

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved : 23.02.2018

Judgment Pronounced on : 28.04.2018

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

W.P.No.24348 of 2017

Donald Fernandes

... Party-in-Person

Vs

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

2.The Managing Director
Tamil Nadu Housing Board
Anna Salai, Nandanam
Chennai - 600 035.

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents herein to consider and pass appropriate orders on the petitioner's representation dated 03.08.2017 and direct them to re-settle his lands admeasuring about 0.65.5 hectares in Survey No.293/1 and 293/2 at 155, Sholinganallur Village, Tambaram Taluk, Kancheepuram District covered by notification dated 23.05.1990 in G.O.(Ms) No.454 and G.O.(Ms) No.996, dated 17.06.1991 respectively, issued by the Housing and Urban Development Department.

For Petitioner : Donald Fernandes
Party-in-Person

For Respondents: Mr.Akhil Akbar Ali
Government Advocate [for R1]
Mr.B.Vivekavannan [for R2]

ORDER

The petitioner has come forward with a prayer for issuing a writ of mandamus for directing the respondents to consider his representation dated 03.8.2017.

2. The petitioner who appeared in person has averred the following facts in this petition:

- The petitioner owned a property having a total extent of 1.62 acres spread over in Survey Nos.293/1 and 293/2 of Sholinganallur Village, and this was later acquired for the benefit of the Tamil Nadu Housing Board (hereinafter will be referred to "TNHB") under the provisions of the Land Acquisition Act, 1894 (hereinafter referred to as "Act"). The different stages of acquisition and the dates corresponds to them are:

Stages of Acquisition	Date of issuance
Notification under Section 4(1) of the Land Acquisition Act, 1894	23.05.1990
Declaration under Section 6 of the Land Acquisition Act, 1894	17.06.1991
Award passed Vide Award No.2/93	18.06.1993
Possession taken by TNHB	18.04.1994

The petitioner was not put on notice about the acquisition at any stage of the proceedings. On taking possession, TNHB demolished the compound wall along the four boundaries of the petitioner's property, labour quarters, and removed about 1000 casuarina trees. Besides, they have also removed truck loads of sands from his property.

- Thereafter, the petitioner had made representation to the Government and as this was not considered, he moved this Court in W.P.No.644 of 1995 to consider his representation. On 24.11.1999, this writ petition was disposed with a direction to consider the representation. Subsequently, petitioner's representation was rejected by the authorities on 05.2.2004.
- On 31-05-2003, the petitioner had filed another representation and as this too was not considered, he filed W.P.9120 of 2004, which this Court disposed of with a direction to consider the said representation. On 24.8.2004, this representation too was rejected. This order of rejection was made in response to what appears to be petitioner's prayer for re-conveyance of his property under Section 48-B of the Act.

- Challenging this, the petitioner filed W.P.No.28849 of 2004 and this was dismissed by this Court on 10.09.2005. The petitioner appealed against this order in W.A.No.85 of 2006 and this too came to be dismissed on 27.02.2006. The petitioner would then prefer a review against this order and this review application was dismissed even at the very preliminary stage on 05.02.2007.
- Thereafter, the petitioner filed a fresh representation for re-conveyance dated 13.4.2009, wherein he had alleged that he had been discriminated against in that, while some of the land owners who were similarly placed were treated favourably and their lands were re-conveyed, the same was denied to the petitioner. As this was not considered, the petitioner filed W.P.No.18711 of 2009 and the same was disposed of on 14.09.2009 for considering the said representation. This representation too was rejected Vide order of the Government/first respondent dated 08.4.2010 and soon it became the subject matter for challenge in W.P.No.29767/2010. This came to be dismissed on 11.08.2015. This was challenged in W.A.No.66 of 2016 and this appeal came to be dismissed on 08.02.2016. The Petitioner would then prefer Review Application No.57 of 2016 and this was dismissed on 19.06.2017.
- Many land owners affected by the acquisition of lands have moved this Court in a batch of Writ Petition commencing with W.P.No.10420 of 1991 and this was allowed on 24.01.1996. A certain Dhanalakshmi and others had moved this Court in W.P.No.516 of 2006 and had declaration under Section 6 of the Act struck down, Vide order dated 23.8.2013.
- In its counter affidavit filed in W.P.No.29767 of 2010, the second respondent namely TNHB has stated that layout plans for S.Nos.293/1 & 293/2 have been approved Vide proceedings of CMDA in PPD/LO-(TNHB) 5/2006 dated 01.2.2006, but in the subsequent information obtained under RTI, it was stated that the said approval pertains to property comprised in S.No.322, 323/3, 346/3B and 347/5 of Puzhal Village. This implies that no layout plan has ever been prepared or approved by the CMDA as concerning the properties in S.Nos.293/1 & 293/2 which the petitioner owned.
- The petitioner has come up with yet another representation to the authorities, this one dated 03.08.2017, and it is for issuing a direction to consider this, the petitioner has filed the present petition. In this petition he has alleged substantially the same set of facts as in earlier instances, and the variance he brings here is that his

