

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16..02..2016

CORAM

<i>Date of Reserving the Orders</i>	<i>Date of Pronouncing the Orders</i>
16.12.2015	16.02.2016

THE HON'BLE Mr.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE Mr.JUSTICE T.S.SIVAGNANAM

W.P. No.859 of 2014

1.Nawabzada Khursheed Mohammed Khan (Deceased)

2.Rafique Mohammed Khan

3.Faiza Ahamed

4.Umar Mohammed

5.Shoeb Mohammed Khan

..Petitioners

P-3 to P-5 are substituted as LRS of deceased P-1 as per order dated 10.08.2015 in M.P.No.1 of 2015 in W.P.No.859 of 2014.

Versus

1.The Secretary to Government,
Revenue Department,
Fort St., George,
Chennai – 600 009.

2.The Secretary,
Ministry of Home Affairs (Settlement Wing),
II Floor, NDCC Building – II,
Jai Singh Road,
New Delhi – 1.

..Respondents

R2 is impleaded as per order dated 09.07.2015 in W.P.No.859/2014

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorarified Mandamus, to call for the records of the respondent in G.O.Ms.332, Revenue (LD 7 (2)), Department, quash the order dated 27.08.2013, and consequently direct the respondent to give effect to their decision to allot the lands measuring 1.21.4 hectares in S.No.405/8A3, Thoraipakkam village and 1.21.4 hectares and 1.22 ½ cents comprised in Survey Nos.174 and 176 respectively in Karappakkam village as found in their letter dated 14.03.2011 addressed to the Principal Secretary and Commissioner of Land Administration, Chennai in lieu of the 2/3rd non evacuee share in the composite property in 82.5 grounds in R.S.No.36/3 to 36/43 in Nungambakkam village, Chennai or demarcate and hand over the 2/3rd non evacuee share of the petitioners in the composite property or pay compensation for the 2/3rd non evacuee share in the composite property as per the prevailing guideline value and pass such further or other orders.

For Petitioner	:: Mr.V.T.Gopalan Sr., Counsel for Mr.R.Asokan
For Respondents	:: Mr.P.H.Aravind Pandian, AAG Assisted by Mr.S.T.S.Murthi. G.P., for R1 Mr.Su.Srinivasan ASGI for R2

ORDER**T.S.SIVAGNANAM,J.**

The petitioners seek for quashing a Government Order in G.O.Ms.No.382, Revenue Department, dated 27.08.2013, by which the request made by the petitioner for separating and handing over 2/3rd share of non-evacuee property of the petitioners measuring an extent of 82.5 grounds in an area called 'Mackey Garden' in R.S.No.36/3 to 36/43 of Nungambakkam village or the lands in RS.No.35/78 or RS.No.35/3 in Nungambakkam village or any other suitable lands in any other area equivalent to that extent or to pay compensation was rejected. Consequently, the petitioners seek for giving effect to the order passed by the Principal Secretary and Commissioner of Land Administration, Chennai in his proceedings dated 14.03.2011, wherein a decision was taken to allot alternate lands to the petitioners equivalent to the value of the non-evacuee share calculated as per the prevailing guideline value in 2004.

2. The facts leading to the filing of this Writ Petition are set out as hereunder:-

The petitioners are son and daughter of Late Prince of Arcot H.H.Sir Gulam Mohammed Ali Khan and the subject property was

