

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON 27/11/2014

DATED: 17/12/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.3613 of 2013

G.Sivanandam

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Petitioner

Vs.

- 1.The Government of Tamil Nadu,
Rep. by its Secretary to Government,
Ministry of Housing & Urban Department,
Fort St. George, Chennai-600 009.
- 2.The Tamil Nadu Housing Board,
Nandanam, Chennai-600 035.
Rep. by its Managing Director.
- 3.The Special Deputy Collector,
(Land Acquisition),
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Building,
Gandhi Irwin Road, Egmore, Chennai-600 008.
- 4.The Commissioner,
Corporation of Chennai,
Chennai.

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Respondents

(Cause title amended as per
order dated 25.07.2014 in M.P.No.1 of 2014 in
W.P.No.3613 of 2013)

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for a Writ of Certiorarified Mandamus, to quash the order in Letter No.L.A.3(5)/5777/02, dated 25.07.2012 of the second respondent and subsequently direct the first respondent to reconvey the lands in Survey No.331/2 part situated in Mogappair Village, Ambattur Taluk, Thiruvallur District to the petitioner.

For Petitioner : Mrs.Sudharshana Sunder

For Respondents: Mr.M.S.Ramesh

Addl. Govt. Pleader for R1 and R3

Mr.B.Vivekavanan (TNHB) for R2

Mr.A.Nagarajan for R4

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O R D E R

The petitioner submits that land measuring an extent of 7.71 acres comprised in Survey Nos.331/2 and 332, 4.20 acres in Survey No.333, C-33, acres in S.No.334/1 and 334/2 and 1.88 acres in Survey No.319, 326/1, 320/2A and 327 and 329 situated at Mugappair Village, Ambattur Taluk, Thiruvallur District originally belonged to his father. The petitioner along with his brothers and sisters acquired the property by inheritance and they are co-owners of the said land. The petitioner further submits that the land in Survey No.332 measuring 3.20 acres was allotted to his exclusive share and in law vests in him. The petitioner further submits that the said property along with other lands of large extent were acquired by the first respondent for implementation of Ambattur Neighbourhood Scheme. Notification under Section 4(1) of the Land Acquisition Act was issued by the Government in G.O.Rt No.260 Housing and Urban Development Department, dated 23.10.1975 and the award came to be passed in G.O.Ms.No.1524 Housing and Urban Development Department, dated 09.11.1978.

2. The petitioner further submits that a few landowners preferred writ petitions challenging the acquisition and the Hon'ble Division Bench of this Court quashed the declaration under Section 6(1) of the Act on 08.01.1988 in respect of those writ petitioners inter-alia holding that Rule 3(b) of the Tamil Nadu Land Acquisition Rules having not been complied with and the second provision of Section 6(1) of the Act having not been complied while issuing the declaration under Section 6 of the Act. One of the writ petitioners alone moved the Hon'ble Supreme Court as the declaration under Section 6 of the Act alone had been quashed and the notification issued under Section 4(1) of the Act has been retained as per the judgment of the Hon'ble Division Bench. The Hon'ble Supreme Court, on finding that no declaration could be issued as on the date of the order as the period stipulated under Section 6 of the Act having elapsed, allowed the special leave petition and quashed the acquisition in respect of that petitioner alone. Notification under Section 4(1) of the Act was also quashed but, however liberty was granted to issue fresh notification. The

petitioner further submits that the entire acquisition proceedings were quashed. Even so, the respondent did not issue any fresh proceedings but untenably retained the entire land including the property belonging to him. The petitioner along with his brothers and sisters as legal-heirs filed the writ petition in W.P.No.786 of 1997 for return / reconveyance of lands praying for a direction to Government to issue a no objection certificate in favour of them in respect of their lands so as to enable them to develop the same as they deemed fit. This Court allowed the above writ petition directing them to make representations to the Government. However, for the representation made by him, his brothers and sisters, the Government rejected the representation stating that the lands were required for some other purpose.

