



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.07.2021

DATE OF DECISION : 13.09.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

AND

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.A.NOS.2200 & 2201 OF 2011

Arcot Ranipet Electricity Workers
Housing and Welfare Society
rep by its Secretary
D.Natarajan
Arcot

.. Appellant in W.A.No.2200 of 2011

Arcot Teachers Housing and
Welfare Society rep by its Secretary
E.Sadagopan, Ranipet
Arcot

.. Appellant in W.A.No.2201 of 2011

-vs-

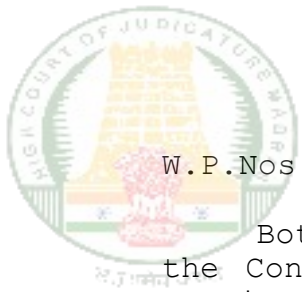
1. The State of Tamil Nadu
rep by Secretary to Government
Housing and Urban
Development Department
Fort St.George, Chennai 600 009

2. Special Tahsildar (LA)
7B1, R.D.O's Compound TNHB
Ranipet, Vellore

3. The Tamil Nadu Housing Board
rep by its Chairperson
TNHB Complex, Nandanam
Chennai 600 035

.. Respondents in both the Writ Appeals

Appeals filed under Clause 15 of the Letters Patent against
the common order dated 08.06.2010 made in W.P.Nos.27732 & 27733
of 2008.



W.P.Nos.27732 & 27733 of 2008:-

Both Writ Petitions are preferred under Article of 226 of the Constitution of India, praying for the issue of a Writ of certiorarified mandamus to quash the order passed by the 1st respondent dated 25.02.2008 culminating in Letter No.6109/LA2 (1)/07-9 or any other order or direction more specifically in the nature of a writ directing the respondents to reconvey the petitioners land in survey No.196 (part) Arcot village, Arcot Taluk without any delay and demand and to pay compensation at the prevailing market rate prevailing today along with solatium interest on solatium additional compensation and such other charges as may be permissible under the Land Acquisition Act 1891 in the event of non allotment of plots to the members of the petitioners association without any demand for any fees/charges in lieu of the petitioners lands.

For Appellants :: Mr.T.Mohan

For Respondents :: Mr.T.Arunkumar
Government Advocate
for R1 & R2
Dr.R.Gowri for R3

JUDGMENT

T.RAJA, J.

These two writ appeals have been filed by Arcot Ranipet Electricity Workers Housing and Welfare Society represented by its Secretary and the Arcot Teachers Housing and Welfare Society represented by its Secretary, challenging the correctness of the impugned common order dated 08.06.2010 passed in Writ Petition Nos.27732 & 27733 of 2008, in and by which the learned single Judge, dismissing the writ petitions, refused the prayer of the appellants/writ petitioners for re-conveyance of the land in Survey No.196 (part), Arcot Village, Arcot Taluk under Section 48-B of the Land Acquisition Act holding that Section 48-B is an exception to the rule and such a provision has to be strictly construed and strict compliance shall be made.

2. Mr.T.Mohan, learned counsel appearing for the appellants submitted that both the Welfare Societies of the appellants were started for the specific purpose of satisfying the needs of housing to its members, who were electricity workers and teachers. Therefore the members of the Arcot Ranipet Electricity Workers Housing and Welfare Society purchased 5.27 acres of land in Survey No.196 (part) having an extent of 0.63 acres in Survey No.191/2 and an extent of 0.23 acres in Survey No.198 at Arcot Town North Arcot District and applied for approval of layout to



