

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.06.2018

CORAM

THE HONOURABLE MRS. V. BHAVANI SUBBAROYAN

WP.No.8441 of 2008

D. Rathinam

...Petitioner

Vs.

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

2.The Special Tahsildar,
Land Acquisition - II,
Tamil Nadu Housing Board,
Nandanam, Chennai - 600 035.

3.The Chairman/cum/Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai - 600 035.

4.The Executive Engineer &
Administrative Officer,
Dr.J.J. Nagar Division,
Chennai - 600 037.

...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records and quash the order passed by the first respondent in his letter No.17886/LAI(1)/2006-12, dated 01.02.2008 and consequently direct the respondents to reconvey the properties bearing S.No.50/1 Ac.0.54 Nolumbur, Thiruvallur District, to the petitioner after receiving the compensation amount with such interest as is legally permissible and put petitioner in legal possession of the properties.

For Petitioner : Mr.D.Baskar

For Respondents 1&2 : Mr.R.S. Selvam
Government Advocate

For Respondents 3&4 : Mr.B.Viveka Vanan
(TNHB)

O R D E R

The petitioner has filed this writ petition for issuance of a Writ of Certiorarified Mandamus to call for the records and quash the order passed by the first respondent in his letter No.17886/LAI(1)/2006-12, dated 01.02.2008 and consequently direct the respondents to re-convey the properties bearing S.No.50/1 Ac.0.54 Nolumbur, Thiruvallur District to the petitioner after receiving the compensation amount with such interest as is legally permissible and put the petitioner in legal possession of the properties.

2. The learned counsel appearing for the petitioner would contend that the Government of Tamil Nadu by G.O.R.No.307, Housing and Urban Development Department dated 11.12.1975 approved acquisition of a total extent of 539.98 acres in Nolumbur Village, now Thiruvallur District for alleged development purposes known as Ambattur Neighbourhood Scheme. The same was published in the Tamil Nadu Government Gazette in Supplement to part II Section 2 on 31.12.1975. After the notification under Section 4(1) of the Land Acquisition Act, Declaration under Section 6 of the above Act was published in the Tamil Nadu Government Gazette dated 30.12.1978. Though, the large extent was acquired as early as 1975, no development was made. The properties remained unutilized for more than 30 years by the Tamil Nadu Housing Board and it is very obvious that the object of acquisition was not fulfilled.

3. The learned counsel appearing for the petitioner would further contend that the citizens cannot be deprived of their fundamental right to own their properties. In the year 1979, the Government dropped the idea of implementing the scheme. The said decision was published in the Tamil Nadu Government Gazette as early as in the year 1979. However, it was stated that cancellation of the notification related to lands in part B of the notification, i.e., 372.99 acres. This is about 2/3rd of the total extent of 539.98 acres originally notified. There is no reason assigned at the time of dropping the same which was only on the whims and fancies of the State Government. After that another extent of 7.42 acres has also been withdrawn from the acquisition from Part A lands. This was not denotified and it was kept secret. However, one Manonmani Palanisamy, who owned land adjacent to 7.42 acres withdrawn, came to know about the said withdrawal and she and few others filed a batch of writ petitions challenging the acquisition and requiring the properties to be resumed as they remained unutilized and also on the ground that differential treatment cannot be given to the land owners. The petitioner had given various representations under Section 48-B for re-conveying the land. The aforesaid batch of writ petitions were disposed of by this Court on 03.07.1997. However, the Government by its order dated 13.11.1997, had declined the request of the petitioner therein for re-transfer. Assailing

