

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON 17/12/2014

DATED: 20 /02/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.1532 of 2013 &
M.P.Nos.1 of 2013 and 1 of 2014

K.V.Srinivasan
Represented by his Power of Attorney,
S.Srividhya,
Residing at
Flat No.H, Visaka Block,
II Floor, Nakshatra,
Old State Bank Colony, 3rd Street,
West Tambaram, Chennai - 600 045. Petitioner

Vs.

1. State of Tamil Nadu,
Rep. by its Secretary,
Housing and Urban Development,
Fort St. George,
Chennai - 600 009.

2.The Managing Director,
The Tamil Nadu Housing Board,
Nandanam, Chennai - 600 035.

3.The Chairman,
The Tamil Nadu Housing Board,
Nandanam, Chennai - 600 035.

4.The Executive Engineer and
Administrative Officer,
K.K.Nagar,
Tamil Nadu Housing Board,
Chennai - 600 083.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for a Writ of Mandamus, to direct the respondents to consider and pass orders in respect of the representation made by the petitioner dated 01.10.2012 and pass such further or other order as this Hon'ble Court may deem fit and proper in the circumstances of the case.

For Petitioner : Mr.K.M.Vijayan, Senior Counsel
For Mr.T.Karthick Srinath

For Respondents : Mr.S.Gomathinayagam
Additional Advocate General
Assisted by Mr.V.Shanmugasundar
Government Advocate for R1

Mr.C.Kasirajan for R2 to R4

ORDER

The petitioner submits that he is the absolute owner of the Flat bearing No.H, to an extent of 1380 sq.ft. (Super built area), Visaka Block, II Floor, Nakshatra, along with undivided share of 680.320 sq.ft. in all that is part and parcel of land to an extent of 98597.16 sq.ft. at Old State Bank Colony, 3rd Street, West Tambaram, Chennai-600 045 and has purchased the said undivided share vide Deed of Sale dated 02.06.2010 registered as Document No.5498 of 2010 in the Office of the SRO, Tambaram from one Mr.V.Chandrasekaran. The petitioner further submits that the facts narrated herein would show as to how the owners (who are innocent/bona fide purchasers) of the flat complex at "Nakshathra" face the threat of losing their only shelter and their entire life savings and virtually coming to the streets (with their families) because of certain acts of commission and omission by the authorities including respondents 2 to 4 herein, in gross violation of Principles of Natural Justice, which in turn will be a flagrant violation of Articles 14 and 21 of the Constitution of India.

2. The petitioner further submits that during the year 2008, he came to know about the project through their friends and newspapers advertisement(s) and thereafter he directly visited the site and saw the construction of the apartments going on in full swing with several workers working on the site. The total extent of land in which the project was going on was compounded. The petitioner booked the flat for valuable consideration and after booking the aforesaid flat like other flat owners approached the Financial Institution / Bank for housing loan and the Bank, through his legal advisor, after detailed scrutiny of the title deeds of the land, on which the project has been proposed, including Planning Permission dated 16.03.2007 bearing No.B/Spl.Bldg/102 A to J/2007 issued by CMDA who has in turn issued the same after detailed scrutiny of title by its own panel of Advocates and Work Permit dated 28.03.2007 bearing No.169/07 issued by Tambaram Municipality (the Local Body), sanctioned the loan. A portion of the consideration was paid by petitioner from out of his life time savings, retirement benefits and selling his jewellery. The

petitioner further submits that on further verification, he found that Revenue Records like patta, chitta and adangal were available in the name of the predecessors in title of his vendors. After the lands were purchased by his vendors Revenue Records have been transferred / mutated in the name of his vendors and patta bearing Nos.3260, 3261 and 3394 all dated 29.11.2006, have been issued by Head Quarters, Deputy Tahsildar, Tambaram. There was absolutely no record of ownership or acquisition by Tamil Nadu Housing Board. The petitioner further submits that Chitta and Adangal for the Fasli 1416 have been issued inter-alia in respect of S.Nos.283/1, 284/1, 284/2 and 284/3. The petitioner further submits that their vendor have also paid Land Tax in respect of the lands. Encumbrance certificates from the year 1960 to the year 2005 in respect of S.Nos.283/1, 284/1, 284/2 and 284/3 reflects only the transactions in favour of his vendors and no other transaction or indication reflecting the ownership of TNHB is available.

