

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :: 20.11.2017
Delivered on :: 29.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.No.419 OF 2014 against WP.17637/08

The Chairman & Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai 600 035 ... Appellant/2nd respondent

versus

1.K.Dhakshinamurthy
2.Krishnaveni
3.Devaki
4.The Secretary to Government,
Housing and Urban Development Department,
Fort St.George,
Chennai 600 009. ... Respondents/1 to 3/Writ petitioner/
4th respondent/1st respondent

Appeal filed against the order passed by this Court dated
14.11.2013 passed in W.P.No.17637 of 2008.

W.P.No.17637/08: This Writ petition is filed under Article 226
of the Constitution of India to issue a Writ of certiorarified
mandamus to call for the records of the order of the First
Respondent in Letter No.447/LA.T(2)/2004-4, dated 16.09.2005,
and quash the same and direct the Respondents to RE-CONVEY the
Property in Survey No.251/1 measuring an extent of 1 Acre 70
cents at Padi Village in favour of the Petitioner and execute
RE-CONVEYANCE DEED and fix terms as decided by this Honble Court.

For appellant : Mr.V.Ayyadurai,
Additional Advocate General,
Assisted by V.Anandhamurthy,
Additional Government Pleader

For Respondents : Mr.G.Masilamani, Senior counsel,
for M/s.P.Subba Reddy, for respondents
1 to 3

Mrs.Sri Jayanthi, Spl.G.P., for R-4

J U D G M E N T
(made by K.K.SASIDHARAN, J.)

Introductory:-

The Hon'ble Supreme Court in Rajasthan State Industrial Development and Investment Corporation v. Subhash Sindhi Cooperative Housing Society, Jaipur and others [(2013) 5 SCC 427], observed that if the land of other similarly situated persons have been released from acquisition and a similar request is made by others invoking Article 14 of the Constitution of India, the Court must be satisfied that it is similarly situated in all respects, and has an independent right to get the land released. The Supreme Court in the said decision set aside the order passed by the High Court directing reconveyance and held that there was no right to claim release on the ground that others were given the benefit of such release of land.

2. Even in the earlier decisions in Keeraveni Ammal case [(2007) 9 SCC 255] and L.Chandrasekaran case [(2010) 2 SCC 786] involving the Tamil Nadu Housing Board, the Supreme Court made it clear that the Government could release the acquired land only till the same continues to vest in it and that too if it is satisfied that the acquired land is not needed for the purpose for which it was acquired or for any other public purpose. In spite of all these authorities and judicial pronouncements, the writ court directed the State to reconvey the acquired land, admeasuring 1 acre and 70 cents, in favour of the erstwhile land owner. Feeling aggrieved, the Tamil Nadu Housing Board, (hereinafter referred to as Housing Board), is before this court.

The facts:-

3. The land owned by the predecessor-in-interest of the respondents 1 to 3 was acquired along with a larger extent, by the Government of Tamil Nadu at the instance of the Housing Board for its housing scheme. The Land Acquisition Officer passed an award dated 18 January 1983 and thereafter, handed over possession to the Housing Board.

4. The respondents 1 to 3 are stated to be the legal representatives of the erstwhile land owner from whom the land, having an extent of 1 acre and 70 cents, in S.No.251/1, was acquired by the government. The respondents 1 to 3 (hereinafter referred to as the land owners), submitted a representation to the government seeking reconveyance of the land on the ground that it was not used for the purpose for which it was acquired. The plea was negatived by the State by order dated 16 September 2005. The order rejecting the request for reconveyance was challenged in W.P.No.17637 of 2008.

5. Before the writ court, the land owners contended that

the Housing Board reconveyed the neighbouring lands and as such, the same yardstick should be adopted in the case of their land also. In short, the land owners invoked Section 48B of the Land Acquisition Act for reconveyance.

6. The writ petition was opposed by the State by filing counter affidavit. The State made it clear that the land is required for a public purpose and it is in the possession of the Housing Board. The Government made it clear that no case is made out for invoking Section 48B of the Land Acquisition Act.

7. The learned Single Judge by placing reliance on various orders passed by the writ court and Division Bench in respect of similar acquisition of land and two judgments stated to be in respect of the very same scheme, in W.A.No.1652, 1653 of 2010 and W.P.Nos.16274 and 15694 of 2008, allowed the writ petition.

