



WP.No.21681/2011

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 18.08.2021

Delivered on 18.11.2022

CORAM

THE HONOURABLE Mr. JUSTICE S.S.SUNDAR

WP.No.21681/2011
& MP.Nos.1&2/2011

Jayachitra

.. Petitioner

Versus

- 1.The Secretary
Government of Tamil Nadu
Land Administration Department
Fort St George, Chennai 600 009.
- 2.The Joint Secretary to Government
Labour and Development Department
Fort St George, Chennai 600 009.
- 3.The Collector
Chengalpattu,
Kancheepuram District.
- 4.The Revenue Division Officer
Chengalpattu.
- 5.The Managing Director
Adayar Anandha Bhavan
Adayar, Chennai 600 020.



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6.The Tamil Nadu Labour Welfare Board
represented by the Administrative Officer/
Secretary, DMS Complex,
Teynampet, Chennai-6.

.. Respondents

**R6 suo motu impleaded vide order
dated 08.01.2021 made in WP.No.21681/2011**

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the respondents 1 to 4 to transfer the lands in an extent of 0.72 cents comprised in Survey No.120/1C Old Mamallapuram Village, Kancheepuram District to the petitioner.

**Prayer amended as per order dated 12.11.2011 in MP.No.3/2011 in
WP.No.21681/2011**

For Petitioner	: Mr.R.Karunagaran
For RR 1 to 4	: Mr.Akhil Akbar Ali Government Advocate
For R5	: Mr.J.Ravikumar

ORDER

(1)The above writ petition is filed for issuance of a writ of certiorarified mandamus to quash the letter of the 2nd respondent dated 21.09.2007 and consequently, to direct respondents 1 to 4 to reconvey the lands to an extent of 72 cents comprised in S.No.120/1C in Old Mahabalipuram Village, Kanchipuram District.



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(2) Brief facts that are necessary for the disposal of this writ petition are as follows;

(3) The petitioner purchased an extent of 72 cents out of 99 cents comprised in s.No.120/1C in Mahabalipuram Village, by a registered Sale Deed dated 30.04.1976. The said lands were acquired by the State Government for the purpose of allotting the said land for the construction of a Holiday Home for the workers by the Tamil Nadu Labour Welfare Board. The petitioner states that the acquisition was done without issuing proper notice to the petitioner, at any point of time. It is also contended that no amount was paid to the petitioner by way of compensation for the lands acquired from her. However, the petitioner has not challenged the acquisition, but seek reconveyance of the land under Section 48-B of the Land Acquisition Act as amended by the Tamil Nadu Amendment Act, 16 of 1997.

(4) The petitioner submitted several representations from the year 1986. It is admitted by the petitioner that by a communication received on 04.04.1990, the petitioner's representation was rejected on the ground that the Tamil Nadu Labour Welfare Board in their Meeting held on



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27.12.19987 rejected the petitioner's request. However, the petitioner submitted further representations to the respondents and the representations of the petitioner were submitted either to the 2nd respondent or to the Hon'ble Chief Minister's Cell or to the Deputy Commissioner of Labour. Finally, the 2nd respondent by the impugned communication rejected the petitioner's representation dated 20.02.2007 on the ground that the entire extent acquired for the 6th respondent was in the enjoyment of the 6th respondent for their bona fide purpose and that the land is fully utilised by the 6th respondent. Aggrieved by the same, the above writ petition is filed.

(5)The case of the petitioner in the writ petition is that the substantial portion of the property acquired by the 6th respondent was not used by the 6th respondent for the purpose for which it was acquired and therefore, the petitioner is entitled to seek reconveyance of the land which is not put to use by the 6th respondent. It is further submitted by the petitioner that as per Section 16-B of the Land Acquisition Act, as introduced by the Tamil Nadu Amendment Act 16/1987, the Government has to forfeit the unused lands from the 6th respondent and



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thereafter, they should consider the application filed by the petitioner for reconveyance if the lands are not required for any other public purpose by the State Government. One of the main ground raised by the petitioner is that in respect of substantial portion of the land, the 5th respondent is running a Hotel. Since the 6th respondent has allotted the land in favour of the 5th respondent for commercial purpose, the very object behind acquisition has gone and the land should be resumed from the 6th respondent by considering the petitioner's application under Section 48-B of the Land Acquisition Act as applicable to the State of Tamil Nadu.