3. The petitioner further submits that only after examining all title deeds and duly verifying the entire records before the Revenue Authorities, Encumbrance Certificate from the Sub-Registrar Office, Tambaram and obtaining legal opinion, the petitioner purchased his respective flat by obtaining loan from the nationalized bank who in turn have sanctioned the loan after detailed scrutiny of title of the land and building through their legal panel of Advocates. It is submitted that the entire project "NAKSHATRA" has been constructed on the land to a total extent of 5.52 acres particularly designed to suit the middle and lower income groups, out of which only 2.26 acres is claimed by the respondents. The entire construction was duly approved by the Chennai Metropolitan Development Authority. The petitioner further submits that he had taken possession of the said flat completed in all respects and the petitioner along with other flat owners are residing in the said flats along with their respective family, children and aged parents since then. CMDA has also issued completion certificate dated 23.02.2011 after inspection and satisfying itself that the building has been constructed as per the Planning Permission and without any deviation.

4. The petitioner further submits that after he took possession and started living in the apartment, to his shock and surprise through newspapers and other sources along with other flat owners came to know that the land in which the flats have been constructed was once under Land Acquisition Proceedings and that Land Acquisitions in respect of land of an extent of 2.26 acres was not challenged and released from the clutches of Land Acquisition. On enquiry, the petitioner came to know that the Government of Tamil Nadu vide G.O.Ms.No.826, Housing Urban Development Department issued a Notification dated 15.05.1978 under Section 4(1) of Land Acquisition Act for the formation of a Tambaram Neighbourhood Housing Scheme in respect of land to an extent of 58.02 1/2 acres.

The above acquisition was challenged by the affected landowners by way of various writ petitions. The learned Single Judge of this Court, by an order dated 16.12.1983, quashed the Declaration on the ground that there was serious flaw in not conducting the enquiry and liberty was given to the Government to take fresh acquisition proceedings from the stage of Section 4(1) if they desire. As against the non-quashing of 4(1) notification the said landowners filed Writ Appeal before this Court which was allowed by judgment dated 23.08.1985 in so far as the lands of writ petitioner(s). As against the order of the Hon'ble Division Bench dated 23.08.1985, the Government of Tamil Nadu filed a Special Leave Petition before the Hon'ble Supreme Court of India and the same was dismissed by order dated 06.05.1992. Since the order setting aside acquisition notification was in place, it applies to all.

5. The petitioner further submits that thereafter relying on the Division Bench Judgment, a second batch of writ petitions were filed by other landowners and similar order was passed. Hence, the Housing Board had abandoned the entire project under Section 53 of the Act and not proceeded with the development scheme and the public purpose mentioned for acquisition under the Notification became redundant as Housing Board cannot acquire Land under Section 72 other than the purpose of that Act. Thereafter, the landowners during the year 2004 sought for clarification before the revenue authority as to whether any acquisition proceedings are pending inter-alia in respect of Survey Nos.283/1, 284/1, 284/2 and 284/3 and the Special Tahsildar, TNHB Scheme who is the competent authority in so far as the acquisition proceedings are concerned, by communication dated 04.03.2004 (obtained under Right to Information Act) categorically stated that no acquisition proceedings are pending in respect of those lands and no fresh proceedings will be initiated. The petitioner further submits that the award passed pertinent to S.No.284/2 was not received by the landowners / predecessors in title and the Government had made a revenue deposit and as on date the same has not been withdrawn. Further, the Housing Board in several communications affirmed to other landowners that Land Acquisition will not have any further effect. The petitioner further submits that the lands acquired and possession with Tamil Nadu Housing Board has no access to go into for any housing activities on these lands that are isolated and sprinkled in the surrounding area kept unutilized by the Tamil Nadu Housing Board. The petitioner further submits that to clear the clutches of Land Acquisition Proceedings, the petitioner's vendor approached this Court and ended successfully in his favour. But in the appeal by the Tamil Nadu Housing Board, the Division Bench by its judgment reversed the learned Single Judge's order. Against which, the petitioner's vendor approached the Hon'ble Apex Court and the same was dismissed. But, he understands that now Revision Petition has been filed and yet to be listed.

