



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2021

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THE HON'BLE Mr. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.34863 of 2018

Padmalakshmi Ammal

...Petitioner

-vs-

1. The Secretary,
To the Government of Tamil Nadu,
Department of Housing Development,
Fort St. George,
Chennai 600 009.

2. The Managing Director,
Tamil Nadu Housing Board,
493, Anna Salai,
Chennai 600 035.

3. The District Collector,
Chennai.

...Respondents

(R3 Suo-Motu impleaded vide order dated 14.06.2021 made in
W.P.No.34863 of 2018 by RSKJ)

Prayer:- Writ Petition is filed under Article 226 of the
Constitution of India praying to issue a writ of Mandamus
directing the 1st and 2nd respondents herein to re-convey or
transfer the unutilized acquired lands in Survey No.107/2, Block
No.21, Arumbakkam Village, Chennai to the petitioner to an
extent 7.06 grounds in the light of the Hon'ble Division Bench
Order in W.A.No.1324 of 2001 dated 10.09.2001.

For Petitioner : Mr.S.Sathiaseelan

For Respondents : Mr.Richardson Wilson
1 and 3 Government Advocate

For Respondent 2 : Mr.M.Baskar

O R D E R

This Writ Petition is filed to issue a writ of Mandamus
directing the 1st and 2nd respondents herein to re-convey or
transfer the unutilized acquired lands in Survey No.107/2, Block
No.21, Arumbakkam Village, Chennai to the petitioner to an
extent 7.06 grounds in the light of the Hon'ble Division Bench
Order in W.A.No.1324 of 2001 dated 10.09.2001.



2. The case of the petitioner is that the property comprised in T.S.No.107/2, Block No.21 situated at Arumbakkam Village, Chennai admeasuring 0.34.20 Hectares was acquired by the first respondent at the request of the second respondent for the purpose of "Sites and Services Scheme" under Land Acquisition Act, 1894. Accordingly, the notification under Section 4(1) was issued on 07.09.1977. On 14.03.1979, the decla under Section 6 was published and compensation was awarded. Aggrieved by the award of compensation, a reference was made under Section 18 of the Land Acquisition Act in L.A.O.P.No.116 of 1987. The compensation was enhanced from Rs.4000/- to Rs.8000/- per ground. Aggrieved by the same, the Special Tahsildar also filed an appeal suit before this Court in A.S.No.755 of 1991, in which, the petitioner also filed Cross Objection and the Hon'ble Division Bench of this Court by the Judgment and Decree dated 08.03.1995 confirmed the compensation enhanced by the referral Court.

3. Further, the case of the petitioner is that the entire land was not utilized by the second respondent and the land admeasuring 7.06 grounds was unutilized and kept vacant. Therefore, the petitioner submitted a representation to the first respondent, requesting to re-convey the unutilized land to an extent of 7.06 grounds by invoking Section 48-B of the Land Acquisition Act, 1894. It was rejected by the first respondent and the same was challenged before this Court in W.P.No.10782 of 2001. The writ petition was also dismissed by an order dated 08.06.2001 and aggrieved by the same, the petitioner filed a writ appeal before this Court in W.A.No.1324 of 2001. While dismissing the writ appeal by an order dated 10.09.2001, this Court directed the first respondent to take appropriate action to evict the encroachers of the land in question, failing which, the petitioner will be at liberty to approach this Court again for appropriate relief.

4. The learned counsel for the petitioner would submit that though this Court specifically directed the first respondent to remove the encroachments in the unutilized land admeasuring 7.06 grounds in T.S.No.107/2, the first respondent failed to remove the encroachments and as such, the petitioner approached this Court once again with request to re-convey the unutilized portion of the land admeasuring 7.06 grounds under Section 48-B of the Land Acquisition Act, 1894.

5. He further submitted that even according to the second respondent, the land admeasuring 7.06 grounds has not yet been handed over by the first respondent. Therefore, the petitioner is entitled to re-conveyance of the said property as contemplated under Section 48-B of the Land Acquisition Act, 1894.



