

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.04.2016

Date of Reserving the Order	Date of Pronouncing the Order
10.03.2016	07.04.2016

Coram

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P.Nos.27156 of 2009

1.N.S.Subbaih Naidu (Deceased)
2.N.S.Manimaran
3.N.S.Padmavathi Petitioners
P3-substituted in the place of the
deceased petitioner (P1), dated 23.12.2014
in M.P.No.1 of 2011 in W.P.No.27156 of 2009

Vs

- 1.The State of Tamil Nadu
Rep., by the Secretary to Government,
Housing and Urban Development,
Fort St., George,
Chennai - 600 009.
- 2.The Deputy Secretary to Government,
Housing and Urban Development Dept.,
Fort St., George,
Chennai - 600 009.
- 3.The Chairman & Managing Director,
Tamil Nadu Housing Board,
Nandanam,
Chennai - 600 035.
- 4.The Special Tahsildar (L.A)
Tamil Nadu Housing Board,
Thirupattur,
Vellore District. Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus, to call for the entire records in respect of the order passed by the first respondent in Letter No.14545LA2(1)/2008-10, dated 20.11.2009 and quash the same, consequently and direct the respondent to re-convey the land by invoking section 48B of Land Acquisition Act in respect of property comprised in survey

No.56/2, with an extent of 3.03 acres at Kondasamutheeram village, Gudiyatham Taluk, Vellore District.

For petitioners .. Mr.D.Rajagopal

For Respondents .. Mr.Gomathinayagam AAG assisted by
Mr.R.V.Babu for R3
Mr.R.Rajeswaran, Spl., G.P., for RR1,2 & 4

O R D E R

The prayer sought for in the Writ Petition is for issuance of a Writ of Certiorarified Mandamus to quash the order passed by the first respondent, the State Government, dated 20.11.2009 and to direct the respondent to re-convey the land by invoking the power under Section 48B of the Land Acquisition Act, 1894, (hereinafter referred to as the 'Act'), in respect of the property comprised in survey No.56/2, Kondasamutheeram village, Gudiyatham Taluk, Vellore District. By the impugned order, the first respondent rejected the request for exclusion of the land in the light of the views expressed by the Tamil Nadu Housing Board for whose purpose the land was acquired.

2. There were two petitioners Mr.N.S.Subbaih Naidu, the first petitioner and his son Mr.N.S.Manimaran, the second petitioner. During the pendency of the Writ Petition, the first petitioner died and his daughter and the sister of the second petitioner was substituted in his place by order, dated 23.12.2014, in M.P.No.1 of 2011. Subsequently, the petitioners filed M.P.No.1 of 2014, to permit them to raise additional grounds in the Writ Petition, which was ordered after hearing both sides and the Housing Board filed additional counter affidavit, dated 12.02.2016, in addition to the counter affidavit, which was filed to the prayer sought in the Writ Petition, dated March 2010. Thus, to consider the relief that the petitioner is entitled to in this Writ Petition, the case has to be tested on the additional grounds raised. To arrive at a decision, the following facts are germane.

3. The Government by G.O.Ms.No.961, Housing and Urban Development, dated 19.09.1985, approved the draft notification proposing to acquire the petitioners' lands for implementation of a scheme envisaged by Tamil Nadu Housing Board (hereinafter referred to as 'Housing Board'). This was followed by notification dated 09.10.1985, under Section 4(1) of the Act, which was published in the Government Gazette. The notification was also published in two dailies on 17.10.1985 and 19.10.1985 and the local publication was made on 19.10.1985. The enquiry under Section 5A of the Act was conducted on 04.12.1985 and 20.12.1985, in which the petitioners participated and raised

their objections and remarks were sought for on those objections from the requisitioning body, the respondent Board on 07.01.1986. The reply so received, was communicated to the petitioners on 26.11.1986 and subsequently the declaration under Section 6 was issued in G.O.Ms.No.1401 and published in the Government Gazette on 17.09.1986 and paper and local publications were effected. Award enquiry was conducted on 26.02.1988 and award was passed on 19.09.1988 in Award No.2 of 1988-99. The land owners filed W.P.No.3456 of 1989, challenging the land acquisition proceedings and the Writ Petition was dismissed by order dated 13.07.1989.

