

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:11.08.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.29767 of 2010

Order Reserved on 15.12.2014 Judgment Pronounced on 11.08.2015

Mr.Donald Fernandes ... Petitioner

Vs.

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

2.The Managing Director,
Tamil Nadu Housing Board,
Anna Salai, Nandanam,
Chennai-600 035. 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 of the first respondent dated 08.04.2010 made in letter No.(I.D.)No.188 and quash the same and consequently reconvey the land to the petitioner comprised in Survey Nos.293/1 and 293/2 at Village No.155 Sholinganallur Village upon refund of compensation deposited to the credit of the petitioner's lands under the acquisition proceedings.

For Petitioner : Mr.S.Balachander
for M/s.Ashok Menon

For Respondents : Mr.M.S.Ramesh (for R1)
Additional Government Pleader

Mr.B.Vivekavanam (for R2)

O R D E R

The petitioner submits that he is the owner of the land situated in Survey Nos.293/1 and 293/2, measuring an extent of 0.65.5 hectares at Sholinganallur Village, Kancheepuram District, which was a subject matter of land acquisition proceedings in G.O.Ms.No.454 Housing and Urban Development Department dated 23.05.1990 which was determined to be acquired by the first respondent for public purpose for the Sholinganallur Neighbourhood Scheme - Phase-II, for the purpose of the housing scheme to be formulated by the requisition Board, namely, Tamil Nadu Housing Board. The process was initiated under Section 4 (1) of the Land Acquisition Act 1894 (Central Act 1/1994). By subsequent G.O.Ms.No.996 dated 17.06.1991 Section 6 Declaration was also caused for implementation of the said scheme.

2.Though as a land owner covered and proceeded against under the said notifications, he did not choose to challenge the said proceedings independently as the said notification was a subject matter of challenge before this Court in a series of cases which culminated in the order dated 24.07.1996 in W.P.No.10420 of 1991 etc. batch of cases, wherein the Hon'ble Division Bench by observing the fact that the Government Order deciding to issue a declaration, did not disclose any consideration of the objections put forth by the land owners and accordingly held that it was not possible to keep the Government Notification under Section 4(1) intact and quash the remaining proceedings in view of the decisions of the Hon'ble Supreme Court on the issue and held that the entire proceedings deserved to be quashed and held that the said notifications was incapable to be allowed to stand in view of the decisions of the Hon'ble Supreme Court. The Hon'ble Bench quashed the notifications in its entirety even while allowing the writ petition.

3.It is relevant to submit that the obiter and the ratio laid down in the said batch of cases disables the respondents from proceeding further with particular reference to the Section 4(1) and Section (6) declaration and hence binding upon the respondents even with regard to the other lands covered under the said notification. He had approached this Court on earlier occasions, praying for a consideration of his representation to re-convey the said lands to him as the lands of similarly placed owners in the adjoining area which were covered under the said two notifications were litigated by individual owners before this Court and after a long drawn battle, ultimately the lands were re-conveyed under the orders of this Court. In the meantime, the Government issued an order under G.O.Ms.No.254 Housing and Urban Development dated 06.10.2003, whereupon the first respondent had constituted a committee to formulate modalities for taking action for effective utilization of lands and re-conveyance of lands not utilised, wherein they examined the financial burden on the

part of the Housing Board to cause acquisition of properties which required payment of enhanced compensation that remained unutilised.

4.Hence, an appropriated application was made out by him to the respondents to consider such a claim which came to be directed to be considered by this Court under order dated 06.04.2004 made in W.P.No.9120 of 2004. Pursuant to the same, the order of the first respondent dated 24.08.2004 came to be issued in letter No.14998/LA.I (1)/2004-2006, rejecting the prayer for reconveyance which was challenged in W.P.No.28849 of 2004 which was adjudicated before this Court and by order dated 10.09.2005 on the basis of the submission made out by the counsel representing the Housing Board, it was recorded by this Court in the order dated 10.09.2005 that, in the contingency where the Housing Board is not going ahead with the scheme for which the land was acquired, then the compliance contemplated under Section 72 of the Housing Board Act would be caused by the Housing Board and recording the same, the writ petition was dismissed.

