



W.P.No.12439 of 2015 and M.P.No.1 of 2015

THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
12~10~2022	18~10~2022

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

W.P.No.12439 of 2015
and M.P.No.1 of 2015

Mrs.M. Premavathi

... Petitioner

~Vs~

1. The Inspector General of Registration,
Santhome, Chennai.
2. The Joint Registrar II
Chennai South,
Saidapet Registrar Office,
Chennai.
3. The Tamil Nadu Housing Board
Rep.by its Chairman,
Nandanam, Chennai.
4. The Special Tahsildar,
Land Acquisition,
Tamil Nadu Housing Board,
Nandanam, Chennai – 35.



W.P.No.12439 of 2015 and M.P.No.1 of 2015

5. Land Acquisition Officer/Special Tahsildar,
Tamil Nadu Housing Board, Chennai – 107.

... Respondents

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Prayer: Writ Petition filed under Section 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus call for the records of the 2nd Respondent in its proceedings dated 10.03.2015 wherein the 2nd Respondent had rejected the petitioner's document of General Power of Attorney dated 10.03.2015 from registration and quash the same and to direct the Respondents 1 and 2 to register the document executed and presented for Residential Flat “Ramana Apartments” bearing Flat No.B-1, First Floor, Ambal Nagar, Barathi Street, Ramapuram, Chennai-89, measuring an extent of 1050 sq.ft.of built up area along with 510 square feet undivided share of land out of 6927 sq.ft. situate within the Sub-Registration District of Joint II Sub-Registrar and Registration District of South Madras.

For Petitioner : Mr. G. Vijay Anand for
M/s. Vijay Anand Associates

For Respondents : Mr. P. Sathish
Additional Government Pleader
[for R1, R2, R4 and R5]

Mr.A.M. Ravindranath Jeyapal
[for R-3]

ORDER

This Writ Petition has been filed to issue a Writ of Certorarified Mandamus challenging the Order of the Second Respondent, rejected the Petitioner document



W.P.No.12439 of 2015 and M.P.No.1 of 2015

of General Power of Attorney dated 10.03.2015 from Registration.

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2. It is the case of the Writ Petitioner that the Writ Petitioner is the owner of the Apartments situated in Survey No.193/1, 2 and 4, Old Ambattur Taluk, Old Tiruvallur District presently Chennai City. The said property was part of larger extent of land measuring 1.17 Acres in Survey No.193/1, 193/2, 193/3 and 193/4, Ramapuram Village, absolutely owned and possessed by Petitioner's father and uncle Mr. Munusamy and Mr. Arumugam. The said land was sought to be acquired on behalf of the 3rd Respondent by issuing a Declaration under section 6 of the Land Acquisition Act 1894 in G.O.Ms.No.971 dated 07.06.1978 published in the Tamil nadu Government Gazette 09.06.1978. The Acquisition proceedings was challenged before this Court by the Petitioner's father, her uncle and Late Mr. Munusamy and Mr.Arumugam in W.P.No.11841 of 1986. This Court in a batch of writ petitions including W.P.No.11841 of 1986 quashed the above proceedings on 31.10.1991. Later the Government of Tamil Nadu had filed appeal by way of Writ Appeal No.170 of 1994(Batch). However, the State Government has not filed any appeal against the order in W.P.No.11841 of 1986. Therefore, it is the contention of the Writ Petitioner that the acquisition proceedings in respect of the



Writ Petitioner property is quashed and reached finality, since no appeal was filed by the Respondents challenging the order of this Court. The Writ Petitioner has been in absolute enjoyment and ownership of the property and put up a construction in a Joint Development Agreement, after obtained proper permission from the local body and constructed apartments. As the Petitioner not able to manage the property, executed a General Power of Attorney in favour of her daughter namely Mrs.P. Bala Anjani. When the same was presented for registration, the 2nd Respondent issued impugned order stating that the patta stands in the name of 3rd Respondent. Therefore, questioning the same, the writ petition has been filed on the ground that once the land acquisition proceedings is quashed and reached finality, the 2nd Respondent cannot reject to register the Petitioner's document for the reason that the patta is in the name of 3rd Respondent.