3. The petitioner further submits that he is entitled for re-conveyance of the property lands under Section 48B of the Land Acquisition Act. Hence, the petitioner along with his brothers and sisters filed the writ petition in W.P.No.10911 of 2003 to call for the records of the orders of the first respondent passed on 15.05.2001 and to quash the same and direct the first respondent to re-convey the said land in favour of the petitioners under Section 48B of the Land Acquisition Act, and restore the lands to him and to recover the same. The petitioner further submits that the first respondent filed counter stating that the land in Survey No.331/2 has been utilized by Tamil Nadu Housing Board for construction of 160 HIG flats or allotted for roads and parks. Portions are said to be handed over to the Ambattur Municipality. The bus stand was allegedly constructed in the said land which was handed over to the Pallavan Transport Corporation. The land in S.F.No.332-part was allegedly utilized for bus stand which was handed over to the Transport Corporation and part of the land was allegedly utilized for telephone exchange after being handed over to the Telephone Department. The Tamil Nadu Electricity Board utilized portion and part of the lands was utilized for deaf and dumb school. It was further stated in the counter filed in writ petition in W.P.No.10911 of 2003 that the land in S.F.No.334/1, 2 were fully utilized for residential plots and roads. It was further stated that the entire extent of lands acquired have been utilized and that there is no valuable land for reconveyance. Based on the said representation, the Court was misled in the said writ petition to hold the landowners are disentitled from even questioning the acquisition proceedings itself after the award is passed and that the claim for reconveyance certainly cannot be entertained. Further, the petitioners were found in fault for not being diligent for not invoking the extraordinary jurisdiction within reasonable time and hence, the writ petition came to be dismissed. The petitioner further submits that in the mean time some of the owners of the plot viz., J.Shenbagavali, D.Malarkodi,

M.Seshavanthi and Aasirvatham who had not earlier challenged the acquisition proceedings filed W.P.No.2972 of 2002 seeking specifically for reconveyance of their land. The aforesaid W.P. was disposed of by giving a general direction to the authorities to consider the petitioner's representation. As against the aforesaid order, the said petitioner's filed writ appeals. By order dated 26.02.2002, this Court in W.A.Nos.464 and 465 of 2002 had directed the first respondent therein to reconvey the land to the said petitioners / appellants. Since this order was not complied with, the petitioners had filed the contempt petition and the property in Survey No.331/2 measuring an extent of 75 cents was directed to be reconveyed to the said A.Shenbagavalli and others. Pursuant thereto a deed of reconveyance was executed on 04.02.2004 and registered as Document No.446 of 2004 in SRO, Ambattur.

4. The petitioner further submits that the Survey No.331/2 is adjacent to Survey No.332 and the perusal of the deed of reconveyance dated 04.02.2004 executed by the first respondent shows that the land in Survey No.332 which according to the first respondent was handed over to the Transport Corporation and the telephone exchange is in fact still vacant. Hence, the petitioner gave another representation on 20.01.2005 stating the above facts. However, no order has been passed. Hence, the petitioner filed a writ petition in W.P.No.32539 of 2005 before this Court and by order dated 07.10.2005, this Court was pleased to direct the first respondent to consider the representation of the petitioner within 12 weeks from the date of receipt of the order. The petitioner submits that however after several reminders, the first respondent by order dated 25.07.2012 in letter No.La.3(5)/5777/02 had sent a reply which is totally unsustainable.

5. The petitioner further submits that the property in Survey No.332 in Mogappari Village, Ambattur Taluk, Tiruvallur District to an extent of 2.60 acres has not been utilized by the respondents till date. It is vacant and available for reconveyance. The adjacent land viz., 331/2 has been conveyed to its owners pursuant to the Hon'ble Court directions. Further, the petitioner had disclosed to this Court about filing of the earlier writ petition in W.P.No.10911/2003 and this Court had directed the respondent to consider the representation in the light of the submissions made by the petitioner. Further, as already stated the property in S.No.332 is unutilized and available for reconveyance. Hence, the petitioner entreats the Court to allow the above writ petition.

6. The second respondent has filed a counter statement and resisted the above writ petition. The second respondent submits that the Notification under Section 4(1) of the Land Acquisition Act was issued under G.O.Rt.260, Housing and Urban

Development Department, dated 23.10.1975 for acquiring large extent of lands for implementation of Ambattur Neighbourhood Scheme and the award was passed in G.O.Ms.No.1524, Housing and Urban Development Department, dated 09.11.1978. The second respondent further submits that the petitioner along with her brothers and sisters filed writ petition in W.P.No.10911 of 2013 to call for the records of the first respondent passed on 15.05.2001 and to quash the same and direct the respondent to re-convey the said land in favour of the petitioner under Section 48B of the Land Acquisition Act. The second respondent further submits that the first respondent filed counter affidavit stating that the entire extent of lands acquired have been utilized and that there are no lands available for re-conveyance and this Court was pleased to dismiss the petition holding that the landowners are disentitled from even questioning the acquisition proceedings after the award was passed and that the claim for reconveyance cannot be entertained and the order has now become final.