owned by the Prince of Arcot and after his demise, the petitioners who are son and daughter each became entitled to $1/3^{\text{rd}}$ share therein. The daughter Aza Muniza Begum migrated to Pakistan and her $1/3^{\text{rd}}$ share was declared as evacuee property under the provisions of the Administration of Evacuee Property Act, 1950 (Act). Pursuant thereto, the entire property including $2/3^{\text{rd}}$ share of the composite property vested with the custodian of Evacuee property, who was appointed under the Act to take possession of the entire extent of 82.5 grounds. The custodian proposed to dispose of the evacuee property namely, $1/3^{\text{rd}}$ share in 82.5 grounds and fixed the value of the property as Rs.1.54 lakhs by its order dated 10.09.1954. Since actual possession was not with the custodian, he was compelled to transfer the evacuee share to non-evacuee claimants and fixed the value of $1/3^{\text{rd}}$ share together with the arrears of rent payable by order dated 06.07.1958. The mode of assessment of the value as well as the claim for rent was resisted by the non-evacuee claimants stating that the property vested with the custodian as composite property. Thus, the proposal of the custodian did not go through. It is an admitted fact that several persons encroached upon the evacuee property put up permanent and semi-permanent construction, which were illegal and most of them are said to be slum dwellers.

3. It is the further case of the petitioners that some of the properties were assessed to tax thus, the State was earning revenue from the collections made from the illegal encroachers. These facts have lead to the situation where the petitioners though were entitled to 2/3rd non-evacuee property, could not obtain actual possession of the property. The petitioners approached the Government to provide 52.5 grounds i.e., 2/3rd share of the total extent or to allot 12 grounds in S.No.38/78, S.No.38/3, Nungabakkam village on exchange basis or pay compensation for the lands. The petitioners filed a Writ Petition before the Hon'ble Supreme Court in W.P.(C).No.526 of 2005, and the same was disposed of by order dated 24.10.2005, directing the authority concerned to dispose of the petitioner's application within a time frame. Pursuant to such direction, the Government by order in G.O.Ms.No.778, dated 04.12.2006, rejected the request stating that as early as 1971, the area has been declared as a slum area and as an Administrator of the evacuee property, the State Government does not have responsibility in respect of the non-evacuee property, being a private property to be protected by its owners and the question of compensation or exchange of land does nor arise. This order dated 04.12.2006, was put to challenge before this Court in W.P.No.7068 of 2007, which was allowed by order dated 02.09.2010, with a direction to the first respondent to either separate and hand over 2/3rd share of

the non-evacuee property or hand over the lands in R.S.No.35/78 or the lands in R.S.No.35/3, or any other suitable land in any other area equivalent to the value of $2/3^{\text{rd}}$ share of the non-evacuee property by considering the recommendation of the District Revenue Officer, Chennai in his letter dated 27.04.2004, and the Collector of Chennai in his letter dated 09.06.2004. The first respondent was directed to complete the exercise within a period of eight weeks from the date of receipt of a copy of the order. Challenging the order passed in the Writ Petition, dated 02.09.2010, the first respondent preferred appeal in W.A.No.2617 of 2012.

4. It was argued that 'Mackey Garden' is a composite property measuring an extent of 82.5 Grounds consisting of 26 plots in R.S.Nos.36/3 to 36/43 owned by the Prince of Arcot and his daughter Aza Muniza Begum having migrated to Pakistan, her $1/3^{\text{rd}}$ share was declared as evacuee property and the petitioners were contesting their claim for the remaining $2/3^{\text{rd}}$ share of the non-evacuee property as legal heirs of Prince of Arcot. It was further contended that the competent authority under the Act namely, the Evacuee Interest (Separation) Madras, directed the owner of the non-evacuee property to deposit the evacuee share and suggested that the composite property be sold by way of public auction in terms of Section 10 of the

Act and fixed the valuation at Rs.1,58,500/-. So far as the evacuee share namely, 1/3rd share, the competent authority ordered that it could be transferred to the petitioners if they are prepared to pay Rs.54,833.33/-, together with Rs.13,713.67/- being the arrears of rent within one month failing which intimated that the property will be sold by public auction. It was submitted that the petitioners did not pay the said amount as fixed by the competent authority nor any appeal was filed against the said order nor they sought for partition of the composite property under Section 10 of the Act. Further the Government vide G.O.Ms.No.378, Housing Department, dated 02.11.1972, declared the entire area as a slum area under Section 3(1) of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971. Therefore, the first respondent contended that the Writ Court ought not to have issued the directions as contained in the order. Further, it was submitted that the entire area is occupied by the trespassers, who have constructed houses and the petitioners having slept over the matter for over 50 years, cannot blame the State Government and claim alternate lands or compensation.

