

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2018

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

W.P.No.32775 of 2002
and WMP.No.4015 of 2004

1.V.Dhesammal
2.V.Venkatesan
3.V.Munusamy
4.V.Muniaymmal
5.M.Vasuki
6.S.Bhavani Petitioners

Petitioners 1 to 6 are represented by their
Power Agent G.Sugumaran

-Vs-

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

2.The Managing Director
Tamil Nadu Housing Board
No.331, Anna Salai
Nandanam
Chennai - 35.

.... Respondents

Prayer:- Writ Petition filed under Article 226 of the
Constitution of India, praying to issue a Writ of Mandamus
directing the first respondent to reconvey the lands situated in
S.No.327/2A, 327/1A, 327/1B, 349/1 and 333 to the extent of 4.17
acres in Nolambur Village, Ambattur Taluk, Tiruvallur District.

For Petitioners : Mr.S.Doraisamy

For Respondents : Mr.Akhil Akbar Ali

Government Advocate [for R1]

Mr.B.Vivekavanaan [for R2]

ORDER

1.1 The petitioners in this case are represented by a certain
Sugumaran as their Power of Attorney.

1.2. The case of the petitioners as presented through their
Power of Attorney is that the petitioners owned a piece of

property admeasuring 4.17 acres spread over Survey Nos.327/2A, 327/1A, 327/1B, 349/1 and 333 of Nolambur Village, Ambattur Taluk, Tiruvallur District. The said properties were acquired by the Government under the provisions of the Land Acquisition Act, 1894 for the purpose of forming Ambattur Neighbourhood Scheme by the Housing Board. According to the petitioners, the respondents came up with a notification under Section 4(1) of the Land Acquisition Act, 1894, publishing it on 11.12.1975, and followed it with a declaration under Section 6 of the Act on 30.12.1978. The said acquisition came to be challenged before this Court in a writ petition, which then was taken on file in an appeal in W.A.No.1776 of 2001 and the Division Bench of this Court has allowed the appeal and quashed the said notification under Section 4(1) of the Act.

1.3. Thereafter, the second respondent, the Housing Board took this matter in SLP(C)3289 of 2002 and the same came to be dismissed on 22.02.2002. While so, the owner of the land namely Dhesammal preferred an application under Section 48-B of the Act for reconveyance of the land in view of quashing of the 4(1) notification by the Division Bench of this Court in W.A.No.1776 of 2001 as stated above.

1.4. In the meantime, Dhesammal had executed a Power of Attorney in favour of Sugumaran, who now appears in this proceeding on behalf of the petitioners, and he, in his capacity as the Power Agent of Dhesammal preferred a fresh representation on 28.06.2002 under Section 48-B of the Act. As the same was not considered by the first respondent, the petitioners have now approached this Court seeking to issue a Writ of Mandamus to direct the first respondent to reconvey their lands situated in Survey Nos.327/2A, 327/1A, 327/1B, 349/1 and 333 in Nolambur Village, Ambattur Taluk, Tiruvallur District.

2. The second respondent has filed the counter wherein it is alleged that the declaration under Section 6 of the Act was duly made after the enquiry contemplated under Section 5-A of the Land Acquisition Act. It is averred that in so far as the petitioners' property in Survey No.333 is concerned, the same was acquired by the Government on 31.07.1984, that an award in Award No.6/84 had been passed and possession was handed over to the Tamil Nadu Housing Board on 18.09.1984 and that their other properties in Survey Nos.327/2A, 327/1A, 327/1B and 349/1 too were acquired and an award in Award No.7/85 dated 30.12.1985 had been passed and the said properties too were handed over on 23.01.1986. Thereafter, necessary approval for formation of layout was obtained from CMDA in approval No.PRSP/LO72/88. So far as application under Section 48-B of the Act is concerned, inasmuch as the entire property has been duly utilised by the Government, nothing survived for

consideration by the Government. A typed set of papers has also been placed before the Court.

3. Heard Mr.S.Doraisamy, learned counsel for the petitioners and Mr.Akhil Akbar Ali, learned Government Advocate appearing for the first respondent and Mr.B.Vivekavannan learned counsel for the second respondent.

4. The learned counsel for the petitioners submitted that by quashing the said 4(1) notification in W.A.No.1776 of 2001, the Court has directed re-conveyance of lands comprised in Survey Nos.319, 302/1, 302/2 and 321 of Nolambur Village back to the appellant in W.A.No.1776 of 2001. The petitioners' lands too were covered under the same notification in G.O.Ms.No.307 dated 11.12.1975, that inasmuch as the properties involved in W.A.No.1776 of 2001 was reconveyed to the appellant, the same parity should be extended to the present petitioners.

5. Mr.B.Vivekavannan, learned counsel appearing for the second respondent would further argue that W.A.No.1776 of 2001 arises from the Order passed by a Single Judge of this Court in W.P.No.18000 of 1997, a copy of which has been filed in the typed set of papers filed by the second respondent. He contends that the petitioner in that case has sought an exemption of her lands in Survey Nos.1/1 and No.1/2 etc., of Nolambur Village from acquisition on the ground that the proposed acquisition denied her access. This was dismissed by the learned Single Judge and the same was challenged in W.A.No.1776 of 2001. He also took this Court through the order in W.A.No.1776 of 2001, to indicate the factual variance which that case bears to the present case.

