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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.10.2021

Coram:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.17765 of 2012

and

M.P.No.1 of 2012

1.D.Gnanammal (deceased)
W/o. Duraisamy Naicker

2.D.Thulukkanam
3.D.Manoharan (Deceased)
4.D.Rajendran
5.D.Loganathan
6.D.Thirumal

(Petitioners 2 to 6 are sons of Duraisamy Naicker)
(Cause title amended as per order
dated 30.09.2019 in WMP.No.28438/2018
in WP.No.17765/2012)

7.Indirani
W/o.Guruparanthaman

8.Jayasubha
W/o.Masilamani

9.M.Jothi
10.M.Mohankumar
11.M.Divakar
12.M.Udhayavani

(Petitioners 9 to 12 impleaded as Lrs of
3rd Petitioner as per order dated 26.10.2021
in WMP.No.23300/2021 in WP.No.17765/2012)

... Petitioners

Vs

1. The State of Tamilnadu,
Rep.by the Secretary to Government,
Housing and Urban Development Department,
Secretariat, Chennai-600 009.
2. The Member Secretary,
Chennai Metropolitan Development Authority,
Gandhi Irwin Road, Chennai-8.



3. The Managing Director,
Tamil Nadu Slum Clearance Board,
Kamarajar Salai,
Chennai-5

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(R3 impleaded as per order dated 30.09.2019
in WMP.No.24837/2018 in WP.No.17765/2012)

....Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of certiorarified Mandamus, calling for the records pertaining to the order passed by the first respondent in Letter No.640/UD3(1)/2005/3, dated 23.05.2005 and quash the same and direct the 1st respondent to re-convey the petitioner's land in S.Nos.314/8, 316/5, 356/7 to an extent of 0.51.5 hectares at No.148, Edayanchavady village, Ponneri Taluk, Trivellore District, which is the subject matter of Section 6 Declaration under the Land Acquisition Act, dated 06.03.1992 to the petitioners.

For Petitioners : Mr.T.P.Sekar

For R1 : Mr. M.R.Gokul Krishnan
Government Advocate

For R2 : Ms.Malarvizhi Udayakumar,
Standing Counsel for CMDA

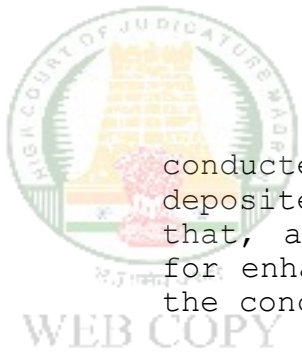
For R3 : Mr.S.Prabhu, Standing Counsel

ORDER

This Writ Petition has been filed for issuance of writ of certiorarified Mandamus, calling for the records pertaining to the order passed by the first respondent in Letter No.640/UD3 (1)/2005/3, dated 23.05.2005 and quash the same and direct the 1st respondent to re-convey the petitioner's land in S.Nos.314/8, 316/5, 356/7 to an extent of 0.51.5 hectares at No.148, Edayanchavady village, Ponneri Taluk, Trivellore District, which is the subject matter of Section 6 Declaration under the Land Acquisition Act, dated 06.03.1992 to the petitioners.

2. The case of the petitioners is that, the respective lands in question, which were originally belonging to the petitioners or their predecessors in title have been acquired long back by the respondents for public purpose.

3. After acquiring the land as per the procedure established under the Land Acquisition Act, award enquiry was



conducted, award was passed and the award amount also has been deposited or paid, even though it was claimed by the petitioners that, as against the said award, original petitions were filed for enhancement of compensation, and the same are pending before the concerned Court.

4. Be that as it may. The land acquisition proceedings has come to a conclusion as some of these petitioners have challenged the land acquisition proceedings before this Court in the earlier round of litigation unsuccessfully.

5. At this juncture, now the grievance of the petitioners is that, the lands in question which were acquired from the petitioners were unutilized for the purpose for which it was actually acquired and it has been handed over to various authorities and at last it has come to the hands of the third respondent viz., Tamil Nadu Slum Clearance Board and the said authority also has not utilized the acquired land for the purpose of housing and still vacant lands are there. Therefore, the unutilized lands can be re-conveyed to the petitioners and in order to get the re-conveyance, each of the petitioners have given separate representations and since the said representations have not been considered, the petitioners have filed the present writ petition with the aforesaid prayer.

6. Heard Mr.T.P.Sekar, learned counsel appearing for the petitioners in the writ petition, who would submit that, though the land acquisition proceedings has been concluded and the land in question has been acquired long back by the respondents for public purpose, the purpose for which the lands were acquired has not been undertaken fruitfully and subsequently the land has been handed over to various authorities and at last it has come to the hands of the third respondent, who in turn, wants to utilize the land for the construction of houses, where still some portion of the land is unutilised, which can be re-conveyed to the petitioners. Therefore, the learned counsel seeks the indulgence of this Court to give suitable direction to the respondents to consider the representations of the petitioners dated 04.01.2005 within a stipulated time frame.

7. However, Mr.M.R.Gokul Krishnan, learned Government Advocate appearing for the first respondent, Ms.Malarvizhi Udayakumar, Standing Counsel appearing for the second respondent and Mr.S.Prabhu, learned Standing Counsel for the third respondent would submit that, the land in question has admittedly been acquired long back by proper land acquisition proceedings. Though it was challenged at some point of time by filing writ petitions before this Court, the petitioners / their predecessors in title have become unsuccessful in such challenge and thereafter the land acquisition proceedings has come to its



logical conclusion, where the land acquired was taken over possession by the acquiring authority and handed over to the required authority and the land in question has been properly utilised for public purpose mainly for housing purposes.