5. The petitioners resisted the appeal contending that it is the admitted case that 82.5 grounds being a composite property and there was no division by metes and bounds and merely because the

custodian offered to sell the evacuee property of 1/3rd share, it is no ground to deny that 2/3rd share of the petitioners. The State Government having declared the entire area as a slum area including the 2/3rd share of the property owned by the petitioners, they are justified in claiming compensation or alternate lands. In this regard, reliance was placed on the reports submitted by the District Revenue Officer to the Special Commissioner and Commissioner of Land Administration, Chennai, recommending the request of the petitioners. It was contended that this aspect was not considered when the Government rejected the petitioners' request and passed the order in G.O.Ms.No.778, dated 04.12.2006, and the learned Single Judge after having considered the entire matter at great length issued the direction and the said order does not call for interference.

6. The First Bench of this Court considered the submission on either side took note of the facts mentioned above and specifically the fact that no partition of the property had taken place nor the property was auctioned, since there were several encroachment, noted that the petitioners have not taken steps to get partition of the 2/3rd share in 82.5 grounds and that the petitioners for the first time in the year 2003 submitted representation seeking exchange of the land to an extent of 12 grounds and this request was processed and the Revenue

officials submitted a report dated 27.04.2004 to the Special Commissioner and Commissioner of Land Administration as called upon. As is evident from the said report, the Slum Clearance Board was unable to give assignment of the land to the slum dwellers/encroachers, as the ownership of the land continued to vest with the petitioners. Therefore, the Division Bench pointed out that unless the said issue is settled, the slum dwellers cannot be given patta and the suggestion made by the Tahsildar in his report dated 27.04.2004, was practical and recommended by the District Revenue Officer coupled with the direction issued by the Hon'ble Supreme Court to consider the matter on merits. As the Government Order in G.O.Ms.No.778, did not refer to the report submitted by the Revenue officials, the difficulties faced by the Slum Clearance Board and therefore, the Division Bench held that the Government Order in G.O.Ms.No.778, was passed by the first respondent without application of mind and without considering the relevant issues in proper perspective.

7. Having made such observation, the Division Bench held that the learned Single Judge was not justified in issuing a positive direction, allowed the appeal filed by the first respondent in part, set aside the Government Order in G.O.Ms.No.778, dated 04.02.2006 and

remitted the matter to the first respondent to consider the issue afresh, based on the materials available on record and pass fresh orders, within a period of four months from the date of receipt of a copy of the judgment. Pursuant thereto, the impugned Government Order in G.O.Ms.No.332, dated 27.08.2013, has been passed rejecting the petitioner's request. In the impugned order, the reason for rejection of the petitioner's request are contained in paragraphs 12 to 14. The earlier paragraphs of the impugned order deal with the facts, the orders passed by the Hon'ble Supreme Court, the order passed by the learned Single Judge and the order passed by the Division Bench. Paragraph 12 of the impugned order contains six sub-paragraphs and on a perusal of the same, we find that it is in effect not a decision, but it is infact a reiteration of the facts set out from the perspective of the first respondent. The broad reasons for rejecting the petitioner's request has to be culled out from paragraph 12 of the impugned order and the grounds being that there is laxity on the part of the petitioners in taking steps to protect the lands from encroachments, they have not taken steps to get partition of the land and also failed to protect their possession. Infact, the Division Bench in its judgment dated 30.04.2013, noted that the petitioners did approach the authorities immediately and that the entire area was encroached well before the same was declared as a slum by the State Government in 1971. That

