

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE:07.07.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.3156 of 2012

and

M.P.No.2 of 2012

Order Reserved on 10.12.2014 Judgment Pronounced
on 07.07.2015

V.Arumugam

... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by its,
Secretary to Government,
Housing and Urban Development Department,
Secretariat, Fort St. George,
Madras - 600 009.

2.Chairman,
Tamil Nadu Housing Board,
493, Anna Salai,
Chennai.

3.Special Thasildar, (LA)
Neighbourhood Scheme,
Salem.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records in No.23213/LA4(2)/11-2 dated 09.01.2012 on the file of First respondent herein and quash the same as illegal and direct the respondents from Dispossession of the petitioner's land and building in Survey No.55/9 Ayyamperumampatti Village Yercaud Road, Salem and parity with other adjacent land owner in S.No.55/4,5,6 exemption from land acquisition.

For Petitioner : Mr.R.Sankarasubbu

For Respondents: Mr.R.Vijayakumar
Additional Government Pleader

O R D E R

The petitioner submits that he is the absolute owner of the land measuring to an extent of 8 cents comprised in Survey No.55/9, Ayyamperumalpatti Village, Salem District, by virtue of sale deed, bearing document No.6021/1980 dated 11.11.1980. On the strength of the Register Sale deed patta had been granted. The petitioner is a poor coolie and he has 3 sons and 4 daughters, except this land he is not in possession of any other land. He submits that the lands in Survey No.55/9 is having total extent of 8 cents / 0.03.0 Ares. He submits that the said Lands along with lands in other sub-division numbers of Survey No.55 of the Ayyamperumalpatti Village, Salem Taluk were subjected to Land Acquisition process by the first respondent through the third respondent for the purpose of formulating a Neighbourhood Scheme in Salem. The acquisition was initiated by issuing a Notification under Section 4(1) of the Land Acquisition Act in G.O.Ms.No.47, Housing and Urban Land Development dated 24.01.1981 published in the Tamil Nadu Government Gazette 18.02.1981. He submits that by the above said Notification the first respondent wanted to acquire total extent of lands measuring 45.75 Acres in the following Survey Numbers.

2. The petitioner submits that the acquisition process was challenged by him in along with Ponnuthayee, Arumugam and Lakshmi Ammal before this Court in W.P.No.1516 of 1989, the said writ petition filed by him and also Interim Stay was granted after that it was dismissed. He submits that the land owners in the other survey numbers covered under the above said notification had also challenged it. While that being so considering the existence of lot of houses and their plot the first respondent has excluded the following lands in the Survey Numbers.

Survey No.		Extent	
55/4	-	1.84.5	Ares.
55/5	-	0.91	Ares.
55/6	-	1.44	Ares.

The exclusion of the above said survey numbers from the Acquisition process have made the Neighbourhood scheme as non implementable with regard to the above said survey numbers and with regard to the petitioner's land in Survey Number 55/9 as the above said survey Numbers are the lands around the petitioner's extent of land. The exclusion of the above said extent of lands from the acquisition process is also confirmed by the letter by the first

respondent's Department in his Letter No.25591/SC2(2) 94-6 dated 23.03.1995.

3. The petitioner submits that his land is surrounded by the above said lands and his land measuring an extent of 8 cents / 0.03.0 Ares was not included even though he is living there with his sons and daughters for more than 35 years and having a house in it. FMB sketch filed in the typed set of papers will give a clear picture how his land is surrounded and excluded. He submits that he made representation continuously to the first and second respondents to exclude his land as done in the case of the lands in Survey Numbers as mentioned above. He submitted the representation dated 10.11.2011 which has been dismissed by the first respondents, dated on 09.01.2012 No.23213/NA4 (2) / 11-2 representation letter dated on 10.11.2011 by the impugned order dated on 09.01.2012. He submits that the impugned order in No.23213/NA4 (2) / 11-2 dated 09.01.2012 on the file of first respondent is unjust and illegal for the following reasons among other grounds.

