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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.25805 of 2013

T.Marappan

... Petitioner

.Vs.

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

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

3. The Executive Engineer and
Administrative Officer, Salem Housing Unit,
(Tamil Nadu Housing Board),
Salem.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records of the first respondent culminating in his letter No.19296/LA4-2/2011-5 dated 28.12.2012, to quash the same and to direct the first respondent to reconsider the entire matter afresh.

For Petitioner : Mr.V.Raghupathi

For Respondents: Mr.Richardson Wilson
Government Advocate (for R-1)

: Mr.I.Sathish
Standing Counsel (for R-2 & R-3)

O R D E R

This writ petition is filed to issue a writ of Certiorarified Mandamus, calling for the records of the first respondent culminating in his letter No.19296/LA4-2/2011-5 dated 28.12.2012, to quash the same and to direct the first respondent to reconsider the entire matter afresh.



2. The case of the petitioner is that the petitioner originally owned the property comprised in S.Nos.347/6, 347/7 and 347/9 to an extent of 1 acre 38 cents. The said lands were acquired under the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act', for short) for construction of houses by the Tamil Nadu Housing Board under the Salem Neighbourhood Scheme. A notification under Section 4(1) of the Act was issued on 05.01.1983. Thereafter, the declaration notice under Section 6 of the Act also was made on 31.12.1985. Thereafter, the award was passed on 28.12.1987. According to the petitioner, the Housing Board has not yet utilized the land which was acquired for the housing scheme for the past 25 years. Therefore, the petitioner requested for re-conveyance of the land under Section 48 B of the Act. The said request was rejected and the said rejection order was challenged by the petitioner in W.P.No.300 of 2009 and consequently to direct the respondents to re-convey the subject property to the petitioner under Section 48-B of the Act. This Court, by an order dated 22.03.2010, dismissed the said Writ Petition. Aggrieved by the same, the petitioner also preferred a Writ Appeal in W.A.No.2017 of 2010 and the Hon'ble Division Bench of this Court, by order dated 29.07.2011, dismissed the Writ Appeal and observed that after the land vested in the Government under Section 16 of the Act, the same was handed over to the Housing Board for implementation of the Scheme. Though it was handed over, the same has not been utilized. However, the fact remains that as on that date the respondent-State has not exercised the power under Section 16-B of the Act forfeiting the land by way of penalty and the land still vested in the Tamil Nadu Housing Board and invocation of Section 48-B of the Act does not arise. Therefore, the request of the petitioner for re-conveyance has been rightly rejected by the learned single Judge of this Court and it was also found that such a petition is not maintainable. However, the petitioner was permitted to approach the Government with a request for invocation of Section 16-B of the Act for forfeiting the land and in the event the Government decides to forfeit the land, to consider the request of the appellant for re-conveyance under Section 48-B strictly in accordance with the judgments of this Court as well as the Hon'ble Supreme Court of India. Aggrieved by the same, the petitioner also preferred SLP before the Hon'ble Supreme Court of India in SLP.No.32618 of 2011 and the same was also dismissed by an order dated 09.12.2011.

3. Thereafter, the petitioner filed a suit for injunction as against the Housing Board in O.S.No.41 of 2012. While pending the suit, the petitioner filed an application for appointment of Advocate Commissioner. According to the petitioner, the Advocate Commissioner inspected the suit property and filed his report. From the Advocate Commissioner's report dated 16.08.2013, it reveals that the subject land is part of the land acquired by



the Tamil Nadu Housing Board. The said land also consists of coconut trees, banana trees, guava tress along with drumstick trees. According to the petitioner, he is still in possession and enjoyment of the said property and the land has not been utilized for the purpose which was acquired by the Tamil Nadu Housing Board.

