

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.12.2017
Delivered on : 04.01.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A No.825 of 2017
CMP No.11536 of 2017

- 1.The Chairman and Managing Director
Tamil Nadu Housing Board,
No.493, Anna Salai, Nandanam,
Chennai - 600 035.
- 2.The Executive Engineer cum Administrative Officer,
Tamil Nadu Housing Board, Ashok Nagar,
Chennai - 600 083.Appellants

Vs

- 1.S.Elumalai
- 2.Kasthuri
- 3.Dharmalingam
- 4.Panjatcharam
- 5.Viswanathan
- 6.Sivalingam
- 7.The Government of Tamil Nadu
Rep. by its Secretary to the Government,
Housing and Urban Development Department,
Fort St.George, Chennai - 600 009.
- 8.M/s.Dharani Developers Private Limited,
Rep. by its Director, Mr.C.Konguvel
Having Registered Office at
No.1, Venus Colony, II Street, Alwarpet,
Chennai - 600 018.Respondents

Prayer:- Writ Appeal filed under clause 15 of the Letter Patent against the order dated 26.10.2015 in W.P.No.23825 of 2011.

W.P.No.23825 of 2011:-

Writ petition is filed under article 226 of the Constitution of India for a Writ of Certiorarified Mandamus to Call for the

records of the first respondent in Letter No.13199A/LA2 (1) 08-18 dated 22.09.2011 and quash the same and consequently direct the respondents herein to forthwith reconvey the lands in S.No.352/1B, 352/4, 353/1 & 353/2 of an extent of 1.30 acres in Kodambakkam Village, Jafferkanpet, Chennai District to the petitioners

For Appellants : Mr.V.Ayyadurai
Additional Advocate General
Assisted by Mr.V.Anandhamurthy
Additional Government Pleader

For R1 and R6 : Mr.R.Gandhi
Senior Counsel for
Mr.R.G.Narendhiran

For R7 : Mrs.A.Srijayanthi
Special Govt.Pleader

For R8 : Ms.P.T.Ramadevi

For R2,R3,R4 and R5 : No appearance

J U D G M E N T

K.K. SASIDHARAN,J.

The learned single Judge while directing the appellants to re-convey the land owned by the respondents 1 to 6 (hereinafter referred to as "the land owners") issued a prohibitive order to the appellants not to file appeal against the order, in view of the possession and enjoyment of the land by the land owners. The order directing re-conveyance is under challenge at the instance of the Tamil Nadu Housing Board.

Facts in Brief

2. The land owned by the land owners having an extent of 1.30 acres at Kodambakkam Village was acquired along with larger extent for a Housing Scheme floated by the Housing Board. The Notification under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as the " Act") was issued on 25 October, 1961. The Land Acquisition Officer passed the Award on 29 July, 1968. The possession of the land was taken over by the Land Acquisition Officer and it was handed over to the Housing Board on 9 August, 1968. The Housing Board prepared a plan for construction of 76 residential units. The plan was approved by the Chennai Metropolitan Development Authority.

3. The land owners submitted a representation for re-conveyance. The request was negatived by the Government. The order has become final.

4. The subsequent order dated 22 September, 2011 negating the request once again was challenged by the land owners in W.P.No.23825 of 2011. The learned single Judge directed re-conveyance of the land taking into account an earlier order re-conveying 1.70 acres of land. The learned Judge opined that the land is still lying vacant and as such, it should be re-conveyed to the erstwhile land owners. Feeling aggrieved by the said order, the requisitioning body has come up with this intra court appeal.

Submissions

5. The learned Additional Advocate General contended that the acquired land has already been used and as such, there is no question of re-conveying it to the erstwhile land owners. The learned Additional Advocate General further contended that part of the land was re-conveyed to the land owners pursuant to an earlier order passed by the Writ Court. The land owners are now making use of the earlier order directing re-conveyance to claim the remaining extent acquired from them.

6. The learned Senior Counsel appearing for the land owners supported the order passed by the learned single Judge. The learned Senior Counsel contended that major portion of the land has already been released. The land owners are therefore justified in their contention that they are also entitled to a similar treatment.

7. The only question that arises for consideration is as to whether the land owners have made out a case for re-conveyance under Section 48-B of the Act.