4. The petitioner further submits that the lands in the above mentioned survey numbers are excluded on the basis that there are lot of houses having the street name K.K.Nagar, Yercaud Main Road, Salem-8, while that being so the petitioner being a similarly placed person having his residential house for more than 35 years in the Survey No.55/9, Ayyamperumalpatti Village, should also be granted the similar treatment as he is entitled to have equality and equal protection of law. The action of the respondents in non-excluding the petitioner's property from acquisition proceedings is discriminatory when more particularly the exclusion of the lands measuring a large extent has made the purpose stated in the Section 4(1) Notification as non executable. Aggrieved by the discriminating action on the part of the respondents 1 and 2 the petitioner having left with no other efficacious alternative remedy is approaching this Court invoking its extraordinary jurisdiction under Article 226 of the Constitution of India. He submits that lands in neighbouring survey numbers are owning their houses peacefully while he is put to undue hardship. Hence, this writ petition is filed.

5. The first respondent/Secretary to Government who are attached to the Housing and Urban Development Department has filed a counter statement and resisted the above writ petition. The respondents submit that the notification under Section 4(1) of the Land Acquisition Act, was approved in G.O.Ms.No.47, Housing and Urban Development Department, dated 24.01.1981 which was published in the Tamilnadu Government Gazette, dated 18.02.1981 at pages 7 to 9 of the Supplement to Part-II - Section-2. The Draft Declaration under Sections 6 and 7 of the said Act was approved in G.O.(Ms). No.106, Housing and Urban Development Department, dated 16.02.1984

and published at pages 3 and 4 of Part-II - Section 3 of the Tamil Nadu Government Gazettee (Extraordinary), dated 17.02.1984. The date of publication of Notification under Section 4(1) and Declaration under Section 6 of the Act, precedes the date of the commencement of the Land Acquisition (Amendment) Act, 1984 (Central Act 68/1984) herein after referred to as "Amended Act" on 24.09.1984. Hence, no publications of the said notifications were made in the local dailies of the locality as required in the said Act. Notices under Section 9(1) and 9(3) of the Act, were issued on 21.08.1986 fixing the date for award enquiry as 10.09.1986.

6. It is submitted that the land in Survey No.55/9 measuring 0.08 acre stands registered in the names of the (1) Tmt.Ponnuthayammal (2)Thiru.Arumugam and (3)Tmt.Lakshmi and notified under Sections 6 and 7 of the Act. But Tmt.Lakshmi and Thiru.Arumugam only appeared for the award enquiry and objected the acquisition. They have not produced the document and not proved their ownership, beyond doubt. Hence, the ownership could not be decided. The due compensation amount of Rs.75,525/- deposited in the Sub-Court under Section 31 of the Act. The petitioner and others filed in W.P.No.1516 of 1989 challenging the Land Acquisition Proceedings of the land under reference in Survey No.55/9 measuring an extent of 0.08 acres and the Award passed by the Land Acquisition Officer vide Award No.9/86-87, dated 18.09.1986. W.P.No.1516 of 1989 was dismissed by this Court on 27.02.1998. The land owner occupied the existing tiled house in the land. The Tamil Nadu Housing Board has also paid for the land cost and the structures and the tree value as per the value fixed by the Executive Engineer, Public Works Department. Necessary steps are being taken by the Tamil Nadu Housing Board through the Tahsildar, Salem to take over the land under Section 47 of the Act.

7. The petitioner further submits that the land under reference is situated abutting the Salem-Yercaud Main Road having good approach from the main road. It is needed for comprehensive Housing Scheme and as approach for the other Tamil Nadu Housing Board Housing projects. It is submitted that only S.Nos.55/4 and 55/5 lands measuring an extent of 4.19 acre and 0.91 acre, respectively, were excluded by the Government as the same was not required for Housing Scheme. As regards S.No.55/6 measuring to an extent of 1.44 acres of land, award was passed in Award No.9/1986-1987, dated 18.09.1986. Hence, the statement of the Petitioner that land in S.No.55/6 was excluded is wrong. The land owner filed in W.P.No.9514 of 1986, challenging the Land Acquisition Proceedings. This Court allowed the writ petition on 25.01.1994.