6. The petitioner further submits that since the petitioner and his family members and other owners of the apartment who are passing through tremendous mental torture as they may be de-sheltered from their homes, as a caution and to buy peace of mind, he along with other flat owners have submitted representations dated 01.10.2012 and 29.10.2012 to the respondents 1 to 3 herein praying for selling the land to an extent of 2.26 acres for the value fixed by the respondents even though the apartments were purchased after conducting due diligence, obtaining legal opinion and trusting the planning permission. The petitioner further submits that the pathetic situation in this case is that all the documents were vigilantly verified and the apartments were purchased out of hard earned money and with life time savings. The respondents had kept quiet for number of years and CMDA had also issued planning permission by verifying all the necessary documents in which the revenue records including patta and chitta and adangal remains in the name of the landowner. This would depict the poor state of affairs prevailing in the Government offices concerned with registration of immovable properties due to which innocent purchasers like them have been affected. The petitioner further submits that the Housing Board cannot have any of several claims in respect of the land as the Planning Permission under Town and Country Planning was given to an entire extent of land admeasuring 5.52 acres, wherein completion certificate was also given. Further the individual flat owners coming within the disputed area as well as the other outside area have common undivided share which is not severable. The petitioner further submits that even assuming that the respondent claims the land, the superstructure admittedly belongs to individual flat purchasers who cannot be thrown out without considering the claim of the petitioner and other co-owners.

7. The petitioner further submits that out of the entire extent of 5.52 acres on which apartments have been constructed only 2.26 acres of land is the subject matter of the dispute, being claimed by the TNHB and the surrounding lands are admittedly undisputed land and as such, the respondents cannot have any access to the land being claimed by TNHB. The petitioner further submits that in this situation, if TNHB decides to take any drastic steps to vacate all the flat owners along with him others from their residential homes, the petitioner, innocent purchaser, who has purchased the apartments trusting the Planning Permission and other revenue records of the Government will be put to irreparable loss and injury for no fault on their part. The petitioner has been subjected to severe mental torture because of the acts of commission and omission on the part of the Government officials. In fact the petitioner along with other flat owners have been duped by Government records. The petitioner would literally be in the streets with his parents, family and children after investing all their lifetime savings and earnings for no fault of theirs, if the

respondents proceed against the subject lands and this will result in irretrievable injustice to them. The petitioner further submits that in this circumstance, equity falls in favour of the petitioner and acquisition under the Land Acquisition is for the benefit of public, a pragmatic approach to make acquisition of land a smooth affair should be evolved by removing procedural bottlenecks.

8. The petitioner further submits that the land to an extent of 2.26 acres claimed by Tamil Nadu Housing Board is land locked and has no approach from the road. They came to know that the High Level Committee of the Tamil Nadu Housing Board also observed that the said land is presently occupied by the petitioner and more than hundred other co-owners and many middle class people for whom having a residential home of their own is a lifelong dream / achievement. Removing innocent middle class people like them from their shelters without giving any opportunity to explain themselves will cause irreparable loss and damage to their lives especially when there is no fault on their part. The State being a public welfare state has to protect fundamental right to own a shelter and in the name of providing homes cannot de-shelter them from their existing houses. The petitioner further submits that the purpose for the acquisition no longer survives as the scheme has been dropped and the Government themselves have issued NOC to other landowners with respect to whom notification was quashed. Further, even if the land is acquired it will serve no useful purpose to the respondent as the same cannot be developed owing to its geographical location without any path entry. On the other hand, he along with other owners will be deserted in the streets with their families after losing their life time, hard earnings for no mistake on their part, if the authorities proceed against the subject lands and many innocent families face the threat of coming to the streets with no remedy in sight except for approaching this Court seeking appropriate reliefs. The petitioner further submits that in order to remove such a crisis due to doctrine of necessity, the petitioner along with other flat owners applied to respondent to convey the disputed land to the petitioner and other owners of the flats, along with the others who made representation dated 01.10.2012 to purchase the same for the value, in as much the respondents cannot effectively use that place in middle of other development and as per the advice of High Level Committee of the TNHB, may consider the representation of the petitioner which was in tune with the respondents.

9. The petitioner further understands that recently in respect of such similarly placed persons at Keelakettalai, Valasaravakkam and Kolathur the Tamil Nadu Housing Board has favourably considered the representation made by the affected persons. The petitioner further submits that the respondents had given acres of land as preferential quota to number of individuals, there is no legal impediment to consider claim of the petitioner as

well, which alone serve the equality and constitutional mandate of equal protection to innocent purchasers who with the authority of planning, registering and local authority persuaded to purchase the property to which respondents were silent spectator. There was contributory negligence on the part of the respondents in permitting the alleged execution which was equally vouched by other statutory authorities who have not only given planning permission but also completion certificate. The limited claim of mere title by the respondents cannot be against statutory sanction and further it is redressable by actual compensation. The petitioners apprehend the Housing Board may take steps any time to take possession of the property which belongs to him. Secondly, it is now not possible to pick and choose the facts which lie in the survey numbers referred to earlier since the construction is completed over the entire extent of land measuring 5.52 acres. Hence, the petitioner has a legal right to retain the property as he is a bona-fide purchaser and the respondents have a corresponding legal duty to consider the petitioner's representation dated 01.10.2012 and 29.10.2012 and pass orders dropping proceedings that may be initiated which would result in unsettling the petitioner's along with other families living in the flats. Hence, the petitioner entreats the Court to allow the above writ petition.

