

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :31.07.2020

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P Nos.8633 to 8636 of 2020
and W.M.P.Nos.10449,10450 10451 to 10453 of 2020

J.Siluvai Lazar Arokkiarajan
S/o.M.Jesumariyan,
No.13, 1st Street,
Vinayagapuram,
Nerkundram,
Chennai - 600 107.

...Petitioner in W.P.No.8633 of 2020

A.S.Shanthi,
S/o.K.A.Sivakumar,
New No.1, Old No.11/292,
2nd Street, Vinayagapuram,
Nerkundram,
Chennai - 600 107.

...Petitioner in W.P.No.8634 of 2020

1.N.Gnansekar
S/o.M.Natarajan,

2.G.Amudha
W/o.N.Gnanasekar

...Petitioner in W.P.No.8635 of 2020

B.Ilangovan,
S/o.Mr.C.Balakrishnan,
No.8-A, Vinayagapuram First Street,
Nerkundram,
Chennai - 600 107.

...Petitioner in W.P.No.8636 of 2020

WEB COPY

Vs.

1.The Secretary to Government,
Housing and Urban Development Department,
Government of Tamil Nadu,
Secretariat,
Chennai - 600 009.

2.The Managing Director,
Tamil Nadu Housing Board,
No.493, Anna Salai,
Nandanam,
Chennai - 600 035.

3.The Executive Engineer
and Administrative Officer,
K.K.Nagar Division,
Tamil Nadu Housing Board,
C-48, T.N.H.B Commercial Complex,
Anna Nagar, 2nd Avenue,
Chennai - 600 040.

4.The Special Tahsildar,
Tamil Nadu Housing Board,
K.K.Nagar Division,
Chennai.

5.The Tahsildar,
Maduravayal Taluk,
Maduravayal,
Thiruvallur District.

...Respondents in all Wps.

Prayer in W.P.No.8633 of 2020: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for records of the third respondent in his proceedings in letter No.K.K.Na.Ko/NI.A.B/5380/99 dated 25.02.2020, quash the same and consequently, direct the fifth respondent to issue the patta to the petitioner for his property bearing Plot No.13-A and house thereon, Vinayagapuram, Comprised in Survey No.284/1A of Nerkundram Village, formerly Saidapet Taluk, presently Maduravayal, Thiruvallur District measuring an extent of 600 sq.ft, situate at Door No.13, Vinayagapuram First Street, Nerkundram, Chennai - 600 107 and lying within the Registration District of Chennai South and Sub Registration District of Virugambakkam

Prayer in W.P.No.8634 of 2020: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for records of the third respondent in his proceedings in letter No.K.K.Na.Ko/NI.A.B/5380/99 dated 25.02.2020, quash the same and consequently, direct the fifth respondent to issue the patta to the petitioner for her property bearing Plot No.43 and house thereon, Vinayagapuram, Comprised in Survey No.284/1A of Nerkundram Village, formerly Saidapet Taluk, presently Maduravayal, Thiruvallur District measuring an extent of 600

sq.ft, situate at New Door No.1, Old Door No.11/292, Vinayagapuram Second Street, Nerkundram, Chennai - 600 107 and lying within the Registration District of Chennai South and Sub Registration District of Virugambakkam.

Prayer in W.P.No.8635 of 2020: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for records of the third respondent in his proceedings in letter No.K.K.Na.Ko/NI.A.B/5380/99 dated 25.02.2020, quash the same and consequently, direct the fifth respondent to issue the patta to the petitioner for the property bearing Plot No.16-A & 16-B and house thereon, Vinayagapuram, Comprised in Survey No.284/1A of Nerkundram Village, formerly Saidapet Taluk, presently Maduravayal, Thiruvallur District measuring an extent of 1200 sq.ft, situate at Door No.16-A & 16-B, Vinayagapuram First Street, Nerkundram, Chennai - 600 107 and lying within the Registration District of Chennai South and Sub Registration District of Virugambakkam.

Prayer in W.P.No.8636 of 2020: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for records of the third respondent in his proceedings in letter No.K.K.Na.Ko/NI.A.B/5380/99 dated 25.02.2020, quash the same and consequently, direct the fifth respondent to issue the patta to the petitioner for the property bearing Plot No.8 and house thereon, Vinayagapuram, Comprised in Survey No.284/1A of Nerkundram Village, formerly Saidapet Taluk, presently Maduravayal, Thiruvallur District measuring an extent of 600 sq.ft, situate at Door No.8-A, Vinayagapuram First Street, Nerkundram, Chennai - 600 107 and lying within the Registration District of Chennai South and Sub Registration District of Virugambakkam.

