

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2015

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P.Nos.33015 and 33016 of 2015
and MP.Nos.1 and 1 of 2015

1.S.P.Santhanam .. 1st Petitioner in WP.No.33015 of 2015
& Sole Petitioner in WP.No.33016 of 2015

2.S.P.Ramarathinam

3.Mythili Giri

4.P.Sridharan

5.S.P.Chandramouli .. Petitioners 2 to 5 in WP.No.33015 of
2015

Vs

1. The Commissioner and Secretary,
The Government of Tamil Nadu,
Department of Housing and Urban Development,
Fort St.George, Chennai - 600 009.

2. The Special Tahsildar,
Land Acquisition,
Maraimalai Nagar Scheme,
Chenglepet Taluk,
Kancheepuram District.

3. The Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 008. ... Respondents in both WPs.

Common Prayer : Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the respondents to re-convey the land of the petitioners described in the schedule to this petition pursuant to the recommendation of the 2nd respondent made to the 3rd respondent vide communication under reference Na.Ka.175/2008/A dated 06.05.2008 and as confirmed in favour of the petitioners vide letter reference Na.Ka.31/2013 dated 13.05.2014, without insisting for further sub-division of land.

For Petitioners : Mrs.Kala Ramesh
(in both WPs)
For Respondents 1 & 2 : Mr.R.Lakshmi Narayanan
(in both WPs) Additional Government Pleader
For Respondent 3 : Mr.K.Raja Srinivas
(in both WPs)

COMMON ORDER

By consent of the learned counsel on either side, the writ petition is taken up for final disposal.

2. Heard Mrs.Kala Ramesh, the learned counsel appearing for the petitioners; Mr.R.Lakshmi Narayanan, Additional Government Pleader appearing for the respondents 1 and 2 and Mr.K.Raja Srinivas, the learned counsel for the third respondent.

3. The petitioners in these Writ Petitions seek for an issuance of Writ of Mandamus to direct the respondents to re-convey the lands of the petitioners described in the schedule to the Writ Petitions, pursuant to the recommendations of the second respondent vide communication dated 06.05.2008.

4. The petitioners' mother Tmt.Nagalakshmi purchased a land to an extent of about 4766 sq.ft., in Plot No.11, comprised in Survey No.217/4, situated at No.60, Potheri Village, Chengalpet Taluk, formerly Chengalpet District, presently Kancheepuram District on 23.09.1965 by a registered Sale Deed bearing document No.3498/1965, on the file of the Sub-Registrar, Chengalpet. Further, the 1st petitioner herein had also purchased a land to an extent of 3000 sq.ft., in Plot No.15, comprised in Survey No.217/4 in the same village by a separate Sale Deed. The lands were in continuous possession and enjoyment of the petitioners' mother and the petitioners. The petitioners' mother died on 22.04.1992, leaving behind the petitioners as legal heirs and their father S.Pattabiraman is said to have been taking care of the property. The petitioners' father also said to have passed away and the 1st petitioner who was working in the Defence Department, at that time was posted in Madhya Pradesh. Now, in these Writ Petitions, the petitioners seek for re-conveyance on two grounds; firstly the Government themselves vide G.O.Ms.No.70 Housing and Urban Development (UD iii(1)) Department dated 01.03.2007 had re-conveyed the lands in favour of the land owners in respect of the lands which are covered under Survey Nos.216, 217 and 219/A of Potheri Village. It is not in dispute that the lands owned by the petitioners are comprised in Survey No.217 of Potheri Village. Therefore, it is submitted that the benefit of the said Government Order, is to be extended to the petitioners. The second contention raised by the petitioner is that based on

the judgment of the Hon'ble First Bench of this Court in W.A.No.2254 of 2001 dated 29.10.2014, re-conveyance was directed to be granted in favour of the land owner/appellant therein, whose lands were comprised in Survey No.218 of Potheri Village, which was not covered in the G.O.Ms.No.70 dated 01.03.2007 and that the benefit of the said Judgment has to be extended to the petitioners herein.

5. The learned Additional Government Pleader as well as the learned counsel for the third respondent submitted that the petitioners are not entitled to the benefit of re-conveyance, since the lands have already been acquired, award has been passed and compensation has already been deposited before the Sub-Court, Chengalpet. Therefore, it is submitted that the lands cannot be excluded from this scheme.

6. After hearing the learned counsel for the parties and perused the materials placed on record, this Court is of the view that the objection raised by the respondents is not tenable since the land owners, whose lands comprised in Survey Nos.216, 217 and 219/4 of Potheri Village, have been granted the benefit of re-conveyance. The operative portion of the G.O.Ms.No.70 dated 01.03.2007 reads as follows :

"5. The Government have examined as to whether withdrawal notification under Section 48 of the Land Acquisition Act 1894 need to be issued in consultation with the Member Secretary, Chennai Metropolitan Development Authority and Special Commissioner and Commissioner of Land Administration. The 4(1) Notification had lapsed long ago the Government after accepts resolution No.22/2006 dated 03.02.2006 of the Chennai Metropolitan Development Authority mentioned in para (4) above. The Member Secretary, Chennai Metropolitan Development Authority is directed to pursue further action accordingly. "

Secondly, the case which is the subject matter in W.A.No.2254 of 2001 is also similar to that of the case of the petitioners herein except the Survey Number of the land, which is S.No.218 of Potheri Village. The Hon'ble First Bench of this Court considered all the provisions and also the issues relating to the beneficiaries of G.O.Ms.No.70 dated 01.03.2007 and allowed the Writ Appeal in W.A.No.2254 of 2001 by judgment dated 29.10.2014. The operative portion of the judgment reads as follows :

"6. This Court, after careful consideration of the materials placed before it and the rival submissions made by the respective learned counsel appearing for the parties, is of the considered view that the writ appeal is to be allowed for the following reasons.

