

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**Reserved on : 06.11.2017**

**Delivered on : 05.12.2017**

CORAM:

THE HON'BLE MR.JUSTICE **K.K.SASIDHARAN**

AND

THE HON'BLE MR.JUSTICE **P.VELMURUGAN**

**W.A No.1299 of 2017 and**  
**C.M.P.No.18112 of 2017**

The Managing Director  
Tamilnadu Housing Board,  
No.493, Anna Salai,  
Nandanam, Chennai - 600 035.

...Appellant

Vs

1.R.Parthasarathy

2.The Secretary,  
Housing and Urban Development Department  
Fort St.George, Chennai - 600 009.

3.The Special Tahsildar Land Acquisition,  
Coimbatore Housing Scheme Unit - I,  
Coimbatore.

...Respondents

**Prayer:-** Writ Appeal filed under clause 15 of the Letter Patent against the order dated 13.04.2017 made in W.P.No.2803 of 2017.

For Appellant : Mr.V.Anandhamurthy  
Additional Govt.Pleader

For Respondents : Mr.R.Krishnamoorthy  
Senior Counsel for  
Mr.R.Udhayakumar for R1  
Mrs.A.Srijayanthi,  
Spl.Govt.Pleader for R2 and R3

**J U D G M E N T****K.K. SASIDHARAN,J.****Introductory**

The writ petition filed by the first respondent challenging the land acquisition was allowed by the writ court. The intra court appeal filed by the appellant on 30 August, 2011 with a delay of 749 days was not posted for hearing before the Division Bench. The first respondent therefore filed a writ petition before the Writ Court to issue a Mandamus for mutation of revenue records by substituting the name of the land owner from whom the land was acquired, in the place of Tamil Nadu Housing Board, whose name was incorporated after taking possession of the land consequent to the Award. The learned single Judge allowed the writ petition and directed the third respondent to issue No Objection Certificate for changing the revenue records from the name of Tamil Nadu Housing Board to the name of the erstwhile land owner, rejecting the contention taken by the appellant that the writ appeal is still pending. The learned single Judge opined that the appeal was filed with delay and action was not taken by the appellant to bring it for hearing.

**Brief Facts**

2. The land owned by the first respondent and his mother Mrs.Rajammal having an extent of 10.69.00 hectares in Vellakiner village, Coimbatore was acquired by the State on behalf of the Tamil Nadu Housing Board, the appellant herein. The notification under Section 4(1) of the Land Acquisition Act was issued on 17 May 1995. The Declaration under Section 6 of the Land Acquisition Act was issued on 28 June, 1996. The first respondent and her mother filed a writ petition in W.P.No.12832 of 1998. The writ petition was allowed by the learned single Judge by order dated 5 August, 2009, on the ground that prior approval was not taken under Section 11(1) of the Land Acquisition Act for passing the Award.

3. The appellant filed an intra court appeal with a contention that prior approval was taken from the competent authority. The intra court appeal was filed with an application to condone the delay of 749 days. Though notice was issued to the first respondent in the petition filed to condone the delay, the matter was not posted thereafter for hearing before the Court.

4. The first respondent filed a writ petition in W.P.No.2803 of 2017 directing the Special Tahsildar, Land Acquisition, Coimbatore to issue No Objection Certificate in respect of his land covered under G.O.Ms.No.507 dated 17 May, 1995, having an extent of 10.69.00 hectares, Vellakiner Village, Coimbatore. The first respondent contended that since the land acquisition proceedings were quashed, the Land Acquisition Officer ought to have given No Objection Certificate for mutation of revenue records.

5. The learned single judge found that the writ appeal challenging the order quashing the land acquisition was pending. However, the appellant has not taken steps for posting it for hearing. The learned single Judge therefore allowed the writ petition and a Writ of Mandamus was issued. Feeling aggrieved, the Tamil Nadu Housing Board has come up with this appeal.

### **Submissions**

6. The learned Standing Counsel for the appellant contended that the learned single Judge was not correct in directing the appellant to give No Objection Certificate for mutation of entries when the appeal is pending. According to the learned counsel, the appellant was not

responsible for the delay in posting. The Registry misplaced the bundle and that was the reason for the delay in posting. The learned single Judge was therefore not correct in allowing the writ petition.

7. The learned Senior Counsel for the first respondent while justifying the order under challenge submitted that the first respondent waited indefinitely for mutation of records. The request was not considered on the ground that the writ appeal was pending. The learned single Judge was therefore correct in issuing the Mandamus, after convincing that no effort was taken either to file the appeal within the statutory period or to bring the petition for delay for hearing before the Court.

