



W.P.No.8527 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.8527 of 2009

And

M.P.Nos.2 of 2009, 1 of 2010 and 2 of 2011

T.S.Krishna Nagar Welfare Association
Represented by its Secretary
K.Rengasamy

... Petitioner

Vs.

1.The Secretary to the Government
Housing and Urban Development Dept.,
Fort St.George,
Chennai – 600 009.

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

3.The Executive Engineer and
Administrative Officer,
Anna Nagar Division,
Tamil Nadu Housing Board,
Chennai – 600 101.

4.S.Dilipan

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to



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issue a Writ of Certiorari calling for the records of the impugned order passed by the first respondent vide letter no.(MS).No.No.7041/1A1(1) 2006 – 2007 dated 15.10.2007 and subsequent order of the second respondent in Memo No.LAIII(3)/48969/04 dated NIL.10.2007 and the consequential reconveyance deed executed by the third respondent dated 22.10.2007 in favour of the fourth respondent and quash the same.

(Prayer amended vide order dated 25.01.2019 made in MP.No.1/11 in WP.No.8527/09 by RMDJ)

For Petitioner : Mrs.Vijayakumari Natarajan

For Respondents : Mr.T.K.Saravanan for R1
Government Advocate
Mr.P.Kumaresan for R2 and R3
Additional Advocate General
Assisted By
Mr.A.M.Ravindranath Jeyapaul
Mr.A.Jenasenan for R4

ORDER

The petitioner has filed this writ petition seeking issuance of Writ of Certiorari calling for the records of the impugned order passed by the first respondent vide letter no.(MS).No.No.7041/1A1(1) 2006 –



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2007 dated 15.10.2007 and subsequent order of the second respondent in Memo No.LAIII(3)/48969/04 dated NIL.10.2007 and the consequential re-conveyance deed executed by the third respondent dated 22.10.2007 in favour of the fourth respondent and to quash the same.

2.The case of the petitioner is that the petitioner is an Association and aggrieved by the re-conveyance deed executed by the Tamil Nadu Housing Board in favour of the fourth respondent, the petitioner has filed this writ petition.

3.The learned counsel appearing for the petitioner submitted that earlier the fourth respondent filed W.P.No.12176 of 2004 before this Court seeking issuance of Writ of Mandamus directing the respondents therein to re-convey the lands comprised in S.Nos.289/1 and 291 part situated at Mogappair Village, Ambattur Taluk, Chennai measuring an extent of 80 cents and this Court vide order dated 29.04.2004 disposed of the said writ petition by directing the fourth respondent to repay the compensation amount received by him together with interest at 9% per annum within a period of two months



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from the date of receipt of a copy of the order, failing which, the fourth respondent shall pay simple interest at 15% over that amount till repayment and on repayment being made, the respondents therein were directed to re-convey the property to the fourth respondent within a period of one month.

4.The learned counsel appearing for the petitioner further submitted that aggrieved by the order of this Court made in W.P.No.12176 of 2004, the Tamil Nadu Housing Board filed W.A.No.196 of 2005 before this Court and the Hon'ble Division Bench of this Court vide judgment dated 19.04.2007 modified the order made in W.P.No.12176 of 2004 by reducing the extent of the land for re-conveyance from 80 cents to 36 cents, namely, 16 cents in S.No.289/1 and 20 cents in S.No.291 part. Aggrieved by the same, the Tamil Nadu Housing Board filed Special Leave to Appeal (Civil) No.13570 of 2007 before the Hon'ble Apex Court and the Hon'ble Apex Court vide order dated 17.08.2007 dismissed the said SLP.

5.The learned counsel appearing for the petitioner further submitted that the grievance of petitioner is that instead of



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re-conveying the land as per the judgment of the Hon'ble Division Bench of this Court, i.e., 16 cents in S.No.289/1 and 20 cents in S.No.291 part, the Authorities on their own interpreted and re-conveyed 16 cents in S.No.289/1 and 20 cents in 296/1 part and 296/2 part, which is contrary to the judgment of the Hon'ble Division Bench of this Court confirmed by the Hon'ble Apex Court.

6.The learned Government Advocate appearing for the first respondent did not dispute the facts submitted by the learned counsel appearing for the petitioner and further submitted that the respondents inadvertently re-conveyed the land contrary to the judgment of the Hon'ble Division Bench of this Court confirmed by the Hon'ble Apex Court.

7.The learned Additional Advocate General appearing for the respondents 2 and 3 fairly submitted that the change over in respect of survey number is wrong and the official respondents are not entitled to change the survey number.

8.The learned counsel appearing for the fourth respondent submitted that the petitioner has no *locus standi* to file this writ



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petition challenging the re-conveyance deed executed in favour of the fourth respondent by the official respondents in exercise of the power conferred under Section 48 – B of the Land Acquisition Act and further submitted that the fourth respondent is no way connected with the error committed by the official respondents and the fourth respondent is entitled to receive the benefit as per the Hon'ble Division Bench of this Court and the Hon'ble Apex Court.

9.Heard the arguments advanced on either side and perused the materials available on record.

