

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN  
and  
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.A.No.1605 of 2017  
and  
C.M.P.No.21006 of 2017

The Executive Engineer,  
Tamil Nadu Housing Board,  
Unit - I, Coimbatore.

... Appellant

Vs

1.R.Parthasarathi  
2.Tmt.Rajammal  
3.The State of Tamil Nadu,  
rep.by Secretary,  
Housing and Urban Development Department,  
Fort St.George, Chennai - 600 009.

4.The Special Tahsildar,  
(Land Acquisition),  
Coimbatore Housing Scheme Unit - I,  
Coimbatore. ...Respondents

PRAYER : Writ Appeal filed under Clause 15 of the Letters  
Patent against the Order made in W.P.No.12832 of 1998  
dated 05.08.2009.

Prayer in W.P.No.12832 of 1998:

Writ petition filed under Article 226 of the  
Constitution of India praying for the issuance of a writ  
of Certiorari calling for the records of the respondent  
herein in connection with the impugned notification  
issued under Section 4(1) of the Land Acquisition Act  
vide G.O.Ms.No.507 (Housing & Urban Development  
Department) dated 17.5.95 published in Daily Thanthi  
dated 18.5.95 and declaration issued under sec.6 of the  
Land Acquisition Act vide G.O.Ms.No.297(Housing & Urban  
Development Department) dated 28.6.1996 published in  
Daily Thanthi on 2.7.96 in respect of the petitioners'  
land comprised in S.F.Nos.484,502,503,482, 483, 504, 506,  
513 and 514 in No.19, Vellaikiner Village, Coimbatore  
North Taluk, Coimbatore issued by the first respondent  
herein quash the same.

For Appellant : Dr.R.Gouri

For Respondents : Mr.AR.L.Sundaresan,  
Senior Counsel for  
Mr.V.Govardhanan  
for R1.

R2-Died.

Mr.V.Anandhamoorthy, Additional  
Government Pleader for R3 & R4.

#### J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The lightening speed in which the officials have acted in getting approval under Section 11 (1) of the Land Acquisition Act and passing the award on the very same day definitely needs to be appreciated.

2.Here is a peculiar case in which this Court could not find bureaucratic Red-tapism. The Tahsildar wrote to the District Revenue Officer on 01.07.1998 seeking prior approval under Section 11(1) of the Land Acquisition Act for acquiring the properties which are the subject matter of this appeal and the said District Revenue Officer responded very quickly and granted approval on the very same day i.e., on 01.07.1998. The approval is rapidly transmitted to the Land Acquisition Officer viz., Tahsildar on 01.07.1998 and further, the award was passed on 01.07.1998 itself like a shot. For the aforesaid actions, normally in a Government office it would take months together and sometimes years together also. However, very curiously and interestingly, in this case approval is stated to have been obtained and award had been passed on the same date.

3.Furthermore shocking and surprising fact is that the award amount was deposited by the Housing Board one year prior to the passing of the award viz., 13.05.1997. It is not known as to how the Housing Board authorities assumed and presumed the quantification of the amount in May 1997 itself as per award which was passed only on 01.07.1998. These are all the facts which definitely make the entire exercise, allegedly undertaken by the authorities, a very suspicious one.

4.This Court has got every reason to believe that the alleged approval is shrouded with mystery and not undertaken properly and proceedings were said to have been made in such a way to appear to this Court that approval under Section 11 (1) of the Land Acquisition

Act, 1894 had been obtained especially, when the learned Single Judge quashed the proceedings on the ground that approval under Section 11 (1) of the Land Acquisition Act, 1894 had not been obtained.

5.It is curious to note that neither the Land Acquisition authorities nor the requisitioning body viz., the board herein took pains to produce those files or approval before the learned Single Judge. The very fact that these files had not been produced before the learned Single Judge would fortify the fact that no such proceedings were available at the time of arguments before the learned Single Judge. Nothing prevented the appellant as well as the Government who were all parties before the learned Single Judge to produce those proceedings before the learned Single Judge. It is also not known as to how the requisitioning body alone has filed the present appeal, when the land acquisition authority, which has to prosecute the case, especially the Government, is in deep slumber like Rip van winkle, even as on date without filing any appeal.

