYER : Writ petition is filed under Article 226 of the Constitution of India for issue of writ of mandamus directing the respondents 1 and 2 herein to consider and dispose of the petitioner's representation dated 31.08.2015 by fixing a time limit.

For Petitioner : Mr.M.S.Subramanian

For Respondents: Mr.R.Lakshmi Narayanan,
Additional Govt. Pleader for R1

Mr.Vivekavanan for R2

Mr.K.Raja Srinivas for R3

O R D E R

With the consent of the learned counsel appearing on either side, the Writ Petition is taken up for final disposal at the admission stage itself.

2. The land to an extent of 8760 sq.ft. comprised in Survey No.333, Mugappair Village, now in Ambattur Taluk, Tiruvallur District belonging to the petitioner's husband was acquired by the Tamil Nadu Government under the Land Acquisition Act for Ambattur Neighbourhood Scheme. Subsequently, award was passed on 30.07.1981 determining the compensation. Under Section 18 reference, the Civil Court, in LAOP No.31 of 1982 dated 30.08.1982, enhanced the compensation against which the Government preferred appeal in A.S.No.559 of 1984 and the same was dismissed by this Court on 01.08.1989. The petitioner's husband also preferred appeal in A.S.No.943 of 1997 for enhancement of the compensation against the award passed by the Civil Court in LAOP No.31 of 1982 and the same was allowed by this Court on 20.02.1998. Pending the appeal, the petitioner's husband died and thereafter the petitioner being the wife was impleaded as the second appellant therein.

3. The petitioner contends that her property to an extent of 8760 sq.ft. was acquired by the respondent for Ambattur Neighbourhood scheme and the remaining extent measuring about 3.50 acres have already been utilised by putting up houses. The aforesaid extent of 8760 sq.ft. are still lying vacant and it is neither utilised for the purpose for which the same was acquired nor been put up for public purpose. Therefore, the petitioner made representation on 31.08.2015 to the respondents 1 and 2. Since no order has been passed by the respondents, the petitioner is before this court seeking writ of mandamus directing the respondents to consider the petitioner's representation dt.31.08.2015 to reconvey the property.

4. Heard Mr.M.S.Subramanian, learned counsel appearing for the petitioner, Mr.R.Lakshmi Narayanan, learned Additional Govt. Pleader appearing for the first respondent, Mr.Vivekavanam, learned counsel appearing for the second respondent and Mr.K.Raja Srinivas, learned counsel appearing for the third respondent.

5. The learned counsel for the petitioner would submit that when the acquired land remains vacant unutilised, the petitioner has got every right to claim reconveyance under Section 48 (B) of the Land Acquisition Act. In this connection, he relied upon the following judgments -

(i) S.Balasubramaniam v. Government of Tamil Nadu reported in 2015 (2) MLJ 671

(ii) Judgment of this Court in W.P.No.19228 of 2008 [M.R.Srinivasan & Others]

(iii) Division Bench judgment of this Court dated 29.04.2015 in Rev.Appln.No.76 of 2013 [State of Tamil Nadu v. M.R.Srinivasan & Others]

6. However, Mr.R.Lakshmi Narayanan, learned Additional Govt. Pleader appearing for the first respondent would submit that the issue is already covered by the judgment of the Hon'ble Supreme Court in Tamil Nadu Housing Board v. Keeravani Ammal reported in 2007 (9) SCC 255, Tamil Nadu Housing Board v. L.Chandrasekaran reported in 2010 (2) SCC 786 and also the judgment of this court in W.P.No.23772 of 2015 dated 03.09.2015.

7. Mr.Vivekavanam, learned counsel appearing for the second respondent would submit that the acquired lands were already utilised and buildings have come up long back and the land acquired from the petitioner is meant for public purpose, i.e. it has been reserved for the purpose of school and therefore it cannot be said that it is lying unutilised. It is also submitted that proceedings have been initiated as early as on late 70's and award was passed in 80's.

8. The appeal suit filed by the petitioner as well as the Government were disposed by this Court as early as on 1998. When the proceedings were initiated about 34 years ago and everything has come to a finality as early as on 1998, the petitioner is only a stranger and he cannot claim any right over the property. Though it has been stated that enhancement has not been paid to the petitioner till date, no document has been produced before this court to prove that the enhancement has not been paid to the petitioner. As rightly pointed out by the learned counsel for the first respondent, the issue is covered by the judgment of the Hon'ble Supreme Court in the above said cases.

