

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON 22.12.2014

DATED:06.01.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.16146 of 2010

and

M.P.Nos.1 to 3 of 2010

R.Revathy ... Petitioner

Vs.

1. The Principal Secretary to Government,
Municipal Administration &
Water supply Department,
Secretariat, Chennai-600 009.

2. State of Tamilnadu, rep. by
the Secretary to Government,
Revenue Department,
Fort St. George, Chennai-600 009.

3. The Chairman,
Thiruvottiyur Municipality,
Thiruvottiyur,
Chennai-600 019.

4. The Commissioner,
Thiruvottiyur Municipality,
Thiruvottiyur,
Chennai-600 019.

5. The Chairman,
Chennai Port Trust,
Chennai-600 001.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order dated 22.08.2008 in the letter No.14228/MAV/2007-7, passed by the first respondent and quash the same and consequently direct the respondents to reconvey the property situate in Survey No.35/2, 36/2, 37, 62/1, 62/2 and 63/2 of Thiruvottiyur Village, measuring 13.93 acres in favour of the petitioner.

For Petitioner : Mr.R.C.Paul Kanagaraj

For Respondents: Mr.P.Srinivas (for R3)
Mr.Vikram Ramakrishnan (for R5)
Mr.S.Saravanan (for R4)
Mr.M.S.Ramesh (for R1 and R2)
Additional Government Pleader

O R D E R

The short facts of the case are as follows:

The petitioner submits that the lands situated in Survey Nos.35/2, 36/2, 37, 62/1, 62/2 and 63/2 of Thiruvottiyur Village, measuring to an extent of 13.93 acres belong to her ancestor late Thiru.T.Shanmugam, who is none other than the grandfather of the petitioner's father. He having purchased the same by registered Sale Deed dated 26.11.1940 as registered document No.1929 of 1940 in the office of the Sub-Registrar, Sembium, he was in continuous possession and enjoyment of the same without any obstruction whatsoever. The patta No.297 also obtained in his name, the entire Revenue records were in his name and there is no dispute with regard to the same. Under a family partition between the said T.Shanmugam and his son Mr.T.S.Gopal registered as document No.31 of 1960, the above lands were allotted in favour of Mr.T.S.Gopal, under Schedule B of the partition deed registered in the office of the Sub-Registrar, Sembium, among other lands owned by Mr.T.Shanmugam and later on said T.Shanmugam expired on 16.03.1964.

2. The petitioner states that in the meanwhile the Government of Tamilnadu had notified for acquiring the said land for the Thiruvottiyur Municipality for the purpose of bore well water supply to the village of Thiruvottiyur and the entire procedure of acquisition was completed and an Award has been passed by the land acquisition Tahsildar on 14.04.1964 for Rs.1,53,255.91. Subsequent to the acquisition only a part of land was utilized for the purpose for which the land was acquired.

3. She submits that thereafter Thiru.T.S.Gopal died intestate on 28.07.1969 leaving behind his wife Tmt.G.Dhamayanthi, daughter Mrs.R.Anjugam and son Mr.T.G.Raja Shanmugam. Though an award was passed by the land acquisition Tahsildar, the subject land continued to be in their possession and enjoyment and the subject land is still lying vacant. The respondent Municipality did not use the said lands for the purpose for which the lands are acquired, till date. Our possession was never dislodged at any point of time. It is further

submitted that because of replenishment of sea water, the water available in the lands is not-portable thus the Government did not proceed with the object for which the land was acquired. Entire acquisition process was carried out by the Government without verifying the same. In the meanwhile the son of Late T.S.Gopal viz. T.G.Raja Shanmugam died intestate on 23.12.2004, leaving behind him the petitioner (wife) and only minor daughter Ms.R.Nandhini as his surviving legal heirs. After the death of the said T.G.Raja Shanmugam they are enjoying the property.

4. She states that as per the Tamil Nadu Government Gazette extraordinary publishes section 48-B of the Land Acquisition Act enabling the Government for the reconveyance of lands that are acquired by the Government back to the original owners if the lands are not utilized for the purpose acquired for or any other public Convenience Act has been passed with retrospective effect. She further states that even now the land is lying idle and respondent Municipality has not put up any building or not used for any other public purpose. A portion of the land is used for road and hence the present area available is only 12.6 acres. They have also made an application under Section 48-B of the Land Acquisition Act to the Government requesting the Government is reconvey the lands in question as the same was not used for the purpose for the last 43 years. They also agreed to pay the amount awarded with reasonable interest thereon.