For all Wps

For Petitioners : Mr.Sahadevan
for Mr.Ilaya Perumal

For Respondents : Mr.Elumalai
Government Advocate
for R1 and R4
Mr.Bashkar for R2 and R3
Mr.K.Parameshwaran
Special Government Pleader for R5

C O M M O N O R D E R

The subject matter in all the writ petitions pertains to challenge made to the impugned proceedings of the third respondent dated 25.02.2020 and for a consequential direction to the fifth respondent to issue patta to the petitioners.

2. The case of the petitioners is that they are the owner of the properties in possession and enjoyment of the same, right from the day on which they purchased the property. The petitioners had applied for patta before the fifth respondent namely the Tahsildar and the Tahsildar was insisting for getting an NOC from the Housing Board. The petitioners made a representation to the Housing Board and the request made by the petitioners was rejected by the third respondent through the impugned letter dated 25.02.2020. Aggrieved by the same the present writ petitions have been filed before this Court.

3. A similar batch of writ petitions came to be filed before this Court and this Court passed an order dated 04.09.2017 made in WP.No.17484 to 17492 of 2017. For better understanding, the order is extracted hereunder:

"The petitioners have filed the above writ petitions to issue a writ of mandamus, directing the first respondent to process the petitioners' application dated 15.05.2017, 06.01.2016, 11.01.2016 and grant patta in respect of S.Nos.375, 373/2A respectively in Nerkundram Village, Maduravoyal Taluk, Tiruvallur District in favour of the petitioners without insisting No Objection Certificate from the second respondent within a time frame.

2. It is the case of the petitioners that originally Section 4(1) Notification was issued for acquisition of the lands on 11.06.1975 and 09.06.1978 in G.O.Rt.No.124 Housing, dated 08.05.1975 and G.O.Ms.Nos.996, 993, 994 Housing, dated 07.06.1978. Challenging the Notification issued under Section 4(1) and 6 of the Land Acquisition Act, the land owner preferred writ petitions in W.P.Nos.8370 and 8371 of 1986 and the Division Bench of this Court, by order dated 21.01.1988 allowed the writ petitions and quashed the declaration under Section 6 of the Act and directed the authorities to conduct enquiry under Section 5A of the Act afresh.

3. Thereafter, the petitioner in W.P.No.8371 of 1986 preferred a writ petition in W.P.No.18379 of 1991 challenging Section 4(1) Notification dated 11.06.1995. This Court, by order dated

01.07.1999 quashed the Section 4(1) Notification dated 11.06.1975 and allowed the writ petition. In para 3 of the order passed in the said writ petition, this Court also recorded that the possession of the land was handed over to the Tamil Nadu Housing Board on 25.07.1986.

4. The petitioners, after their purchase from the original land owner, had applied for issuance of patta before the first respondent. The first respondent directed the petitioners to get No Objection Certificate from the Tamil Nadu Housing Board for the reason that the land was acquired by the Tamil Nadu Housing Board.

5. The learned counsel for the petitioners submitted that once Section 4(1) Notification has been quashed by this Court, the Housing Board has no right over the acquired lands. Admittedly, neither the Housing Board nor the State Government have challenged the orders passed in the earlier writ petitions. Therefore, according to the learned counsel for the petitioners, the order passed in W.P.Nos.8370 and 8371 of 1986, dated 21.01.1988 and in W.P.No.18379 of 1991, dated 01.07.199 have become final.

6. Mr.Vivekavanam, learned Standing Counsel appearing for the Tamil Nadu Housing Board, submitted that the Housing Board had taken possession of the land, as early as on 25.07.1986 and also deposited the Award amount before the Civil Court. The learned Standing Counsel further submitted that Award was passed on 30.05.1986 in Award No.1 of 1986. In these circumstances, the learned Standing Counsel appearing for the Housing Board submitted that the possession is still with the Housing Board and the petitioners have no right to get patta from the first respondent.

7. Mr.R.Rajeswaran, learned Special Government Pleader appearing for the first respondent fairly submitted that after quashing of the Section 4(1) Notification, neither the State nor the Housing Board have any right over the acquired lands.

