

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 31.01.2019
CORAM
THE HONOURABLE Mr.JUSTICE D.KRISHNAKUMAR

W.P.No.6444 of 2011
&
M.P. No.1 of 2011

1. P. Navaneetham W/o. Late T. Paramasivam
2. P. Balamurugan S/o. Late T. Paramasivam
3. P. Hariharan S/o. Late T. Paramasivam
4. P. Kannan S/o. Late T. Paramasivam
5. P. Narayana Suvami S/o. Late T. Paramasivam
6. P. Sasikumar S/o. Late T. Paramasivam

... Petitioner

Vs.

1. The Secretary to Government
Government of Tamil Nadu, Industries Department,
Fort St. George, Chennai - 600 009.
2. The Special Thasildhar (TACIT)
SIPCOT TACIT DIVISION,
Oragadam Alagu - 8.
No.1, Sivashanmugam Road,
Tambaram West, Chennai - 45.
3. The Special Thasildhar,
Land Acquisition, Sriperumbudur Taluk,
Sriperumbudur - 602 105.
4. State Industries Promotion Corporation of Tamil Nadu,
(A Government of Tamil Nadu Undertaking)
Rep. by its Managing Director,
No.19-A, Rukmani Lakshmipathy Road,
Post Box No.7223, Egmore, Chennai - 08
5. Town and Country Planning,
Rep. by its Director Mr. N. Ramanathan,
No. 801, Anna Salai, Chennai - 2
6. Mr. Natarajan, President,
Vaipur Village Panchayat,
Sriperumbudur, Kancheepuram District
7. Baskar
8. S. Jayagandan
9. Murali

...Respondents

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, issuance of a Writ of Mandamus, directing the respondents to re-convey the properties measuring an extent 1 acre 15 cents comprised in S.No.38/1 and 0.15 cents, S.No.81/9 of punja lands situate in No.182, Vaipur Village, Sriperumbudur Taluk, Kancheepuram District to the petitioners herein after receiving back the compensation amount by considering the representation dated 04.09.2009 under Section 48 (B) of the Land Acquisition (Tamil Nadu Amendment) Act.

For Petitioner : Mr. D. Rajagopal

For Respondents 1-3,&5: Mr.A.Kumar,
Additional Advocate General
Assist By Mr.V.Anandhamoorthy,AGP

For Respondent -4 : Mrs.Sudharshana Sundar

For Respondents 6-9 : No Appearance

O R D E R

The writ Petition has been filed seeking for re-conveyance of the acquired land measuring an extent of 1 acre 15 cents comprised in S.No.38/1 and 0.15 cents comprised in S.No.81/9, situate in No.182, Vaipur Village, Sriperumbudur Taluk, Kancheepuram District to the petitioners herein after receiving back the compensation amount by considering the representation dated 04.09.2009 under Section 48(B) of the Land Acquisition (Tamil Nadu Amendment) Act.

2. According to the petitioners, the first petitioner's husband, Late. Paramasivam, had purchased agricultural lands which situate at No.182, Vaipur Village, Sriperumbudur Sub Registration District, Sriperumbudur Taluk, Kancheepuram District total measuring 1 acres 30 cents comprised in S.No.38/1 and S.No.81/9 under a registered sale deed dated 04.10.1993. While the land acquisition proceedings were initiated by the Government, large extent of agricultural lands were acquired from the surrounding villagers including the aforesaid land measuring an extent of 7.14.0 hectares for SIPCOT Oragadam Industrial Complex by the Tamil Nadu Corporation for Industrial Infrastructure Development Limited. In this regard, the aforesaid department issued a notification in G.O. M.S. No.393 Industries (MII) dated 19.05.1999/No.II (2) IND/587 (b-5)/99 under Section 6 of the Land Acquisition Act, 1894. Subsequently, an award was passed fixing the compensation amount of Rs.64,195/- (Sixty Four Thousand One Hundred and Ninety Five

Only) for the aforesaid entire land of 1 acre 30 cents by the Government. Aggrieved by that award, on protest for enhancement of the compensation amount, an application, under Section 18 of Land Acquisition Act, was filed before the District Collector. Thereafter, the award amount was enhanced for a sum of Rs.10,00,000/- (Rupees Ten Lakhs Only) in L.A.O.P. No.865 of 2008 on the file of the Sub-Court, Kancheepuram.

