

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.01.2018

Coram:

THE HON'BLE Mr.JUSTICE S.MANIKUMAR

AND

THE HON'BLE Mr.N.AUTHINATHAN

W.A.Nos.921 of 2012 and 1563 of 2016

W.A.No.921/2012:

1. The State of Tamil Nadu,
rep.by its Secretary,
Housing and Urban Development Department,
Fort St.George, Chennai-9.
2. The District Collector, Namakkal.
3. The Special Tahsildar,
Land Acquisition Neighbourhood Scheme,
Namakkal.

... Appellants/
Respondents

vs.

- 1.Chinnasamy Goundar (Died) ... Respondent-1/Writ Petitioner
- 2.C.Raja, S/o.Chinnasamy Goundar
- 3.C.Sakthivel, S/o.Chinnasamy Goundar
- 4.T.Pappathi, D/o.Chinnasamy Goundar
- 5.C.Chellammal, W/o.Chinnasamy Goundar

... Respondents 2 to 5/L.Rs. of R-1

(RR2 to 5 brought on record as LRs.of the deceased Respondent-1,
vide order dated 08.9.2016 made in CMP Nos.14294 and 14295 of
2016)

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Prayer:-

Writ Appeal filed under Clause 15 of Letters Patent, against
the order of the writ court, dated 06.10.2010, made in
W.P.No.6801/2006)

Prayer in W.P.No.6801/2006:-

Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Mandamus directing the respondents to issue patta to the petitioner for the lands bearing S.No.56/1 to 56/9 and 66/9 measuring about 12.16 acres in Kondichettypatty village, Namakkal Taluk and District

For Appellants ... Mr.V.Anandhamoorthy,
Additional Govt. Pleader
For Respondents 2 to 5 ... Mr.I.Abrar Mohd. Abdullah

W.A.No.1563 of 2016:

The Executive Engineer & Administrative Officer,
Salem Housing Unit,
Tamil Nadu Housing Board,
Iyyanthirumaligai Road,
Salem-636 008. ... Appellant/Proposed Party

vs.

1. Chinnasamy Goundar (Died) ... Respondent-1/Writ Petitioner
2. The State of Tamil Nadu,
rep.by its Secretary,
Housing and Urban Development Department,
Fort St.George, Chennai-9.
3. The District Collector, Salem.
4. The Special Tahsildar,
Land Acquisition Neighbourhood Scheme,
Namakkal. ... Respondents 2 to 4/
Respondents 1 to 3

- 5.C.Raja, S/o.Chinnasamy Goundar
- 6.C.Sakthivel, S/o.Chinnasamy Goundar
- 7.T.Pappathi, D/o.Chinnasamy Goundar
- 8.C.Chellammal, W/o.Chinnasamy Goundar ... Respondents 5 to 8

(RR5 to 8 were brought on record as L.Rs. of the deceased Respondent-1 vide order dated 08.09.2016, made in CMP Nos.14292 & 14293 of 2016 in WA.Sr.No.36580 of 2005 in M.P.No.4 of 2007)

Writ Appeal filed under Clause 15 of Letters Patent, against the order of the writ court, dated 24.12.2013, made in W.P.No.5328 of 2000).

Prayer in W.P.No.5328 of 2000:-

Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus to quash the Award No.4/1986-1987, dated 02.09.1986 made by the Third Respondent.

For Appellant ... Mr.C.Kasirajan
For Respondents 2 to 4 ... Mr.V.Anandhamoorthy,
Additional Govt. Pleader
For Respondents 5 to 8 ... Mr.I.Abrar Mohd. Abdullah

COMMON JUDGMENT

(Order of the Court was made by S.MANIKUMAR, J.)

Writ Appeal No.1563 of 2016 has been filed by the Tamil Nadu Housing Board, against the order dated 24.12.2013, made in W.P.No.5328 of 2000, in which the Housing Board is not a party, after obtaining leave of the Court.

2.Writ Appeal No.921 of 2012 has been filed by the Goernment of Tamil Nadu and its officials, against the order of the writ court, dated 06.10.2010, made in W.P.No.6801/2006.

3.For the sake of convenience, parties are referred to hereunder as per their rankings in W.A.No.1563 of 2016.

