



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 14.07.2017

Date of Reserving the Judgment	Date of Pronouncing the Judgment
27.06.2017	14.07.2017

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CORAM:
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN
W.A. (MD) No.1709 of 2011
and
M.P. (MD) Nos.1 of 2011 & 1 of 2014

M.G.Muhundharajan
Rep. by his Power Agent
O.V.K.Periyakaruppan

... Appellant/Petitioner

-vs-

- 1.The State of Tamil Nadu
Rep. by its Revenue Secretary
Secretariat, Chennai-9
- 2.The Secretary
Small Industries (SIC) Department
Secretariat, Chennai-9
- 3.The Secretary
Labour and Industrial Department
Secretariat, Chennai-9
- 4.The Special Commissioner
Commissioner of Land Administration
Chepauk, Chennai-5.
- 5.The Chairman
Small Industrial Development
Corporation (SIDCO)
Guindy, Chennai.
- 6.The District Collector
Sivaganga District
Sivaganga
- 7.The Revenue Divisional Officer
(Land Acquisition Officer)
Revenue Divisional Office
Sivaganga

... Respondents /Respondents

PRAYER

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 08.11.2011 made in W.P.(MD) No.12550 of 2011, on the file of this Court.

Prayer in WP(MD) . 12550/ 2011 :

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 pursuant to the 1st respondent impugned order dated 24.03.2011 in his proceeding in letter (per) No.32734/Ne/Ne1(1) 2010 and quash the same and consequently direct the 1st respondent to pass appropriate order in sprit of the section 48(b) read with 16(b) of the Land Acquisition Amended Act 1996.

For Appellant : Mr. Tranquebar Dorai Vasu
for Mr. J. John

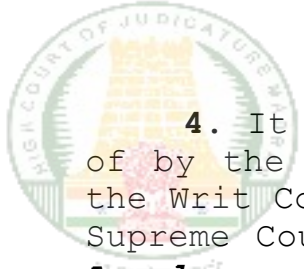
For Respondents : Mr. V. Muruganantham
Addl. Govt. Pleader for R1 to R4, R6 & R7
Mr. K. P. Krishnadoss for R5

J U D G M E N T**T. S. SIVAGNANAM, J.,**

This writ appeal by the writ petitioner is directed against the order, dated 08.11.2011 made in W.P.(MD) No.12550 of 2011, which was filed challenging the order passed by the first respondent, dated 24.03.2011, by which the Government rejected the request made by the appellant for re-conveyance of the land, which was acquired for an Industrial Estate Project to be promoted by the fifth respondent - SIDCO.

2. The appellant's case is that his grandfather's property was acquired by the third respondent invoking the urgency clause under Section 17 (4) of the Land Acquisition Act, 1894 (hereinafter, referred to as "the Act"), during 1963, for the purpose of establishment of an Industrial Estate without providing alternate site to the land owners. It is submitted that the establishment of the Industrial Estate was abandoned in the year 1988 and the entire lands were transferred to the fifth respondent - SIDCO by way of G.O.Ms.No.785, dated 07.06.1988. However, till date, the lands have not been utilized by fifth respondent - SIDCO. Therefore, in the year 2003, the appellant filed a writ petition in W.P.No.39273 of 2002 challenging the acquisition proceedings, which was dismissed on the ground of delay and laches by order dated 28.11.2003, however, liberty was granted to the appellant to file an application, under Section 48-B of the Act as amended by the Tamil Nadu Amendment Act, 1996, for re-conveyance.

3. It is submitted that the second respondent / Secretary, Small Industries Department (SIC) Department has no jurisdiction to reject the application filed by the appellant for re-conveyance and mechanically rejected the same by orders, dated 10.02.2005 and 10.11.2008. This was challenged before the first respondent by submitting an appeal petition. However, the request made in the appeal petition was not considered by the first respondent and the same was rejected by order dated 24.03.2011, which was challenged in the writ petition and the same was dismissed by the impugned order.



4. It is submitted that the factual position was not taken note of by the Writ Court, while considering the prayer sought for and the Writ Court erred in relying upon the judgement of the Honourable Supreme Court in the case of **Tamil Nadu Housing Board v. Keeravani Ammal**, reported in **2007 (9) SCC 255** and **Tamil Nadu Housing Board v. Chandrasekaran**, reported in **2010 (2) SCC 786**. The order of rejection passed by the first respondent is a non-speaking order without taking note of the fact that the lands have not been utilized for nearly four decades.

