

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON 23/12/2014

DATED: 28/01/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.12988 of 2008 &
M.P.Nos.1 of 2008 and 1 of 2010

K.G.Chinnaiya Naidu ... Petitioner

Vs.

1. The State of Tamilnadu,
Represented by its Secretary,
Housing and Urban Development,
Fort St. George,
Chennai - 600 009.

2. The District Collector,
Kancheepuram District,
Kancheepuram.

3. The Commissioner,
Land Administration,
Chepauk, Chennai - 600 005.

4. The Member Secretary,
CMDA,
Chennai - 600 008.

5. The Special Tahsildar,
Maraimalai Nagar (Scheme),
Maraimalai Nagar,
Kattankulathur.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for a Writ of Certiorarified Mandamus, to call for the records relating to the order passed in Letter No.6778/Nava 3(1)/07-2, dated 04.10.2007, by the first respondent, quash the same and consequently direct the first respondent to issue a de-notifying notification for withdrawal of acquisition of lands situated in Survey No.140/27 - 7 cents, 140/28 - 7 cents, 146/1b - 31 cents, 147/1 - 29 cents and 172/1 - 38 cents, to an extent of Acre 1.12

cents, situated in Kilkarainai Village, Maraimalai Nagar, Kancheepuram District.

For Petitioner : Mr.A.R.L.Sundaresan, Senior Counsel
For Mr.M.Raja Sekhar

For Respondents : Mr.M.S.Ramesh
Addl. Govt. Pleader for R1 to R3 and R5

Mr.A.Kumar for R4

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O R D E R

The short facts of the case are as follows:-

The petitioner submits that he is depending upon his livelihood from and out of the income derived from the agricultural lands owned by him. He further submits that he has been raising crops, trees in his land, besides a well is situated in his lands. There are more than 272 persons owning to an extent of 200 acres of wet lands and dry lands situated in S.Nos.2 to 398/2 in various villages like Ninnakarai, Chithamanur, Kilkaranai, Sengundram Villages. The petitioner further submits that his entire family members are depending on the income accrued from the crops as well as trees from the wet lands. He further submits that he owns the land measuring to an extent of 1.12 cents, comprised in Survey No.140/27 - 7 cents, 140/28- 7 cents, 146/1b - 31 cents, 147/1 - 29 cents and 172/1 - 38 cents, situated in Kilkarainai Village, Maraimalai Nagar, Kancheepuram District.

2. The petitioner further submits that the respondents herein initiated acquisition proceedings in the year 1974 for acquiring lands in the Ninnakarai and other Villages for the scheme, by name called Maraimalai Nagar New Satellite Town. The petitioner further submits that for the said proposal there was a strong opposition from the public, since the lands proposed for acquisition will put the occupiers in the street. Further, there was also a Government Order to drop the proceedings in respect of wet lands and irrigation lands. Even after passing of the Government Order, the authorities were bent upon to implement the scheme and award was also passed in respect of some other lands referred above. The petitioner made various representations to the respondents to issue a de-notifying notification to withdraw the acquisition of his lands. Since no proper notice was issued to the petitioner, he was not called for the enquiry. Even though, the petitioner had purchased the property in the year 1972 and the revenue records stood in his name, the respondents neither conducted any proper enquiry nor the objection submitted by him individually was properly considered. The petitioner further added that the respondents proceeded to pass an

order of award and deposited the award amount in the Court. The petitioner further submits that the order of acquirement of lands passed by the respondents remains on the paper but he is in possession and enjoyment of the land till date and also doing cultivation as on date.

3. The petitioner further submits that the Land Acquisition Proceedings initiated in the year 1974 in respect of his lands are yet to be terminated or come to an end, in view of the fact that it is nearly 33 years, most of the lands acquired by the respondents have not been put to use for the purpose, for which it was acquired and he is in continuous possession and occupation by cultivating the same. The petitioner further submits that the long silence and the inaction on the part of the respondents will amount to the non-requirement of the lands for the purpose for which, it was acquired. In such circumstances, the respondents may not have any difficulty that when the lands are not required for the purpose for which it was acquired, the respondents by exercising the powers under Section 48 (B) of the Land Acquisition Act, could have transferred the lands in his favour on condition that he may not claim any damages or compensation. Though the completion of the acquisition has not been done in respect of the lands, the Land Acquisition Proceedings cannot be kept pending indefinitely and the respondents may be directed to issue withdraw of notification from the acquisition and the same may be made by way of de-notifying notification.