5. In the meantime, the respondent Municipality tried to lease out the lands to the Chennai Port Trust for using the same as lorry parking space. She submitted that the respondent Municipality has got no right or power to lease out the same to the Chennai Port Trust. It is not for public purpose. The respondent Municipality can use the same for the purpose of bore well water supply from the land. But it cannot lease the land acquired from their family to the third respondent herein. She submitted that as per the standing orders of the board of revenue RSO-24(6)(12)(ii) the respondent Municipality cannot use the said land for any other purpose other than the purpose for which it was acquired. Hence, the above writ petition is filed.

6. The first respondent has filed a counter statement and referred the above writ petition. It is submitted that the lands in question have been acquired as early as 1964 and the proper compensation had been paid to the land owners. After such land was acquired it was put to the proposed use of drawing bore well water for the Thiruvottiyur village. Subsequently as stated, due to the intrusion of sea water, the bore wells were abandoned. Thereafter, the lands are in the possession of the respondents herein and have been used for various public purpose from time to time.

7. It is submitted that in 1964, an extent of 13.968 acres in

T.S.No.27 of Thiruvottiyur Municipality land belonged to Late Thiru.T.S.Gopal S/o Thiru.T.Shanmugam was acquired by Tahsildar (L.A.), Ponneri (T.K.) for a sum of Rs.1,53,255.91/- to the Thiruvottiyur Municipality (now zone-I of Corporation of Chennai) for its own use. It is also submitted that now due to proximity of the lands to the Container Terminal of the Chennai Port Trust, the lands have been leased to the fifth respondent for parking of the heavy vehicles that come to the said terminal. The lease deed was executed for three years from 2007 to 2010 (copy enclosed). After the said lease period ended, the fresh lease deed is to be executed and the administrative process is on. It is further submitted that the remuneration received from the lease of the lands is being used for the public purposes and is being included in the Municipal Budget for carrying out the various activities of the Municipality under the statute, such as provision of roads, water supply, drainage, licensing, town planning, etc. The said funds are now public revenue. It is nothing but a public purpose for which the lands are now being put to use. The statements of the petitioner he is in possession of the lands are totally false and baseless.

8. It is submitted that the various averments in this paragraph are denied. The very fact that the petitioner has made an application for re-conveyance of the lands under Section 48-B of the Land Acquisition Act for transfer of land to original owner would mean that the petitioner is not in possession of the lands. Further as already stated above, the lands are under the exclusive possession of the respondent herein and has been leased out to the fifth respondent and is being used as a lorry parking facility (G.O. Copy enclosed). It is submitted that the averments are denied and it is submitted that the provision of Section 48-B of the Land Acquisition Act will come into effect only when the land in question is vested with the State Government. When once the lands have been acquired and have been vested with the requisitioning body, there is no question of re-conveyance, that too when the land is being used for public purposes. It is further submitted that the Hon'ble Supreme Court of India has held that the lands acquired for public purposes can be used for the public purpose for which it was acquired and after the said purpose is satisfied, it can be used for any other public purpose. Moreover, after the purpose of acquisition is satisfied, the public authority concerned cannot be directed to re-convey it to the original owner and it should be disposed of only by public auction so that the maximum revenue can be earned. But in the present case, the land is being put to other public purposes and it is not lying waste. The more important purpose of providing of parking to the Vehicles that bring containers to the Container terminal is now being satisfied with the use of the lands that have been acquired.