the correctness of the said order, the said Manonmani Palanisamy, who owned land adjacent to 7.42 acres withdrawn earlier had filed a writ petition in W.P.No.18000 of 1997 before this Court for a Writ of Certiorarified Mandamus, seeking to quash the order and for re-conveyance. The said writ petition was also dismissed on 22.09.2000 and thereafter Writ Appeal No.1776 of 2001 was filed before this Court. The said Writ Appeal No.1776 of 2001 was allowed by the Hon'ble Division Bench of this Court on 16.11.2001, wherein among other grounds, this Hon'ble Court had also considered the orders passed in W.P.No.4600 of 1999 and held that the discrimination against the persons, from whom the lands were acquired, is unconstitutional and held that it vitiated the acquisition proceedings. Thus, the Hon'ble Division Bench has observed that the entire acquisition proceedings were vitiated and lacked bonafides and non application of mind and the Hon'ble Division Bench further held that the power vested under Section 48-B of the Land Acquisition Act was not properly exercised by the Government and the amount of compensation was ordered to be returned with interest. The Hon'ble Divison Bench of this Court quashed the proceedings and ordered re-conveyance.

4. The learned counsel appearing for the petitioner would further contend that, aggrieved by the said order, the second respondent had filed S.L.P.(Civil) No.3289 of 2002 but the Hon'ble Apex Court dismissed it by order dated 22.02.2002. Based on the said final order, the first respondent sent a communication to the second respondent on 27.05.2003 directing re-conveyance. Accordingly, some of the lands were re-conveyed. Another batch of writ petitions in W.P.No.11578 of 2003 was filed and which relates to items in Part-A, and the same was also directed to be re-conveyed. The persons, who are owning lands to an extent of Ac.No.2.99 in S.Nos.62/1 and 62/2 in Nolumbur Village, which comes under Part-A, also sought for re-conveyance of the lands as the same was not utilized for 30 years since compulsory acquisition was made and also if the properties were not utilized, the aggrieved persons have right to get the same from the Government as per Section 48-B of the Act. The learned counsel for the petitioner would also submit that when some of the items in Part-A are re-conveyed to its original owners, the petitioner is also entitled to equal treatment and if any differential treatment is shown then that will be violative of equality guaranteed under Article 14 of the Constitution of India, but no valid reason given by the Government for such differential treatment.

5. The learned counsel appearing for the petitioner also would contend that the petitioner and others have given a representation to the respondents 1 and 3 on 10.04.2003, seeking re-conveyance. Since there was no response, they have filed W.P.No.22570 of 2003 and this Court by an order dated 12.08.2003 directed the petitioners therein to give fresh

representations fulfilling the requirements of Section 48-B of the Land Acquisition Act. In the meanwhile, the third respondent had found that about 2000 acres of land acquired by it remained unutilized for various reasons including court cases and the second respondent has expressed financial crunch and several impediments in implementing various schemes and a Gazette Notification by Housing and Urban Development (HB5) Department has been made in G.O.Ms.No.254 dated 06.10.2003 bringing about a proposal to deal with the properties acquired for it.

6. The learned counsel appearing for the petitioner would further contend that the respondents 3 and 4 have no right to auction the properties after acquisition and this would be unjust enrichment at the expense of the land owners and it will be virtual land grabbing measure by the respondents. Hence they again made representation on 21.10.2003 invoking Section 48-B of the Land Acquisition Act as per the liberty granted by this Court in W.P.No.22570 of 2003. Since there was no response to the representation given to the respondents, they were forced to file the writ petition in W.P.No.395 of 2004 before this Court and obtained order of injunction restraining auction.

7. The learned counsel for the petitioner would submit that another W.P.No.4616 of 2000 filed by one V.D.Balasubramaniam, in respect of another property in Mogappair, which was also unutilised and was about to be auctioned, by order dated 02.11.2000, this Hon'ble Court has rejected the right to auction and has issued a Writ of Mandamus upholding the petitioner's right of reconveyance. This was suppressed and ignored. A petition to vacate injunction was also filed, and the petitioner therein filed detailed reply affidavit. By common order dated 18.11.2004, the order of interim injunction was made absolute. Later, the said writ petition itself was disposed off by order dated 13.09.2005 wherein this Hon'ble Court directed the 1st respondent to consider the petitioner's representation and communicate. The first respondent had passed an order dated 25.10.2005, as if allotments for various purposes have been made and reiterating that the remaining lands will be auctioned and it is stated that there is no unutilized land available to be re-conveyed.

