



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2021

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

AND

THE HONOURABLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

W.A.No.669 of 2014

The Managing Director,
Tamil Nadu Housing Board,
No.331, Anna Salai,
Nandanam, Chennai - 35.

.. Appellant

Vs

1.S.Paramanandam (deceased)
2.V.Sarangapani (deceased)
3.M.Vedanesan (deceased)

4.The Secretary,
Housing and Urban Development,
Fort St. George, Chennai - 9.

5.Mrs.Thangammal

6.S.Ebinezer

(R5 & R6 were impleaded as LR's of deceased R2

vide order of the Court dt. 05.01.2015 made in M.P.No.2/14)

7.M.V.Saloman

8.Ganaselvi

9.S.Bhritan Raj

10.S.Deepika

11.M.V.Jeyapal

12.M.Nesamani

13.G.Rebekkal

14.Gopu

15.M.V.Selvam

16.M.V.Jones

(R7 to R16 were substituted as LR's of the deceased R3

vide order of Court dt.10.09.2015 made in M.P.No.4/15 in

WA.No.669/14)

17.P.Selvarani

18.P.Rajesh

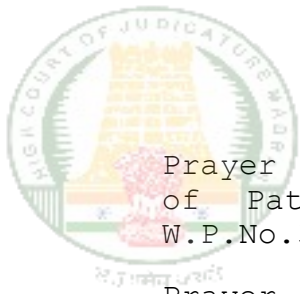
19.P.Saranya

.. Respondents

(R17 to R19 were substituted as LR's of the deceased R1

vide order of Court dt.10.09.2015 made in M.P.No.5/15 in

WA.No.669/14)



Prayer : Writ Appeal has been filed under Section 15 of Letter of Patent against the order dated 30.04.2013 passed in W.P.No.3559 of 2004 by the learned Single Judge of this Court.

Prayer in W.P.No.3559 of 2004: Petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus, directing the respondents to reconvey the lands situated in S.No.454, measuring 1.33 Acres, 455-1 measuring 1.62 Acres in Mogappair Village, Ambattur Taluk, Tiruvallur District to the Petitioners.

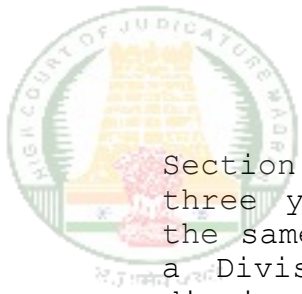
For Appellant	:	Dr.R.Gowri
For R5 & R6	:	Mr.V.Raghavachari for Mr.Tamil Amudhu
For R7 to R19	:	Mr.P.Wilson, SC for Mr.P.S.Amalraj
For R4	:	Mr.T.Arunkumar, GA
For R1 to R3	:	died

JUDGMENT

The Tamil Nadu Housing Board (TNHB), represented by its Managing Director, has filed the present appeal challenging the impugned order passed by the learned Single Judge in W.P.No.3559 of 2004, dated 30.04.2013, in and by which, learned Single Judge allowed the prayer of the writ petitioners seeking for reconveyance of the lands situated in S.Nos.454, measuring 1.33 acres, 455-1 measuring 1.62 acres, 456-1 measuring 0.77 acres, 456-2, measuring 0.57 acres in Mogappair Village, Ambattur Taluk, Thiruvallur District, holding that in the matter of reconveyance of the land to the land owners, there cannot be any discriminatory treatment applying the principles of pick and choose among the land owners arbitrarily.

2. Brief facts leading to the filing of the writ appeal are stated below:-

The aforesaid lands owned by the writ petitioners were acquired by a Notification in G.O.R.No.261, dated 23.10.1975, under Section 4(1) of the Land Acquisition Act (in short "the Act") for the purpose of Mogappair Eri Scheme. Subsequently, after a lapse of three years, a declaration under Section 6 of the Act was issued on 09.11.1978. The said land acquisition proceedings were challenged before this Court in W.P.No.13582 of 1995 and this Court, by order dated 01.02.1996, quashed the 4(1) notification dated 23.10.1975 holding that declaration under



