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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.09.2021

PRONOUNCED ON : 17.09.2021

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.23914 of 2012

The Husainy Trust
Rep. by its Secretary,
No.210, Anna Salai,
Chennai - 600 006.

... Petitioner

-Vs-

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

2. The Government of Tamil Nadu,
Rep by its Secretary,
Revenue Department,
Fort St. George,
Chennai - 600 009.

3. The Special Tahsildar (LA)
Tamil Nadu Housing Board,
Nandanam,
Chennai - 600 035.

4. The Tahsildar,
Ambattur Taluk,
Ambattur, Chennai.

5. The Managing Director,
Tamil Nadu Housing Board,
Nandanam,
Chennai - 600 035.

6. The Chief Educational Officer,
Thiruvallur.

...Respondent

Prayer :- Writ Petition filed under Article 226 of the
Constitution of India praying for the issuance of a Writ of



Certiorarified Mandamus, to quash the entire proceeding ending with impugned letter No.11764/LA1(2)/2007 dated 19.03.2012 of the first respondent and consequently direct the first and second respondents to release the entire land in S.N.157 to the petitioner Trust based on the report of the CEO, Thiruvallur dated 28.08.2001 pursuant to the order dated 09.07.1997 passed by this Court in W.P.No.10795 of 1986. (Prayer amended vide order of this Court dated 04.03.2021 made in W.M.P.No.4289 of 2021 in W.P.No.23914 of 2012)

For Petitioner : Mr.C.Manishankar,
Senior Counsel,
For Mr.S.D.S.Phillip

For Respondents
For R1 to R4 : Mr.G.Baranidharan
Government Advocate.

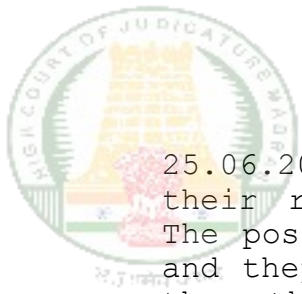
For R5 : Mr.M.Baskar,
Standing Counsel.

ORDER

The Writ Petition has been filed to quash the entire proceeding ending with impugned letter No.11764/LA1(2)/2007 dated 19.03.2012 of the first respondent and consequently direct the first and second respondents to release the entire land in S.N.157 to the petitioner Trust based on the report of the CEO, Thiruvallur dated 28.08.2001 pursuant to the order dated 09.07.1997 passed by this Court in W.P.No.10795 of 1986.

2. The case of the petitioner is that the petitioner Trust owned property comprised in survey No.157 ad measuring 1.89 acres in patta No.133, in Ramapuram Village, Saidapet Taluk. (herein after called as "subject land"). The fifth respondent initiated acquisition proceedings for the public interest in order to cater to the needs of housing, covering wet and dry lands ad measuring 421.26 acres under the neighbourhood scheme known as New Ramapuram Neighbourhood Scheme. The acquisition proceedings was challenged by the petitioner before this Court in W.P.No.10795 of 1986 and this Court directed the second respondent to name an officer of the Education Department not below the rank of Chief Education Officer (herein after referred to as "CEO") and to submit report as to what extent of land is needed for the school building and for the play ground and to what extent of land is required to be released for the purpose of the school and for the play ground, within three months from the date of receipt of a copy of that order.

3. The inspections were conducted on 28.02.2001 by the CEO, Education Department, Thiruvallur District and later a high level committee headed by the Hon'ble Mr. Justice Baskaran on



25.06.2008. During the inspections, the petitioner Trust made their representations requesting to release the subject land. The possession of the subject land is with the petitioner Trust and they are running two schools for the past 68 years and more than thousand students are studying in two schools. Both the schools are government aided school catering to the poorer sections of all communities including Muslims.

4. The petitioner Trust had also written a letter dated 05.08.2010 for reconveyance of the land under Section 48(B) of the Land Acquisition Act, 1984 (herein after called as "the Act"). However, the petitioner Trust was issued letter dated 22.09.2011, called upon the petitioner Trust for personal hearing which was held on 29.09.2011. The petitioner Trust attended the said hearing and the fifth respondent demanded the petitioner Trust to hand over 1.89 acres of land out of survey No.158 and on that condition, the land in Survey No.157 will be re-conveyed. Further the petitioner Trust represented that they are minority institution and their schools have been functioning from 1950, catering to the needs of the poor and underprivileged children, including Muslims children. However, the first respondent by the impugned order dated 19.03.2012, rejected the petitioner's request to reconvey the land comprised in survey No.157 on the ground that the subject land is absolutely essential for implementation of the comprehensive scheme of the Tamil Nadu Housing Board. Hence the present Writ Petition.