8. The learned counsel for the petitioner would submit that the writ petition was filed in W.P.No.9247 of 2006 for a Writ of Mandamus, wherein the respondents claimed unfettered rights, but this Hon'ble Court by order dated 03.12.2017 rejected the defence and this court has followed the earlier decisions and has held that the property is not vested with the Housing Board and the Court has found force in Sections 16A and 16B being provisions in a Central Enactment and has quashed the order of the first respondent dated 22.11.2005 but the plea of the petitioner for re-conveyance was rejected. In

that order, this Court had also directed the respondents to consider the petitioner's claim of re-conveyance. Hence, on 20.12.2007 the petitioner and others sent another representation to the 1st respondent and the first respondent vide order dated 01.02.2008 rejected the plea of re-conveyance, which is under challenge in the present writ petition.

9. Counter affidavit filed on behalf of the respondents 3 & 4 stating that the Government in G.O.Rt.No.307, dated 11.12.1975 have approved notification under Section 4(1) of the Land Acquisition Act, 1894 for an extent of 539.98 acres in S.No.1/2 of Nolambur Village for implementing Ambattur Neighbourhood Scheme and the same was published in the Tamil Nadu Government Gazette dated 31.12.1975.

10. The learned counsel for the respondent would contend that after following the procedures under Land Acquisition Act, necessary award was passed vide Award No.2/85 dated 30.12.1985 including the land referred by the petitioner i.e. S.No.50/1 at Nolambur Village measuring to an extent of 0.54 Acres. The possession has been taken over by Tamil Nadu Housing Board from Land Acquisition Officer on 24.01.1986 and as per the details available the land stands registered in the name of Duraisamy Naicker under Patta No.35 as per the revenue records. As the said Duraisamy is no more, his sons, namely, Mayakannan, Vengu, Rathinam and Palani appeared for award enquiry and necessary compensation has been awarded. Since the land is the ancestral property involving the rights of minor children, the award amount have been deposited in the City Civil Court under Section 30 and 31(2) of the Land Acquisition Act. Necessary enhanced compensation has also been paid by the Tamil Nadu Housing Board. Further, enhanced compensation was also paid as per the judgment in Land Acquisition Proceedings. Various writ petitions have been filed by the writ petitioner and no orders have been passed in favour of the petitioner except to consider his representation. Since, the land in question has been utilized for the purpose for which it has been acquired, the question of lands vesting with the Government does not arise. The lay out for the lands vested with the Government was approved by the Chennai Metropolitan Development Authority on 20.10.1997 and the land in question is in the middle of the scheme area and the said scheme has been now implemented and the sale deeds have been executed in favour of the third parties and their interest has also been arose. As far as S.No.50/1 is concerned, it consists of plot Nos.313, 314, 321, 318, 317, 310, 309, 307, 98 and 97. Since the scheme is of Ambattur Neighbourhood Scheme, the lands were utilised as detailed below:

Land Use Details:

Residential	63274.99	53.22
Commercial (Shopping Complex, C.S. Commercial Sites)	3103.13	2.61
Public Purpose (High School, P.P. Electrical Sub-Station)	7240.96	6.09
Park and Well and Pump Room	8530.63	7.22
Roads	36695.29	30.86
Total	118895	100

11. The learned counsel for the respondent would also contend that as per Section 39 of the Housing Board Act, the Housing Board is not only dealing with construction and selling of houses, but it is also dealing with comprehensive schemes like the present one viz,. Ambattur Neighbourhood Scheme. Since, already the land in question has been utilised for the purpose, for which it has been acquired and the lands were also allotted to third parties as on date the petitioner is not entitled to any order since there is no land kept unutilised.

12. Heard the learned counsel appearing for the petitioner as well as the Respondents. Perused the materials available on record.