4. The Writ Appeal filed against the said order, was dismissed by the Hon'ble Division Bench by judgment dated 26.09.1988 and while doing so, the land owners were directed to file a representation for withdrawal of the acquisition proceedings against the lands in question within four weeks from the date of the judgment and if so filed, the representation was directed to be duly considered by the Government and the decision taken thereon be communicated to the petitioners. The Hon'ble Division Bench observed that during the pendency of the Writ Appeal, the petitioners had the benefit of stay of the impugned notice for taking possession and that possession can be continued until the representation of the petitioners is disposed of and communicated to them, within a period of four weeks thereafter. There was a further observation that the representation of the petitioners will have due consideration at the hands of the first respondent without reference to the dismissal of the Writ Petition and the dismissal of the Writ Appeal. The Government by order dated 08.04.1999, negatived the petitioner's request. Challenging the same, Writ Petition in W.P.No.9809 of 1999, was filed for quashing the said Government Order and to direct the release of the petitioners' land. At the time of entertaining the Writ Petition, an order of interim injunction of dispossession alone was granted, if possession had not already been taken and the interim order was made absolute by order dated 01.09.2003. Ultimately, the Writ Petition was dismissed by order dated 15.06.2009. However, liberty was granted to the petitioner to make a representation to the first respondent under Section 48B of the Act, within a period of four weeks from the date of the order and if such representation is made, the first respondent was directed to consider the same in the light of the two Government Orders and more particularly the judgment in the case of R.Shanmugam & Ors., vs. State of Tamil Nadu reported in 2006 (4) CTC 290. The Government was directed to pass orders in accordance with law as indicated and in the mean time, as directed by the Hon'ble Division Bench in W.A.No.631 of 1989, the possession of the petitioner was directed not be disturbed for 20 weeks. Based on such order, the petitioner submitted three representations on 08.07.2009, 11.07.2009 and 03.08.2009, seeking reconveyance. The said

request was rejected by order dated 20.11.2009, which is impugned in this Writ Petition.

5. As noticed above, the petitioner initially challenged the impugned order raising various grounds as to how the first respondent failed to take into consideration their request for reconveyance. However, during the pendency of the Writ Petition in the light of the fact that the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (Act 30 of 2013), having come into force, the petitioner was permitted to raise additional grounds and opportunity was granted to the respondents to file their counter to the additional grounds raised which they have done.

6. Therefore, it has to be seen as to whether the acquisition proceedings initiated by the respondents acquiring the petitioner's lands have lapsed. The petitioner would contend that Section 24(2) of Act 30 of 2013 states that notwithstanding anything contained in sub-section (1) in case of land acquisition, proceedings initiated under the Act (1894), where an award under Section 11 has been made five years or more prior to the commencement of the Act, but the physical possession of the land has not been taken or compensation has not been paid, the said proceedings shall be deemed to have lapsed and appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of the Act 30 of 2013. It is submitted that as on date, the petitioners are in possession and enjoyment of the property, which fact has been admitted in the counter affidavit filed by the respondent Board and possession has not been taken over from the land owners, as interim orders were operating in the interregnum, which fact has not been denied by the respondents and therefore, the acquisition proceedings shall be deemed to have lapsed.

7. So far as the payment of compensation, it is submitted that a reference was made by the Special Tahsildar (LA), TNHB, Tiruppathur, in LAOP No.425 of 1989, under Section 30 of the Land Acquisition Act, 1894, before the Sub-Court, Vellore and notice was issued in the said proceedings. Ultimately, the said reference under Section 30 was closed by the Court, by order dated 26th June 1987, on the ground that none of the parties had appeared to consider the offer made by the Land Acquisition Officer offering to pay a sum of Rs.89,793/-. Therefore, it is submitted that till date the compensation has not been paid nor deposited before the Court and therefore, it is one more ground to hold that the acquisition proceedings are deemed to have lapsed under Section 24(2) of the Act 30 of 2013.

