

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2016

CORAM :

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE

AND

The Hon'ble MR.JUSTICE R.MAHADEVAN

W.A.No.411 of 2000 against WP.5852 of 1999

The Tamilnadu Housing Board,
rep. by its Chairman, Nandanam,
Chennai-35. ... Appellant

-vs-

1.K.Meenakshi Achi (Deceased)
rep. by her Power of Attorney,
P.L.Chinnapalaniappa Chettiar.

2.The State of Tamilnadu,
rep. by the Commissioner and
Secretary to Govt. Housing and
Urban Development Dept.,
Fort St. George, Madras-9.

3.Chinnapalaniappan
(R-3 substituted as legal heir of
deceased R-1 vide order of Court
dt.25.09.2013 in WA.MP.19/2013)

.. Respondents

Appeal filed under Clause 15 of the Letters Patent against
the common order dated 06.12.1999 made in W.P.No.5852 of 1999 on
the file of this Court.

WP.No.5852/99: This Writ petition filed u/a.226 of the
Constitution of India praying to issue a writ of certiorarified
mandamus calling for the records of the 1st respondent in letter
No.34885/L.Az(1) 98-2 dt.25/2/99 and quash the order passing the
direct the I respondent to transfer to the petitioner 31 cents
of land comprised in R.S.No.54/2 Northern 71 cents out of 1 acre
17 cents comprised in R.S.No.55/2 and 21 cents comprised in
R.S.No.53/7 totalling 1 acre and 23 cents and situate in Ponneri
Village, Madurai Taluk as required under Sec.48-N of the Land
Acquisition Act (Tamilnadu Amendment Act 1996) Act 16/97.

For Appellant : Mr.V.Anandamurthy
For Respondents : Mr.T.N.Rajagopalan
Spl.G.P. For R-2
: Mr.Harishankar for R-3

* * * * *

J U D G M E N T

(Judgment of the Court was delivered by The Hon'ble Chief Justice)

The original owners of the land / the first respondent and two other adjacent land owners filed petitions for return of the land under Section 48-B of the Land Acquisition Act, 1894 (hereinafter referred to as 'the 1894 Act'), on account of non-utilisation of the land which formed the subject matter of notification under Section 4 (1) of the 1894 Act with the declaration under Section 6 of the 1894 Act being dated 17.12.1979 and 24.10.1980 respectively.

2.It is the case of the original petitioner / first respondent that the land acquisition proceedings under Section 4 of the 1894 Act initiated in reference to a majority of the lands surrounding the area of the original petitioner / first respondent stand quashed, for which no fresh acquisition proceedings were initiated. Not only that, the original petitioner and two other adjacent land owners averred that they were prepared to surrender an extent of 59 cents of land for purpose of providing a 50 feet road if the request for release of the lands can be considered. The result would, thus, be that out of the lands in question, 59 cents could be retained and remaining land could be returned to the original petitioner and two others. The lands were stated to have been handed over to the Housing Board / appellant on 04.12.1982, but there were interim orders and thus, only the remaining land was capable of being developed in the meantime. The original concept of having integrated development of the housing scheme could not be sub-served on account of quashing of the acquisition proceedings and thus, the land of the original petitioner may not be required.

3.It was not disputed before the learned Single Judge that the notification issued under Section 4(1) of the 1894 Act in reference to the lands surrounding the land in question had been quashed and the owners were dealing with their land. There were certain communications issued by the Superintendent Engineer supportive to the stand of the original petitioner. It came to light that even of the taken over lands, 108 acres had been utilised and 28.38 acres of land was still covered by the order of stay. Since even after 20 years, the lands were not being put to use for construction of house for which the original

scheme was intended, it was found that without acquiring the surrounding lands, the original petitioner's land could not be utilised especially keeping in view the report of the Executive Engineer of the appellant at Madurai Division dated 13.07.1994. The order refusing to transfer the land was, thus, quashed by the learned Single Judge and it was directed that the original petitioner's land should be released from acquisition and transferred back to the original petitioner and the two other land owners, retaining the extent of 59 cents alone, in view of the original petitioners having volunteered to surrender their remaining land.

4.It is the aforesaid order of the learned Single Judge which is the subject matter of the appeal.

5.Section 48-B of the 1894 Act reads as under:

'48-B. Transfer of land to original owner to 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 purpose, 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.

6.In the course of hearing of the appeal, the plans of the area were produced on 07.01.2015. It is not in doubt that the larger scheme has not been implemented qua the land even though it was in possession of the appellant free from hindrance. Further, acquisition proceedings in respect of a large portion already stood quashed and no steps had been taken to acquire the lands afresh and thus, it was opined that to that extent, the scheme stood abandoned.