5. The learned counsel for the appellant relied upon the Full Bench decision of this Court in the case of **Y.Arul Nadar v. Authorised Officer, Land Reforms, Thanjavur (FB)**, reported in **AIR 1990 MADRAS 33** for the proposition that the rights and obligations of parties should be decided only according to law, which existed when the action was begun, unless a clear contrary intention is evident in the Amending Act. This proposition is for the purpose that the new Land Acquisition Act has been enacted and old Act stood repealed and the effect of repeal should be considered in terms of Section 6 of the General Clauses Act, 1987 and the decision in the case of **Arul Nadar** (supra) mandates that the application of the appellant for re-conveyance should be considered under the erstwhile Land Acquisition Act.

6. In aid of such proposition, the learned counsel referred to the decision of the Honourable Supreme Court in the case of **Kanthimathy Plantation Pvt. Ltd., vs. State of Kerala**, reported in **AIR 1990 SC 761**. Further, it is submitted that the land losers should be invited to apply for allotment before the sector is floated for sale as held by the Honourable Supreme Court in prejudice and other excises and any other in the case of **Brij Mohan & Ors. v. Haryana Urban Development Auth. and Anr.**, reported in **2011 (2-3) SBR 347**.

7. Further it is submitted that when the statute mandates that a particular thing has to be done according to the Rule of reasons and justice, it should be done so and not according to the whims of the authorities and the action of the State in giving different treatment to the land-owners is arbitrary. In support of such contention, reliance was placed on the decision of the Division Bench in the case of **TNHB v. Uma Maheswari Ramasamy**, reported in **(2011) 7 MLJ 849**.

8. Further, it is submitted that environmental clearance is required to be obtained as there are standing cashew nut trees in the said land and there is a water channel, which cannot be altered and it has to be preserved as such. In support of such proposition, reliance was placed on the decision of the Honourable Supreme Court in the case of **Karnataka Industrial Areas Development Board v. C.Kenchappa**, reported in **(2006) 6 SCC 371**.



9. The learned counsel appearing for the fifth respondent - SIDCO submitted that the lands are required for the purpose of forming an industrial estate and the project is being developed in a phased manner and to substantiate that the approval granted by the authorities under the Town and Country Planning Act, dated 13.06.2017, was referred to. Further, it is submitted that even assuming that the lands are not utilized for the project for which it was allotted by the Government, the same has to be disposed of by way of public auction and the appellant / erstwhile land-owner has no vested right to seek for re-conveyance.

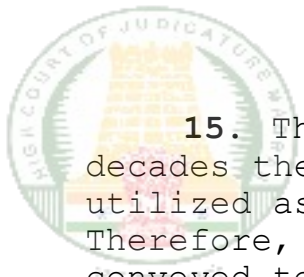
10. The learned counsel referred to the typed set of papers filed by them, wherein letters of allotment issued by SIDCO; approval for development of infrastructure as granted by MSME Department, dated 14.03.2012; no objection certificate issued by the National Highways, dated 22.01.2013; Communication from the sixth respondent / District Collector to SIDCO, which is a status report of the current position of the lands and the approval granted by the Member Secretary of the Sivagangai Local Town Planning Authority, were referred to.

11. In addition to that the learned Additional Government Pleader referred to the consolidated typed set of papers, in which the copy of the layout plan, which has been submitted for approval before the Planning Authority was referred to and it is submitted that the area, which according to the appellant was owned by him, is earmarked as Park No.6 in the layout plan. Thus, it is submitted that every step is being taken by the SIDCO to utilise the land and the same can be done only in a phased manner.

12. Further, it is submitted that the appellant is guilty of re-litigation as the same issue was agitated earlier by the legal heirs of the erstwhile land owner, presently by the appellant. Therefore, it is submitted that the decision taken by the Government not to re-convey the lands to the appellant is perfectly in order. In support of such contention, the learned counsel referred to the decision of the Honourable Supreme Court in the case of **Keeravani Ammal and L.Chandrasekarn** (supra).

13. We have heard Mr. Tranquebar Dorai Vasu learned counsel for Mr. J. John, learned counsel for the appellant, Mr. V. Muruganantham, learned Additional Government Pleader appearing for the respondents 1 to 4, 6 and 7, Mr. K. P. Krishnadoss, learned counsel appearing for the fifth respondent and carefully pursued the materials placed on record.