8. The learned counsel appearing for the petitioner in support of his contention placed reliance on the decisions of the Hon'ble Supreme Court in the case of Pune Municipal Corporation and Anr., vs. Hara K.Chand Misirimal Solanki & Ors., reported in 2014 (1) CTC 755, Sree Balaji Nagar Residential Association vs. State of Tamil Nadu & Ors., reported in 2014 (5) CTC 857, Civil Appeal No.4283 of 2011, (M/s.Radiance Fincap (Pvt.) Ltd., & Ors., vs. UOI) Civil Appeal Nos. 503 etc of 2015 (Arvind Bansal & Ors., vs. State of Haryana & Ors.,) and Civil Appeal No.2592 of 2015 (Government of NCT of Delhi vs. Jagjit Singh & ors.,). and the decisions of the Hon'ble Divisions Bench of this Court in the case of P.Jayadevan vs. The State Government & Ors., reported in 2014 (5) CTC 187; W.A.No.368 of 2013 and 538 of 2014, dated 16.06.2014(A.Nagarajan & Ors., vs. The Secretary to Govt., & Ors.,); and the decisions of this Court in the case of Karuppathal & Ors., vs. The Government of Tamil & Ors., 2014 (5) CTC 282; On the above submissions, the learned counsel seeks for appropriate orders and to hold that the land acquisitions are deemed to have been lapsed.

9. The learned Additional Advocate General assisted by the learned counsel appearing for the Tamil Nadu Housing Board, submitted that the word "or" employed in Section 24(2) of the Act 30 of 2013 between the sentences "physical possession of the land has not been taken" and "the compensation has not been paid" should be read as "and", this word "or" employed in two places in Section 24(2) cannot be read as disjunctive, and if it is done, there will be an anomaly, as the expression "more", would not convey any meaning without the expression "five years", because, the intention of the Legislature is to set five years as limitation, above which, the expression "more" would apply. It is further submitted that the expression "or" should be read as conjunctive and therefore, the condition to hold that the proceedings are lapsed is that the twin condition should be satisfied and if one is not satisfied, the land owners are not entitled to a benefit under the provisions of Act 30 of 2013. It is further submitted that the land owners had initially challenged the acquisition proceedings which failed, their request for exclusion of the land from acquisition was rejected on 08.04.1999, and their subsequent request for reconveyance under Section 48B of the 1894 Act was rejected by the impugned order and at this juncture, they cannot raise a plea that the acquisition had lapsed in terms of Section 24(2) of Act 30 of 2013. It is further submitted that the compensation amount has already been deposited in the Sub-Court, as per the procedure under 1894 Act and thus, the case of the petitioner that compensation has not been paid, is not sustainable. It is further submitted that the patta has been transferred in favour of the Housing Board bearing patta No.212, in which the property in survey No.56/2, also finds place.

10. The learned Special Government Pleader also sought to sustain the acquisition proceedings by adopting the arguments of the learned Additional Advocate General and referred to the manner in which the acquisition proceedings were done and submitted that the Court having upheld the acquisition proceedings, the petitioner now cannot raise such a frivolous plea and seek for any relief in this Writ Petition.

11. In reply, the learned counsel appearing for the petitioner referred to certain communications, which they have received under the Right to Information Act. By referring to the letter of the Managing Director of the respondent Board addressed to the first respondent, Secretary to Government, dated 19.02.1999, the proceedings of the Executive Engineer, TNHB, Vellore Housing Unit to the Assistant Secretary LA(2), TNHB, dated 01.09.2009, the proceedings of the Managing Director of the respondent Board to the Government dated 02.11.2009, it is submitted that from all these communications, it is clear that possession has not been taken over.

12. Heard the learned counsels appearing for the parties and perused the materials placed on record.

13. The first aspect to be considered is as to whether the petitioner is estopped or prevented from raising a plea that they are entitled to the benefit of Act 30 of 2013, on the ground that they were unsuccessful in challenging the acquisition proceedings and their request for exclusion and reconveyance were rejected.

