

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 07.09.2020

Delivered on 09.09.2020

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

WP.No.10065/2020 & WMP.No.12225/2020

V.Anantharaman
S/o.Late S.Vaidyanathan
rep.by his Power Agent
M/s.KCEE Properties Pvt. Ltd.,
rep.by its Managing Director
Mr.L.Chandrasekaran
Having their registered office at
No.17, 3rd Cross Street,
West CIT Nagar, Chennai 600 035.Petitioner

Versus

1. The Chennai Metropolitan Development Authority,
rep.by its Member Secretary
No.1, Gandhi Irwin Road, Egmore,
Chennai 600 008.
2. Tamil Nadu Housing Board
rep.by its Chairman/MD,
Nandanam, Chennai 600 035.Respondents

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for records of the 1st respondent / CMDA relating to their letter vide File No. CMDA/PP/NHRB/C/0091/2020 dated 04.03.2020, calling for particulars on the petitioner's application for planning permission in SBC.No.PR/NHRB/C/0091/2020 dated 03.02.2020 for the proposed construction of stilt + 4 Floors residential building with 8 dwelling units of plot No.59 and 60, Marirajan Street, Saraswathy Ramakrishna Street, Janaki Nagar, Valasarawakkam, Chennai comprised in Old S.No.150/1A part, New S.No.150/39 of Valasarawakkam village and quash the same insofar as the demand of 'No Objection Certificate' from the 2nd respondent is concerned and direct the 1st respondent to consider the petitioner's application for planning permission expeditiously and in accordance with law without insisting on

production of NOC from the 2nd respondent considering the facts and circumstances of the case.

For Petitioner	:	Mr.V.Raghavachari for Mr.V.S.Senthil Kumar
For R1	:	Mr.Thiruvengadam Standing counsel
For R2	:	Mr.M.Baskar Standing Counsel

ORDER

- (1) This writ petition has been filed challenging the impugned letter issued by the 1st respondent dated 04.03.2020, directing the petitioner to furnish 'No Objection Certificate' [NOC] from the Tamil Nadu Housing Board [TNHB] / 2nd respondent herein, for the purpose of considering the application submitted by the petitioner seeking for Planning Permission.
- (2) The case of the petitioner is that he purchased the subject property by way of a registered Sale Deed dated 30.09.1988 from one Mrs.Charumathi Rajamani. The petitioner wanted to develop the property and therefore, he entered into a Development Agreement and executed a Power of Attorney in favour of M/s.KCEE Properties Private Limited. The petitioner submitted an application seeking for sanction to construct a building consisting stilt + 4 Floors. This application was submitted before the 1st respondent. The 1st respondent, through the impugned letter, among other things, directed the petitioner to get a NOC from the TNHB for considering the application submitted for approval. Aggrieved by the same, the present writ petition has been filed before this Court.
- (3) Mr.V.Raghavachari, learned counsel appearing for Mr.V.S.Senthil Kumar, learned counsel for the petitioner submitted that the 1st respondent is not justified in insisting for a NOC from the 2nd respondent and such an authority was not contemplated under Section 49 of the Town and Country Planning Act. The learned counsel further submitted that even though the subject property along with a larger extent of lands was the subject matter of acquisition by the TNHB, the possession was not taken.
- (4) The learned counsel further submitted that when similar letter was issued by the Chennai Metropolitan Development Authority [CMDA] insisting for a NOC from the TNHB for providing sanction, the same was interfered with by this Court and several orders have been passed by this Court, setting aside the said condition on the ground that the CMDA cannot insist for such a NOC. Thereafter, the properties were also developed and therefore, the petitioner is also entitled for the very same benefit.
- (5) The 2nd respondent has filed a counter affidavit and the relevant portions in the counter affidavit is extracted

hereunder:-

3 The petitioner mentioned land in S.No.150/1A measuring an extent of 3.44 acres. I state that the notification under section 4 [1] of the Land Acquisition Act was approved by the Government vide G.O.Rt.No.136 Housing Department, dt 14.05.1975 for implementing New Ramapuram Neighbourhood Scheme and subsequently the Draft Declaration under section of the Land Acquisition Act was approved by the Government vide G.O.Ms.No.956 dated 07.06.1978 and award passed vide no.9/86 for 2.33 $\frac{3}{4}$ Ac., 1/87 dt.31.12.87 for 0.77 $\frac{1}{2}$ Ac and 1/91 dated 12.12.91 for 0.40 $\frac{3}{4}$ Ac.by Land Acquisition Officer part of the land measuring an extent of 0.27 acres out of 3.54 acre was taken by TNHB on 09.09.1999.