(6) This Court heard the learned counsel for the petitioner ; Mr.Akhil Akbar Ali, learned Government Advocate appearing for respondents 1 to 4 and Mr.J.Ravikumar, learned counsel appearing for the 5th respondent and also perused the materials placed before it.

(7) The learned counsel for the petitioner relied upon the judgment of a Division Bench of this Court in the case of ***R.Shanmugam and Others Vs. State of Tamil Nadu rep. By its Secretary, Housing and Urban Development, Secretariat, Chennai*** reported in ***2006-4-MLJ-805***.



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The said judgment relied upon by the petitioner is of course, a case arising out of a similar situation. The Division Bench of this Court, noticing that the land acquired by the Tamil Nadu State Housing Board was not utilised by the Housing Board, the land cannot be disposed of by the Housing Board. It was directed that the land should be but should be resumed by the State Government in exercise of their power under Section 16-B of the Land Acquisition Act as amended by the State of Tamil Nadu. Since the writ petition filed by the petitioner therein was dismissed on the ground that the land was handed over to the Requisition Department namely, the Housing Board, a direction was issued to the State Government to initiate action under Section 16-B of the Land Acquisition Act and thereafter, the application submitted by the petitioner therein should be considered under Section 48-B of the Land Acquisition Act as amended by the State of Tamil Nadu. The relevant portion of the judgment of the Division Bench reads thus:-

36. In view of the above discussions, we hold that the Government in exercise of the power under Section 16-B of the Act can forfeit the land from



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the Tamil Nadu Housing Board as penalty and on such forfeiture, the land shall vest in the Government in Revenue Department free from all encumbrances. Once such vesting takes place, the Government shall consider the request, if any, received from the land owners expressing their willingness for re-conveyance and may accept or reject. Such exercise of power is discretionary and the owners have no right to seek for automatic re-conveyance of land. The Tamil Nadu Housing Board has no power under Section 72 of the Act to dispose of unutilized land and such power shall only vest with the Government under Section 16-B of the Land Acquisition Act.

37. Coming to the facts in issue in all these Writ Appeals, though award was passed in respect of 662.96 acres of land, possession was taken only in respect of 105.61 acres of land and handed over to the Board, out of which, only an extent of 21.47 acres of land alone was utilised. The acquisition proceedings were completed in the year 1991 and the award was passed in the year 1994. Possession was taken and compensation was also paid to the



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owners. It is the specific case of the appellants that large number of buildings have come up in the land notified, and the implementation of the scheme is not really possible. By the impugned orders, the respondent-State Government has rejected the request of the erstwhile land owners for re-conveyance on the ground that possession of the land was taken and handed over to the Housing Board and the compensation was also paid to the erstwhile land owners and that the lands are still required for Housing Scheme. Except the above, we do not find any consideration of the individual grievance of the appellants.

38. For rejecting the request of the land owners, the Government has given two reasons viz., (1) the land owners have been awarded compensation and possession of the land has been given to the Housing Board and (2) the land is still required for Housing scheme. Insofar as the first reason, we are of the opinion that the same cannot be held good in view of the specific provisions of Section 48-B enabling the land owners to make the application for reconveyance. Mere fact that



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they have received compensation does not prevent them from making a request to the Government invoking Section 48-B of the Act for reconveyance of the unutilised lands. Insofar as the second reason, it must be kept in mind that though the proposal was made by the Housing Board to the Government for acquiring an extent of 1997.02 acres of patta land, ultimately, the Government could pass award only in respect of 662.96 acres and even out of the said extent of the land, only an extent of 105.61 acres was taken possession and handed over to the Housing Board. But the Board could utilise only an extent of 21.47 acres of land for Housing Scheme. In view of the above undisputed facts, we are of the considered view that the Government have not applied their mind to the above aspects while they came to the conclusion that the land is still required for Housing Scheme.