the land being a private property, the Slum Clearance Board has not taken steps to implement the Slum Improvement Programme and there is no responsibility for the State Government to pay any compensation to the petitioners. The reports submitted by the District Revenue officials was brushed aside stating that it was merely based on the report of the Tahsildar as a means to settle the issue and without any other justification and the property being a private property, there is no responsibility vested with the Government and the recommendations of the District Revenue Officer is not valid. Further, in terms of the provisions of the Act, the State Government has no specific responsibility in respect of non-evacuee property as this being a private property has to be protected by the landowners themselves. The above are the reasons assigned in paragraph 12 of the impugned order leading to the rejection of the petitioners claim.

8. We have heard Mr.V.T.Gopalan, learned Senior counsel for the petitioners and Mr.P.H.Aravind Pandian, learned Additional Advocate General appearing for the respondents and given our anxious consideration to the facts and circumstances of the case and the materials placed on record.

9. In the preceding paragraphs, we have set out the factual matrix, which are required to decide the controversy in issue and it would be worthwhile to reiterate a few facts. The total extent of the property known as 'Mackey Garden' is 82.5 grounds. The petitioners and Aza Muniza Begum are son and daughter of the Prince of Arcot and after his lifetime each were entitled to $1/3^{\text{rd}}$ share. As Aza Muniza Begum migrated to Pakistan, her $1/3^{\text{rd}}$ share was declared as an evacuee property under the provisions of the Act. This $1/3^{\text{rd}}$ share along with $2/3^{\text{rd}}$ share of the petitioners being a composite extent was thus declared by the custodian of evacuee property, who was appointed under the Act to take possession of entire extent of 82.5 grounds. The competent authority under the Act passed an order on 10.09.1954, on claim petitions filed by 'Prince of Arcot' and three others. It was held that there was no dispute regarding the shares to which the claimants and the evacuee Aza Muniza Begum are entitled to (i.e.,) the first claimant, the Prince of Arcot is entitled to $10/48^{\text{th}}$ share, the claimants 2 & 3 widows of Prince of Arcot are entitled to $1/16^{\text{th}}$ share each, the four claimant the daughter of the late Prince of Arcot entitled to $1/3^{\text{rd}}$ share and the evacuee who is also a daughter is entitled to $1/3^{\text{rd}}$ share. The competent authority accepted the valuation report by the Valuation Officer of the Government of India who estimated the value at Rs.1,58,500/-. Noting that none of the

claimants are willing to deposit the evacuee share, suggested that the properties may be sold in public auction and sale proceeds distributed. Further, it was observed that when the properties are put up for sale, they will not fetch the prices fixed by the Valuer, in view of the fact in respect of some of the plots, tenants have acquired rights under the City Tenants Protection Act and this is a matter for the purchaser to investigate. Therefore, on the evidence placed before the competent authority, he accepted the valuation report and directed the property be sold in public auction and the sale proceeds be distributed after deducting the expenses of sale. It is not in dispute that the said order dated 10.09.1954, of the competent authority had become final.

10. The Resident Settlement Commissioner, Government of India, sent a communication to the Chief Settlement Commissioner, New Delhi by proceedings, dated 01.09.1966. This communication was pursuant to his personal inspection of the property and the discussions with the State Government officers for transfer of the work relating to arrears of rent and he examined the ways and means by which the property could be disposed of. It was pointed out that the property is occupied for more than 500 unauthorised persons, who have put up pakka constructions and there are paved concrete roads inside the plots and any attempt to sell the property by public auction

