



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.06.2021

CORAM:

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P. (MD) .No.8686 of 2021

(Through video conferencing)

M.Rahamathunnisha Beevi

... Petitioner

Vs.

1.The Managing Director,
Tamil Nadu Housing Board,
Anna Salai, Nandanam,
Chennai-600 035.

2.The Executive Engineer and
Administrative Officer,
Tirunelveli Housing Unit,
Tirunelveli District.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the 2nd respondent in his proceedings Letter No.LA/521/82 dated 12.02.2021 and quash the same as illegal, consequently directing the respondents to issue a 'No Objection Certificate' for mutation of Patta in respect of the lands in Survey No.554/1, 555/2, 556/land **(*)549/2** measuring an extent of 1.06 acres, 0.36 acres, 1.69 acres and **(*)0.66 acres** respectively, Kulavanigapuram, Palayamkottai Taluk, Tirunelveli -11.

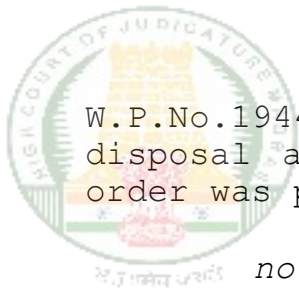
For Petitioner
For Respondents

: Mr.T.Lenin Kumar
: Mr.Mahaboob Athiff

ORDER

This writ petition has been filed challenging the impugned proceedings of the second respondent dated 12.02.2021 and for a consequential direction to the respondents to issue a 'No Objection Certificate' in order to enable the petitioner to mutate the revenue records with respect to the subject property and to obtain patta.

2. The case of the petitioner is that he is the Power-of-Attorney agent of the owner of the property and the owner of the property became entitled to the subject property by virtue of a final decree passed in a partition suit. The property became the subject matter of acquisition in the year 1986. Several writ petitions were filed before this Court questioning the acquisition proceedings. The petitioner also filed a writ petition in



W.P.No.19445 of 1992. This writ petition was taken up for final disposal along with three other writ petitions and the following order was passed allowing the writ petition:

"4.Even at the beginning it is brought to my notice by the learned counsel for the petitioners that the very same notification was under challenge by 49 persons in writ petition No.13650 of 1988. By order dated 10.06.1998 K.Gnanaprakasam, J. after considering the rival contentions and after holding that the respondent failed to follow Rule 3(b) of the Land Acquisition (Tamil Nadu) Rules, allowed the said writ petition. Here also the very same declaration is under challenge in these writ petitions. In the light of the conclusion arrived by the learned Judge in the above referred case, it is unnecessary for this Court to refer the case of the parties. In as much as the applicability of the said order is not disputed. I am of the view that by applying the said decision the impugned notification are liable to be quashed, accordingly all the writ petitions are allowed in terms of writ petition No.13650 of 1988 dated 10.06.1998. However, there will be no order as to costs."

3. The further case of the petitioner is that this order passed in the writ petition has become final and it was never put to challenge by filing an appeal. The petitioner applied for issuance of 'No Objection Certificate' before the respondents in order to get a patta with respect to the subject property. Since the same was rejected, the present writ petition has been filed before this Court.

4. Heard Mr.T.Lenin Kumar, learned counsel appearing on behalf of the petitioner and Mr.Mahaboob Athiff, learned counsel appearing on behalf of the respondents.

5. It can be seen from records that there were nearly 4 batches of writ petitions that were filed by various land owners. The petitioner also had filed a writ petition in W.P.No.19445 of 1992 questioning the acquisition. Initially an order was passed in W.P.No.13650 of 1988 dated 19.06.1998 wherein the acquisition proceedings were quashed. In this writ petition, there were totally 49 petitioners, who had knocked the doors of this Court. Subsequently the writ petition filed by the petitioner along with three other writ petitions came up for hearing and these writ petitions were allowed by merely following the earlier order passed in W.P.No.13650 of 1988. The same is clear from the extracted portion supra.



