

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.03.2018

Delivered on : 24.04.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A No.485 of 2015

M.Mariappan

...Appellant/Petitioner

Vs

- 1.The Government of Tamil Nadu
Rep. by its Secretary,
Housing and Urban Development Department,
Fort St.George, Chennai -9.
- 2.The Chief Revenue Officer,
Tamil Nadu Housing Board,
No.493, Anna Salai, Nandanam, Chennai - 600 035.
- 3.The Executive Engineer and Administrative
Officer, Tirunelveli, Housing Section,
Tamil Nadu Housing Board, Tirunelveli.
- 4.The Special Tahsildar (Land Acquisition)
Neighbourhood Scheme, Tuticorin,
Tuticorin District. ...Respondents/Respondents

Prayer:- Writ Appeal filed under clause 15 of the Letter Patent
against order dated 10.04.2013 in W.P.No.9832 of 2013.

WP.No.9832/2013 filed under Article 226 of the Constitution of
India praying for writ of mandamus directing respondents 1 to 2
to recovery the agricultural and measuring an extent of 1.06
cents comprised in Survey No.131/5 of Sankarapari Village,
Tuticorin Taluk & District in the name of the petitioner.

For Appellant : Mr.V.Prakash
Senior Counsel for Mr.K.Raja

For Respondents : Mrs.A.SriJayanthi
Spl.Govt.Pleader for R1 and R4
Mr.V.Anandhamurthy
Addl.Govt.Pleader for R2 and R3

J U D G M E N T

K.K. SASIDHARAN, J.

The land acquired from the appellant as per Award dated 29
July 1988 was developed by the Tamil Nadu Housing Board
(hereinafter referred to as the "Housing Board") and allotted
to general public. The appellant is still in the Court for a

direction to the State and the Housing Board to re-convey the land on the ground that the land was not utilised for the purpose for which it was acquired.

Summary of Facts

2. The 1.06 acres of land owned by the appellant in S.No.13/9, Sankaraperi Village, Tuticorin was part of 44.68 acres acquired by the Government for and on behalf of the Housing Board. The Award was passed on 29 July 1988. There was no challenge to the acquisition at the instance of the appellant.

3. The appellant filed a writ petition in W.P.(MD)No.9128 of 2008 before the Madurai Bench of this Court for re-conveyance. The writ petition was disposed of with liberty to submit a fresh representation for re-conveyance, and a direction to the Housing Board to consider it on merits. However, no such representation was given.

4. The appellant filed a fresh writ petition in W.P.No.9832 of 2013 before the Principal Bench again for re-conveyance. The learned single Judge directed the respondents to pass orders on merits. The said order is the subject matter of this appeal.

Submissions

5. The learned Senior Counsel for the appellant contended that the Notification under Section 4(1) has already been quashed by the Writ Court by order dated 25 July 1997 in W.P.Nos.10716, 10717 and 10718 of 1988. The said order would apply to the entire land acquired on the strength of the very same notification. The learned Senior Counsel contended that a learned Judge of this Court by order dated 4 June 2013 granted relief to another land owner. The appellant being a person similarly situated is entitled to the benefit of the earlier order. The respondents are therefore bound to re-convey the land to the appellant.

6. The learned Special Government Pleader appearing for the respondents 1 and 4 contended that the order dated 25 July 1997 quashing the notification under Section 4(1) has already been set aside by the Division Bench. The order dated 4 June 2013 and 28 October 2013 are now in appeal. According to the learned Special Government Pleader, the land acquired from the appellant has already been developed and put into use. Therefore, there is no question of re-conveyance to the erstwhile land owner.

Discussion

7. The land owned by the appellant was part of the larger extent of land acquired by the Government of Tamil Nadu for and on behalf of the Housing Board. The Notification appears to have been quashed in respect of a land covered in W.P.Nos.10939 to 10941 of 1987. The said order dated 3 August 1997 was followed in W.P.Nos.10716, 10717 and 10718 of 1988.

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8. The core question is whether the benefit of quashing the notification in respect of a portion of the acquired land would

give a right to the appellant to make a claim for re-conveyance.

9. There is no dispute that there was no challenge to the land acquisition at the instance of the appellant. The Award in respect of his land was passed on 29 July 1988. The possession was taken on 13 September 1988. The Award has become final insofar as the land of the appellant is concerned.

10. The Award amount was deposited in Civil Court deposit before the Sub-Court, Tuticorin.

11. The layout approval for the land was originally given by the Local Planning Authority by order dated 11 February 2009. The land was developed and it was allotted to the public. The concerned allottees are stated to be in possession of the allotted plots. There is no question of re-conveyance in view of the utilisation of the acquired land.

12. The Supreme Court in *Tamil Nadu Housing Board v. Keeravani Ammal and others* [(2007) 9 SCC 255] 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 re-conveyance. 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.

13. 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 re-conveyance and made the legal position very clear that there is no question of re-conveyance 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."

14. There is no vested right to claim re-conveyance. In case, the land has already been utilised, such cases would not attract Section 48-B of the Land Acquisition Act. We therefore do not find any merit in the claim made by the appellant.

15. The intra court appeal is dismissed . No costs.

Sd/--

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary,
The Government of Tamil Nadu
Housing and Urban Development Department,
Fort St.George, Chennai -9.

2.The Chief Revenue Officer,
Tamil Nadu Housing Board,
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4.The Special Tahsildar (Land Acquisition)
Neighbourhood Scheme, Tuticorin,
Tuticorin District.

+1cc to Government Pleader Sr.No.30740

+1cc to Mr.V.Anandhamurthy, Advocate Sr.No.30663

+1cc to Mr.K.Raja, Advocate Sr.No.30566

PVS (CO)

sm:10.5.2018

Judgment in
W.A No.485 of 2015

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