5. The learned Senior Counsel appearing for the petitioner Trust submits that the petitioner Trust has been running schools and they are represented minority institution and it has been functioning from 1950 to cater the needs of the poor and underprivileged children. They are protected under Article 30 of the Constitution of India, which is fundamental right guaranteed by the Constitution of India. Though this Court specifically directed, by an order dated 09.07.2007 in W.P.No.10795 of 1986, to consider the petitioner Trust's request, the first respondent mechanically passed the impugned order with giving personal hearing before passing the order.

5.1. He further submitted that in fact, the inspection report as well as the high level committee, who inspected the subject land during the year 2001 and 2008, were not furnished to the petitioner Trust. Removal of the petitioner Trust's school is against the directive principles laid down under the Constitution of India. The subject land has not been utilized and the several other lands, that were acquired under the very same scheme, were not utilized for the purpose of the scheme. Whereas it was allowed to be used for private purpose for the last several decades. Therefore, there is absolutely no prejudice would be caused to the respondents, if the



petitioner's land is exempted and reconveyed. In support of his contention, the learned Senior Counsel appearing for the petitioner relied upon the following reported judgments:-

- (i) 2002 (1) SCC 73 - The Society of St. Joseph's College Vs. Union of India and ors.
- (ii) 2006 (4) CTC 609 - R.Pari Vs. The Special Tahsildar and anr
- (iii) 2007 AIHC 569 - Golconda Educational Society Vs. State of Andra Pradesh & ors
- (iv) 2007 (3) LW 654 - The Society of St. Joseph's College Tiruchy Vs. Union of India and others.
- (v) 2014 (4) KCCR 3507 - St. Joseph's Society of Madurai Vs. The Deputy Commissioner, Bangalore & ors
- (vi) 2017 (3) CTC 833 - Governmetn of NCT of Delhi & anr Vs. Mahender Singh & ors
- (vii) 2018 (5) MLJ 829 - Shiv Singh and ors Vs. State of Himachal Pradesh & ors.

6. Per contra, the learned Government Advocate appearing for the respondents 1 - 4 filed counter and submitted that on the request made by the fifth respondent for the formation of neighbourhood scheme known as New Ramapuram Neighbourhood Scheme, they initiated acquisition proceedings to acquired patta land to an extent of 421.26 acres. Further the fifth respondent submitted revised acquisition proposal dated 01.12.1972 to an extent 338.28 acres for the above said scheme. Accordingly, the first respondent accorded approval for the draft notification under Section 4(1) of the Act in G.O.Ms.No.138, Housing and Urban Development Department, dated 14.05.1975, to acquire land to an extent of 338.28 acres in Ramapuram village for the formation of Ramapuram Neighbourhood Scheme.

6.1. The notification was published on 11.06.1975 in the Tamil Nadu Government Gazette and the enquiry under Section 5(A) of the Act was conducted on 19.01.1976 and 21.01.1976 after issuing notice to all the individual and also published in the locality as contemplated the Rules framed under Section 55(1) of the Act. On receipt of the objections from the land owners, the gist of the objections have been sent to the requisition body to offer their remarks. After considering the remarks and also objections raised by the land owners, they issued draft declaration under Section 6 of the Act, excluding certain lands and for remaining extent of 261.79 acres. Direction under Section 7 of the Act was approved in G.O.Ms.No.969 dated 07.06.1978 and published in the Tamil Nadu Government Gazette on 09.06.1978 to an extend of 34.02 acres in which, the petitioner sought for reconveyance to an extent of 1.89 acres. Thereafter, the notice under Sections 9(3) and 10 of the Act, were sent to



the land owners on 29.05.1980. It was also published in the village taluk office in the locality.

