

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2017

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH

W.P.No.6684 of 2016

& W.M.P. No. 5920 of 2016

E.Arul Rajkumar ... Petitioner

..Vs..

1. The State of Tamil Nadu
Rep. by its Secretary Department of Housing
and Urban Development Fort St. George
Chennai 9
2. The Chairman
Tamil Nadu Housing Board, Nandanam
Chennai 35
3. The Special Thasildar
(Land Acquisition (L.A.)) Neighbourhood
Scheme Tamil Nadu Housing Board Salem
District Salem
4. Jaya Watson
5. Enjalin Shalini
6. Staneli
7. Nelson
8. Nalini
9. Rajasekar ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for a writ of Mandamus, directing the respondents 1 to 3 to consider the representation of the petitioner dt 14.1.2016 by exempting the land in Survey No.94/1B1 measuring about 26 cents situated at Iyamperumampatty Village Salem District from acquisition pursuant to the

Notification in G.O.Ms. No.755 H & U D (Housing and Urban Development Department) dt 4.9.1981 to secure the ends of justice.

For Petitioner : Mr.R.Sankarasubbu

For Respondents : Mr.S.Diwakar,
Special Government Pleader (For R1 & R3)
Mr.S.S.Mathivanan (For R6)
Mr.k. Marimuthukurmarasamy (For R8 & R9)
No appearance (For R2, R4, R5 & R7)

O R D E R

The petitioner has filed this Writ Petition claiming the relief through a Will said to have been executed by the erstwhile land owner as early as on 18.12.1995 with respect to a proceedings which was completed in the year 1986-1987 by seeking to consider his representation dated 14.01.2016 to exempt the aforesaid land.

2.The Acquisition proceedings have been initiated for the purpose of constructing the house by the respondent Housing Board. The declaration was passed in G.O.Ms.No.608 Housing and Urban Development Department dated 03.08.1984. The land in Survey No.94/1B1 with an extent of 26 cents was registered in the name of one Mr.Sigamani. Notice under Sections 9 & 10 of the Land Acquisition Act was issued on 12.09.1986 followed by an award in Award No.11/86-87 dated 19.09.1986 in which Sigamani appeared. The Award was passed and an amount of Rs.12,050,60 was deposited on the file of the Sub Court Sections 30 and 31 of the Land Acquisition Act in L.A.O.P.No.155 of 1988. The possession is said to have taken over on 23.09.1986. Patta was transferred in the name of Housing Board in Patta No.446 by the Revenue Department. The layout is stated to be under preparation for implementation of Ayyamperumalpatti Housing Board.

3.It appears that Writ Petitions have been filed by the Cooperative Society, on behalf of its members challenging the acquisition proceedings. Those writ petitions were allowed in W.P.No.33881 of 2013 dated 29.01.2014 and W.P.No.5023 of 1986 dated 18.03.1996. They had been allowed on the premise that there cannot be any substitution of public interest which was in existence at the time of acquisition as the members of the society were also intending to put up construction for the respective houses.

4.The petitioner though stands in the different footing made a representation on 14.01.2016 without challenging the acquisition proceedings seeking to exempt his land based upon the Will executed by his Grandfather Sigamani, who died on 06.02.2001. Since, the said representation is yet to be considered the present Writ Petition has been filed.

5.The learned counsel appearing for the petitioner would submit that in view of the orders passed by this Court, which has been accepted by the respondents, the petitioner is entitled for exemption. There is no scheme as on today and the petitioner is still in possession of the property in question. Therefore the Writ petition will have to be allowed also by taking into consideration of the Act 30 of 2013. Reliance has been made on the judgment of the learned Single Judge of this Court in Saroja Sethu vs. State of Tamil Nadu, rep. by its Secretary to Government, Revenue Irrigation Department, Fort St. George, Madras-9 and others reported in 1993 Writ L.R. 240, the judgment of the Hon'ble Division Bench of this Court in L.Selvam vs. The Government of Tamil Nadu, rep. by its Secretary, Department of Housing and Urban Development, Fort. St. George, Chennai-9 and another reported in 2010 (5) CTC 261 and the judgment of the Hon'ble Supreme Court in Pune Municipal Corporation vs. Harakchand Misirimal Solanki reported in The Laws, Encyclopedia of India Laws.

6.The learned Special Government Pleader appearing for the respondents 1 and 3 would submit that in view of the stand taking in the counter affidavit, no interference is required apart from the delay in latches. The scheme is being proceeded with. The acquisition proceedings have completed as early as in the year 1996 by passing the award. The petitioner's predecessor in title who participated in all the proceedings did not challenged the acquisition proceedings. He is stated to have died only in the year 2001. By that time having everything is over including taking of possession though disputed by the petitioner, change of patta which is not challenged followed by the action to go through the scheme. Incidentally, the Housing Board has become the owner now.

