

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.1606 of 2017
and
C.M.P.No.21007 of 2017

Tamil Nadu Housing Board,
rep. by the Executive Engineer & Admin. Officer,
Coimbatore Housing Unit,
Tatabad, Sivanandha Colony,
Coimbatore 641 012. ... Appellant

Vs

1.S.Doraisamy
2.S.Rangasamy
3.Anthony Nadar
4.D.Lourdhu Shobana
5.Subadhara
6.C.Malathi
7.V.Santhi
8.Rajagopal
9.Nataraj
10.N.Swaminathan
11.G.Barnabas

12.The Government of Tamil Nadu,
represented by its Secretary,
Housing and Urban Development Department,
Fort St.George, Chennai - 600 009.

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

14.Union of India,
Rep. by its Secretary,
Ministry of Housing and Urban Affairs, New Delhi.

15.Union of India,
Rep. by its Secretary,
Ministry of Finance, New Delhi.

...Respondents

(R14 and R15 suo motu impleaded vide order

<https://hcservices.ecourts.gov.in/hcservices/>
dated 04.02.2020 made in W.A.No.1606 of 2017)

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent to set aside the order made in W.P.No.13523 of 1999 dated 19.11.2008 on the file of this Court.

Prayer in W.P.No.13523 of 1999:

Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorari to call for the records of the respondents relating to the impugned Section 4 (1) Notification issued in G.O.Ms.No.386, Housing and Urban Development dated 06.09.1996 of the first respondent, published in Tamil Daily "Pirpagal" dated 02.11.1996 and section 6 Declaration issued in G.O.Ms.No.379, Housing and Urban Development, dated 28.10.1997 Published in Tamil daily Makkal Kural dated 31.10.97 and quash the same insofar as they relate to the holding of the petitioners herein.

For Appellant : Dr.R.Gouri

For Respondents : Mr.B.Kumarasamy for R6.

Mr.A.Muthukumar for R8.

Mr.V.Anandhamoorthy, Additional
Government Pleader for R12 & R13.

J U D G M E N T

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

"LET US NOT HAVE INSATIABILITY
TO GRAB OTHER'S HOUSING AMENITY"

"HOUSING FOR ALL" is the mission.

"ADEQUATE HOUSING" is one of the most basic human needs and necessities. Housing should be available to everyone in the world.

"ADEQUATE HOUSING" is defined within the Global Strategy as "Adequate privacy, Adequate space, Adequate security, Adequate lighting and ventilation, Adequate basic infrastructure and Adequate location with regard to work and basic facilities - all at a reasonable cost."

2."Homelessness" is a major problem in India. UNESCO defines homelessness as follows:

"When we are talking about housing, we are not just talking about four walls and a roof. The right to adequate housing is about security of tenure, affordability, access to services and cultural adequacy. It is about protection from forced eviction and displacement, fighting homelessness,

poverty and exclusion".

India defines "Homelessness" as those who do not live in Census houses, but rather stay on pavements, roadsides, railway platforms, staircases, temples, streets, in pipes, or other open spaces. There are 1.77 million homeless people in India. according to the 2011 census, consisting of single men, women, mothers, the elderly, and the disabled. It is stated that there are 18 million street children in India, the largest number of any country in the world, with 11 million being urban.

3.As per 2011 census, there is a shortage of 18.78 million houses in the country. Total number of houses has increased from 52.06 million to 78.48 million. About 78 million people in India live in slums and tenements, according to "Homeless Statistics at Homeless World Cup". 17% of the world's slum dwellers reside in India. Homeless are exposed to extreme weather in Summer and Winter. Pavement dwellers in New Delhi are the best examples. Therefore, the Government should increase the shelters for Homeless people.

4.According to a longitudinal analysis of India's housing pattern undertaken by the Economic Survey 2017-18, 28% of India's city dwellers live in a rented house, which is much less than 54% in the year 1961. It is also found that living in rented premises has declined and there has been a dramatic rise in the number of houses lying vacant in cities across the country.