4 I respectfully further submit that the land owner/interested person as per the Award is as follows:-

Survey No	Extent	Ex-land owner name as per 4[1] Notification G.O.Rt.No.136 dt 14.05.1975	Ex-Land Owern name as per 6DD G.O.Ms.No.956 dt. 07.06.1978	Ex-Land owner as per Award No.9/86 dt. 20.09.86, 1/87 dt 31.12.87 and 1/91 dt. 12.12.91
150/1A	3.54 Ac.	Rani Dharmaraj	Rani Dharmaraj & Kuliammal	Rani Dharmaraj

5 I respectfully submit that as per the Award No.9/86, dated 20.09.1986, the land in S.NO.150/1A measuring an extent of 3.54 ac originally belonged to Tmt.Rani Dharmaraj when the notification under section 4[1] of the Land Acquisition Act was published. There was Mango Tope in the land when the notification under section 4[1] was published Tmt.Rani Dharmaraj has converted an extent of 2.65 acres out of 3.54 acres as Plots as per the unapproved layout drawn by her and sold them to several persons. The remaining extent of 0.89 acres is alone is her possession and enjoyment at present. there are Mango trees in this portion. Neither the lands sold to other

parties nor the extent in the possession of Tmt.Rani Dharmaraj were sub divided. According to the unapproved layout produced by the interested parties this area [0.89 acre] was earmarked for school building. She is believed to have assured the sale purchaser in the layout area that she will donate the land for the construction of school building. But no recorded evidence was produced in this connection. The land owner however claimed that the land is still in her possession and enjoyment. Since a major portion of the land has already been converted into house sites, and only a portion is now covered by trees the land cannot be construed as tope. She also did not claim it as tope. She wanted the compensation to be paid for the land at Rs.10,000/- per cent, which according to her was the prevailing market rate on the date of award enquiry [i.e] 22.7.86. She is entitled for compensation at thereto which was prevailing on the date of 4[1] Notification only. Hence her claim is rejected. She will be awarded compensation at Rs.160/- per cent for the land and fuel value for the trees standing in this portion of 0.89 acres.

Hence, compensation amount in respect of this portion of land is ordered to be deposited in the Sub Court, Poonamallee, under section 30 and 31[2] of the Land Acquisition Act.

6 I respectfully submit that the acquisition proceedings was challenged in respect of Survey No.150/1A, 156/1, 156/3 in Valasarawakkam Village in WP.No.8065/1986 with prayer to exempt the above land from acquisition proceedings and the said writ petitioner in WP.No.8065/1986 ended in favour of the petitioner on 09.10.1991 'on the ground of vagueness'. Thereafter, the Government has preferred writ appeal in WA.No.685/95 against WP.No.8065/1986. It was allowed on 16.11.96. Order as follows:-

'4. Accordingly, following the aforesaid decision, the writ appeals are allowed. The orders dated 17.03.1992, 17.12.1991, 09.10.1991 and 10.10.1991 passed in Wps.2738 of 1985, 5404 and 5407 of 1991, 8080, 8941, 8065, 7740, 9990, 10013, 10308, 10853 of 1986, 11514 of 1988, 10333, 10336, 7126 of 1986 and 11515 of

1988 respectively are set aside. The writ petitions are dismissed. It is made clear that if the writ petitioners are entitled to the benefit of the resolution No.7 of 1986 dated 02.07.1986 passed by the Housing Board. It is open to them to make applications for re-conveyance. In that event, the Housing Board shall consider the request in terms of the resolution of 7 of 1986 dated 02.07.1986. However, we make no order as to cost.'

The petitioner quoted judgment in WP.No.36111/2005 dated 22.09.2006. It was allowed to the petitioner and the records revealed that it is completely irrelevant to the petitioner subject land Survey No.150/1A.