39. In our opinion, merely because possession is taken and the lands are handed over to the Housing Board, the power of the State Government to forfeit the land under section 16-B of the Act, is not curtailed. The said power is independent and



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exclusive. In the event, the lands are unutilised by the Board for quite long number of years, the State Government has the power to forfeit the lands by way of penalty. Of course, the fact that Section 17-A

was repealed was not brought to the notice of the learned single Judge and consequently, the learned single Judge has held that there is vesting of land in Housing Board under Section 17-A. In view of Section 162 of TNHB Act, 1961 the City Improvement Trust Act, 1950 was repealed and consequently, Section 17-A was also repealed. In the circumstances, there cannot be any vesting of the land on the Housing Board under Section 17-A as well as the Government under Section 16 of the Central Act simultaneously.

40. On a challenge to the above impugned orders, the learned Single Judge has dismissed the Writ Petitions mainly on the ground that the land handed over to the Housing Board shall vest in the Housing Board under Section 17-A of the Act and there cannot be a further vesting in the State Government under Section 16-B. In our



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opinion, the said finding is unsustainable in view of the fact that Section 17-A was repealed by the provisions of Section 162 of the Tamil Nadu Housing Board Act which was enacted in the year 1964. As on today, Section 17-A is not in the Text Book and the only provision holding the field is Section 16-B, empowering the State Government for forfeiture of the unutilised lands from the Housing Board by way of penalty."

(8)The 2nd respondent has filed a counter affidavit pointing out that an extent of 3.95 acres in S.No.120/1C etc., in Mamallapuram Village was acquired for the construction of Holiday Home for the benefits of labourers by the Labour Welfare Board following statutory requirements. It is stated that the entire amount of compensation payable to the land owners were fixed and that a sum of Rs.26,476/- for the acquired land was deposited. It is stated that possession of the land was handed over to the Public Works Department for the purpose of constructing a Holiday Home on 16.12.1976. The Public Works Department has constructed the Holiday Home and the said Home was



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inaugurated on 13.06.1988. It is seen that 10 two bedded rooms and 2 six bedded rooms and one huge room with 12 beds were constructed at a cost of Rs.22,72,023/- by the Government. Since the land which has been acquired, has been handed over to the Requisition Department and the Requisition Department has fully utilised the land, the 2nd respondent has taken a stand that the petitioner cannot have a claim over the land which was acquired by the Government indicating that the land is also used by the 6th respondent for other purposes. However, it was indicated by the 2nd respondent that the 5th respondent was given a substantial portion of the acquired land for the Restaurant established by the 5th respondent. It is also stated that running of the Restaurant by the 5th respondent is very much required in the interest of the 6th respondent.

(9)The 6th respondent has also filed a detailed counter affidavit disputing the contentions raised by the petitioner. However, in the counter affidavit of the 6th respondent, it is admitted that the 5th respondent was granted license in respect of an extent of 10,000 sq.ft., for the purpose of running a Restaurant to cater to the requirements of inmates



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of Jawaharlal Nehru Holiday Home. Stating that it is uneconomical to run a Restaurant only for the purpose of inmates, the 5th respondent was allowed to carry on business to attract the public even though priority is given to the inmates of the Holiday Home and Labourers. The 6th respondent specifically stated that the entire premises which is acquired for the 6th respondent is owned, possessed and controlled by the 6th respondent and that it cannot be treated as a land which is not in use for the purpose of maintaining the writ petition. Further, stating that around 51,727 employees have availed the facility of the Home and there is continuous flow of visitors to the Home, the 6th respondent contended that the writ petition with the prayer for reconveyance is not maintainable. Though it is stated that the license was given to the 5th respondent was by following rules regarding grant of public larges, the procedure or the formalities that was followed before granting license in favour of the 5th respondent, is not indicated in the counter. Finally, it is contended by the 6th respondent that outsourcing is also in the interest of the 6th respondent.