5.Right to housing is protected by the following universal treaties:-

- (a)Article 25 of the Universal Declaration of Human Rights.
- (b)Article 11 of the International Covenant on Economic, Social and Cultural Rights.
- (c)Article 27 of the United Nations Convention on the Rights of the Child.
- (d)Article 5 of the International Convention on the Elimination of All forms of Racial Discrimination.
- (e)Article 14 of the Convention on the Elimination of All forms of Discrimination against Women.
- (f)Article XI(II) of the American Declaration on Rights and Duties of Man.

6.The Central Government in the year 2015 launched a scheme to tackle homelessness. The Government promised that every Indian will have a home to live in by 2022 with 10 Million homes ready by 2019 in rural areas and 10 Million homes ready by 2022 in Urban areas. In July 2018, the Government announced that 5.4 Million out of scheme target of 10 Million have been approved for building in urban areas. The official data from Housing and Rural Development Ministry shows that by March 2019, 8 Million homes had been approved.

7.It is reported in the media that data analysis of tax returns shows that 1.14 Crore people owned one house across India and only 6537 Indians have owned more than one self occupied house in India during the assessment year 2017-18. It only shows that people are not straight forward and they are not disclosing the number of houses they possess and they suppress the facts to avoid tax liability.

8.As per the report made by RICS and KNIGHT FRANK, India is likely to need an additional 25 Million affordable housing units by 2030 to cater to the growing Urban population. By the year 2030, more than 40% of India's population will live in urban India as against current 34% and this is likely to create a demand for 25 million additional housing units, according to a report titled "Brick by Brick - Moving towards 'Housing for All' by RICS (Royal Institution of Chartered Surveyors) in association with international property consultant Knight Frank.

9.Housing is the basic need and many people are without shelter. Here is a case in which the attempts made by the Government to acquire lands for the purpose of allotting the same to the public for housing have been made futile because of the negligence on the part of the officials in complying with the provisions of land acquisition to be followed at the time of acquisition.

10.The appeal has been filed by the Requisition body viz., the Housing Board against the order of the learned Single Judge quashing the land acquisition proceedings for non-compliance of Sections 4(1) and 6 of the Land Acquisition Act. The acquisition proceedings have been initiated by the State of Tamil Nadu for providing housing units to general public by issuance of Notification under Section 4 (1) of the Land Acquisition Act dated 06.09.1996 in respect of the properties covered under survey numbers viz., S.F.No.537/1, 539/3A, 539/3B, 539/3C, 539/3E, 539/3F totaling 369.13 Acres in 'Thudiyalur & Vellakinar Neighbourhood Scheme'. Various properties covered in various survey numbers are included.

11.The properties covered under the above survey numbers are owned by the private respondents herein. They challenged the said notification under Section 4 (1) of the Act on various grounds by filing a Writ petition in W.P.No.13523 of 1999 and the learned Judge of the Court by order dated 19.11.2008, allowed the Writ petition on the ground that the notification under Section 4 (1) of the Act issued in G.O.M.S.No.386 Housing and Urban Development Department dated 06.09.1996 was published in "Pirpagal" dated 02.10.1996 which does not have wide circulation in the area concerned and Section 6 of the declaration in G.O.Ms.No.379, Housing Urban Development Department dated 28.10.1997 published in Tamil Dailies viz., 'Makkal Kural' on 31.10.1997 on the ground that the newspaper called 'Pirpagal' by relying upon the Judgment

of this Court made in the case of "Arumugha Mudaliar Vs. The State of Tamil Nadu and another" reported in "(2002) 1 MLJ 459". The said order is being challenged before this Court by the Housing Board. The appeal has been filed three years after the learned Single Judge passed the order on 19.11.2008.

12. Heard Dr.R.Gouri, learned Counsel for the appellant and Mr.B.Kumarasamy, learned Counsel for R6, Mr.A.Muthukumar, learned Counsel for R8 and Mr.V.Anandhamoorthy, learned Additional Government Pleader for R12 & R13.