8. When Section 4(1) Notification itself has been quashed by this Court on 01.07.1999 after taking into consideration that the possession of the land was handed over to the Housing Board on 25.07.1986, the Housing Board cannot claim any right over the acquired lands. Admittedly, the respondents have not issued any fresh 4(1) Notification for acquisition after the order

passed on 01.07.1999. The Tamil Nadu Housing Board, having lost their right on 01.07.1999 cannot now take a stand that they are still in possession of the land pursuant to Section 4(1) Notification dated 11.06.1975.

9. The learned counsel for the petitioners also brought to the notice of this Court that in the lands sought to be acquired, layouts were formed and 250 occupants have constructed house and are residing.

10. When the Housing Board has no right over the lands sought to be acquired under Section 4(1) Notification dated 11.06.1975, the first respondent viz., the Tahsildar, should not have insisted the petitioners to get No Objection Certificate from the Housing Board. The first respondent should have considered the orders passed by this Court in the earlier writ petitions. Without even considering those orders, the Tahsildar had called upon the petitioners to get No Objection Certificate from the Housing Board, which is unwarranted.

11. In these circumstances, I direct the first respondent to consider the petitioners' application for issuance of patta without insisting them to produce No Objection Certificate from the Tamil Nadu Housing Board and pass orders in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order."

4. Even thereafter, another set of petitioners approached this Court and this Court passed an order dated 16.09.2019. For better appreciation, the order is extracted hereunder:

"2. The petitioners are land owners in Survey No.373/2A, 373/2B, 374/2 and 375, Nerkundram Village, Maduravoyal Taluk, Tiruvallur District. The land was earlier sought to be acquired by Housing Board for developing housing tenements. The said acquisition proceedings was initiated under the Land Acquisition Act, 1984 vide G.O.Ms.No.124 dated 08.05.1975 was later subjected to challenge in W.P.No.18379 of 1991. This Court quashed Section 4(1) notification published on 11.06.1975 vide order dated 01.07.1999. Thus, the acquisition proceedings initiated by the Housing Board was quashed. Subsequently, the petitioners herein have purchased flats promoted by the land owners under

the name and style of Sri Lakshmi Nagar layout. Now when the petitioner sought for issuance of patta, the first respondent has directed them to get No Objection Certificate from the Housing Board. Though the lands are not subject matter of any acquisition proceedings, in a similar circumstances the other flat owners when approached this Court in W.P.No.17484 to 17493 of 2017 dated 04.09.2017, directed the first respondent to consider the application of land owners for issuance of patta without insisting them to produce NOC from Tamil Nadu Housing Board. Seeking parity with them, the present writ petitions have been filed.

3. Counter has been filed by the first respondent. It is admitted that the acquisition proceedings initiated by them was quashed by this Court. Initially Section C declaration of the acquisition proceedings was quashed in W.P.No.8371 of 1986 on 21.01.1988 and thereafter 4(1) notification itself got quashed in W.P.No.18379 of 1991 vide order dated 01.07.1999. In the counter it is also admitted that in a batch of writ petitions, this Court has directed the Government to issue patta without insisting the petitioners to get NOC from the Housing Board. However, pointing out that the Housing Board has preferred Writ Appeal against the order passed by this Court quashing 4(1) notification, the first respondent insisted upon NOC from Housing Board.

4. The Standing Counsel for Housing Board submitted that the Writ Appeal Sr.No.84733 to 84740 of 2017 and 84742 to 84743 of 2017 filed against the order passed by the Court in W.P.No.18379 of etc is pending in the Registry and yet to be numbered. Therefore the Housing Board is not in a position to issue NOC.

5. After hearing the counsel it is obviously clear that the lands acquired by the petitioners are no more under the acquisition proceedings. The Housing Board has not taken steps to pursue their writ appeal filed in the Registry as early as 2017, but yet to be numbered. Citing unnumbered appeal papers, the right of the petitioners cannot be deprived being third party who have purchased after the acquisition

proceedings were quashed. Therefore, the Housing Board is bound to give NOC and the first respondent is bound to consider the application for transfer of patta based on the representation given by the petitioners without insisting on NOC issued by the second respondent.

