

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2018

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

W.P.No.32965 of 2014
and WP.No.32745 of 2016
and

M.P.No.1 of 2014 in WP.No.32965 of 2014

W.P.No.32965 of 2014 :

- 1.Karema Bee
 - 2.Asha Bee
 - 3.Rahamathunnissa
 - 4.Syed Javed Hussain
 - 5.Razia Sultana
 - 6.Rameeza Sultana
 - 7.Akhatar Hussain
 - 8.S.H.Ajmad Hussain
- Petitioners

-Vs-

- 1.The Government of Tamil Nadu
Represented by its Secretary to
Revenue Department
St.George Fort
Chennai - 600 009.
 - 2.The Member Secretary
Chennai Metropolitan Development Authority
Thalamuthu Natarajan Maligai
No.1, Gandhi Irwin Road
Egmore, Chennai - 600 008.
 - 3.The Tamil Nadu Housing Board
Represented by its Chairman
Nandanam, Chennai - 600 035.
 - 4.The Special Tahsildar
Market Management Committee Building
Koyambedu
Chennai - 600 092.
 - 5.The District Revenue Officer
Land Acquisition
Chennai Metro Rail Limited
Koyambedu,
Chennai - 600 092.
- Respondents

W.P.No.32745 of 2016 :

Karema Bee

.... Petitioner

-Vs-

- 1.The Government of Tamil Nadu
Represented by its Secretary
Housing and Urban Development Department
St.George Fort
Chennai - 600 009.
- 2.The Tamil Nadu Housing Board
Represented by its Chairman
Nandanam, Chennai - 600 035.
- 3.The Member Secretary
CMDA, Thalamuthu Natarajan Maligai
No.1, Gandhi Irwin Road
Egmore, Chennai - 600 008.
- 4.The District Revenue Officer
Land Acquisition
Chennai Metro Rail Limited
Koyambedu, Chennai - 600 092.
- 5.The Special Tahsildar
Land Acquisition
CMDA, Thalamuthu Natarajan Maligai
No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 008.Respondents

Prayer in W.P.No.32965 of 2014 :- Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the respondents herein not to take possession and also not to develop the petitioners' land in Survey Nos.159/1, 160/1, and 163/1, measuring an extent of 5 acres and 13 cents at Koyambedu Village by the respondents either collectively or individually without acquiring their lands under Land Acquisition Act and as per due process of law.

Prayer in W.P.No.32745 of 2016 :- Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the respondents to consider the petitioner's representation dated 03.05.2016.

In W.P.No.32965 of 2014 :

For Petitioners : Mr.K.M.Venugopal

For Respondents : Mr.M.Karthikeyan
Additional Government Pleader [R1 & R4]
Mr.Tamilmani [R2]
Mr.B.Vivekavannan [R3]
Mr.Jayesh B Dolia [R5]

In W.P.No.32745 of 2016 :
For Petitioner : Mr.K.M.Venugopal

For Respondents: Mr.M.Karthikeyan
Additional Government Pleader [R1 & R5]
Mr.B.Vivekavannan [R2]
Mr.Tamilmani [R3]
Mr.Jayesh B Dolia [R4]

ORDER

1. This twin petitions are filed by the same set of parties on causes of action which are not vastly different. The petitioners have come forward with the present writ petitions seeking writ of mandamus (i) to direct the respondents not to take possession or to develop the petitioners' land in Survey Nos.159/1, 160/1 and 163/1 of Koyambedu Village (in W.P.No.32965 of 2014) and (ii) to consider her representation dated 03.05.2016, given to the respondents, seeking a relief under Section 48-B of the Land Acquisition Act, 1894, with regard to her property (in W.P.No.32745 of 2016)

W.P.No.32965 of 2014:

2.1. Karema Bee, the first petitioner in this petition is the sole petitioner in W.P.No.32745 of 2016. Karema Bee had two sisters viz., Asha Bee, who is the second petitioner and one more sister named Mymunbibi, who is now no more. The petitioners 3 to 8 herein are the heirs of Mymunbibi.

2.2. The petitioners' case is that the three sisters namely Karema Bee, Asha Bee and Mymunbibi jointly inherited a block of land measuring 5.13 acres in Survey Nos.159/1, 160/1 and 163/1 in Koyambedu Village. According to them, this property originally belonged to a certain Nooruhdin Sahib, their father. While so, a notification under Section 4(1) of the Land Acquisition Act, 1894 [hereinafter referred to as "Act"] dated 01.10.1975 was issued for formation of K.K.Nagar Housing Scheme, involving acquisition of the entire 5.13 acres that belonged to the three sisters. This was followed by a declaration made under Section 6 of the Act dated 29-09-1978. Subsequently, an award too was passed in 1983. This acquisition proceedings was challenged by the petitioners and other land owners before this Court in W.P.No.10351 of 1982 & etc., batch. Section 6 declaration made was subsequently quashed and the petition filed by these petitioners along with

others were allowed by a Division Bench of this Court Vide its order dated 08.01.1988, in which, the Land Acquisition Officer was directed to hold a fresh enquiry under Section 5-A of the Act. The aforesaid direction was not complied and no enquiry too was conducted and consequently the entire acquisition proceedings had lapsed.