4. The petitioner further submits that he has submitted various representations for issuing the de-notifying notification in respect of the acquired lands. The said representations did not evoke any positive response from the officials of the respondents. At last the Special Tahsildar herein, submitted the detailed report in respect of the status of the acquired lands and the grievances of the owners and sought for appropriate orders from the higher authorities. Till date, no action was taken by the respondents for issuing de-notifying notification in respect of the acquired lands. The petitioner further submits that similarly placed persons from Ninnakarai Village and other villages approached this Court and has filed a writ petition in W.P.Nos.15333 of 2005, 15335 of 2005, 15918 of 2005, 15877 of 2005, 1721 of 2003 and W.A.No.9531 of 1998 and also obtained interim order of dispossession and as on date the above said interim order as well as a batch of writ petitions, challenging the notification is pending. The petitioner further submits that the first respondent has issued a Government Order in G.O.Ms.No.1452, dated 11.09.1986 had acceded to the request of some of the owners of the land which have been acquired for the purpose of formation of Maraimalai Nagar and dropped the acquisition proceedings and the same was also communicated to the fourth respondent herein. Similarly placed persons like him whose lands have been acquired for the above said formation of the Maraimalai Nagar Scheme was not able to enjoy the similar benefits shown to other persons by the respondents

herein. The petitioner further submits that one Anandan and his brothers Thirunavukarasu and Murugesu Naicker and N.K.Saraswathy and others have filed a writ petition in W.P.No.2133 of 2003 and W.A.No.1570 of 1998 before this Court, challenging the acquisition proceedings and the same was allowed by this Court, by an order dated 24.09.2001. The fifth respondent herein pursuant to the orders of this Court has passed the appropriate Government Order in G.O.Ms.No.70, dated 01.03.2007 and re-conveyed the lands, which was acquired for the purpose of formation of Maraimalai Nagar to the erstwhile owners. The petitioner further submits that all the efforts taken by him for issuance of de-notifying to withdraw from acquisition of land did not yield any fruitful result.

5. The petitioner further submits that he is in absolute possession and enjoyment of the properties despite the fact that the lands were acquired in the year 1974 itself. The respondents have failed to give any valid reasons for non-issuance of de-notifying notification of the acquired lands. The petitioner is facing threat of dispossession in the name of implementation of the acquisition proceedings initiated in the year 1974. The acquired lands are in no way needed for the purpose of scheme formulated by the respondents. The petitioner further submits that the Hon'ble Supreme Court as well as this Court have held in various decisions that once the land which was acquired for the particular purpose is not required for that purpose for which, it was acquired or for any other public requirement, then they may transfer such lands to the original owner who is willing to repay the amount paid to him for acquisition of such lands. The petitioner further submits that he has not received any compensation from the respondents with regard to the above said acquisition.

6. The petitioner further submits that he is a member of the Maraimalai Nagar Vivasayigal Nala Sangam, a registered Association under the Societies Registration Act, Registration No.9/2006, has filed a writ petition in W.P.No.5630 of 2007, for a writ of mandamus, directing the first respondent herein to dispose of the representation dated 26.06.2006, to drop the acquisition proceedings. He further submits that this Court, by an order dated 13.03.2007, directed the first respondent to dispose of the representation within a period of four weeks from the date of receipt of the order of production of the same. He further submits that the second respondent by his communication dated 05.04.2007, directed the fifth respondent to conduct enquiry and forward the report to him. Pursuant to the communication, the fifth respondent conducted the enquiry on 25.05.2007 and on recording a statement from him, forwarded the same to the second respondent. Similarly, on 26.07.2007, the second respondent has also directed the fifth respondent to forward the report after conducting the enquiry. The petitioner further submits that the first respondent by his impugned order dated 04.10.2007, has rejected the request of the petitioner on the ground that already the

property was acquired and possession was handed over to the fourth respondent and hence, the acquisition proceedings cannot be dropped, contrary to the statement recorded by the fifth respondent. The petitioner further submits that the first respondent without considering the fact as well as the statement recorded by the fifth respondent has passed the impugned order. Hence, the petitioner has filed the above writ petition to quash the impugned order.