(10)The 5th respondent has filed a Memo dated 22.02.2021 adopting the



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counter affidavit filed by respondents 2 and 6 and contended that they may be permitted to file counter affidavit if it is necessary in future.

(11) Though the issue arise for consideration in this writ petition is whether the 1st respondent should be directed to reconvey the land which was acquired from the petitioner in terms of Section 48B of the Land Acquisition Act, this Court, in the course of hearing, noticed that a substantial portion of the land has been leased out to the 5th respondent for running a Restaurant without a clue as to how it was done. In view of Section 16A and Section 16B of the Land Acquisition Act as amended by the Tamil Nadu Amendment Act, 1996, this Court, particularly having regard to the judgment of the Division Bench of this Court in *R.Shanmugam's case [cited supra]*, reported in **2006-4-MLJ-805**, is inclined to consider whether a further direction also to be issued to the Government in terms of Sections 16A and 16B of the Land Acquisition Act, 1892.

(12) The first issue revolves around the scope of Section 48B of the Land Acquisition Act as amended by the Tamil Nadu Land Acquisition Amendment Act, 1996.



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(13)Section 48B of the Land Acquisition Act as exist as on date, reads as follows:-

"Section 48B:-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 required 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 the 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."

(14)Therefore, to invoke Section 48B of the Act, the Government should be satisfied that the land acquired is not required for the purpose for which it was acquired for any other purpose. The history of introduction of Section 48B in the State of Tamil Nadu has to be examined to find out the object behind the introduction of Section 48B. After introducing the amendment in the year 1996, the Tamil Nadu Highways Act, Tamil Nadu Acquisition of Land for Industrial Purposes



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Act, 1997, were enacted. The Court can take judicial notice of the fact that several acquisition proceedings have been initiated for acquisition of lands under the Tamil Nadu Highways Act, 2001, Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1978, Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997, apart from acquisition under the Right to Fair Compensation in Land Acquisition and Rehabilitation and Settlement Act, 2013, with effect from 01.01.2014. By virtue of Section 114 of Right to Fair Compensation in Land Acquisition and Rehabilitation and Settlement Act, 2013, the Land Acquisition Act, 1894, was repealed. However, the repeal of the Act shall not be held to prejudice or affect general application of Section 6 of the General Clauses Act, 1897 with regard to the effect of repeals. Therefore, the right that was created in favour of any person in terms of the Land Acquisition Act, 1894, may still be enforced irrespective of the repeal of the Land Acquisition Act. However, the fact that the State Government goes on acquiring several parcels of lands for various purposes relating to several Departments of the State. For example, even for the District Administration, Court



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Complexes and for the schemes that are formulated by the Tamil Nadu Slum Clearance Board, now known as Tamil Nadu Urban Habitat Development Board, Tamil Nadu State Housing Board and other Development Programmes of the State and State Instrumentalities shows scarcity of lands in every District, every Town and every Village in the State. Therefore, the object of Section 48B appears to be to protect the interest of the State in a precarious situation whereby the acquisition proceedings have to be compulsorily dropped. For example, this Court in the case of *State of Tamil Nadu rep.by the Secretary to Government, Revenue Department, Madras-9 and Others Vs. Narendra Dairy Farm [P] Ltd and Another* reported in *AIR 1987 Mad 161* , held that the acquisition of land under the Land Acquisition Act for a public purpose cannot be withdrawn so as to enable the Government to acquire the land under the Land Reforms [Fixation of Ceiling on Land] Act, 1961. Therefore, it is impossible or not feasible and convenient for the Government to release the land on the ground that the land is no more required for any public purpose. If the Government had taken a decision in any single case that the land is



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not required for any other purpose, the same can never be termed as a bona fide decision taken in the interest of public. Therefore, Section 48B is not in the interest of public and it is high time that the said provision should be deleted from the statute and the State Government may not face a situation as in the case of *Narendra Dairy Farm case* [cited supra] at present in view of the changes.

