

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

W.A.No.1574 of 2016

and CMP No.19597 of 2016

Mrs.B.Kanniyammal .. Appellant

versus

1. The District Collector,
Thiruvallur District,
Tiruvallur.
2. The Special Tahsildar for Land Acquisition,
Taluk Office, Thiruvallur.
3. The Surveyor,
Taluk Office, Thiruvallur.
4. The SIDCO Industrial Estate,
Tamil Nadu Industrial Development Corporation,
Baulwels Road, Kathipara Junction,
Chennai - 600 016.
5. The Revenue Divisional Officer,
Tiruvallur Taluk Office,
Tiruvallur.
6. The Principal Secretary and Commissioner of
Land Administration,
Ezhilagam, Chepauk,
Chennai - 600 005.
7. The Secretary to the Government,
Secretariat Revenue Department,
Fort St.George, Chennai - 600 009.

8. The Secretary to Government,
Small Industries Department,
Fort St.George,
Chennai - 600 009.

.. Respondents

Writ Appeal filed against the order dated 10.01.2013 in W.P.No.14456 of 2012 Writ Petition filed u/S 2226 of the constitution of India praying to issuance of a writ of certiorarified mandamus to to call for the records of the 6th respondent in Letter No. M2/19933/09 dt 28.4.2010 and quash the same and direct the respondents to re-convey the petitioners lands situated at Puttlur Village Thiruvallur high Road Thiruvallur District comprised in Survey Nos. 482/1 486/1 486/2 487 488/1 488/2 488/3 and 489 totaling 2 acres and 47 cents to the petitioner.

For Appellant : Mrs.V.Yamuna Devi

JUDGMENT

(Order of the Court was made by S.MANIKUMAR, J.)

Challenge in this writ appeal is to an order made in W.P.No.14456 of 2012 dated 10.01.2013, by which the writ Court, declined to quash the letter dated 28.04.2010 of the Principal Secretary and Commissioner of Land Administration, Chennai, the 6th respondent herein, and declined to direct the respondents therein, to reconvey lands in S.Nos.482/1, 486/1, 486/2, 487, 488/1, 488/2, 488/3 and 489, measuring 2 acres and 47 cents in Puttlur Village, Thiruvallur High Road, Thiruvallur District.

2. Facts of the case in nutshell are that, lands of the appellant have been acquired from 1968 onwards and in 1971, a decision has been taken to handover the same to SIDCO for public purpose. According to the appellant, lands have been acquired for development of an industrial area. Appellant has further submitted that lands have not been utilised for the purpose for which they were acquired and that encroachers had occupied the lands. Being aggrieved, the appellant has submitted a petition dated 20.04.2009 to the Government.

3. After considering the claim of the appellant, for reconveyance under Section 48 (B) of the Land Acquisition Act, reply of SIDCO and other connected records, vide letter dated 28.04.2010, the Principal Secretary and Commissioner of Land Administration, Chennai, the 6th respondent herein, has rejected the request for reconveyance, by stating that lands acquired were to be used for the purpose, for which it was acquired and that the claim of the appellant has no basis. Aggrieved against

the said order W.P.No.14456 of 2012, has been filed for the relief stated supra.

4. Before the writ Court, counter affidavit has been filed. Submissions have been advanced by the learned Additional Advocate General, who appeared for respondents R1 to R3 and R5 to R8 therein that in so far as the area, in question was concerned, the same was meant for Open Space Reservation (OSR) and that the same was to be used for the said purpose. However, when the learned counsel for the appellant/petitioner therein submitted that the lands in question was under encroachment, and therefore not used for the purpose, for which it was acquired, at paragraph nos.14 and 15, the writ Court ordered as hereunder.

"14. As far as Open space reservation is concerned, it will remain as open space and that is the reason why no construction is made in that place. Consequently, the stand of the learned counsel for the petitioner that the land in question is not utilized for the purpose for which it was acquired cannot be accepted since the land has been earmarked for Open Space Reservation. Further, under the relevant rule, reservation of certain area for open space is mandatory. Consequently, the argument of the learned counsel for the petitioner will not hold good.

15. The second stand that the respondent department itself wanted to transfer the land in question on the ground of encroachment is concerned, as rightly pointed out by the learned Additional Advocate General, as per the Division Bench Judgment, the relevant portion of which has been extracted above, Section 48-B will come into operation only in the event of completion of Section 16-B. As far as 16-B of the Land Acquisition Act is concerned, the land has to be forfeited and it has to be again vested with the Government for any reason and after it is vested with the Government, the Government may utilize the same for public purpose or any other purpose or if the Government is of the opinion, it may also reconvey the same. Consequently, the argument of the learned Additional Advocate General that as a matter of right, reconveyance cannot be sought has to be accepted."