4. On a perusal of the counter affidavit filed by the third respondent, it reveals that, after dismissal of the said SLP by the Hon'ble Supreme Court of India, the petitioner filed the suit for bare injunction and in respect of the said property, the said suit was dismissed by the judgment and decree dated 09.12.2019 on the file of the Principal District Munsif Court, Trichengode. In fact, after passing the award, the petitioner and the other land owners raised objections and the matter was referred in LAOP No.29/1992 and the award amount has been enhanced. Aggrieved by the same, the Land Acquisition Officer has filed an appeal suit before this Court in A.S.No.640 of 1997 and the same was allowed determining the correct value of the property. Accordingly, the amount has been deposited and all the land owners/interested persons received the compensation amount. Thereafter, the entire land has been utilized for the purpose for which it was acquired. Subsequently, the layout was also approved by D.T.C.P., Chennai vide LP/DTCP 1088/90 while approving the layout the land under reference earmarked as 12.20 m road, 5 residential plots, and commercial use by the authority concerned. Later on, the commercial site was sub-divided as commercial plots as per LP/DTCP 1611.B/95 and revised approval was made for the over all scheme by D.T.C.P/Chennai (LP/DTCP.60/2001). Out of these commercial plots, some of the plots were sold out through open auction by giving proper advertisements in leading news papers. The petitioner has also participated in the open auction and he is one of the successful bidder for the commercial Plot No.13 and Health Centre. The above 2 plots were allotted in his favour, vide this officer (Lr.No.R7/9650/05 dated 27.01.2006 & Lr.No.R7/9652/05 dated 27.01.2006). The possession of the land was also handed over to the petitioner on 01.06.2006. Therefore, the request of the petitioner for re-conveyance of the subject property was rightly denied and the entire property has been property utilized by the Tamil Nadu Housing Board. At that juncture, the petitioner again submitted a representation dated 08.09.2011 praying to invoke the power under Section 16(3) of the Act to forfeit the land and to consider his request for re-conveyance under Section 48-B of the Act. Therefore, it is the second round of litigation with regard to re-conveyance of the subject property under Section 48-B of the Act. While dismissing the Writ Appeal, the Division Bench of this Court observed as follows:-



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"7. Keeping the above in mind, the facts of this case must be considered. It is not in dispute that the land acquired from the appellant was at the request of the TNHB. After the land vests in the Government under Section 16, the same was handed over to TNHB for implementation of the scheme. Though it was handed over, the same has not been utilised. However, the fact remains that as on today the respondent-State has not exercised the power under Section 16-B for forfeiting the land by way of penalty and the land still vests in the TNHB and invocation of Section 48-B does not arise. In that sense, the request of the petitioner for re-conveyance has been rightly rejected by the impugned order in the writ petition the learned judge has also found that such a petition is not maintainable. In that view of the matter, we do not find any justification to interfere with the order in the writ petition. Therefore, the writ appeal has to be dismissed.

8. Mr.V.Raghupathi, learned counsel appearing for the appellant has submitted that in view of the order, the appellant may be permitted to approach the Government with a request for invocation of Section 16-B for forfeiting the land and in the event the Government decides to forfeit the land to consider the request of the appellant for re-conveyance under Section 48-B strictly in accordance with the judgments of this Court as well as the Apex court, we make it clear that this order shall not stand in his way to approach the Government in the manner the appellant has submitted before us. Accordingly, the Writ Appeal is dismissed. However, there is no order as to costs. Consequently, the connected miscellaneous petitions are also dismissed."

5. This Court permitted the petitioner to approach the Government with a request for invocation of Section 16(B) of the Act for forfeiting the land and in the event the Government decides to forfeit the land, to consider the request of the petitioner for re-conveyance. Whereas, as stated supra, the entire land which was acquired for the purpose of housing scheme, has been completely utilized after layout approval. In fact, the petitioner also participated in the auction and he succeeded in respect of the plot No.13 and Health Centre. Accordingly, he was allotted and other plots were purchased by the third parties. Further, the subject land has been utilized as detailed below:-

"12.20 m road & 6 roads. 1847 sq.m.



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Residential plots	B.18	157.20 Sq.m.	B.Monokaran
MIG Building constructed by TNHB and allotted to public	B.19	156.00 Sq.m.	R.Kaliannan
	B.20	146.20 Sq.m	S.Anbumani
	B.21	144.42 Sq.m	R.Malliga
	B.22	166.07 Sq.m	S.Gnansekara n
Commercial plots Disposed under	6	397.25 Sq.m	Vacant
Open auction	7	240.98 Sq.m	Vacant
	8	285.08 Sq.m	Vacant
Vacant plot open auction to be conducted	9	344.46 Sq.m	Vacant
	10	316.52 Sq.m	Vacant
	11	204.96 Sq.m	Vacant
	12	462.76 Sq.m	Vacant
	13	292.18 Sq.m	Marappan
	14	423.48 Sq.m	Vacant
	TOTAL	3737.57 Sq.m	

6. Therefore, no land is forfeited by the Housing Board to consider the request of the re-conveyance and the first respondent rightly rejected the request, as it is not feasible for compliance for the reason that the subject land in question was fully implemented for the Housing Scheme. Hence, this Court finds no infirmity or illegality in the order passed by the first respondent and this Writ Petition is devoid of merits and it is liable to be dismissed.



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7. In the result, this Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

kv

To

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Fort ST.George,
Chennai - 600 009.
2. The Managing Director,
Tamil Nadu Housing Board,
Nandanam,
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Administrative Officer, Salem Housing Unit,
(Tamil Nadu Housing Board),
Salem.

+1cc to Mr.V.Raghupathi, Advocate, S.R.No.48915

+1cc to Mr.I.Sathish, Advocate, S.R.No.48947

W.P.No.25805 of 2013

MG(CO)

CS/02/11/2021