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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.08.2017

CORAM :

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Writ Appeal (MD) No.1211 of 2016

and

C.M.P (MD) No.8023 of 2016

R.Meenakshi Ammal

... Appellant

Vs.

- 1.The State of Tamil Nadu,
Rep by its Secretary,
Housing and Urban Development Department,
Fort St., George, Chennai.
 - 2.The Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai 35.
 - 3.The Executive Engineer,
Housing Board,
North Neighbourhood Scheme,
Madurai.
 - 4.The District Collector,
Madurai District Collectorate,
Madurai 20.
 - 5.The Special Tahsildar, (L.A),
A.D.W., Madurai North & South Neighbourhood Project,
Shenoy Nagar, Madurai 20.
- ... Respondents

Appeal filed under Clause 15 of the Letters Patent against the order dated 30.09.2015 made in W.P.(MD)No.20045 of 2013 on the file of this Court.

Prayer in WP (MD) . 20045/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records in connection with the order passed by the 1st respondent vide letter No.26310/NiA3 (1)/2013-4 dated 21.11.2013, quash the same and consequently direct the 1st and 2nd respondent to re-convey the land in survey no.38/1, and extent of 44 cents in Silayaneri Village, Madurai North Taluk, Madurai District to the petitioner .



For Respondents 1,4&5: Mr.T.R.Janarthanam
Additional Government Pleader.

JUDGMENT

(Judgment of the Court was delivered by **M.M. SUNDRESH,J**)

The appellant herein is the erstwhile owner of the property. Acquisition proceedings have been initiated for the purpose of putting up construction by the Tamil Nadu Housing Board. Acquisition proceedings have become final. The appellant herein filed writ petition challenging the award on the ground that it has not been furnished. The writ petition was disposed of holding that the petitioner will have to be given a copy of the award. Thereafter, the appellant expressed his desire to receive money but he did not turn up. On the contrary, he made a request for reconveyance. The request for reconveyance was rejected. This is also put into challenge before the learned single Judge. During the pendency of the aforesaid proceedings, Act 30 of 2013 came into being. As per Section 24 (2) of the Act, proceedings would lapse inasmuch as the mandate of Section 31 (2) of the Land Acquisition Act, 1894 has not been complied with in not depositing the award amount into the Court as against the revenue deposit, the learned single Judge dismissed the writ petition. Hence, the writ appeal.

2.Learned counsel for the appellant made substantial reliance upon the judgement of the Apex Court in **Pune Municipal Corporation and another Vs.Harakchand Misirimal Solanki and others reported in (2014) 3 SCC 183** and in **Vijay Latka and another Vs.State of Haryana and others reported in (2016) 5 MLJ 80 (SC)**. Incidentally, one more judgment rendered by the Division Bench of this Court in **Tamil Nadu Housing Board Vs.K.Meenakshi Achi** reported in **2017 (1) CWC 1** was also relied upon by the learned counsel for the appellant.

3.Learned counsel for the respondent would submit that much water has flown under the bridge as the property has been taken by the Housing Board and thereafter allotted to various third parties being the beneficiaries and an approval of the lay out has been made. Now the present position is, tenders have been called for from intending tenderers being the contractors for the purpose of undertaking joint venture project. It is further submitted that inasmuch as the appellant himself made a request for reconveyance, the decision relied upon would not have an application.

4.The appellant was aware of the factum of the non-compliance of Section 31(2). It is trite law that even a substantive provision can be waived by consent. In this case, the appellant was quite aware of factum of the deposit made in the revenue record. Over the years, he has not challenged it. In fact, such a plea has never been raised even at the time of filing the



writ petition. Now and earlier, this can also be seen from the conduct of the appellant in asking for reconveyance.

5. Secondly, the title having passed, Section 24(2) of Act 30 of 2013, though would make a proceedings to get lapsed, cannot be made applicable to a case where a title has passed from the acquisition authority. In the case on hand, admittedly, Tamil Nadu Housing Board has become the owner of the property after the award was passed followed by possession under Section 16 of the Land Acquisition Act, 1894. Though it is contended by the learned counsel for the appellant that the subsequent allotment is during the pendency of this proceedings, the fact remains that the third party interest has crept in. They are also not parties before us. Therefore, at this stage, the appellant cannot be put back in possession.

6. The third issue to be seen is with reference to the non compliance of Section 31(2) of the Land Acquisition Act, 1894. Perhaps, it would come under Section 31(1) of the Act. As recorded by the learned single Judge, it is not a case of refusal of consent by the appellant. The Rules framed under 1894 Act also provides for deposit into the revenue records. Therefore, even on that count, the appellant cannot be said to be entitled to declare the acquisition proceedings to be lapsed. However, considering the facts of the case and taking note of the fact that the appellant has not received the amount, we direct the respondents to make such payment available in the revenue records within a period of eight weeks from the date of receipt of copy of this order. Inasmuch as the appellant stated to have made application seeking reference before the jurisdictional Sub Court within time, we direct the District Collector namely, the fourth respondent herein to refer the application made by the appellant before the jurisdictional Sub Court, if such application has not been disposed of already.

7. The writ appeal is accordingly is dismissed. No costs. Consequently, C.M.P. (MD) No. 8023 of 2016 is closed.

Sd/-

Assistant Registrar(writs)

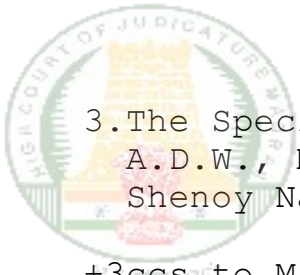
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Sub Assistant Registrar

To

1. The Secretary to Government of Tamil Nadu,
Housing and Urban Development Department,
Fort St., George, Chennai.

2. The District Collector,
Madurai District Collectorate,



3.The Special Tahsildar, (L.A),
A.D.W., Madurai North & South Neighbourhood Project,
Shenoy Nagar, Madurai 20.

+3ccs to M/S.NIRANJAN S.KUMAR, Advocate SR.No.71839

+1cc to M/S.S.NAGARAJAN, Advocate SR.No.72103

+1cc to Special Government Pleader, SR.No.72334

sms

MAS/SV-MMS/SAR4:29.08.2017:4P-9C

Writ Appeal (MD) No.1211 of 2016
and
C.M.P (MD) No.8023 of 2016
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