7. As pointed out by the learned Senior Counsel appearing for the appellant, the official respondents, in para 10 of the counter affidavit filed in the writ petition, admitted that they have not taken possession of the lands belonging to him. The writ petition filed by the appellant herein along with other writ petitions came to be dismissed by a common order dated 30.07.1998 and some of the landowners, aggrieved by the same, has filed W.A.Nos.1570/1998 and 246/1999 respectively, wherein interim order of Status Quo was granted. The appellant filed the present writ appeal with a delay of 600 days and after condonation, it was numbered and admitted and directed to be listed along with the said writ appeals and it is to be pointed out that no interim order was granted and therefore, the official respondents are not prevented from taking possession of the lands belonging to the appellant.

8. Challenge made by one of the landowners to the above said common order in W.A.No.1480/1998 was dismissed and he filed C.A.No.2226/1997 and it was taken up along with other similar matters by a Constitution Bench of the Hon'ble Supreme Court of India, wherein it has been held that where Declaration under Section 6 is quashed by the Court, a fresh Declaration must be issued with the same limitation prescribed under proviso to Section 6(1) of the Act and the requisitioning body, namely the CMDA has taken note of the said judgment and as already pointed out in the earlier paragraphs, CMDA has passed a resolution for withdrawal of Section 4(1) notification and made a recommendation to the Government and the Government has also passed G.O.Ms.No.70 dated 01.03.2007, withdrawing the notification including the lands belonging to Tmt.Saraswathi and Others situated in Potheri Village wherein the lands of the appellant are also situated. The appellant also submitted a representation dated 31.07.2010 praying for reconveyance of the lands under Section 48 of the Land Acquisition Act and it has not been given any disposal.

9. Since the lands in question belonging to the appellant have not been taken possession within 5 years, Section 24(2) of the Act would have application and therefore, Land Acquisition proceedings initiated

against the appellant herein shall be deemed to have been lapsed. That apart, in compliance of the judgment rendered by the Constitution Bench of the Hon'ble Supreme Court of India (cited supra), the Government has withdrawn the land acquisition proceedings in respect of some landowners in G.O.Ms.No.70 dated 01.03.2007 and the appellant herein has also submitted a representation for withdrawal of land acquisition proceedings and applying the Principle of Parity, he is also entitled for similar benefit, subject to the condition that if he has received any compensation, he shall be liable to remit the same to the Government.

10. In the result, this Writ Appeal is allowed and the order dated 30.07.1998 made in W.P.No.11697/1987 is set aside and the second respondent is directed to reconvey the lands in S.Nos.218/1B, 218/1B, 218/2B and 219/1, totally admeasuring 10.21 acres situated in Potheri Village, Chengalpattu District, to the appellant subject to the condition that if the appellant has received the compensation in terms of the Award No.7/1986 dated 17.09.1986, he shall remit back the same within a period of six weeks from the date of receipt of a copy of this order and if not, the second respondent is directed to re-convey the above said lands to the appellant herein within a period of twelve weeks from the date of receipt of a copy of this order. No costs. If the official respondents are of the opinion that the lands in question still required for public purpose, they may do so by invoking the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013."

7. The Hon'ble First Bench also considered the question as to whether possession was taken over from the appellants therein within five years in terms of Section 24(2) of the Act and thereafter took into consideration the G.O.Ms.No.70 and granted similar relief. Therefore, this Court is of the view that the petitioners should also be granted the same relief as that of the land owners. That apart, the extent of the land held by the owners is very meager in extent, of less than one and a half ground in two housing plots.

8. In the light of the above, the Writ Petition is allowed following the decision of the Hon'ble First Bench in W.A.No.2254 of 2001 dated 29.10.2014, by directing to re-convey the lands comprised in Survey Nos. 216, 217 and 219/4 of Potheri Village, Chengalpet District to the petitioners subject to the condition that if the petitioners have received the compensation in terms of the law, the same shall be remitted

back to the respondents within a period of six weeks from the date of receipt of a copy of this order and if not, the second respondent is directed to re-convey the lands to the petitioner within a period of three months from the date of receipt of a copy of this order. If the officials respondents are of the opinion that the lands in question is still required for public purpose, they could do so by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013.

9. It is further to be pointed out that the second respondent as early as on 06.05.2008 has recommended the case of the petitioners by referring to G.O.Ms.No.70 and stating that the lands comprised in Survey Nos. 216, 217 and 219/4 of Potheri Village has been deleted from the acquisition proceedings. This aspect of the matter is also a very relevant fact for the petitioners to claim to the relief of re-conveyance. No costs. Consequently, connected miscellaneous petitions are closed.

ds/srn

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To:

1. The Commissioner and Secretary,
The Government of Tamil Nadu,
Department of Housing and Urban Development,
Fort St.George, Chennai - 600 009.
2. The Special Tahsildar,
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3. The Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 008.

+ 2 ccs to Mr.K.Raja Srinivas, Advocate SR 61891, 61892

+ 1 cc to M/s.Kala Ramesh, Advocate SR 61831

+ 1 cc to Govt.Pleader SR 62347

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and W.P.No.33016 of 2015.