13. The writ petition is filed with regard to the land comprised in Survey No.50/1 to an extent of 0.54 acres in Nolumbur, Thiruvallur District. In respect of this land, and other lands, 4(1) Notification under Land Acquisition Act, 1894 for Ambattur Neighbourhood Scheme was issued by G.O.Rt.No.307, Housing and Urban Development Department, dated 11.12.1975 and an award was passed in Award No.2/85 on 30.12.1985.

14. At the time of filing the writ petition, the petitioner has filed a Miscellaneous Petition in M.P.No.1 of 2008, seeking injunction restraining the respondents from allotting or auctioning S.No.50/1 Ac.0.54 in Nolumbur Village, Thiruvallur District by public or private auction. This Hon'ble Court vide order dated 02.02.2010, while dismissing the said injunction petition, has observed as follows:

"4. It is the case of the learned counsel for the petitioner that since the said lands remained unutilized for more than 30 years by the Tamil Nadu Housing Board, it is obvious that the object of acquisition was not fulfilled and in the year 1999, the Government had dropped the

idea of implementing the scheme and also a portion of the acquired lands was also re-conveyed. As far as the land of the petitioner is concerned, the petitioner had submitted a representation dated 04.12.2003 seeking re-conveyance of the land and this Court, by order dated 07.02.2004 in W.P.No.2184 of 2004, has issued a direction to the respondents to dispose of the said representation and in pursuance of this, by order dated 16.11.2004, the request of the petitioner for re-conveyance was rejected. However, the petitioner had filed W.P.No.17492 of 2004 seeking a writ of mandamus to re-convey the land comprised in S.No.50/1 at Nolumbur, Thiruvallur District. However, the same was disposed of by order dated 22.07.2005 whereby directions were issued to permit the petitioner to make a representation to the Government with regard to re-conveyance and accordingly, the petitioner had also submitted his representation dated 20.09.2005 to the Government and the same was rejected by order dated 22.11.2005. Challenging the same writ petition in W.P.No.9247 of 2006 was filed and the said writ petition was disposed of by this Court by order dated 03.12.2007 and as per the above said order of this Court, the lands in question were forfeited by the Government and it can be utilised by the Government for any other purpose and if the Government is of the opinion that the same is not required for any other public purpose, then, the request of the petitioner for re-conveyance has to be considered and the order dated 22.11.2005 of the respondent was also quashed and consequently, the petitioner is entitled for the relief sought in the Miscellaneous Petition.

5. On the other hand, the learned Government Advocate has brought to the notice of this Court that by 4(1) Notification dated 11.12.1975, lands were acquired for Ambattur Neighbourhood Scheme and the land in question has been utilised for the purpose, for which it has been acquired, therefore, the question of re-conveyance does not arise and similarly, since the land has been utilised for the purpose for which it has been acquired, the

question of land vesting with the Government also does not arise; besides, the layout was approved by CMDA on 20.10.1997 and the sale deeds were executed in favour of the third parties, the land in question is in the middle of the scheme area and the said scheme has been now implemented and a third party interest arose are also enclosed in the typed set of papers and as per the sketch enclosed in the typed set of papers. As far as S.No.150/1 is concerned, it consists of plot Nos.313, 314, 321, 318, 317, 310, 309, 307, 98 and 97 and since the scheme is of Ambattur Neighbourhood Scheme, the lands were utilised as detailed below:

Land Use Details:

Residential	63274.99	53.22
Commercial (Shopping Complex, C.S. Commercial Sites)	3103.132 .61	
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Total	118895	100

and allotment orders with reference to these plots viz., 312, 311, 379 and 94 are also issued, besides, even Chennai Metropolitan Development Authority has also granted its approval and the petitioner, under the wrong impression that the land has been acquired for the construction of houses, has taken a stand that the land has not been utilised for the purpose, for which it was acquired.