7. The highly competent senior counsel Mr.A.R.L.Sundaresan, appearing for the petitioner submits that the petitioner is depending upon his livelihood from the subject matter of the lands by way of cultivation. He further submits that the respondents had initiated Land Acquisition Proceedings under the Old Act for a acquiring the petitioner's land and adjacent land for the purpose of implementation of Maraimalai Nagar New Satellite Town. He further submits that the notification had been issued in the year 1974. He further submits that most of the lands are wet lands and irrigation lands. The Government Order has not permitted to acquire the lands which are classified as wet lands, but the respondents ignored the Government Order and initiated the Land Acquisition Proceedings. Further, without following the procedure, the lands have been acquired and compensation amount had been deposited in the civil Court. As of now, the petitioner is carrying out cultivation over the subject matter of the lands. Further, after acquiring the said lands, the respondents have not initiated any plan to put up for the said purpose. The petitioner had made various representations to the respondents to issue a de-notified notification to withdraw the acquisition of the lands. After receipt of the said representations, the respondents are still silent. The highly competent senior counsel further submits that the petitioner is entitled to obtain re-conveyance of the land as per Section 48(B) of the Land Acquisition Act since the lands have not been utilized for the purpose for which it was acquired. The adjacent landowners have also filed writ petitions before this Court and obtained interim order prevailing on the respondents herein not to dispose their respective occupation. Some of the landowners have made a request to the respondents to discharge their lands from the acquisition proceedings and the same was accepted by the respondents and dropped the acquisition proceedings after issuing a Government Order in G.O.Ms.No.1452, dated 11.09.1986 and therefore, the petitioner is also entitled to secure the remedy from the respondents like other landowners. Further, as of now, the purpose of formation of Marimalai Nagar New Satellite Town had not been implemented after a lapse of around 40 years and as such, the respondents purpose for which, the land was acquired, was defeated.

8. The highly competent senior counsel appearing for the petitioner further submits that one Anandan and others had filed a writ petition in W.P.No.2133 of 2003 and W.A.No.1570 of 1998 before this Court and challenged the acquisition proceedings and the same was allowed by this Court by an order dated 24.09.2001. Pursuant to

the said Court Order, the respondents had passed a Government Order in G.O.Ms.No.70, dated 01.03.2007 and re-conveyed the acquired lands to the respective owners of the lands. Similarly, this writ petitioner is also entitled to obtain the same remedy from the respondents. Further, the petitioner is in absolute possession and enjoyment of the said lands. The highly competent senior counsel further submits that the petitioner's lands are not required for the purpose of the scheme formulated by the respondents. The highly competent senior counsel further submits that the Hon'ble Apex Court has held in various decisions that once the land which was acquired for the particular purpose is not required for that purpose for which it was acquired or for any other public purpose, they may transfer such lands to the original owner who is willing to repay the amount paid to him for acquisition of such lands. The highly competent senior counsel further submits that the petitioner had made a representation to the respondents for re-conveyance of the acquired lands in favour of the petitioner and the same was rejected by the respondents without assigning any valid reasons, in an arbitrary manner and as such, the rejection order is not an appropriate one. Hence, the highly competent senior counsel entreats the Court to allow the above writ petition. In support of his contentions, he has cited the following judgments:-

(i) G.V.Krishna Setty v. Government of Tamil Nadu reported in 2008 (4) CTC 657-

"Constitution of India, Article 226 - Writ Jurisdiction - Powers of Court - Re-opening a concluded issue after gap of 22 years - impermissibility of.

Writ Petitioner challenged order refusing re-conveyance of their acquired lands. After award, possession was taken over on 09.04.1986 in Writ Petition Challenging acquisition prior for re-transfer of acquired land was sought for. On 08.09.2003, Writ Petition was disposed of with direction to consider claim under Section 48-B of the said Act. Secretary to Government rejected representation by order dated 11.02.2004 by giving details of utilization of acquired lands.

Held: It is difficult for this Court to re-open said proceeding which was concluded by Award No.1/1985 and taking over of possession of land by TNHB on 09.04.1986. So, after a gap of 22 years, it is not prudent of a Writ Court to enter into such factual controversy.

Land Acquisition Act, 1894 (1 of 1894) (as amended by T.N.Act 16 of 1997), Section 48-B - Re-conveyance of acquired land - Scope of Section 48-B does not give any right to claim re-conveyance - It merely empowers

Government to re-convey provided conditions specified in said Section are fulfilled.

When the Government is satisfied that the land which vests in the Government under the said Act is not required for the purpose for which it was acquired, or for any other public purpose, the Government may transfer such land to the original owner who is willing to repay the amount paid to him under the Act for the acquisition of such land."

(ii) T.N.H.B. v. M.Kirubakaran reported in (2009) 6 MLJ 708 "Letters Patent Appeal, Clause 15 - Land Acquisition Act (1 of 1894), Section 48-B - Reconveyance of unutilized lands - Land acquired by Tamil Nadu Housing Board for proposed housing scheme - Some lands acquired under same scheme are re-conveyed to original owners - Similar application by respondents rejected - Writ petition challenging the order - Matter remitted back to Government - Appeal - In the first instance Government has to explore possibility of using land for any public purpose - In even if it is not required it has to be sold in public auction - Only if Government could not do so, claim of owner for re-conveyance can be considered - Claim of owners for re-conveyance not automatic and should be considered and could be rejected on reasonable grounds."

