

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2017

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN
And
THE HON'BLE MR.JUSTICE N.SESHASAYEE

W.P.No.1575 of 2013
and M.P.No.1 of 2013

1.Chellammal
2.Selvaraj
3.Shanthi

... Petitioners

vs.

1.The State of Tamil Nadu,
Represented by its Secretary to Government,
Housing and Urban Department, Fort St.George,
Chennai-600 009.

2.The Special Tahsildar (LA),
Neighbourhood Scheme,
Namakkal.

3.The Tamil Nadu Housing Board,
Rep. by its Managing Director,
Anna Salai, Nandanam,
Chennai.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 13.02.2013 made in W.P.No.765 of 2008.

W.P.No.765 of 2008:

Writ Petition filed under Article 226 of the Constitution of India praying this court to issue a Writ of certiorari to call for the records relating to the impugned order of the first respondent dated 4.12.2006 vide letter 33202/Ni.Aa.4(2)/01-13 and quash the same and consequently direct the respondents to reconvey 12 1/2 cents of land situated in Old Survey No.32/3B2 presently Survey No.32/3B3 at No.73 Kondichetty Patti Village ,Namakkal Taluk and Namakkal Dist

For Petitioners : Mr.P.Mathivanan

For Respondents : Mr.R.Vijayakumar,
1 & 2 Additional Government Pleader
For R3 : V.Anandamoorthy

O R D E R

(Order of the Court was made by M.SATHYANARAYANAN, J.)

The endeavour made by the appellants/writ petitioners to get the acquired lands reconveyed to one S.Ramasamy, who is the husband of the first appellant and father of the appellants 2 and 3, by invoking Section 48-B of the Land Acquisition Act, 1894, has ended in failure in the form of the dismissal of the writ petition and hence, this Writ Appeal.

2. A perusal of the materials placed before this Court would reveal among other things that lands belonging to one Ramasamy, Son of Sengoda Gounder, situated in old S.No.32/3B, new S.No.32/3B3 along with the neighbouring lands were acquired for the purpose of Namakkal Neighbourhood Scheme Phase-3 of the Tamil Nadu Housing Board. It is an admitted fact that the lands of the appellants was taken possession on 28.07.1992 and according to the second respondent, a portion of the land has also been utilized for the purpose for which acquisition it was acquired. The learned Judge, after taking note of the factual aspects, found that S.Ramasamy, husband of the first appellant and father of the appellants 2 and 3, on an earlier occasion, filed W.P.No.8014 of 1997, challenging the land acquisition proceedings and it was dismissed, vide order dated 17.05.1987 and the appeal made by him in W.A.No.1484 of 1987 was also dismissed, vide order dated 06.09.1990 and as such, re-conveyance sought for by him cannot be sustained. The learned Judge further recorded the finding that once the lands are vested with the Government and the same has been transferred to the custody of the Tamil Nadu Housing Board, reconveyance cannot be ordered and also placed reliance upon the decision of the Hon'ble Supreme Court of India in Tamil Nadu Housing Board v. Keeravani Ammal and Others [Civil Appeal Nos.5928 - 5929 of 2004 dated 15.03.2007] as well as the decision of this court in K.Duraisingam v. The State of Tamil Nadu and Others [W.P.No.25961 of 2011 dated 13.02.2013]. The legal heirs of S.Ramasamy/appellants herein challenging the dismissal of the writ petition, has filed this Writ Appeal.

3. Mr.P.Mathivanan, learned counsel appearing for the appellants/writ petitioners has invited the attention of this Court to the typed set of documents and would submit that the adjacent lands in Old S.No.32/3B1, New S.No.32/3B2 though acquired, was not utilized for the purpose for which it was acquired and it was also reconveyed to the concerned land owner and the lands of S.Ramasamy lie adjacent to the said property and as such, there cannot be any impediment on the part of the respondents 2 and 3 to release the lands in favour of the appellants and this Court, while dismissing the writ petition, has failed to take into consideration the relevant facts and hence, prays for interference.

4. Per contra, Mr.R.Vijayakumar, learned Additional Government Pleader appearing for the respondents would contend that though it is the submission of the learned counsel for the appellants that adjacent lands in S.No.32/3B2 has been reconveyed, the said fact has not been reflected in the affidavit for the reason that it has been erroneously stated as S.No.32/3BD(part) and the lands were utilized for the purpose for which it was acquired and at this distant point of time, it is not open to the appellants to pray for re-conveyance.

5. In response to the same, the learned counsel appearing for the appellants would submit that though the respondents claim that the lands in question was taken possession on 28.07.1992, compensation has not been deposited and therefore, by invoking the benevolent provisions of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013, the appellants filed W.P.No.25499 of 2014 to declare the land acquisition proceedings insofar as the lands of Ramasamy deemed to be lapsed and the said writ petition is pending adjudication.

6. This Court has considered the rival submissions and also perused the entire materials placed before it.

7. The husband of the first appellant has submitted representations dated 24.07.2001, 26.05.2004 and 07.10.2005 praying for reconveyance of the lands and the first respondent, vide Letter No.33202/Ni.Ac.4(2)/01 13 dated 04.12.2006 has informed the petitioner that an award has also been passed in Award No.3/87-88 and the possession of the land was handed over to the Tamil Nadu Housing Board on 28.07.1995 and the lands of the appellants has been indicated as Plot No.3 and a portion of it has also been allotted for commercial purpose and as such, his request cannot be considered.

8. It is also to be pointed out at this juncture that the award was passed as early as on 03.08.1987 and though the husband of the first appellant repeatedly sent representations, he has approached the Court only during the year 2008. The learned Judge, has also taken note of the factual aspects and in the light of the decision in Keeravani Ammal case (cited supra), found that reconveyance of the lands is within the discretion of the State Government and the writ petitioner, as a matter of right, cannot ask for reconveyance. The averments in the counter affidavit of the second respondent would disclose that the lands of S.Ramasamy, husband of the first appellant herein has also been utilized for the purpose for which it was acquired and as such, the prayer sought for cannot be granted.

9. This Court, on an independent application of mind to the entire materials placed, is of the view that there is no

error apparent or perversity in the reason assigned by the learned Judge in dismissing the writ petition and finds no merit in this Writ Appeal.

10. In the result, this Writ Appeal dismissed, confirming the order dated 13.02.2013 made in W.P.No.765 of 2008. However, the appellants are at liberty to work out their remedy in the pending writ petition in W.P.No.25499 of 2014. No costs. Consequently, connected miscellaneous petition is dismissed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

jvm

To

- 1.The Secretary to Government,
The State of Tamil Nadu,
Housing and Urban Department, Fort St.George,
Chennai-600 009.
- 2.The Special Tahsildar (LA),
Neighbourhood Scheme,
Namakkal.
- 3.The Managing Director,
The Tamil Nadu Housing Board,
Anna Salai, Nandanam,
Chennai.

+1cc to Government Pleader sr.50731

+1cc to Mr.V.Anandamoorthy, Advocate sr.50731

W.A.No.1575 of 2013

lrs(co)
ss(18/8/2017)

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