6. Likewise some of the other writ petitions were also allowed on the same ground.

7. The Housing Board filed an appeal in W.A.No.1336 of 1998 as against the order passed in W.P.13650 of 1988. This writ appeal was allowed and the order passed by the learned single Judge was set aside. Admittedly no writ appeal was filed against the order passed in the writ petition filed by the petitioner and three others. It can also be seen from records that two other writ appeals that were filed by the Housing Board subsequently came to be dismissed. All these appeals pertain to the same acquisition proceedings.

8. The effect of the above orders is that the order that was passed in W.P.No.13650 of 1988 alone was interfered and none of the other orders were set aside by the Division Bench.

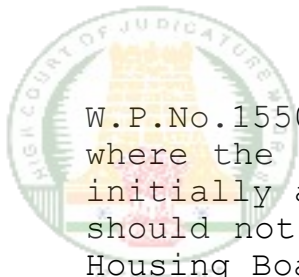
9. The main ground that has been taken by the second respondent in the impugned proceedings is that the order passed in W.A.No.1336 of 1998 will also automatically apply to the order passed in the writ petition filed by the petitioner and that order also automatically gets set aside. Therefore the petitioner does not have the right to seek for a 'No Objection Certificate'. Yet another reason that has been mentioned in the impugned order is that the petitioner is a subsequent purchaser and therefore does not have a legal right to seek for the 'No Objection Certificate' since the sale itself is void.

10. This Court is not able to agree with the reason assigned in the impugned communication issued by the second respondent. The order passed in W.A.No.1336 of 1998 will only confine itself to the order passed in W.P.No.13650 of 1988. This order will not automatically set aside all the other orders passed in various other writ petitions. If the stand taken by the Housing Board is taken to its logical conclusion, there was no requirement for the Housing Board to file the subsequent writ appeals with regard to the same acquisition which got dismissed on two occasions. Therefore, the Housing Board itself understood that wherever the writ petitions are allowed, it can be nullified only if the same is set aside specifically by the order of the Division Bench.

11. Therefore, the order passed in W.A.No.1336 of 1998 cannot be held to have nullified the order passed in favour of the petitioner in W.P.No.19445 of 1992.

12. In view of the above discussion, this Court is inclined to interfere with the order passed by the second respondent. Once the acquisition proceedings are quashed, the petitioner become the absolute owner of the property and therefore there is no requirement to get a 'No Objection Certificate' from the Housing Board. Useful reference can be made to the order passed by this Court in

<https://hcn.judiciary.go.in/hcservices/> **N. Gnanasekar and another vs. Secretary to the Government** in



W.P.No.15502 of 2020 dated 04.11.2020. This Court has held that where the Housing Board has lost its right over the lands that were initially acquired and which was subsequently quashed, the Tahsildar should not insist for getting a 'No Objection Certificate' from the Housing Board.

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13. In the result, the impugned proceedings of the second respondent dated 12.02.2021 is hereby quashed. Since this Court has held that the Housing Board is no more the owner of the property, there is no requirement for getting 'No Objection Certificate' from the Housing Board. It is left open to the petitioner to file an application seeking for patta before the revenue authorities and the revenue authorities shall process the application without insisting for the 'No Objection Certificate' from the Housing Board.

14. This writ petition is accordingly allowed. No Costs.

Sd/-

Assistant Registrar (CO)

(*) Vide Amendment in WMP(MD) No.9273/2021 order dated 14/7/2021

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PJL

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

(*)To be substituted the order already despatched on 09/07/2021

To

1.The Managing Director,
Tamil Nadu Housing Board,
Anna Salai, Nandanam, Chennai-600 035.

2.The Executive Engineer and
Administrative Officer,
Tirunelveli Housing Unit, Tirunelveli District.

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NS (CO)

KB(09.07.2021) 4P 3C

NS (CO)

<https://hdservices.courts.gov.in/hdservices/> 4P 3C