10. The fourth respondent has filed an affidavit in the vacate stay petition on behalf of the second and third respondents herein and himself and resisted the above writ petition. The fourth respondent submits that with regard to the averments made in para No.2, he submits that the petitioner's representation dated 01.10.2012 stating that he has an innocent buyer having purchased the flat and requested to allot the land and agreed to pay the land cost as fixed by the Government was already considered by the Board and the same was rejected. The SLP filed before the Hon'ble Supreme Court of India ordered in (Civil Appeal Nos.6342 and 6343 of 2012) by V.Chandrasekaran & others was dismissed on 18.09.2012 with cost of Rs.25 lakhs and the appellants were directed to deposit the cost with the Hon'ble Supreme Court Legal Services Authority within a period of six weeks in terms of the signed reportable judgment. Action is being taken to remove the existing structures on the Tamil Nadu Housing Board land as per the Board's Resolution No.8.06, dated 27.02.2012. The fourth respondent further submits that with regard to the averments made in paragraphs 3 and 4, he submits that the petitioner had purchased the flat vide Sale Deed dated 02.06.2010 registered as Document No.5498 of 2010 in the office of the Sub Registrar Office, Tambaram from Mr.V.Chandrasekaran, who is not at all the ex-land owner. The present petitioner had purchased the flat from the person who is not at all owner of the property, which is void in the eyes of law and does not have any right to title over the property. Since the executant to the petitioner is not a rightful owner and hence, the sale of the flats and instrument executed become null and void, the

land is vested with Tamil Nadu Housing Board. The purchaser should have followed the principle of 'caveat emptor' and exercised due diligence before the purchase of the property.

11. The fourth respondent further submits that the land comprised in S.No.283/1 admeasuring 0.27 acre, S.No.284/1 admeasuring 0.70 acre, S.No.284/3 admeasuring 0.64 acre and S.No.284/2 admeasuring 0.65 acre, totally 2.26 acres of Tambaram Village, Tambaram Taluk, Kancheepuram District was acquired under the Land Acquisition Act for the implementation of the housing Scheme namely, "Tambaram Neighbourhood Scheme". The 4(1) Notification under the Land Acquisition Act was approved by the Government in G.O.Ms.No.826 of Housing & Urban Development Department, dated 15.05.1978 for an extent of 58.59 acres and the substance was published in the Tamil Nadu Government Gazette dated 07.06.1978. Subsequently, the Draft Declaration under Sections 6 and Direction 7 of the said Act was approved by the Government in G.O.Ms.No.389, Housing & Urban Development Department, dated 06.06.1981 and the same substance was published in Tamil Nadu Government Gazette dated 06.06.1981. The Land Acquisition Officer passed award for the land in S.No.283/1, 284/1 and 284/3 measuring an extent of 0.27 acres, 0.70 acres and 0.64 acres respectively vide Award No.14/1983 dated 28.06.1983, and for S.No.284/2 in an extent of 0.65 acres, vide Award No.11/1986 dated 14.08.1986. The possession of land in S.No.283/1, 284/1 and 284/3 was taken over by the Tamil Nadu Housing Board from the Land Acquisition Officer on 21.07.1983 and possession of the land in S.No.284/2 was taken over on 21.10.1986. The ownership and possession of the land is vested with the Tamil Nadu Housing Board ever since. The fourth respondent further submits that the batch of writ petitions filed for challenging the Land Acquisition in Tambaram Village vide W.P.No.9142 of 1993 etc., were allowed vide common judgment dated 16.12.1983 by this Court, quashing the Draft Declaration under Section 6 of the Land Acquisition Act leaving 4(1) Notification intact. The landowners filed W.A.Nos.214 of 1984 to 225 of 1984 and 435 of 1984 against this Court order dated 16.12.1983 in W.P.No.9142 of 1983 etc, before the Hon'ble Division Bench of this Court. The Hon'ble Division Bench of this Court, quashed the 4(1) Notification on the ground of delay in publishing the locality notice, in its order dated 20.03.1985. The Government have preferred Appeal before the Hon'ble Supreme Court of India against the orders of this Court dated 20.03.1985 and the same was also dismissed on 06.05.1992 and upheld the orders of High Court of Madras. It is pertinent to state that land bearing S.Nos.283/1, 284/1, 284/2 and 284/3, which are the subject matter of the present writ petition are not covered in W.P.No.9142 of 1983 etc batch cases. Hence, the orders passed therein are not applicable to the land in S.Nos.283/1, 284/1, 284/2 and 284/2. Further, another batch of writ petition's vide W.P.No.7645 of 1996 etc, relied upon by the petitioner herein also does not pertain to the land in S.Nos.283/1,

