

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16-11-2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K.AGNIHOTRI
AND
THE HON'BLE DR.JUSTICE P.DEVADASS

Writ Appeal No.530 of 2013
and M.P.Nos.1 of 2013 and 1 of 2015

P.Sundarajan ... APPELLANT/Petitioner

Vs.

- 1.State of Tamil Nadu
Represented by
Secretary to Government,
Housing & Urban Development,
Fort St. George,
Chennai-600 009.
- 2.Tamil Nadu Housing Board,
Represented by its Managing Director,
Nandanam,
Chennai-600 035.
- 3.The Executive Engineer and
Administrative Officer,
T.N.H.B. Mogappair Division,
3rd Floor, Arignar Anna Shopping Complex,
Thirumangalam,
Chennai-600 101.

...RESPONDENTS/RESPONDENTS

This Writ Appeal preferred under Clause 15 of Letters Patent against the order dated 5.3.2013 made in W.P.No.12655 of 2011 on the file of this Court. Writ petition has been filed under Art 226 of the Constitution of India, praying for a writ of Mandamus for bearing the respondents from carrying out any activities in his land admeasuring 54 cents comprised in Survey No.350/2, Mogappair Village, ambattur taluk, Tiruvallur District since the very acquisition proceedings stood quashed in SLP 11353/88.

For Appellant : Mr.R.Muthukumaraswamy,
Senior Counsel for Mr.S.Jayakumar.

For Respondent-1 : Mrs.A.Sri Jayenthi,
Special Government Pleader.

For Respondents-2&3 : Mr.V.Anandhamoorthy

(ORDER OF THE COURT WAS MADE BY DR.P.DEVADASS, J.)

With the consent of both sides, this Writ Appeal has been taken up today for final disposal.

2. This Writ Appeal, at the instance of the writ petitioner, arises out of the order of the Writ Court passed in W.P.No.12655 of 2011 on 5.3.2013.

3. On 12.11.1975, the first respondent made notification under Section 4(1) of the Land Acquisition Act, for the acquisition of 2.45 acres of land comprised in Survey No.350 situate in Mogappair village, Ambattur Taluk, Tiruvellore District for the public purpose of constructing houses under Neighbourhood Scheme to be undertaken by the second respondent, namely, Tamil Nadu Housing Board. Subsequently, on 10.11.1978, declaration under Section 6 of the said Act was made. On 27.1.1982, award was passed.

4. Subsequently, on 27.2.1982, the writ petitioner purchased 54 cents of land comprised in Survey No.350/2, a part of the said land from the sons of one K.T.Chandrasekhara Mudaliar, by way of a registered Sale Deed. On 5.4.1982, possession of the acquired land was stated to have been taken by Tamil Nadu Housing Board.

5. Already certain affected land owners have filed batch of writ petitions, namely, W.P.No.7499 of 1983 etc. challenging the said land acquisition. It does not include the present writ petition. A Division Bench of this Court partly allowed the writ petitions, quashing the declaration made under Section 6 of the Act only, leaving the notification under Section 4(1) of the Act intact.

6. Aggrieved against the said partial quashment, A.S.Naidu and others had gone to the Hon'ble Supreme Court in SLP Nos.11353 to 11355 of 1988. On 21.8.1990, the SLPs were allowed. The Hon'ble Apex Court quashed the Section 4(1) notification also.

7. The present writ petitioner applied to the Tamil Nadu Housing Board, for issuance of 'No Objection Certificate' (N.O.C.) with respect to the 54 cents of land purchased by him. As no orders were passed, he filed W.P.No.769 of 1998 seeking issuance of Mandamus to the Tamil Nadu Housing Board to issue him N.O.C. Similar writ petitions were filed by some other land owners also. On 22.9.1998, the writ petitions were disposed of giving liberty to the writ petitioners to approach the State Government for reconveyance of the land as envisaged under Section 48-B of the Land Acquisition Act.

<https://hcservices.ecourts.gov.in/hcservices/>

8. However, the application of the writ petitioner was dismissed by the Government on 15.5.2001. In the

circumstances, the writ petitioner filed W.P.No.22758 of 2001. On 22.3.2002, the writ petition was allowed, remitting the matter to the Government with a direction to reconsider the writ petitioner's prayer for reconveyance of the land.