8. The petitioner further submits that the land under reference, in respect of which Award has been passed; possession could not be taken over, since the land was occupied by the ex-land

owner. However, the land has to be taken over under Section 47 of the Act. Action initiated to take over the land is under progress. In this regard, the Tamil Nadu Housing Board has already addressed the Salem District Collector and Tahsildar, Salem. It is submitted that the petitioner represented to the Government and the Tamil Nadu Housing Board for exclusion of his land from the acquisition proceedings. The same has been rejected by the Government. Since, the land is essentially required for the comprehensive Housing Scheme and as it also needed for approach to other Tamil Nadu Housing Board lands under acquisition, the said representation was rejected by the Government.

9. The petitioner further submits that the Land Acquisition Officer observed all Land Acquisition formalities before passing Award No.9/86-87, dated 18.09.1986. The award amount was deposited in the Civil Court since the ownership could not be decided. The land owners did not produce any documentary evidence to prove their ownership. The lands were already occupied by the ex-land owners in the existing structure; as such the land possession could not be taken over under Section 47 of the Act. The Tamil Nadu Housing Board is taking necessary steps to take over the lands under Section 47 of the Act. The land is situated abutting Salem - Yercaud main road having approach from the main road. The land is essentially required for the comprehensive Housing Scheme and it is needed for approach to other Tamil Nadu Housing Board lands under acquisition. It is submitted that the writ petition is liable to be dismissed for devoid of merits and for delay and latches.

10. The second respondent has filed a counter statement and refuted the above writ petition. The Tamil Nadu Housing Board has proposed Neighbourhood Scheme in Ayyamperumalpatti Village to fulfill the Housing Demands. For that various patta lands are acquired under Land Acquisition Act through Land Acquisition Officer, Salem. The land under reference 55/9 extent 0.08 acre, the land acquisition details as follows. The Notification under Section 4(1) of the Land Acquisition Act was approved in G.O.Ms.No.47, Housing and Urban Development Department, dated 24.01.1981 and it was published in the Tamil Nadu Government Gazette No.6-A dated 18.02.1981 at Pages 7 to 9 of the supplement to Part-II Section-2. The Draft Declaration under Section 6 and 7 of the Land Acquisition Act was approved in G.O.Ms.No.106, Housing and Urban Development Department, dated 16.02.1984 and published at pages 3 and 4 of Part-II. Section 3 of the Tamil Nadu Government Gazette (Extra Ordinary) dated 17.02.1984. The date of publication of notifications under Sections 4(1) and 6 of the Land Acquisition Act proceed the date of the commencement of the Land Acquisition (Amendment) Act 1984 (Central Act 68 / 1984) on 24.09.1984, the publication of the notifications were made in the two local dailies of the locality as required in the Land Acquisition Amendment Act

1994 (Central Act 68/1984). Notices under Section 9(1), 10 and (3) 10, of the Land Acquisition were issued on 21.08.1986 fixing the date for award enquiry on 10.09.1986.

11. The Land in S.No.55/2 measuring 0.08 acre stands registered and notified under Sections 6 and 7 of the Land Acquisition Act in the names of the (1) Ponnuthayammal and (2) Arumugam (3) Lakshmi. But Lakshmi and Arumugam has appeared for the award enquiry and objected the acquisition. They have not produced the document and not proved their ownership, beyond doubt. Hence, the ownership could not be decided. Hence, the due compensation amount Rs.75,525/- was deposited in the Sub-Court under Section 31 of Land Acquisition Act. The petitioner and others have filed in W.P.No.1516 of 1989 pray for challenging Land Acquisition proceedings and the same was dismissed by this Court on 27.02.1998, the land under reference 55/9 measuring an extent of 0.08 Acres award passed by Land Acquisition Officer vide Award No.9/86-87 dated 18.09.1986. The land owner occupied existing tiled house in the land. The Tamil Nadu Housing Board has also paid the land cost and the structures and tree value as per the Executive Engineer / P.W.D. fixation. Since, the land occupied by the Ex-land owner, the Tamil Nadu Housing Board has taken necessary steps to take over the land under Section 47 of Land Acquisition Act through the regular, Tahsildar, Salem is under progress.