3. According to the petitioners, the aforesaid entire land acquired by the Government was not utilized for the purpose for which it was acquired and since the land is belonging to the petitioners who are the legal heirs of the Late. Paramasivam, they made jointly a detailed representation dated 04.09.2009 to the respondents 1 to 3 requesting the Government to re-convey the aforesaid lands under Section 48(B) of the Land Acquisition Act on receipt of the compensation amount to the petitioners. There is no response from the respondents for the aforesaid representation. Hence, the writ petition has been filed by the petitioners seeking for the aforesaid prayer.

4. According to the respondents as stated in the Counter Affidavit, an extent of 0.41.0 hectares in S.No.38/1 and 0.06.0 hectares in S.No.81/9 of Vaipur "A" Village of Sriperumbudur Taluk, Kancheepuram District belonging to Late. Thiru. Paramasivam H/o. Tmt. Navaneetham (Writ petitioner herein) was acquired under Award No.1/2001 dated 15.05.2001. The draft notification under Section 4(1) of the Land Acquisition Act, 1894 for an extent of 7.14.0 hectares covered in Block-2 of Vaipur "A" Village in which the subject lands are also covered, was approved by the Government in G.O. Ms. No.35, Industries (MII) Departments. dated 19.1.1999 and published an Extraordinary issue No.54, in part II Section 2 of the Tamil Nadu Government Gazette dated 22.1.1999 at pages 12 to 15. The said 4(1) Notification has also been published in News papers "Malaimalar" dated 4.3.1999 at page no.5 and "Kathiravan" dated 4.3.1999 at page no.11. The substance of the said notification has also been published in village locality of Vaipur "A" Village on 10.3.1999. As the lands were notified for acquisition invoking the urgency provision of sec.17(1) of the Land Acquisition Act, the enquiry under Section 5-A has been dispensed with. The Declaration under Section 6 of the Act has been proved by the Government in G.O. Ms. No.393, Industries (MII) Department dated 19.05.1999 and published in the Extraordinary Issue No.396 in Part II Section 2 of the Tamil Nadu Government Gazette dated 19.5.1999 at pages 11 to 13. The said Declaration under Section 6 of the Act, has also been published in News papers "Madurai Mani" dated 3.6.1999 and "Malai Murasu" dated 3.6.1999. The substance of the said declaration has also been published in the Vaipur "A" Village (locality) on 10.6.1999. An extent of 0.05.5 hectares in S.No.38 (since sub-divided as 38/2) has not been acquired as

this is used by the villages as Panchayat road.

5. It is further stated that the petitioners were paid compensation amount for the afore-said acquired land and the subject land was handed over to the respondent Corporation along with other lands on 20.8.2001. As per the norms of the DTCP, 10% of the total lay-out area i.e.161.55 acres has to be set apart for OSR (Open Space Reservation). The subject land has been utilized as OSR in Sipcot Oragadam Industrial Complex by the respondent corporation. Thus, the subject lands have been utilized and it is not correct to say that the lands have been left waste and not utilized for which purpose it was acquired. Further, the learned counsel, also relied on the decision reported in the case of "Tamil Nadu Housing Board Vs. L. Chandrasekaran and ors., Manu/SC/0069/2010:(2010) 2SCC786 wherein it is held as follows:

"10.... It is clearly pleaded by the State and Tamil Nadu Housing Board that the Scheme had not been suspended or abandoned and that the lands acquired are very much needed for the implementation of the scheme and the steps in that regard have already been taken. In the light of this position, it is not open to the Court to assume that the project has been abandoned merely because another piece of land in the adjacent village had been released from acquisition in the light of orders of the Court. It could not be assumed that the whole of the project had been abandoned or has become unworkable. It depends upon the purpose for which the land is acquired. As we see it, we find no impediment in the lands in question being utilized for the purpose of putting up a multi-storied building containing small flats, intended as the public purpose when the acquisition was notified. Therefore, the High Court clearly erred in proceeding as if the scheme stood abandoned. This was an unwarranted assumption on the part of the Court, which has not foundation in the pleadings and the materials produced in the case. The Court should have at least insisted on production of materials to substantiate a claim of abandonment.

We have already noticed that in the writ petition, there are no sufficient allegations justifying interference by the Court. Mere claim of possession by the Writ petitioners is not a foundation on which the relief now granted could have been rested either by the learned Single Judge or by the Division Bench of the High Court. On the materials, no right has been established by the Writ petitioners.