6.2. Thereafter, the enquiry was conducted and award has been passed in Award No.5 of 1986 dated 01.09.1986. The entire compensation for the land at Rs.67,404.45 was deposited in the Subordinate Court, Poonamallee as contemplated under Sections 30 & 31(2) of the Act. But the possession of the land has not been taken, due to the interim injunction granted in W.P.No.10795 of 1986. The said Writ Petition was filed for reconveyance of the subject land and this Court by an order dated 09.07.1997 directed the first respondent to name an Officer of the Education Department not below the rank of CEO to make an inspection and submit a report. The CEO conducted inspection on 28.02.2001 and submitted his report recommending the reconveyance of the land by stating that the school has to be developed in the village at a larger size. However, the Executive Engineer & Administrative Officer addressed a letter to the fifth respondent stating that the subject land is essentially required to the fifth respondent for formation of housing scheme and it is submitted before Board and it resolved in resolution dated 12.01.2011.

6.3 In fact, the first respondent had already excluded the land in survey No.158 to an extent of 7.21 acre in the same scheme belonging to the petitioner Trust vide order dated 23.10.1978. Now the same petitioner's institution sought for reconveyance of land comprised in survey No.157 situated at Ramapuram Village to an extent of 1.89 acre. Based on the representation submitted by the fifth respondent, the first respondent rejected the request of the petitioner Trust for reconveyance of the subject land. He further submitted that the subject land has not been developed by any building activities, since already the petitioner's land was exempted from the acquisition proceedings to an extent of 7.21 acres. Therefore, the subject land to an extent of 1.89 acres is essentially required to the fifth respondent for formation of neighbourhood scheme.

7. The fifth respondent also filed counter and reiterated the averments made in the counter filed by the respondents 1 to 4 herein. The learned Standing Counsel appearing for the fifth respondent contended that as directed by this Court in W.P.No.10795 of 1986 dated 09.07.1997, the first respondent named a CEO and he inspected the subject property along with the fourth respondent on 28.02.2001. On receipt of the said report, the fifth respondent has categorically stated that the subject land is essentially required for formation of housing scheme. The said report was placed before the Board and by the resolution dated 12.01.2011, it was resolved that detailed reply



be sent to the government on various points raised and while sending the reply, legal position clarified by the Hon'ble Supreme Court of India may also be informed.

7.1. He further submitted that the government already excluded the petitioner's property to an extent of 7.21 acres comprised in survey No.158 under the same scheme. Once again, the petitioner Trust requested to reconvey the land comprised in survey No.157 to an extent of 1.89 acres under the same scheme. The subject land in the Ramapuram Village is required for the Tamil Nadu Housing Board to construct LIG/MIG flats and to form the comprehensive housing scheme. The government after careful examination of the petitioner's request and the reply thereon received from the fifth respondent concluded that the request of the petitioner Trust is not feasible of compliance for reconveyance as it is absolutely essential for providing house for shelter less general public. The request of the petitioner under Section 48 (B) of the Act cannot be considered on the ground that the subject land can be utilized only for the purpose for which it was acquired and other than that it cannot be used, since once the land acquired under the Act, the land is vested with the government.

8. Heard Mr.C.Manishankar, learned Senior Counsel appearing for the petitioner and Mr.G.Baranidharan, learned Government Advocate appearing for the respondents 1 to 4 and Mr.M.Baskar, learned Standing Counsel appearing for the fifth respondent.

9. The petitioner Trust owned the subject land comprised in survey No.157, ad measuring 1.89 acres, in patta No.133, situated at Ramapuram Village, Saidapet Taluk. On the request of the fifth respondent, the first respondent initiated acquisition proceedings to acquire lands ad measuring 338.28 acres for the purpose of Ramapuram Neighbourhood Scheme. All the procedures were duly followed and the award has been passed in Award No.5 of 1986 on 01.09.1986. In fact, the award amount has also been deposited in the Subordinate Court, Poonamallee as contemplated under Sections 30 & 31(2) of the Act.

10. At that juncture, the petitioner filed a Writ Petition before this Court in W.P.No.10795 of 1986, challenging the acquisition proceedings. This Court by an order dated 09.07.1997, directed the first respondent to name an officer of the Education Department not below the rank of CEO to make an inspection and submit a detailed report as to the actual land needed for the school buildings and for the play ground and to ascertain what reasonable land is required to be released for the purpose of the school building and for play ground, causing no disturbance to the scheme already evolved.