WEB COPY

the Town Planning Authorities paying the necessary charges for approval. Similarly, the members of the Arcot Teachers Housing and Welfare Society also purchased 1.33 acres of land in Survey No.196 (part) at Arcot Town North Arcot District and applied for approval of layout to the Town Planning Authorities paying the necessary charges for approval. When the approval for the layout was pending, a proposal was made by the Government in 1984 for acquisition of their land by the Housing Board. Therefore, they made representations to the Government to delete their land from the proposal of acquisition for meeting out the housing needs of its members. As there was no response, they filed Writ Petition Nos.6909 and 6904 of 1986 and during the pendency of these writ petitions, after a delay of over 10 long years, the proposal submitted for acquisition was approved in G.O.Ms.No.702 dated 31.8.94. Therefore, at the time of final hearing of the writ petitions, a representation was made to the Court by the Government that the Government itself would allot the plots to the members of the appellants' societies under Bulk Allotment System. Hence the writ petitions were dismissed on 12.4.96. As against that, Writ Appeal Nos.17 & 18 of 1998 were filed by the appellants. When the appeals came up for disposal, the Government made the same representation. Therefore, this Court, taking the representation into consideration, disposed of the appeals on 10.9.2001 with an observation that after completion of the acquisition proceedings and at the time of allotment, first preference shall be given to the members of the appellants' societies. When the appellants were hoping that the plots would be given to their members to put up construction, there was no sign of any response. Moreover, the respondents have not even paid any compensation for the land acquired for more than 24 years. Thereafter, when Section 5(1) notice was issued, objections were given. Again there was no communication from the Government. Therefore, the appellants were making frequent visits to the various offices of the Government and the Housing Board. Finding no response, again representations were given to the Housing Board stating that as there was no compensation paid to them, they should not be asked to pay the cost of the land for allotment under the bulk allotment scheme at the present value. It was also stated that the plots developed in the neighbouring area were quoted at Rs.2.51 lakhs per ground, whereas the compensation paid to the members of the appellants' societies was less than Rs.1000/-. Therefore, representations were given that they need not be insisted to pay the cost of the land for allotment, instead of payment of compensation. It is at this juncture, it was pointed out that for the neighbouring land, this Court in A.S.Nos.785 to 788 of 1995 etc., by judgment dated 18.9.2003, had fixed Rs.1,000/- per cent as on 26.9.84 with usual solatium, interest and additional compensation as permissible under the Act, that may be paid. Again there was no response.



3. In the meanwhile, the Government had announced a policy to give back the lands acquired for the Housing Board, therefore, representations were made to the Government for return of the land under the special scheme. But the appellants were informed that possession of their land was delivered to the Housing Board by the Government on 18.1.2001. It was also represented that if the possession is delivered on 18.1.2001, then it would amount to contempt of Court for violation of the interim order passed by the Hon'ble Division Bench granting stay of delivery of possession during the pendency of the writ petitions and also the writ appeals. Therefore, W.A.M.P.Nos.3181 & 3183 of 2004 were filed seeking a direction to the respondents to allot plots under the bulk allotment system to the members of the appellants' societies within a reasonable time to be fixed by this Court and that the cost of the land should not be collected from them and only the development charges should be collected, failing which they should return the land to the appellants herein. But this Court closed the petitions by order dated 24.9.2004 observing that it was for the appellants to take appropriate action against the Housing Board. Again Writ Petition No.35196 of 2004 was filed seeking for a mandamus to allot plots to all the members of the appellants' societies under the bulk allotment system with a direction to the respondents to re-convey the land to the appellants and also for a direction to the respondents to pay compensation at the prevailing market rate along with solatium, interest on solatium, additional compensation and such other charges as may be permissible under the Land Acquisition Act in the event of not allotting the plots to the appellants. The said writ petition was disposed of, by order dated 2.12.2004, stating that the appellants' associations may file necessary application under Section 48-B of the Land Acquisition Act before the first respondent within a period of two weeks from the date of receipt of copy of the order with a further direction to the first respondent to consider and pass orders on the said representation on merits and in accordance with law within a period of 12 weeks thereafter. Therefore, when representation were made under Section 48-B of the Act requesting the first respondent to re-convey the land, finally, the first respondent rejected the appellants' request for reconveyance under Section 48-B of the Act without assigning any valid reason, except saying that the land is essentially required for formation of the housing scheme. Hence the appellants filed Writ Petition Nos.21247 & 21248 of 2006 seeking for issuance of writ of certiorarified mandamus calling for the records of the respondent in the order dated 27.9.2005, to quash the same with a consequential direction to re-convey the land to the appellants or in the alternative to allot plots to all the members of the appellants' societies under the bulk allotment system in Survey No.196 (part), Arcot Village, Arcot Taluk