is not feasible and on account of the encroachment, there will not be any prospective bidders. Further, he noted that they are unable to collect any rent from the premises for 10 years or so and when the matter was referred to the Ministry of Law, it was opined that if no rent is recovered by the custodian for 12 years, the occupants will acquire the right of ownership in the property by virtue of law of adverse possession. The custodian was therefore advised by the Ministry of Law to take steps to evict the unauthorised occupants from the property. The State Government was addressed to use their good officers for recovering the rent. However, they have expressed their inability. Thus, the Resident Settlement Commissioner opined that there was no other way to dispose of the property except to offer the same to unauthorised occupants who are unwilling to purchase the land, which they have encroached. The proposal which emanated during his visit to Madras with regard to formation of a cooperative society to put an end to the dispute, the Resident Settlement Commissioner observed that it is the only possible alternative for disposal of the property. Accordingly, valuation was fixed at Rs.1,48,050/-, and a sum of Rs.35,000/- as arrears of rent and the price of the property was fixed at Rs.1,83,000/- and an offer was made to the co-operative society for negotiating the sale.

11. Thereafter, the non-evacuee claimant Shri.Navab Ali and others filed an application before the competent authority offering to purchase the evacuee share. Accordingly, having been satisfied with the claim made, the competent authority ordered that the evacuee share in the property shall be transferred to the applicants, if they pay Rs.54,333.33ps being the value of the evacuee 1/3rd share plus Rs.13,713.67ps being the arrears of rent, they would be entitled to purchase the evacuee share or else, the property shall be sold by public auction as already ordered.

12. The State Government by G.O.Ms.No.378, dated 02.11.1972, in exercise of its powers conferred under Section 3(1) of the Slum Areas Act, declared the said area to be a slum and this notification was published in the District Gazettee. During 1983, a conference of rehabilitation secretaries was convened by the Government of India at New Delhi and the first respondent attended the said meeting in which certain points emerged one of which was that the State Government, stale list out properties and lands free of encroachments and arrange for their disposal and encroachment and other problems will be considered separately. Pursuant thereto, the work of administration, management and disposal of evacuee properties and collection of rental arrears in respect of those

properties stood transferred to the State Government with effect from 01.04.1981. Pursuant thereto, the Deputy Secretary to Government, Revenue Department, addressed the Commissioner of Land Administration by letter dated 23.08.1983, requesting action in respect of each evacuee property be expedited with a view to complete the work as early as possible to realize the sale proceeds and rental dues of the properties concerned. Thus, with effect from 01.04.1984, State Government was responsibility for the administration, management and disposal of evacuee properties and for collection of rent.

13. It appears that no appreciable steps were taken by the State Government and during 1989, the Government issued an order in G.O.Ms.No.1919, dated 30.11.1989, with a view to determine the market value of the evacuee property, it decided to appoint two Judicial Officers as competent officers and another appellate officer and the same was notified. During 2003, the petitioner submitted a representation dated 12.09.2003, requesting for finalisation of the issue by ordering for exchange of the property. They pleaded with the first respondent to settle the everlasting issue by handing over either of the land specified by them and declare the entire stretch of 82.5 grounds and 471sq.ft., in 'Mackey Garden' after making necessary payment to the custodian. The Special Commissioner, Commissioner

of Land Reforms by proceedings dated 22.10.2003, called for a report from the District Revenue Officer, Chennai on the representation of the petitioners. In this connection, the Tahsildar, Egmore, Nungambakkam Taluk, to whom request of the petitioners was referred by the District Revenue Officer submitted report dated 15.04.2004, who after setting out the entire factual position and the situation prevailing on ground suggested that the request of the petitioner for exchange of land in lieu of their non-evacuee shares in the evacuee property be accepted and the encroachments could be regularised by collecting land cost based on marked value/nominal market value as most of the encroachers cannot afford to pay the cost fixed by the Government. The District Revenue Officer examined the report of the Tahsildar and stated that the request made by the petitioner deserves consideration and by considering their request, the regularisation of encroachment in the lands in R.S.No.36/3 etc., could also be made by collecting the market value of the land in question as the land becomes the property of the Government as and when the non-evacuee interest is settled.

