

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2016

CORAM

THE HONOURABLE Mr. JUSTICE N.KIRUBAKARAN

W.P.No.38603 of 2016
and W.M.P.No.33063 of 2016

P.Rathinam

.. Petitioner

Vs

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

2.The Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai - 600 035.

3.The Executive Engineer and
Administrative Officer,
Tamil Nadu Housing Board,
Salem Housing Unit, Salem.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order of the first respondent in Letter No.3099/LA3(2)/2016-17 dated 07.10.2016, quash the same and consequently direct the first respondent to re-convey the lands of 38 cents in S.No.204/1, 15 cents in S.No.207/2B, 50 cents in S.No.207/3 and 71 cents in S.No.207/4, Narasingapuram Village, Attur Taluk within a time to be stipulated by this Hon'ble Court.

For Petitioner : Mr.A.Sivaji

For Respondents : Mr.P.V.Selvakumar
Additional Government Pleader
(For R1)

ORDER

The petitioner has filed this writ petition seeking Certiorari Mandamus to call for the records relating to the order of the first respondent in Letter No.3099/LA3(2)/2016-17 dated 07.10.2016, quash the same and consequently direct the first respondent to re-convey the lands of 38 cents in S.No.204/1, 15 cents in S.No.207/2B, 50 cents in S.No.207/3 and 71 cents in S.No.207/4, Narasingapuram Village, Attur Taluk within a time to be stipulated by this Hon'ble Court.

2.No acquisition will reach finality if the contention of the petitioner is to be sustained. The petitioner's land to an extent of 1.74 acres, namely, 38 cents in S.No.204/1, 15 cents in S.No.207/2B, 50 cents in S.No.207/3 and 71 cents in S.No.207/4, Narasingapuram Village, Attur Taluk, Salem was acquired by virtue of Section 4(1) Notification dated 17.07.1980. Section 6 declaration was made on 31.03.1982. Along with the petitioner's property, the property of 33 land owners covered the acquisition and an award was passed during 1985. Not satisfied with the acquisition proceedings one of the owner filed L.A.O.P.No.5/1991 on the file of the Principal Sub Court, Salem. The compensation was enhanced and fixed at Rs.3/- per sq.ft. The State challenged the same in A.S.No.26/1997 and thereafter the matter was settled between the parties at Rs.2.75/- per sq.ft. for the lands acquired. The said Appeal Suit came to be disposed of by the Division Bench on 09.01.2009. Thereafter, the petitioner sought for re-determination of compensation under Section 28-A of the Land Acquisition Act (hereinafter referred to as "the Act") referring the judgment of the Division Bench. Since the petitioner's claim was not considered, the petitioner filed a writ petition in W.P.No.15849 of 2010 and by order dated 18.08.2010, this Court directed the concerned respondent to consider the claim of the petitioner for compensation under Section 28-A of the Act. Thereafter, the Land Acquisition Officer re-determined the compensation as per the rate fixed by this Court in A.S.No.26/1997 and deposited the awarded amount due to the land owners including the petitioner. Subsequently, the petitioner approached the Civil Court in L.A.O.P.No.3/2012 and a sum of Rs.14,44,621/- was received by the petitioner through the cheque dated 20.12.2013 and subsequently filed his objection on 23.09.2013.

3.On 12.04.2014, the petitioner sent a representation followed by a reminder on 05.07.2014 to the first respondent for re-conveyance of his land. Though a portion of the land is utilized for construction, the petitioner's land was not utilized for the purpose for which it was acquired. Therefore,

the petitioner sought for re-conveyance under Section 48(b) of the Act.

4. Since the application of the petitioner for re-conveyance was not disposed of, the petitioner filed a writ petition in W.P.No.39123 of 2015 and this court by order dated 15.12.2015 directed the first respondent therein to consider the petitioner's representation dated 12.04.2014 reminder dated 05.07.2014 in the light of the Government Order dated 28.10.1986. Pursuant to the said direction only, an order has been passed on 07.10.2016 rejecting the petitioner's claim under Section 48-B of the Act. Challenging the said order only, the present writ petition has been filed.