5.It is relevant to submit that as against the said order, he had preferred in W.A.No.85 of 2006, which was rejected, confirming the order of the learned Single Judge as against which S.L.P. was also preferred and the same was also dismissed. Subsequently, on coming to know that persons similarly placed like him, whose lands were acquired under the said notification had the benefit of reconveyance of the lands even as late as in the year 2000 by reconveyance caused by the first respondent, more particularly; (i)one Padmavathi came to be re-conveyed with the lands comprised in Survey Nos.675/1 and 675/2 covered under G.O.Ms.No.454 dated 23.05.1990, measuring 0.63 cents, (ii)T.Eshodya in Survey No.643/3 and 643/2A covered by the said Government Notification, (iii)T.Munni Ammal covered under Survey No.643/2A; were all reconveyed by reason of fact that Section 4(1) notification having been quashed and hence there can be no reason for the respondents to take different stand for other individuals, which itself places on record that the respondents have not chosen to proceed further with the object with which the lands were acquired in the said two Government Orders.

6.Hence, he was constrained to make a fresh representation to the first respondent on 13.04.2009 placing on record that when similarly placed persons with lands comprised in the said acquisition proceedings were given the benefit of reconveyance, he should also be considered, which came to be disposed by this Court vide order dated 14.09.2009 made in W.P.No.18711 of 2009. However by reiterating their contention that the lands in question covered under the acquisition notifications have already been taken possession of and handed over to the second respondent on 18.04.1994 and by further contending that for implementation the scheme of the Housing Board a layout has also been approved and stated that reconveyance of the

land as required by him was not advisable of consideration and rejected the same under the impugned letter dated 08.04.2010 made in letter (I.D.)No.188 by overlooking the fact that this Court had by its decision observed in categorical terms that such contentions put forth by the Housing Board with reference to the exercise of power under Section 48-B cannot be mechanical and whenever the discretion to take a decision is conferred upon the authority by a statute, the concept of fairness which is an inherent guarantee of equality under Article 14 of the Constitution of India ought to be ensured. When admittedly the respondent had sufficient materials were before it and the respondents were acquiesced by fact that the development scheme of the second respondent had reached a state of being incapable of implementation and also for the reason that most of the lands covered under the notification were re-conveyed by exercising Section 48-B by ignoring the above facts the respondent had chosen to pass the impugned order dated 08.04.2010 made in Letter (ID)No.188 which is challenged.

7.The petitioner had submitted brief written arguments are as follows:

The counsel for the petitioner begs to state as follows:

1)An unfortunate Senior Citizen whose life was again and again beaten by the drums of destiny and who could not foresee the vagaries and uncertainties of life is the petitioner before this Court. To narrate the petitioner's factual matrix they have to rewind the time machine to 1990 A.D. The petitioner Donald Fernandes was the absolute owner of 1.61 acres of land situated in Survey Nos.293/1 and 293/2 at Sholinganallur Village, Kancheepuram District. To implement the Sholinganallur Neighbourhood Scheme, Phase-II the second respondent issued Section 4(1) notification on 23.05.1990 and Section (6) declaration was passed on 17.06.1991 but award was promulgated only on 18.09.1993 which is contrary to the principles laid down under Section 11(A) of Land Acquisition Act 1894. It is imperative at this point of time to quote Section 11(A) of the Principal Act 1894.

"11-A period within which an award shall be made The Collector shall make an award under Section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse".

8.On mere perusal of Section 11(a) of the Principal Act, the award ought to have been passed within two years of the declaration that was made under Section (6) of the Act. It is the submission of the petitioner that in the case on hand declaration was made on 17.06.1991 the award was passed only on 18.09.1993 three months and 3 days later than the mandatory period prescribed under Section 11(a) of the Act. This principle was well highlighted by the Apex Court reported in 2009 (8) Supreme 441. In that Judgment the Hon'ble

Supreme Court held that:

"Explanation to Sec. 11/A of land Acquisition Act 1894 is intended to confer a benefit on the land holder whose land is acquired after the declaration under Sec. 6 is made."