284/1, 284/2 and 284/3. Therefore, the petitioner who is subsequent purchaser, cannot insist for reconveyance of the said lands and therefore, present writ petition is not maintainable either in law or on facts.

12. The fourth respondent further submits that with regard to the averments made in para No.6, it is submitted that the Tahsildar, Tambaram, by proceedings No.Na.Ka.20996/09-10 A1, dated 26.03.2010 informed the Tamil Nadu Housing Board that the lands in the said survey numbers stood transferred in the name of the Housing Board in the Revenue records. Therefore, it is submitted that the petitioner who is said to have purchased the property are attempting to side track the well settled matters, when awards were passed way back in 1983/1986. That apart, the petitioner has indulged in activities which are not in consonance with the law presumably in collusion with some insiders and therefore they are not entitled for any relief. The decision of the Hon'ble Supreme Court in Banu Barkya Thakur Vs. State of Bombay and Ors. (AIR 1960 SC 1203) , in support of his contention that a Notification under Section 4(1) of the Act will not lapse is also relevant. Further, the decision of the Hon'ble Supreme Court in U.P. Jal Nigam, Lucknow, Vs. Kalra Properties (P) Ltd (1996 3 SCC 124) for the proposition that a subsequent purchaser has no right and locus-standi to challenge the Notification issued under Section 4(1) of the Act. The fourth respondent further submits that with regard to the averments made in para Nos.6 and 7, he submits that the contention of the petitioner is against the truth. The land in S.Nos.283/1, 284/1, 3, 287/1B and 287/2 transferred in the name of Tamil Nadu Housing Board by the Revenue Tahsildar, Tambaram Taluk, Tambaram vide Letter No.Na.Ka.20996/09-10/A1, dated 26.03.2010. The said land is vested with Tamil Nadu Housing Board. The fourth respondent further submits that with regard to averments made in paragraphs 8 to 11, he submits that a notification under Section 4 (1) of the Land Acquisition Act, 1894, was issued on 15.05.1978 with respect to land measuring 58.59 acres, in the revenue records of Tambaram Village, Saidapet Taluk, Chengalpet District, Tamil Nadu, including the land measuring 2.26 acres in Survey Nos.283/1 (extent of 27 cents), 284/1 (extent of 70 cents), 284/2 (extent of 65 cents) and 284/3 (extent of 64 cents).

13. The fourth respondent further submits that as per the provisions of the Urgency Clause under Section 17 of the Act were not invoked, the persons interested were at liberty to file objections under Section 5-A of the Act. A declaration under Section 6 of the Act with respect to the said land was issued on 06.06.1981. Very few among the persons interested had challenged the land acquisition proceedings by way of filing 8 writ petitions, including writ petition Nos.8897 and 8899 of 1983 etc, which were filed by some of the original tenure-holders of the suit land on several grounds. The fourth respondent further submits that with

regard to averments made in paragraph No.12, he submits that the petitioner's vendor filed writ petition No.6108 of 2009 for the quashing of the Notification dated 15.05.1978, issued under Section 4 of the Act, pertaining to the land that comprised 9 survey numbers, including the suit land contending that the declaration under Section 6 had been quashed and no fresh declaration was subsequently issued. The proceedings therefore, automatically lapsed as there could be no award without a fresh declaration, and therefore, all subsequent proceedings would be void ab-initio. Another writ petition No.20896 of 2009 was also filed seeking totally inconsistent / contrary reliefs i.e., praying for the quashing of the letter No.LA1(4)/37549/05, dated 07.07.2005 and also for the issuance of directions to re-convey the suit land in favour of the appellants. A learned Single Judge, vide judgment and order dated 01.11.2010 allowed both writ petitions, observing that as the Section 6 declaration had been quashed and no fresh declaration was issued thereafter, the land acquisition proceedings had lapsed and the suit land was hence, free from any and all acquisition proceedings. Being aggrieved, the Tamil Nadu Housing Board the respondents, then filed writ appeals in W.A.Nos.805 and 806 of 2011, which were allowed vide impugned judgment and order dated 24.01.2012, reversing the judgment and order of the learned Single Judge. The petitioner's vendor Thiru.V.Chandrasekaran and another have filed S.L.P. in Civil Appeal Nos.6342 and 6343 of 2012. The Hon'ble Supreme Court by order dated 18.09.2012 has dismissed the SLPs with cost of Rs.25 lakhs, which the appellants are directed to deposit with the Supreme Court Legal Services Authority within a period of six weeks in terms of signed reportable judgment.