7.When the Housing Board has become the owner, there is no question of complying Section 48(b) of the Land Acquisition Act. The two judgments of the learned Single Judge relied upon by the petitioner deals with different sets of facts. They have been filed by the Co-operative Society on behalf of its members. Therefore, it was held that no public purpose cannot be substituted with the other. The petitioner has not produced any material to show that Article 14 of the Constitution of India is violated in as much as the similarly placed person got his land released from the Government. The petitioner's predecessor in

title was admittedly not a member of the Co-operative Society but owning a strength of land (26 cents). Re-conveyance cannot be sought for as a matter of right and an order passed by this Court in acquisition proceedings has to be made applicable to that person alone being a party and not to others.

8.The petitioners seeks relief based upon the Will which is yet to be established. Suffice it is stated that till 2001, his grandfather Sigamani did not lay any challenge. The petitioner is trying to resurrect the issue which was concluded way back in the year 1996 by making a representation in the year 2016. such a delay/latches and acquiescence cannot be gotten over by a representation made in the year 2016. The judgment rendered by this Court in 1993 Writ L.R. 240 is also one dealing with the Cooperative Society. This court does not find any application on Act 30 of 2013 in view of the stand taken in the counter affidavit. In the case on hand, not only the possession is staid to have been taken over but Patta is also transferred though disputed by the petitioner, based upon the records and photographs produced. Further, the contention of the learned counsel appearing for the petitioner that public purpose is lost cannot be accepted in view of the discussion made above and the Scheme is still on as per the counter affidavit filed by the respondent Housing Board.

9.Be that as it may, as submitted earlier, the respondent Housing Board has become the owner after the transfer of the Patta. Hence, looking from any perspective, this Court does not find any merits in the writ petition. Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

cse

To

1. The State of Tamil Nadu
Rep. by its Secretary Department of Housing
and Urban Development Fort St. George
Chennai 9

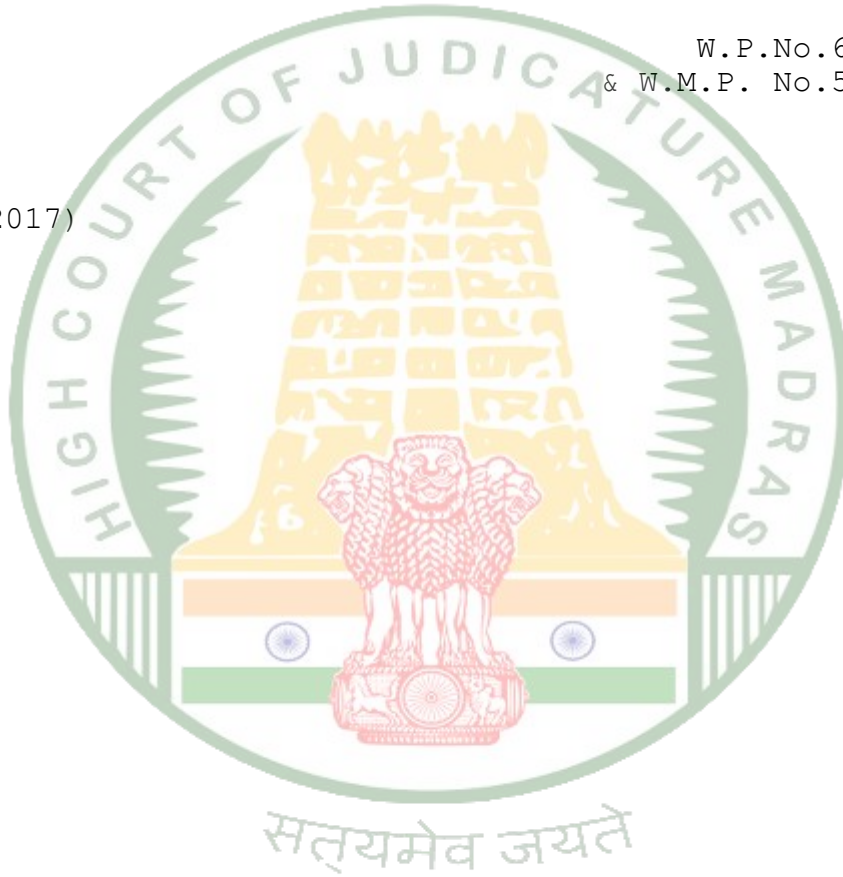
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Tamil Nadu Housing Board, Nandanam
Chennai 35
3. The Special Thasildar
(Land Acquisition (L.A.)) Neighbourhood
Scheme Tamil Nadu Housing Board Salem
District Salem

+lcc to Government Pleader SR.No.22102
+lcc to Mr.R.Sankarasubbu, Advocate SR.No.21783

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RV(CO)
GN(19/04/2017)



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