On this score alone the acquisition proceedings were to be declared as lapsed. Most unfortunately the copy of the award was not served on the petitioner or in other words, the petitioner did not know about the land acquisition proceedings till 1996. It is crystal clear that 5(A) enquiry was not conducted and the award was passed without hearing the objections of the petitioner which is contrary to the law incorporated under 5(A) of the Principal Act. This petitioner is duty bound to quote Section 5(A) of the Act.

"5-A. Hearing of objections -(1) Any person interested in any land which has been notified under Section 4, Sub Section (1) as being needed or likely to be needed for a public purpose or for a company may, (within thirty days from the date of the publication of the notification) object to the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under Sub-Section (1) shall be made to the Collector in writing and Collector shall give the objector an opportunity of being heard (in person or by any person authorized by him in his behalf) or by pleader and shall after, hearing all such objections and after making such further enquiry, if any as he thinks necessary, (either make a report in respect of the land which has been notified under Section 4 Sub Section (1) or make different reports in respect of different parcels of such, to the appropriate Government, containing his recommendations on the objections together with the record of the proceedings held by him, for the decision of that Government.) The decision of the appropriate Government on the objections shall be final".

9. It is a settled principle of law that 5(A) enquiry is not an empty formality but a mandatory provision which goes to the root of the Acquisition Proceedings. This petitioner is duty bound to quote from the Apex Court full bench Judgment reported in 2014 (6) MLJ 500 S.C. in paragraph 9 and 10 of the said Judgment Apex Court held that:

9. a) "Therefore Section 5-A of the Act 1894 confers a valuable right in favour of a person whose lands are sought to be acquired. It is imperative that hearing given to a person must be an effective one and not a mere formality. Formation of opinion as regard the public purpose as also suitability threat must be preceded by application of mind having due regard to the relevant factors and rejection of irrelevant ones. The state in its decision making process must not commit any misdirection in law. It is also not in dispute that 5-A of the Act 1894 confers a valuable important right

and having regard to the provisions, contained in Article 300-A of the Constitution of India has been held to be asking to a fundamental right. Thus the limited right given to an owner / person interested under Section 5-A of the Act, 1894 to object to the acquisition proceedings is not an empty formality and is a substantive right, which can be taken away only for good and valid reason and within the limitations prescribed under Section 17(4) of the Act, 1894."

10. The petitioner begs to submit that the 5(A) enquiry was not conducted, there is a delay in passing the award and compensation was not paid to the petitioner. Since the petitioner was living in Kerala no proper notice under Section 45 of the Act was served to the petitioner. So all the mandatory provisions were given a go by. The award was a clear illustration of the contention of the petitioner. It is imperative at this point of time to quote from the award filed as the additional typed set No.1 page 49 and paragraph-8 here under as follows:-

"The above land stand registered in the name of Tmt. Donal Fernandes. The notice under Section 9(3) and 10 was served in accordance with the rules. The Pattador did not appear for the award enquiry. Hence, the ownership and the actual enjoyment could not be ascertained and determined. There are casurina trees in the above lands. In the absence of any claim with the documentary evidence from the rightful owner and the ownership and the enjoyment could not i.e. ascertained and determined. Hence, the entire compensation amount of Rs.1,37,023.50/- is ordered to be deposited under Civil Court deposit under Section 30(3)(2) of the Land Acquisition Act in the name of Tmt. Donal Fernandes."

From the award 3 things appears to be self explanatory.

- 1) No proper notices were sent
- 2) 5-A enquiry was not conducted.
- 3) Compensation was not paid to the petitioner.

Keeping in view shortcomings of the 1894 Act, the Central Government thought it fit to replace the old Act.

11. The Right to Fair compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Bill 2012, aims to replace a law enacted by the British in 1894. It aims to provide fair compensation to owners whose land is taken to bring transparency to the process and lays down measures for rehabilitation of those displaced.

Highlights of the act are as follows:

Payment of compensations that is upto 4 times the market value in rural areas and 2 times the market value in urban areas.

To address historical injustice to the Act. Applies

retrospectively to cases where no land acquisition award has been made.

No one shall be dispossessed until and unless all payments are made and alternative sites for the resettlement and rehabilitation have been prepared.