12. The land under reference situated abutting the Salem-Yercaud main road having good approach from the main road. The land has got good demand from the public and it is needed for comprehensive Housing Scheme and approach for the other Tamil Nadu Housing Board Land Acquisition lands. The land under reference 55/9 is acquired under Land Acquisition Act through the Land Acquisition Officer. The Land Acquisition Officer observed all Land Acquisition formalities before passing the award vide Award No.9/86-87 dated 18.09.1986. As per award report, the land stands registered in the name of 1.Ponnuthayammal, 2.Arumugam, 3.Lakshmi. The Lakshmi and Arumugam has appeared for the award enquiry and objected the acquisition. They have not produced any documents to show their ownership. Hence, the ownership could not be decided, as such, the compensation amount to a sum of Rs.75,525/- was deposited in the Civil Court. The award amount inclusive of land cost structure value and tree values. The petitioner and others have filed W.P.No.1516 of 1989 and challenging the Land Acquisition proceedings after passing the award. After due enquiry, this writ petition was dismissed on 27.02.1998. After the dismissal the petitioner has not filed any appeal against this judgment.

13. The petitioner statement is wrong. The S.No.55/4 and 55/5 lands measuring an extent of 4.19 acre and 0.91 acre are excluded by the Government before passing the award. The

Government has examined clearly and excluded the above lands. The S.No.55/6 measuring an extent of 1.44 acres of land, award passed in Award No.9/1986-1987 dated 18.09.1986. The land owner has filed W.P.No.9514 of 1986 by challenging the Land Acquisition proceedings. After due enquiry, this Writ petition allowed on 25.01.1994. Against this judgment the Land Acquisition Officer has filed appeal at High Court, Chennai vide WA.SR.No.67195/95 and WA.No.3292/05 and the same is still pending. In the above appeal case, Government and Special Tahsildar (L.A) are only the party. The land under reference Award has been passed, possession could not be taken over, since the land occupied by the ex-land owner. As such the land to be taken over under Section 47 of Land Acquisition Act. However, action initiated by this office to take over the land is under progress. In this regard the Tamil Nadu Housing Board has already addressed to the Salem Collector and Tahsildar, Salem.

14. The petitioner represented to the Government and the Tamil Nadu Housing Board for exclusion of his land from the acquisition proceedings. The same has been rejected by the Government. Since the land is essentially required for the comprehensive Housing Scheme and it also needs approach to the other Tamil Nadu Housing Board lands are under acquisition. The Land Acquisition Officer observed all Land Acquisition formalities before passing the Award No.9/86-87 dated 18.09.1986. The award amount deposited in the Civil Court since the ownership could not be decided. The land owners had not produced any documentary evidence to prove their ownership. The lands already occupied by the ex-land owners in the existing structure, as such the land possession to be taken over under Section 47 of Land Acquisition Act.

15. The Tamil Nadu Housing Board has taken necessary steps to taken over the lands under Section 47 of Land Acquisition Act is under progress. The land situated abutting Salem-Yercaud main road having approach from the main road and good demand from the public. The land is essentially required for the compressive Housing Scheme and it is needed for approach to other Tamil Nadu Housing Board lands are under acquisition. The petitioner can not challenging the acquisition proceedings or exclusion once award passed. The Supreme Court has clearly stated in their judgment 2003 (4) SCC 485 and AIR 2000 SC 671 cited in. It is submitted that the writ petition is liable to be dismissed for devoid of merits.