6. The Power Agent of the petitioners has filed his representation to the respondents requesting them to reconvey the lands under Section 48-B of the Land Acquisition Act, 1894. For this, the petitioners cite two reasons: (a) the 4(1) notification was quashed by this Court in W.A.No.1776 of 2001 and (b) land have been reconveyed to the land owners involved in W.A.No.1776 of 2001 and therefore, a similar parity need to be granted to the petitioners in the present case.

7.1 As to the two points raised, it may have to be stated that a certain Manonmani Palanisamy possessed some properties which were part of the same acquisition proceedings in which the property of the present petitioners before this Court too were involved. She appeared to have moved the Government for exempting the property from acquisition solely on the ground that the proposed acquisition of her would deny access to her remaining property and approached this Court in W.P.No.18000 of 1997 and the same was dismissed by this Court on 22.09.2000.

7.2. The order in W.P.No.18000 of 1997 was tested in W.A.No.1776 of 2001. It is seen from paragraphs No.2 and 3 of the Order of the Division Bench that decided W.A.No.1776 of 2001 that the property of Manonmani Palanisamy which lie adjacent to the property acquired have already been exempted from acquisition due to its unsuitability and taking into other attending circumstances, which are more case specific, it was held that the whole acquisition proceedings of Manonmani Palanisamy property would be futile and accordingly directed the authorities to redeliver the possession of her properties. Can the same be replicated in the case of the petitioners is the point here, and this is the second point to be discussed.

8. It is the first point that stands out here and it is contrary to what the petitioners, to be more precise their Power of Attorney has averred. In W.A.No.1776 of 2001, this Court has not quashed the notification issued under Section 4(1) of the Act. It would have been appreciable that the facts are verified before pleadings are settled, and as already stated in the earlier paragraphs, the Order in W.A.No.1776 of 2001, which stood confirmed by the Hon'ble Supreme Court in SLP.(C)3289 of 2002, was specific to the case of the Manonmani Palanisamy and the same cannot be telescoped to benefit the petitioners unless the petitioners establish independent cause for the Government to exercise the authority under Section 48-B of the Act. In this context, the statement of the Housing Board in its counter that the entire property has been utilised or atleast approval for layout has been obtained gains significance. In the context of the prayer, this Court may not direct the authority to reconvey the petitioners' property without considering whether the parameters are available for such reconveyance. At any rate, this power is vested only in the Government and the Court cannot arrogate to itself such statutory powers that the Land Acquisition Act has specifically clothed the Government with.

9. In conclusion, this Court has no reason to grant the prayer, the petitioner has sought for and hence the same is liable to be dismissed. However, if the petitioner has any other remedy to pursue with the Government, it is open to the petitioner to approach the Government in the manner known to law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-vi)

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Sub Assistant Registrar

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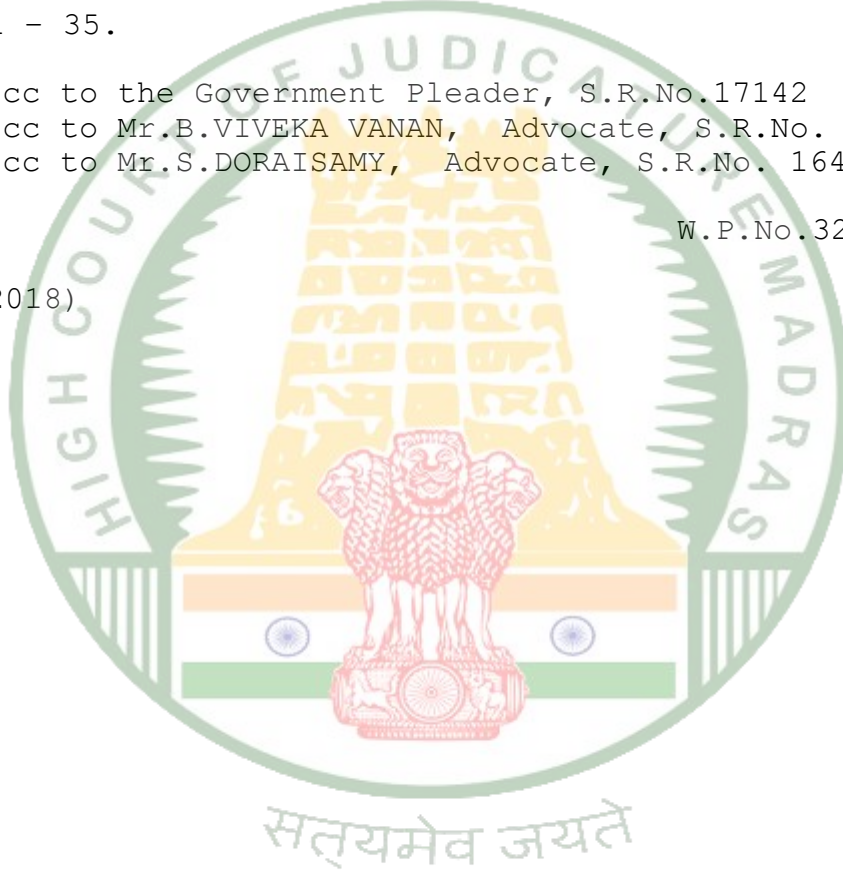
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+lcc to the Government Pleader, S.R.No.17142
+lcc to Mr.B.VIVEKA VANAN, Advocate, S.R.No. 16112
+lcc to Mr.S.DORAISAMY, Advocate, S.R.No. 16413

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TR(11/04/2018)



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