6. But by relying on Section 39 of the Housing Board Act, the learned Additional Advocate General has submitted that as per the Housing Board Act, the Housing Board is not only dealing with construction and selling of houses, but it is also dealing with comprehensive schemes like the present one, viz., Ambattur Neighbourhood Scheme, since already the land in question has been utilised for the purpose for which it has been acquired and as the lands were also

allotted to third parties, as on date, the petitioner is not entitled for interim order.

7. Placing reliance on paragraph Nos.2,3,6,9,12 to 15 of the judgment of the Hon'ble Apex Court reported in (2007) 9 SCC 255, T.N. Housing Board v. Keeravani Ammal and Ors, wherein also an indential issue has been dealt with by the Hon'ble Apex Court, the learned Additional Advocate General has submitted that since the petitioner's request for re-conveyance of the land was rejected earlier by order dated 16.11.2004 and as the said order was not challenged by the petitioner, basing on the orders passed by this Court, the petitioner's request need not be considered.

8. In addition to this, according to the learned Additional Advocate General, as far as the case in hand is concerned, earlier itself, the Housing Board has rejected the petitioner's request, but, repeatedly, the petitioner has given representations and the same were also repeatedly rejected.

9. Relying on paragraph No.26 of the judgment reported in (1995) 5 SCC 590, Hope Plantations Ltd., v. Taluk Land Board, Peermade and Anr, the learned Additional Advocate General has submitted that legal principles of estoppel and res judicata are equally applicable in proceedings before the administrative authorities as they are based on the public policy and justice. Besides, by placing reliance on the judgment reported in (2008) 4 CTC 657, G.V. Krishna Setty and 7 Ors v. Government of Tamil Nadu, represented by its Secretary, Housing and Urban Development Department, Fort St. George, Chennai 9 and 13 Ors, wherein the Hon'ble First Bench of this Court has held at paragraph No.7 as follows:

"7. In the background of these facts, it is difficult for this Court to entertain the prayer of the appellants for re-conveyance. It may be noted in this connection that Section 48-B of the said Act does not give the appellants any right to claim re-conveyance. The said Section

merely empowers the Government to re-convey, provided the conditions specified in the said Section are not fulfilled. In the instant case, pursuant to the Court's order on the Writ Petition filed by the appellants, the Secretary to Government has considered the matter and disposed of the representation of the appellants by a reasoned order, giving particulars thereof. In that view of the matter, it is not possible for this Court to go behind this order. Learned counsel for the appellants is trying to assert that the particulars given in the said order are factually incorrect. It is difficult for this Court to reopen the said proceeding which was concluded by Award No.1 of 1985 and the taking over of the possession of the land by the Tamil Nadu Housing Board on 09.04.1986. So, after a gap of 22 years, it is not prudent for a Writ Court to enter into such factual controversy. Learned Counsel for the Housing Board also submits that the land of the appellants has been utilised in the manner in which it has been stated in the order of the Secretary to Government, Housing and Urban Development Department dated 11.02.2004."

the learned Additional Advocate General has contended that since the proceedings were concluded by Award No.2/85 on 30.12.1985 and also taking over of possession of the land by the Housing Board was as early as in 1995, after a gap of 14 years, the relief sought for by the petitioner cannot be entertained. Based on this, the learned Additional Advocate General has sought dismissal of the Miscellaneous Petition.

10. I have considered the above submissions of the respective learned counsel.

11. Injunction now sought is to restrain the respondents from allotting or auctioning S.No.50/1, Ac. 0.54 in Nolumbur Village, Thiruvallur District by public or private auction. Though, originally