6.The 3rd respondent, State of Tamil Nadu started the acquisition proceedings by issuance of notification under Section 4 (1) on 14.06.1995 to acquire the vast extent of land viz., 369.13 acres for execution of a scheme called "Thudiyalur & Vellakinar Neighbourhood Scheme" for housing board purposes. The lands are comprised in various survey numbers viz., S.F.No.482, 483, 504, 506, 513, 514, extent 7.23.5 Hect (or) 17.87 Acres and S.F.No.484, 502, 503 - Extent 3.45.5 Hec. (or) 8.53 Acres. The scheme was proposed to be implemented in ten phases. It is stated that in five phases, the lands were acquired and scheme was already implemented. The balance viz., the block phases 6 to 10 alone remain to be executed because of the various proceedings either pending or disposed of by this Court.

7.In this case, the properties are subject matter of the proceedings before the Special Tahsildar, Land Acquisition, Housing Scheme Unit - I, Coimbatore. Aggrieved over the land acquisition proceedings, the private respondents filed Writ petitions before this Court raising various grounds including non obtaining of approval under Section 11 (1) of the Land Acquisition Act.

8.The learned Single Judge appreciating the contentions of the petitioners allowed the Writ petitions on the ground that prior approval under Section 11 (1) of the Land Acquisition Act has not been obtained by relying upon the Division Bench Judgment of this Court in "N.D.Ramanujam and others Vs.The State of Tamil Nadu rep., by its Secretary to Government and others" reported

in "2006 (1) CTC 51" and another Judgment of this Court in "Mr.A.Unnikrishnan and another" reported in "2008 (5) MLJ 1315". The said order was passed by this Court on 05.08.2009. However, the said Judgment is sought to be challenged before this Court after two years i.e.on 30.08.2011 along with condone delay petition by the beneficiary viz., the requisitioning body/Housing Board and no appeal has been preferred till date by the acquisitioning authorities viz., the Government.

9.Dr.R.Gouri, learned Counsel for the appellant took pain and collected various dates to stress the point that all the procedures as contemplated under the Land Acquisition Act have been followed. She would submit the following details:

- (a)On 14.06.1995 Notification under Section 4 (1) of the Land Acquisition Act was published in Gazette.
- (b)On 17.06.1995 and 18.06.1995 Notifications under Section 4 (1) of the Land Acquisition Act were published in Newspapers.
- (c)On 03.07.1995 substance of the Notification was published in the locality.
- (d)On 24.08.1995 enquiry under Section 5A of the Land Acquisition Act was conducted.
- (e)On 28.06.1996 draft declaration overruling the objections of the Land owners had been passed.
- (f)On 02.07.1996 declaration under Section 6 of the Land Acquisition Act was published in two Tamil Dailies
- (g)On 02.07.1996 declaration under Section 6 of the Land Acquisition Act was published in locality.
- (h)On 01.07.1998 prior approval of draft award was obtained and
- (i)On 01.07.1998 the award was passed.

10.The Appellant would contend that the prior approval of the draft award was obtained from District Revenue Officer dated 01.07.1998 to show that the Writ Petition was erroneously allowed on the ground that no prior approval was obtained by the authorities. She would submit that once prior approval had been obtained from District Revenue Officer, all the formalities and procedures as contemplated under the Act have been followed and therefore, the quashing of the proceedings by the learned Single Judge has to be set aside.

11.The appellant would further urge that the lands still remain vacant. Moreover, the Writ petition was filed only on 12.08.1998 after the award was passed and therefore, the Writ petition is not maintainable. Further, the award amount was deposited on 13.05.1997 itself by the Housing Board authorities in favour of the Land Acquisition authorities in the name of the Tahsildar. Therefore, the right got accrued to the Housing Board. So far, no land has been deleted or

released from the acquisition. She would submit that because of the order of the learned Single Judge, the further implementation of phases 6 to 10 is with held. Hence, she prayed for allowing this Writ appeal.

12.However, Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the 1st respondent would submit that there is no appeal by the Government; There is no right available to the beneficiary to support the acquisition proceedings as no right got accrued to them. In this regard, he relied upon the Division Bench Judgment of this Court in "Tamil Nadu Housing Board Vs. Sembanna Gounder and others" reported in "2006 (4) CTC 803". Further, the possession of the land remains with the respondents/land owners and therefore, no right is available to the Housing Board; The neighboring Scheme viz., Kalapattu Project was already dropped in view of the Judgment reported in "2006 (4) CTC 803". Similarly, the present project could also be dropped as the project cannot be implemented making use of the lands which are scattered.

13.The learned Senior Counsel pointed out that in respect of survey number viz., S.F.No.533/1 which is also coming under the same scheme, a learned Single Judge of this Court directed to issue No objection Certificate in Writ Petition No.32101 of 2014 on 03.02.2015 reported in "2015 SCC Onlilne Mad 2251". The said order, on challenge before the Bench, was dismissed on 26.02.2016. When that is the position, the present Writ Appeal is unwarranted.