2.3. According to the petitioner, a certain Samu Naicker, who was one of the land owners under the very award in which the petitioner's property was considered for compensation, had moved this Court challenging the declaration under Section 6 of the Act, and the same was allowed.

2.4. In the meantime, Vide G.O.Ms.No.125 [Housing and Urban Development Department] dated 11.10.1978, the entire land declared under Section 6 of the Act had been handed over to CMDA, the second respondent herein for implementing Pallavan Transport Corporation Ltd and for KWMC project. No possession however was taken from the land owners, as no valid acquisition at all was in place, thanks to the orders of this Court referred to above.

2.5 It is under these circumstances, the Government came up with a fresh acquisition proceedings and issued a notification under Section 4(1) of the Land Acquisition Act, 1894, on 13.11.1998, and this was followed by a declaration under Section 6 of the Act on 02-02-2000. This however, did not involve the entire property earlier notified or declared. The left out property was again notified for a fresh acquisition in 2001 for formation of Koyambedu Wholesale Market Complex and as regards this, a declaration under Section 6 of the Act was issued on 20.09.2002. The second acquisition implies that the Government had released all the lands which are covered under the declaration under Sec. 6 made in 1978.

2.6. Be that as it may, no portion of the property in Survey Nos.159/1, 160/1 and 163/1 in Koyambedu Village, pertaining to which Karema Bee, Asha Bee and Mymunbibi claimed title, was covered in any of the subsequent notifications. This land remained vacant for the past 32 years. It is under these circumstances, the CMDA (Chennai Metropolitan Development Authority) and CMRL (Chennai Metro Rail Corporation Ltd.,) are trying to take possession of the same illegally along with the lands acquired in the subsequent notifications. Worse, these respondents also allowed a Trust known by the name 'Alfred Educational Trust' to encroach upon the portion of this property. The petitioners are essentially illiterate pardhanashin women, and guided by their ignorance they moved the authorities in 2003 seeking re-conveyance of their property under Section 48 of the Land Acquisition Act, 1984. In the meantime, the third respondent in W.P.No.32965 of 2014 namely Rahamathunnissa also filed a suit in O.S.No.6657 of 2001 on the file of the learned XI Assistant City Civil Court,

Chennai, seeking permanent injunction against the aforesaid Alfred Educational Trust, CMDA and 2 others. This was decreed on 20.3.2006, and as per which the plaintiff's possession was found valid.

2.7. While this being so, the petitioners came to know that their property had already been taken over by CMDA and handed over to Chennai Metro Rail Limited Vide G.O.Ms.No.62 (P & I) Department in the year 2009. The Special Tahsildar, Land Acquisition, CMDA, Koyambedu, Chennai, in a communication dated 23.7.2013, addressed to the Member Secretary, Chennai Metropolitan Development Authority, Chennai, it is averred that the aforesaid petitioners' land had already been acquired by Tamil Nadu Housing Board, Chennai. This is patently wrong, inasmuch as the declaration under Section 6 issued to carry out original intent of formation of K.K.Nagar, has been quashed. Therefore, G.O.Ms.No.62 (P & I) Department is bad in law. Further, no compensation has been paid.

2.8. While things remained thus, the petitioners had approached the authorities with a representation for releasing their lands, and as there was no response from the authorities, they filed W.P.No.49306 of 2006 and this Court Vide its order dated 24.4.2008, had directed the authorities concerned to dispose of the petitioners' representation for re-conveyance of their lands. But, the same was not considered by the authorities.

2.9. In essence the lands of the petitioners have been acquired by the Government without furnishing any details of the award and that no fresh notification too has been made. It is further contended that at the moment, CMRL is attempting to enter upon the petitioners' land and are trying to fence the same. It is also brought to the notice of the Court that in a batch of writ petitions in W.P.Nos.12526 to 12530 of 2014, few of the neighbours of the petitioners' land, have obtained an order of interim status-quo from this Court. It is in these circumstances, the petitioners have filed the present writ petition in W.P.No.32965 of 2014.

3. While so, the first petitioner Kareema Bee alone filed yet another writ petition in W.P.No.32745 of 2016, seeking a direction to the respondents to re-convey her property in Survey No.188 of Koyambedu Village.