3. The 3rd Respondent filed a Status Report stating that there was 4(1) Notification published on 11.6.1975 for formation of New Ramapuram Neighbourhood Scheme and acquired 421.26 Acres. Enquiry under Section 5A of the Land Acquisition Act also conducted. Thereafter, Declaration was issued under Section 6 and 7 of the L.A.Act. It is the contention of the 3rd Respondent that the



W.P.No.12439 of 2015 and M.P.No.1 of 2015

land in Survey Nos.193/1, 2 and 4 of Ramapuram Village measuring an extent of

0.35, 0.52 and 0.15 acres are covered in this Award No.9/86 dated 23.09.1986.

Notice also served in the name of Arumugam and Munusamy. As the amount has not received, compensation ordered to be deposited in the City Civil Court under Section 30 and 31(2) of the L.A. Act. It is their contention that the possession of the land was also handed over to the Tamil Nadu Housing Board on 30.10.1986. Therefore, according to them the Petitioner has subsequently purchased the property, they have no right to question the land acquisition. It is their contention that the Petitioner is only an encroacher. Further it is contended that W.A.No.170 of 1994 and 16 other cases filed by the State was allowed and the entire G.O. has been restored. Therefore, their contention is that the Petitioner being the subsequent purchaser has no right in the property.

4. The learned counsel appearing for the Petitioner submitted that though several Writ Petitions have been filed challenging the land acquisition, one such Writ Petition was filed by the Petitioner's father and uncle in W.P.No.11841 of 1986. While disposing the Writ Petition along with other petitions this Court by order dated 31.12.1991 quashed the Section 6 Declaration and also the



proceedings. Though the State has filed appeal against the other writ petitioners, the Order in the Writ Petition No.11841 of 1986 has not been challenged by the State. Therefore, it is his contention that once the order has reached finality, the 3rd Respondent cannot take advantage of the order passed in other Writ Appeals wherein the Petitioner's father was never made as a party respondent. Therefore, according to them, once the matter has reached finality, Housing Board cannot question the title of the Petitioner and under the wrong premise they proceeded against the petitioner as if the petitioner is the subsequent purchaser. Hence, submitted that as long as acquisition relating to the Petitioner land is quashed and reached finality, it operate as *res judicata* against the Respondent/State. Therefore, the learned counsel submitted that the 2nd Respondent cannot refuse the registration and hence the proceedings of the 2nd Respondent has to be quashed.

5. In support of his contention he relied upon the following judgments:

1. Union Of India and Others vs. Major S.P.Sharma and Others [(2014) 6 Supreme Court Cases 351]

2. Indu Bhusan Jana vs. Union of India [2008 SCC



W.P.No.12439 of 2015 and M.P.No.1 of 2015

Online Cal 626]

3. Rajeswari vs. A.Pongalarasi [W.P.Nos.27576 and 27578 of 2021 dated: 03.01.2022 – High Court Madras]

4. N.Gnansekar and Another vs. The Secretary to Government, Housing and Urban Development Department [W.P.No.1552 of 2020 dated: 04.11.2020 – High Cout Madras]

6. The learned counsel appearing for the 3rd Respondent/TNHB submitted that though this Honourable Court by order dated 31.12.1999 quashed Section 4(1) Notification and Section 6 Declaration in a batch of writ petitions, a batch of Writ Appeals filed by the State in W.A.Nos.170 to 172, 174 of 1996 etc., challenging the above writ petitions and the same have been allowed and the entire G.O.was restored. Therefore, it is his contention that the land is vested with the 3rd Respondent. It is his further contention that the Petitioner is the subsequent purchaser, she has no right in the property. Merely Apartment is constructed, they have no right in the property. Therefore submitted that the writ petition is not



W.P.No.12439 of 2015 and M.P.No.1 of 2015

maintainable and the same has to be dismissed. In support of his contention, he

relied upon the following judgments:

- 1. Shivkumar & Another vs. Union of India & Tamil Nadu Housing Board and Others [Civil Appeal No.8003 of 2019 decided on 14.10.2019 – Supreme Court of India.*
- 2. B.Nagaraj vs. State of Tamilnadu and others [W.A.Nos.1204, 1209, 1210, 1214, 1216, 1218 and 1239 of 2022 dated 09.06.2022 – Madras High Court]*

7. I have perused the entire materials and submissions put forth by both side learned counsels.

8. As rightly pointed out by the learned counsel for the Petitioner land acquisition proceedings were challenged in various writ petitions, one such Writ Petition is W.P.No.11841 of 1986 filed by the father and uncle of the Petitioner in respect of the subject property. Though the G.O.Ms.No.971 Housing dated



W.P.No.12439 of 2015 and M.P.No.1 of 2015

07.06.1978 has covered for a large extent of land, every individual has challenged the G.O. and one such Writ Petition was W.P.No.11841 of 1986, wherein the acquisition in respect of the petitioner's father's land was challenged and the entire acquisition has been quashed by this Court and no appeal has been filed. Even the Status Report also does not indicate that any appeal has been filed against the W.P.No.11841 of 1986. Though some of the writ orders were challenged by way of batch of Writ Appeals, no appeal has been filed as against the Writ Petition No.11841 of 1986, which reached finality.

9. It is relevant to note that the Apex Court in *Abhey Ram (Dead) By Lrs. And Others vs Union Of India And Others (AIR 1997 SC 2564)* has held that the benefit of the quashing of the declaration under Section 6 by the High Court does not enure to the person who are not party to that judgment. Similar view also taken in *Om Prakash vs. Union of India [AIR 2010 SC 2430]* wherein the Honourable Apex Court has held that the benefit of quashment of declaration in some matters cannot be extended to those who had not party to the suit. Therefore, same analogy applies to the 3rd Respondent where the State has not filed appeal against the Writ Petition filed by the father of the Petitioner challenging the



acquisition, in fact, acquisition under Section 6 Declaration has been quashed.

Therefore, when the Petitioner's father who is not a party to the Writ Appeals, Orders passed in the Writ Appeals will not be binding on the Petitioner. 3rd Respondent cannot take advantage of the writ orders passed against some other parties. When acquisition is not alive as far as the petitioner land is concerned, once the matter reached finality and no appeal has been filed it operates as *res judicata*.

10. In a Judgment of the Apex Court in ***Manmohan Sharma vs. State of Rajasthan and other [(2014) 5 Supreme Court Cases 782]*** the Honourable Apex Court in paras 22 and 23 has held that when one of the writ petitioners who was party in the writ petition, who has not been arrayed as a party in the writ appeal in a service matter, based on the order passed in the writ appeal, he could not have been terminated from service since he has not made as a party. In para 23 of the above judgment it is held as follows:

“23. There is, in our opinion, considerable merit in the submission made by learned counsel for the appellant Danveer Singh. Even Mr. Mangal Sharma appearing for the respondent fairly conceded that on a true and proper construction of the order of this



W.P.No.12439 of 2015 and M.P.No.1 of 2015

Court in Kailash Chand Sharma's case (supra), the benefit of appointment to Danveer Singh could not be denied merely because the order passed in his favour had not been assailed by the State or because he had not been impleaded as respondent in the Supreme Court in the appeal filed by the State. The termination of services of Danveer Singh cannot in that view be sustained."

11. Therefore, now the 3rd Respondent cannot contend that the entire acquisition proceedings is over. As far as the petitioner property is concerned, their contention is that the petitioner is the subsequent purchaser has no leg to stand. It is the specific case of the Petitioner that she inherited the property of his father and developed the same.

12. As far as the Section 6 Declaration operate as *right in personam* and it has already been quashed by this Court, which has not been challenged and reached finality, now the Respondent cannot take advantage of the some other writ appeals where the acquisition was restored in respect of the other properties covered under the G.O.Ms.No.971 Housing dated 07.06.1978.

13. In ***Indian Council for Enviro-Legal Action vs. Union of India and***



others [(2011) 8 SCC 161] in para 149 the Honourable Supreme Court has held

that it is settled principle of law that no one can take advantage of his own wrong.