14.According to the learned Senior Counsel, possession has not been taken as on date. When possession has not been taken, it is hit by Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and the new Act alone would be applicable and compensation has to be paid under the new Act. Finally, he would urge that the approval was granted on 01.07.1998 only to make it appear as if the procedures had been complied with. The alleged compliance under Section 11 (1) of the Land Acquisition Act as well as passing of the award on the very same date would show that documents have been purposely fabricated for the purpose of the case. Hence, he seeks to dismiss the Writ Appeal.

15.Heard the parties and perused the records.

16.A scrutiny of the dates and events would denote that all the procedures have been complied with up to declaration under Section 6 of the Land Acquisition Act on 02.07.1996. Thereafter only, the cause of action for the writ petitioners/land owners seems to have arisen.

The main contention of the respondents 1 & 2/Writ petitioners before the learned Single Judge was that no prior draft approval was obtained as per Section 11 (1) of the Land Acquisition Act and the learned Single Judge allowed the Writ petition accepting the contentions of the land owners/private respondents that there is no sanction as per proviso to Section 11 (1) of the Land Acquisition Act by relying upon the Judgment in "N.D.Ramanujam and others Vs. The State of Tamil Nadu rep., by its Secretary to Government and others" reported in "2006 (1) CTC 51". Section 11 (1) of the Land Acquisition Act is usefully extracted herein;

"11.Enquiry and award by Collector.-  
[(1)] On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under Section 9 to the measurements made under Section 8, and into the value of the land [at the date of the publication of the notification under Section 4, sub-section (1)], and into the respective interests of the persons claiming the compensation and shall make an award under his hand of -

(i)the true area of the land;

(ii)the compensation which, in his opinion, should be allowed for the land; and

(iii)the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him:

[Provided that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorise in this behalf:

Provided further that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf]"

From the above it is clear that prior approval from the Government is compulsory.

17.In this case, there is no proof for prior approval. If prior approval order was available, nothing prevented the appellant as well as the Government to produce the approval before the learned Single Judge. If

that had been produced, the learned Single Judge, in all probability, would have dismissed the Writ petition or would have considered the other grounds raised by the respondents/land owners. Having failed to produce the documents before the learned Single Judge, the appellant which is only a beneficiary/requesting authority cannot maintain the Writ Appeal by filing the alleged draft approval obtained under Section 11 (1) of the Land Acquisition Act.

18. It is not known as to how the requisitioning body got the alleged approval, especially when the Government is in deep slumber even as on date i.e., ten years after the learned Single Judge's order, to challenge the said order. It would go to show that the Government is not interested in prosecuting the land acquisition proceedings which have been initiated for the purpose of providing individual houses to the general public.

19. When the Government is the Land Acquisition Authority and it has not taken any steps to challenge the impugned order, it is not open to the requisitioning body or beneficiary to file an appeal against the learned Single Judge's order. In this regard, this Court would rely upon the Division Bench Judgment of this Court in "Tamil Nadu Housing Board Vs. Sembanna Gounder and others" reported in "2006 (4) CTC 803" in which this Court held that the Writ Appeal filed by the requisitioning body is not maintainable at the hands of the requisitioning body viz., Tamil Nadu Housing Board and Paragraph No.2 of the Judgment is usefully extracted as follows:

"2. We gave our careful consideration to the submissions made by Mr. N. R. Chandran, learned Senior Counsel for respondents 2 to 4 on the maintainability of the Writ Appeal and the submission made by Mr. K. Chelladurai in meeting those objections. Under the Land Acquisition Act "Appropriate Government" is defined under Section 3 (ee) as hereunder:

"Appropriate Government" means, in relation to acquisition of land for the purposes of the Union, the Central Government, and, in relation to acquisition of land for any other purposes, the State Government.

Under Section 4 of the Land Acquisition Act the "Appropriate Government" - as defined under Section 3 (ee) of the Act alone can proceed to initiate the proceedings for acquiring the lands exercising their power of eminent domain. The Housing Board has no interest, what so

ever, at any stage of the proceedings initiated under the Land Acquisition Act, in the land intended to be acquired till such time possession of the acquired land is handed over to the Housing Board. Since admittedly in this case the declaration under Section 6 of the Land Acquisition Act had come to be quashed at the instance of the land owners, we have no doubt at all that it is only the Government and that Government alone, being the appropriate Government under the Land Acquisition Act, can challenge the order of the learned Single Judge impugned in the Writ Petition. We are very clear in our mind that the Housing Board cannot challenge the order of the learned Single Judge impugned in the Writ Petition. We are very clear in our mind that the Housing Board cannot challenge the order of the learned Single Judge, having regard to the stage at which the Writ Petition came to be allowed. Accordingly the objection regarding maintainability raised by learned Senior Counsel appearing for respondents 2 to 4 is sustained and the Appeal stands dismissed as not being maintainable at the hands of the Tamil Nadu Housing Board. Since we have dismissed the Writ Appeal only on the maintainability issue, we are not expressing any opinion on the other points involved. No costs."