9. On 21.6.2002, the Government rejected the request of the writ petitioner on the ground that already the acquired land had been utilised. The writ petitioner challenged the same in W.P.No.36488 of 2002. On 16.12.2002, it was dismissed. He appealed in W.A.No.546 of 2003. It was allowed on 7.8.2006 directing the Government to reconsider his request for reconveyance of 54 cents of land purchased by him.

10. The Tamil Nadu Housing Board challenged the said order dated 7.8.2006 in the Hon'ble Supreme Court in SLP No.18390 of 2006. In the meanwhile, the Housing Board advertised in the dailies inviting applications for allotment of flats to be constructed in the said land. In the circumstances, the writ petitioner preferred W.P.No.6163 of 2007 to quash the said advertisement. Later, he had withdrawn it with a view to approach the Hon'ble Apex Court for appropriate relief.

11. In the meanwhile on 26.4.2011, SLP No.18390 of 2006 filed by the Tamil Nadu Housing Board was allowed by the Hon'ble Supreme Court setting aside the orders of this Court passed in W.A. No.546 of 2003 whereunder the Government was directed to reconsider the writ petitioner's request for reconveyance of the land.

12. Now referring to the Hon'ble Apex Court's earlier order in SLP Nos.11353 to 11355 of 1988 dated 21.8.1990, the writ petitioner filed the present writ petition seeking Mandamus to restrain the respondents from carrying out any construction in the 54 cents of land purchased by him on the ground that the Section 4(1) notification was quashed by the Hon'ble Apex Court in its judgment.

13. On 5.3.2013, the Writ Court went into all the previous orders passed by the Writ Court, including the orders passed by the Hon'ble Supreme Court in SLP Nos.11353 to 11355 of 1988 and in SLP No.18390 of 2006 and held that by the orders of the Hon'ble Supreme Court passed in SLP No.18390 of 2006, the request of the writ petitioner for reconveyance of the land was negatived and it had closed the avenue of the land owner for claiming reconveyance of the land and thus dismissed his present writ petition.

14. Aggreived, the writ petitioner has preferred this writ appeal.

15. Mr.R.Muthukumaraswamy, learned Senior Counsel appearing for the appellant contended that in its order dated 21.8.1990 passed in SLP Nos.11353 to 11355 of 1988, the

Hon'ble Apex Court had quashed the Section 4(1) notification resulting in quashing the entire land acquisition proceedings and that enables the appellant to get back his 54 cents of land.

16. The learned Senior Counsel would further submit that throughout the appellant was unaware of the orders of the Hon'ble Supreme Court dated 21.8.1990 which helps him to get back the land purchased by him, the Government and the Housing Board knows about this, in such circumstances, the appellant cannot be denied of the benefit of the order dated 21.8.1990 (supra).

17. On the other hand, Mr.V.Anandhamoorthy, learned counsel appearing for the Tamil Nadu Housing Board would submit that the matter pertaining to the appellant has been sealed and was over by the orders of the Hon'ble Supreme Court dated 26.4.2011 passed in SLP No.18390 of 2006, thereafter, he cannot rack up the same issue in the Writ Court and also in this Court. The appellant cannot be permitted to disturb the said orders of the Hon'ble Supreme Court in this Court. Mrs.A.Sri Jayenthi, learned Special Government Pleader appearing for the first respondent reiterated the very same contentions.

18. We have anxiously considered the rival submissions, perused the impugned order of the Writ Court as well as the previous orders of the Writ Court and the orders of the Hon'ble Supreme Court passed in the concerned SLPs and also the materials on record.

19. Section 4(1) notification under the Land Acquisition Act was made by the Government on 12.11.1975 with respect to land measuring about 2.45 acres comprised in Survey No.350 situate in Mogappair village, Ambattur Taluk, Tiruvellore District. Subsequently, Section 6 declaration was made on 10.11.1978. Award was also passed on 27.1.1982. Only thereafter on 27.2.1982, the appellant has purchased 54 cents comprised in Survey No.350/2 from its owner.