Rival submissions:-

8. The learned Additional Advocate General contended that though the original scheme failed, still the Housing Board is in need of the land for another public purpose. The learned Additional Advocate General further submitted that the question of invoking 48B of the Land Acquisition Act would arise only in case the Government, on the basis of materials, arrived at a conclusion that the land is not necessary for the original purpose and that it is also not necessary for any other public purpose. According to the learned Additional Advocate General, the land could be used by the Government for any other public purpose, in case another scheme is floated. The learned Additional Advocate General further submitted that there was no reconveyance of the neighbouring land as contended by the land owners and as such, the learned Single Judge was not correct in quashing the government order dated 16 September 2005 and directing reconveyance.

9. The learned Senior Counsel for the land owners contended that land could be acquired only for a particular scheme. The initial scheme was for construction of residential units. The scheme failed. Thereafter, the land was given for construction of working women's hostel. The said scheme also failed. The land was again given for construction of quarters for Coast Guard. Even the said scheme also failed. Therefore, it is evident that there is no scheme as on today. According to the learned Senior Counsel, Housing Board is a State, within the meaning of Article 12 of the Constitution of India and as such, it is not open to the Housing Board to do business in land. The learned Senior counsel contended that there is no question of keeping the land for future purpose. It was further contended that some of the neighbouring owners got the benefit of reconveyance and as such, the learned Single Judge was correct in adopting a similar treatment in the case of respondents 1 to 4.

Discussion :-

10. The State Government initiated proceedings for land acquisition pursuant to the request made by the Housing Board. The Government acquired 115.17 acres of land in Padi village for a housing scheme floated by the Housing Board. The notification under section 4(1) of the land Acquisition Act was published on 12 November 1975. The Declaration under section 6 of the Land Acquisition Act was published on 2 August 1978. Thereafter, award was passed on 18 January 1983. The Land Acquisition Officer, after culmination of the land acquisition proceedings, put the Housing Board in possession of the acquired land.

11. The land owned by the predecessor in interest of the land owners in S.No.251/1 of Padi village was also the subject matter of the award no.1/03 dated 18 January 1983. The Government acquired 1.70 acres of land from the land owner. The failure on the part of the Housing Board to utilize the land acquired from the predecessor-in-interest of the land owners made them to submit a representation before the Government for reconveyance. The request was rejected by the government vide order dated 16 September 2005. The order contained reasons for the rejection. According to the Government, the land is very much needed for the original scheme and that the proposed ICC Alignment Project also passes through the said land. The Government therefore, pleaded its inability to return the land to the land owners.

12. The learned Single Judge allowed the writ petition in W.P.No.17637 of 2008 on the basis of certain earlier orders directing reconveyance.

13. The Judgment dated 19 November 2010 in W.A.No.1926 of 2010 was relied on by the learned Single Judge to arrive at a conclusion that the land acquired by the very same award was reconveyed to the original owners. There is no indication in the said judgment as to whether land covered in W.A.No.1926 of 2010 was part of the award No.1 of 1983 dated 18 January 1983. The learned Single Judge referred to certain unreported judgments, which according to the appellants, have nothing to do with the subject land.

14. The learned Single Judge invoked Article 14 of the Constitution of India to direct the State to release the land to the legal representatives of the erstwhile land owners. Though in the order, the learned Single Judge referred to the case of Thiru.Santhanam, who is stated to be the beneficiary of a similar order of reconveyance, the said fact is disputed by the learned Additional Advocate General. The learned Additional Advocate General placed reliance on the order dated 25 April

2011 in W.P.No.28138 of 2010 in support of his contention that the writ petition filed by the neighbouring land owners for reconveyance of their land in S.No.251/2, Padikuppam village was dismissed by the learned Single Judge. The writ appeal was disposed of by the Division Bench without issuing any direction for reconveyance. Similar writ petition filed by another land owner in W.P.No.24791, 24792 of 2012 for reconveyance was dismissed by the learned Single Judge by order dated 12 September 2002. The order was upheld by the Division Bench by judgment dated 20 December 2012 in W.A.No.2858 and 2829 of 2012.

15. While accepting the plea of discrimination, the learned Single Judge appears to have not taken into consideration the string of orders passed by the writ court and the related judgment of the Division Bench declining to grant reconveyance.

Limited cope of Section 48-B of Land Acquisition Act

16. 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."

17. 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.

18. As observed by the Hon'ble Supreme Court in Tamil Nadu Housing Board v. Keeravani Ammal and others [(2007) 9 SCC 255], Section 48-B introduced into the Land Acquisition Act in the State of Tamilnadu is an exception to the general rule that the land on acquisition become the property of the State and it could be used by the Government for any other public purpose or in case, it is not needed for such public purpose, the same can also be sold by public auction. The provision like 48-B must

therefore requires a strict construction, meaning thereby, satisfaction of the State Government with regard to the non-utilisation of the land must be arrived at on the basis of relevant materials.