We may also notice that once a piece of land has been duly acquired under the Land Acquisition Act, the land becomes the property of the State. The State can

dispose of the property thereafter or convey it to any one, if the land is not needed for the purpose for which it was required, only for the market value that may be fetched for the property as on the date of conveyance. The doctrine of public trust would disable the State from giving back the property for anything less than the market value. In State of Kerala Vs. M. Bhaskaran Pillai MANU/SC/0731/1997 : (1997) 5 SCC 432 in a similar situation, this Court observed: (SCC P.433, para 4)

The question emerges whether the Government can assign the land to the erstwhile owners? It is settled law that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. In case there is no other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public auction can be better utilized for the public purpose envisaged in the Directive Principles of the Constitution. In the present case, what we find is that the executive order is not in consonance with the provision of the Act and is, therefore, invalid. Under these circumstances, the Division Bench is well justified in declaring the executive order as invalid. Whatever assignment is made, should be for a public purpose. Otherwise, the land of the Government should be sold only through public actions so that the public also gets benefited by getting a higher value.

Section 48-B introduced into the Act in the State of Tamil Nadu is an exception to this rule. Such a provision has to be construed and strict compliance with its terms insisted upon. Whether such a provision can be challenged for its validity, we are not called upon to decide here."

and further, Tamil Nadu Housing Board Vs. Keeravani Ammal and Ors., Manu/SC/7220/2007: (2007) 9SCC255 wherein it is held as follows: (Para 12)

"12. We are thus of the view that the writ petitioners, the contesting respondents, have not made out any case for interference by the Court or for grant of any relief to them. It is therefore not necessary for us to go into the further contention raised on the scope of Section 48B of the Act, whether the writ petitioners have established any claim to the lands, whether the re-conveyance can only be to the original owners and not to others and whether if

possession has already been made over to the Housing Board, the State could exercise its power under that provision. We leave open those questions for the High Court to consider as and when the occasion arises on it being approached in the context of Section 48B of the Act. Suffice it to say that the decision of the High Court in the Writ petition in question is totally unsustainable and deserves to be set aside."

6. At the time of hearing on 19.12.2018, the learned counsel for the petitioner would submit that the subject matter of lands are not marked for OSR and third parties are encroaching in the aforesaid OSR lands where the encroacher was granted patta in the OSR lands. Hence, the District Collector, Kancheepuram has been directed to inspect the said OSR lands, including the petition mentioned properties and submit a report before this Court. Accordingly, District Collector has submitted his Report after inspecting the site before this Court. It is useful to extract relevant portion of the report as follows:

"It is submitted that in pursuant to the aforesaid direction of the Hon'ble Court to inspect the above land in the Kancheepuram District, Sriperumbudur Taluk, 1601.29 acres of land has been acquired by Sipcot Growth Centre, under Oragadam Scheme and the Villages covered is to be as follows: (1) Oragadam (2) Panappakkam (3) Mathur (4) Karanithangal (5) Vallam (6) Vaipur A (7) Vaipur B (8) Panruti A (9) Panruti, in this 161.55 acres of land were allotted for open space reservation (OSR) purpose as per the norms of the DTCP. The below OSR lands were inspected by me on 08.01.2019. The details have been submitted below:

S.No	Details	Extent (In Acres)
1	Industries	
	(a) A Series	569.61
	(b) B Series	417.19
2	Hi Tech Zone	321.59
3	Commercial	25.23
4	Other Facilities	106.12
5	OSR lands (20 Schedule)	161.55
Total		1601.29

The Director Town and Country Planning Chennai has given approval in S.No.13/2011, for the industrial purpose place wide DTCP No.21865/2010/LA. In the Vaipur Village OSR No.11,12,13,14,15, total 13.33

acres of Land has been allotted for the Open Space Reservation purposes.

OSR No.11

Survey Nos.	Extent	Classification	Patta Details	Encroachment Details
70/1(part)	0.44.0	Anadheenam	-	Vacant
72/5	0.11.5	Anadheenam	-	Vacant
68(Part)	0.31.0	Cart Tract	193 Sipcot	Vacant
72/11	0.22.5	Dry	Tacid Division	Vacant
72/4	0.25.0	Dry		Vacant
72/6	0.09.0	Dry		Vacant
38/1	0.41.0	Dry		Vacant
81/9 (Old S.No.)	0.06.0	Dry		Vacant
81/1 (New S.No)	1.33.5	Dry		Vacant

OSR No.12

Survey Nos.	Extent	Classification	Patta Details	Name of the Encroachers	Encroachments Details	Extent
76/1	0.45.0	Canal	-	Vacant	-	-
76/2	0.00.4	Grama Nathan (Village Site)	-	Vacant	-	-
79 (Part)	2.37.0	Anadheenam	-	JCBL & Company	Iron barbed wire fencing Compound, Toilet, Watchman shed	2.37.0