20. On 21.8.1990, in SLP Nos.11353 to 11355 of 1988 when some of the land owners had gone to the Hon'ble Supreme Court, the Hon'ble Supreme Court quashed the notification made under Section 4(1) of the Act. This decision has been reported in A.S.Naidu and others vs. State of Tamil Nadu and others {2010 (2) SCC 801}. Long after that the appellant had filed W.P.No.769 of 1998 for a Mandamus directing the Tamil Nadu Housing Board for issuance of 'No Objection Certificate' with respect to the 54 cents of land purchased by him and he had failed in the said writ petition. Subsequently, as against the rejection of his claim for reconveyance, he filed W.P.No.36488 of 2002 to get back the said land. But he was unsuccessful. As against that he filed writ appeal in W.A.No.546 of 2003. He succeeded and the Appellate Court has directed the Government

to reconsider his prayer for reconveying the 54 cents of land purchased by him. When this order was challenged by the Tamil Nadu Housing Board in SLP No.18390 of 2006, on 26.4.2011, the Hon'ble Apex Court allowed the SLP, set aside the directions of the Appellate Court passed in W.A.No.546 of 2003. It is pertinent to note that in the said writ petitions, in the writ appeals and in the SLP No.18390 of 2006, the appellant did not mention about the orders of the Hon'ble Supreme Court passed in A.S.Naidu's case (supra).

21. The appellant's simple contention that all these years, he was not aware of the decision of the Hon'ble Apex Court in A.S.Naidu's case (supra) cannot be accepted. Further, admittedly, the writ petitioner was not a party in A.S.Naidu's case (supra).

22. Now, the plea of the appellant to remit the matter for reconsideration of his request for reconveyance of the land, as rightly pointed out by the Writ Court, will definitely bye-pass the orders of the Hon'ble Apex Court passed in SLP No.18390 of 2006 dated 26.4.2011. By the orders of the Hon'ble Apex Court, the appellant's plea for reconveyance of the land was sealed and it was over. In such view of the matter, we do not find any reason to interfere with the order of the Writ Court.

23. In fine, this writ appeal fails and it is dismissed, confirming the orders of the Writ Court passed in W.P.No. 12655 of 2011 dated 5.3.2013. However, in the circumstances, there will be no order as to costs. Consequently the connected miscellaneous petitions are also dismissed.

sd/

ASSISTANT REGISTRAR (CS-IV)

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SUB-ASSISTANT REGISTRAR

svn/vaan

To

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

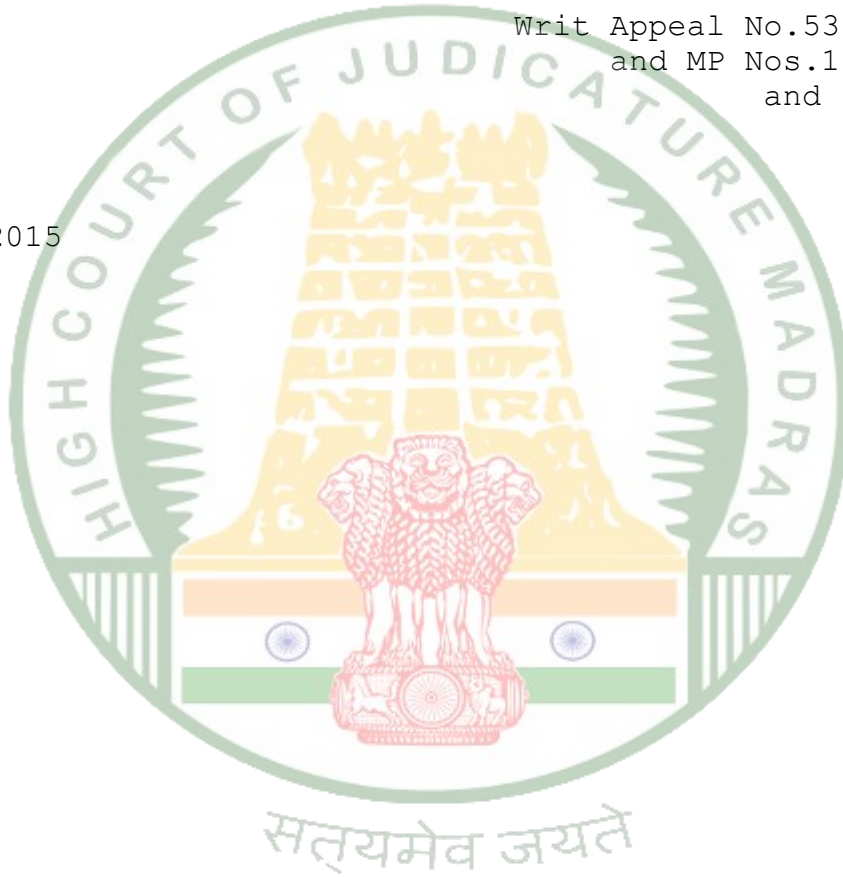
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+1 CC to MR.S.Jayakumar. Advocate. SR.NO. 61936

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