10.The facts in the case is not in dispute. Admittedly, petitioner is an Association and its members purchased lands in the layout formed by the Tamil Nadu Housing Board. The petitioner is aggrieved by the re-conveyance deed executed by the Tamil Nadu Housing Board in favour of the fourth respondent, since, 16 cents in S.No.289/1 and 20 cents in S.No.291 part, were ordered to be re-conveyed in favour of the fourth respondent by the Hon'ble Division Bench of this Court, whereas, the Tamil Nadu Housing Board re-conveyed 16 cents in S.No.289/1 and 20 cents in 296/1 part and 296/2 part.



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11. For better appreciation, the relevant portion of the order of this Court made in W.P.No.12176 of 2004; judgment of the Hon'ble Division Bench of this Court made in W.A.No.196 of 2005 and order of the Hon'ble Apex Court made in Special Leave to Appeal (Civil) No.13570 of 2007 are extracted hereunder:

(i) W.P.No.12176 of 2004 (S.Dilipan Vs. The State of Tamilnadu By its Secretary to Government and another), dated 29.04.2004:

"The petitioner is hereby directed to repay the compensation amount received by him together with interest at 9% per annum within a period of two months from the date of receipt of a copy of this order, failing which the petitioner shall pay simple interest at 15% over that amount till repayment. On the repayment being made, the respondents are directed to reconvey the property to the petitioner within a period of one month the cost of the petitioner."

(ii) W.A.No.196 of 2005 (The Managing Director, Tamil



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Nadu Housing Board Vs. S.Dilipan and another), dated

19.04.2007:

"5.Recently, the Honourable Supreme Court of India in the judgment reported in 2007 (2) C.T.C.447 (TAMIL NADU HOUSING BOARD v. KEERAVANI AMMAL) was dealing with the proceedings arising out of this Court's order. In the course of the judgment, the Supreme Court observed that the power available under Section 48-B of the Land Acquisition Act as introduced by the State of Tamil Nadu is still available for the Government. Therefore the resultant position is, the power available under Section 48-B of the Land Acquisition Act is still exercisable on a well guided principles. Inasmuch as the Supreme Court has affirmed the order of this court in W.A.No.1152 of 2005. It may be true that the learned Single Judge, while passing the impugned order, appears to have been under the impression that the order of the Division Bench in W.A.No.2430/1999 (referred to in the impugned order) clinches the issue in favour of the land owner. But factually it does not appear to be so since, in the above referred to writ appeal, the acquisition proceedings itself stood quashed. But none – the – less, we are of the opinion that in a similar situation (non – utilisation of the lands for a long number of years) a Division Bench of this court in W.A.No.1152/2005 affirmed the learned Single Judge's order directing re-conveyance



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of the lands. Since that order of this court had been affirmed by the Supreme Court, we are of the opinion that instead of remitting the matter back to the learned Single Judge for disposal in accordance with law and in such an event the learned Single Judge is likely to follow the judgment of this court in W.A.No.1152/2005, we thought that we ourselves can dispose of this writ appeal. Accordingly, finding from that angle that there is no infirmity in the order of the learned Single Judge, we dismiss the writ appeal with the following modification:

"In this case also 36 cents out of the acquired lands remain unutilised for 34 years (i.e.) from 1973 when possession was taken. But however we make it clear that though the learned Single Judge's order directs reconveyance of 80 cents of land in all in the two survey numbers referred to above and when factually and in reality only an extent of 36 cents is available with the Housing Board, which remains unutilised, the learned Single Judge's order directing reconveyance of 80 cents of land would stand modified to the extent of 36 cents, out of which 16 cents lies in the total extent of 1.07 acres in Survey No.289/1 and 20 cents lies out of 77 cents in Survey No.291 part in Mugappair Village. All other conditions imposed by the learned Single



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*Judge in the impugned order are maintained.
It is needless to state that this order is based
on the facts available in this case, namely, non
utilisation of the lands for almost 34 years and
therefore this order cannot be cited as a
precedent in every case."*

[Emphasis added]

**(iii) Special Leave to Appeal (Civil) No.13570 of 2007
(M.D.,T.Nadu Housing Board Vs. S.Dilipan and another), dated
17.08.2007:**

"Heard.

*In view of the order passed by this Court
dated 15th (torn) 2006, dismissing SLP (C)
No.20398/2006 [M.D., Tamil Nadu Housi (torn)
v. Rangarajan & Ant.], the special leave
petition is dismissed."*

12.Perusal of the decisions cited supra makes it clear that the Division Bench of this Court has issued direction for re-conveyance of the land in favour of the fourth respondent only in respect of 16 cents in S.No.289/1 and 20 cents in S.No.291 part, whereas, the Tamil Nadu Housing Board has re-conveyed 16 cents in S.No.289/1 and 20 cents in 296/1 part and 296/2 part, which is not sustainable. Hence the



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impugned orders are liable to be interfered with.

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13. Accordingly, the impugned orders are set aside and the matter is remanded back to the 1st and 2nd respondents. The State and Tamil Nadu Housing Board are directed to implement the judgment of the Hon'ble Division Bench of this Court made in W.A.No.196 of 2005, dated 19.04.2007 and the order of the Hon'ble Apex Court made in Special Leave to Appeal (Civil) No.13570 of 2007, dated 17.08.2007, in letter and spirit, in favour of the fourth respondent, within a period of twelve weeks from the date of receipt of a copy of this order.

14. This writ petition is accordingly disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

28.11.2022

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Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No



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