

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2018

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**W.P.No.651 of 2006
And
W.P.M.P.Nos.761 and 762 of 2006**

V.T.Duraisamy

... Petitioner

Vs.

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

2.The Managing Director,
Tamil Nadu Housing Board,
331, Annasalai,
Nandanam,
Chennai – 600 035.

3.The Assistant Secretary (Land Acquisition)
Tamil Nadu Housing Board,
331, Annasalai,
Nandanam,
Chennai – 600 035.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the letter of the third respondent made in Lr.No.Ni.A.4(3) 46277

dated 17.11.2005, quash the same and further direct the respondents to reconvey the lands situated in survey No.143/5, 144/1 in Veerakeralam Village measuring an extent of 7.97 Acres to the petitioner herein.

For Petitioner : Mr.R.Saravanakumar

For Respondents : Mr.R.Govindasamy for R1
Special Government Pleader
Mr.S.Diwakar for R2

ORDER

The petitioner has filed this writ petition challenging the order of the third respondent dated 17.11.2005 wherein, the third respondent rejected the request for re-conveyance of the land to the petitioner.

2.The land was acquired for the purpose of Anna Nagar Neighbourhood Scheme and it was very nearer to the existing road. Hence, the third respondent rejected the request of the petitioner on the ground that the acquired land is very much required for the purpose for which it was acquired.

3.The subject matter is covered by the decision of the Hon'ble Apex Court reported in **(2007) 9 Supreme Court Cases 255 (T.N.Housing Board Vs. Keeravani Ammal and others)**, the

relevant portion of which reads as follows:

15. We may also notice that once a piece of land has been duly acquired under the Land Acquisition Act, the land becomes the property of the State. The State can dispose of the property thereafter or convey it to anyone, if the land is not needed for the purpose for which it was acquired, only for the market value that may be fetched for the property as on the date of conveyance. The doctrine of public trust would disable the State from giving back the property for anything less than the market value. In *State of Kerala Vs. M. Bhaskaran Pillai* in a similar situation, this Court observed: (SCC p.433, para 4)

"The question emerges: whether the Government can assign the land to the erstwhile owners? It is settled law that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. In case there is no other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public auction can be better utilised for the public purpose envisaged in the Directive Principles of

the Constitution. In the present case, what we find is that the executive order is not in consonance with the provision of the Act and is, therefore, invalid. Under these circumstances, the Division Bench is well justified in declaring the executive order as invalid. Whatever assignment is made, should be for a public purpose. Otherwise, the land of the Government should be sold only through the public auctions so that the public also gets benefited by getting higher value."

16. Section 48B introduced into the Act in the State of Tamil Nadu is an exception to this rule. Such a provision has to be strictly construed and strict compliance with its terms insisted upon. Whether such a provision can be challenged for its validity, we are not called upon to decide here.

17. We are thus of the view that the writ petitioners, the contesting respondents, have not made out any case for interference by the Court or for grant of any relief to them. It is therefore not necessary for us to go into the further contention raised on the scope of Section 48B of the Act, whether the writ petitioners have established any claim to the

lands, whether the re- conveyance can only be to the original owners and not to others and whether if possession has already been made over to the Housing Board, the State could exercise its power under that provision. We leave open those questions for the High Court to consider as and when the occasion arises on it being approached in the context of Section 48B of the Act. Suffice it to say that the decision of the High Court in the writ petition in question is totally unsustainable and deserves to be set aside."

4. Accordingly, the writ petition is dismissed. No costs.

Consequently, the connected miscellaneous petitions are also closed.

10.04.2018

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Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No

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M.DHANDAPANI,J.

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To

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