

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.02.2018

Coram: The Honourable Mr. Justice N. SESHASAYEE

W.P.No.19620 of 2017

and

W.M.P.Nos.21184 & 21185 of 2017

Mrs.Haripriya Murali

...Petitioner

Versus

1. State of Tamil Nadu
Rep. by its Secretary,
Housing and Urban Development Department,
Secretariat, Chennai - 600 009.
2. Special Tahsildhar,
(Land Acquisition),
Unit II, Tamil Nadu Housing Board Schemes,
Nandhanam,
Chennai - 600 035.
3. The District Collector,
Tiruvallur District.
4. The Tamil Nadu Housing Board,
Rep. by its Managing Director,
Nandanam, Chennai - 600 035.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a issuance of a Writ of Certiorarified Mandamus calling for the records of the first respondent in its proceedings Letter No.11409/L.A.1(2) 2013-6 dated 30.12.2013, and quash the same and direct the first respondent to withdraw the Land Acquisition Notification dated 14.10.2003 in respect of the petitioner's property comprised in S.No.20/1, 20/3, and 26/3, situate at No.84, Perumalagaram Village, Ambattur Taluk, Thiruvallur District, measuring an extent of 35.4 cents, in view of G.O.Ms.No.20 dated 17.01.2006, Housing and Urban Development Department.

For Petitioner : Mr.A.Rajendra Kumar

For Respondents -1 to 3: Mr.Akhil Akbar Ali,
Government Advocate

Respondent - 4 : Mr.B.Vivekavan

O R D E R

There is a piece of property in Survey No.20/1, 20/3 and 26/3 of Perumal Agaram Village, Ambattur Taluk, Thiruvallur District ad-measuring an extent of 35.4 cents owned by the petitioner and this was acquired by the Government for developing a Neighbourhood Scheme by the Housing Board. The acquisition proceeding commenced Vide Notification issued under Section 4(1) of the Land Acquisition Act, 1894 dated 20.09.2002. The petitioner challenged this Notification on grounds of certain procedural non-compliance in W.P.No.31155 of 2005. However, the Government proceeded with the acquisition process and passed an award on 20.10.2005 in Award No.3 of 2005. In the meantime, petitioner had filed a representation to withdraw the land acquisition Notification dated 14.10.2003 and thereafter, moved this Court in W.P.No.12100 of 2013 seeking a direction to the Authorities concerned to consider her representation. On 25.04.2013, this Writ Petition was allowed by this Court with a direction to consider the said representation. Thereafter, the petitioner again moved the Government under Section 47 of the Land Acquisition Act to exempt her lands from the acquisition. This was rejected on 30.12.2013. Again, the petitioner made a fresh attempt with another representation dated 05.02.2017 and pending the same she has filed this present petition for issuance of a writ of certiorari to quash the order of the first respondent/Government dated 30.12.2013 and for other consequential orders.

2. The learned counsel for the petitioner submitted that in W.P.No.31155 of 2005, the petitioner had challenged the acquisition under Section 4(1) and the same is still pending. He also brought to the notice of this Court, the order in W.P.No.31155 of 2005 dated 16.11.2009, whereunder this Court has relieved more than 50% of the land from acquisition. The learned counsel further submitted that since 50% of the lands are already saved from acquisition, the entire project for which acquisition was contemplated itself might not be feasible any more. This is supported by the fact that the remaining property which is not so saved and forms part of the acquired land, of which the petitioner's property is a part, has not been developed till date. Where properties acquired are not utilized, it is essential for the Government to take a realistic view of the matter and re-convey the property back to its owner. Continuing his argument, the learned counsel submitted that even though the petitioner's representation is under Section 48 of the Land Acquisition Act, the same relief can be granted by the Government even under Section 48-B, and as on date since 48-B has been repealed and has been replaced by Section 101 of the Right to Fair Compensation and Transparency in Land Acquisition,

Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013) (hereinafter referred to as "The Right to Fair Compensation Act"), the remedy provided under Section 101 of the Right to Fair Compensation Act may be granted to the petitioner and an opportunity to invoke the same without prejudice to her right vis-a-vis her cause of action involved in W.P.No.31155 of 2005.

3. Heard Mr.Akhil Akbar Ali, the learned Government Advocate for the respondents 1, 2 & 3 and Mr.Vivekavanam, the learned counsel for the fourth respondent.