WEB COPY

without any delay or pay compensation at the prevailing market rate as on date along with solatium, additional compensation and such other charges as may be permissible under the Land Acquisition Act. This Court, by order dated 13.8.2007, disposed of the writ petitions with a direction to the respondents to consider and pass orders afresh on the applications for reconveyance on merit and in accordance with law within a period of 18 weeks. Once again the first respondent rejected the request for reconveyance by order dated 25.2.2008 stating that the land has been acquired after completing the land acquisition formalities and the entire award amount was also paid by the third respondent to the Land Acquisition Officer towards disbursement of the award amount to the land owners and that the question of non-receipt of the award amount did not arise. It was also stated that the layout has been approved by the Chief Engineer, Tamil Nadu Housing Board and the same has been forwarded to the Commissioner, Arcot Municipality for onward transmission to the Director of Town and Country Planning, Chennai for final approval, as the lands are essentially required for implementing the housing scheme. Therefore, the appellants filed the writ petitions.

4. A counter affidavit was filed by the respondents taking a stand that the lands are essentially required for forming the comprehensive neighbourhood scheme; that the award was passed in Award No.2 of 1988 dated 29.6.88; that due to the order of stay of dispossession, lands were not handed over to the Tamil Nadu Housing Board, however, after the disposal of the writ petitions, the possession of 8.48 acres had been handed over to the Tamil Nadu Housing Board on 18.1.2001; that the construction activity in the above phase-III Arcot Scheme would be taken up shortly after approval of layout by the Director of Town and Country Planning, Chennai and therefore, the request for allotment could not be complied with, however, the individuals can apply and get the allotment.

5. A detailed reply was also filed by the appellants stating that when there was an order dated 18.1.2001 to consider the request of the appellants for re-conveyance under Section 48-B, the stand of the respondents that the land in question is to be utilized for Arcot Neighbourhood Phase-III scheme would clearly amount to contempt of Court, as there was a stay of delivery of possession during the pendency of the writ petitions.

6. The learned single Judge dismissed the writ petitions holding that Section 48-B is an exception to this rule and such a provision has to be strictly construed and complied with its terms insisted upon. Aggrieved thereby, the present writ appeals have been filed.



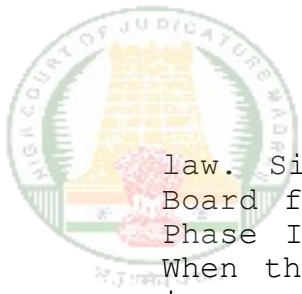
7. Mr.T.Mohan, learned counsel appearing for the appellants submitted that the order passed by the first respondent rejecting the request of the appellants for reconveyance of the land under Section 48-B of the Land Acquisition Act is arbitrary and untenable, inasmuch as the order has been passed without any valid reason, except saying that the lands are essentially required by the third respondent for implementing the comprehensive housing scheme, against the spirit of the order dated 13.8.2007 passed in Writ Petition Nos.21247 & 21248 of 2006, wherein this Court directed the first respondent to pass orders on merits and in accordance with law. Hence the failure on the part of the respondents to re-convey the land of the appellants without assigning any valid reason is an attempt to take away the legitimate claim of the appellants. When the respondents have not taken any efforts to re-convey the land or alternatively develop the land acquired by them for more than 24 years, such an action violates the right to shelter enshrined under Articles 19 & 21 of the Constitution of India; that the appellants have waited for more than 24 years without any appropriate reply or compensation or reconveyance, they cannot be put to face prejudice. Now the members of the appellants' societies are left with no plot or compensation for the land acquired. When the land has not been utilized for more than two decades, the purpose for which the land was acquired has become meaningless and defeated, therefore, the order passed by the learned single Judge is liable to be interfered with.

