

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.P.No.19097 of 2011

1.Muni Venkatajulu
2.Visalakshi
3.Munisamy Chetty
4.Raghuraman

... Petitioners

Vs

1. The State of Tamil Nadu
rep by its Secretary to Government,
Housing and Urban Development,
Department, Fort. St. George,
Chennai - 600 009.

2. The Chairman,
Tamil Nadu Housing Board,
Nandanam, Chennai - 600 035.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings in letter No. 2461/LA2.2/2011-3 dated 28.07.2011 on the file of the 1st respondent herein, quash the same and consequently direct the respondents herein to re-convey the lands in Survey No.670/1A situated at Hosur Village, Krishnagiri District measuring an extent of 0.24.0 Hectares (59\ cents) to the petitioners herein.

For Petitioners: Mr.M.Sathiavel

For Respondents: Mr.Akhil Akbar Ali,

Government Advocate [For R1]

: Mr.V.Anandhamoorthy [For R2]

ORDER

The petitioners have come forward with the present petition seeking issuance of a Writ of Certiorarified Mandamus, to quash the impugned proceedings in letter No.2461/LA2.2/2011-3 dated 28.07.2011 on the file of the 1st respondent under which the 1st respondent has rejected the petitioners' prayer under Sec. 48-B of the Land Acquisition Act, 1894, for re-conveyance

of the land acquired with a further direction to reconvey the same to the petitioners.

2.1. The case of the petitioners in brief is that the petitioners are brothers and they owned a plot of 59.5 cents situated at Hosur Village, Krishnagiri District, in Survey No.670/1A. The said property was purchased under the Sale Deed dated 22.02.1960, that the same along with other adjacent lands were notified under Sec.4(1) of the Land Acquisition Act, 1894, for acquisition for construction of houses by the Housing Board Vide G.O.Ms.No.349, Housing and Urban Development, dated 21.03.1991, and G.O.Ms.No.537, Housing and Urban Development, dated 18.08.1992. This notification under Section 4(1) was followed by a declaration under Sec. 6 and it was issued in the name of one Kondappa Naidu. However, at no time, notices were issued in the name of the to the petitioners or on them. Further, no compensation amount too has been paid in the name of the petitioners. Notwithstanding the above, the property acquired was not utilised for several years for which it was intended, and hence the petitioners had filed a representation to the first respondent to re-convey the land under Section 48-B of the Land Acquisition Act, 1894.

2.2. As the Government did not respond to the same, the petitioners had filed W.P.No.28496 of 2010 and this was disposed of on 19.01.2011 and this Court with a direction to the authorities to consider the representation of the petitioners for re-conveyance, but the same was rejected. As already indicated this is now under challenge. It may be mentioned here that in the impugned Order, the 1st respondent has indicated that in the petitioners' Survey No.670/1A, a layout has been prepared and necessary approval too has been obtained.

3. In this case, the Government has not filed any counter. The 2nd respondent/Housing Board has filed its counter which Mr.Akhil Akbar Ali, the learned Government Advocate stated that the Government too adopts. On the specific point in issue, a categorical statement is made in the counter in the property in Survey No.670/1A, a layout was prepared and approval was obtained from the Director of Town and Country Planning vide D.T.C.P.No.278/96. (This, the first respondent has relied on in his order, which is now impugned).

4.1. The learned counsel for the petitioners submitted that the entire acquisition proceedings had taken place without any notice at any point of time to the petitioners or their predecessors-in-title. Instead, a fictitious name Kondappa Naidu was invented by the Land Acquisition Authority for the purpose of acquiring petitioners' property. And, no compensation too was paid. In this regard, he has specifically brought to the notice of this Court the information that he obtained under

Right to Information Act, dated 01.07.2011, that was provided by the Special Tahsildar(Land Acquisition), in which a categorical statement was made that the compensation amount determined was swindled by Mr.Durairajan, the then Special Tahsildar, and a criminal action too has been initiated against him.

4.2. The learned Counsel would now add that it is only with the criminal intent to swindle the compensation amount, the said Durairajan, then Special Tahsildar, land acquisition, might in all probability have created a fictitious character in certain Kondappa Naidu as owner of the property and kept the petitioners in dark about acquisition. He added that even Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013) would also come to rescue since admittedly no compensation amount has been paid before commencing of the Right to Fair Compensation Act i.e., 01.01.2014. He also brought to the notice of this Court that the Government has already re-conveyed the land in S.No.598.

5. The scope of the petition is narrow and limited. Here, contentions touching on non-issuance of notice to the petitioners has already been agitated in the earlier Writ Petition in W.P.No.28496 of 2010. However, the petitioners appears to have the same line of allegations which this Court is not anxious to consider.

6. Sec.48-B does not vest in the land owners any substantial right to reclaim the property acquired, but has only provided a space for requesting the Government to reconvey the lands, and whether to grant it or not literally is Government's prerogative, subject however, to any act of malafide or violation of rule against equality. Even, if any of them is shown to have dictated the decision conveyed under the impugned order, this Court may not remand it back to the authority concerned inasmuch as Section 48-B of the Act is not a statute book no longer. This is because, Sec.48-B, as indicated earlier, does not create any statutory obligation in the Government or a right in favour the land owners for keeping it alive consequent to repeal of Land Acquisition Act, 1894, under Central Act 31/2013. The petitioners however, have an option to move the Government as per the law now in force.

7. So far as his allegations regarding invoking Section 24 (2) of the Right to Fair Compensation act is concerned, this Court does not pass any opinion on the same and if the petitioners consider that they have a cause of action to seek remedy under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013), they are free to do it.

8. With the above observations this writ petition is disposed of. No Costs.

-s/d-
Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

ssn
To

1. The Secretary to Government,
Housing and Urban Development,
Department, Fort. St. George,
Chennai - 600 009.
2. The Chairman,
Tamil Nadu Housing Board,
Nandanam, Chennai - 600 035.

+1 CC to Mr.V. Anandamurthy, Advocate sr 20879.
+1 CC to Govt. Pleader sr 21863.

W.P.No.19097 of 2011

RSK (CO)
SP (12/04/2018)

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