13. Dr.R.Gouri, learned Counsel for the appellant would submit that publication had been effected in "Makkal kural" as well as "Pirpagal", as the publication has to be effected in two leading widely circulated Newspapers in that area. Hence, the provisions of Land Acquisition Act had been complied with.

14. Mr.B.Kumarasamy, learned Counsel appearing for the private respondent/ R6 and Mr.A.Muthukumar learned Counsel appearing for the private respondent/ R8 would submit that the newspaper "Pirpagal" is not having wide circulation in that area and no notice has been given to the land owners at any point of time. Even before passing of the award, Writ petitions have been filed and stay was also obtained. No compensation amount has been deposited by the authorities.

15. Though it has been contended by the appellants that other procedures have been followed, the learned Single Judge is right in quashing the proceedings for non compliance of the provisions of the Act i.e., non publication of the notification under Section 4 (1) of the Act and the declaration under Section 6 of the Act in two Newspapers which are widely circulated in that area. Therefore, the appeal has to be dismissed.

16. The law regarding publication of Section 4(1) notification in newspapers has been settled by the Hon'ble Supreme Court in the decision reported in (2011) 1 Supreme Court Cases 330, Special Deputy Collector, Land Acquisition CMDA v. J.Sivaprakasam and Others, wherein it has been held that failure to publish in two daily newspapers which have no wide circulation in that locality make the notification under Section 4(1) of the Act and the consequential acquisition proceedings vitiated. Paragraph 27 of the said judgment is usefully extracted hereunder:-

"27.If there is failure to publish in two daily newspapers or if the publication is in two newspapers that have no circulation at all in the locality, without anything more, the notification under Section 4 (1) of the Act and the consequential acquisition proceedings will be vitiated, on the ground of non-compliance with an essential condition of Section 4(1) of the Act."

17.The newspaper "Pirpagal" is one of the newspapers in which Section 4(1) notification was published. As far as the said newspaper "Pirpagal" is concerned, this Court in the Judgment reported in "(2002) 1 MLJ 459, Arumugha Mudaliar v. State of Tamil Nadu" had already held that "Pirpagal" is not a widely circulated newspaper. Therefore, the notification issued under Section 4(1) and declaration made under Section 6 of the Land Acquisition Act are liable to be quashed. Moreover, the Government has not filed any counter stating that the newspaper "Pirpagal" is a widely circulated newspaper in that area by giving the details of circulation. Therefore, on this ground alone the writ appeal is to be dismissed.

18.Moreover, in respect of 40 Acres covered under the very same scheme, proceedings have attained finality in favour of the land owners. In respect of 67.52 Acres, orders have been passed by this Court in favour of the land owners and only review petitions are pending before this Court. The sketch produced by the appellant before this Court would also denote that scheme was already implemented in respect of phases 1 to 5. In respect of phases 6 to 10, the scheme cannot be implemented as the acquired lands are scattered in bits and pieces and various land owners had already obtained orders in their favour and the proceedings already attained finality. It is impossible for the appellant to implement phases 6 to 10 of the scheme making use of the small extent of lands which are found to be located at various places. The available lands are not located continuously making it difficult to execute the balance phases 6 to 10.

19.That apart, a Division Bench of this Court in the decision reported in 2006 (4) CTC 83, Tamil Nadu Housing Board v. Subanna Gounder and others had held that Writ Appeal against the order of quashing Section 6 declaration is not maintainable at the instance of Requisitioning body, viz., Tamil Nadu Housing Board. Therefore, the present Writ Appeal preferred by the Tamil Nadu Housing Board is not maintainable and the Writ Appeal is to be dismissed. Hence, the Writ Appeal is dismissed confirming the order of the learned Single Judge quashing the land acquisition proceedings on the following grounds:-

- (a).Non-publication of Section 4(1) notification and Section 6 declaration in widely circulated newspaper
- (b).On the question of maintainability of the Writ Appeal at the instance of TNHB which is the requisitioning body, when the Government has not filed any appeal.