9. It is submitted that when in the earlier period from 2007 to 2010, when the respondent herein leased out the lands to the fifth respondent, the petitioner herein filed W.P.No.13009 of 2007. The said writ petition had been kept pending and on 16.06.2010, the petitioner has withdrawn (order copy enclosed) the said writ petition. The Revenue Board Standing Order quoted has no application for the lands that have been acquired. It applies to other kinds of lands that have been placed at the disposal of the Local Body concerned. It is submitted that the first respondent after considering the entire issue has rejected the representation of the petitioner and the said impugned order is in public interest and it is perfectly valid in law. The lands in question are under use by the respondent herein and it has been leased out to the fifth respondent for the parking of vehicles that come to the container terminal at the Port of Chennai. The same is an essential public service also. It is the bounden duty of the local body to provide the parking places to the vehicles which are used for public utility. The income from the lease of the said property is also being put to the use of the public and the public is being benefited from the same. It is also submitted that the Government have issued G.O.(D) No.1, Municipal Administration and Water Supply Department, dated 21.01.2011 (copy enclosed) extending the period of lease to 30 years due to public interest. The provisions of section 48-B do not apply to the lands that are not vested with the State Government and that which have been handed over to the requisitioning Body, i.e. the fourth respondent municipality, after acquisition. It is submitted that the contents at paragraph 8 of the counter affidavit is applicable to them. With regard to the averments made in grounds (g) and (i) of the affidavit, it is submitted that reasons stated in the paragraph 10 of Counter affidavit will apply to them. It is submitted that the petitioner has approached this Court after more than two years since the impugned order has been passed by the first respondent. This Court in its interim order dated 01.03.2011 has vacated the stay order. In the above stated facts and circumstances, it is prayed that this Court may be pleased to dismiss the above writ petition.

10. The highly competent counsel Mr.R.C.Paul Kanagaraj appearing for the petitioner submits that the petitioner has succeeded the subject matter of the landed property through his ancestors. The Government of Tamilnadu had acquired the land under the old act for the Thiruvottiyur Municipality for the purpose of bore well water supply to the village of Thiruvottiyur. After completion of the land acquisition proceedings an award has been passed by the land acquisition officer / Tahsildar on 14.04.1964 and fixed compensation a sum of Rs.1,53,255.91. After acquiring the said property only a part of the land was utilized for the said purpose, however acquiring the said property the petitioner's ancestors were in possession continuously but the respondent / Municipality did not use the said lands for the said purpose.

11. The highly competent counsel further submits that because of replenishment of sea water, the water available in the lands is not-portable, thus the Government did not proceed with the object for which the land was acquired. In the meanwhile, the petitioner's husband expired leaving behind him the petitioner / wife and her daughter namely R.Nandini as sole survivors and legal heirs of late T.G.Raja Shanmugam. As per the Government notification, if the acquired land had not been utilized for the said purpose then the original owner is entitled for reconveyance of the acquired lands. Accordingly, the petitioner is entitled to secure relief under Section 48-B of the old Act. The respondent / Municipality had not put up any building or not used for any other public purpose or portion of the land is used for road and the remaining area is only to an extent of 12.61 acres. The petitioner made an application to the Government and requesting them to reconvey the acquired land after receiving the original compensation amount with admissible interest.

12. The very competent counsel further submits that the Thiruvottiyur Municipality tried to lease out the lands to the Chennai Port Trust for using the same as lorry parking space. The Thiruvottiyur Municipality has no right to lease out the acquired property to the Chennai Port Trust since the said property had been acquired for the purpose of bore well water to be supplied from the acquired land but the said purpose was not successful due to non portability of the water. The Principal Secretary, who is attached to the Municipal Administrative Department had issued a G.O. No.92 dated 21.01.2011 and ordered to lease out the acquired property to an extent of 11.26 acres to the Chennai Port Trust for parking of containers for a monthly rent of Rs.11,01,374/-. This original lease agreement took effect from 01.07.2007 for a period of 9 years. Thereafter, the Municipality had passed a resolution to extend the lease agreement for another 30 years on condition that the monthly rent will be extended by 15%, once in 3 years. The same was endorsed by the first respondent herein. The first respondent proceeding and the Thiruvottiyur Municipality resolution are using the petitioner's land for their personal gain i.e. for the Municipality. Now the aggrieved person / petitioner seeks remedy to reconvey the said lands to the petitioner after receiving original compensation received by the ancestors of the petitioner with admissible interest thereon subject to the Municipality's deduction of the rental amount, hence the highly competent counsel Mr.R.C.Paul Kanagaraj entreats the Court to allow the above writ petition.

13. Dr.(Lt.COL) C.V.Krishnaswami (Retd.), S/o. Late Venkataswamy, Coimbatore - 641 012 v. State of Tamil Nadu, rep. By the Secretary to Government, Adi Dravidar and Tribal Welfare Department, Chennai - 600 009 and Others.

