

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.26774 of 2009

S.Loganathan

... Petitioner

vs.

- 1.The State of Tamil Nadu
Rep.by its Secretary
Housing and Urban Development Department
Fort St.George
Chennai-600 009.
2. The Chairman
The Tamil Nadu Housing Board
Anna Salai
Nandanam
Chennai-600 035.
3. The Managing Director
The Tamil Nadu Housing Board
Anna Salai
Nandanam
Chennai-600 035.
4. The Executive Engineer Cum Administrative Officer
The Tamil Nadu Housing Board
Mogappair Division
Thirumangalam
Chennai-600 101.
5. ST.Antony's Church
rep.by its Present Parish Priest
Fr.Irudhayaraj
No.4/1, Mogappair West
Chennai-600 037.
6. Mr.Irudhayaraj
residing at ST.ANTONY'S CHURCH
No.4/1, Mogappair West
Chennai-600 037.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records in relation to the allotment of the land measuring to an extent of 9 Cents comprised in Survey No.8/1 of Nolumbur Village, Ambattur Taluk, by the 4th respondent in favour of the 5th respondent, vide Letter No.MRA/3828/04, dated 29.01.2007 and Transfer Certificate Ref.No.MRA 4/3828/04, dated 09.02.2007 issued by the 4th respondent in favour of the 6th respondent and quash the same and direct the respondents to handover the land to the petitioner herein.

For Petitioners : M/r.N.Raja Senthoo Pandian
For Respondent : Mr.M.Elumalai,
Government Advocate
Mr.M.Baskar
for TNHB for R2 to R4
Mr.K.Sankaranarayanan for R5.
Mr.M.L.Ganesh, for R6.

O R D E R

This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus, to call for the records in relation to the allotment of the land measuring to an extent of 9 Cents comprised in Survey No.8/1 of Nolumbur Village, Ambattur Taluk, by the 4th respondent in favor of the 5th respondent, vide Letter No.MRA/3828/04, dated 29.01.2007 and Transfer Certificate Ref.No.MRA 4/3828/04, dated 09.02.2007 issued by the 4th respondent in favor of the 6th respondent and quash the same and direct the respondents to handover the land to the petitioner herein.

2. The case of the petitioner is that the petitioner's mother Mrs.S.Kannammal had purchased the land measuring to an extent of 9 Cents comprised in Survey No.8/1 of Nolumbur Village in Saidapet Taluk, from one Duraisamy Mudaliar, in pursuance of a Sale deed dated 09.11.1932, registered as Document No.1921 of 1932. The petitioner's mother died on 10.12.2007 and left behind the petitioner's sister Padma and the petitioner as legal heirs. During the lifetime of the petitioner's mother, she had executed a Will dated 09.05.2005 in favour of the petitioner and registered the same as Document No.22 of 2005.

3. The petitioner's mother was alive, the above said her land and also others land had acquired by the 1st respondent for the development of the area known as "Ambattur Neighbourhood Scheme" pursuant to the Section 4(1) Notification under the Land Acquisition Act, 1894 (Central Act 1 of 1894), vide G.O.R.No.307, Housing, 11th December 1975 and the same has been

published in Tamil Nadu Government Gazette dated 31.12.1975 and followed by the same Draft Declaration has been made on 30.12.1978, vide G.O.Ms.No.1786 H & U Development Department, under Section 6 of the Land Acquisition Act and subsequently, an Award was passed on 30.09.1985, fixing a sum of Rs.1111.50 for the petitioner's mother land. Subsequently, the 1st respondent had delivered symbolic possession of the acquired lands to the 2nd respondent for the above said scheme.

4. The petitioner's neighbour namely Manonmani had filed W.P.No.10572 of 1986 before this Court for re-conveyance of her land and the said writ petition was disposed of on 03.07.1997 directing the 1st respondent to take appropriate decision on the representation of the petitioner therein. Since the representation of the petitioner therein was rejected by the 1st respondent and then preferred a writ Appeal in W.A.No.1776 of 2001 and by judgment dated 15.11.2001, this Court has set aside the award proceedings and directed the land owner to repay the compensation amount already received by them with certain conditions and directed the Government to re-convey the property which was not utilized for the purpose for which it was acquired. Aggrieved by the said order, the 3rd respondent preferred S.L.P.Civil No.3289 of 2002 and the Hon'ble Supreme Court was dismissed the same. The other landowners in respect of the very same scheme also filed numerous writ petitions and obtained favourable orders for re-conveyance of their respective lands, in W.P.No.13552 of 1995, W.P.No.4600 of 1999 dated 20.07.1999, W.P.No.9576 of 2005 dated 20.03.2005, W.P.No.8283 of 1999 dated 30.08.1999 and W.A.No.2430 of 1999 dated 18.02.2000. In view of the above said writ proceedings, the 1st respondent has passed an order vide G.O.Ms.No.254 dated 06.10.2003 stating that the lands not required by the 2nd respondent may be released to the respective owners after collecting the administration and legal expenses.