(15) Be that as it may, when a application is filed under Section 48B of the Land Acquisition Act, the State Government may deal with it in accordance with law. In the present case, it is admitted that an extent of 3.95 acres was acquired for the construction of workers Holiday Home by the 6th respondent. As admitted before this Court and as seen from records, out of 3.95 acres of land acquired by the 6th respondent, the extent of land belonged to the petitioner is stated to be an extent of 72 cents. It is stated by the respondents that the total extent of 99 cents belonged to three persons, namely, one Thiru.Aravamudhan, Tmt.Booma Narayanan and the petitioner herein. Though this Court has no material to discredit the statement of the petitioner as to her title in respect of an extent of 72 cents, her application under Section 48B



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of the Act is only a portion out of a larger extent of land. The petitioner has not stated anywhere in the affidavit that the 5th respondent is running the business only in the property acquired from her. Therefore, the petitioner is not entitled to claim reconveyance of land under Section 48B of the act. Having regard to the object of Section 48B, this Court is unable to find any merit in the writ petition for reconveyance of land which was acquired from the petitioner about 44 years back. It will be against the interest of public to entertain the request.

(16)The 2nd respondent is the statutory authority constituted under the provisions of the Tamil Nadu Labour Welfare Fund Act, 1971. The object of the Act is to provide for constitution of a fund for promoting the welfare of labour and for certain other matters connected therewith in the State of Tamil Nadu. It is admitted by the 6th respondent that the fund comprises of unpaid accumulation to the Board, of fines and the amount realised under the Standing Orders of any Industrial Establishment or Model Standing Orders issued under the Tamil Nadu Industrial Establishments Standing Orders Rules, deductions made



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under the Payment of Wages Act, contributions by employers and employees, interest by way of penalty, voluntary donations, any amount raised by the Board from other sources to augment resources of the Board, grants and advances made by the Government and all fines imposed and realised from employers by Courts for violations of labour laws. Therefore, the purpose for which the lands were acquired was for a public purpose as defined under the Land Acquisition Act. It is stated by the 6th respondent that the Government can specify the measures to promote the welfare of the employees and their dependents. It is pointed out that the Holiday Homes and Holiday Resorts is also one of the purpose for which the fund can be utilised. It is admitted that more than 30 lakhs of workers are contributing every year. Whereas, the employee is required to contribute a sum not exceeding Rs.10/- per year as prescribed and the employer is required to contribute Rs.20/- per year in respect of every employee. Therefore, a substantial amount is available with the 6th respondent. Interestingly, out of 3.95 acres of land, the 6th respondent has admitted that the Holiday Home was to accommodate 40 members a day and therefore,



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this Court is unable to see utilisation of the full extent of land that was acquired by the 6th respondent. Though it is stated that a part of the land is utilised as children's park and labour park, the details of the land that is being put to use by the 6th respondent is not stated in clarity. However, it is admitted that a land measuring an extent of 10,000 sq.ft., has been given to the 5th respondent by way of license for the purpose of running a Restaurant to cater to the requirement of the inmates of Jawaharlal Nehru Holiday Home. Though this Court wanted to know as to how the substantial portion of the land can be given to a third party by way of lease for commercial exploitation, the 6th respondent has not produced before this Court the details and the manner in which the land was leased. Having regard to the fact that a right is created in favour of the 5th respondent in respect of a substantial portion of immovable property acquired out of public funds, the 6th respondent is accountable to the State. This Court is also of the view that there is a transfer of possession by the 6th respondent in favour of the 5th respondent. Under Section 16A, the Requisition Body in whose favour the land was acquired, cannot transfer the land



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without the sanction of the Government. In this case, the 6th respondent has not produced any sanction by the Government for giving the land on lease or by way of license to the 5th respondent.