5. Heard Mr.A.Sivaji, learned counsel for the petitioner, who would submit that though the lands were acquired as early as in the year 1980, so far no possession was taken. Even as on date, the property remains vacant and it is in possession of the petitioner. Further the petitioner sought for dropping of the proceedings under Section 24 of the new Act, namely, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation Resettlement Act, 2013 in W.P.No.31592 of 2014 and the same is pending. The learned counsel would rely upon the reply dated 10.07.2014 given by the Housing Board under the Right to Information Act that the land acquired from the petitioner is not utilized for the purpose for which it was acquired and therefore re-conveyance was sought and without appreciating the facts properly, the respondent rejected the re-conveyance prayer. He would also rely upon the judgments of the Division Bench of this Court in the case of A.N.Visalakshi and others vs. The Special Commissioner, Urban Land Ceiling and Land Reforms reported in 2015 (5) CTC 823 and in the case of Tamil Nadu Housing Board, rep. by its Managing Director and another vs. iGate Global Solutions Limited rep. by its Group Manager-Administration reported in 2016 (2) CTC 241 to state that the delivery of possession was not taken and the respondents have not stated anywhere that the possession was already taken.

6. It is not one year ago or two years ago the land was acquired and it is about 36 years ago the property was acquired, namely, in the year 1980. Section 6 declaration was made on 31.03.1982 and the award was passed in 1985. The compensation was also paid earlier at the lesser rate and subsequently it was enhanced to Rs.3/- per sq.ft. and by compromise it was decided before this Court at Rs.2.75/- per sq.ft. in the order passed in A.S.No.26/1997 initiated at the instance of the neighbouring land owners. Thereafter, petition under Section 28-A of the Act has been filed by the petitioner and as per the directions of this Court dated 18.08.2010 in W.P.No.15849 of 2010 filed by the petitioner, compensation on par with the order passed in A.S.No.26 of 1997 dated 09.01.2009 was also paid to the

petitioner through cheque dated 20.12.2013 to the tune of Rs.14,44,621/-. These are all the admitted facts.

7. When the procedure was followed in the matter of land acquisition and the amount was paid and the same was admittedly received by the petitioner, it is unimaginable that the Government paid the money without even taking the possession. There are very many cases where even after taking possession money was not paid, whereas for the first time, the petitioner very curiously would contend that though money was paid possession was not taken. That itself would demonstrate the falsity of the petitioner's case.

8. The petitioner gave a representation under Section 48(b) of the Act on 12.04.2014 seeking re-conveyance. A perusal of the said representation would reveal that there is no whisper about non-taking of the possession by the Housing Board. If the Housing Board has not taken possession, the petitioner would not have kept quiet and would not have omitted to mention about the alleged fact of non-taking of possession. Therefore the petitioner's representation dated 12.04.2014 itself would go against the petitioner.

9. The learned counsel for the petitioner would submit that the respondent has not stated anything with regard to taking of delivery of possession. But, there is no necessity for the respondent to speak about taking possession, that too, after 36 years, especially when there is no plea regarding that in the original representation dated 12.04.2014. These are all cooked up cases to take advantage of the state of affairs which are prevalent in the Government office where records are not properly maintained as it is or the documents are destroyed. This Court has got every reason to suspect that there is a possibility of destruction of the documents with the connivance of the officials. Otherwise having lost the property in 1980, the petitioner would not have kept quiet till the new Act is enacted.

10. The first respondent has categorically stated in paragraph Nos.3 and 4 of the order, which are extracted usefully:

"3. The Tamil Nadu Housing Board has stated that the lands were acquired in the year 1985 and the petitioner had willingly accepted compensation amount. Tamil Nadu Housing Board got the lay out approved for the acquired lands in the year 1989 and also obtained revised layout approval for the entire extent of 35.83 acres of acquired lands, including 1.74 acres belonging to the petitioner in survey nos.204/1, 207/2B, 207/3 and 207/4 and development activities were completed in the year 1993 by way of formation of roads, water supply

arrangements, culverts, etc. Further, 7 houses were also constructed on the plots in the year 1994 itself. Since there were some complaints regarding carrying out of development works in the above scheme, the subject matter was referred to the Director of Vigilance and Anti Corruption for an Enquiry.

4.As a result, the remaining developed plots could not be sold immediately. Later, with the consent of DV&AC, during 2011, the Tamil Nadu Housing Board made advertisements in the newspapers calling applications for allotment of balance 563 plots. More than 12,000 applications were received for allotment of plots. But, the plots could not be allotted immediately through lot due to filing of case by one Thiru.Selvaraj against the fixation of land cost for the plots. Subsequently the case was dismissed on 28.04.2015 and thereafter allotment has been made in respect of all the 563 plots in the layout including 60 developed lying in the lands acquired from the petitioners through lot conducted on 01.03.2016 and issuance of sale deed is being made as and when the allottees are paying full cost of the plot. Accordingly, there is no land left in the scheme to hand over to the petitioner. Further as the lands have been utilized for the purpose for which these were acquired, there is no question of forfeiting of the lands by the Government under Section 16(b) of the Old Land Acquisition Act and reconvey the same to the petitioner under Section 48(b) of the LA Act."