Compensation to those who are dependent on the land being acquired for their livelihood.

12. The very important provision which has retrospective value is Section 24(2) and for greater appreciation of the issue on hand the petitioner is duty bound to quote (24) (2) of the new Act. Section "24(2) Notwithstanding anything contained in Sub Section (1) in case of acquisition proceedings initiated under the Land Acquisition Act 1894 where an award under the said section 11 has been made 5 years or more prior to the commencement of this act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of the act."

13. The said provision is fully applicable to the case of the petitioner for two reasons namely that (1) compensation was not paid to the petitioner (2) possession was not taken by the acquisition body. The petitioner is duty bound to explain how for Section 24(2) of the new Act applies to the petitioner's case. As stated earlier. In page 50 of the petitioner's additional typed set No.1. The second respondent clinchingly admits that a sum of Rs.1,37,023.50/- was only deposited. Therefore, viewed from any angle compensation was not paid as per the new Act.

14. This new Act was a game changer and the ambit of the Land Acquisition was revolutionized by the new Act. Touching upon the new Act Hon'ble Apex Court in a full Bench Judgment reported in 2014 (3) Section 183 has interpreted compensation paid. Petitioner is quoting paragraph 14 of the said judgment for better appreciation of the issue on hand.

"14) Section 31(1) of the 1894 Act enjoins upon the Collector on making an award under Section 11 to tender payment of compensation to persons interested entitled thereto according to award. It further mandates the Collector to make payment of compensation to them. Unless prevented by one of the contingencies contemplated in Sub-Section 2) The contingencies contemplated in Section 31 (2) are 1) the persons interested entitled to compensation do not consent to receive it. There is no person competent to alienate the land and 3) there is dispute as to the title to receive compensation or as to the

apportionment of it. If due to any of the contingencies contemplated in Section 31(2) the Collector is prevented from making payment of compensation to the persons interested who are entitled to compensation, then the Collector is required to deposit the compensation in the Court to which reference under Section 18 may be made"

15.From the above Judgment. It appears that award should be passed after paying compensation to the land owners. None of the contingencies referred to in the above judgment fits into the petitioner's case. The award was not served on the petitioner compensation amount was not intimated petitioner was not enquired as to whether he was ready and willing to receive the compensation. The petitioner was actually kept in the dark about the acquisition proceedings and only after laborious search petitioner received the copy of the award, possession is also with the petitioner. Petitioner is duty bound to prove this through the documents filed before this Court. It is humbly prayed that the impugned orders dated 08.04.2010 is filed as Typed set before this Court may kindly be perused. The petitioner is quoting the relevant lines from page No.43 of main typed set.

"The land sought for re-conveyance in S.No.293/1 and 2 measuring an extent of 0.65.5 hectares of Sholinganallur Village, Kancheepuram District was acquired along with other lands in Award No.1/93 dated 18.06.1993 and possession had already been taken over by Tamil Nadu Housing Board on 18.04.1994 itself."

16.According to the first respondent possession was taken on 18.04.1994. To prove that it is factually in correct the petitioner is duty bound to draw this Court's attention to the letter sent by Special Tahsildar dated 28.07.2000 filed in Additional Typed set No.2. Page No.2 wherein the said Special Tahsildar has requested the petitioner as follows:

"With reference to his letter cited Thiru.Donald Fernandes is informed to hand over the possession of the lands immediately so that the reference under Section 18 of the Land Acquisition Act will be sent to the Sub-Court, Poonamallee."

17.This document is Page No.2 of the petitioner Additional typed set 2 clinchingly proves that possession was not taken by the second Respondent on 18.04.1994 as alleged. So the second respondent is wantonly perjuring before this Court on his own peril. Hence Section 24(2) of the New Act is attracted and this Court may be pleased to hold that the acquisition proceeding have been lapsed as

- 1)compensation was not paid to the land owner.
- 2)possession was not taken by the acquisition body.