9. In the judgment of the Hon'ble Supreme Court in Tamil Nadu Housing Board v. Keeravani Ammal reported in 2007 (9) SCC 255, it has been specifically stated that Section 48 (B) is an exception to the General Rule and such a provision has to be strictly construed and strict compliance with its terms insisted upon. In the said judgment, it has also been held that once the land has been duly acquired under the Land Acquisition Act, the land becomes the property of the State. The relevant portion of the said judgment is usefully extracted hereunder -

We may also notice that once a piece of land has been duly acquired under the Land Acquisition Act, the land becomes the property of the State. The State can dispose of the property thereafter or convey it to anyone, if the land is not needed for the purpose for which it was acquired, only for

the market value that may be fetched for the property as on the date of conveyance. The doctrine of public trust would disable the State from giving back the property for anything less than the market value. In *State of Kerala & Ors. Vs. M. Bhaskaran Pillai & Anr.* [(1997) 5 S.C.C. 432] in a similar situation, this Court observed:

"The question emerges: whether the Government can assign the land to the erstwhile owners? It is settled law that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. In case there is no other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public auction can be better utilised for the public purpose envisaged in the Directive Principles of the Constitution. In the present case, what we find is that the executive order is not in consonance with the provision of the Act and is, therefore, invalid. Under these circumstances, the Division Bench is well justified in declaring the executive order as invalid. Whatever assignment is made, should be for a public purpose. Otherwise, the land of the Government should be sold only through the public auctions so that the public also gets benefited by getting higher value."

Paragraph 26 and 28 of the judgment of the Hon'ble Supreme Court in *Tamil Nadu Housing Board v. L.Chandrasekaran* reported in 2010 (2) SCC 786 reads as follows -

26. A glance at the impugned order shows that the Division Bench did not at all advert to the factual matrix of the case and the reasons incorporated in the Government's decision not to reconvey the acquired land to the respondents. The Division Bench also did not examine the correctness or otherwise of the order passed by the learned Single Judge and allowed the appeals preferred by the respondents simply by relying upon order dated 18.2.2000 passed in Writ Appeal No.2430/1999 and that too without even making an endeavour to find out whether the two cases were similar. In our view, the direction given by the Division Bench to the appellant-Board to reconvey the acquired land to the respondents is

per se against the plain language of Section 48-B of the Act in terms of which only the Government can transfer the acquired land if it is satisfied that the same is not required for the purpose for which it was acquired or for any other public purpose. The appellant-Board is not an authority competent to transfer the acquired land to the original owner. Therefore, the Division Bench of the High Court could not have issued a mandamus to the appellant-Board to reconvey the acquired land to the respondents. As a matter of fact, the High Court could not have issued such direction even to the Government because the acquired land had already been transferred to the appellant-Board and the latter had utilized substantial portion thereof for execution of the housing scheme and other public purposes.

28. It need no emphasis that in exercise of power under Section 48-B of the Act, the Government can release the acquired land only till the same continues to vest in it and that too if it is satisfied that the acquired land is not needed for the purpose for which it was acquired or for any other public purpose. To put it differently, if the acquired land has already been transferred to other agency, the Government cannot exercise power under Section 48-B of the Act and reconvey the same to the original owner. In any case, the Government cannot be compelled to reconvey 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.

10. The Hon'ble Supreme Court, in the above said cases, set aside the judgment of the High Court which directed to reconvey the property to the owners, observing that the Division Bench of the High Court should not have issued such a direction even to the Government because the acquired lands have already been transferred to the requisition body and the latter had utilized substantial portion thereof for execution of the housing scheme and other public purposes.

11. Similarly, in this case also, the entire scheme has been executed and the land of the petitioner is reserved only for public purpose. In those circumstances, the prayer sought for by the petitioner in this writ petition could not be granted.

12. In the result, this writ petition is dismissed.
No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
Housing and Urban Development
Department, Fort St.George,
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2.The Managing Director,
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Chennai - 600 035.

3.The Member Secretary
Chennai Metropolitan
Development Authority,
Gandhi Irwin Road,
Thalamuthu Natarajan Building
Egmore, Chennai - 600 008.

+1cc to Mr.Vivekavan, Advocate, S.R.No.59101
+1cc to Mr.K. Rajasrinivas, Advocate, S.R.No.59019
+2ccs to M.S. Subramanian, Advocate SR.58580

AR(CO)
EU(20/11/2015)

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