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8. In this regard, the learned counsel would rely upon the following averments made in the counter affidavit filed by the third respondent, which reads thus,

"Inasmuch as the interested persons have not participated for any enquiry during the land acquisition process and in the absence of any documentary evidence in proof of their claim over the title of the property, the apportionment of the ownership and compensation could not be dispersed. Hence, the entire amount of compensation as worked out was ordered to be kept in Civil Court Deposit and the following persons namely 1) Tmt.Vanammal D/o Late Shanmuga Naicker 2) S.Kamsala D/o Late Shanmuga Naicker have been included as interested persons and a reference under Section 30 and 31(2) made to Sub-Court, there were no trees or buildings on the land the same was also mentioned in the award No.2/2001 dated 03/08/2001. The competition amount of Rs.18,00,000/- for the award No.2/2001 dated 03/08/2001 deposited at Sub-Treasury, Ponneri Vide Chalan No.1534 and 1535 dated 14.09.2001. The land was vacant and till now vacant and no residence is located in the land bearing S.No.357/5 as stated by the petitioner. The land was acquired by TNHB for housing project and the transferred to CMDA and in turn to TNSCB for affordable housing. TNSCB has formulated as EWS housing scheme and got approval from Government of India under PMAY (Pradhan Mantri Awas Yojana) and the agency has been finalized for constructing 3360 EWS houses in the 19.75 Acres of land handed over to TNSCB which includes S.No.357/5. The process for implementation of EWS Housing Scheme started as soon as the land was handed over to TNSCB. A demand survey was conducted and 18,000 people responded to the survey and about 250 have paid in advance amount of Rs.10,000/- even before the commencement of the project. The case filed against acquisition was dismissed by the Hon'ble High Court in W.P.No.8850/1992 on 07/02/1999 which is admitted by the petitioner. The award for S.No.357/5 was passed on 03/08/2001 vide Award No.2/2001 after the Hon'ble High Court dismissed the cases against acquisition. Since the land is being utilized for the purpose of Housing Scheme as ordered in the



Acquisition the vacant land cannot be re-conveyed to the petitioner."

9. By relying upon the above averments, the learned counsel would submit that, the proposal to construct 3360 EWS houses in the 19.75 Acres of land handed over to the third respondent, is already in progress and in this regard, there has been demand from 18000 people and about 250 people have paid an advance amount of Rs.10,000/- each even before the commencement of the project.

10. As per the latest instructions, according to the learned Standing Counsel for the third respondent, 80% of the construction of 3360 EWS houses as proposed, has already been completed and only the rest of the construction work is left out, which also would be completed soon. Therefore, the question of keeping the land unutilized as claimed by the petitioners does not arise. Instead, the entire land has been property utilized for public purpose as stated above.

11. Insofar as the claim made by the petitioners that, some area of the land has been unutilized, where trees and bushes are there and some area is left out for burial ground, that also has been traversed in the counter affidavit saying that, the burial ground has been earmarked only for the said purpose and apart from that, no other area has been left out in the land acquired. By making these submissions, the learned Standing Counsel would submit that, absolutely there is no point made out in the claim made by the petitioners and the plea raised by the petitioners can very well be rejected as it deserves to be rejected.

12. I have considered the rival submissions made on behalf of the petitioners and the respondents and also perused the materials placed on record.

13. It is the definite stand taken by the respondents, especially the third respondent, who is the beneficiary, in whose favour the land in question has been entrusted, where, the proposal for construction of 3360 EWS houses had been approved and accordingly construction work is in progress, where, as claimed by the respondents, 80% of the construction work had already been completed and the remaining construction would be over soon.

14. When that being the position, it is the claim of the petitioners that the land has not been utilized for several years since the land has been acquired by proper land acquisition proceedings, which has ended in favour of the land acquisition authorities. Even though a challenge was made in this regard by the land owners and subsequently award amount



also has been paid or deposited, and in this regard for enhancement of compensation, the petitioners have approached the Court by filing original petitions and the same is pending consideration.

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15. Be that as it may. If at all the petitioners succeed in future for getting enhancement of award amount, that is upto them to get it and in this regard that would not in any hamper the progress undertaken by the present respondents ie., the authorities who have utilized the land in question for public purpose.

16. When that being so, the question of considering the request made by the petitioners to re-convey the land as claimed in their representations dated 04.01.2005 does not arise, in view of the fact that, not only the land in question has been utilized for public purpose, for which it was acquired, but also 80% of the land has been utilized by constructing dwelling houses, which is under progress.

17. In that view of the matter, this Court feels that the writ petition do not deserve to be considered for giving a direction by way of Mandamus as claimed by them. Therefore, the writ petition fails and accordingly it is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar (CO)

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Sub Assistant Registrar

Lpp

To

1. The Secretary to Government,
The State of Tamilnadu,
Housing and Urban Development Department,
Secretariat, Chennai-600 009.
2. The Member Secretary,
Chennai Metropolitan Development Authority,
Gandhi Irwin Road, Chennai-8.



3. The Managing Director,
Tamil Nadu Slum Clearance Board,
Kamarajar Salai,
Chennai-5

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+1cc to Mr.T.P.Sekar, Advocate, S.R.No.54946

+1cc to Mr.S.Prabhu, Advocate, S.R.No.55312

+1cc to the Government Pleader, S.R.No.55400

W.P.No.17765 of 2012

GSM(CO)
SU(21/12/2021)