4.Facts, which are necessary for the disposal of the writ appeals, are as follows:

(i) The 1st respondent was the owner of the lands, measuring about 12.16 acres, comprised in S.No.56/1 to 56/9 and 66/9, in Kondichettypatty Village, Namakkal Taluk and District. For putting up construction of houses under Salem Neighbourhood Scheme, proceedings were initiated to acquire certain lands owned by the 1st respondent and others, by issuing Notification under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") as early as on 04.01.1983 and the Notification was published in the Tamil Nadu Goverment Gazette, dated 26.01.1983, in G.O.Ms.No.21, Housing and Urban Development Department. Section 6 Declaration came to be published in

Government Gazettee on 31.07.1985.

(ii) The 1st respondent challenged the acquisition proceedings in W.P.No.11488/1985 and this Court, by order dated 20.11.1985, directed the District Collector, Salem District, the 3rd respondent, to conduct a personal inspection of the 1st respondent's lands and file a report as to whether the construction put-up by the 1st respondent in his lands in any way interfere with the alignment of the Scheme. Accordingly, the District Collector inspected the lands on 25.12.1985 and submitted his report, wherein the Collector had stated that the built-up area, measuring 25 cents, as against the total extent of 3.80 acres in S.No.56/9, may be excluded from acquisition and the remaining portion of 3.55 acres may be acquired. However, it is the case of the 1st respondent that ignoring the report of the District Collector, the 2nd appellant, the Secretary to the Government, Housing and Urban Development Department, issued a declaration under Section 7 of the Act in Government Gazette, dated 27.08.1986, directing that the lands shall be acquired for the construction of houses under the Salem Neighbourhood Scheme.

(iii) Challenging the declaration under Section 7 of the Act, the 1st respondent/land owner filed W.P.No.11037 of 1986 and this Court quashed the above said proceedings by its order, dated 10.02.1997, and directed the Government to consider the report of the District Collector for the purpose of exclusion of the 1st respondent's lands from acquisition, after affording him an opportunity.

(iv) In the meanwhile, the Land Acquisition Officer passed an Award on 02.09.1986 in Award No.4/1986 and this fact was not brought to the notice of the Court when orders were passed in W.P.No.11037 of 1986, quashing the declaration issued under Section 7 of the Act.

(v) Aggrieved by the Award No.4/1986, dated 02.09.1986, the 1st respondent/land owner approached this Court again with another writ petition in W.P.No.5328 of 2000, seeking to quash the Award, dated 02.09.1986, and the said writ petition was allowed, by order dated 24.12.2003.

(vi) Since no appeal was filed either by the Government or by the requisitioning body against the order, dated 10.02.1997, passed in W.P.No.11037 of 1986 or the order, dated 24.12.2003 passed in W.P.No.5328 of 2000, the 1st respondent/land owner came

forward with another writ petition in W.P.No.6801 of 2006 seeking for a writ of mandamus to direct the respondents 2 to 4 to issue patta in favour of the 1st respondent/land owner in respect of the lands, comprised in S.No.56/1 to 56/9 and 66/9, measuring an extent of 12.16 acres. A learned Single Judge of this Court, after hearing both the parties, allowed the writ petition on 06.10.2010 and directed the appellants to issue patta in favour of the 1st respondent/land owner in respect of the above lands. Aggrieved by the said order dated 06.10.2010, the respondents 2 to 4 in W.A.No.1563 of 2016 have come forward with W.A.No.921 of 2012.

(vii) During the hearing of the above said Writ Appeal No.921 of 2012, it was brought to the notice of this Court, the writ appeal filed by the requisitioning Body, namely, the Executive Engineer and Administrative Officer, Salem Housing Unit, Tamil Nadu Housing Board, against the order dated 24.12.2003, made in W.P.No.5328 of 2000, with a delay of 360 days, was pending in W.A.S.R.No.36580 of 2005. Upon hearing the parties, the delay of 360 days in filing the above said WASR was condoned and the said writ appeal was directed to be numbered and accordingly it is numbered as W.A.No.1563 of 2016.

(viii) Pending the above writ appeals, since the 1st respondent/land owner Chinnasamy Gounder died, his legal representatives have been brought on record as respondents 5 to 8 in W.A.No.1563 of 2016 and as respondents 2 to 5 in W.A.No.921 of 2012.

(ix) Since both the writ appeals have arisen out of the same acquisition proceedings, they were taken up for hearing together. We have heard the learned counsel appearing for the parties and also perused the materials on record.

