

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **04.12.2017**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

AND

THE HONOURABLE MR.**JUSTICE P.VELMURUGAN**

W.A.Nos.1351 and 1352 of 2017

The Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai 8. ... Appellant in both appeals
versus

1.S.P.Santhanam
2.S.P.Ramarathinam
3.Mythili Giri
4.P.Sridharan
5.S.P.Chandramouli

6.The Commissioner and Secretary,
Government of Tamil Nadu,
Department of Housing & Urban Development,
Fort St.George, Chennai.9

7.The Special Tahsildar,
Land Acquisition,
Maraimalai Nagar Scheme
Chengalpet Taluk,
Kancheepuram District ...

Respondents in W.A.No.1351/2017

1.S.P.Santhanam

2.The Commissioner and Secretary,
Government of Tamil Nadu,
Department of Housing & Urban Development,
Fort St.George, Chennai.9

3.The Special Tahsildar,
Land Acquisition,
Maraimalai Nagar Scheme
Chengalpet Taluk,
Kancheepuram District ...

Respondents in W.A.No.1352/2017

Appeal filed against the order passed by this Court dated 16.11.2015 passed in W.P.Nos.33015 and 33016 of 2015

For appellant : Mr.V.Ayyadurai, Additional Advocate General
assisted by Mr.Raja Srinivas

For Respondents : Mrs.Kala Ramesh,
for respondents 1 to 5

Ms.A.Srijayanthi, Spl.G.P.
For respondents 6 and 7

COMMON JUDGMENT

(made by K.K.SASIDHARAN, J.)

The learned Single Judge issued a Mandamus to the Chennai Metropolitan Development Authority to reconvey the land to the first respondent on the ground that the adjacent lands were all released to the land owners. Since direction was issued for reconveyance without giving opportunity to the Government to take a decision in the matter, Chennai Metropolitan Development Authority (hereinafter referred to as “the CMDA”) has come up with these intra court appeals.

2. We have heard the learned Additional Advocate General on behalf of the appellant. We have also heard the learned counsel for the respondents 1 to 5.

3. The land, which is the subject matter of the two appeals was purchased by the mother of the respondent. The property devolved on the present land owners after the death of parents. The land was acquired by

the Government of Tamil Nadu on behalf of CMDA. The notification u/s 4(1) of the Land Acquisition Act was issued on 7 July 1979. After conducting the statutory enquiry and issuing declaration under Section 6, award was passed on 17.9.1986. The compensation amount was deposited before the Subordinate court at Chengalpattu.

4. The land acquired from the respondents was part of a larger extent acquired for development of Maraimalai Nagar Scheme. There were writ petitions filed by the land owners resulting in quashing the land acquisition. The Government reconveyed the land to some of the land owners. The respondents submitted a representation to the Government requesting reconveyance of the land, requesting to treat them equal with those whose lands were reconveyed. Since there was no action taken by the Government, the respondents filed writ petitions.

5. The learned single Judge allowed the Writ petitions on the basis of the earlier orders passed by this Court.

6. The core question is whether the learned Judge was correct in directing the appellant to reconvey the land without calling upon the Government to take a decision one way or the other.

7. Section 48-B was inserted by State amendment in the Land

Acquisition Act, for re-conveyance of the property. The provision reads thus:-

"48-B *Transfer of land to original owner in certain cases*- Where the Government are satisfied that the land vested in the Government under this Act is not required for the purpose for which it was acquired, or for any other public purpose, the Government may transfer such land to the original owner who is willing to repay the amount paid to him under this Act for the acquisition of such land inclusive of the amount referred to in sub-section (1-A) and (2) of Section 23, if any, paid under this Act."

8. The question of re-conveyance in terms of Section 48-B would arise only in case the State Government is of the view that the land is not required for the purpose for which it was acquired or **for any other public purpose**. Before taking a decision for reconveyance, the Government must be convinced that the land is not required not only for the purpose for which it was acquired, **but for any other public purpose also**.

9. The Government must be given an opportunity to consider the request for reconveyance. The question of directing the Government to reconvey the land would arise only in case the Court is of the view, after

considering the order passed by the Government, that there was no satisfaction by the Government that the land is not used for the purpose for which it is acquired or for any other purpose. Since such an opportunity was not given to the Government, we are constrained to set aside the order passed by the learned Single Judge.

10. We give liberty to the landowner to submit a comprehensive representation to the Government of Tamil Nadu for reconveyance of land under Section 48B of the Land Acquisition Act. The Government is directed to consider and dispose of the representation on merits and as per law. Such exercise shall be completed within a period of three months from the date of receipt of representation.

11. The intra court appeals are disposed of with the above direction. No costs. Consequently, C.M.P.Nos.18697 and 18698 of 2017 are closed.

(K.K.SASIDHARAN, J.)

(P.VELMURUGAN, J.)

04.12.2017

Index: Yes/no
tar

To

1. The Commissioner and Secretary,
Government of Tamil Nadu,
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K.K.SASIDHARAN, J.

and

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(tar)

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