

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.P.No.28500 of 2017

S.Udaya Shankar

... Petitioner

Vs

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

2. The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Maaligai,
Egmore, Chennai-600 008.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents to dispose of the petitioner's representation dated 03.03.2017 for re-conveyance of petitioner's land as per Section 101 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-Settlement Act 2013 within the stipulated period as fixed by this Court.

For Petitioner : Mr.K.Hariharan

For 1st Respondent : Mr.A.Zakir Hussain
Government Advocate

For 2nd Respondent : Mr.K.Raja Srinivas

O R D E R

This petition is seeking a direction to consider the representation of the petitioner dated 03.03.2017 wherein he has requested the authorities to re-deliver the unutilised lands that were originally acquired.

2. The petitioner has averred in his affidavit that his properties were acquired and an award was passed in Award No.13/1986 dated 19.09.1986, in S.No.545/1 - 0.28 cents, 545/2 - 0.30 cents, 545/3 - 0.15 cents, 545 / 1E - 0.23 cents, and 547/3 - 0.82 cents, totally measuring 1.78 acres. However, major extent of the acquired land was not utilised till date and therefore, the petitioner has moved the authority with his representation dated 03.03.2017, requiring the authorities to re-deliver the unutilised properties under Section 101 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-Settlement Act, 2013 (hereinafter Right to Fair Compensation Act for brevity). The petitioner has also filed several documents justifying his entitlement to obtain the same under Section 101 of the said Act.

3. Mr.A.Zakhir Hussain, learned Government Advocate appearing for the 1st respondent and Mr.K.Raja Srinivas, learned counsel appearing for the 2nd respondent.

4. Heard the counsel for both sides.

5.1 Sec.101 of the Right to Fair Compensation Act reads as below :

101. Return of Unutilised Land :- When any land acquired under this Act remains unutilised for a period of five years from the date of taking over the possession, the same shall be returned to the original owner or owners or their legal heirs, as the case may be, or to the Land Bank of the appropriate Government by reversion in the manner as may be prescribed by the appropriate Government.

Explanation :- For the purpose of this section, "Land Bank" means a Governmental entity that focuses on the conversion of Government owned vacant, abandoned, unutilised acquired lands and tax-delinquent properties into productive use.

5.2. Sec.48-B of the Land Acquisition Act, 1894 reads as below:

48-B. Transfer of land to original owner in certain cases:- Where the Government are satisfied that the land vest in the Government under this Act is not required for the purpose for which it was acquired, or for any other public purpose, the Government may transfer such land to the original owner who is willing to repay the amount paid to him under this Act for the acquisition of such land inclusive of the

amount referred to in sub-section (1-A) of (2)
of section 23, if any, paid under this Act.

Sec.48-B of its predecessor enactment in Land Acquisition Act, 1894, is contrasted with Sec.101 of the Right to Fair Compensation Act, it can be immediately observed that while Sec.48-B has not vested any right in the erstwhile owner of the land which were acquired, to insist reconveyance, Sec.101 of the Right to Fair Compensation Act has vested a right in him to insist subject however to the condition that his lands are left un-utilized for five years after taking possession. In other words, it is no more the exclusive option of the Government based on its own satisfaction about the requirement of the lands acquired as was earlier prescribed in the statute.

6. The authorities are therefore directed to consider the representation of the petitioner dated 03.03.2017 and dispose of the same within a period of three months from the date of receipt of a copy of this order. While considering the said representation, the petitioner shall be granted a right of hearing, to enable him to justify his entitlement to have the property redelivered within the meaning to Section 101 of the Act.

7. With the above direction, this writ petition is disposed of. No costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

ssn

To

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

2. The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Maaligai,
Egmore, Chennai-600 008.

+1 cc to M/s.K.Rajasrinivas Advocate sr 6811
+1 cc to M/s.K.Hariharan Advocate sr 5896
+1 cc to Govt Pleader sr 6214

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