20.The prior approval under Section 11 (1) of the Act granted by the District Revenue Officer dated 01.07.1998 has to be considered. A close scrutiny of the proceedings dated 01.07.1998 issued by the District Revenue Officer would reveal that the Special Tahsildar (Land Acquisition), Housing Scheme Unit - I, Coimbatore wrote to the District Revenue Officer on 01.07.1998, seeking his prior approval of the draft award under Section 11 (1) of the Land Acquisition Act. It seems on 01.07.1998 itself, the District Revenue Officer, Coimbatore gave approval under Section 11 (1) of the Land Acquisition Act and directed the Tahsildar to pronounce the award. Curiously, on the very same date itself i.e., 01.07.1998, it seems that the award was passed by the Tahsildar.

21.From the above, it is clear that three steps are alleged to have been complied with by the authorities in lightening speed on the same day viz., the Special Tahsildar wrote on 01.07.1998 to the District Revenue Officer and it was transmitted to the District Revenue Officer on the same day. Similarly, the District Revenue

Officer also seems to have been waiting for the requisition and immediately gave his attention to the said requisition and granted approval on 01.07.1998 itself. The said approval was said to have been transmitted on the very same date to the Special Tahsildar, Housing Scheme Unit - I. The Special Tahsildar also did wonder by passing the award on the very same date i.e, 01.07.1998.

22.It seems that the officials would not have acted in similar fashion in any other matter except this matter in the past and would not do in the future. The speed in which the entire requisition for prior draft approval was made, received, approved and transmitted and the award was passed makes this Court to suspect the above acts. It is impossible for a Government office to work in this speed. Therefore, this Court is justified in suspecting that those documents including prior approval of draft award produced before this Court should have been prepared to suit the convenience of the appellant only to get over the order passed by the learned Single Judge. If really those proceedings were available, either the Government or the appellant would have produced the same before the learned Single Judge. Nothing of that sort has been done by both of them. The contention made before this Court is that prior approval under Section 11(1) of the Act was allegedly obtained and award was passed on the very same day viz., 01.07.1998 is to avoid lapse of proceedings due to limitation of period of two years for making award from the date of publication of 6(1) declaration viz., 02.07.1996.

23.It is to be noted that the Writ Petition was filed on 12.08.1998 and it was allowed only after eleven years on 05.08.2009. No counter has been filed either by the Government or by the appellant. Non filing of the counter by both the parties even after lapse of ten years could be deemed that all the contentions made in the Writ Petition by the respondents/land owners are admitted by the appellants as well as the Government. Non filing of the counter affidavit by the Government as well as by the Housing Board before the learned Single Judge would mean that officials were negligent in performing their functions viz., to safeguard the interest of the Government and also to safeguard the project which was to be implemented for the general public to provide housing units.

24.A curious fact also emerges from the above facts which is proved by the award itself being passed on 01.07.1998 quantifying the compensation to be paid to the land owners whereas the compensation amount was deposited one year prior to the award on 13.05.1997. There are a number of cases filed and pending before this Court for

non-payment of compensation even after many years of passing of orders/decrees by Courts determining the compensation, inspite of the fact that the schemes/projects were executed already. When such is the position, it is not known as to how the appellant/Housing Board assumed and presumed the quantum of compensation which had been determined after one year on 01.07.1998 and deposited on 13.05.1997. This itself is a suspicious ground. Moreover, the amount has been deposited in the Tahsildar's account.

25.It is also stated by the learned Counsel for the respondents 1 and 2/land owners that the land is an agricultural land and cultivation is being made. Photographs have also been produced to show that the lands are agricultural lands. When such is the position, agricultural lands cannot be disturbed for housing purposes.

26.Possession remains with the respondents /land owners and that fact is also admitted by the appellant. When the possession remains with the land owners, as per Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, the entire proceedings should be deemed to have been lapsed and fresh proceedings have to be initiated under the New Act for determining the compensation under the New Act.