5. On the aspect of reconveyance, the writ Court has also considered that there was no forfeiture of land by the Government and vesting and in such circumstances, the question of ordering reconveyance does not arise. Writ Court has also considered that lands have been acquired in the year 1968.

6. From the reply of SIDCO, it could be deduced that an

extent of 283.03 acres in Kakkalur village was acquired by the Industries Department for industrial purpose and subsequently, Industrial Estate was transferred to SIDCO in G.O.Ms.No.785, Industries (SIE-1) Department dated 07.06.1988 and that lands in S.No.488/1 etc., have already been allotted to one entrepreneur M/s.Indian Furniture Product and S.No.482/1, 0.60 acres and the same has been utilised as plots, and allotted to the entrepreneur for the projects. The balance portion of the lands in S.No.488/1, has been kept as 'Open Space Reservation (OSR)', in the revised layout.

7. Further, SIDCO has stated that though there were encroachment, steps are being taken to evict the encroachers and 16 acres of land have already been recovered from the encroachers. According to them, land is still required for fulfillment of the public purpose and on the above submissions, prayed to reject the request of the appellant for reconveyance.

8. Perusal of the letter dated 28.04.2010 shows that after considering the claim of the appellant for reconveyance and reply of SIDCO, the Principal Secretary and Commissioner of Land Administration, Chennai, the 6th respondent herein, at paragraph No.4 of the letter dated 28.04.2010, has ordered, as hereunder

"4. The claim of the petitioner and the reply from the beneficiary department SIDCO have been carefully considered. The request of the petitioner Tmt.Kanniyammal is that the lands acquired from her has not been utilized by the SIDCO, hence it should be reconveyed to her under Section 48(B) of the Land Acquisition Act. The beneficiary department SIDCO has replied that action is being pursued to evict the encroachers from the acquired land and the lands are being used for the purpose for which it was acquired. The genuineness of the statement of the SIDCO is evident from the fact that the SIDCO has retrieved 16 acres of land from encroachers. Further analysis of the statement of the SIDCO shows that the lands have been fully utilized for the industrial purpose for which it was acquired. Some portion of land classified as open space reservation lands which the petitioner claimed as unutilized and has requested for reconveyance is actually a part of the Industrial park only. The OSR lands are part of the layout. The SIDCO is sincerely taking action to evict encroachments on OSR land also. The SIDCO has developed the land acquired from the petitioner and a part of the said land was after developing it as industrial plot was allotted to M/s.Indian Furniture Products which carry out its industrial activities thereon by providing employment

to the public. Under Section 48(B) of the Land Acquisition Act, 1894, no original owner has any locus standi to demand re-conveyance of land. It is the prerogative of State to declare the need / public purpose and use of the land."

9. Thus, from the above, it could be deduced that, as rightly contended, an extent of land has been kept only as Open Space Reservation and steps have also been taken to remove the encroachers. Though, in the earlier in the letter dated 11.04.2006, SIDCO, has requested the District Collector, Thiruvallur to regularise the encroachments in an extent of 14.917 acres of land in Industrial Estate, Kakkalur, taking into consideration the economic conditions of the encroachers, in the reply of SIDCO submitted to the Principal Secretary and Commissioner of Land Administration, Ezhilagam, Chennai, SIDCO has stated that 16 acres of land have already been recovered from the encroachers. Acquisition has commenced in the year 1969 for formation of Industrial Estate at Kakkalur and subsequently, transferred to SIDCO during 1974. Reconveyance, at this stage cannot be ordered. Writ Court has considered the contentions of the appellant and passed a well considered order. We find no merits in the appeal.

10. In the light of the above, Writ Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector,
Thiruvallur District,
Tiruvallur.

2. The Special Tahsildar for Land Acquisition,
Taluk Office, Thiruvallur.

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3. The Surveyor,
Taluk Office, Thiruvallur.

4. The SIDCO Industrial Estate,
Tamil Nadu Industrial Development Corporation,
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5. The Revenue Divisional Officer,
Tiruvallur Taluk Office,
Tiruvallur.

6. The Principal Secretary and Commissioner of
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7. The Secretary to the Government,
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Fort St.George, Chennai - 600 009.

8. The Secretary to Government,
Small Industries Department,
Fort St.George,
Chennai - 600 009.

scd(CO)
md(29/12/2016)

W.A.No.1574 of 2016

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