14. In *Union of Inda and Others vs. Major S.P. Sharma and others [(2014) 6 SCC 351]* the Honourable Apex Court has held as follows:

“80. In *M. Nagabhushana vs. State of Karnataka & Ors.*, AIR 2011 SC 1113, this Court held that doctrine of res-judicata was not a technical doctrine but a fundamental principle which sustains the rule of law in ensuring finality in litigation. The main object of the doctrine is to promote a fair administration of justice and to prevent abuse of process of the court on the issues which have become final between the parties. The doctrine was based on two age old principles, namely, 'interest reipublicae ut sit finis litium' which means that it is in the interest of the State that there should be an end to litigation and the other principle is 'nemo debet bis vexari si constat curiae quod sit pro una et eadem causa' meaning thereby that no one ought to be vexed twice in a litigation if it appears to the Court that it is for one and the same cause.

81. Thus, the principle of finality of litigation is based on a sound firm principle of public policy. In the absence of such a principle great oppression might result under the colour and pretence of law inasmuch as there will be no end to litigation. The doctrine of res-judicata has been evolved to prevent such an anarchy.



82. *In a country governed by the rule of law, finality of judgment is absolutely imperative and great sanctity is attached to the finality of the judgment and it is not permissible for the parties to reopen the concluded judgments of the court as it would not only tantamount to merely an abuse of the process of the court but would have far reaching adverse affect on the administration of justice. It would also nullify the doctrine of stare decisis, a well established valuable principle of precedent which cannot be departed from unless there are compelling circumstances to do so. The judgments of the court and particularly the Apex Court of a country cannot and should not be unsettled lightly.”*

15. In ***Indu Bhusan Jana vs. Union of India [AIR 2009 Cal 24]*** the Division Bench of Calcutta High Court has held that a party aggrieved by an order has to work out his remedies within the legal framework. If an issue or the entire lis is concluded upon a finding being rendered and such finding remains unchallenged, it is no longer open to the party to undo the effect thereof at any subsequent stage or collaterally unless it is demonstrated that the finding was obtained by fraud or the court lacked jurisdiction to pass the order. The hierarchy in the judiciary exists to afford litigants to climb up the ladder in pursuit of justice and to right a wrong committed at a lower level. But if a litigant accepts an order, he does it to his prejudice and binds himself thereby. It is in the interest of the



W.P.No.12439 of 2015 and M.P.No.1 of 2015

public at large that finality should attach to the binding decisions pronounced by a court of competent jurisdiction and it is also in the public interest that individuals should not be vexed twice over in the assessment of the same matter in issue.

16. This Court also in ***Rajeswari vs The Secretary to the Government Housing and Urban Development Department [W.P.No.27576 of 2021 dated 03.01.2022 Madras High Court]*** has held that the appeal has not been pursued and the acquisition is quashed, Housing Board is bound to give NOC.

17. Considering the above judgments and the matter reached finality, now the Housing Board cannot agitate the right in a collateral proceedings. The Writ Petition is filed for challenging the order of the 2nd Respondent. As the entire acquisition in respect of Petitioner's property has been quashed and reached finality, merely on the basis of the pattas stand in the name of the Housing Board since other larger extent is in the name of TNHB, the 2nd Respondent cannot refuse to register the General Power of Attorney. Accordingly the impugned order is set aside.



W.P.No.12439 of 2015 and M.P.No.1 of 2015

18. In view of the above, the Writ Petition is allowed. The impugned order is set aside. No costs. Consequently, connected M.P.is closed. The 2nd Respondent is directed to register the General Power of Attorney document forthwith, as per law.

18.10.2022

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Index : yes

Internet : yes

Speaking / Non-Speaking order

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5. Land Acquisition Officer/Special Tahsildar,
Tamil Nadu Housing Board, Chennai – 107.

Page 15 / 16



WEB COPY



W.P.No.12439 of 2015 and M.P.No.1 of 2015

N. SATHISH KUMAR, J.

ggs

Order in:
W.P.No.12439 of 2015
and M.P.No.1 of 2015

18.10.2022