representation presumably was made for invoking Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 [hereinafter referred to as "Right to Fair Compensation Act" in brevity] pursuant to the liberty given to him in Rev.Appln No.57 of 2016 against W.A.No.66 of 2016.

4. Both the respondents have filed their separate counters. The contentions taken in both the counter affidavits are substantially same and hence the material facts in defence are bullet-pointed below :

- The petitioner has little to do with the property concerned. The notification under Section 4(1) of the Land Acquisition Act, as well as the award was passed in the name of Mrs.DONAL FERNANDO, W/o. Francis Fernando. The petitioner has not explained how he is related to Mrs.Donal Fernando, nor has he produced any legal heir certificate. As such, the petitioner has no locus standi to invoke Section 24(2) of the Right to Fair Compensation Act nor can he maintain the present petition.
- So far the application of 24(2) of the Right to Fair Compensation Act goes, the compensation amount payable is deposited in LAOP.No.140/1995 before the Sub Court, Poonamalle under Section 30 & 31(2) of the Act. So far as taking physical possession of the property goes, on 18.4.1994, the Special Tahsildar (LA) had handed over the property to TNHB for implementing a Housing Scheme. Necessary layout was subsequently prepared and the Scheme was approved by the CMDA Vide PPD/LO/No.(TNHB)5/2006 on 01.2.2006.
- The petitioner has been interfering in the right of the Housing Board over the property when he mischievously sold about 55 cents of the property acquired under two sale deeds dated 25.04.2005 and 09.5.2005, whereupon the purchasers thereunder challenged the Order of the Government rejecting re-conveyance under 48-B unsuccessfully in W.P.No.22927 of 2007.
- The petitioner has filed repeated petitions relentlessly and it constitutes an abuse of process.
- So far as the land owners in W.P.No.10420 of 1991 and W.P.No.516 of 2006 are successful, they are on different conditions and facts, which are not applicable to the petitioner.

5. Before this Court Mr.Donald Fernandes, the petitioner harped much on the leave granted to him in Rev.Appln. 57 of 2016,

wherein the petitioner was granted liberty to institute appropriate proceedings by invoking Sec 24(2) of the Right to Fair Compensation Act. He also argued how the entire land acquisition proceedings was bad in law since at no point of time he was served with any notice of acquisition.

6. The argument refuting the above contentions advanced on behalf of the respondents was along the predictable lines:

- That at no point of time, the Court entered a finding that ingredients for invoking Section 24(2) was present independent of those facts which provided cause of action for filing WP.No.29767 of 2010, out of which Rev.Appln.No.57 of 2016 has arisen at a later stage. So far as ingredients of Section 24(2) of the Right to Compensation Act goes, the compensation amount has been promptly deposited in the Court in LAOP No.140 of 1995, before Sub Court, Poonamallee
- On the point if possession of the property is taken, it is a fact which even the petitioner admits that it had been so taken. Even in the affidavit he has specifically alleged that on taking possession, the Housing Board had demolished the compound wall, labour-quarters, cut and removed casuarina tress and quarried truck loads of sands. There is also no truth in the fact, that the approved layout pertain to different survey numbers as the one enclosed in the typed set of papers show that it included the property in S.Nos.293/1 & 293/2.

7. It has been an untiring journey for the petitioner to this Court since he filed his first petition in W.P.No.644 of 1995. In fact, this is the sixth occasion when he has come forward with a writ petition. This does not include two writ appeals and at least two review petitions that he had filed. Therefore, even though the pursuit of the petitioner in this writ petition is to have a direction to the authorities to consider his representation for invoking Section 24(2) of the Right to Fair Compensation Act, still there is a dire necessity for this Court to relieve itself from a deluge of such petitions more or less for the same purpose.