18.The petitioner would like to bring to the notice of this Court's that the adjacent land owners had filed in W.P.Nos.10420 to 100-51 of 1993 challenging the Section 6 declaration of the Acquisition. By an order dated 24.01.1996 the Division Bench of this Court had held that

"7)In view of the fact that the objections raised by the petitioners have not at all been considered by the land acquisition officer and he has not given any reason whatever for rejecting their objections, the proceedings are vitiated. The Government order deciding to issue declaration does not disclose any application of mind. If the Government had considered, the objections and passed an order containing reasons the position might have been different. In as much as the Government has not chosen to pass an order containing reasons, and the report of the land acquisition officer does not given any reason for the rejecting the objections of the petitioners, the proceeding deserve to be quashed.

8)It is not possible to keep the notification under Section 4(1) intact and quash the remaining proceedings in view of the Judgment of the Supreme Court in Oxford English School -Vs- Government of Tamil Nadu (AZR 1995-SC.2398).

9)In the result the entire proceedings deserve to be quashed. Even though there is no specific prayer in the petitions for quashing the notification under Section 4(1) of the Act, the said notification cannot be allowed to stand in view of the aforesaid Judgment of the Supreme Court. Consequently, we quash the said notification also.

10)The writ petitions are allowed. The notification in G.O..M.S. No.454, Housing and Urban Development dated 17.06.1991 are quashed in so far as the lands of the petitioners in these writ petitions are concerned. There will be no order as to costs."

19.The entire Judgment has been placed before this Court in the main typed set from page No.7 to page No.19. The petitioner begs to submit that adjacent land owners land was released from land acquisition in W.P.No.24712 and 26455 of 1993 and also in W.P.No.15708 of 1993. The said judgments were incorporated in main typed set page No.23-31. The petitioner begs to submit that from 1990- till date possession was not taken over by the Acquisition body. Neither has the second respondent made any progress as regards the neighbourhood housing scheme. The land has remained barren for the past 24 years. It goes without saying that the second respondent has not shown any interest in the lands acquired for the Sholinganallur neighbourhood housing scheme. In fact G.O.Ms.254 dated 06.10.2003 was issued to facility re-conveyance. The petitioner is quoting the relevant portion of that G.O. incorporated

in page No.32-34 in the main typed set of papers filed by the petitioner.

(iii)"Undeveloped properties locked in long pending litigation to E.C. and land acquisition proceeding if not required by the board for future development, may be released to the land owners on Collection of Administrative and legal expenses incurred by the Board (though) out of Court settlement on case to case basis and on merit board's. Commercial and Office building given on lease may be disposed by public auction".

20.But the second respondent has not followed the said G.O. in letter and spirit. To redress the grievances of the land owners Section 48-B was introduced by Tamil Nadu Government through the Land Acquisition (Tamil Nadu Amendment) Act 1996 (Act XVI of 1997). The petitioner is quoting the said Section 48-B.

"Transfer of land to original owner in certain cases:-

Where the Government are satisfied that the land vest in the Government under this Act is not required for the purpose for which it was acquired, or for any other public, the Government may transfer such land to the original owner who is willing to repay the amount paid to him under this Act for the acquisition of such land inclusive of the amount referred to in sub-section (1-A) and (2) of Section 23, if any, paid under this Act".

Invoking the said 48-B this Court has expanded the ambit of Re-conveyance in the following Division Bench Judgments.

- 1)2011 (5) CTC 5031 (Paragraph No.18-24)
- 2)2006 (4) CTC 290 (Paragraph 20 to 35)
- 3)2011 (2) MLJ 527 (Paragraph 19)
- 4)2010 (3) CTC 261 (Paragraph 7-13)
- 5)2005 (2) L.W.325 (Paragraph 17-19).

21.The argument put forward by the second respondent was that the petitioner has sold the lands to third parties and so he is not entitled for re-conveyance. The petitioner is duty bound to inform this Court that because of abject poverty the petitioner sold 55 cents of property. Still the petitioner is the lawful owner of 1 acre and 5 cents. Inadvertently it was not stated in the affidavit sworn by the petitioner. So in the entire arguments the following aspects are highlighted by the petitioner.

(1)Award was not passed within the stipulated period mandated by Section 11/A of the Principal Act.

(2)5-A enquiry was not conducted objections of the petitioner was not recorded.

(3)Compensation was not paid.

(4) Possession was not taken by the acquisition body.