6. A perusal of the records reveals that the petitioner received compensation for the entire land which was acquired by the first respondent for the purpose of "Sites and Services Scheme" under the Land Acquisition Act, 1894. In fact, the petitioner filed Cross Objection for enhancement of the award in the appeal suit filed by the Special Tahsildar, Land Acquisition in A.S.No.755 of 1991 and this Court confirmed the order passed by the referral Court in L.A.O.P.No.116 of 1987. Therefore, this Court, by an order dated 08.06.2001, dismissed the writ petition. The relevant portion of the order reads as follows:

"It cannot be construed that the Lands which were acquired by the first respondent were not really required for the purpose for which acquisition was made. Under Section 48-B of the Act, the question of re-transfer to the original owner would arise only when the Government is satisfied that the lands vested with the Government are not really required for the purpose for which it was acquired, when the first respondent has made it very clear that the land which were acquired for the purpose of sites and services scheme of the second respondent board are really required even at on this date. There is no scope for holding that Section 48-B of the Act is attracted, so as to enable the petitioner to seek for re-transfer of the so called unutilised portion of the land in question. There being no justifiable ground pointed out by the petitioner to interfere with the order impugned and since I am satisfied that the reasons mentioned in the impugned order are fully justified, there is no scope for interfering with the said order."

7. Aggrieved by the same, the petitioner preferred the writ appeal before this Court and this Court, by Judgment dated 10.09.2001, dismissed the appeal as under:

"However we make it clear that the first respondent has a duty to see that the encroachers are evicted without any further delay. Accordingly, we direct the first respondent for whom notice has been taken by the learned Government pleader, to take appropriate action to evict the encroachers of land in question as expeditiously as possible at any rate not later than six months from the date of receipt of copy of this Judgment failing which the appellant



will be at liberty to approach this Court again for appropriate relief, if so advised."

8. While dismissing the writ appeal, this Court directed the first respondent to take appropriate action to evict the encroachers in the subject property. If the first respondent failed to take any action, the petitioner is at liberty to approach this Court for appropriate relief. It does not mean that the petitioner can again ask for the relief of re-conveyance. The Hon'ble Division Bench of this Court, while considering the allegation that the vacant portion of the subject property have been encroached by the encroachers, directed the first respondent to evict the encroachers, which does not confer any right on the petitioner to seek the same relief once again.

9. As stated supra, the entire land was acquired by the first respondent and handed over to the second respondent. The unutilized portion by the second respondent has now been encroached by the encroachers. In fact, the first respondent had already taken action to remove the encroachers. Aggrieved by the same, the encroachers filed a revision before the Commissioner of Land Administration. However, the same was rejected on the ground that as against the order passed by the District Collector under Section 10 of the Land Encroachment Act, 1905, only revision will lie before the Government. Accordingly, the encroachers had filed a revision before the Government of Tamil Nadu and it is pending for enquiry.

10. Therefore, the petitioner has not been conferred any right to seek re-conveyance of the land under Section 48-B of the Land Acquisition Act, 1894 repeatedly, since, request of the petitioner was dismissed and confirmed by the Hon'ble Division Bench of this Court. The relevant portion of the order passed by the Hon'ble Division Bench reads as follows:

"Adverting to this contention learned single judge, on appreciation of the materials placed before him has observed that out of the total extent of Land acquired for sites and services scheme of the second respondent / Board substantial portion of the land has been plotted out by providing approach road to an extent of 50 ft. and that remaining portion of 0.15.76 hectares of land is under unlawful possession of certain encroachers. It is brought to the notice of the learned single Judge that the District Collector has taken appropriate proceedings for removal of the



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encroachments and once the encroachments are removed the said remaining portion of 0.15.76 hectares also should handed over to the second respondent / Board for the purpose of full utilisation of the scheme for which the land has been acquired.

Since the substratum of the case set up by the petitioner / Appellant has been demolished in the above backdrop of facts we are of the opinion that the learned single judge was right in nonsuiting the appellant by dismissing the writ petition. We find no infirmity in the order of the learned single judge and accordingly, dismiss this writ appeal. No costs."

11. Therefore, the present writ petition filed for the very same relief, which was already rejected by this Court and confirmed by the Hon'ble Division Bench of this Court, is dismissed as devoid of merits.

12. Accordingly, this writ petition stands dismissed. No order as to costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary, To the Government of Tamil Nadu,
Department of Housing Development,
Fort St. George, Chennai 600 009.
2. The Managing Director,
Tamil Nadu Housing Board,
493, Anna Salai, Chennai 600 035.
3. The District Collector,
Chennai.

+1cc to M/s.Sathyaseelan, Advocate, S.R.No.41331
+1cc to the Government Pleader, S.R.No.41345

W.P.No.34863 of 2018

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NSK 13/09/2021