14. The Writ Petition filed by the petitioner challenging the acquisition proceedings in W.P.No.3456 of 1989, was dismissed by order dated 13.07.1989, against which the petitioner filed Writ Appeal in W.A.No.631 of 1989. While confirming the order of dismissal of the Writ Petition, the Hon'ble Division Bench by judgment dated 20.09.1991, granted liberty to the petitioner to seek for exclusion of his lands from the acquisition proceedings. The operative portion of the judgment reads as follows:-

At the same time, we do not want to limit the possibility and charges of the petitioners seeking for withdrawal from the acquisition, since possession has not yet been taken. It is for the petitioners to urge for withdrawal from acquisition pressing forth the Government order referred to above as well as all other relevant factors which they say conceive of as supporting this case of theirs. The petitioners are directed to file a representation to that effect to the first respondent within a period of four

weeks from today and if so called, that representation shall be duly considered by the first respondent and the decision taken thereon may be communicated to the petitioners. Since we find that during the pendency of the writ appeal, the petitioners had the benefit of stay of the impugned notice for taking possession, that position can be continued until the representation of the petitioners is disposed of and communicated to them and for a period of four weeks thereafter. The representation of the petitioners will have due consideration at the hands of the first respondent without reference to the dismissal of the writ petition and the dismissal of this Writ Appeal. The dismissal of this writ appeal is subject to what we have directed as above.

15. Thus, two things are clear from the judgment of the Hon'ble Division Bench, namely the petitioners possession of the land was protected, till representation for withdrawal of the acquisition was considered for which a time frame was fixed; the second is that the Government while considering the representation was directed to do so without reference to the dismissal of the Writ Petition or the Writ Appeal. In other words, the direction was to independently consider the representation for withdrawal of the acquisition. However, the Government negatived such request by order dated 08.04.1999. This was put to challenge by the petitioner in W.P.No.9809 of 1999. While entertaining the Writ Petition, an interim order was granted on 11.06.1999, protecting the petitioners possession. This interim order was made absolute till the disposal of the Writ Petition by order dated 01.09.2003. Ultimately, the Writ Petition was dismissed by order dated 15.06.2009, and even while doing so, liberty was granted to the petitioner to make a representation to the Government under Section 48B of the 1894, Act. At this stage, it would be relevant to take note of the direction and observations contained therein:-

8..... However, liberty is given to the petitioner to make a representation to the first respondent under Section 48-B of the Act within a period of four weeks from today. If any such representation is made, the first respondent is directed to consider the same in the light of above stated two Government Orders and in the light of various judgments of this Court more particularly the judgment reported in R.Shanmugam and Ors., vs. The State of Tamil Nadu (2006 (4) CTC 290). Further, the first

respondent is directed to pass appropriate order on receipt of such representation strictly in accordance with law as indicated above within a period of four months from the date of representation. In the mean while, it is directed that as directed by the Division Bench in W.A.No.631 of 1989, the possession of the petitioner shall not be disturbed for twenty weeks.

16. Thus, the petitioners' possession was protected by order dated 15.06.2009, till the disposal of the representation under Section 48B of the 1894 Act, for which, 20 weeks was set as the time limit. The petitioner submitted his representation well within the time fixed and the Government negatived the same by order dated 20.11.2009. This order is impugned in this Writ Petition and at the time when the Writ Petition was entertained, an interim order was granted on 23.12.2009, protecting the petitioner's possession, which order was made absolute on 25.11.2015. Thus, from the inception till today, there has been an interim order protecting the petitioner's possession. In this factual background, if the proceedings of the respondent Board to the Government are taken note of namely, the letters dated 19.02.1999, 01.09.2009 and 02.11.2009, clearly show that the respondent Board has admitted that possession of the property could not be taken over by the Government. This is candidly admitted in the counter affidavit filed in the Writ Petition in paragraph 6 of the counter affidavit, dated March 2010.

17. Thus, in the light of the above facts, the question of estoppel or acquiescence would not arise in the instant case and the petitioners are entitled to seek umbrage under the new enactment, namely, Act 30 of 2013. Therefore, the plea raised by the respondents in this regard has to necessarily fail. Consequently, it has to be held that the possession of the land is still with the petitioner and they have not been dispossessed, no more proof is required for this in the light of the admission in the counter affidavit and the other documents, which have been referred to above. Therefore, the petitioner has satisfied one of the conditions to be entitled to the benefit of Section 24(2) of Act 30 of 2013.