16. The third respondent namely the Special Tahsildar, Land Acquisition has also filed counter statement and opposed the above writ petition. This respondent submits that the Tamil Nadu Housing Board has proposed Neighbourhood Scheme in Ayyamperumalpatti Village to fulfill the Housing Demands. For that various patta

lands are acquired under Land Acquisition Act through Land Acquisition Officer, Salem. The land under reference 55/9 extent 0.08 acre, the land acquisition details as follows:

The Notification under Section 4(1) of the Land Acquisition Act was approved in G.O.Ms.No.47, Housing and Urban Development Department, dated 24.01.1981 and it was published in the Tamil Nadu Government Gazette No.6-A dated 18.02.1981 at Pages 7 to 9 of the supplement to Part-II Section 2. The Draft Declaration under Section 6 and 7 of the Land Acquisition Act was approved in G.O.Ms.No.106, Housing and Urban Development Department, dated 16.02.1984 and published at pages 3 and 4 of Part-II. Section 3 of the Tamil Nadu Government Gazette (Extra ordinary) dated 17.02.1984. The date of publication of notifications under Section 4(1) and 6 of the Land Acquisition Act proceed the date of the commencement of the Land Acquisition (Amendment) Act 1984 (Central Act 68/1984) on 24.09.1984, no publication of the notifications were made in the two local dailies of the locality as required in the Land Acquisition Amendment Act 1994 (Central Act 68/1984). Notices under Section 9(1), 10 and (3) 10, of the Land Acquisition were issued on 21.08.1986 fixing the date for award enquiry on 10.09.1986.

17. The Land in S.No.55/2 measuring 0.08 acre stands registered and notified under Section 6 and 7 of the Land Acquisition Act in the names of the (1)Ponnuthayammal and (2) Arumugam (3) Lakshmi. But Lakshmi and Arumugam has appeared for the award enquiry and objected the acquisition. They have not produced the document and not proved their ownership, beyond doubt. Hence, the ownership could not be decided. Hence the due compensation amount Rs.75,525/- was deposited in the Sub-Court under Section 31 of Land Acquisition Act. The petitioner and others have filed in W.P.No.1516 of 1989 pray for challenging Land Acquisition proceedings and the same was dismissed by this Court on 27.02.1998, the land under reference 55/9 measuring an extent of 0.08 Acres award passed by Land Acquisition Officer vide Award No.9/86-87 dated 18.09.1986. The land owner occupied existing tiled house in the land. The Tamil Nadu Housing Board has also paid the land cost and the structures and tree value as per the Executive Engineer / P.W.D. fixation. Since, the land occupied by the Ex-land owner, the Tamil Nadu Housing Board has taken necessary steps to take over the land under Section 47 of Land Acquisition Act through the regular, Tahsildar, Salem is under progress.

18. The land under reference situated abutting the Salem-Yercaud main road having good approach from the main road. The land has got good demand from the public and it is needed for comprehensive Housing Scheme and approach for the other Tamil Nadu Housing Board Land Acquisition lands. The land under reference

55/9 is acquired under Land Acquisition Act through the Land Acquisition Officer. The Land Acquisition Officer observed all Land Acquisition formalities before passing the award vide Award No.9/86-87 dated 18.09.1986. As per award report, the land stands registered in the name of 1.Ponnuthayiammal, 2.Arumugam, 3.Lakshmi. Both Lakshmi and Arumugam have appeared for the award enquiry and objected the acquisition. They have not produced any documents to show their ownership. Hence, the ownership could not be decided, as such, the compensation amount to a sum of Rs.75,525/- was deposited in the Civil Court. The award amount inclusive of land cost structure value and tree values. The petitioner and others have filed W.P.No.1516 of 1989 challenging the Land Acquisition proceedings after passing the award. After due enquiry, this writ petition was dismissed on 27.02.1998. After the dismissal the petitioner has not filed any appeal against this judgment. The S.No.55/4 and 55/5 lands measuring an extent of 4.19 acre and 0.91 acre are excluded by the Government before passing the award. The Government has examined clearly and excluded the above lands. The S.No.55/6 measuring an extent of 1.44 acres of land, award passed in Award No.9/1986-1987 dated 18.09.1986. The land owner has filed in W.P.No.9514 of 1986 by challenging the Land Acquisition proceedings. After due enquiry, this Writ petition allowed on 25.01.1994. Against this judgment the Land Acquisition Officer has filed appeal at High Court, Chennai vide WA.SR.No.67195/95 and WA.No.3292/05 and the same is still pending. In the above appeal case, Government and Special Tahsildar (L.A) are only the party. The land under reference Award has been passed, possession could not be taken over, since the land occupied by the ex-land owner. As such the land to be taken over under Section 47 of Land Acquisition Act. However, action initiated by this office to take over the land is under progress. In this regard the Tamil Nadu Housing Board has already addressed the Salem Collector and Tahsildar, Salem.

