

In the High Court of Judicature at Madras

Dated : 17.12.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mr.Justice N.SATHISH KUMAR

Writ Appeal No.2784 of 2018 & CMP.No.23012 of 2018

Donald Fernandas

....Appellant/Petitioner

Vs

1.The State of Tamil Nadu rep.by its
Secretary, Housing & Urban
Development Department,
Fort St. George, Chennai-9.

2.The Managing Director, Tamil Nadu
Housing Board, Anna Salai,
Chennai-35.

....Respondents

APPEAL under Clause 15 of the Letters Patent against the
order dated 28.4.2018 made in W.P.No.24348 of 2017.

Prayer in W.P.No.24348 of 2017:

Writ Petition filed under Article 226 of the Constitution of
India praying to issue a Writ of Mandamus directing the
respondents herein to consider and pass appropriate orders on
the petitioner's representation dated 03.08.2017 and direct them
to re- settle has lands measuring about 0.65.5 hectares in
Survey No.293/1 and 293/2 at 155 Sholinganallur Village
Tambaram Taluk Kancheepuram District covered by notification
dated 23.05.1990 in G.O.Ms. No.454 and G.O.Ms. No.996 dated
17.06.1991 respectively issued by the Housing and Urban
Development Department.

Appellant : Appearing in Person

For Respondents : Mr.V.Anandhamoorthy, AGP

Judgment was delivered by T.S.SIVAGNANAM, J

We have heard the appellant appearing in person and Mr.V.Anandha Moorthy, learned Additional Government Pleader accepting notice for the respondents.

2. This appeal has been filed by the appellant - writ petitioner challenging the order passed in W.P.No.24348 of 2017 dated 28.4.2018.

3. The said writ petition was filed by the appellant to direct the respondents to consider and pass appropriate orders on the representation dated 03.8.2017 and also direct the respondents to re-settle (restore) possession of the lands admeasuring about 0.65.5 hectares in Survey Nos. 293/1 and 293/2 at 155, Sholinganallur Village, Tambaram Taluk, Kancheepuram District covered by Notification dated 23.5.1990 in G.O.Ms. No.454 and G.O.Ms.No.996 dated 17.6.1991 respectively issued by the Housing and Urban Development Department.

4. The appellant claims to be the owner of the properties in question and according to him, the lands have been acquired without payment of any compensation. Therefore, the appellant seeks to invoke Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

5. The respondents filed a counter affidavit in the said writ petition. However, the learned Single Judge dismissed the said writ petition. At this juncture, we deem it appropriate to extract the relevant portions of the order dated 28.4.2018 passed in the said writ petition, which highlight the factual position and the conduct of the appellant as hereunder :

"6. The argument refuting the above contentions advanced on behalf of the respondents was along the predictable lines:

That at no point of time, the Court entered a finding that ingredients for invoking Section 24(2) was present independent of those facts which provided cause of action for filing WP.No.29767 of 2010, out of which Rev.Appln.No.57 of 2016 has arisen at a later stage. So far as ingredients of Section 24(2) of the Right to Compensation Act goes, the compensation amount has been promptly deposited in the Court in LAOP No.140 of 1995, before Sub Court, Poonamallee.

On the point if possession of the property is taken, it is a fact which even the petitioner admits that it had been so taken. Even in the affidavit he has specifically alleged that on taking possession, the Housing Board had demolished the compound wall, labour-quarters, cut and removed casuarina tress and quarried truck loads of sands. There is also no truth in the fact, that the approved layout pertain to different survey numbers as the one enclosed in the typed set of papers show that it included the property in S.Nos.293/1 & 293/2.

7. It has been an untiring journey for the petitioner to this Court since he filed his first petition in W.P.No.644 of 1995. In fact, this is the sixth occasion when he has come forward with a writ petition. This does not include two writ appeals and at least two review petitions that he had filed. Therefore, even though the pursuit of the petitioner in this writ petition is to have a direction to the authorities to consider his representation for invoking Section 24(2) of the Right to Fair Compensation Act, still there is a dire necessity for this Court to relieve itself from a deluge of such petitions more or less for the same purpose.