18. Argument of the learned Additional Advocate General with regard to whether the word 'or' occurring in Section 24(2) should be read disjunctively or conjunctively was raised before the Hon'ble Division Bench and after threadbare analysis of the said submission, the Hon'ble Division Bench rejected the same by judgment dated 26.02.2016, in W.A.No.1100 of 2014 (R.Rajaram & Ors., vs. The Secretary to Government & ors.,). The Hon'ble Division Bench after referring to the explanation given to the words "or" and "and" Principles of Statutory Interpretation, 14th

Edition, authored by Justice G.P.Singh and revised by Justice A.K. Patnaik, former Judge, Supreme Court of India, and taking note of various decisions held thus:-

23. The ratio deducible from the aforesaid judicial pronouncements is that when a provision is clear and unambiguous, leaving no room or scope for vagueness, the word "or" cannot be understood and interpreted as "and". The intention of the Legislature must be given full effect to, unless it creates anomaly. In the case on hand, the word "or" used in two places in the passage in Rule 24(2) of the 2013 Act, viz., "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" clearly indicates that after the award is passed 5 years or more, prior to the commencement of the 2013 Act, the proceedings initiated under the Old Act, 1894, shall be deemed to have lapsed. Thus, in any eventuality, either if the compensation is not paid or possession of the land is not taken over, the provisions of Section 24(2) would be attracted. Thus, the word "or" employed in Section 24(2) of the 2013 Act in the aforesaid two places, has to be read disjunctively and not conjunctively, as pleaded by the learned Additional Advocate General.

24 The manifest intention of the Legislature can be derived from the Statement of Objects and Reasons, read with the plain language of Section 24(2) of the 2013 Act. Clause 18 of the Statement of Objects and Reasons clearly stipulates that the benefits under the new law would be available in all the cases of land acquisition under the Old Act, 1894, where, award has not been made or possession of land has not been taken. In line with the objective of the enactment, Section 24 (2) of the 2013 Act plainly reads that where an award under Section 11 has been made 5 years or more prior to the commencement of the 2013 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. Thus, it is eloquent that the word "or" employed in two places in the passage "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" is disjunctive and not conjunctive. On happening of one event, the land owner would be entitled to the benefit under the provisions of Section 24(2) of the 2013 Act.

19. In the light of the above judgment of the Hon'ble Division Bench, the submission made by the learned Additional Advocate General in this regard, does not merit acceptance.

20. The next aspect that has to be considered is as to whether the compensation has been paid to the land owners.

21. It is not in dispute that the award was passed on 19.09.1988. If that is so, it has to be seen as to whether compensation was paid to the landowner or deposited before the Court to non-suit the petitioner from one of the twin conditions required to be fulfilled for being entitled to the benefit under Section 24(2) of the Act. The Hon'ble Division Bench has held that on happening of one of the events i.e., if possession has not been taken or compensation has not been paid, the land owner would be entitled to the benefit under Section 24(2) of the Act 30 of 2013. In the preceding paragraphs, this Court has held that the physical possession has not been divested from the petitioner. Therefore, having satisfied one of the events, the land owner would be entitled to the benefit of Section 24(2) of the Act 30 of 2013. However, an issue was raised with regard to payment of compensation, this Court proposes to consider that aspect also.

22. During the award enquiry, the deceased land owner stated that he had already entered into a sale agreement with one Murugesu Mudaliyar and received an advance agreeing to sell the subject land along with other lands. The said Murugesu Mudaliyar was also enquired at the time of award enquiry, who had confirmed that he had entered into a sale agreement with the land owner (since deceased) and he has also filed a Suit in O.S.No.34 of 1988, before the Sub-Court, Vellore for realising the advance amount paid by him.