Section 6 has not been issued within the statutory period of three years from the date of 4(1) notification. Aggrieved by the same, when Writ Appeal No.645 of 1996 was filed by the TNHB, a Division Bench of this Court, by order dated 12.07.1996, dismissed the writ appeal. Against which, when SLP was filed by the TNHB, the same was also dismissed. Thereafter, in the year 2001, the TNHB/Requisitioning Authority took a policy decision as not to undertake any construction vide their resolution dated 30.10.2001. Therefore, it is averred that the TNHB was not in a position to undertake any new construction and hence, as per Section 48(B) of the Act, the writ petitioners deserve the reconveyance of the lands as original land owners. It is further averred that pursuant to the order passed by this Court in W.P.No.13582 of 1995, dated 01.02.1996, the writ petitioners have made various representation to the authorities concerned to reconvey their lands, but, the TNHB has not taken any steps. Therefore, the writ petitioners have filed W.P.No.3559 of 2004 seeking for issuance of a writ of mandamus to direct the TNHB to reconvey the lands in question to the writ petitioners. This Court, by impugned order dated 30.04.2013, holding that in the matter of reconveyance, everyone should be treated equally and there shall not be discrimination among equals, allowed the prayer as prayed for. Against which, the present writ appeal has been filed by the TNHB.

3. We have heard Dr.R.Gowri, learned standing counsel for the TNHB, Mr.V.Raghavachari, learned counsel for the respondents 5 and 6, Mr.P.Wilson, learned Senior counsel for the respondents 7 to 19 and Mr.T.Arunkumar, learned Government Advocate for the fourth respondent, and perused the materials available before this Court.

4. It is seen from the records that the lands in question were acquired by the State Government by issuing a Notification under Section 4(1) of the Act on 23.10.1975 for the purpose of Mogappair Eri Scheme. Instead of issuing a declaration under Section 6 of the Act within a period of one year from the date of issuance of 4(1) notification, Section 6 declaration was issued after a lapse of three years i.e. on 09.11.1978, as a result, in a writ petition filed by the parties in W.P.No.13582 of 1995, this Court, by order dated 01.02.1996, was pleased to quash the 4(1) notification by holding that Section 6 declaration has not been issued within the statutory period of three years from the date of 4(1) notification. Against the said order, when writ appeal in W.A.No.645 of 1996 was filed by the TNHB, a Division Bench of this Court, by order dated 12.07.1996, dismissed the said writ appeal. Subsequently, it is stated in the affidavit, the Special Leave Petition preferred by the TNHB was also dismissed by the Hon'ble Apex Court.



5. Challenging the 4(1) notification dated 12.11.1975, one A.S.Naidu went upto the Hon'ble Apex Court, whereby, the Hon'ble Apex Court, by order dated 21.08.1990 passed in I.A.Nos.1 to 3 in SLP.Nos.11353 to 11355 of 1980, while disposing the said case, gave liberty to the State Government to make a fresh preliminary notification if acquisition is necessary in public interest. However, ironically, even after long passage of 45 years from the date of 4(1) notification, neither fresh 4(1) notification has been issued nor any new scheme has been framed for using the lands in question.

6. Besides, it is to be noted that for the very same village for adjacent survey numbers covered in the very same 4 (1) notification dated 23.10.1975, this Court, vide order dated 20.07.1999 passed in W.P.No.4600 of 1999, held as follows:-

"11. Hence, it has to be considered whether on the date when the petitioners sought for the transfer the second respondent required the acquired land for the public purpose. It may not be open to the requisitioning body to change its mind after a request for the transfer of the land under Section 48-B is made. In that case it will be an after thought that always it may be open to the requisitioning authority to proclaim that the particular land is required for the public purpose in future. That is why the criteria for consideration is the date on which the transfer was sought for by the owner of the land, which means on that date the requisitioning body required the land for the public purpose for which it was required or for any other public purpose."

7. The above said order of the learned Single Judge was also confirmed by a Division Bench of this Court in W.A.No.2160 of 1999, dated 01.03.2000. Subsequently, when Special Leave Petition was filed in SLP(C).Nos.9343-44/2000 by the TNHB, the same was also dismissed as withdrawn on 12.06.2000. Thus, in the present case, by taking note of the fact that the very same 4(1) notification dated 23.10.1975 and the subsequent declaration under Section 6 dated 09.11.1978 have already been quashed, which was subsequently confirmed by the Hon'ble Apex Court, this Court by the impugned order dated 30.04.2013 held as follows:-

"24. Though the respondents have opposed the writ petition on various grounds, in similar matters, this Court in W.A.No.2602 of 2004, dated 15.12.2006, W.A.No.645 of 1996,



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dated 12.06.1996, W.A.No.2430 of 1996, dated 18.02.2000, W.A.No.2160 of 1999, dated 01.03.2000 and W.A.No.1926 of 2010, dated 19.11.2010, confirming the orders passed by the learned Single Judge in W.P.No.3559 of 2004, dated 03.03.2004, W.P.No.13552 of 1995, dated 01.02.1996, and W.P.No.4600 of 1999, dated 20.07.1999 and W.P.No.5431 of 2009, dated 05.11.2009, respectively, has passed orders granting reconveyance of the lands which was not utilized for the purpose for which it was acquired."