4.1. The Chennai Metropolitan Development Authority, the third respondent alone has filed its counter in W.P.No.32745 of 2016, which is adopted by the other respondents, and it was also requested to be treated as a counter to both the writ petitions.

4.2. In the said counter, it is averred that the property in Survey No.188 Koyambedu Village had earlier been acquired Vide

Award No.1/85 and it was converted into 45 plots, of which 33 plots were already sold. Since there were some dispute as to the ownership and apportionment of compensation amount, the award amount payable to the land owners were deposited in concerned Civil Court under Section 30 & 31(2) of the Land Acquisition Act, 1984. Besides, the petitioners herein have moved this Court in W.P.No.17766 of 2010 through one Mr.V.Balasubramanian, Power of Attorney. This Court Vide its order dated 23.12.2010 had passed an order to consider the representation made by the petitioners and required the petitioners to submit one more representation to CMDA enclosing the earlier representation. Based on this order, the said Balasubramanian made a fresh representation to the authorities concerned and in that he requested (a) to remove the material dumped in Survey No.188 of Koyambedu Village and to grant planning permission for 15,900 sq.mtrs., which is approximately equal to 3.03 acres, and (b) to grant planning permission for the unused land in S.No.173/1 of Koyambedu Village measuring an extent of 1.89 acres. There is also a request to re-convey the land in Survey Nos.188 and 173/1.

3.2. It is further averred in the counter that as regards the land in Survey No.188 was concerned, an award was passed Vide Award No.1/85 and this property has been used for the construction of Post Office, Fire Station, E.B. Sub-station and for formation of Road, and that a small extent of land available has been leased out to CMRL for using it as a construction site. Since the entire lands has already been utilised for public purpose, the request of the petitioner for re-conveyance may not be possible. Subsequently, the petitioner had again approached the authority with a representation dated 11.04.2011, that out of 15,900 sq.mtr., an extent of 500 sq.mtrs. still remained unutilised and therefore, sought re-conveyance of the same, followed by a representation dated 13.07.2011. To consider his representation, the petitioner moved this Court in W.P.No.910 of 2012 and this Court Vide its order dated 21.01.2012 has directed it to be considered. In the representation of the petitioner dated 13.07.2011, addressed to the first respondent, the petitioner had requested to identify and re-convey 500 sq.mtrs. of lands. The fifth respondent however had objected to this on the ground that the entire property has been fully utilised for construction of post office, fire station etc. Subsequently, the petitioner again approached this Court seeking re-conveyance of the lands in Survey No.188 of Koyambedu Village in W.P.No.31631 of 2014 and Vide its order dated 03.12.2014, this Court again directed the authorities to consider the representation of the petitioner dated 17.11.2014.

3.3. As per the records, the petitioner Kareema Bee and her husband Hayat Basha divided the property into 45 plots and sold the same to about 35 persons, even in 1967, and after acquisition awards were passed in the names of these

purchasers. Hence, the petitioner's claim for re-conveyance of entire extent of 3.93 acres of land in Survey No.188 of Koyambedu Village was not acceptable.

4. The learned counsel for the petitioners' submissions are pointed :

- That the respondents relied heavily on a declaration issued under Section 6 of the Land Acquisition Act, 1864, sometime in the year 1978. But the same was since been quashed by this Court and nothing survives thereafter. As to the allegation of the petitioner that the subsequent acquisition initiated in the year 1998, it did not include the petitioner's property and there is no denial of the petitioners' assertion that their properties were not included.
- Even now a sizable portion of the petitioner's property remained un-utilised and vacant, and part of it is under encroachment with M/s.Alfred Educational Trust. As regards, the vacant property, the Government is yet to take a call and to that extent a cause of action still survives.

5. Mr. Tamilmani entered appearance for Chennai Metropolitan Development Authority, Mr.Jayesh B.Dolia for Chennai Metro Rail Limited, Mr.B.Vivekavannan, learned counsel for Tamil Nadu Housing Board and Mr.M.Karthikeyan, learned Additional Government Pleader for rest of the respondents and they argued in unison that it is not the first time that the petitioners have been approaching the Court, that even the petitions and counter affidavits would indicate their visits to this Court with writ petitions have been frequent, and on every occasion, their only prayer has been to seek a direction from this Court to consider their/her representations/representation and at no point of time, they sought a relief from this Court to have the acquisition proceedings quashed. Therefore, the petitioners may not be able to sustain the prayer that may have the effect of nullifying the acquisition proceedings either directly or remotely. Secondly, the petitioners only seek a relief to consider yet another representation dated 18.06.2016 and this again is intended for re-conveyance. Identical prayers have been made repeatedly in the past and more than once it has been decided against them.