23. In the light of the factual position, an award was passed on 19.09.1988 and the matter was referred to the Sub-Court, Vellore, under Section 30 of the Land Acquisition Act. In paragraph 5 of the counter affidavit, dated March 2010, a vague averment has been made that the compensation was deposited before the Sub-Court for deciding the apportionment. From the record of the proceedings of the Sub-Court, Vellore, it is seen that a notice was issued by the Court on 28.03.1989, under Section 30 of the Act, stating that the Land Acquisition Officer is offering a compensation of Rs.89,793/- and the parties were directed to appear before the Court. However, the parties did

not appear and the Sub-Court, Vellore by order dated 26.06.1997, closed the proceedings, stating that the land owners or the claimants were not aware, what is the stage of the proceedings nor evinced any interest in that regard and the matter being pending from 1989 requires to be closed. The record of the proceedings of the reference Court do not clearly reveal that the amount has been deposited. In any event, the amount has not been paid to the land owner and the Court while closing the proceedings did not make any order to repatriate the funds to the Department nor passed any other order making any specific observation regarding deposit, if any made. Therefore, this Court can safely presume that there was no deposit made and the land owners were not paid compensation, as required to be done under the Act. In any event, this issue is only academic as the petitioner is entitled to succeed on the first ground that possession has not been taken over by the respondents. Even assuming the respondents are able to establish that the deposit was made before the Sub-court, much prior to or at the time of seeking reference under Section 30, the same can hardly have any effect on the petitioners being entitled to relief at the hands of this Court.

24. In the result, it is held that the provisions of Section 24(2) of Act 30 of 2013, would be attracted in the facts and circumstances of the case as possession continues to remain with the petitioners and as admitted by the respondents and consequently, the entire land acquisition proceedings shall stand lapsed. Accordingly, Writ Petition is allowed on the above terms. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

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To

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

2.The Deputy Secretary to Government,
Housing and Urban Development Dept.,
Fort St., George,
Chennai - 600 009.

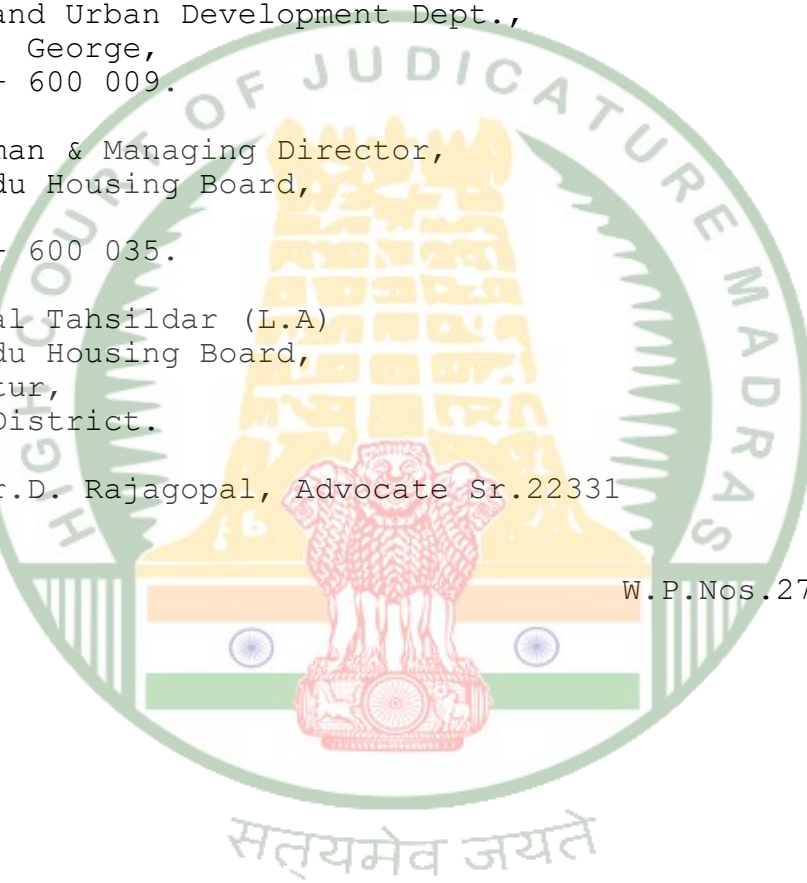
3.The Chairman & Managing Director,
Tamil Nadu Housing Board,
Nandanam,
Chennai - 600 035.

4.The Special Tahsildar (L.A)
Tamil Nadu Housing Board,
Thirupattur,
Vellore District.

+ 1 cc to Mr.D. Rajagopal, Advocate Sr.22331

W.P.Nos.27156 of 2009

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