OSR No.13

Survey Nos.	Extent	Classification	Patta Details	Name of the Encroachers	Encroachment Details	Extent
81/1	1.33.5	Dry	193 Sipcot Tacid Division	1. Muniyammal W/o.Irudhayaraj	Hut House	0.00.5
				2. Tamil Selvi W/o. Chinnakutti	Tiled House	0.00.5
				3. Suguna W/o. Suramani	Hut House	0.00.5

OSR No.14

Survey Nos.	Extent	Classification	Patta Details	Name of the Encroachers	Encroachment Details	Extent
38/1	0.410	Dry	193 Sipcot Tacid Division	Parvathy W/o.Jaisankar	Hut House Tin shed	0.01.0

OSR No.15

Survey Nos.	Extent	Classification	Patta Details	Name of the Encroachers	Encroachment Details	Extent
1/1	1.74.0	Dry	193 Sipcot Tacid Division	Vacant		

In the writ petition, respondent 6 to respondent 9 have not encroached the said land. Their details are submitted as follows:

S.N o.	Respondent	Details	Remarks
1	6th respondent Tr. Natarajan	---	He has not encroached the OSR land and residing at Kuzhangachery Village
2	7th respondent Tr. Baskar	---	He has not encroached the OSR land and residing at Vaipur Village
3	8th respondent Tr. Jayagandan	---	He has not encroached the OSR land and residing at Vaipur Village
4	9th respondent Tr.Murali	---	He has not encroached the OSR land and residing at Vaipur Village

According to the Court direction, the status of the old S.Nos. of 38/1 and 81/9 are submitted as follows:

Survey Nos.	Extent	Classification	Patta Details	Name of the Encroachers	Encroachment Details	Extent
38/1	0.41.0	Dry	193 Sipcot Tacid Division	---	Vacant	---
81/1 is new S. No. (81/9 was clubbed with 81/1 which had an extent of 0.06.0 Areas)	1.33.5	Dry	193 Sipcot Tacid Division	Muniyamm al W/o. Irudhaya raj	Hut House	0.00. 5

1) No patta has been given in the said land to the encroachers.

2) Now the lands are in the possession of SIPCOT (TACID DIVISION). SIPCOT authorities are instructed to evict the above encroachment.

7. Pursuant to the aforesaid status report filed by the District Collector, the fourth respondent- industrial corporation has filed affidavit before this Court by stating that action has been initiated against these encroachments in the afore-said OSR lands and notice has been issued to the encroachers under Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975 to evict them. Vide Ref.Nos.1 Lr.No.PO/Org/Removal of Encroachment-01/2019 dated 27.1.2019, 2. Lr.No.PO/Org/Removal of Encroachment-02/2019 dated 27.1.2019, 3.Lr.No.PO/Org/Removal of Encroachment-03/2019 dated 27.1.2019, and 4.Lr.No.PO/Org/Removal of Encroachment-04/2019 dated 27.1.2019. It has been further stated that the plots are allotted to Industrial Project for which purpose the land are acquired, it will be made use of it and OSR lands are continued to be maintained by SIPCOT itself. Every steps has been taken to maintain the lands free from encroachment. No land in the OSR area has been transferred to any third party by way of Patta and it is maintained as such in the approved layout.

8. In view of the averments stated in the affidavits and undertaking filed by the fourth respondent, the contention of the petitioner in the subject matter of the land cannot be considered and the petitioner is not entitled to seek for re-conveyance of the afore-said OSR lands as prayed for in the writ petition.

9. It is also brought to the notice before this Court that as per the report of the Collector, in the OSR. No.12, the land in Survey No.79(Part) measuring to the extent of 2.37.0 acres has been encroached by JCBL & Company. But, in reply affidavit filed by the fourth respondent, it has been omitted. While inquiring about this, the learned counsel for the fourth respondent would submit that the above said encroachment in Survey No.79 (Part) measuring to the extent of 2.37.0 has already been removed and the Corporation has taken possession of the said property in its custody.

10. In the light of the facts and circumstances of the case and the aforesaid decision of the Hon'ble supreme Court, the writ petition is dismissed accordingly. Consequently, connected miscellaneous petition is closed. No Costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

lbm

To:

1. The Secretary to Government
Government of Tamil Nadu, Industries Department,
Fort St. George, Chennai - 600 009.
2. The Special Thasildhar (TACIT)
SIPCOT TACIT DIVISION,
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6. The President,
Vaipur Village Panchayat,
Sriperumbudur,
Kancheepuram District

+1cc to Mr.D.Rajagopal, Advocate, S.R.No.9052

+1cc to Mr.Mr.Sudharsanasundar, Advocate, S.R.No.8345

+1cc to the Government Pleader, S.R.No.8760

सत्यमेव जयते

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