7.The land of the original petitioners was found existence in three small circle portion falling within the area of acquisition proceedings where it had been quashed, but a road had been built over a part of that portion and to that extent, the original petitioners did not press their claim. Learned counsel for the appellant then appearing took some time to obtain instructions in this behalf as to how the 59 cents of the land of the appellant were proposed to be utilised.

8.Another aspect noted was that according to the learned counsel appearing for the original petitioner / first respondent, they continued in possession and thus, sought to avail of the consequences of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and

Resettlement Act, 2013 (hereinafter referred to as 'the 2013 Act'), though that position was sought to be disputed by the learned counsel for the appellant in view of the State ordinance issued in that behalf. Suffice to say that after number of hearings, on 19.08.2015, the then Advocate General took the stand that in view of the proposed utilisation, there could be no re-conveyance of the land in question.

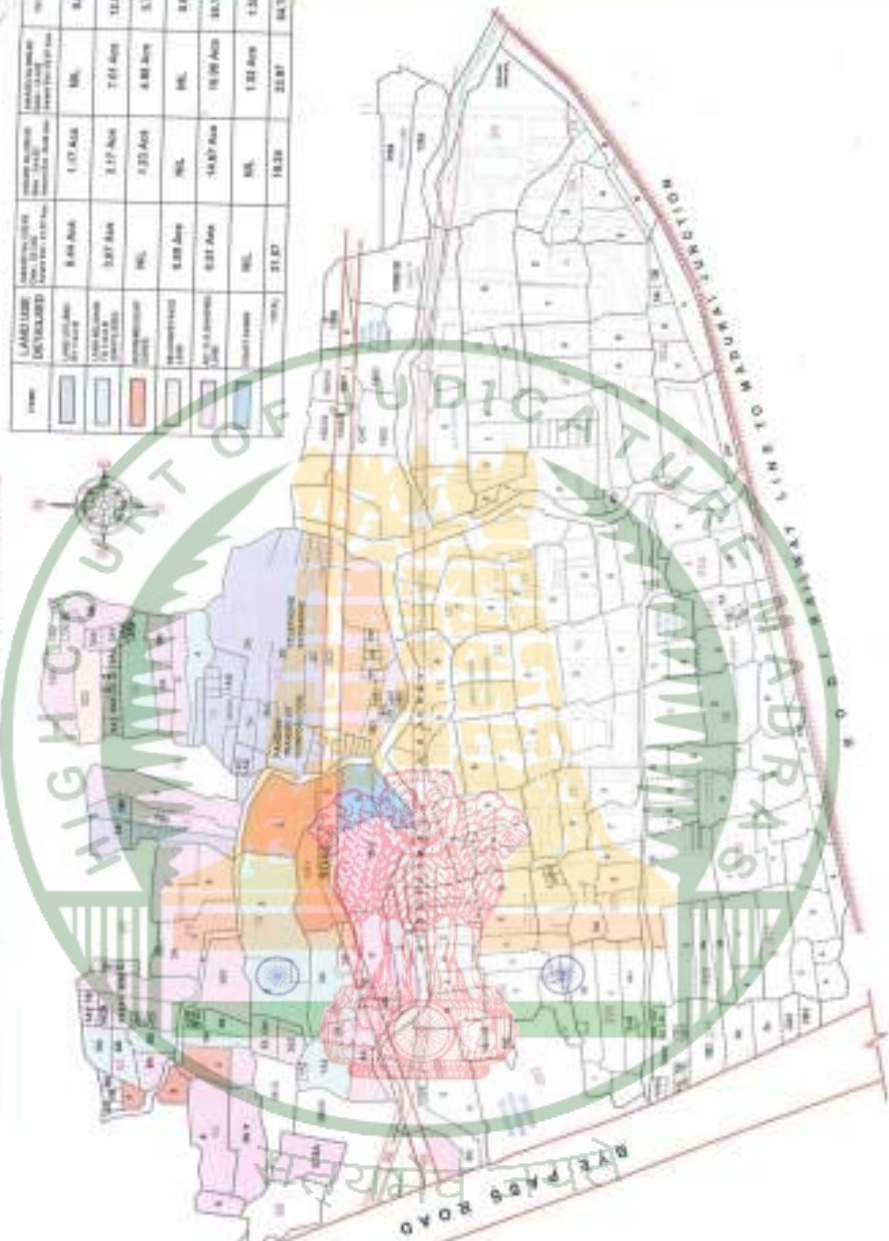
9. In order to appreciate the locational context, we reproduce the plan, which has been produced by the authorities concerned, where the land of the original petitioner / first respondent is coloured in orange at S.No.53/7, 54/2 and 55/2, on the left side corner of the plan:



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**MADURAI HOUSING UNIT OF TAMILNADU HOUSING BOARD
COMBINED SURVEY SKETCH & LAYOUT FOR ELLIS NAGAR SCHEME**

Sl. No.	LAND USE DESCRIPTION	Area in Sq. Ft.	Area in Sq. Mts.	Area in Acres	Area in Hectares
1	Residential (A)	8,00,000	1,17,424	2.68	10.81
2	Residential (B)	1,00,00,000	1,47,424	33.68	134.88
3	Residential (C)	1,00,00,000	1,47,424	33.68	134.88
4	Residential (D)	1,00,00,000	1,47,424	33.68	134.88
5	Residential (E)	1,00,00,000	1,47,424	33.68	134.88
6	Residential (F)	1,00,00,000	1,47,424	33.68	134.88
7	Residential (G)	1,00,00,000	1,47,424	33.68	134.88
8	Residential (H)	1,00,00,000	1,47,424	33.68	134.88
9	Residential (I)	1,00,00,000	1,47,424	33.68	134.88
10	Residential (J)	1,00,00,000	1,47,424	33.68	134.88
11	Residential (K)	1,00,00,000	1,47,424	33.68	134.88
12	Residential (L)	1,00,00,000	1,47,424	33.68	134.88
13	Residential (M)	1,00,00,000	1,47,424	33.68	134.88
14	Residential (N)	1,00,00,000	1,47,424	33.68	134.88
15	Residential (O)	1,00,00,000	1,47,424	33.68	134.88
16	Residential (P)	1,00,00,000	1,47,424	33.68	134.88
17	Residential (Q)	1,00,00,000	1,47,424	33.68	134.88
18	Residential (R)	1,00,00,000	1,47,424	33.68	134.88
19	Residential (S)	1,00,00,000	1,47,424	33.68	134.88
20	Residential (T)	1,00,00,000	1,47,424	33.68	134.88
21	Residential (U)	1,00,00,000	1,47,424	33.68	134.88
22	Residential (V)	1,00,00,000	1,47,424	33.68	134.88
23	Residential (W)	1,00,00,000	1,47,424	33.68	134.88
24	Residential (X)	1,00,00,000	1,47,424	33.68	134.88
25	Residential (Y)	1,00,00,000	1,47,424	33.68	134.88
26	Residential (Z)	1,00,00,000	1,47,424	33.68	134.88



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10. We may note that prior to that, on 25.02.2015, while referring to the aforesaid plan, we had noted that since the acquisition proceedings had been quashed in respect of the pink portion and the land of the original petitioner was in the orange portion interposed with pink portion, unless it was known as to what was going to be the plan for the pink portion (i.e. is it to be acquired afresh, etc.), the orange portion could not be of much utility except to the extent of the road plan over which the original petitioners have no objection to the same being acquired. The stand of the learned Advocate General was that a fresh lay out plan had been prepared for a proposed construction of 16 HIG, 6 MIG and 64 LIG flats in respect of the land of the original petitioners.

11. There was, however, a subsequent development recorded in our order dated 04.11.2015 as it was pleaded that the affidavit of the appellant that the amount of compensation was deposited in Court had been found to be factually incorrect as, on information sought, the original petitioner had been informed that there was no such amount (information made available on application filed before the Subordinate Court). Thus, the third respondent (the legal heir of the deceased first respondent / owner) sought to plead that the appellant was creating evidence in their favour since, despite possession being with the third respondent, the appellant had come and installed a board at the property stating that they were in possession and the third respondent has already issued notice to the appellant in this behalf seeking to alter the position during the pendency of the appeal.

12. Further affidavit was filed by the appellant, the result of which was recorded by us on 06.01.2016. The relevant portion of our order is as under:

'2. With different affidavits, new facts keep coming to light contrary to the position before the learned Single Judge. In the affidavit affirmed on 05.01.2016, in paragraph-5, it has been averred that the appellant as requisitioning body, had paid the amount on 29.03.1979 to the Land Acquisition Officer for the entire scheme, including the land of the third respondent. In what circumstances, after 20 years, i.e., on 23.01.1999, the appellant had addressed a communication to the Secretary to the Government, Housing and Urban Development Department stating that a sum of Rs.60,201.15 had been deposited in the civil court in respect of 1.23 acres of land of third respondent is not clear at all. We may note that thereafter, the bifurcation of even that amount qua the extent of different survey numbers had been given, but they had paid the amount to the Land Acquisition

Officer and not that the amount had been deposited in the Court. What the Land Acquisition Officer did with this amount for 20 years and thereafter is not clear.