8. Mr.T.Arunkumar, learned Government Advocate appearing for the respondents 1 & 2 submitted that the appellants' societies, having filed series of cases unsuccessfully, had stalled the development project under the public scheme. When the land acquisition proceedings have attained finality in the earlier round of litigation and consequently the appellants' societies having been found in the earlier litigation that they have no right of reconveyance of lands to their members, these appeals are neither maintainable in law nor on facts.

9. Learned standing counsel appearing for the third respondent also submitted that when the Tamil Nadu Housing Board had acquired an extent of 67.07 acres including 8.48 acres in Ward A, Block 14, T.S.No.2/5, 3/1 etc., of Arcot Town and Taluk under Award No.2 of 1988 dated 29.6.88, Section 4(1) notification was issued in G.O.Ms.No.702 dated 31.8.84 and Section 5A enquiry was conducted on 7.8.85, after the objections were received by the Revenue Divisional Officer, Ranipet on 22.7.85 and 24.7.85, they have informed that the land to an extent of 8.48 acres were purchased for the formation of housing society during the year 1983 and as such requested to exclude the land. When the objections were overruled by the acquisition body by informing them that these lands are



essentially required for forming the comprehensive neighbourhood scheme, challenging the acquisition proceedings, they filed Writ Petition Nos.6904 & 6906 of 1986. However, an award was passed in Award No.2 of 1988 dated 29.6.88 and a notice under Section 12(2) to receive the award amount was also served on 9.5.88 and 11.5.88. Due to dispossession of stay, in the meantime, excluding the disputed land to an extent of 8.48 acres, the Board executed Arcot Phase II NH scheme for 69.39 acres for 1082 residential plots and all of them were completed and handed over to the local body on 24.2.2004. Since the appellants' societies filed Writ Petition Nos.6904 & 6906 of 1986 which were dismissed on 12.4.96 and the Writ Appeal Nos.17 & 18 of 1998 were also dismissed on 10.9.2001, even after the disposal of the above writ appeals, the appellants made representations dated 11.12.2005 for allotment of the plots by giving first preference as per the direction given by the High Court. Based on the above representation, reply has been given to them stating that their request would be considered at the time of allotment of the plots after development of 8.48 acres. In the meanwhile, they again filed W.A.M.P.Nos.3182 & 3183 of 2004 in W.A.Nos.17 & 18 of 1998 to clarify the order dated 10.9.2001 and to direct the respondents to allot the plots under the bulk allotment system to the members of the appellants' societies within a reasonable time to be fixed by this Court and that the cost of the land should not be collected from them and only to collect the development charges or else to return the land to the appellants, and it was also stated that the individuals can apply and get the allotment, as there is no provision for bulk allotment. Again when this Court, in its order dated 24.9.2004 in W.A.M.P.Nos.3182 & 3183 of 2004, observed that the Government would not allot the land, as the property was acquired on behalf of the Housing Board, after the dismissal of the petitions, again they filed Writ Petition Nos.35195 & 35196 of 2004 before this Court to allot plots to all the members of the appellants' societies under the bulk allotment system in Survey Nos.191/2, 196 and 198 of Arcot Village, Arcot Taluk without any delay with a direction to the respondents to re-convey the land to them or in the alternative, to direct the respondents to pay compensation at the prevailing market rate along with solatium and such other charges as may be permissible under the Act. These writ petitions were also dismissed on 2.12.2004 with liberty to the respondents to file necessary application under Section 48-B. Accordingly, when a representation was made before the Government on 13.12.2004, the same was rejected by the Government in the order dated 27.9.2005 stating that the lands are required for implementing the housing project. Aggrieved thereby, they filed Writ Petition Nos.21247 & 21248 of 2006. Once again this Court by order dated 13.8.2007 directed the first respondent to consider and pass orders afresh on the application for reconveyance on merits and in accordance with



law. Since the lands are essentially required by the Housing Board for implementation of the housing scheme under the Arcot Phase III scheme, their request for reconveyance was rejected. When the Housing Board has rightly informed them that the land in question is required for implementation of the housing scheme under Arcot Phase III scheme, it is not open to them to come to this Court, accordingly, urged this Court to dismiss the writ appeals.