11. Accordingly, the first respondent named the CEO, Thiruvallur District and the CEO inspected the subject property on 28.02.2001 along with the third respondent and recommended to reconvey the subject land to the petitioner herein. However, the fifth respondent by its letter dated 04.05.2001 categorically stated that the subject land is essentially required for them for the formation of housing scheme. The report as well as the reply from the fifth respondent were placed before the high level committee headed by the Hon'ble Judge of this Court. The said committee inspected the subject property on 25.08.2006 and informed that no scheme has been developed by the fifth respondent and the entire land be released to the petitioner Trust to run the schools.

12. In fact, the fifth respondent sent a letter dated 22.09.2011 called upon the petitioner for personal hearing to be held on 29.09.2011. The petitioner Trust had attended the hearing and the fifth respondent demanded the petitioner Trust to hand over the land measuring 1.89 acres out of in survey No.158, on that condition the land in survey No.157 will be reconveyed. However, the petitioner Trust made request to the first respondent to serve copy of the inspection report conducted on 28.02.2001 by the CEO, Thiruvallur and the report of the high level committee dated 25.06.2008. The petitioner Trust further stated that they are running minority institution and their schools have been functioning from the year 1950, catering to the needs of the poor and underprivileged children including Muslim children. Therefore, they are protected under Article 30 of the Constitution of India, which is their fundamental right guaranteed by the Constitution of India.

13. In this regard, the learned Senior Counsel appearing for the petitioner relied upon the judgment of the Hon'ble Constitution Bench of the Supreme Court of India reported in 2002 (1) SCC 73 in the case of The Society of St. Joseph's College Vs. Union of India and ors, in which the Hon'ble Supreme Court of India held that Article 30 of the Constitution of India is a part of the chapter on Fundamental Rights in the Constitution. It guarantees a right to the minorities, religious and linguistic to establish and administer educational institutions of their choice. Therefore, it requires the State i.e., Parliament in the case of a Central legislation or a State legislature in the case of State legislature, to make a specific law to provide for the compulsory acquisition of minority educational institutions, the provisions of which law should ensure that the amount payable to the educational institution for the acquisition of its property will not be such as will in any manner impair the functioning of the educational institution.



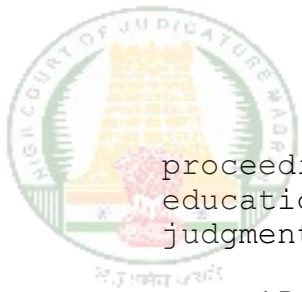
14. He also relied upon the judgment reported in 2007 AIHC 569 in the case of Golconda Educational Society Vs. State of Andhra Pradesh & ors., which reads as follows :-

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"7. Plainly, Parliament in its constituent capacity apprehended that Minority Educational Institutions could be compelled to close down or curtail their activities by the expedient of acquiring their property and paying them inadequate amounts in exchange. To obviate the violation of the right conferred by Article 30 in this manner, Parliament introduced the safeguard provision in the Constitution, first in Article 31 and then in Article 30.

8. We cannot accept the submission of the learned Attorney-General that the provisions of a statute that provides for the acquisition of property in general, as for example, the Land Acquisition Act, are adequate for the compulsory acquisition of the property of Minority Educational Institutions because what is payable there under is compensation, or that the provision of Clause (1A) of Article 30 should be read into such statute. Clause (1A) clearly states that after the date of its introduction there must be a law that specifically relates to the compulsory acquisition of the property of Minority Educational Institutions and that that law must make provisions that ensure that the amounts that are fixed or determined there under for the acquisitions are such as do not restrict or abrogate the right guaranteed under Article 30. Necessarily, such law must require the taking into account of factors that do not come into play in the determination of amounts payable in relation to the acquisition of the properties of others and are, therefore, not set out in the general acquisition statutes."

The Hon'ble High Court of Andhra Pradesh referred the judgment of the Hon'ble Constitution Bench of the Supreme Court of India reported in 2002 (1) SCC 273 in the case of Society of St. Joseph's College Vs. Union of India., set aside the acquisition



proceedings in respect of the land owned by the minority educational institution as not sustainable. Therefore, the above judgments are squarely applicable to the case on hand.