14. When the factual situation at the state level remained thus the petitioner submitted a representation to the Chief Settlement Commissioner/custodian General under the provision of the Act on

22.12.2004, and requested for a direction to the State Government to allot 12 grounds in Survey No.35/3 on exchange basis in lieu of non-evacuee share of 52 grounds. Since the representation was pending for quite a long time, the petitioners approached the Hon'ble Supreme Court and filed a Writ Petition in W.P.(C).No.526 of 2005, noting that the representation is pending consideration of the concerned authorities, the Writ Petition was disposed of with the direction that if the representation is really pending the same shall be disposed of within three months from the date of communication of the order.

15. Thereafter, the State Government considered the matter and by order dated 04.12.2006 in G.O.Ms.No.778, rejected the petition filed by the petitioners as devoid of merits. This was put to challenge in W.P.No.7068 of 2007, and the Writ Petition was allowed by order dated 02.09.2010. After the Writ Petition was disposed of the Under Secretary to Government of India, Ministry of Home Affairs, (Settlement Wing), sent a communication, dated 25.10.2010 to the first respondent reiterating that the work relating to administration, management and disposal of the evacuee/composite property in the State of Tamil Nadu was transferred to the State Government vide order dated 20.03.1981, by the erstwhile Ministry of Supply and Rehabilitation, Department of Rehabilitation and requested the

Government of Tamil Nadu to take appropriate action for immediate compliance of the order passed in W.P.No.7068 of 2007, as per law to safeguard the Government/public interest under intimation to the Ministry. The Deputy Secretary to Government of Tamil Nadu, Revenue Department addressed a letter to the learned Government Pleader, High Court, dated 26.10.2010, requesting for an opinion as to whether an appeal could be preferred as against the order.

16. Parallely, it appears that the office of the Commissioner of Land Administration considered the matter and by proceedings dated 14.03.2011, accepted the recommendations of the District Revenue Officer and the Commissioner of Land Administration was directed by the Principal Secretary, Revenue Department, to submit a report to the Government. The operative portion of the said communication, dated 14.03.2011, reads as follows:-

10. Since the first option given by the Hon'ble High Court to evict and hand over 2/3 non-evacuee share to the petitioner is not possible and payment of compensation for 55 grounds to the land owners for their 2/3 share of the non-evacuee involves huge budget provision, after careful examination in consultation with Law department and after getting the legal opinion from the Law Officer concerned the Government have decided to allot alternate lands to the petitioner for the value of Rs.39,33,60,000/- which is

equal to the value of their non-evacuee share calculated as per the current guideline value prevailed in the year 2004 as recommended by the then District Revenue Officer, Chennai and as per the Hon'ble High Court as follows, after getting a status report of the said lands from the District Revenue Officer, Kancheepuram.

<i>Name of the village</i>	<i>S.No.</i>	<i>Extent (hectares)</i>	<i>Guideline Value (Rs.)</i>	<i>Total Value (Rs.) (Crore)</i>
Thoraipakkam	405/8A3	1.21.4	2198 Sq.ft (43560 Sq.ft +1 acre)	28,72,34,640/-
Karapakkam	174	1.21.4	300	3,92,04,000/-
Karapakkam	176	1.22 ½ cents	1250	6,68,93,750/-
Total				39,33,32,390/-

11. In the circumstances stated above, I am directed to request you to send a report in this regard to the Government immediately.

17. In continuation with the proceedings, dated 14.03.2011 of the first respondent, the Principal Secretary and Commissioner of Land Administration submitted a D.O.letter, dated 23.11.2011, with regard to allotment of alternate lands to the petitioners and the said communication contains the value of the lands in two places namely Thoraipakkam and Karapakkam. The next step that should have been taken is to consider the recommendations, assess the lands value in respect of the alternate land suggested and take a follow up action,