5.From the facts narrated above, W.A.No.1563 of 2016, which has been filed by the Tamil Nadu Housing Board against the order in W.P.No.5328 of 2000, dated 24.12.2003, needs consideration at the first instance. At the outset, it is to be stated that the Tamil Nadu Housing Board is not a party to the proceedings in W.P.No.5328 of 2000. However, being aggrieved by the order dated 24.12.2003, made in W.P.No.5328 of 2000, Tamil Nadu Housing Board has filed W.A.No.1563 of 2016, after obtaining leave of the Court. As stated above, the said writ petition was filed by the land owner seeking to quash the Award, dated 02.09.1986, contending that the Award had been passed without

following the directions issued by this court in W.P.No.11488 of 1985, dated 20.11.1985 as well as the report of the District Collector, dated 30.12.1985 and also contending that once the declaration under Section 7 of the Act has been quashed, no award could be made and even if an award was passed, it would have no effect. Per contra, it was the contention of the respondents 2 to 4/Housing Department before the writ court that since Award was passed after due notice to the 1st respondent/land owner under Section 9 of the Act, it was not open to the 1st respondent/land owner to ignore the award which was passed after due notice. After considering the rival submissions of the parties, the writ Court allowed the writ petition, holding as under:

"11.A perusal of Scheme of the Act discloses that provision under Section 8 of the Act which entitles the Collector to take possession and measure the land would apply only after the declaration under Section 7 of the Act. It is only subsequently notice to persons interested can be issued under Section 9 of the Act expressing the intention to take possession of the land and enquiry for the award under Sections 10 and 11 of the Act. All proceedings contemplated under Sections 8, 9, 10 or 11 of the Act could be processed only after the declaration under Section 7 of the Act. In view of the fact that declaration under Section 7 of the Act had been quashed by this Court, it follows that all actions taken under Sections 8, 9, 10 or 11 of the Act, have to be termed as non-est in the eye of law. The failure on the part of the respondents to have brought to the notice of the Court about the alleged passing of the award when W.P.No.11037 of 1986 was disposed, cannot enure to the benefit of the respondents. Further more, the contention of the petitioner that no notice of the award was served on the petitioner, not having been denied will also result in invalidating the award passed by the respondents.

12.Therefore, as a result of quashing of the declaration under Section 7 of the Act all further and subsequent proceedings arising thereunder have to be held as invalid. Moreover, the Government itself in G.O.Ms.No.508 dated 31.12.2001, have accepted the claim of the petitioner for exclusion of 0.25 acres in terms of the recommendations of the Collector. Therefore, it is clear that the respondents themselves were not sure of the various steps undertaken by them, inclusive of passing of the award.

13.In the result, I am inclined to hold that the proceedings initiated subsequent to the publication of the declaration under Section 7 of the Act cannot be held to be valid and all such proceedings have to be set aside as invalid.

14.The result of the above order would mean that the petitioner will be entitled to a proper notice for enquiry and for passing of the award excluding the extent of 0.25 acres.

15.In the result, the writ petition is allowed as prayed for with liberty to the respondents to proceed afresh for passing of the award in terms of the provisions of the Land Acquisition Act, 1894. No costs."

6.From the order of the writ Court in W.P.No.5428 of 2000, dated 24.12.2003, it is clear that the Award, dated 02.09.1986, has been quashed by the writ court as early as on 24.12.2003. Though the present writ appeal (W.A.No.1563 of 2016) has been filed against the order in W.P.No.5428 of 2000, the contention of the respondents/land owners is that the present appeal preferred by the Tamil Nadu Housing Board is not maintainable, as they have no locus standi to file such an appeal against quashing the award, as held by this Court in various decisions, including one reported in 2006 (1) CTC 803 - Tamil Nadu Housing Board vs. Sembanna Gounder & Others. It is their further submission that Special Leave Petition filed against 2006 (1) CTC 803 in SLP (Civil) No.10927 of 2007 has also been dismissed by order dated 19.03.2007. The respondents/land owners have further contended that though the writ court granted liberty to the respondents 2 to 4/Housing Department to proceed with the acquisition proceedings, afresh and pass an award in accordance with the provisions of the Land Acquisition Act, the said course of action was also not taken by the appellants. It is their further submission that the possession of the lands is with the respondents/land owners in view of the interim order granted by this Court and therefore the averment of the respondents 2 to 4/Housing Department that the possession has already been taken on 17.10.1986 is false. On the above grounds, they prayed for the dismissal of the writ appeal No.1563 of 2016.