Property Laws - Land Acquisition - Re-Convey of land - Tamil Nadu Land Acquisition Act, 1894, Section 48-B - The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013, Section 24(2) - Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1978 - Petitioner purchased land in question to put up hospital, who later found that the lands were in Land Acquisition Proceedings - Representation made to Collector under Section 48B of Land Acquisition Act to consider request to release lands from Land Acquisition - Collector passed order rejecting Application - Writ petition - Whether Petitioner is entitled to re-convey and release of land from acquisition - Held, land acquisition initiated for purpose of providing free house sites to poor houseless Adi Dravidars - If any land is acquired for Adi Dravida people, Respondents ought to have acquired land under Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act - When representation of other owner for deletion of holding from acquisition considered, main purpose for which acquisition initiated defeated - Land Acquisition Proceedings are not valid under law - Petitioners in physical possession of land in question - Compensation amount awarded lying unused - Land acquired against wish - Petitioner entitled to relief under Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act - Remedial solution to be arranged by Respondents to provide free house sites to houseless Adi Dravidars situated at sites of better environment - Collector to re-convey land - Petition allowed.

14. The highly competent Additional Government Pleader Mr.M.S.Ramesh submits that the subject land to an extent of 13.968 acres comprised in T.S.No.27 situated at Thiruvottiyur Municipality was belonging to the late Thiru.T.S.Gopal, the same was acquired under the old Act 1894 by the Land Acquisition Tahsildar after adopting necessary legal formalities. This acquisition proceedings had been completed in the year 1964 and compensation also paid to the land owner a sum of Rs.1,53,255.91. As such, the Municipality is the absolute owner of the property. After a lapse of 50 years the petitioner's claim cannot be maintainable. The petitioner's plea is as an after thought. Now, the said acquired property is leased to the Chennai Port Trust for parking the container vehicles, this also for public purpose since the Municipality as well as Port Trust are functioning for the general public welfare. The leased amount is being utilized for various social schemes of the Municipality viz. Road formation, water supply, drainage, health centre, etc. Therefore, at this stage the plea of the petitioner cannot be entertained. Further, the said petitioner had filed another writ petition in the year 2007 and the same was withdrawn by her, therefore, on the same cause of action, this writ petition has been filed which is not maintainable under law.

15. The highly competent counsel Mr.P.Srinivas appearing for the third respondent submits that the subject property had been

acquired in the year 1964 and compensation also paid to the land owners. From the date of acquisition the Thiruvottiyur Municipality occupied the said property and enjoying the same as directed for public purpose. Out of the acquired land a portion of this land had been utilized for road formation. The Municipality Councilors had conducted a meeting and a resolution had been passed after detailed discussions. Thereafter, the said landed property was leased out to the fifth respondent for three years i.e. from 2007 to 2010. Thereafter, another resolution was passed renewing the lease agreement for a period of 30 years for which an unanimous resolution was passed, the same was referred to the first respondent herein. The first respondent had approved the same by way of issuance of a Government order.

16. The very competent counsel Mr.S.Saravanan appearing for the fourth respondent submits that for the past 40 years the land had been subjected to sea water intrusion and as a result the area of the acquired land had been reduced to 11.26 acres. Further, the water beneath the acquired lands was not suitable being not-portable water. Therefore, the subject land was leased out to the fifth respondent herein for usage as a container parking but which also served as general public convenience. Therefore, the above writ petition is not maintainable since the acquired land is now for use of general public at large.

17. The highly competent counsel Mr.Vikram Ramakrishnan appearing for the fifth respondent submits that the container vehicles are plying between the Port Trust and other destination places resulting in heavy traffic volume. Now, the containers are parking on the acquired lands which has been leased out to the Port Trust. The Port Trust and the Municipality are in general serving the public. After arranging these facilities the container vehicles are not parking on the road consequently traffic will not be disturbed. Now, the public vehicles are in free passage on the road without inconvenience to any one. Hence, the learned counsel entreats the Court to dismiss the above writ petition.

18. From the above discussions this Court is of the view:

(1) The landed properties had been acquired for the purpose of drawing portable water through bore wells for the Thiruvottiyur Municipality areas, the said purpose became impracticable due to intrusion of non-portable water from the sea. Therefore, the said purpose became unachievable;

(2) Now the respondents 3 and 4 had passed a resolution for leasing out the said property to and in favour of the fifth respondent herein on a monthly rent of Rs.11,01,374/- with effect from 01.07.2007 for the purpose of parking the container vehicles initially for a period of three years, thereafter it has been renewed

for a further period of 30 years on condition that the pricing for the leased land will be enhanced by 15% once in 3 years. Even though this being an alternative arrangement nevertheless it serves for the welfare of the general public. However, the fifth respondent and other respondents namely 3 and 4 are benefiting by accrued benefit which is treated as a commercial purpose. Therefore, the acquired lands have not been utilized for the purpose of drawing drinking water through bore wells beneath the lands as originally envisaged;