19. The petitioner represented to the Government and the Tamil Nadu Housing Board for exclusion of his land from the acquisition proceedings. The same has been rejected by the Government. Since the land is essentially required for the comprehensive Housing Scheme and it also needs approach to the other Tamil Nadu Housing Board lands which are under acquisition. The Land Acquisition Officer observed all Land Acquisition formalities before passing the Award No.9/86-87 dated 18.09.1986. The award amount deposited in the Civil Court since the ownership could not be decided. The land owners not produced any documentary evidence to prove their ownership. The lands already occupied by the ex-land owners in the existing structure, as such the land possession to be taken over under Section 47 of Land Acquisition Act. The Tamil Nadu Housing Board has taken necessary steps to take over the lands under Section 47 of Land Acquisition Act is

under progress. The land situated abutting Salem Yercaud main road having approach from the main road and good demand from the public. The land is essentially required for the compressive Housing Scheme and it is needed for approach to other Tamil Nadu Housing Board lands under acquisition. The petitioner can not challenging the acquisition proceedings or exclusion once award passed. The Supreme Court has clearly stated in their judgment 2003 (4) SCC 485 and AIR 2000 SC 671 cited in. It is submitted that the writ petition is liable to be dismissed for devoid of merits and for delay and laches and it is prayed that the writ petition may be dismissed accordingly.

20. The very competent counsel Mr.R.Sankarasubbu, appearing for the petitioner submits that the petitioner belongs to the weaker section and he had purchased the land to an extent of 8 cents comprising in Survey No.55/9, Ayyamperumampatti Village Yercaud Road, Salem District out of his hard earned money. The said deed has been registered on the file of the Sub-Registrar, Salem, as document bearing No.6021 dated 11.11.1980. After the sale deed executed in favour of the petitioner it untreated all the records pertaining to the said property including the patta. The petitioner is having 3 sons and 4 daughters, as such his family is quite large as such the subject land to an extent of 8 cents is barely adequate for them. The third respondent had initiated land acquisition proceedings for the purpose of forming a neighbourhood scheme at Salem, pursuant to the G.O. issued by the first respondent. The land acquisition proceedings had been initiated and dated 24.01.1981 i.e. after the purchase of the property. As such, the said land has not come under the purview of land ceiling. The respondents had acquired a total extent of lands measuring 45.75 acres.

21. The learned counsel further submits that the first respondent had extended to an extent of 3 acres, 19.5 cents from the acquisition proceedings. The petitioner and his family members are living on the said land. Hence, the petitioner made a representation to the first respondent from excluding his land from the acquisition proceedings, the same was rejected. The petitioner is also entitled to receive relief from the land acquisition as per other land owners who are the owners of the properties comprising in Survey No.55/4, 55/5, 55/6, to an extent of 1.84.5, 0.91 and 1.44 acres respectively. The very competent counsel further submits that the petitioner has not received any compensation from the respondents. Further, the petitioner and his family members are still in possession and in enjoyment of the same. The Village Administrative Officer had issued a certificate stating that the petitioner and his family members are residing on the subject matter of the land after raising a super structure besides the petitioner is regularly remitting the mandatory taxation to the

Revenue Department. In order to prove the occupation the learned counsel annexed a photograph in the typed set of papers. Further, the land acquisition officer had informed to some of the land owners stating that the award has not been passed within the stipulated period, as such the award has elapsed. Further, the Deputy Secretary, attached to the Government, Housing and Urban Development Department has sent a communication to one Mr.Mahalingam and had decided to drop the land acquisition proceedings pertaining to the lands comprising in Survey No.55/4, 5 and 6 at Ayyamperumampatti Village Yercaud Road, Salem District. Subsequently, the Executive Engineer who is attached to the Tamilnadu Housing Board had informed one Mr.Kalaivanan, stating that his lands had been excluded from the acquisition proceedings. This kind of similar relief also makes the petitioner entitled to, hence the learned counsel entreats the Court to allow the above writ petition.