(5) The purpose for which acquisition was made was not gone ahead with by the acquisition body.

(6) Notices under Section 9, 10 and 45 were not properly served to the petitioners.

22. The entire provisions of the Principal land acquisition Act was given a go-by by the second respondent. For the above said reasons the petitioner prays that the writ petition be allowed and impugned order dated 08.04.2010 may be quashed and re-conveyance of land may be ordered as prayed for.

23. The highly competent counsel Mr. S. Balachandar, appearing for the petitioner submits that the respondents had acquired the subject matter of lands to an extent of 0.55.0 hectares at Sholinganallur Village, for the purpose of neighbourhood scheme. The learned counsel further submits that the respondents' notification for acquiring the land has been quashed by this Court. Hence, the petitioner made representation to the respondent to reconvey the said land, since the lands have not been utilized. Further, the petitioner had levelled a writ petition before this Court in W.P.No.9120 of 2004 and the same was disposed of with a direction to the respondents to consider the petitioner's claim and the same was rejected. Some of the land have been reconveyed to the respective land owners under the same scheme. The respondent had rejected the petitioner's representation made under section 48(B) of the Act without assigning any reason.

24. The very competent counsel Mr. M. S. Ramesh, appearing for the 1st respondent submits that on the request of the 2nd respondent, the 1st respondent had issued a Government Order in the year of 1990 for acquiring the petitioner's lands and others' lands. Pursuant to the said Government Order, the Land Acquisition Officer had acquired the lands. Under the circumstances, the petitioner's representation has been rejected, since the acquired lands are under the occupation of the Housing Board.

25. The very competent counsel, Mr. B. Vivekavanan, appearing for the 2nd respondent submits that the 1st respondent has issued Government Order in the year 1990. Subsequently, the land had been acquired and draft declaration was issued in the year 1991 and the award was passed on 18.06.1993 and the petitioner's lands were taken over by the Tamil Nadu Housing Board from the Land Acquisition Officer. One Thiagarajan and others had filed batch of writ petitions and challenged the land acquisition proceedings comprised in Survey Nos. 631- Part II, 636-Part II of Sholinganallur Village. The petitioner's lands comprised in Survey No. 293/1 and 293/2 is not covered in the judgment passed in the batch of writ petitions. Similarly, one Somasundaram and others had filed batch of writ

petitions including the petitioners writ petition. These writ petitions were dismissed with a direction to consider their representation. The same was rejected. Further, some of the land owners filed writ petitions before this Court and the same was allowed. Consequently, no objection certificate was issued pertaining to the lands comprised in Survey Nos.643/3E and 643/2A by the Tamil Nadu Housing Board. One of the land owner namely Mrs.Padmavathi had filed in W.P.No.15708 of 1993. The same was allowed by the learned Single Judge and against the said order, the Tamil Nadu Housing Board has filed writ appeal and the same was allowed and the order of the Single Judge was set aside.

26.The Division Bench order is existing and has become final. The same order is applicable to the petitioner. The petitioner's, on an earlier application, for a similar remedy, was rejected by the respondents on 05.02.2004. Again, the petitioner made similar application on 31.05.2004 and the same was rejected on 24.08.2004. Further, the petitioner has filed one more writ petition No.28849 of 2004 to quash the impugned order dated 24.08.2004. The same was rejected.

27.The very competent counsel further submits that the petitioner's lands layout had been approved by CMDA in their proceedings dated 01.02.2006 and 28 plots were approved. The petitioner had also filed a writ appeal against the order passed in W.P.No.28849 of 2004, and the same was dismissed. Besides, the petitioner had filed review application which had also been dismissed. Further, the power agent of the petitioner and also subsequent purchaser had filed in W.P.No.22927 of 2007 and the same was dismissed on 23.10.2010. Subsequently, the petitioner has filed the above writ petition on the same cause of action, same prayer, same property is not maintainable, since res-judicata Section 11 of C.P.C will squarely be applicable in the instant case.

28.Per contra, the learned counsel Mr.Ashok Menon, submits that the 1st respondent had issued Government Order on 23.05.1990. Subsequently, declaration under section 6 was published on 17.06.1991, but award was promulgated only on 18.09.1993, which is contrary to the section 11(a) of the Land Acquisition Act.

