

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.11.2020

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THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

W.P.No.13315 of 2020 &
WMP.No.16455 of 2020

M/s.NPR Finance Limited,
represented by its authorised
Signatory Mr.Dhruv Thodi,
No.35/36, Greams Road,
Ground Floor, Chennai 600 006.

..Petitioner

Vs

1. Chennai Metropolitan Development Authority, represented by its Member Secretary, Thalamuthu Maligai Buildings, Egmore, Chennai 600 008.
 2. The District Revenue Officer, Kancheepuram.
 3. The Special Tahsildar (Land Administration), Maraimalainagar, Kaattangulathur, Chengalpet District.
- ..Respondents.

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Mandamus calling for the record on the file of the 1st respondent in Letter No.NT1/13/2004, dated 21.10.2019 and quash the same and further direct the 1st respondent to issue NOC for transfer of patta in the name of the petitioner company for the land measuring 87 cents in Survey No.547/1, 545/5, 545/6 at Thirukatchur Village, Maraimalainagar, Chengalpet District.

For Petitioner : Mr. K.V.Sajeev Kumar
For Respondents: Mr.Tamilmani, Standing counsel
for
Mr.E.Manoharan,
Spl. Govt. Pleader

ORDER

This Writ Petition is filed challenging the impugned letter of the 1st respondent dated 21.10.2019 and for consequential direction to transfer the Patta in the name of the petitioner with respect to the subject property.

2. The case of the petitioner is that the petitioner company purchased the subject property measuring about 87 cents through registered sale deed dated 5.1.2005. The subject property along with larger extent of lands were acquired by the Government under the 1894 Act. A representation was made by the predecessor in title for releasing an extent of 41.08 acres of land from the acquisition proceedings. The further case of the petitioner is that similar request was made by several other land owners and the Government also passed orders under section 48(1) of the Land Acquisition Act 1894 by releasing the lands from acquisition proceedings. The lands belonging to the predecessor in title was also excluded by a Government Order dated 23.3.1987. Thereafter the subject property was purchased by the vendor of the petitioner.

3. The further case of the petitioner is that the Government issued a Government Order dated 23.4.1998, cancelling the earlier Government Order dated 23.3.1987 and thereby the lands that were excluded from acquisition was again sought to be taken over by the Government.

4. The vendor of the petitioner filed W.P.No.9531 of 1998 challenging the said Government Order. In the meantime, the petitioner purchased the subject property measuring an extent of 87 cents through a registered sale deed dated 5.1.2005. This Court, by an order dated 26.4.2007, quashed the Government Order and allowed the Writ Petition. The relevant portions in the order is extracted hereunder;

'10.It is not in dispute that by G.O.Ms.No.497 dated 23.3.1987, the Government declared that the lands measuring a total extent of 25.92 acres in various Survey Numbers be excluded from acquisition for the Maraimalai Nagar scheme. Only thereafter the petitioners purchased the lands. On 23.4.98 only, the Government has passed the impugned G.O., cancelling the order of exemption granted in G.O.Ms.No.497 dated 23.3.87.

11.Therefore the only question that arises for consideration in this writ petition is whether the Government has powers on 23.4.98 to cancel the earlier G.O. dated 23.3.87 granting exemption to the lands from the acquisition proceedings?

12.Under Sec.48(1) of the Act, 1894, the Government shall be at liberty to withdraw from the acquisition of any land of which possession

has not been taken. Only exercising this power under Sec.48(1) of the Act, the Government passed the G.O., on 23.3.87 withdrawing from acquisition of the lands measuring an extent of 25.92 acres. In such circumstances, it is not for the Government to simply cancel the order withdrawing from the acquisition proceedings, if the Government wants to acquire the same again. The Government should only follow the land acquisition proceedings afresh by issuing a fresh 4(1) Notification.

13. In AIR 1976 Delhi 166 (cited supra), the Delhi High Court held that if the Government withdraw from the acquisition of any land in exercise of the power conferred under Sec.48 of the Act, it is obvious that Sec.4 Notification has exhausted itself and if the Government wants to acquire the lands again, the Government shall have to act in accordance with the provisions of Sections 4 to 8 of the Act. The relevant portion reads as under:

"5. The scheme of the Act is quite clear. Under Section 4

of the Act the appropriate Government issues a notification to the effect that the land is likely to be needed for any public purpose and objections are invited and disposed of. Finally if the Government is satisfied, a declaration is issued under Section 6 of the Act to the effect that the land is needed for public purposes and such declaration is published in the Gazette and is a conclusive evidence of the land being needed for public purposes. Thereafter the proceedings under the Act are initiated for making of the award and taking possession of the land in accordance with the provisions of the law."