5. Like that, the petitioner's mother has also filed a writ petition in W.P.No.37908 of 2005 and this Court has passed an order in W.P.No.37908 of 2005 seeking a direction to the 1st respondent for re-conveyance of the said land to her. But the first respondent rejected the re-conveyance of the said land to her by its order dated 10.11.2006 stating that the said land were included in Nolumbur Housing Scheme in the approved layout and reserved for future development and further action is being taken by the 2nd respondent to utilize the above said land. Challenging the 1st respondent's rejection order dated 10.11.2006, the petitioner's mother has filed another writ petition in W.P.No.8734 of 2007. In the mean time, the 2nd respondent with a mala fide intention passed a resolution dated 22.01.2007 in a hurried and illegal manner approving the allotment of the said land to the 5th respondent. Challenging the

said resolution, she had filed yet another writ petition in W.P.No.13308 of 2007. The petitioner has filed two miscellaneous petitions in W.P.No.8734 of 2007 and impleaded the respondents 3 to 5. Thereafter they have been filed their counter in the above writ petition and the petitioner came to know that the said land was allotted by the 4th respondents in favour of the 5th respondent for a sum of Rs.26,82,000/- and issued a Transfer Certificate dated 09.02.2007 in favour of an individual person Mr.Irudhayaraj, the 6th respondent herein. Aggrieved by the same, the present writ petition is filed.

6. The learned counsel for the petitioner would submit that the 4th respondent has allotted the said land to the 5th respondent Church and the Church transferred the said land in favour of an individual viz., Irudhayaraj, the 6th respondent herein, by means of a Transfer Certificate dated 09.02.2007. Therefore, the said Transfer Certificate dated 09.02.2007, issued by the 4th respondent in the name of the 6th respondent is null and void. The learned counsel would further submit that the first respondent has not followed the procedure contemplated under Section 72 of the Tamil Nadu Housing Board Act, 1961 for allotment of the said land.

7. The learned counsel for the respondents 1 to 4 and 5 would submit that S.Kannammal, wife of Swamy Naidu, the original owner has filed W.P.No.37908 of 2005 for re-conveyance of the land in S.No.8/1 in Nolambur Village and this Court, by order dated 23.11.2005, has permitted the petitioner to make a representation to the Government for re-conveyance under Section 48(b) of the Land Acquisition Act. Further, the Government, in their Lr.No.38522/LAI-I/05-4 dated 10.11.2006, have rejected the representation of S.Kannammal for reconveyance, on the ground that possession of the said land was handed over to the Tamil Nadu Housing Board by the Special Tahsildar (LA) on 02.01.1986. Therefore, S.Kannammal has also filed the writ petition seeking remedy under Section 48(B) of the Land Acquisition Act and challenging the Board Resolution No.9.08 dated 22.01.2007 in W.P.No.8734 of 2007 and W.P.No.13308 of 2007, and the same were dismissed by this Court on 19.08.2009 and 31.08.2010. The learned counsel for the respondents fairly concede that the procedures contemplated under Section 72 of the Tamil Nadu Housing Board were not followed by the authorities concerned at the time of passing of the order.

8. A perusal of the records clearly shows that the petitioner's mother has filed a writ petition in W.P.No.37908 of 2005 seeking direction to the first respondent to consider the representation dated 15.03.2006 for re-conveyance of the said land to her. But the 1st respondent has rejected her representation dated 15.03.2006, by its order dated 10.11.2006.

Challenging the said rejection order, the petitioner has filed another writ petition in W.P.No.8734 of 2007. This Court, by its order dated, 19.08.2009 stating that the petitioner seeks for re-conveyance of the land as per Section 48-B of the Land Acquisition Act. The request for re-conveyance of the land would arise only if the land has not been utilized. Furthermore, the Housing Board has also executed a sale deed dated 07.02.2007 in respect of the said land, in favour of the fourth respondent. The request of re-convey of the land in her name was rejected. But, the issue involved in this case is that whether the Housing Board, while alienating the property in favour of the 5th respondent, has followed the procedure contemplated under Section 72 of the Tamil Nadu Housing Board Act, 1961 or not. The learned counsel for the respondent board has also confirmed that the procedure contemplated under Section 72 of the said Act is not followed by the respondents while alienating the property to the 5th respondent. For better appreciation, the relevant provision Section 72 of the Tamil Nadu State Housing Board Act, 1961, is extracted here under:

72.Power to dispose of land:-(1) The Board may retain or may lease, sell, exchange or otherwise dispose of any land vested in or acquired by it under this Act.

2). Whenever the Board decides to lease or sell any land acquired by it under this Act from any person, it-

(a) shall give notice by advertisement in one of the leading local newspapers in the State, and

(b) shall offer to the said person, or his heirs, executors or administrators, a prior right to take on lease or to purchase such land for an amount or at a rate to be fixed by the Board, if the Board considers that such an offer can be made without detriment to the carrying out of the purposes of the Act.

(3) If in any case two or more persons claim to have the prior right referred to in clause (b) of sub-section (2), preference shall be given to the person who agrees to pay the highest amount or rate for the land, not being less than the amount or rate fixed by the Board under that clause.

9. In view of the above position, since the respondent board has not followed the procedure contemplated under the said Act, the impugned allotment orders passed by the 4th respondent in favour of the 5th respondent, vide Letter No.MRA4/3828/04, dated 29.01.2007 and Transfer Certificate Ref.No.MRA4/3828/04, dated 09.02.2007 issued by the 4th respondent in favour of 6th respondent are set aside. Accordingly, the writ petition stands allowed. Further, liberty is granted to the petitioner to make application under ex-owner category to the third respondent. If

any such application is received, the third respondent has to consider and pass appropriate orders in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

- 1.The State of Tamil Nadu
Rep.by its Secretary
Housing and Urban Development Department
Fort St.George
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The Tamil Nadu Housing Board
Mogappair Division
Thirumangalam
Chennai-600 101.

+1cc to the Government Pleader Sr.67536
+1cc to Mr.N.Raja Senthoo Pandian, Advocate Sr.66956
+1cc to Mr.M.Baskar, Advocate Sr.66949
+2cc to Mr.Sankaranarayanan, Advocate Sr.66947

W.P.No.26774 of 2009

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srg 25/09/2019