3. We call upon the second respondent to personally look into this matter and place an affidavit before this Court clearly stating as to when, if at all, the amount had been deposited in Court and the history as to what was done with the amount from the date the appellant made it over in 1979.

4. We may also note that as per the affidavit filed, the amount is stated to have been deposited on 29.03.1979, which would logically have been as per the assessment of the acquiring authority, since the award was made and published only on 26.11.1982.

13. Thereafter has begun a saga of endeavours of the appellant authorities consequently conceding that they had not been able to locate any proof of deposit in Court and requesting for adjournments, which went on from 09.03.2016 till today. In this period of time, the Principal Sub Judge, Madurai, was also called upon to assist the appellant in endeavouring to verify from records the correct position and costs had also to be paid for the repeated adjournments.

14. The final picture which now emerges as per the communication dated 18.11.2016 placed before us in the typed set of documents from the Revenue Divisional Officer, Madurai, to the appellant is that no records were available to prove that the compensation amount due to the owners was paid or deposited. It has been averred in para 9 of the letter that the compensation amount of Rs.60,201.16 due almost 30 years ago to the original owner for the total land of 1.23 acres was not paid to her and thus, under the circumstances, it may be treated as if the compensation has not been paid. However, simultaneously, it has been reiterated that the possession of lands is with the appellant and that they are 'essential for the development of the scheme'.

15. We would not like to comment upon the essentiality considering that the areas of land for which acquisition was quashed were never sought to be re-acquired.

16. In view of the aforesaid undisputed position, the benefit is available to the original petitioner even under Section 24 (2) of the 2013 Act. Assuming even the possession is with the appellant, the fact remains that no compensation has been paid or deposited for the benefit of the original owner and thus, even one of the two eventualities would suffice to result in the

consequences of the acquisition proceedings having lapsed. We reproduce the relevant provision as under:

'24. Land acquisition process under Act No.1 of 1894 shall be deemed to have lapsed in certain cases.

- (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), -

(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five 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 this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.

17. The legal position in respect of the aforesaid is quite clear and it is not required to refer to the catena of judgments, but suffice to refer to the judgment of the Hon'ble Supreme Court in *Pune Municipal Corporation and Anr. vs. Harakchand Misirimal Solanki and Ors.* (2014) 3 SCC 183 opining that in either of the two contingencies being satisfied : (1) physical possession of the land not having been taken over or (2) the compensation having not been paid, the acquisition proceedings shall be deemed to have lapsed. This being the consequence, it was observed that if the appropriate Government still chooses to acquire the land which was the subject matter of acquisition under the 1894 Act, then it has to initiate proceedings afresh under the 2013 Act.

18.Learned counsel for the original petitioner states that the total land of the original petitioner is 31 cents in S.Nos.54/2, 71 cents in S.No.55/2 and 21 cents in S.No.53/2, totalling to 1.23 acres. Learned counsel states on instructions that the road has been laid on the land of the original petitioner measuring about 5 cents. He submits that the 59 cents referred to in the impugned order was in the context of the total area utilised for the road of three different owners. On the other hand, learned counsel for the appellant states that as per his instructions, no part of the land of the original petitioner has been retained for the road. Be that as it may, the original petitioner has already given an undertaking that to the extent of road being laid, he is not re-claiming possession.

19.The result of the aforesaid is that since no compensation is paid, the land to the extent of 1.23 acres less the area over which road has been laid, would be liable to be returned back to the original petitioner (now the third respondent being the legal heir). In case, the appellant is still desirous of obtaining the land by taking recourse to the provisions to acquire the land under the 2013 Act, they may do so within a period of two (2) months from today, failing which the land with possession shall vest with the third respondent as mentioned aforesaid.

20.Writ Appeal is, thus, dismissed in the aforesaid terms for the reasons set out hereinabove, leaving the parties to bear their own costs.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To

1.The Chairman,
Tamilnadu Housing Board,
Nandanam, Chennai-35.

2.The Commissioner and
Secretary to Govt. of Tamilnadu,
Housing and Urban Development Dept.,
Fort St. George, Madras-9.

+1 cc to Mr.V.Anandamurthy, advocate, sr.68678

+1 cc to Govt.Pleader, sr.68496

+2 cc's to Mr.K.harishankar, advocate, sr.68395.

rj(co)

krd 8/12

W.A.No.411 of 2000