20.In fine, the Writ Appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

taking earnest efforts to provide houses to the general public and economically weaker sections by way of land acquisition proceedings. However, the very purpose is lost as the officials fail to acquire the lands by following the provisions of Land Acquisition Act.

22.The land acquisition Act is not a new Act and various acquisition proceedings are being made by the Government of various public purposes, including allotting/providing housing units/housing plots for the public especially for the Scheduled Caste people as they are incapable of purchasing houses/plots for their own use. To alleviate the housing problems for the poor people, many land acquisition proceedings are made, however for various administrative reasons for non-compliance of the Act, the Courts are striking down/quashing the acquisition proceedings, even though they are initiated for laudable purposes. The officials should be sensitized about the strict provisions of the land acquisition Act, presently the New Act. Only then, the officials would take appropriate action within the time period stipulated under the Act, in compliance with the provisions of the Act.

23.It is brought to the notice of this Court that the land acquisition Tahsildars are not full time officials and they are deputed from other departments. Even after deputation, it is stated that the officials are facing a lot of problems as they are not paid their regular salary and that apart, the supporting staff and other infrastructures are not provided to them. Even Travelling allowance for the officials for bringing the voluminous files to the Courts are not paid to them and the officials are forced to spend the money from their own pocket. In the absence of infrastructures and supporting staff, the provisions of the land acquisition Act could not be complied with by the inadequate strength of the officials. Therefore, the Government should ensure that for land acquisition proceedings, a separate wing has to be created so that there will not be any lacunae or non-compliance of the provisions of the Act, while acquiring land for public purposes.

24.In the instant case, the land has been acquired for the purpose of providing housing units to the general public by issuance of Section 4(1) notification on 06.09.1996. The learned Single Judge struck down the notification for non-compliance of provisions of the Act viz., non-publishing of Section 4(1) and Section 6 notification in widely circulated newspapers in the locality. That apart, the Government has not filed counter defending the land acquisition proceedings in the writ petition which was pending for about 10 years. Hence, there is default on the part of the Government to defend their case. That apart, when the land acquisition proceedings were quashed by the learned Single Judge, surprisingly the Government had not preferred appeal against the said order which would not only prejudice the interest of the Government

but also the beneficiaries of the land acquisition proceedings namely the general public. Only the requisitioning body viz., Tamil Nadu Housing Board alone had filed the above appeal which is not maintainable as per the Division Bench judgment of this Court reported in 2006 (4) CTC 83.

25. Sufferer is only the general public. India's population has already exceeded 130 crores and stands second only next to China. The basic housing amenities should be available to all the citizens. India is being ruled by democratically elected Government which is only for the people, of the people and by the people, as observed by Abraham Lincoln. Therefore, the Government should take necessary steps to provide basic amenities like housing to all its citizens.

26. Lakhs and lakhs of people are living on platforms, roads, cement pipes, slums, under the trees and on banks of water bodies without proper shelter and basic amenities and safety. It is true that the Central Government has presently taken a policy decision to provide housing unit to every family. It should be achieved at the earliest. It could become fruitful when restrictions are put on persons who hold more than one housing units.

27. Every individual has the right to purchase/own more than one house and as on date there is no restriction to own more than one house. However, such individuals should think of rights of others to have a house and avoid grabbing houses which should be available to others. Right to own property/properties by citizens is a constitutional right under Article 300A. Right to property which was a fundamental right under Article 19(1)(f) of the constitution is taken away by deleting (f) from Article 19(1) and placed it as Article 300A by virtue of 44th amendment. Hence, the Government has got power to put restrictions to buy properties till "Housing for all" is achieved". If more money is available with him/her, he/she can invest in bank and the money should not be used to purchase more than one house which would eventually result in denying of housing rights to the needy people.