19. There is no right to compel the Government or the requisitioning body to reconvey the land either to the erstwhile land owner. The issue is no longer res integra in view of the string of decisions on the point.

20. The Supreme Court in Keeravani Ammal (cited supra) considered the scope and ambit of Section 48-B of the Land Acquisition Act. The Supreme Court made it very clear that there is no vested right to the land owner to claim reconveyance. The Supreme Court, in the said decision, by quoting an earlier judgment in State of Kerala v. M.Bhaskaran Pillai [(1997) 5 SCC 432] indicated that in case the land is not required for the purpose for which it was acquired, it should be sold through public auction and the provision like Section 48-B is an exception to the said rule and as such, it should be construed very strictly and the Court must insist upon strict compliance with its terms.

21. The Hon'ble Supreme Court in Tamil Nadu Housing Board v. L.Chandrasekaran (dead) by Lrs. and others [(2010) 2 SCC 786] once again considered the right claimed by the erstwhile land owners under Section 48-B for reconveyance and made the legal position very clear that there is no question of reconveyance by the Government, in case, the land had already been transferred to the requisitioning body and the latter had utilised substantial portion thereof for execution of the Scheme and for other public purpose. The following observation would make the position clear:-

"28. It need no emphasis that in exercise of power under Section 48-B of the Act, the Government can release the acquired land only till the same continues to vest in it and that too if it is satisfied that the acquired land is not needed for the purpose for which it was acquired or for any other public purpose. To put it differently, if the acquired land has already been transferred to other agency, the Government cannot exercise power under Section 48-B of the Act and reconvey the same to the original owner. In any case, the Government cannot be compelled to reconvey the land to the original owner if the same can be utilised for any public purpose other than the one for which it was acquired."

22. The question before the Supreme Court in Rajasthan

State Industrial Development and Investment Corporation v. Subhash Sindhi Cooperative Housing Society, Jaipur and others [(2013) 5 SCC 427], was as to whether transferee of land after issuance of Section 4(1) notification is entitled to claim release of land from acquiring authorities on the basis of similar release of land. The Hon'ble Supreme Court, by placing reliance on the earlier judgments indicated that the sale subsequent to Section 4(1) notification is void and there would be no need for an order for quashing as it would be automatically null and void without more ado. The question regarding discrimination was answered by the Supreme Court by observing that if the land of other similarly situated persons have been released, the Court must be satisfied that it is similarly situated in all respects, and has an independent right to get the land released. It was further observed that Article 14 of the Constitution does not envisage negative equality and it cannot be used to perpetuate any illegality. The Supreme Court set aside the order passed by the High Court directing reconveyance and held that there was no right to claim release on the ground that others were given the benefit of such release.

23. The land owners proceeded as if the original scheme failed and as such, the land is not required any more for the purpose for which it was acquired. There is no merit in the said contention for the simple reason that the land owned by the land owners in the subject case is only 1.70 acres. The Government have acquired vast extent of 115.17 acres and it was developed. Merely because a part of the acquired land was not put to use, it cannot be said that the very scheme failed. Even if the original scheme failed, still the land could be used for some other public purpose. It is always open to the Government to permit the requesting body to use the land for any other public purpose.

24. The pre-condition to invoke Section 48B of the Land Acquisition Act is that the land is not used for the purpose for which it was acquired or it is not needed for any other public purpose. The term "any other public purpose" gives clear discretion to the government. There is no question of issuing a Mandamus to the Government for reconveyance of the land, unless there are materials to show that the Government has taken a decision that the land is not used for any other public purpose. Even for taking such a decision, the Government must forfeit the land in question under Section 16 of the Land Acquisition Act.

25. We have perused the file produced by the learned Additional Advocate General. It was only in relation to a part of the land acquired from the predecessor-in-interest of the land owners, the scheme was not implemented. Even now the Housing Board wants this land to be used for a public purpose. There is no question of fixing a time limit for development of

land. Development is an ongoing process which would consume time. Mere delay in utilizing the land cannot be a ground for return of land. This vital factor was not considered by the writ court. We are therefore of the view that the learned Single Judge was not correct in directing the State to reconvey the land to the erstwhile land owners.

26. In the result, the order dated 14 November 2013 is set aside. The writ petition is dismissed.

27. In the upshot, we allow the intra court appeal. No costs. Consequently, connected M.P.s, are closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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To

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

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

+3ccs to Mr.P.Subba Reddy, Advocate SR.No.84719

+1cc to Mr.V.Anandhamurthy, Advocate SR.No.84928

सत्यमेव जयते

W.A.No.419 OF 2014

GN(22/12/2017)

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