22. The highly competent Additional Government Pleader appearing for the first and third respondents submit that the petitioner's land and the lands of others have been acquired by the third respondent under the old Act as per the G.O. Ms.No.47 dated 24.01.1981. After strictly adhering to the provision, the petitioner's land has been acquired to an extent of 8 cents in comprising Survey No.55/9 and compensation amount had been deposited before the Sub-Court, Salem, as per Section 31 of the Act, a sum of Rs.75,525/- as compensation. The Tamilnadu Housing Board had also paid compensation for the existing tiled house on the acquired land. Further, the petitioner's land is essentially required for the formation of the neighbourhood scheme.

23. The learned counsel further submits that the third respondent had issued 4(1) Notification as per G.O.Ms.No.47 dated 24.01.1981. thereafter Section 5(A) inquiry was conducted and a declaration published as per Section 6 of the Act. The petitioner had filed a writ petition and challenged the land acquisition proceeding, the same was dismissed, therefore on the same cause of action the above writ petition is not maintainable. Hence, the learned counsel entreats the Court to dismiss the above writ petition.

24. The highly competent counsel Mr.R.V.Babu appearing for the second respondent submits that the third respondent had acquired the land for the formation of the Neighbourhood Scheme under the old Act. After acquiring the lands the same was handed over to the second respondent for implementing the said scheme. The petitioner's land situated abutting Salem-Yercaud Main Road having an approach from the main road and a good demand from the public and it is needed as an approach to other Tamilnadu Lands

under acquisition. The compensation amount had been deposited before the Sub-Court, Salem. The petitioner's representation is duly considered and rejected the same since the said land is absolutely necessary for the formation of the Neighbourhood Scheme.

25. Per contra, the learned counsel Mr.R.Sankarasubbu vehemently argued that the other land owner had filed a writ petition No.9514 of 1986 and challenged the entire land acquisition proceedings before this Court, the same was allowed on 25.01.1994 and set aside the land acquisition proceedings which became final since no appeal has been filed by the Government. Further, the land comprised in Survey Nos.55/4 and 55/5 to an extent of 4.19 acres and 0.19 acres respectively were excluded by the respondents herein. As such the minimum extent of 8 cents may be excluded from the acquisition proceeding, hence, the highly competent counsel makes a deep request to allow the above writ petition.

26. From the above discussion, this Court is of the view:

(1) The first respondent had issued G.O.Ms.No.47 dated 24.01.1981 for acquiring the petitioner's land to an extent of 8 cents along with others land for formation of neighbourhood scheme at Salem. The said scheme has not been implemented over the petitioner's land even after a lapse of 35 years, as such, it has gone into oblivion;

(2) The respondents have acquired the lands for the formation of Neighbourhood scheme in order to provide house sites, houses to the general public. In the instant case, the petitioner's family is quite large consisting of eight members, the total extent of land is 8 cents, as such the said land taken away from a poor man and given away to the general public is discrimination and against the principles of natural justice, since the petitioner's fundamental rights and personal right ought to be protected as per our Indian Constitution;

(3) As per the counter statement filed by the first respondent, the lands comprising in Survey Nos.55/4, 55/5 to an extent of 4.91 acres and 0.91 acres respectively were excluded by the respondents herein. In the instant case the petitioner is seeking exemption to an extent of 8 cents from the acquisition proceedings. Considering this fact, this Court's view is that the petitioner is absolutely entitled to retain his property since he has not received the compensation amount besides he is residing there with his family;

(4) The other land owner had filed a writ petition No.9514 of 1986 before this Court and the same was allowed on 25.01.1994, as such the writ petitioner's land to an extent of 1.44 acres is discharged from the acquisition proceedings. Similar relief also makes the petitioner entitled to;

(5) As per the records, the petitioner is still residing on the subject land after constructing a super structure existing now and also he has not received any compensation amount from the respondents, as such the petitioner is also entitled to receive relief under Section 24(2) of the new Act 30 of 2013.