27.It is admitted by the Housing Board that as regards the property comprised in survey number viz., S.F.No.533/1, No Objection Certificate was directed to be issued by the Housing Board by the learned Single Judge in "V.P.Kalichamy Vs.Government of Tamil Nadu" reported in "2015 SCC Online Mad 2251" and the Writ appeal filed by the Housing Board was also admittedly dismissed on 26.02.2016. Even though, a review is said to have been filed before the learned Single Judge to review the order passed in the said case, it is doubtful as to how review is maintainable especially when the Writ appeal was already admittedly dismissed by the Division Bench of this Court upholding the learned Single Judge's order. In any event, no order has been obtained as on date. When a property covered under the very same scheme was directed to be deleted by issuance of No Objection Certificate, it is not possible for the appellant to implement the scheme in bits and pieces.

28.A perusal of the sketch produced before this Court would show that phases 1 to 5 were already implemented whereas the lands which are necessary for implementation of the scheme under phases 6 to 10 are scattered here and there. In respect of many properties, favourable orders have been obtained from this Court by

the land owners in respect of 34.93 Acres regarding which No Objection Certificate was directed to be issued and it attained finality. Similarly, in respect of 4.89 Acres also, the proceedings have attained finality in favour of the land owners.

29. In respect of 79.12 Acres, land owners obtained favourable orders before the Single Judge and Writ appeals have been filed and the same are pending. In respect of 67.52 Acres, up to the stage of Writ appeal, land owners obtained favourable orders and thereafter, review petitions are said to have been filed by the Housing Board. From the above it is clear that for about 40 acres, proceedings already attained finality in favour of land owners and for about 67.52 Acres, up to appeal stage, land owners succeeded and the proceedings attained finality.

30. When that is the position, without availability of the entire extent of the property, this Court doubts as to whether it is possible to implement phases 6 to 10 or not. Therefore, the Writ appeal has to be dismissed. The Land Acquisition proceedings are vitiated as held by the learned Single Judge.

31. Dr. R. Gouri, learned Counsel for the appellant would submit that after passing of the award, Writ petition is not maintainable and produced the following Judgments:-

(i). Executive Engineer Vs. Girija Janarthanan and others made in W.A.Nos.1241 and 1242 of 2005, dated 25.11.2008;

(ii). Swaika Properties (P) Ltd & Another Vs. State of Rajasthan & Others reported in (2008) 4 SCC 695;

(iii). S. Harshavardhan and another Vs. State of Tamil Nadu and others reported in 2005 (3) CTC 691;

(iv). State of Punjab and Others Vs. Sadhu Ram reported in (1997) 9 SCC 544; and

(v). Municipal Council, Ahmednagar & Another Vs. Shah Hyder Beig & Others reported in (2000) 2 SCC 48.

As already observed by this Court, when passing of the award on the very same date is doubtful after getting approval from the District Revenue Officer on 01.07.1998 itself, the question of going into the issue whether the Writ petition is maintainable or not after passing of the award would not arise.

32. As far as prior approval under Section 11 (1) of the Land Acquisition act is concerned, this Court doubts obtaining of prior approval under Section 11 (1) of the Act as it has been shown in a suspicious manner. Secondly, properties are scattered in bits and pieces and it is impossible for the Housing Board to implement the

phases 6 to 10. When the Government has not chosen to file an appeal, it is not open to the appellant/Housing Board/beneficiary to maintain the appeal as per the judgment reported in "2006 (4) CTC 803" in the case of "Tamil Nadu Housing Board rep.by its Managing Director Vs. Sembanna Gounder and others". Hence, the appeal at the instance of the Tamil Nadu Housing Board is not maintainable.

33.Even as per Section 114 of the Evidence Act, when the Government is the land acquisition party and is in possession of all the documents including prior approval obtained from District Revenue Officer under Section 11 (1) of the Act and when it has not chosen to file the same before the learned Single Judge and even before this Court by the Government, necessarily, adverse inference under Section 114 of the Evidence Act has to be drawn against the Government. The alleged approval and other consequential proceedings have been produced by the appellant/Housing Board only, whereas the Government neither filed counter nor filed those approvals.

34.In the result, the appeal fails and the same is dismissed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary,  
State of Tamil Nadu,  
Housing and Urban Development Department,  
Fort St.George, Chennai - 600 009.

2.The Special Tahsildar,  
(Land Acquisition),  
Coimbatore Housing Scheme Unit - I,  
Coimbatore.

+1cc to Mr.V.Govardhanan , Advocate SR.No. 8968

+1cc to M/s.R.Gowri , Advocate SR.No. 8504

W.A.No.1605 of 2017  
and

C.M.P.No.21006 of 2017