7.Though the Tamil Nadu Housing Board has filed the appeal as early as in 2005, they have kept quiet for more than 11 years in prosecuting the appeal. As there was no order staying the operation of the order of this Court, dated 24.12.2003, passed in W.P.No.5328 of 2000, quashing the Award, there was no fresh proceedings to acquire the lands and to pass Award, after following the provisions of the Land Acquisition Act, as

directed by the Writ Court, the 1st respondent/land owner was forced to file Writ Petition No.6801 of 2006 seeking to issue a writ of manamus, directing the respondents 2 to 4 to issue patta to him for the lands bearing S.No.56/1 to 56/9 and 66/9 measuring about 12.16 acres in Kondichettypatty Village, Namakkal Taluk and District. In the said writ petition, the main contention of the respondents/land owners was that once this Court had quashed the declaration under Section 7 of the Act, as early as on 10.02.1997 in W.P.No.11037 of 1986, further proceedings taken thereon should have been within a period of two years, as contemplated under Section 11A of the Act and even assuming that the respondents 2 to 4 have the time after 24.12.2003, after passing an order in W.P.No.5328 of 2000, when the respondents 2 to 4 have not passed any orders in tune with Section 11A of the Act, it was too late for the respondents 2 to 4 now to contend that the notification under Section 6 of the Act still had its life for further process under the provisions of the Land Acquisition Act. In this regard, the finding of the writ Court is as under:

"6.Although the respondents have not filed any counter in this matter, learned Additional Government Pleader produced before this Court the remarks received from the respondents, wherein, except for referring to the earlier proceedings of this Court and the appeal pending in SR stage said to have been filed by the Tamil Nadu Housing Board as early as 2005, there are hardly any objections worth mentioning herein. Learned Additional Government Pleader submitted that whenever the matter is remanded by this Court, the petitioner would be entitled to have a proper notice for enquiry before passing any fresh order in terms of the provisions of the Land Acquisition Act. Further, he submits that depending on the outcome of the writ appeal filed by the Housing Board, the claim of the petitioner could be finalised. I do not find any justification in the submissions of the learned Additional Government Pleader reiterating the stand taken in the remarks received by him."

8.Even though the said writ petition was disposed of on 06.10.2010, directing the respondents 2 to 4 to issue patta to the respondents/land owners for the lands bearing S.No.56/1 to 56/9 and 66/9 and it was the submission of the learned Additional Government Pleader, as recorded by the Writ Court in its order dated 06.10.2010, that depending on the outcome of the writ appeal filed by the Housing Board, the claim of the 1st respondent/land owner could be finalised, the Housing Board did not take any steps to get the writ appeal filed by them in W.A.SR.No.36580 of 2005 numbered and slept over the matter till

the writ appeal No.921 of 2012 was been filed by the Government, against the order dated 06.10.2010, directing the Government to issue patta to the respondents/land lords. Declining the contention of the appellants/respondents in W.A.No.921 of 2012 as to the limitation as provided under Section 11A of the Act, the writ court held as under:

"8. Section 11A of the Land Acquisition Act states that the Collector shall make an award within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse. The proviso contained in the Section deals with the declaration published before the commencement of the Land Acquisition (Amendment) Act, 1984, with which we are not concerned herein. The Section further states that in computing the limitation period of two years referred to therein, the period during which there is an order of stay of the Court on any action or proceeding to be taken in pursuance of the said declaration, shall be excluded. Admittedly, no such efforts are taken to obtain stay by the respondents in support of the claim that they can proceed further in this matter."

Referring to the various decisions of the Hon'ble Apex Court on the above said point, the learned Single Judge has further held as under:

"12. As far as the present case is concerned, admittedly, there is no stay of any of the proceedings before this Court that the limitation under Section 1A of the Act could not be complied with. Hence, going by the decision of the Apex Court cited supra and the admitted facts as regards the quashing of Section 7 declaration by order of this Court as early as 10.02.1997 and even on the worst of the scenario, taking into consideration the order of this Court dated 24.12.2003, I do not find any justifiable ground in the contention of the respondents that their action is protected by Section 11 A of the Act to deny the prayer of the petitioner seeking grant of patta to be registered in his name. Admittedly, the said letter was sent with a copy to be marked to the Collector and the Housing Board and they still remain unanswered. Again, on 17.12.2005, a letter was forwarded to the Government on similar line. Ultimately, faced with inaction from the respondents herein, the petitioner was constrained to move this Court by invoking the

jurisdiction of this Court under Article 226 of the Constitution of India.

12. In the background of the admitted facts and the letters sent by the petitioner remaining unanswered, and in view of the decisions made in W.P.No.11488 of 1985 dated 20.11.1985; W.P.11037 of 1986 dated 10.02.1997 and in W.P.No.5328 of 2000 dated 24.12.2003, the matter thus attained finality and Section 11 A of the Act thus not complied with, I have no hesitation in allowing the writ petition, thereby issuing a direction as sought for by the petitioner."