injunction was granted for a period of three weeks by order dated 08.04.2008, subsequently, the same was not extended. This relief is sought based on the order dated 03.12.2007 passed by this Court in W.P.No.9247 of 2006 wherein this Court has quashed the order dated 22.11.2005 whereby the request of the petitioner for re-conveyance has been rejected. However, there is no direction to re-convey the land of the petitioner even in the said order passed by this Court. As per the said order, since the lands were not utilised for the purpose for which they were acquired by the Housing Board for a long period, those lands have been forfeited by the Government and vest with the Government and the petitioner can make a representation. But, now, it has been brought to the notice of this Court that as far as the lands in question are concerned, the approval of the layout was as early as on 20.10.1997. Apart from this, the petitioner, relying on the orders passed in favour of the other individuals, seeks this relief. As far as re-conveyance of the land is concerned, the first requirement is whether the requisitioning body is in need of the land in question or utilised the said land already. If the land in question was not utilised, the requisitioning body should hand over the said land to the Government. Subsequently, the State Government must apply its mind and decide whether it can use the same for any public purpose. If the Government is of the opinion that the same is not in need of for any public purpose, then, the question of re-conveyance of the land to the original owner will arise. But, here is a case where already lands have been utilised and C.M.D.A. has approved the layout and allotments orders were also issued and as rightly pointed out by the learned Additional Advocate General, as far as Housing Board is concerned, it deals with not only construction and sale of houses but also with sale of plots. Consequently, only on the ground that construction has not been made the stand of the petitioner cannot be accepted. Moreover, the nomenclature of the scheme in question is Ambattur Neighbourhood Scheme. There is no whisper also that it is only for the construction of houses, the lands were acquired. Besides, already lands have been put into use and in pursuance of this scheme,

certain portion of the acquired area has been given to Villivakkam Panchayat Union by gift deed dated 14.07.2004 prior to the order dated 03.12.2007 passed by this Court in W.P.No.9247 of 2006.

12. Besides, as rightly pointed out by the learned Additional Advocate General, even as per the judgment of the Hon'ble Apex Court also, the principle of estoppel has to be applied with reference to administrative proceedings also. Here is a case where repeatedly orders were passed by the Housing Board with regard to the request of the petitioner. Without challenging these orders, only the order dated 22.11.2005 was challenged by the petitioner in W.P.No.9247 of 2006 and for the reasons best known to the Housing Board also, the earlier orders were not brought to the notice of this Court at the relevant point of time. Besides, as per the judgment reported in (2007) 9 SCC 255 wherein a similar situation has been dealt with, the Hon'ble Apex Court, relying on the earlier orders passed by the Tamil Nadu Housing Board, has rejected the request of the petitioner therein, though an order has been passed in favour of the petitioner therein by this Court. When the issue in question falls directly within the judgment reported in (2007) 9 SCC 255, I am of the opinion that the petitioner is not entitled to the interim relief sought. Hence, the Miscellaneous Petition No.1 of 2008 is dismissed.

15. It is seen that the Nolambur Scheme, which has been part of the Ambattur Neighbourhood Scheme has various phases of constructions and is different from Phase I and Phase II. It could be seen from the records available that the said lands have been allotted and given to various persons as plots and part of acquisition has been formed as roads and residential plots for the public purpose, after incurring huge amount towards compensation enhanced compensation and development charges towards infrastructural facilities of Roads, Culverts, Water Supply, Street light and Drainage system etc.

16. Hence, in view of the above and also the order passed in M.P.No.1 of 2008 the plea of the petitioner cannot be sustained and it cannot be accepted since the public purpose for which land has been acquired has been fulfilled by

the Government and the writ petition fails and accordingly, is dismissed. No costs.

msm

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary to Government,
Government of Tamil Nadu,
Housing and Urban Development
Department, Fort St. George,
Chennai - 600 009.
- 2.The Special Tahsildar,
Land Acquisition - II,
Tamil Nadu Housing Board,
Nandanam, Chennai - 600 035.
- 3.The Chairman/cum/Managing Director,
Tamil Nadu Housing Board, Nandanam, Chennai - 600 035.
- 4.The Executive Engineer &
Administrative Officer, Dr.J.J. Nagar Division,
Chennai - 600 037.

+lcc to Mr.B.Viveka Vanan, Advocate S.R.No. 36395
+lcc to the Government Pleader, S.R.No. 36575

KR/8/11/18

WP.No.8441 of 2008

सत्यमेव जयते

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