7. The second respondent further submits that the lands in Survey No.331/1 to an extent of 0.06 acres and in Survey No.332 to an extent of 5.20 acres of Mogappari Village, were acquired and taken over from the Land Acquisition Officer on 11.08.1981 and 19.08.1981 after passing of Award No.7/81, dated 30.07.1981 and the entire extent of lands acquired were utilized for Mogappair Site and service scheme. The second respondent further submits that the lands in Survey No.331/1 to an extent of 0.06 acres have been utilized for prime commercial and for bus stand and road and the lands in Survey No.331/2 to an extent of 2.60 acres was utilized for the Park and Road facilities and the lands in Survey No.332 to an extent of 5.20 acres were utilized for public purpose, commercial, residential, park site etc. The second respondent further submits that the contentions of the petitioner that the lands in Survey No.332 in Mogappair Village, Ambattur Taluk, Thiruvallur District to an extent of 2.60 acres has not been utilized and the lands are vacant and available for reconveyance are denied. The above said lands were acquired and the same was handed over to Local Municipality on 21.07.1987 and is now maintained by the Ambattur Municipality as on date and hence, there is no land available for reconveyance in Survey No.332 of Mogappair Village in the possession of the TNHB. The second respondent further submits that since the lands in Survey No.332 of Mogappair Village were utilized for the purpose for which it was acquired and hence, the lands are not available for reconveyance as claimed by the petitioner and in such circumstances, the lands cannot be reconveyed under Section 48B of the Land Acquisition Act. The second respondent further submits that the Hon'ble Supreme Court has made it very clear that even if the land is not required for any other public purpose, the land should be put to public auction instead of disposal to the erstwhile owner (Civil Appeal

Nos.3148-3149 of 2002). Hence, the second respondent entreats the Court to dismiss the above writ petition.

8. The fourth respondent has filed a counter affidavit and resisted the above writ petition. The fourth respondent submits that the Tamil Nadu Housing Board handed over the land to Ambattur Municipality through Gift deed vide No.5536/2010, dated 08.11.2010 to an extent of 47 grounds and 604 sq.ft. for the purpose of park which lies in 331/2 pt, 332 pt, 334/4 pt, Mogappair Village and the same has been acted upon by taking possession. The Ambattur Municipality has since merged with Corporation of Chennai and the said land is under the possession of Corporation of Chennai. The fourth respondent further submits that the land in Survey No.331/2 pt, 332 pt, 334/4pt lies in Mogappair Village, is under the possession of Corporation of Chennai and protected with compound wall. The said land will be formed as a park for the use of public. The Corporation has also spent a sum of Rs.3,04,684/- for the improvement of this land for the use of public. The fourth respondent further submits that the gifted land is being improved as a park in a short period for the use of public. There is no park in and around the locality and hence, it is required for Corporation.

9. The fourth respondent further submits that the land Gifted by TNHB at Survey No.331/2pt, 332 pt, 334 pt, Mogappair Village are under the possession of Corporation of Chennai and protected with compound wall and it is being improved as a park for the use of public. The fourth respondent further submits that this Court did not pass any order to reconvey the land at Survey No.331/2 pt, 332 pt, 334/4 pt, Mogappair Village to an extent of 47 G-604 sq.ft. which is vested with the Corporation of Chennai and protected with compound wall by erstwhile Ambattur Municipality. The Corporation of Chennai has prepared an estimate of Rs.130.90 lakhs to form a park in the said land and to get administrative sanction at the earliest. The fourth respondent further submits that the TNHB has handed over the land to erstwhile Ambattur Municipality for the use of park and they had constructed a compound wall to protect it. Hence, the fourth respondent entreats the Court to dismiss the above writ petition.

10. The highly competent counsel Mrs.Sudharshana Sunder appearing for the petitioner submits that the subject matter of the property originally belonged to the petitioner's father and thereafter, he and his brothers and sisters succeeded the said property and now all are co-owners of the said property. The petitioner has been allotted 3.20 acres lands comprised in Survey Nos.332, situated at Mogappair Village. The first respondent had issued G.O. to acquire the petitioner's lands and other lands for implementation of Neighbourhood

Scheme. A few land owners challenged the acquisition proceedings before this Court. The petitioner went to Hon'ble Supreme Court on the said notification and the Hon'ble Supreme Court quashed the order passed in the said Land Acquisition Proceedings and given liberty to the respondents to issue fresh notification if the said land is required for the said purpose. As of now, no notification has been issued. The petitioner's brothers and sisters made representation to the Government to re-convey the said lands. The petitioner also made similar representation to the Government and sought reconveyance of the lands. The same was rejected. Hence, the petitioner and his brother's and sisters have filed writ petition No.10911 of 2003 to quash the first respondent's rejection order.