9. The highly competent Additional Government Pleader Mr.M.S.Ramesh appearing for the respondents 1 to 3 and 5 submits that the fifth respondent had initiated Land Acquisition Proceedings under the Old Act for acquiring the petitioner's lands and the neighbours lands for formation of Maraimalai Nagar New Satellite Town. Accordingly, the lands were acquired by the fifth respondent after strictly adhering to the legal procedures, who in turn, handed over the acquired lands to the fourth respondent herein for implementing the said scheme. Now, the acquired lands were occupied by the fourth respondent and which were in the care and custody of the fourth respondent. The highly competent Additional Government Pleader further submits that after acquiring the said lands, the compensation amount had been deposited into the Court. Therefore, the acquired lands cannot be re-conveyed to the petitioner since it is being utilized for implementation of Maraimalai Nagar Satellite Scheme. Hence, the highly competent Additional Government Pleader entreats the Court to dismiss the above writ petition.

10. The highly competent counsel Mr.A.Kumar appearing for the fourth respondent submits that the petitioner had made representations to the respondents for re-conveying the said acquired lands and the same were rejected after conducting a comprehensive enquiry and also assigned valid reasons stating that the acquired lands are required for the Satellite Scheme and other public

purposes. The highly competent counsel further submits that in order to acquire the said lands, there is no lapse on the side of the respondents, besides the compensation amount had been deposited and possession had been taken over and utilizing the same. Therefore, the above writ petition is not maintainable.

11. From the above discussions, this Court is of the view that:-

(i) The fifth respondent / Special Tahsildar (Land Acquisition) had initiated Land Acquisition Proceedings in the year 1974 for acquiring the petitioner's land and adjacent lands for formation of Maraimalai Nagar New Satellite Town. After a lapse of around 35 years, the scheme had not been implemented on the petitioner's land and as such, Acquisition Proceedings have become defunct.

(ii) As of now, the petitioner is occupying the subject matter of the land and carrying out cultivation. Besides, the petitioner had not received any compensation amount from the respondents and as such, the petitioner is entitled to obtain relief under Section 24(2) of the New Act 30 of 2013, as meted out to other landowners.

(iii) The first respondent had issued a Government Order in G.O.Ms.No.1452, dated 11.09.1986 and dropped the acquisition proceedings to certain landowners in the same scheme and as such, the petitioner is also entitled to get similar relief or maintaining equality.

(iv) One Mr.Anandan and others have filed a writ petition in W.P.No.2133 of 2003 and W.A.No.1570 of 1998 before this Court, challenging the acquisition proceedings and the same was allowed by this Court on 24.09.2001. Pursuant to this Court's order, the fifth respondent had passed a Government Order in G.O.Ms.No.70, dated 01.03.2007 and re-conveyed the acquired lands to the landowners / writ petitioners therein. Likewise, the petitioner is also entitled to secure the similar remedy, without any discrimination since the instant case is also similar in nature.

(v) The petitioner's lands have been classified as dry lands and they have been used for carrying out cultivation from time immemorial and they should not be shifted to some other place elsewhere. However, the Satellite Scheme can be established elsewhere. As such, no one will be placed into hardship or prejudiced. It is a pertinent question of maintaining the balance of convenience.

(vi) The respondents have not produced any authenticated documents or material evidence to show that the new satellite scheme

had been implemented after a lapse of around 35 years. Hence, the petitioner is entitled for re-conveyance of the lands, while the respondents can take up the other viable option and exhaust their remedy thereon.

12. On considering the facts and circumstances of the case and arguments advanced by the highly competent counsels on all sides and this Court's views mentioned above as (i) to (vi), the above writ petition is allowed. Consequently, the order passed in Letter No.6778/Nava 3(1)/07-2, dated 04.10.2007, by the first respondent is quashed. This Court directs the first respondent to issue a de-notifying notification for withdrawal of acquisition of lands situated in Survey No.140/27 - 7 cents, 140/28 - 7 cents, 146/1b - 31 cents, 147/1 - 29 cents and 172/1 - 38 cents, to an extent of Acre 1.12 cents, situated in Kilkarainai Village, Maraimalai Nagar, Kancheepuram District, within a period of two months from the date of receipt of a copy of this order.

13. In the result, the above writ petition is allowed. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar(CS-III)

Dt:24/2/2015

True Copy

Sub-Assistant Registrar

To

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

2. The District Collector,
Kancheepuram District,
Kancheepuram.

3. The Commissioner,
Land Administration,
Chepauk, Chennai - 600 005.

4. The Member Secretary,
CMDA,
Chennai - 600 008.

5. The Special Tahsildar,
Maraimalai Nagar (Scheme),
Maraimalai Nagar,
Kattankulathur.

+ 1 cc to Mr.M.Rajasekhar Advocate SR 4335

+ 1 cc to the Govt.Pleader High Court, Madras SR 5306

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prk24/2

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M.P.Nos.1 of 2008 and 1 of 2010



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