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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2021

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.NO.24531 OF 2021

AND

W.M.P NO.25838 OF 2021

T.Mathiazhagan

... Petitioner

Vs

1. The Principal Secretary
Housing and Urban Development Department
Fort St. George
Chennai-600 009.

2. The District Collector
Erode.

3. The Executive Engineer &
Administrative Officer (In Charge)
Erode Housing Unit,
Tamil Nadu Housing Board
Erode-9.

... Respondents

Prayer :-

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the proceedings of the 1st respondent in Letter No.11603/La-1 (2)/2014 - 34 dated 30.09.2021 and to quash the same as illegal, incompetent and ultravires and consequently direct the 1st respondent to exclude petitioner land in R.S No.752/4A2 to an extent of 0.17.05 hectares in Kasipalayam Village, Erode District, from the purview of the land acquisition proceedings in pursuance to the resolution dated 30.01.1995 passed by the 3rd respondent.

For Petitioner : Mr.R.Shase

For R1 & R2 : Mr.A. Selvendran
Special Government Pleader.



For R3 : Mr.I.Sathish

ORDER

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This Writ Petition has been filed for issuance of Writ of Mandamus, to call for the records pertaining to the proceedings of the 1st respondent in Letter No.11603/La-1 (2)/2014 - 34 dated 30.09.2021 and to quash the same as illegal, incompetent and ultravires and consequently direct the 1st respondent to exclude petitioner land in R.S No.752/4A2 to an extent of 0.17.05 hectares in Kasipalayam Village, Erode District, from the purview of the land acquisition proceedings in pursuance to the resolution dated 30.01.1995 passed by the 3rd respondent.

2. Heard, Mr.R.Shase, learned counsel appearing for the petitioner, Mr.A.Selvendran, learned Special Government Pleader appearing for the respondents 1 & 2 and Mr.I.Sathish, learned counsel appearing for the third respondent.

3. According to the petitioner, the property comprised in R.S.No.752 in Kasipalayam Village, Erode District, was jointly owned by his father and his brothers. The petitioner acquired the property, in sub-division in R.S.No.752/4A2 to an extent of 0.17.05 hectares in Kasipalayam Village, Erode District, by way of a partition deed dated 27.04.1987. While being so, the said lands were acquired by the Special Tahsildar (Land Acquisition Officer) for the purpose of Tamil Nadu Housing Board Neighborhood Scheme. Therefore, the petitioner challenged the acquisition proceedings in W.P.No.7312 of 1994 before this Court. Pending writ petition, the third respondent herein passed a resolution dated 30.01.1995, thereby resolved that the land comprised in R.S.Nos.762/2, 752/2 and 752/4 Kasipalayam Village, Erode District, shall be returned to the respective owners for the reason that the land owners are indigent workers and weavers and they have obtained loan from Erode Co-operative Building Society Limited and constructed dwelling house.

4. Thus, as per the recommendations of the Government Officials, it was informed that the said land shall be removed from the acquisition process once the land owners withdraw their respective writ petitions filed before this Court. Accordingly, the petitioner had withdrawn W.P.No.7312 of 1994 with liberty to make a representation to the authority concerned to exclude his land from the acquisition proceedings in pursuance to the resolution dated 30.01.1995. Accordingly, he withdrew his writ petition and this Court observed that "liberty is given to the petitioners to make representation to the concerned authorities to exclude their lands from the acquisition proceedings in pursuance to the resolution passed by the Housing Board on



30.01.1995, within a period of 3 months from the date of receipt of a copy of the order. On the receipt of such representation, the concerned authorities shall dispose of the same within a period of three months from the date of receipt of such representation". Accordingly, the petitioner submitted a detailed representation to exclude his land from the acquisition proceedings.

5. Since it was kept pending, the petitioner was constrained to file another writ petition before this Court in W.P.No.18012 of 2006, in which, this Court, by an order dated 17.06.2006, directed the first respondent to dispose of the representation of the petitioner within a period of three months from the date of receipt of a copy of that order. Further, till the disposal of the representation, the respondents were directed not to disturb the possession of the petitioner. Though the order was passed by this Court on 17.06.2006, the first respondent failed to consider the same and had not passed orders within a period of three months as directed by this Court and hence the present writ petition.

6. A perusal of the records reveals that the first respondent issued notices to the petitioner only on 11.12.2018, 20.12.2018 and 22.01.2019 for enquiry to be conducted on the representation submitted by the petitioner dated 30.08.2001, as directed by this Court. Therefore, there is no record to show that the said notices were served on the petitioner. That apart, in the impugned order dated 30.09.2021, there is no whisper about the notice to the petitioner and any enquiry conducted by the first respondent before passing the impugned order. More over, it is not a speaking order. In the impugned order, after referring to the award dated 22.05.1995, it is only stated that the Government after careful consideration of the request made by the petitioner for exclusion of land from acquisition, hereby rejects the same. It clearly amounts to violation of principles of natural justice. The petitioner was not given any opportunity of hearing before passing the impugned order. On the sole ground alone, the impugned order cannot be sustained and it is liable to be set aside.

7. In view of the above, the impugned order dated 30.09.2021 passed by the first respondent, is hereby set aside. The matter is remanded back to the first respondent for fresh enquiry. The first respondent is directed to issue notice to the petitioner within a period of two weeks from the date of receipt of a copy of this order and conduct enquiry, by giving an opportunity of hearing to the petitioner and pass orders on merits and in accordance with law, within a period of twelve weeks thereafter.



8. With the above direction, the writ petition stands allowed. It is needless to say that the respondents shall not disturb the possession of the petitioner property, till the disposal of his representation. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Lpp

To

1. The Principal Secretary
Housing and Urban Development Department
Fort St. George
Chennai-600 009.
2. The District Collector
Erode.
3. The Executive Engineer &
Administrative Officer (In Charge)
Erode Housing Unit,
Tamil Nadu Housing Board.
Erode-9.

+1cc to Mr.I.Sathish, Advocate, S.R.No.60941
+1cc to Mr.M.Guruprasad, Advocate, S.R.No.61629
+1cc to the Government Pleader, S.R.No.61515

W.P.No.24531 of 2021
and
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SSI (CO)
PM/12/01/2022