14. The fourth respondent further submits that with regard to the averments made in paragraph Nos.14 and 15, he submits that the contention of the petitioner is against the truth and misleading the Court. The land in S.Nos.283/1, 284/1, 3, 287/1B and 287/2 transferred in the name of Tamil Nadu Housing Board by the Revenue Tahsildar, Tambaram Taluk, Tambaram vide letter No.Na.Ka.20996/09-10/A1, dated 26.03.2010. The said land vested with the Tamil Nadu Housing Board. The fourth respondent further submits that the Managing Director of the Tamil Nadu Housing Board has written a letter No.LA1(4)/37549/05, dated 22.12.2009 to the Member Secretary, CMDA, stated that the letter No.LA/37549/05, dated 07.07.2005, said to have been issued by the Assistant Secretary (LA), Tamil Nadu Housing Board, stating that there is no land acquisition proceedings pending in respect of Survey Nos.283/1, 284/1, 284/2, 284/3 and 289/1 is wrong, and the three letters were never officially issued from the office. However, xerox copy of the same have somehow been obtained from the office by the writ petitioners and submitted to CMDA. Further, in the said letter dated 22.12.2009, it was stated that no NOC was issued for the said survey numbers and the writ petitioners have no right to get planning permit. Therefore, it was requested to immediately

arrange for the stoppage of construction in the said land. Further, it was stated that the property in Survey No.284/2 stands registered in the name of the Housing Board in the Town Survey records. Based on such communication, the CMDA informed the Housing Board, by letter dated 11.03.2010, stating that show cause notice has been issued for cancellation of the planning permit. Further, the Tahsildar, Tambaram, by proceedings No.Na.Ka.20996/09-10, dated 26.03.2010, informed the Board that the lands in the said survey numbers stood transferred in the name of the Housing Board in the revenue records. Therefore, it is submitted that those who have said to have purchased the property are attempting to unsettle the settled matters, when awards have been passed way back in 1983/1986. That apart, the petitioner has indulged in activities not in consonance with law or presumably in collusion with some insiders and therefore, they are not entitled for any relief. The decision of the Hon'ble Supreme Court in Babu Barkya Thakur Vs. State of Bombay and Ors. (AIR 1960 SC 1203), in support of his contention that a notification under Section 4(1) of the Act will not lapse. Further, the decision of the Hon'ble Supreme Court in U.P.Jal Nigam, Lucknow vs. Karla Properties (P) Ltd [(1996) 3 SCC 124], for the proposition that a subsequent purchaser has no right and locus-standi, to challenge the notification issued after Section 4(2) of the Act.

15. The fourth respondent further submits that the prayer in the writ petition has become infructuous since the request of the writ petitioner was already placed before the Board and the Board in its Resolution No.8.06, dated 27.12.2012 resolved to issue eviction notice to the encroacher. If the writ petitioner is aggrieved by the decision of the Board, they have to challenge the decision separately and cannot compel the Tamil Nadu Housing Board to consider the issue. On this ground, the writ petition has to be dismissed. The fourth respondent further submits that the averments made in paragraphs 16 to 22, he submits that the contention of the petitioner is against the truth. The subject land of 2.26 acres have access to the flats construction in the above land by the existing road. The petitioner has purchased the flat. The petitioner's vendor was not competent to make any transfer, as none of them had a good title over the land in question. Therefore, any and all sale transactions are illegal and void. The sale deed is executed in favour of the petitioner, do not confer upon them, any title. Therefore, the writ petition is liable to be dismissed as devoid of merits and on the ground of locus-standi.