6. There is merit in the submissions of the learned counsel for the respondents in that in spite of the fact that the petitioners have approached this Court either directly or through their Power Agent a few times earlier, not once they chose to challenge the acquisition proceedings. Nor have they sought a declaration that the alleged taking of possession of their property by CMDA and its subsequent utilisation are not legal and contrary to law. Even now petitioners do not seek a relief such as the one indicated.

7. So far as the present prayer is concerned inasmuch as the petitioners now seek the Government to re-convey what he claims as a sizable portion of unutilised land, out of their entire holding of 5.13 acres, they can approach the Government afresh with a better representation, with a more accurate details. In this context, it is necessary to reiterate that in the counter of CMDA, it is indicated candidly that the petitioners themselves have sold sizable part of their lands in the year '1967 to 35 purchasers and that these purchasers have been paid compensation. Therefore, the locus standi of the petitioners or anyone claiming under them, may come into question. In the eventuality of the petitioners approaching the Government with a fresh representation as indicated above, this aspect may also have to be gone into.

8. This Court, therefore, dispose of both these petitions with a direction to the petitioners to approach the first respondent/Government with a fresh representation with accurate details of the portion of the land which according to them remain unutilised within a total extent of 5.13 acres situate within eight weeks from the date of receipt of a copy of this order under Section 101 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and the Government may decide them on merits and in accordance with law after affording the petitioner or any of their representative an opportunity of being heard in the matter. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS III)

//True Copy// सत्यमेव जयते
Sub Assistant Registrar

To:

1.The Government of Tamil Nadu
Represented by its Secretary to
Revenue Department
St.George Fort
Chennai - 600 009.

2.The Member Secretary
Chennai Metropolitan Development Authority
Thalamuthu Natarajan Maligai
No.1, Gandhi Irwin Road
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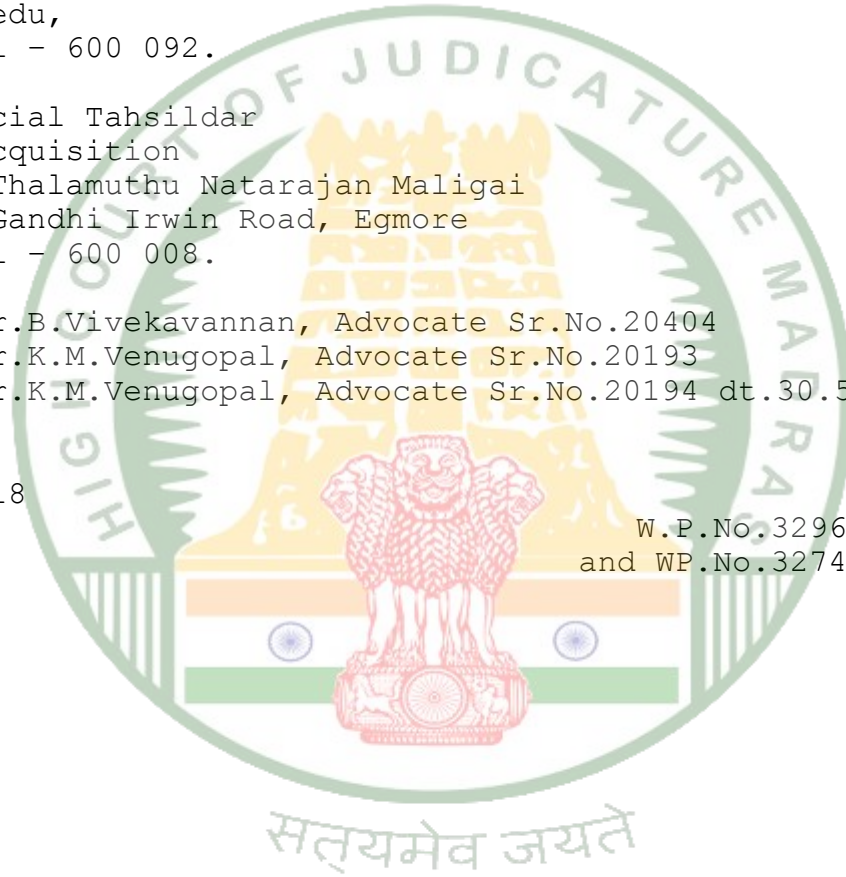
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+1cc to Mr.B.Vivekavannan, Advocate Sr.No.20404
+1cc to Mr.K.M.Venugopal, Advocate Sr.No.20193
+1cc to Mr.K.M.Venugopal, Advocate Sr.No.20194 dt.30.5.2018

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W.P.No.32965 of 2014
and WP.No.32745 of 2016



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