15. More over, after the period of several years from the acquisition proceedings, the possession of the property has not been taken over by the respondents and the petitioner Trust is running the school. Therefore, the Petitioner Trust Board expressed that in view of the developmental work taken to fulfil the object of the Trust, the land exempted in Survey No.158 cannot be spared to be considered for any exchange to the fifth respondent and there was no such direction issued by this Court. However, on receipt of the same, the first respondent rejected the request of the reconveyance by the order impugned in the Writ Petition for the reason that the request of the petitioner Trust is not feasible of compliance for reconveyance of the land, as it is absolutely essential for implementation of comprehensive scheme of the Tamil Nadu Housing Board.

16. It is pertinent to note that this Court directed the first respondent to name one CEO to conduct inspection by an order dated 09.07.1997 to consider the request of the reconveyance. As directed by this Court, the first respondent named the CEO, Thiruvallur, and he inspected the subjection land on 28.02.2001. Even according to the respondents, the CEO who conducted the inspection, recommended for reconveyance of the subject land to the petitioner Trust. However, the fifth respondent objected the same and requested to retain the land for completing the scheme. It is seen from the records revealed that the petitioner Trust made repeated request till the impugned order dated 19.03.2012, and requested the first respondent to furnish the copy of the inspection report and the report submitted by the high level committee. There is no evidence to show that the inspection report as well as the high level committee report were furnished to the petitioner Trust.

17. That apart, on perusal of the impugned order nowhere referred to the inspection report submitted by the CEO and the report of the high level committee. The first respondent mechanically, without applying his mind that too without even verifying the report submitted by the CEO as well as the high level committee, passed the impugned order that too without any reasons. They simply rejected the request made by the petitioner Trust for the reason that the subject land is absolutely essential for implementation of the comprehensive scheme.

18. Admittedly, the petitioner Trust is running Elementary and High Schools in the subject land from the year 1950. They are also running an orphanage and working for the upliftment of the Muslim community and they are minority institutions having



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protected under Article 30 of the Constitution of India. Therefore, their earlier request was rightly considered by the first respondent in respect of the land comprised in survey No.158 ad measuring 7.21 acres by excluding them from the acquisition proceedings. In fact, the petitioner Trust is a minority institution and they are catering to the needs of the poor and underprivileged children. More over, the possession and enjoyment of the subject land are always with the petitioner Trust even till today as such, the scheme of the fifth respondent will not be effected at any cost by reconveyance of the subject land in favour of the petitioner.

19. It is also seen that several other lands which were acquired under the scheme in the locality were not utilised for the purpose of the scheme. Therefore, there is absolutely no prejudice would be caused to the respondents, if the subject land is exempted and reconveyed in favour of the petitioner. The petitioner Trust is running schools and as such it needs the subject land for its play ground and it also confirmed by the report submitted by the CEO. Further the said report as well as the report of the high level committee have not been considered by the first respondent while passing the impugned order.

20. That apart, as stated supra, the subject land is in possession and enjoyment of the petitioner Trust even till today and the respondents have never taken the possession of the property even after disposal of the Writ Petition in W.P.No.10795 of 1986 dated 09.07.1997. Admittedly, the petitioner was not heard before passing the impugned order and they never served with the inspection report as well as the high level committee report. Therefore, the impugned order cannot be sustained as against the petitioner and it is liable to be set aside.

21. In view of the above discussions, the impugned letter dated 19.03.2012 sent by the first respondent in Letter No.11764/LA1(2)/2007 is hereby set aside. The second respondent is directed to reconvey the subject land ad measuring 1.89 acres comprised in survey No.157 in patta No.133, situated at Ramapuram Village, Saidapet Taluk in favour of the petitioner Trust within a period of twelve weeks from the date of the receipt of a copy of this Order.

22. In the result, the Writ Petition stands allowed. There shall be no order as to costs.

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar



1. The Secretary
Government of Tamil Nadu,
Housing and Urban Development
Department,
Fort St. George,
Chennai - 600 009.
2. The Secretary,
Government of Tamil Nadu,
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Nandanam,
Chennai - 600 035.
6. The Chief Educational Officer,
Thiruvallur.

+2cc to Mr.S.D.S.Philip,Advocate, Sr.47323

W.P.No.23914 of 2012

PVS[co]
NSK 22/10/2021