6. Hence, it is directed the first respondent shall without insisting NOC from the Housing Board issue patta within a period of four weeks from the date of receipt of this order if the petitioners produce all the other necessary documents for change of patta."

5. There is no dispute with regard to the fact that the property for which the petitioners are seeking for patta also falls in the same 4(1) notification. That fact is clear from the counter affidavit that has been filed by the second and third respondents.

6. Mr.Sahadevan, learned counsel appearing on behalf of the petitioners submitted that this Court had repeatedly held that the Tamil Nadu Housing Board has no right over the property and therefore the Tahsildar should not insist the petitioners to get No Objection Certificate from the Housing Board. Despite all these orders, the Tahsildar continues to insist for No Objection Certificate. The learned counsel further submitted that the third respondent even without having a right over the property has come to the conclusion that the property belongs to the Housing Board. According to the learned counsel, the finding of the Housing Board goes completely contrary to the earlier orders passed by this Court. Therefore the learned counsel submitted that the impugned order passed by the third respondent requires interference and the fifth respondent must be directed to issue patta to the petitioners.

7. Per contra, Mr.Bhaskar, learned counsel appearing on behalf of the second and third respondents submitted that the petitioners made a representation before the Housing Board and had also approached this Court by filing a writ petition directing the Housing Board to dispose of all the representations and therefore the third respondent has proceeded to pass the order. The learned counsel further submitted that the petitioners did not produce any valid documents to prove their title over the property and all the petitioners are encroachers in the property and they have nothing to do with the property and they neither have a title nor the ownership over the property. The learned counsel heavily relied upon the common counter affidavit filed by the second and third respondents in all the writ petitions.

8. Mr.Elumalai, learned Government Advocate appearing on behalf of the respondents 1 and 4 and Mr.K.Parameshwaran, learned counsel appearing on behalf of the fifth respondent submitted that property in question was a subject matter of land acquisition and therefore to deal with the application for patta, the petitioner will have to necessarily get NOC from the Housing Board. It was therefore submitted that there are no merits in these writ petitions and the same is liable to be dismissed.

9. This Court has carefully considered the submissions made on either side and materials available on record.

10. It is true that initially acquisition proceedings were initiated and 4(1) notification was issued in the year 1975. The subject property in all the writ petitions forms part of 4(1) notification. This Court by an order dated 01.07.1999 made in W.P.No.18379 of 1991, quashed the 4(1) notification published on 11.06.1975 and even gave liberty to the Government to proceed afresh if the acquisition is necessary for public interest. However, no fresh acquisition proceedings were initiated. However, the Tahsildar was insisting for NOC from Housing Board in order to process patta applications from the concerned owners.

11. The previous order passed by this Court which has been extracted supra clearly establishes the fact that this Court on more than one occasion had held that the Housing Board has no right over the lands and the Tahsildar should not insist for getting No Objection Certificate from the Housing Board. This Court also proceeded to issue directions to the Tahsildar to grant patta without insisting for No Objection Certificate from the Housing Board.

12. The above order squarely covers the facts of the present case also.

13. In view of the above discussion, the impugned proceedings of the third respondent dated 25.02.2020 is hereby quashed and there shall be a direction to the fifth respondent to process the applications submitted by the petitioners seeking for patta without insisting for an NOC from the Tamil Nadu Housing Board and necessary orders shall be passed strictly in accordance with law within a period of six weeks from the date of receipt of copy of this order.

14. In the result all the writ petitions are allowed with the above directions. No cost. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To:

1.The Secretary to Government,
Housing and Urban Development Department,
Government of Tamil Nadu,
Secretariat,
Chennai - 600 009.

2.The Managing Director,
Tamil Nadu Housing Board,
No.493, Anna Salai,
Nandanam,
Chennai - 600 035.

3.The Executive Engineer
and Administrative Officer,
K.K.Nagar Division,
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Tamil Nadu Housing Board,
K.K.Nagar Division,
Chennai.

5.The Tahsildar,
Maduravayal Taluk,
Maduravayal,
Thiruvallur District.

+4cc to Mr.A.Ilayaperumal, Advocate,
S.R.No.25925,25926,25927,25928

+4cc to the Government Pleader, S.R.No.25976,25977,25978,25979

W.P Nos.8633 to 8636 of 2020
and W.M.P.Nos.10449, 10451 to 10453 of 2020

VG II (CO)
KKV/21/08/2020