but however, the Principal Secretary and Commissioner of Land Administration by proceedings dated 21.02.2012, decided to file an appeal against the order passed in W.P.No.70268 of 2007. Accordingly, the appeal was preferred and the appeal was allowed in part and only the positive direction issued by the learned Single Judge was modified with a direction to consider the request. In the light of the above facts, it would be too late for the respondents to now contend that the claim made by the petitioners at the first instance in 2003 was a belated or a stale claim. These issues cannot be re-agitated by the first respondent in the light of the fact that the Hon'ble Division Bench confirmed the order passed in the Writ Petition and interfered only to the extent where the learned Single Judge issued a positive direction. Therefore, the first respondent was not justified in falling back on the same reasons and rejecting the request by the impugned order when those reasons were found to be not tenable by the learned Single Judge in the earlier Writ Petition and confirmed by the Division Bench.

18. Thus, it is an attempt made by the first respondent to reopen an issue, which has been already heard and decided against the State. The aspect regarding the delay in submitting representation cannot be put against the petitioners at this distance of time, as the first

respondent having suffered the order passed by this Court.

19. Equally the State Government cannot blame the Central Government as the work of administration, management and disposal of evacuee property and collection of rental arrears stood transferred to the State Government with effect from 01.04.1981. It is the State Government which declared the land as a slum area even prior to the said date by issuing a Government Order dated 02.11.1972. The encroachments appears to have been encouraged and we are shocked to see from the photographs that several buildings including multi-storied constructions have been made and hotels and guest houses have come up, civic amenities have been provided by the State and it is a densely populated area. Thus, we are of the clear view that the State has not taken any steps to protect the property free from encroachment nor to administer the property to protect the evacuee's interest and to non-suit the petitioners stating that they had approached the authorities belatedly is an argument stated to be rejected. As on date, the State Government has no title to the property. If they seek to treat the entire area as slum area and regularise the occupation of the trespassers, unless and until the claim of the petitioners are settled, the State Government would not be in a position to take things forward.

20. The Administration and Management of the property having been vested with the State Government with effect from 1981, it is the duty of the State Government to protect the property, which they have failed to do. The petitioners cannot be directed to file a suit for possession. In the given facts and circumstances, it is next to impossible for the State Government to recover possession. Therefore, the only option left to them is to provide alternate lands to the petitioners or to offer compensation at the market value. Thus for all the above reasons, we hold that the impugned order is unsustainable and a clear attempt to unsettle/settle issues, which stood concluded after the judgment of the Division Bench in W.A.No.2617 of 2012. For all the above reasons, the impugned order has to be set aside.

21. This leaves us with the only issue as to what is the relief the petitioner should get. Under normal circumstances, the Court will not issue a positive direction to direct the Government to act in a particular manner. But given the hard facts and being the second round of litigation, we are inclined to issue a positive direction to the

State Government, however, giving them an option either to accept the request made by the petitioners by offering alternate lands which in effect was recommended by the proceedings dated 14.03.2011, or in the alternative to pay compensation at market rate.

22. In the result, the Writ Petition is allowed, the impugned order is quashed and the first respondent is directed to consider and allot alternate lands to the petitioners and while doing so, take note of the proceedings dated 14.03.2011, or in the alternative to pay compensation for the 2/3rd non-evacuee share in the composite property as per the guideline value prevailing as on April 2013, when the Division Bench disposed of W.A.No.2617 of 2012. The above direction shall be complied with by the first respondent, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

(S.K.K.,CJ.) (T.S.S., J.)

16.02.2016

Index :Yes/No
Internet:Yes/No
pbn

To

1. The Secretary to Government,
Revenue Department,
Fort St., George,
Chennai – 600 009.
2. The Secretary,
Ministry of Home Affairs (Settlement Wing),
II Floor, NDCC Building – II,
Jai Singh Road,
New Delhi – 1.

**The Hon'ble The Chief Justice
and
T.S.SIVAGNANAM, J.**
pbn

Pre-Delivery Order in

W.P. No.859 of 2014

16.02.2016