8. In the case on hand, it is not in dispute that the direction issued by the learned Single Judge for reconveyance has not been questioned by the State Government and only TNHB alone has filed the present appeal. Secondly, in the present appeal, the State has not even filed any counter affidavit supporting or objecting the stand of the Housing Board. In this context, it is relevant to extract Section 48-B which reads thus:-

" 48-B --- Transfer of land to original owner in certain cases.--- Where the Government are satisfied that the land vest in the Government under this Act is not acquired for the purpose for which it was acquired, or for any other public purpose, the Government may transfer such land to the original owner who is willing to repay the amount paid to him under this Act for acquisition of such land inclusive of the amount referred to in sub-section (1-A) and (2) of Section 23, if any, paid under this Act. "

A perusal of the above provision clearly shows that the Government alone can transfer the land to the original owner who is willing to repay the amount paid to him for acquisition of such land. Therefore, although acquired lands have been reconveyed to the similarly situated persons relating to the very same acquisition proceedings, the Government has failed to reconvey the same to the writ petitioners alone. It is the moral obligation on the part of the Government to act with substantial fairness and consistency in considering the representations of the land owners for withdrawal from acquisition whose lands have been acquired under the same acquisition proceedings. The State Government cannot pick and choose some landowners and release their land from acquisition and deny the same benefit to other land owners by creating artificial distinction. Passing different orders in exercise of



its power under Section 48 of the Act in respect of persons similarly situated relating to the same acquisition proceedings and for the same public purpose is definitely violative of Article 14 of the Constitution and must be held to be discriminatory. (A reference can be had from a decision of the Hon'ble Apex Court in Hari Ram Vs. State of Haryana [2010 3 SCC 621]). In this case, admittedly, the TNHB has reconveyed the lands acquired to several persons under Section 48-B and therefore, refusing to grant the similar relief to the writ petitioners alone, as rightly held by the learned Single Judge holding that the authorities should treat everyone equally and there must not be any discrimination among equals, is untenable.

9. Further, it is to be noted that 4(1) notification in question was issued 45 years ago i.e. on 23.10.1975 for the purpose of Mogappair Eri Scheme. As declaration under Section 6 of the Act was issued after a lapse of 3 years on 09.11.1978, challenging the belated issuance of declaration under Section 6, a writ petition No.13582 of 1995 was filed, whereby learned Single Judge, by order dated 01.02.1996, accepting the case of the writ petitioners therein that a declaration under Section 6 has not been issued within the statutory period of 3 years, allowed the writ petition quashing the declaration under Section 6. This was also confirmed by the learned Division Bench by dismissing the writ appeal filed by the Housing Board on 12.07.1996 in W.A.No.645 of 1996. Aggrieved thereby, when SLP was filed by the Housing Board, the same was also dismissed by the Hon'ble Apex Court. Therefore, admittedly, when the land in question was not utilized by the Housing Board and consequently, the State Government also re-conveyed the adjacent lands to several land owners, refusing the same benefit of re-conveyance under Section 48-B to the similarly placed persons, namely, writ petitioners, is not sustainable. Hence, in our considered view, learned Single Judge has rightly allowed the writ petition holding that the authorities shall not treat the land owners indiscriminately while providing the benefit of re-conveyance. Therefore, for the reasons stated above, the writ appeal stands dismissed by confirming the order passed by the learned Single Judge. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Deputy Registrar (CS)

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Sub Assistant Registrar

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To

1.The Managing Director,
Tamil Nadu Housing Board,
No.331, Anna Salai,
Nandanam, Chennai - 35.

2.The Secretary,
Housing and Urban Development,
Fort St. George, Chennai - 9.

+lcc to Mr.P.S.Amalraj, Advocate SR. No.57078

W.A.No.669 of 2014

SSI (CO)
PR (19/01/2022)