The question regarding re-conveyance

8. Section 48-B was inserted by State amendment in the Land Acquisition Act, for re-conveyance of the property. The provision reads thus:-

"48-B Transfer of land to original owner in certain cases- Where the Government are satisfied that the land vested in the Government under this Act is not required for the purpose for which it was acquired, or for any other public purpose, the Government may transfer such land to the original owner who is willing to repay the amount paid to him under this Act for the acquisition of such land inclusive of the amount referred to in sub-section (1-A) and (2) of Section 23, if any, paid under this Act."

9. The question of re-conveyance in terms of Section 48-B would arise only in case the Government is of the view that the land is not required for the purpose for which it was acquired or for any other public purpose. Before taking a decision for re-conveyance, the Government must be convinced that the land is not required not only for the purpose for which it was acquired, but for any other public purpose also.

10. As observed by the Hon'ble Supreme Court in Tamil Nadu Housing Board v. Keeravani Ammal and others [(2007) 9 SCC 255], Section 48-B introduced into the Land Acquisition Act in the State of Tamilnadu is an exception to the general rule that the land on acquisition become the property of the State and it could be used by the Government for any public purpose or in case, it is not needed for such public purpose, the same can also be sold by public auction. The provision like 48-B must therefore requires a strict construction, meaning thereby, satisfaction of the Government with regard to the non-utilisation of the land must be arrived at on the basis of relevant materials.

11. There is no right to compel the Government or the requisitioning body to reconvey the land either to the erstwhile land owner or to the subsequent purchaser. The issue is no longer res integra in view of the string of decisions on the point.

12. The Supreme Court in Keeravani Ammal (cited supra) 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 reconveyance. 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 reconveyance and made the legal position very clear that there is no question of reconveyance 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. The question before the Supreme Court in Rajasthan State Industrial Development and Investment Corporation v. Subhash Sindhi Cooperative Housing Society, Jaipur and others [(2013) 5 SCC 427], was as to whether transferee of land after issuance of Section 4(1) notification is entitled to claim release of land from acquiring authorities on the basis of similar release of land. The Hon'ble Supreme Court, by placing reliance on the earlier judgments indicated that the sale subsequent to Section 4(1) notification is void and there would be no need for an order for quashing as it would be automatically null and void without more ado. The question regarding discrimination was answered by the Supreme Court by observing that if the land of other similarly situated persons have been released, the Court must be satisfied that it is similarly situated in all respects, and has an independent right to get the land released. It was further observed that Article 14 of the Constitution does not envisage negative equality and it cannot be used to perpetuate any illegality. The Supreme Court set aside the order passed by the High Court directing reconveyance and held that there was no right to claim release on the ground that others were given the benefit of such release.

15. The materials produced before us by the Housing Board clearly indicates that possession of the land has already been taken on 9 August, 1968. The land was part of a larger Scheme. It would not be possible for the Housing Board to use the entire land at one stretch. Since the subject land is part of a Scheme, it would be possible to develop the land only stage by stage. The fact that the entire land is not used alone cannot be a ground to direct the Housing Board to re-convey the vacant land.

16. The learned single Judge proceeded as if re-conveyance is a matter of right. The Supreme Court time and again made it

very clear that re-conveyance is essentially a discretion to be exercised by the Government on satisfaction that the land is not used for the purpose for which it was acquired and that it is not necessary for any other public purpose. This aspect was not considered by the learned single Judge. We are therefore of the view that the appellants are entitled to succeed.

17. The order dated 26 October 2015 is set aside. The writ petition in W.P.No.23825 of 2011 is dismissed.

18. In the up shot, we allow the intra court appeal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to the Government,
The Government of Tamil Nadu
Housing and Urban Development Department,
Fort St.George, Chennai - 600 009.
2. The Chairman and Managing Director
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3. The Executive Engineer cum Administrative Officer,
Tamil Nadu Housing Board, Ashok Nagar,
Chennai - 600 083.

+1cc to Mr.R.G.Narendhiran, Advocate, S.R.No.413

+1cc to Mr.Syed Ibrahim, Advocate, S.R.No.1190

+1cc to Mr.V.Anandhamurthy, Advocate, S.R.No.739

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NRI (CO)
CS/30.01.2018