11.The aforesaid order would make it very clear that the petitioner willingly accepted the compensation after taking possession, layout approval for the acquired lands were obtained as early as in 1984 and revised layout approval was also obtained for the extent of 35.83 acres including 1.74 acres belonging to the petitioner. The development activities in the petitioner's property was already concluded by way of formation of road, water supply arrangement, culverts, etc. and in fact, seven houses were also constructed in 1994 itself. Therefore, it is very clear that all the details of acceptance of compensation, obtaining of layout and allotment of plots to various persons and completion of development activities are already over and it is too late for the petitioner to contend that the possession was not taken. It is only as a second thought, such a prayer has been sought for illegally without any substance.

12.The prayer sought for is under Section 48(b) of the Land Acquisition Act, 1894. The said Act was repealed by virtue of a new Act called the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation Resettlement Act, 2013 (Central Act 30 of 2013) which came into force on 01.01.2014. From 01.01.2014 onwards the old Act has been repealed. After repealing of the old Act representation for re-conveyance is said to have been given on 12.04.2014. No relief could be obtained under the Repealed Act. Therefore, the entire claim of the petitioner is unsustainable. There is no quarrel with regard to the dictum laid down in the above judgments referred to by the learned counsel for the petitioner and in those cases, the delivery of possession or taking of possession was the subject matter, whereas in this case as already observed that possession was already taken, lands were already developed. When such is the position, reconveyance under the Repealed Act is not sustainable and the judgment relied upon is not applicable to the facts of the present case. Hence, the writ petition is nothing but abuse of process of law. Though heavy cost has to be imposed on the petitioner, taking lenient view this Court is not awarding any cost.

13.Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

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

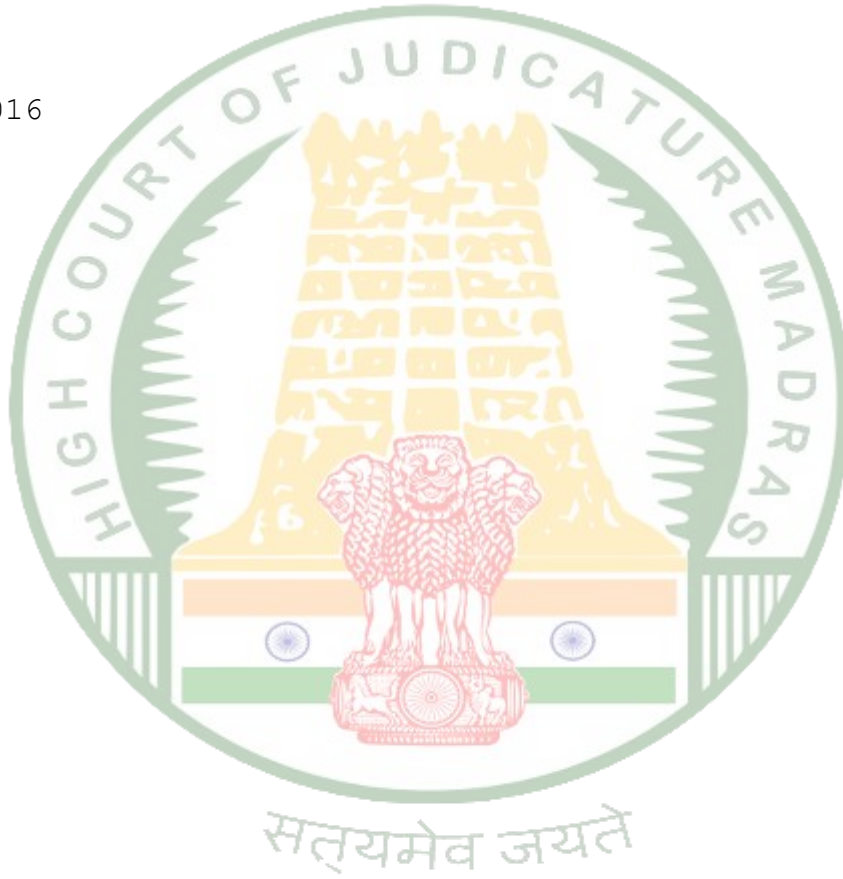
2.The Managing Director,
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3.The Executive Engineer and
Administrative Officer,
Tamil Nadu Housing Board,
Salem Housing Unit, Salem.

+1 cc to M/s.A.Sivaji Advocate sr 63740
+1 cc to the Government Pleader sr 63928

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