10. Heard learned counsel appearing for the parties.

11. The members of the Arcot Ranipet Electricity Workers Housing and Welfare Society, who are working in the electricity department, jointly purchased 5.27 acres of land in Survey No.196 (part) having an extent of 0.63 acres in Survey No.191/2 and an extent of 0.23 acres in Survey No.198 in Arcot Town, North Arcot District and applied for approval of layout to the Town Planning Authorities by paying the necessary charges for approval. Similarly, the members of the Arcot Teachers Housing and Welfare Society also jointly purchased 1.33 acres of land in Survey No.196 (part) at Arcot Town, North Arcot District and applied for approval of layout to the Town Planning Authorities by paying the necessary charges for approval. During the pendency of the applications for approval of the layout, the Government made a proposal for acquisition of the land in question by the Housing Board. Hence, representations were made to delete their land from the proposal of acquisition. As there was no response, they filed Writ Petition Nos.6909 and 6904 of 1986. Since these writ petitions were pending, after a delay of over 10 long years, the proposal submitted for acquisition was approved in G.O.Ms.No.702 dated 31.8.84. But the said writ petitions were dismissed by order dated 12.4.96. Therefore, Writ Appeal Nos.17 & 18 of 1998 were filed and during the pendency of these writ appeals also, representation were made to allot the plots to the members of the appellants' societies under the bulk allotment system. When the same representation was made by the Government, writ appeals were disposed of on 10.9.2001 with an observation that after completion of the acquisition proceedings and at the time of allotment, first preference should be given to the members of the appellants' societies. It was also the claim of the appellants that since 24 years have gone by and in the meanwhile, the price of the land also increased, again representations were given to the respondents stating that the plots developed in the neighbouring area are quoted at Rs.2.51 lakhs per ground, whereas the compensation payable to the members of the appellants' societies was less than Rs.1000/-, they requested the Housing Board that inasmuch as no compensation was paid, they should not be asked to pay the cost for the land under the bulk allotment system. But the Housing Board, in their reply dated 30.12.2003, stated that the bulk



allotment would be considered as and when the land is developed and sold without committing any time frame. However, since possession of the land was delivered to the Housing Board by the Government on 18.1.2001 and the delay of delivery of possession was occasioned due to the order of stay of delivery of possession during the pendency of the matters till 24.9.2004, the learned single Judge came to the conclusion that the appellants' societies have filed series of cases and failed to challenge the acquisition proceedings, because they attempted to fall back on the enabling provision under Section 48-B of the Land Acquisition Act, and the issues raised are no longer res integra, as it has been answered by the Supreme Court in more than one judgment, more particularly, in Tamil Nadu Housing Board v. Keeravani Ammal and others, 2007 (2) CTC 447, holding that Section 48-B introduced into the Act in the State of Tamil Nadu is an exception to this rule and such a provision has to be strictly construed with strict compliance. Again referring to another decision of the Apex Court in Tamil Nadu Housing Board v. L.Chandrasekaran and others, Manu/SC/0069/2010 holding that in any case, the Government cannot be compelled to re-convey the land to the original owner if the same can be utilized for any public purpose other than the one for which it was acquired, dismissed the writ petitions. It is relevant to extract the relevant portion of the said judgment, in paragraph-19, as follows:-

"19. Before concluding, we may notice the judgment of this Court in Tamil Nadu Housing Board v. Keeravani Ammal (supra). The question considered in that case was whether the Division Bench of the High Court could direct release of the acquired land which had been transferred to the appellant-Board. While setting aside the impugned order, this Court observed:

"It is clearly pleaded by the State and the Tamil Nadu Housing Board that the scheme had not been suspended or abandoned and that the lands acquired are very much needed for the implementation of the scheme and the steps in that regard have already been taken. In the light of this position, it is not open to the Court to assume that the project has been abandoned merely because another piece of land in the adjacent village had been released from



WEB COPY

acquisition in the light of orders of the Court. It could not be assumed that the whole of the project had been abandoned or has become unworkable. It depends upon the purpose for which the land is acquired. As we see it, we find no impediment in the lands in question being utilised for the purpose of putting up a multi-storied building containing small flats, intended as the public purpose when the acquisition was notified. Therefore, the High Court clearly erred in proceeding as if the scheme stood abandoned. This was an unwarranted assumption on the part of the Court, which has no foundation in the pleadings and the materials produced in the case. The Court should have at least insisted on production of materials to substantiate a claim of abandonment."