28. Though single housing unit is enough for a family, considering the future of the children, a family can be allowed to have an additional housing unit on payment of additional charges and the third unit should be completely prohibited. By this restrictions, not only the price of housing units will come down but the persons who do not have sufficient means to purchase housing units will be in a position to purchase the property. It will go in a long way preventing the real estate people from converting the agricultural land into commercial properties or housing properties and thereby the agricultural lands can also be saved.

29.Further, if it is found in the survey that a family possesses more than two housing properties, the source of income for purchasing those properties should also be enquired into and investigated by the authorities.

30.That apart, the above restrictions would definitely reduce mindless exploitation of natural resources like sand, water, trees etc., which are all nowadays exploited illegally. Only if these natural resources are saved, they would be available for our posterity.

31.In the above circumstances, this Court would like to go into the larger issue of providing housing unit to all families in India, as this case relates to acquisition of lands for the purpose of providing housing units to the general public. Hence, this Court suo motu impleads the following parties as respondents in this writ appeal.

1. Union of India, Rep. by its Secretary, Ministry of Housing and Urban Affairs, New Delhi.
2. Union of India, Rep. by its Secretary, Ministry of Finance, New Delhi.

Mr.G.Karthikeyan, learned Assistant Solicitor General of India takes notice on behalf of the newly impleaded respondents 14 & 15.

32.The respondents are directed to answer the following queries:-

1. How many families have basic amenity of housing in India as well as in Tamil Nadu?
2. What is the population and housing ratio in our country as well as in Tamil Nadu as well as in Tamil Nadu?
3. When "Housing for All" mission of the Central Government to provide a house to each family in the country would be achieved?
4. Whether the Central and State Governments have got special schemes for the marginalized and economically weaker sections as well as SC & ST people?
5. How many families possess more than one house in our country as well as in Tamil Nadu?
6. Is it not a fact that allowing a single family to acquire more housing unit/flat/plot would result in the escalation in price of the housing units in the real estate sector which would eventually deny the needy people from purchasing the property?
7. Whether all the details regarding possession of more than one housing unit is available with the Government?
8. If not why not the Central and the State Governments take a survey to find out the details regarding the number of housing units possessed by each individual or family?
9. Why not the Governments restrict the families/individuals from purchasing/possessing more than one housing unit/flat/plot by defining what is meant by single housing unit till "Housing for all" is achieved?

10. Why not the Government charge 100% more or extra stamp duty to discourage buying more than one house/flat by a family/individual while purchasing second housing unit/flat at the registration level itself?
11. Why not the Government conditionally allow the families to purchase more than one house/flat/plot provided the said family pays 100% extra statutory dues like property tax, Electricity charges, Water and Sewerage charges on the second property?
12. Why not the Government initially prohibit the purchase of more than one housing unit in urban area viz., Corporation/Municipality/Town Panchayat limits?
13. Why not the financial institutions be prohibited from giving loan for purchase of more than one housing unit?
14. Why not the Government prohibit the NRI's who are permanently settled by getting Citizenship and Permanent Resident status in various countries from purchasing housing units/plots/flats in an effort to bring down the cost of housing unit/plots in India?
15. Why not the Government prohibit sale of houses/flats/housing plots within a short time, terming them as "speculative sale" within 3 or 5 years?

33. In fine, the Writ Appeal is dismissed without costs with a direction to file reply to the above queries and for further orders, call the matter on 06.03.2020.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

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

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

3. Union of India,
Represented by its Secretary,
Ministry of Housing and Urban Affairs,
New Delhi.

4.Union of India,
Represented by its Secretary,
Ministry of Finance,
New Delhi.

+1cc to M/s.R.Gowri , Advocate SR.No. 8505

+1cc to Mr.B.Kumarasamy , Advocate SR.No. 8807

W.A.No.1606 of 2017
and

C.M.P.No.21007 of 2017

A.SK(05/03/2020)



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