27. Considering the facts and circumstances of the case and the arguments advanced by the highly competent counsel on all sides, on perusing the typed set of papers besides the views of the Court as expressed in 1 to 5 as above, the above writ petition is allowed, consequently the first respondent's letter No.23213/NA4 (2)/11-2 dated 09.01.2012 is quashed. As a result, this Court directs the respondents to exclude the petitioner's land along with the superstructure to an extent of 8 cents comprising in Survey No.55/9 Ayyamperumampatti Village Yercaud Road, Salem District, within a period of three months from the date of receipt of the order.

28. In the result, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

ub

To

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

2.The Chairman,
Tamil Nadu Housing Board,
493, Anna Salai,
Chennai.

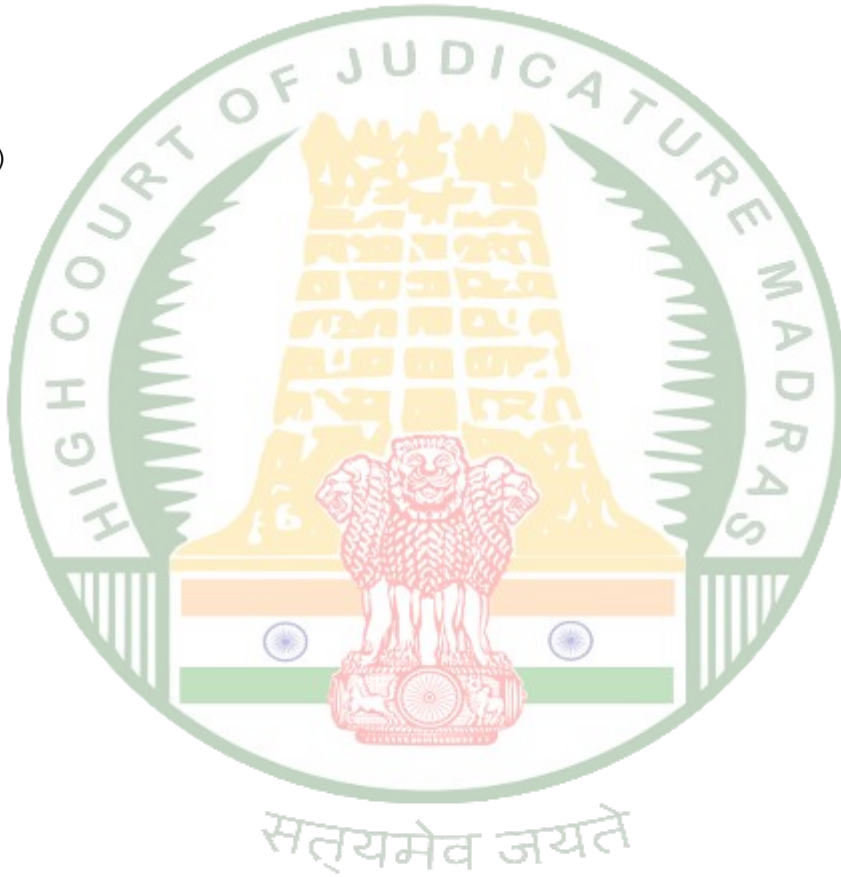
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3.The Special Thasildar, (LA)
Neighbourhood Scheme,
Salem.

1 cc to Mr.R.Sankarasubbu, Advocate, sr. 33826
+1 cc to The Government Pleader, sr.34750 (27/10/2015)

W.P.No.3156 of 2012
and
M.P.No.2 of 2012

SVI (CO)
kk 27/7



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