14. The first issue to be decided in this appeal is whether the appellant has a vested right in seeking for re-conveyance of the land. If the answer to this question is in affirmative, then we should move on decide as to whether the application filed by the appellant for re-conveyance should be considered in accordance with erstwhile Land Acquisition Act, 1984.



15. The sheet anchor of the appellant's case is that for four decades the land has remained un-utilized and even now, it cannot be utilized as there are cashew nut trees and there is a water channel. Therefore, the appellant's case is that the land should be re-conveyed to him.

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16. The fifth respondent - SIDCO has filed documents to show that the land is to be utilized for the purpose for which it was transferred to SIDCO by the Government on 31.07.2014. The District Collector, Sivagangai, has submitted a status report with a view to assist the respondents 1 and 2 to make submissions before this Court. The relevant portion of the report reads as follows:

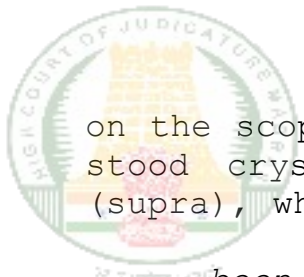
"1) In the S.F.No.281/1 in Soorakulam Revenue Village, Taluk, PWD Channel is passing through which was allotted by SIDCO vide order upon permission granted to the Special Tahsildar (LA) Periyar Improvement scheme unit III Melur, Madurai District based on G.O.Ms.No.213/2003/SIE Industries Department dated:15.3.08.

2) About 0.34.10 Hectares of lands have been proposed for formation of new Bypass Road by the State Highways Department, Sivagangai in the S.F.No.281/1 in Soorakulam (Group) and 42/2B of Paiyoor Pillaivayal Group.

3) Layout have been prepared and submitted to DTCP Sivagangai for approval for entire SIXCO, Industrial Estate comprising in S.F.No.276/1,2, 277/1,2,3,4, 280, 281, 281/1,2,3, 282/1,2,3,4,5 of Soorakulam (Group) and 42/2B of Paiyoor Pillaivayal Group.

4) The Application provisionally have been selected for allotment of plots in the S.F.No.281/1 After getting DTCP approval and completion of development works at entire estate (all Survey Nos) the allotment order will be issued to the applicants. Moreover more entrepreneurs are interested to start the industries at Industrial estate, Sivaganga and also action is being taken to allot the plots to the needy entrepreneurs at the earliest for purpose of industrial activities.

17. In terms of above report, it cannot be stated that the lands have not been utilized especially the lands formerly owned by the appellant in S.F.No.281/1. The above factual position cannot be rebutted by the appellant nor this Court can make a roving enquiry into the decision making power or policy making decision as to how the land acquired by the Government has to be utilized. Be that as it may, it would be necessary to take note of the legal position on this aspect. As held by the learned Single Judge when a direction was issued in an earlier writ petition filed by the appellant, there was no authoritative pronouncement by the Honourable Supreme Court



on the scope of Section 48-B of the Act. The legal position should stand crystallized and settled in the **Keeravani Ammal** decision (supra), wherein it was held as follows:

"We may also notice that once a piece of land has been duly acquired under the Land Acquisition Act, the land becomes the property of the State. The State can dispose of the property thereafter or convey it to anyone, if the land is needed for the purpose for which it was acquired, only for the market value that may be fetched for the property as on the date of conveyance. The Doctrine of Public Trust would disable the State from giving back the property for anything less than the market value. In **State of Kerala and Ors. v. M. Bhaskaran Pillai and Anr.** 1997 (2) CTC 177 : 1997 (5) S.C.C.432 in a similar situation, this Court observed:

"The question emerges: whether the Government can assign the land to the erstwhile owners? It is settled law that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. In case there is no other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public auction can be better utilised for the public purpose envisaged in the Directed Principles of the Constitution. In the present case, what we find is that the executive order is not in consonance with the provision of the Act and is, therefore, invalid. Under these circumstances, the Division Bench is well justified in declaring the executive order as invalid. Whatever assignment is made, should be for a public purpose. Otherwise, the land of the Government should be sold only through the public auctions so that the public also gets benefited by getting higher value.