12. In the cases on hand, in the light of the above settled legal position, if we consider the case of the appellants herein, it is an admitted case that during the pendency of the writ petitions and the writ appeals, there was an order of stay of dispossession, therefore, the delay in proceeding with the project by the Housing Board had occurred only due to the pendency of the court proceedings initiated by the appellants. Secondly, they have not challenged the land acquisition proceedings. Thirdly, the award was passed in Award No.2 of 1988 on 29.6.88 and the possession of the land of 8.48 acres has been handed over to the Tamil Nadu Housing Board on 18.1.2001 after completion of all land acquisition formalities. Now the Housing Board has proposed the area development of 118 plots in the 8.48 acres and the layout was also approved by the Director of Town and Country Planning, Vellore vide Ma.Va.Na.Ooo.thu(ve.ma3) No.23 of 2013 dated 4.10.2013. Moreover, the proposed scheme was also approved by the Housing Board vide Board resolution No.4.14 dated 29.5.2020 for Rs.590.00 lakhs. Thereupon, tenders were called through tender notice No.CC/2/2020-21 dated 3.6.2020 and finally the land was handed over to the contractor on 5.10.2020. In view thereof, the scheme development is in process/progress.



13. For the aforementioned reasons, we find no reasons to interfere with the impugned order. Accordingly, the writ appeals fail and they are dismissed. Consequently, interim order stands vacated and the C.M.P.Nos.13100 & 13101 of 2020 are also dismissed. However, there is no order as to costs.

ss
13.09.2021

(Order of the Court was made by T.Raja, J.)

After pronouncement of the order, Mr.T.Mohan, learned counsel appearing for the appellants requested us to consider the observation made by the Division Bench in its order dated 10.9.2001 passed in W.A.Nos.17 & 18 of 1998 that the members of the appellants' societies can apply for developed sites at the time of allotment under the bulk allotment system, as suggested by the Executive Engineer and Administrative Officer of the Tamil Nadh Housing Unit, Vellore, and after completion of the acquisition proceedings, at the time of allotment, first preference will be given to the members of the appellants' societies.

2. We also heard Dr.R.Gowri, learned standing counsel appearing for the third respondent Housing Board.

3. Since the earlier order passed by the Division Bench in W.A.Nos.17 & 18 of 1998 dated 10.9.2001 also made it clear that after completion of the acquisition proceedings and at the time of allotment, first preference will be given to the members of the appellants' societies, we hereby, reiterating the same stand, direct the third respondent Housing Board to consider the allotment under the bulk allotment system, as suggested by the Executive Engineer and Administrative Officer of the Tamil Nadu Housing Unit, Vellore, once the scheme is completed, by giving first preference to the members of the appellants' societies.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

ss



To

1. The Secretary to Government
Housing and Urban
Development Department,
Fort St.George,
Chennai 600 009.

2. The Special Tahsildar (LA)
7B1, R.D.O's Compound TNHB,
Ranipet, Vellore.

3. The Chairperson
Tamil Nadu Housing Board,
TNHB Complex, Nandanam,
Chennai 600 035.

4. The Executive Engineer
and Administrative Officer,
Tamil Nadu, Housing Unit,
Vellore.

+2ccs to Mr.T.Mohan, Advocate, S.R.No.46312

+1cc to the Government Pleader Sr.No.46497 (27/05/2022)

W.A.Nos.2200 & 2201 of 2011

VSN-II (CO)
CS/27/09/2021