(17)Section 16A and Section 16B as amended by the Tamil Nadu Act 16 of 1997, read as follows:-

Section 16-A:-Restriction on transfer, etc:-

[1]No person or authority [other than the Government], for whom any land is acquired under this Act for any public purpose as referred to in sub-section[1] of section 4, shall transfer the said land or any part thereof by way of sale, mortgage, gift, lease or otherwise except with the previous sanction of the Government.

[2]Where it is noticed or any information has been received that any land has been transferred in contravention of sub-section [1], the Government may, by an order, declare the transfer to be null and void, and on such declaration, the land shall, as penalty, be forfeited to, and vest in, the



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Government in Revenue Department free from all encumbrances;

***Provided** that no order under this sub-section shall be made unless such person or authority has had a reasonable opportunity of being heard.*

16-B-Land to be forfeited in certain cases-

Where the Government are satisfied that the land acquired under this Act for any public purpose as referred to in sub-section[1] of Section 4 is not used for the purpose for which it was acquired, they may, by an order, forfeit the land as penalty and the land shall vest in the Government in Revenue Department free from all encumbrances.

***Provided** that no order under this section shall be made unless the person or authority aggrieved has had a reasonable opportunity of being heard."*

(18) Having regard to the scope of Sections 16A and 16B of the Act, this

Court gave an opportunity to the 6th respondent to produce the files



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relating to the particulars and terms and conditions on which the license was granted in favour of the 5th respondent. However, this Court is unable to get the details. The need to go for in search of the property of private individuals for public purpose will not stop. However, it will be against the interest of public to invest more amount for acquisition of more lands from the public for various public purposes. Having regard to the legal implications of the Act 20 of 2013, namely, Right to Fair Compensation in Land Acquisition and Rehabilitation and Settlement Act, 2013, the financial implication for resorting to acquisition of lands for public purpose will be a deterring factor and the public also will be put to a lot of prejudice while choosing their lands for utilising the same for any public purpose. It is in these circumstances, this Court is of the view that the land which is acquired for a public purpose, if it is not required by the Requisition Body or the Requisition Body is not utilising the land for any commercial purpose, which has no nexus with the object for which the land was acquired, the Government should initiate action under Section 16B of the Act.



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(19)The 6th respondent has not produced any records justifying the fact that lease or license granted in favour of the 5th respondent is after following the procedure which are applicable to grant of public larges or licensees.

(20)Therefore, this Court while dismissing the writ petition as devoid of merits, directs the 1st respondent to hold an enquiry in terms of Section 16A and Section 16B of the Act. In case, the 1st respondent is convinced that any interest in respect of the land has been conveyed or created in favour of third parties without the previous sanction of the Government or the land is not used for the purpose for which it was acquired, then the 1st respondent shall take appropriate action to resume the land from the 5th respondent and to cancel the license that was granted to the 5th respondent.

(21)In the result, the **writ petition stands dismissed** however subject to the above directions. It is made clear that an enquiry shall be initiated by the 1st respondent within a period of eight weeks from the date of



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receipt of a copy of this order and a reasoned order shall be passed by the 1st respondent after completing the enquiry, within a period of three months from the date of completion of the enquiry. The 1st respondent shall also file a Report of compliance before the Registry. Upon receipt of such Report from the 1st respondent, this Court may either pass further orders or close this writ petition as no further orders are necessary. No costs. Consequently, connected miscellaneous petition is closed.

(22) Post this writ petition after receipt of the Compliance Report from the 1st respondent.

18.11.2022

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Internet : Yes



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To

- 1.The Secretary
Government of Tamil Nadu
Land Administration Department
Fort St George, Chennai 600 009.
- 2.The Joint Secretary to Government
Labour and Development Department
Fort St George, Chennai 600 009.
- 3.The Collector
Chengalpattu,
Kancheepuram District.
- 4.The Revenue Division Officer
Chengalpattu.
- 5.The Managing Director
Adayar Anandha Bhavan
Adayar, Chennai 600 020.
- 6.The Administrative Officer Secretary,
Tamil Nadu Labour Welfare Board
DMS Complex,
Teynampet, Chennai-6.



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S.S.SUNDAR, J.,

AP

Order in
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