(3)The property had been acquired in the year 1964 but the same remained vacant till the year 2007, thereafter, the third and fourth respondents leased out the property to the Port Trust. Now, the fifth respondent is utilizing the acquired land for parking of container vehicles as such the fifth respondent / Chennai Port Trust are performing affectively and with purpose. Equally the third and fourth respondents are enjoying monetary benefits after leasing out of the acquired property which is against the original purpose of the third and fourth respondents. Therefore, the petitioner is praying for reconveyance of the land from the respondents on condition that the petitioner shall remit the original compensation amount with admissible interest thereon;

(4)The third and fourth respondents and the fifth respondent are Government bodies which are functioning under the State and Central Governments. Now, they are jointly in enjoyment of the acquired property which runs against the private individual's civil rights over the said property.

19. Considering the facts and circumstances of the case and arguments advanced by the learned counsels on all sides and perusing the typed set of papers besides the views of this Court as mentioned in 1 to 4, the above writ petition is allowed. Consequently, the impugned order dated 22.08.2008 in letter No.14228/MAB/2007-7 passed by the first respondent is quashed. Further, this Court directs the respondents to reconvey the property situated at Survey Nos.35/2, 36/2, 37, 62/1, 62/2 and 63/2 of Thiruvottiyur Village measuring to an extent of 13.93 acres in favour of the petitioner within a period of 3 months from the date of receipt of this order, after receiving the original compensation amount with admissible interest thereon from the petitioner. Accordingly ordered. No costs. Consequently, connected miscellaneous petitions are closed.

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Assistant Registrar()

Dt:29/1/2015

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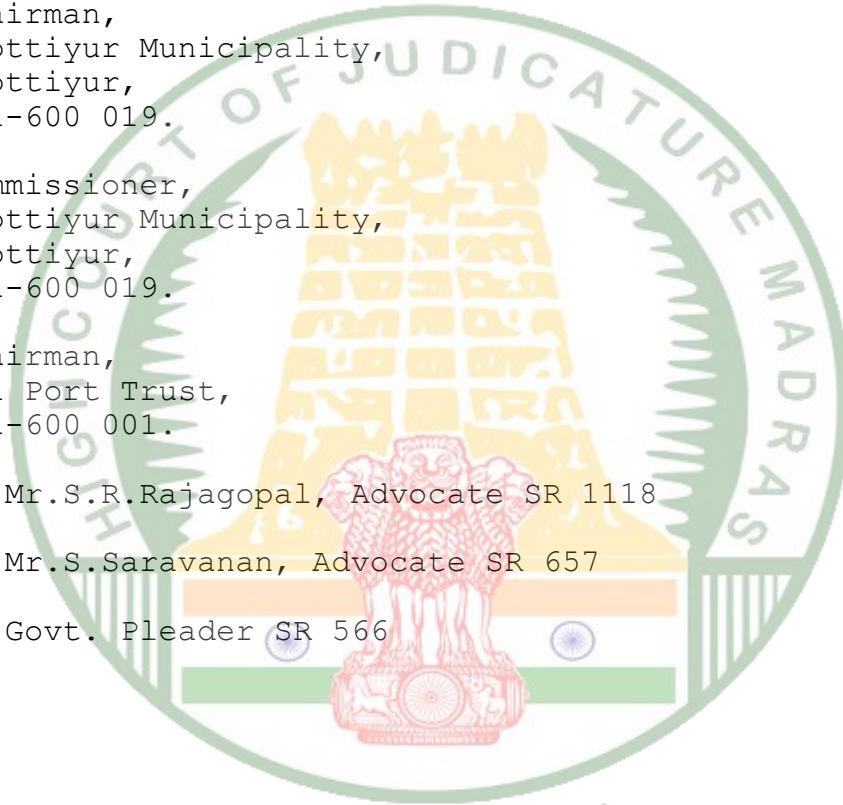
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+ 1 cc to Mr.S.R.Rajagopal, Advocate SR 1118

+ 1 cc to Mr.S.Saravanan, Advocate SR 657

+ 1 cc to Govt. Pleader SR 566

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