9. Writ Court has considered the issue involved in this case in detail, after a threadbare discussion of the facts involved, has come to the conclusion that there is no scope for the Tamil Nadu Housing Board to re-open the case, which has attained finality, since provisions of Section 11-A of the Act was not complied with. The main contention of the respondents 2 to 4 in opposing the claim of the respondents/land owners to issue patta in their name is that such a claim could be considered only after the disposal of the writ appeal filed by the Tamil Nadu Housing Board in WASR No.36580 of 2005 cannot be accepted in view of the clear finding given by the learned Single Judge. Further, the inaction on the part of the Tamil Nadu Housing Board in not pursuing the appeal which was filed in the year 2005 cannot be ignored.

10. Next, coming to the contention of the learned counsel for the respondents/land owners that the Housing Board has no locus standi to file writ appeal in acquisition proceedings, in the decision reported in 2006 (4) CTC 803 - Tamil Nadu Housing Board v. Sembanna Gounder, a Hon'ble Division Bench of this Court has held as follows:

"1. Mr. N.R. Chandran, learned Senior Counsel appearing for respondents 2 to 4 raised a preliminary objection on the maintainability of the Writ Appeal. The objection is, by the order impugned in the Writ Appeal, a learned Single Judge of this Court quashed the declaration issued under Section 6 of the Land Acquisition Act passed by the State Government. The State Government had not challenged that order of the learned Single Judge. Therefore though the intended acquisition is for the benefit of the Tamil Nadu Housing Board, they have no right to challenge the order of the learned Single Judge. We asked Mr. K. Chelladurai, learned counsel appearing for the appellant as to whether the Housing Board has any role to play at any stage before possession of the acquired

lands are handed over to the Tamil Nadu Housing Board. Learned counsel fairly stated that the Tamil Nadu Housing Board has no role to play at all and possession was never handed over to the Housing Board and no award was also passed. However learned counsel would submit that since the acquisition is for the benefit of the Tamil Nadu Housing Board, they have a right to file the Appeal.

2. We gave our careful consideration to the submissions made by Mr. N. R. Chandran, learned Senior Counsel for respondents 2 to 4 on the maintainability of the Writ Appeal and the submission made by Mr. K. Chelladurai in meeting those objections. Under the Land Acquisition Act "Appropriate Government" is defined under Section 3(ee) as hereunder:

"Appropriate Government" means, in relation to acquisition of land for the purposes of the Union, the Central Government, and, in relation to acquisition of land for any other purposes, the State Government.

Under Section 4 of the Land Acquisition Act the "Appropriate Government" - as defined under Section 3 (ee) of the Act alone can proceed to initiate the proceedings for acquiring the lands exercising their power of eminent domain. The Housing Board has no interest whatsoever, at any stage of the proceedings initiated under the Land Acquisition Act, in the land intended to be acquired till such time possession of the acquired land is handed over to the Housing Board. Since admittedly in this case the declaration under Section 6 of the Land Acquisition Act had come to be quashed at the instance of the land owners, we have no doubt at all that it is only the Government and the Government alone, being the appropriate Government under the Land Acquisition Act, can challenge the order of the learned Single Judge impugned in the Writ Petition. We are very clear in our mind that the Housing Board cannot challenge the order of the learned single Judge, having regard to the stage at which the Writ Petition came to be allowed. Accordingly the objection regarding maintainability raised by learned Senior Counsel appearing for the respondents 2 to 4 is sustained and the Appeal stands dismissed as not being maintainable at the hands of the Tamil Nadu Housing Board. Since we have dismissed the Writ Appeal only on the maintainability issue, we are not expressing any opinion on the other points involved. No costs."

It is seen from the order of the Hon'ble Supreme Court in Petition for Special Leave to Appeal (Civil) CC 2543/2007, dated 19.03.2007, the appeal filed by the Tamil Nadu Housing Board against the order of the Division Bench in Tamil Nadu Housing Board v. Sembanna Gounder - 2006 (4) CTC 803, referred above, was dismissed.

In the result, both the writ appeals are dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

skm

To

1. The Secretary to Government of Tamil Nadu, Housing and Urban Development Department, Fort St.George, Chennai-9.
2. The District Collector, Namakkal.
3. The District Collector, Salem.
4. The Special Tahsildar, Land Acquisition Neighbourhood Scheme, Namakkal.

+2cc to Mr.I.Abrar Mohd. Abdullah, Advocate, S.R.No.3841

W.A.Nos.921 of 2012 and
1563 of 2016

SSV(CO)
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