Section 48-B introduced into the Act in the State of Tamil Nadu is an exception to this rule. Such a provision has to be strictly construed and strict compliance with its terms insisted upon. Whether such a provision can be challenged for its validity, we are not called upon to decide here.

18. In **L. Chandrasekaran's** case, after taking note of the decision in **Keeravani Ammal's** case, a pre-condition was pointed out for issuing directions by the State Government to release the lands, which were acquired. The relevant paragraph reads as follows:

"28. It need no emphasis that in exercise of



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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 utilized for any public purpose other than the one for which it was acquired.

29. Before concluding, we may notice the judgment of this Court in *Tamil Nadu Housing Board v. Keeravani Ammal* (supra). The question considered in that case was whether the Division Bench of the High Court could direct release of the acquired land which had been transferred to the appellant Board. While setting aside the impugned order, this Court observed:

"13. It is clearly pleaded by the State and the Tamil Nadu Housing Board that the scheme had not been suspended or abandoned and that the lands acquired are very much needed for the implementation of the scheme and the steps in that regard have already been taken. In the light of this position, it is not open to the Court to assume that the project has been abandoned merely because another piece of land in the adjacent village had been released from acquisition in the light of orders of the Court. It could not be assumed that the whole of the project had been abandoned or has become unworkable. It depends upon the purpose for which the land is acquired. As we see it, we find no impediment in the lands in question being utilised for the purpose of putting up a multi-storied building containing small flats, intended as the public purpose when the acquisition was notified. Therefore, the High Court clearly erred in proceeding as if the scheme stood abandoned. This was an unwarranted assumption on the part of the Court, which has no foundation in the pleadings and the materials produced in the case. The Court should have at least



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insisted on production of materials to substantiate a claim of abandonment.

14. We have already noticed that in the writ petition, there are no sufficient allegations justifying interference by the Court. Mere claim of possession by the writ petitioners is not a foundation on which the relief now granted could have been rested either by the learned Single Judge or by the Division Bench of the High Court. On the materials, no right to relief has been established by the writ petitioners.

15. We may also notice that once a piece of land has been duly acquired under the Land Acquisition Act, the land becomes the property of the State. The State can dispose of the property thereafter or convey it to anyone, if the land is not needed for the purpose for which it was acquired, only for the market value that may be fetched for the property as on the date of conveyance. The doctrine of public trust would disable the State from giving back the property for anything less than the market value. In *State of Kerala v. M. Bhaskaran Pillai*, in a similar situation, this Court observed:

"4)....The question emerges whether the Government can assign the land to the erstwhile owners? It is settled law that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. In case there is no other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public auction can be better utilised for the public purpose envisaged in the Directive Principles of the Constitution. In the present case, what we find is that the executive order is not in consonance with the provision of the Act and is,



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Section 48-B introduced into the Act in the State of Tamil Nadu is an exception to this rule. Such a provision has to be strictly construed and strict compliance with its terms insisted upon. Whether such a provision can be challenged for its validity, we are not called upon to decide here."

19. If the above legal position is made applicable to the case on hand, the only answer that can be given is to reject the request made by the appellant for re-conveyance. The learned Single Judge was perfectly justified in refusing to interfere with the order passed by the first respondent and thus taking note of the factual position as placed before us by the fifth respondent / SIDCO and taking note of the legal position, we are of the considered view that the order passed in the writ petition is perfectly legal and valid and calls for no interference.

20. In the result, the writ appeal fails and it is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To:

- 1.The Revenue Secretary,
Secretariat, Chennai-9.
- 2.The Secretary,
Small Industries (SIC) Department,
Secretariat, Chennai-9.
- 3.The Secretary,
Labour and Industrial Department,
Secretariat, Chennai-9.



4.The Special Commissioner,
Commissioner of Land Administration,
Chepauk, Chennai-5.

5.The Chairman,
Small Industrial Development
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6.The District Collector,
Sivaganga District,
Sivaganga.

7.The Revenue Divisional Officer,
(Land Acquisition Officer),
Revenue Divisional Office,
Sivaganga.

+1cc to THE SPECIAL GOVERNMENT PLEADER in SR. No.65609,66164
+1cc to Mr.J.JOHN Advocate in SR. No.65518

KRK/IA
JS/GT/SAR.3/3.8.2017/10P-10C

JUDGMENT
IN
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