29.As such, the land acquisition proceedings had been vitiated. As per section 11, the award has to be passed within two years, but the award has been passed only after two years. Therefore, the acquisition proceedings is not sustainable under the Old Act. The learned counsel also mentioned the judgment reported in 2009 (8) Supreme 441 supporting the instant case. Further, the Land Acquisition Officer had not conducted enquiry under section 5(a) of the Old Act. Therefore, there is a short coming in the acquisition proceedings. The highly competent counsel further submits that the

petitioner is residing at Kerala, but the notices under the acquisition proceedings were not served on him. As such, the respondent had not given sufficient opportunity and had violated the principles of natural justice. As of now, the compensation has not been paid to the petitioner and the said subject land had not been utilized. Therefore, the petitioner is entitled to receive relief under section 24(2) of the New Act. Hence, the very competent counsel entreats the Court to allow the above writ petition.

30. From the above discussion this Court is of the view that:

(1) The 1st respondent had issued Government Order dated 23.05.1990 and draft declaration under section 6 was published on 17.06.1991 and award was passed on 18.06.1993 and possession had been handed over to the Housing Board by the Land Acquisition Officer, dated 18.04.1994. Layout was approved by CMDA, pertaining to the subject matter of lands, comprised in Survey Nos.293/1 and 293/2, dated 01.02.2006. It clearly proves that the petitioners land is under the occupation of the respondents. As per the written argument submitted by the petitioner it is seen that the entire compensation amount of Rs.1,37,023.50/- was ordered to be deposited before the Civil Court in the name of the petitioner herein. Therefore, the petitioner is entitled to receive relief under section 24(2) of the New Act 30 of 2013;

(2) The same petitioner has filed in W.P.No.644 of 1995 and the same was dismissed on 24.11.1999 with direction to the respondents to consider the petitioner's application. The petitioner's representation was rejected by the respondents on 05.02.2004. Again, the petitioner filed in W.P.No.9120 of 2004 and the same was disposed of with a direction to the respondents to dispose the petitioner's representation dated 31.05.2003. The same was rejected on 24.08.2004. The said proceedings were challenged before this Court by way of another writ petition No.28849 of 2004 and the same was dismissed on 10.09.2005. Against, the said dismissal order, the petitioner has filed writ appeal and the same was dismissed on 27.02.2006. Subsequently, review application was filed by the petitioner and the same was disposed of with a direction to the respondent to dispose the petitioner's representation dated 13.04.2009 and the same was rejected and the impugned order has been passed is an order challenge now. The petitioner had filed several writ petitions and challenged the acquisition proceedings before this Court. All the writ petitions had been negated. In those writ petitions, the issue under section 11(a) had been raised, but the same was not entertained by this Court on earlier occasions including Hon'ble Division Bench. Therefore, the contentions raised by the petitioner within section 11(a) of the Act cannot be considered;

(3) One Mr.V.Bhaskaran and seven others had filed in W.P.No.22927 of 2007 in the capacity of power of attorney and agreement holder and subsequent purchaser and the same was dismissed. As such, the petitioner has no locus-standi, since she had given all power to the above mentioned persons;

(4) The acquisition proceedings had been initiated in the year of 1990 and the same was completed in the year of 1993. As such, after a lapse of 25 years, the reconveyance of land sought by the petitioner cannot be entertained. Besides, the subject matter of land has been divided into 28 plots which had been approved by the CMDA dated 01.02.2006.

31. On Considering the facts and circumstances of the case and the arguments advanced by the learned counsel on either side and on perusing the typed set of papers and the views of this Court listed as (i) to (iv) above, the above writ petition is dismissed. No costs.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

ub

To

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

2.The Managing Director,
Tamil Nadu Housing Board,
Anna Salai, Nandanam,

2 cc to M/s.Ashok Menon, Advocate Sr.No.41965

1 cc to Mr..B.Vivekavanan , Advocate Sr.No.42163

1 cc to Government Pleader.Sr.No.42077

W.P.No.29767 of 2010

scd(co)

pmk.1.9.2015