16. Mr.K.M.Vijayan, the highly competent senior counsel appearing for the petitioner submits that the petitioner has purchased the plot bearing No.H, to an extent of 1380 sq.ft. along with undivided share at Old State Bank Colony, West Tambaram after paying full sale consideration to one Mr.V.Chandrasekaran. The said sale deed has been registered on the file of Sub

Registrar's Office, Tambaram as document No.5498 of 2010. After purchasing the said flat, the petitioner and his family members are occupying the flat for residential purpose. Further, the petitioner had availed Bank loan and purchased the said property. The flat and other flats were constructed after obtaining necessary planning permission from the Chennai Metropolitan Development Authority, who also after scrutinizing the entire title deeds relating to the landed properties. As such, the construction over the land is valid, besides the Bank officials inspected the flat and scrutinizing the title deeds of the petitioner herein through their legal advices, the Bank sanctioned the Housing loan and as such, the Bank is also having a right over the said flat until the repayment of the loan amount and the loan amount is public related one. Further, the highly competent senior counsel further submits that the Tambaram Municipality has provided water connection as well as drainage and also laid a road formation. The highly competent counsel further submits that after observing all legal formalities regarding ownership of the flat, the Tambaram Municipality is collecting statutory taxes from the petitioner. It clearly proves that the landed properties had been under the care and custody of the Housing Board. The Hon'ble Supreme Court of India had imposed a cost of Rs.25 lakhs to one Mr.V.Chandrasekaran, which will not affect the occupation and enjoyment by the petitioner. Further, the Hon'ble Supreme Court of India had not passed any order against the petitioner herein regarding eviction. As such, the judgment of the Hon'ble Supreme Court of India is not squarely applicable in the petitioner's case. The highly competent counsel further submits that the petitioner had also obtained electricity service connection in his name after complying with all necessary legal formalities. The petitioner had levelled a representation dated 01.10.2012 to the first respondent herein and requested him not to evict the petitioner from the said premises. The said representation is still pending on the file of the first respondent, hence, the highly competent senior counsel Mr.K.M.Vijayan makes a deep request to direct the respondents to consider the petitioner's representation dated 01.10.2012 on merits.

17. The highly competent Additional Advocate General Mr.S.Gomathinayagam appearing for the first respondent submits that the subject matter of the lands had been acquired under the Old Act for Neighbourhood Housing Scheme, for which, the first respondent had issued a G.O.Ms.No.826, dated 15.05.1978. After following the said G.O., the Land Acquisition Officer had acquired lands to an extent of 58.59 acres including the subject matter of the lands. The highly competent Additional Advocate General further submits that the Land Acquisition Proceedings had been initiated in the year 1978 and the same had been completed in the year 1981. The award also had been passed in the name of the landowners. The possession had been taken by the Land Acquisition Officer, who in

turn handed over the acquired land to the Tamil Nadu Housing Board on 21.10.1986. From that date onwards, the acquired land under the care and custody of the Tamil Nadu Housing Board. The highly competent Additional Advocate General further submits that the petitioner had purchased the said flat on 02.06.2010 which is not valid under law, therefore, the petitioner cannot claim any civil rights especially ownership under the invalid sale deed. The statutory authorities viz., Chennai Metropolitan Authority, Tambaram Municipality, Tamil Nadu Housing Board and the State Revenue Authorities, who have passed any orders in favour of petitioner which are an erroneous view of the statutory authorities. This erroneous views of the authorities may be set-aside or cancelled at any stage and time. Therefore, the above writ petition is not maintainable.

18. The highly competent counsel Mr.C.Kasirajan appearing for the respondents 2 to 4 submits that the petitioner had purchased the said flat from one Mr.V.Chandrasekaran, who is not the owner of the property, besides, he did not possess marketable title deeds over the said land and buildings. Therefore, the sale deed is a sham and nominal. Hence, the petitioner cannot claim any single right under the invalid sale deed, which is not sustainable under law. The highly competent counsel further submits that the respondents are being implementing the Neighbourhood Scheme. Further, the Land Acquisition Proceedings had been initiated in the year 1978 for acquiring lands to an extent of 58.59 acres including the subject matters of the lands and as such, the lands fall under land ceiling. Therefore, the ceiling lands cannot be alienated to the third parties. In the instant case, the petitioner had purchased the said flat on 02.06.2010 and the sale deed is not valid under Transfer of Property Act since the law does not permit the transfer of the property. The said acquired lands under the care and occupation of the Housing Board for implementing Neighbourhood Scheme which is for public purpose. There is no provision to permit the innocent purchaser / petitioner herein to occupy the said property. The highly competent counsel further pointed out that the petitioner's representation dated 01.10.2012 has been rejected after being well considered by the Board. Therefore, the prayer of the writ petitioner is not maintainable, hence, the highly competent counsel entreats the Court to dismiss the above writ petition.