7 I respectfully further submit that the petitioner namely Thiru V.Anantharman is an ENCROACHER and claiming rights and title over the acquired alnd in Survey No.150/1A for the extent of 2 gds 120sqft at Valasarawakkam Village, Maduravoyal Taluk. I submit that the Award No.9/86 dated 20.09.1986 for 2.33 $\frac{3}{4}$ Ac., 1/87 dt.31.12.87 for 0.77 $\frac{1}{2}$ Ac., and 1/91 dt.12.12.91 for 0.40 $\frac{3}{4}$ Ac for S.No.150/1A in favour of the land owner/interested person namely Rani Dharmaraj. Since there was dispute over the apportionment of extent and compensation, the entire compensation amount deposited in Court under section 30 and 31[2] of LA Act. Part of the land measuring an extent of 0.27 acres out of 3.54 acre was taken over by TNHB on 09.09.1999 and balance was not handed over due to encroachments. After that the petitioner herein has said that purchased the acquired land illegally vide alleged Sale Deed document No.4046/88 on 30.09.1988 from Ms.Charumathi Rajamani. The subject land was entrusted to KCEE properties illegally, executed and registered a general power of attorney on 03.10.2019 vide Doc.No.6128/2019. However, they are no way connected to the property. Therefore, the said alleged alienation does not confer any rights and title in favour of the petitioner herein.

The above statement reveal that the petitioner purchased the said property after Government published 4[1] Notification. It is clearly revealed that the petitioner is a subsequent purchaser. Hence, they have no

right to claim over the property.''

- (6) Mr. M. Baskar, learned Standing Counsel appearing on behalf of the 2nd respondent / TNHB, apart from reiterating the contentions raised in the counter affidavit, submitted that the subject property has already vested with the TNHB and the challenge made to the acquisition proceedings also came to be rejected by this Court in the Writ Appeals. That apart, the compensation has already been paid by depositing the same before the Sub Court, Poonamallee. The learned Counsel submitted that the petitioner can only be construed as an encroacher in the property and the Sale Deed executed in favour of the petitioner in the year 1988 much after the 4[1] Notification, is non est in the eye of law. To substantiate the said submission, the learned Counsel relied upon the judgment of the Hon'ble Supreme Court of India in Shivkumar and Others V. Union Of India and Others in Civil Appeal No.8003 of 2019, dated 14.10.2019 .
- (7) This Court has carefully considered the submissions made on either side and the materials placed before it.
- (8) The petitioner is admittedly the subsequent purchaser of the property which had already vested with the TNHB much before the property was purchased by the petitioner. The various orders relied on by the learned Counsel for the petitioner will have no significance in the present case in view of the latest judgment of the Hon'ble Apex Court Shivkumar and Others V. Union Of India and Others in Civil Appeal No.8003 of 2019, dated 14.10.2019 [referred supra]. The Hon'ble Supreme Court of India has categorically held that a purchaser of a property, after the issuance of the Notification under Section 4[1] of the Land Acquisition Act, 1894, does not have any right to challenge the original acquisition or to claim any benefits after the coming into force of the 2013 Act. The Hon'ble Supreme Court has held that a transaction of sale that is effected after 4[1] Notification is void and the said sale transaction will not cloth the subsequent purchaser with any right whatsoever. The Hon'ble Supreme Court of India has held that once a 4[1] Notification is issued, the property becomes incapable of being sold or transacted and the sale transaction is void ab initio and is a nullity and it does not confer any right or title over the subsequent purchaser of the property.
- (9) In the light of the settled law, the petitioner cannot be permitted to use the property against the interest of the TNHB which has become the owner of the property. The earlier orders passed by this Court and which has been relied upon by the learned Counsel for the petitioner will pale into insignificance in view of the judgment of the Hon'ble Supreme Court of India. This is more so since the acquisition proceedings has been upheld by the Division Bench in the Writ Appeals and the compensation amount has also been deposited before the competent Civil Court.

(10) In view of the above, this Court does not find any ground to interfere with the impugned letter issued by the 1st respondent dated 04.03.2020, directing the petitioner to get the NOC from the TNHB. The 1st respondent was perfectly right in seeking for such a NOC since the TNHB is the actual owner of the property in the eyes of law.

(11) In the result, the writ petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Member Secretary
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road, Egmore,
Chennai 600 008.
 2. The Chairman/MD,
Tamil Nadu Housing Board
Nandanam, Chennai 600 035.
- +2cc to Mr.V.S.Senthil Kumar, Advocate in SR.NO..29405

Order in

WP.No.10065 of 2020

mp(co)

rv(30/09/2020)

सत्यमेव जयते

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