"6. The power of withdrawal from acquisition is conferred by Section 48 of the Act, relevant portion of which runs as follows:

"Except in the case provided for in Section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken."

"7. This power can be exercised by the Government after declaration under Section 6 had been issued but before possession has been taken. Should the Government withdraw from the acquisition of any land in exercise of the said power, it is obvious

that Section 4 notification on the basis of which the land was being acquired has exhausted itself and if the Government considers it fit again to acquire the land, it shall have to act in accordance with the provisions of Sections 4 to 8 of the Act. Thus in this view of the matter the contention of Mr.Dalal appears to be plausible."

14.In view of the above settled position, I am of the considered view that by passing the impugned order, the Government cannot cancel its earlier order of withdrawing from the acquisition proceedings in respect of the lands owned by the petitioners herein (who purchased the same after the withdrawal order) that too, after a lapse of 11 years.

15.It is also admitted in the counter-affidavit that 25.92 acres were withdrawn from the acquisition and as the lands are now needed, the Government cancelled the order of withdrawal. The Government has no power to cancel the order of withdrawal once it withdraw from the acquisition proceedings by exercising powers under Sec.48(1) of the Act. Without resorting to fresh land acquisition proceedings in accordance with the Act it is not open to the Government to reopen the order of withdrawal after more than a decade. The impugned order is certainly liable to be set aside and accordingly set aside.'

5. The above order became a subject matter of challenge in a Writ Appeal which was filed with delay. A Division Bench of this Court, by an order dated 14.09.2017, dismissed the condone delay petition and thereby the Writ Appeal itself was not even numbered.

6. The further case of the petitioner is that the petitioner wanted to get a patta with respect to the subject property. However, the No Objection Certificate of the 1st respondent was insisted on the ground that the earlier acquisition proceedings itself was done on the requisition made by the 1st respondent. The 1st respondent has proceeded to issue the impugned letter dated 21.10.2019 rejecting the request made by the petitioner. Aggrieved by the same, the present Writ petition has been filed before this Court.

7. Heard Mr.K.V.Sajeev Kumar, learned counsel appearing for the petitioner and Mr.Tamilmani, learned Standing Counsel

appearing on behalf of the 1st respondent and Mr.E.Manoharan, learned Special Govt. Pleader appearing for the respondents 2 and 3.

8. It is not in dispute that the subject property which was initially acquired was excluded from the acquisition proceedings through G.O.Ms.497 dated 23.3.1987. Thereafter it was sought to be reversed by the subsequent Government Order made in G.O.Ms.134, dated 23.4.1998. This was challenged before this Court in W.P.No.9531 of 1998 and this Court, by an order dated 26.4.2007, allowed the Writ petition and this Court held that without resorting to fresh land acquisition proceedings, it is not open to the Government to reopen the order of withdrawal and that too, after more than a decade. This order was subsequently confirmed in appeal when the Division Bench dismissed the appeal in the condone delay stage itself.

9. Mr. Tamilmani, learned Standing Counsel appearing for the 1st respondent submitted that the 1st respondent cannot grant the No Objection Certificate sought for by the petitioner, since the subject property is very much required by the 1st respondent for developmental activities. The learned counsel further submitted that till date, the patta stands in the name of the 1st respondent.

10. In the considered view of this Court, the 1st respondent has already lost their rights over the subject property. The earlier Government Order passed withdrawing the acquisition proceedings has been upheld by this Court by an order dated 26.4.2007. This Court also made it clear that if the lands are required, the Government can only initiate fresh acquisition proceedings and there is no question of reopening of withdrawal from acquisition proceedings. Admittedly, this order has become final. In spite of the order becoming final, the 1st respondent cannot be permitted to take a contrary stand and claim any rights over the subject property. In fact, asking for a No Objection Certificate from the 1st respondent itself is unsustainable since the 1st respondent who has no right over the property, cannot give a No Objection Certificate for the subject property.

11. In view of the above discussion, this Court has absolutely no hesitation to interfere with the impugned letter of the 1st respondent dated 21.10.2011 and accordingly, the same is hereby quashed. There shall be a direction to the 3rd respondent to process the representation made by the petitioner and issue patta for the subject property in the name of the petitioner within a period of six weeks from the date of receipt of a copy of this order.

12. In the result, this Writ Petition is allowed with the above direction. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. Chennai Metropolitan Development Authority, represented by its Member Secretary, Thalamuthu Maligai Buildings, Egmore, Chennai 600 008.

2.The District Revenue Officer, Kancheepuram.

3.The Special Tahsildar (Land Administration), Maraimalainagar, Kaattangulathur, Chengalpet District.

+1cc to Mr.K.V.Sanjeev Kumar, Advocate, S.R.No.36277

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EV(CO)
RV(10/12/2020)



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