### **Discussion**

8. The writ petition filed by the first respondent in W.P.No12832 of 1998 was allowed by the Writ Court, resulting in filing an appeal by the appellant in WA.Sr.No.78589 of 2011. The appeal was filed along with an application in M.P.No.1 of 2011 for condoning the delay. The delay petition was not posted for hearing. According to the learned counsel for the appellant, the entire bundle was missing and as such, the Registry pleaded its inability to post the application for hearing.

9. The first respondent filed the subject writ petition for a Writ of Mandamus to direct the Tahsildar to give No Objection Certificate for mutation of records.

10. The Land Acquisition Officer, after culmination of the land acquisition proceedings took possession of the land from the first respondent and his mother and it was handed over to the Tamil Nadu Housing Board. Thereafter, revenue records were mutated in the name of the appellant. The appellant is the title holder and the person in possession as per the revenue records. Since the said position continued even after quashing the land acquisition, the first respondent moved the Writ Court by filing W.P.No.2803 of 2017.

11. The learned single Judge allowed the writ petition, rejecting the contention taken by the appellant that on account of the pendency of the appeal and the order in W.P.No.12832 of 1998 the first respondent is not entitled to the relief. The relevant observation reads thus:

"5. This Court is afraid that a mere filing of an appeal, which is yet to be numbered for more than six years, against the order passed by this Court in 2009, cannot be a ground to deny the relief sought for. The appeal was also not filed in time but with

substantial delay. Even thereafter, no steps have been taken till now. The petitioner has got the order as early as 05.08.2009, Now, more than seven years have elapsed. The property has been purchased in the year 1969. Hence looking from any angle, this Court is of the view that the stand taken by the respondents cannot be accepted.

6. Accordingly, the writ petition stands allowed. Consequently, the second respondent is directed to issue No Objection Certificate in favour of the petitioner's land as sought for within a period of eight weeks from the date of receipt of a copy of this order. However, it is made clear that this order is subject to the final order, if any, that may be passed in W.A.Sr.No.78589 of 2011. No costs."

12. The correct number of the appeal is WA.SR.No.78590 of 2011.

13. The appeal filed by the appellant in WA.Sr.No.78590 of 2011 along with the petition in M.P.No.1 of 2011 came up for hearing before the Bench. The delay was condoned after hearing the first respondent. The Division Bench by its order dated 5 December 2017 in W.A.No.1605 of 2017 stayed the operation of the order dated 5 August, 2009 in W.P.No.12832 of 1998.

14. The learned single Judge while issuing the Mandamus observed that the order is subject to the outcome of the writ appeal in

WA.Sr.No.78590 of 2011, which is now registered as W.A.No.1605 of 2017.

15. The order quashing the land acquisition is the subject matter of a statutory appeal before this Court in W.P.No.1605 of 2017. The hearing of the said appeal was adjourned on account of the submission made by the learned counsel for the first respondent herein that he is in the process of filing appeal against the order condoning the delay. We would have disposed both the writ appeals together, but for the submission made by the learned counsel for the first respondent.

16. The learned single Judge allowed the writ petition in W.P.No.12832 of 1998 only on the basis of the order dated 5 August, 2009. The said order is stayed by this Court in W.A.No.1605 of 2017. It would not be correct to mutate the entries during the currency of the appeal. In case, third party interest is created, after mutation, it would affect the innocent purchasers. The first respondent has to wait for mutation till the disposal of the writ appeal in W.A.No.1605 of 2017. We are therefore of the view that the appellant must succeed.

17. The order dated 13 April, 2017 is set aside. The writ petition in W.P.No.2803 of 2017 is dismissed. The first respondent is given liberty to approach the authorities for mutation of records in case the writ appeal is decided in his favour.

18. The intra court appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

**(K.K.SASIDHARAN.,J.) (P.VELMURUGAN.,J.)**

**5 December 2017**

svki

To

1.The Secretary,  
Housing and Urban Development Department  
Fort St.George, Chennai - 600 009.

2.The Special Tahsildar Land Acquisition,  
Coimbatore Housing Scheme Unit - I,  
Coimbatore.

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**K.K.SASIDHARAN,J.**

and

**P.VELMURUGAN,J.**

(svki)



Judgment in

**W.A No.1299 of 2017**

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**05.12.2017**