8. In order, a land owner may be benefited under Section 24(2) of the Right to Fair Compensation Act, there shall be present three conditions. Of them, one is a constant and the other two operate in the alternative. The inviolable condition in all situations is that the award should have been passed at least five years prior to the commencement of Right to Fair Compensation Act on 01.1.2014. The other two conditions that can either operate simultaneously or alternatively are (a) that the compensation amount should not have been paid, or (b) the physical possession of the land should not have been taken. As to the payment of compensation, even the petitioner does not dispute or deny the fact that the same has been deposited in the Court in LAOP No.140/

1995. On he losing the physical possession of the property, the petitioner makes an unambiguous and unequivocal statement in his affidavit that possession has been taken on 18.4.1994 and follows it up with further averment that the second respondent had demolished the compound wall etc., Even in its order dated 08.02.2016 in W.A.No.66 of 2016, the Division Bench of this Court has entered a categorical finding that possession had been handed over to the authorities concerned. Apparently when the twin conditions that are required to invoke Section 24(2) are absent, what is that the authorities are going to consider other than rejecting the petitioner's representation. Even if this petition is allowed, still the authorities are more likely to reject the petitioner's representation for invoking Section 24(2) and consequently, it brings into operation what this Court may term as law of conservation of litigation: A litigation that disappears in one form may re-appear in another form, keeping the total pendency a constant; In other words, a litigation for mandamus seeking a direction to consider a representation may disappear, but will re-appear as one seeking issuance of writ of certiorari. This syndrome, nay a malady, that has affected our legal system should stop somewhere or at least in some set of cases. And, this Court considers that the present case is one where this Court should become aware of this syndrome, and should halt the prospect of it turning out to be a malady.

9. In the result, this petition is dismissed."

6. From the above, we are of the view that the appellant is not able to dislodge the findings recorded by the learned Single Judge. Furthermore, we note that the appellant had filed another writ petition in W.P.No.644 of 1995 and also approached this Court on more than six occasions. Apart from that, two writ appeals and two review petitions were filed by the appellant. Considering the factual matrix of the case, we find that the learned Single Judge was fully justified in rejecting the relief sought for. For the above reasons, we find no good ground to entertain this appeal.

7. Accordingly, the above writ appeal is dismissed. No costs. Consequently, the connected CMP is also dismissed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

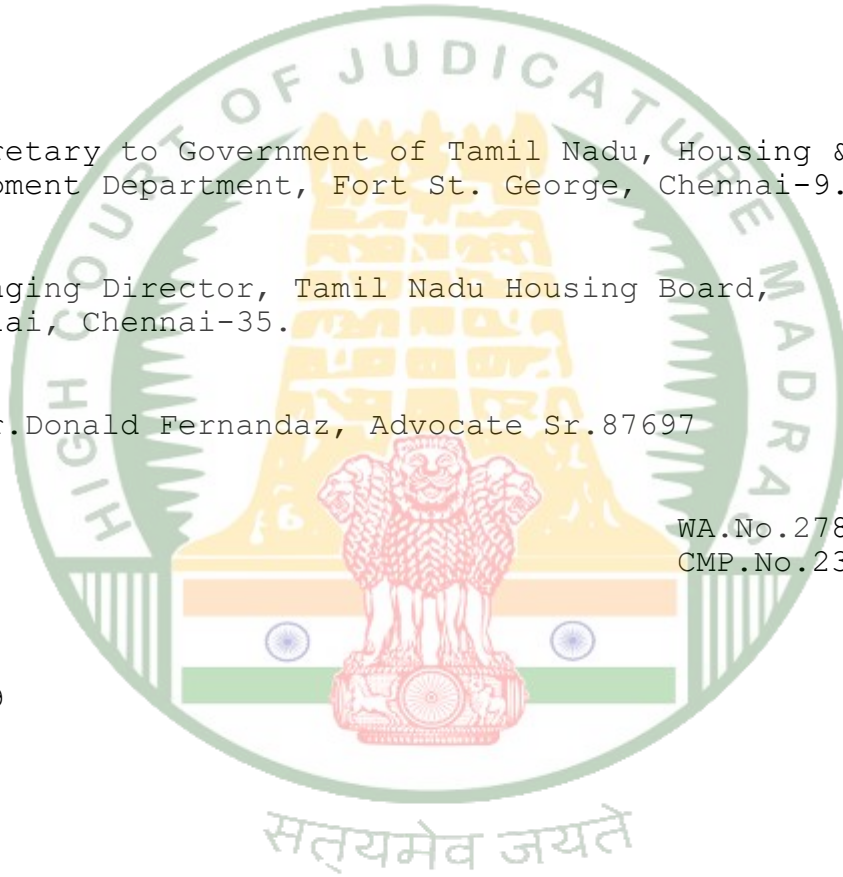
1.The Secretary to Government of Tamil Nadu, Housing & Urban Development Department, Fort St. George, Chennai-9.

2.The Managing Director, Tamil Nadu Housing Board, Anna Salai, Chennai-35.

+2cc to Mr.Donald Fernandez, Advocate Sr.87697

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01/02/2019



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