11. The highly competent counsel appearing for the petitioner further submits that the first respondent has filed counter statement, wherein it has been stated that the acquired property has been utilized by the Tamil Nadu Housing Board for constructions of flats, road formation and park. Further, a portion of the land has been allotted to the Transport Corporation and Telephone Exchange. Actually, the acquired lands have not been fully utilized by the respondents. Some of the landowners have filed writ petitions and the same were dismissed. Hence, Writ Appeals have been filed by the same petitioners. The same was allowed and the first respondent was directed to re-convey the acquired land to the said petitioners viz., J.Shenbagavali, D.Malarkodi, M.Seshavanthi and Aasirvatham. The order of the Hon'ble Division Bench of this Court has not been complied with. Hence, the said petitioner had moved contempt petition and then the respondents had reconveyed the said lands to an extent at 75 cents comprised in S.No.331/2 by way of registered document bearing No.446 of 2004, on the file of Sub Registrar, Ambattur. The petitioner is also entitled to receive same remedy. The acquired land is still vacant. Hence, the petitioner made another representations dated 20.01.2005 to the respondents. The same has not been considered. Hence, the petitioner has filed writ petition in W.P.No.32539 of 2005 before this Court. This Court was pleased to direct the respondents to dispose the petitioner's representation on merits within a period of eight weeks. On the basis of the direction of this Court, the second respondent passed the impugned order and rejected the petitioner's claim in an arbitrary manner. The highly competent counsel further submits that the acquired lands belongs to the petitioner and are still vacant and as such, the subject lands is not required for the said purpose. Hence, the highly competent counsel entreats the Court to set-aside the second respondent's order and consequently direct the respondents to reconvey the said lands.

12. The highly competent Additional Government Pleader Mr.M.S.Ramesh appearing for the respondents 1 and 3 submits that the first respondent had issued G.O. to acquire the petitioner's lands and others lands for implementation of Ambattur Neighbourhood Scheme. To that effect, the G.O. had been issued in the year 1975. On the basis of G.O., the third respondent had acquired the land under the Old Act. After acquiring the said land, the same had been handed over to the Tamil Nadu Housing Board for the implementation of Neighbourhood Housing Scheme. The Land Acquisition Officer had passed award in the year 1981. Thereafter, the petitioner made several representations to reconvey the said land under Section 48B of the Land Acquisition Act. The same was rejected since the entire acquired lands had been utilized. Therefore, the highly competent Additional Government Pleader entreats the Court to dismiss the above writ petition.

13. The highly competent counsel Mr.B.Vivekavanam appearing for the second respondent submits that the first respondent had issued G.O.Ms.No.260, dated 23.10.1975 for acquiring large extent of lands for implementation of Ambattur Neighbourhood Scheme. Accordingly, the third respondent had acquired the petitioner's lands and others lands and the same had been handed over to the Housing Board for implementation of Neighbourhood Scheme. Award also has been passed to the landowners. Now, the entire acquired lands have been utilized. Hence, the highly competent counsel entreats the Court to dismiss the above writ petition.

14. The highly competent counsel Mr.A.Nagarajan appearing for the fourth respondent submits that the Tamil Nadu Housing Board had handed over a portion of acquired lands to the fourth respondent by way of a gift deed dated 08.11.2010 to an extent of 47 grounds and 604 sq.ft. Now, the fourth respondent / Ambattur Municipality, has been merged with the Chennai Corporation. Now, the allotted lands are under the care and maintenance by the fourth respondent. Therefore, the petitioner's claim cannot be entertained. Hence, the highly competent counsel entreats the Court to dismiss the above writ petition.

15. On considering the facts and circumstances of the case and arguments advanced by the highly competent counsels on either side and on perusing the typed-set of papers and on scrutinizing the impugned order of the second respondent, it is seen that the acquired lands were also utilized for implementation of J.J.Nagar East Scheme which involves larger public interest. No piece of lands are available as unused. This reply has been given by the second respondent on the basis of documentary proof maintained by the Government. Further, the petitioner had not produced any documentary proof to prove that

the acquired lands are still vacant and had not been utilized for the said purpose. Hence, the above writ petition is dismissed. There is no order as to costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

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To

- 1.The Secretary to Government,
Government of Tamil Nadu,
Ministry of Housing & Urban Department,
Fort St. George, Chennai-600 009.
2. The Managing Director.
Tamil Nadu Housing Board,
Nandanam, Chennai-600 035.
- 3.The Special Deputy Collector,
(Land Acquisition),
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Building,
Gandhi Irwin Road, Egmore, Chennai-600 008.
- 4.The Commissioner,
Corporation of Chennai,
Chennai.

+2 ccs to Government Pleader sr.69236
& 69237/15

+1 cc to Mr.B.Vivekavanam Advocate sr.68577/15

W.P.No.3613 of 2013

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