

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2018

CORAM : THE HONOURABLE MR. JUSTICE N.SESHASAYEE

W.P No. 16129 of 2017

G.Vinoba

...Petitioner

.Vs.

1. The Secretary to Government,  
Housing & Urban Development Department,  
Fort St.George, Chennai - 600 009.
  2. The District Collector,  
Tiruvallur District, Tiruvallur.
  3. The Managing Director,  
Tamil Nadu Housing Board,  
Nandanam, Chennai - 600 035 .
- ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records of the respondents pertaining to the impugned Order passed by the 1<sup>st</sup> Respondent in Letter No.15354/LA1(1)/2015-12 dated 24.10.2016, quashing the same and consequently direct the 1<sup>st</sup> respondent for the re-conveyance of the extent of 2062 sq.ft in Survey No.262, Mugappair Village, Ambattur Taluk, Tiruvallur District in favour of the petitioner and to pass orders.

For Petitioner : Mr.M.S.Subramanian  
For Respondent 1 & 2 : Mr. Akhil Akbar Ali  
Government Advocate  
For Respondent 3 : B.Vivekavanam

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O R D E R

This case is a testimony to petitioner's unrelenting pursuit to obtain at least a fraction of his property acquired in re-conveyance. The petitioner's father Late.Gananaprakasam initially owned of 1.33 acres in Survey No.262 of Mugappair Village and the same was acquired under the provisions of the Land Acquisition Act, 1894, that an award was passed on 20.06.1983, that seeking enhancement of compensation,

petitioner's father sought a reference under Section 18 of the Act, that the same was taken on file by Sub Court, Poonamallee in L.A.O.P. No.18 of 1984, and that the Reference Court has enhanced the property, which amount which was later reduced by this Court in A.S.No.955 of 1988.

2. Be that as it may, out of the entire extent of 1.33 acres, all but 86 cents were utilized and 47 cents remained unutilized. In the meantime, petitioner's father died on 04.3.1997. On 24.10.2006, the petitioner and the other legal representatives of deceased Gnanaprakasam approached the authority seeking re-conveyance of the unutilized 47 cents and this was not considered, which forced the petitioner and the other legal representatives to file W.P.No.3222 of 2007, and this Court directed the authority to consider their representation. On 22.06.2007, this was rejected. In the mean time, of the remaining 47 cents, another all but 7,548 sq.ft was utilized by the Housing Board, and therefore, the petitioner herein again moved with a fresh representation dated 21.09.2015 for re-conveying 7,548 sq.ft of lands. As no order was passed in this representation, the petitioner again approached this Court in W.P.No.37107 of 2015, and this Court Vide its order dated 20.11.2015, granted liberty to the petitioner to pursue his representation before the first respondent.

3.After the disposal of W.P.No.37107 of 2015, the petitioner made representations dated 20.06.2016, 25.07.2016, 28.07.2016 and 22.08.2016, all but reminders of the earlier representation dated 21.09.2015. Vide impugned order dated 24.10.2016, the first respondent has rejected the petitioner's request for re-conveyance. In the impugned order, the first respondent has indicated that some 2,235 sq ft is left vacant for utilisation as Open Space and another 2,062 sq.ft. is retained for future use, and for the said reasons the first respondent rejected the petitioner's claim for re-conveyance of 7,548 sq.ft. This is now put to challenge in this writ petition.

4.The learned counsel for the petitioner submitted that even by the first respondent's order, only 2,062 sq.ft. alone is remained unutilized and therefore, at any rate, he cannot order rejection of 7548 sq.ft. He would further submit that unlike Section 48-B of the Land Acquisition Act, 1894, Section 101 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30/2013), which has replaced Section 48-B of the Land Acquisition Act, 1894, from 01.01.2014, has granted a positive right in favour of the petitioner to obtain reconveyance of the

land if the same is not utilised for 5 years since taking possession of the property acquired. In this regard, the learned counsel for the petitioner submitted that even though Section 101 of the Central Act 30/2013 says that the acquisition must be under 'this Act', implying thereby the very acquisition should have taken place under the Central Act 30/2013, and necessarily it cannot have application to any acquisitions that had taken place prior to 01.01.2014. The learned Govt Advocate and along with the counsel for the Housing Board submitted in unison that about 4.5 cents which is yet to be fully utilised can cannot be segregated from the entire project.

5. After weighing the rival contention and in view of the certain points raised by the learned counsel for the petitioner, this Court partially allows the petition, quashes the the impugned order of the first respondent dated 24.10.2016 and the matter is remanded back to the consideration of the first respondent to consider the representation of the petitioner dated 04.01.2016, 10.03.2016, 23.03.2016, 31.03.2016 and 20.04.2016, after affording the opportunity of hearing to the petitioner touching on the point herein raised, within three months from the receipt of copy of this order. No costs.

-Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar

To

1. The Secretary to Government,  
Housing & Urban Development Department,  
Fort St.George, Chennai - 600 009.

2. The District Collector,  
Tiruvallur District, Tiruvallur.

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

- 1 cc to Mr.B.Vivekavanam, Advocate Sr.No.11868
- 1 cc to MR.M.S.SUBRAMANIAN, Advocate Sr.No.11359

W.P NO. 16129 OF 2017

CO(RK)

RRI 05/03/2018