19. Per contra, the highly competent senior counsel Mr.K.M.Vijayan appearing for the petitioner submits that the respondents had not served any copy of the rejection order on the petitioner's representation besides there was no comprehensive enquiry regarding this issue in the presence of the writ petitioner, therefore, the rejection order is not an appropriate one.

20. On considering the facts and circumstances of the case and arguments advanced by the highly competent counsels on all sides and on perusing the typed-set of papers, the above writ petition is allowed with a direction to the petitioner to submit a fresh representation to the respondents within a period of two weeks from the date of receipt of a copy of this order. After receipt of the fresh representation from the petitioner, the respondents / competent authority shall pass orders, on merits, after conducting a comprehensive enquiry, considering the present prevailing condition of the property within a period of eight weeks from the date of receipt of the said fresh representation after prior notice to the petitioner and also in the presence of the petitioner. If any lacuna should arise in the impugned order, the petitioner is at liberty to file a review petition before this Court.

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

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

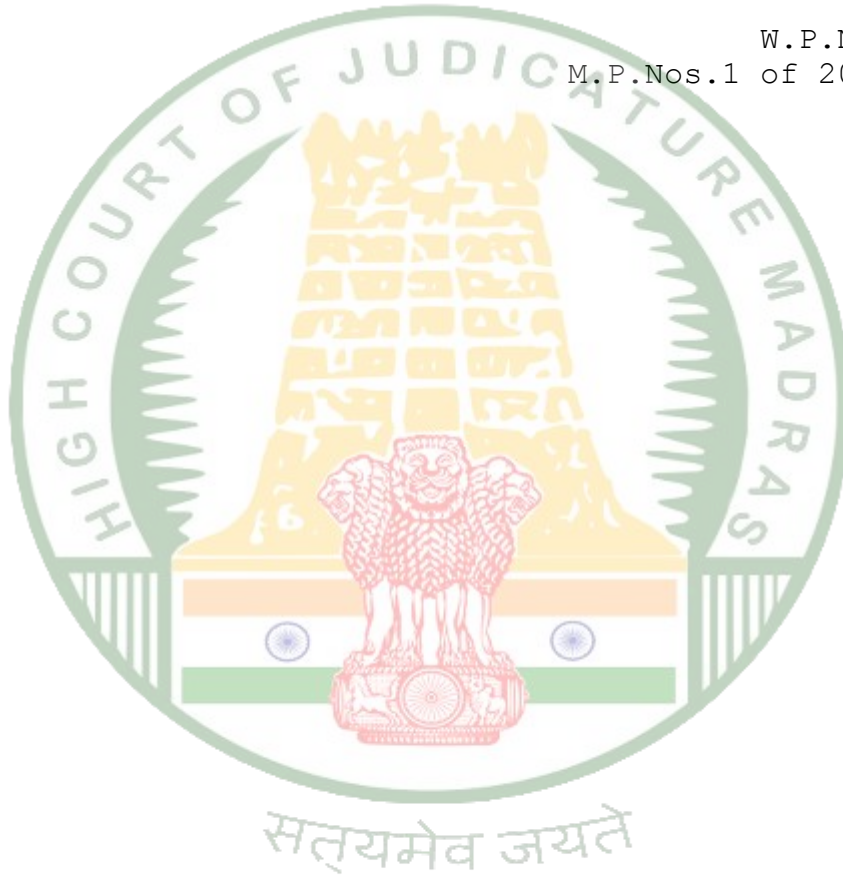
1. The Secretary,
Government of Tamil Nadu,
Housing and Urban Development,
Fort St. George,
Chennai - 600 009.
2. The Managing Director,
The Tamil Nadu Housing Board,
Nandanam, Chennai - 600 035.
3. The Chairman,
The Tamil Nadu Housing Board,
Nandanam, Chennai - 600 035.

4.The Executive Engineer and
Administrative Officer,
K.K.Nagar,
Tamil Nadu Housing Board,
Chennai - 600 083.

1 cc to Mr.T. Karthick Srinath Advocate, sR. 9479

W.P.No.1532 of 2013 &
M.P.Nos.1 of 2013 and 1 of 2014

RJ (CO)
kk 17/3



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