4. The learned counsel for the fourth respondent in particular submitted that the petitioner having challenged 4(1) Notification, literally conceded to the fact that acquisition has been done fairly.

5. It is to be clarified at the outset that different right flowed to the owners of land at different stages of Land Acquisition Act and merely because the Notification under Section 4(1) has been challenged that does not ipso facto a bar for the petitioner to approach the Authority for re-conveyance which in a given case can operate alternatively. So far as W.P.No.31155 of 2005 is concerned, the same is yet to be taken up for final disposal and that however, need not halt this Court from disposing of this petition especially in the context of the Court's view based on the submission of the learned counsel for the petitioner.

6. Accordingly, this Writ Petition is disposed of with a direction to the petitioner to file a fresh representation to the Government under Section 101 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013) within four weeks from the date of receipt of a copy of this order and the same shall be disposed of on its own merit and without reference to pending of W.P.No.31155 of 2005, within four months thereafter, after affording all reasonable opportunities to the petitioner to put forward her case. The Government may also consider the order passed by this Court in W.P.No.31155 of 2005 dated 16.11.2009 in deciding the issue to be raised by the petitioner. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

mrr

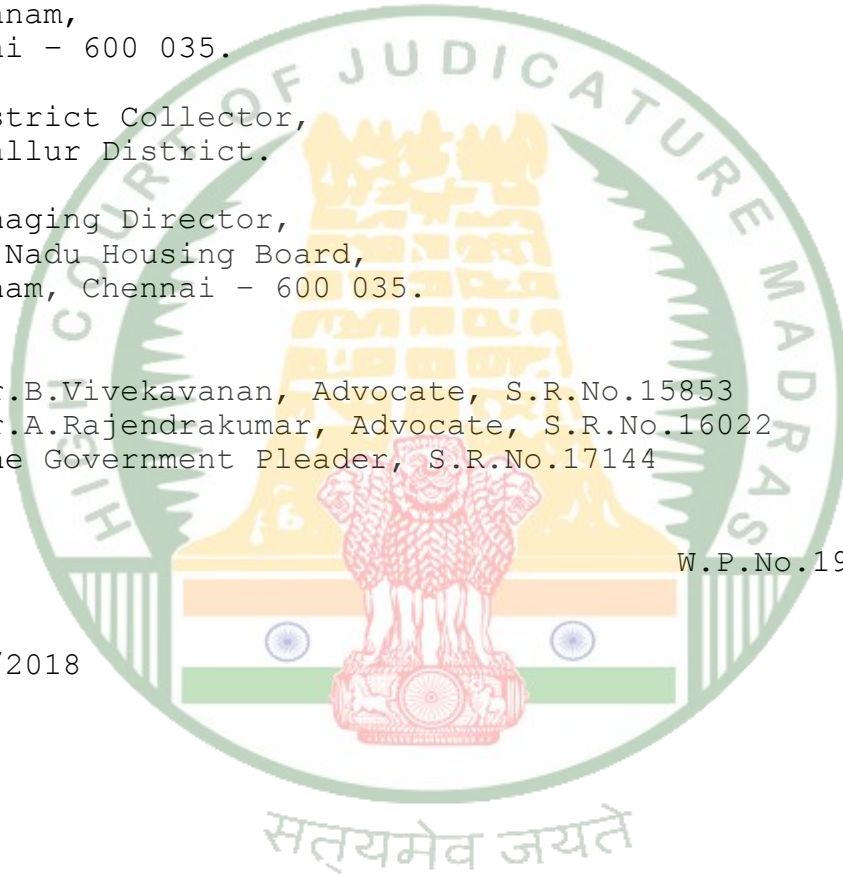
To

1. The Secretary,
Housing and Urban Development Department,
Secretariat, Chennai - 600 009.
2. Special Tahsildhar,
(Land Acquisition),
Unit II, Tamil Nadu Housing Board Schemes,
Nandhanam,
Chennai - 600 035.
3. The District Collector,
Tiruvallur District.
4. The Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai - 600 035.

+lcc to Mr.B.Vivekavanam, Advocate, S.R.No.15853
+lcc to Mr.A.Rajendrakumar, Advocate, S.R.No.16022
+lcc to the Government Pleader, S.R.No.17144

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