8. In order, a land owner may be benefited under Section 24(2) of the Right to Fair Compensation Act, there shall be present three conditions. Of them, one is a constant and the other two operate in the alternative. The inviolable condition in all situations is that the award should have been passed at least five years prior to the commencement of Right to Fair Compensation Act on 01.1.2014. The other two conditions that can either operate simultaneously or alternatively are (a) that the compensation amount should not have been paid, or (b) the

physical possession of the land should not have been taken. As to the payment of compensation, even the petitioner does not dispute or deny the fact that the same has been deposited in the Court in LAOP NO.140/1995. On he losing the physical possession of the property, the petitioner makes an unambiguous and unequivocal statement in his affidavit that possession has been taken on 18.4.1994 and follows it up with further averment that the second respondent had demolished the compound wall etc., Even in its order dated 08.02.2016 in W.A.No.66 of 2016, the Division Bench of this Court has entered a categorical finding that possession had been handed over to the authorities concerned. Apparently when the twin conditions that are required to invoke Section 24(2) are absent, what is that the authorities are going to consider other than rejecting the petitioner's representation. Even if this petition is allowed, still the authorities are more likely to reject the petitioner's representation for invoking Section 24(2) and consequently, it brings into operation what this Court may term as law of conservation of litigation: "A litigation that disappears in one form may re-appear in another form, keeping the total pendency a constant"; In other words, a litigation for mandamus seeking a direction to consider a representation may disappear, but will re-appear as one seeking issuance of writ of certiorari. This syndrome, nay a malady, that has affected our legal system should stop somewhere or at least in some set of cases. And, this Court considers that the present case is one where this Court should become aware of this syndrome, and should halt the prospect of it turning out to be a malady.

10. In the result, this petition is dismissed. No costs.

Sd/-

Assistant Registrar(CS IX)

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Sub Assistant Registrar

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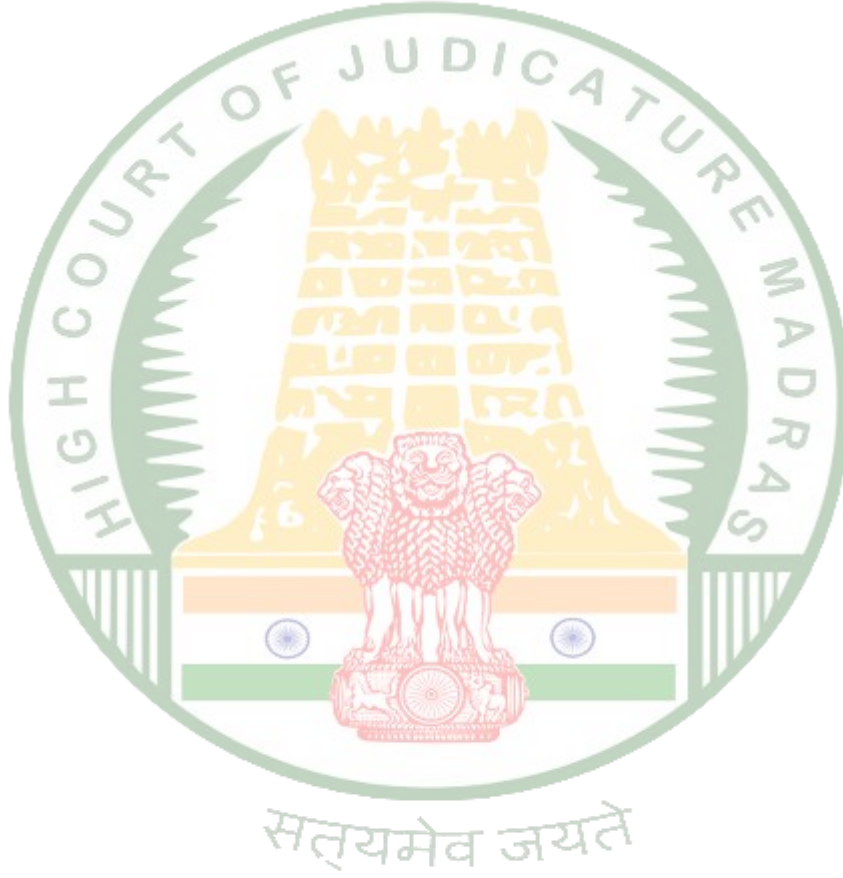
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+1cc to Mr.B.Vivekavannan, Advocate sr.no.32222
+1cc to Government Pleader in sr.no.32750

W.P.No.24348 of 2017

nr 12/06/2018



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