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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.9464 of 2010

And

M.P.Nos.1 and 2 of 2010

- 1.Lalitha
- 2.Balasaraswathi
- 3.Rajakumari

... Petitioners

Vs.

1. The State of Tamil Nadu,
Rep. by the Secretary,
Department of Housing,
Fort St.George,
Chennai 600 009.
2. The Tamil Nadu Housing Board,
Rep. by the Chairman,
Annasalai, Nandam,
Chennai 600 035.
3. The Executive Engineer and
Administrative Officer,
Tamil Nadu Housing Board,
No.48, Dr.Muthulakshmi Road,
Adyar,
Chennai 600 020.
4. The District Collector,
Chennai.
5. The Special Deputy Collector (L & A),
The Tamil Nadu Housing Board,
Annasalai, Nandam,
Chennai 600 035.
6. V.Kumaravelu
7. B.Madanagopal

... Respondents



Prayer:

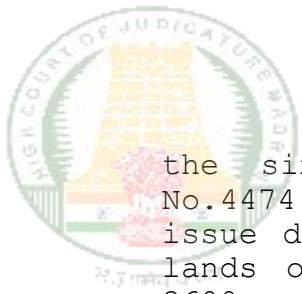
Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the respondents 2 and 3 pertaining to the impugned auction notice dated 15.06.2008 and dated 16.06.2008 and quash the entire proceedings of auction and sale of their lands comprised in No.4 A measuring 3600 sq.ft. in R.S.No.93/2, Block No.35, Town Survey No.53 bearing Paimash No.318/A1, 319/B, 347/A, 348/B2 and also 348/C in Thiruvanmiyur Village, Chennai District the second petitioner's plot comprised in Plot No.3, measuring 5250 sq.ft., in R.S.No.93/2 admeasuring 2450 sq.ft., in the Registration Sub District of Saidapet and in the Registration District of Madras - Chinglepet and consequential Sale Deed executed by the fifth respondent to and in favour of the sixth respondent on 11.05.2009 registered as Document No.4474 of 2009 in the Sub Registrar Office, Saidapet and issue a direction to the respondents 1, 2 and 3 to re-convey the lands of the petitioners father comprised in No.4 A measuring 3600 sq.ft., in R.S.No.93/2, Block No.35, Town Survey No.53 bearing Paimash No.318/A1, 319/B, 347/A, 348/B2 and also 348/C in Thiruvanmiyur Village, Chennai District the second petitioner's plot comprised in Plot No.3, measuring 5250 sq.ft., in R.S.No.93/2 in the Registration Sub District of Saidapet and in the Registration District of Madras - Chinglepet.

For Petitioners : M/s.A.Arulmozhi

For Respondents : Mr.M.Murali
Government Advocate
Mr.S.Silambannan for R1 & R4
Additional Advocate General
Assisted by
Mr.M.Baskar for R2, R3 & R5
Mr.M.R.Thangavel for R6
Mr.C.K.Kamalakannan for R7

O R D E R

The petitioners have filed this writ petition seeking issuance of Writ of Certiorarified Mandamus calling for the records of the respondents 2 and 3 pertaining to the impugned auction notice dated 15.06.2008 and dated 16.06.2008 and to quash the entire proceedings of auction and sale of the lands comprised in No.4 A measuring 3600 sq.ft. in R.S.No.93/2, Block No.35, Town Survey No.53 bearing Paimash No.318/A1, 319/B, 347/A, 348/B2 and also 348/C in Thiruvanmiyur Village, Chennai District, the second petitioner's plot comprised in Plot No.3, measuring 5250 sq.ft., in R.S.No.93/2 admeasuring 2450 sq.ft., in the Registration Sub District of Saidapet and in the Registration District of Madras - Chinglepet and consequential Sale Deed executed by the fifth respondent to and in favour of

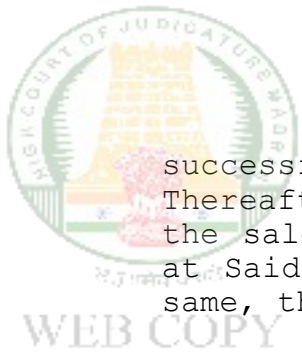


the sixth respondent on 11.05.2009 registered as Document No.4474 of 2009 in the Sub Registrar Office, Saidapet and to issue direction to the respondents 1, 2 and 3 to re-convey the lands of the petitioners father comprised in No.4 A measuring 3600 sq.ft., in R.S.No.93/2, Block No.35, Town Survey No.53 bearing Paimash No.318/A1, 319/B, 347/A, 348/B2 and also 348/C in Thiruvanniyur Village, Chennai District, the second petitioner's plot comprised in Plot No.3, measuring 5250 sq.ft., in R.S.No.93/2 in the Registration Sub District of Saidapet and in the Registration District of Madras - Chinglepet.

2.The case of the petitioners is that the petitioners are sisters and the seventh respondent is their brother. They are the legal heirs of one Late.Balasubramanian and the lands comprised in No.4 A measuring 3600 sq.ft. in R.S.No.93/2, Block No.35, Town Survey No.53 bearing Paimash No.318/A1, 319/B, 347/A, 348/B2 and also 348/C in Thiruvanniyur Village, Chennai District were purchased by their father on 16.07.1962 vide registered sale deed bearing document no.1807 of 1962 on the file of the Sub Registrar, Thiruvanniyur, Chennai. The petitioners father died intestate leaving behind the petitioners, seventh respondent and their mother Rukmani Ammal as his legal heirs. The second petitioner purchased the lands in Plot No.3, measuring 5250 sq.ft., in R.S.No.93/2 admeasuring 2450 sq.ft., in the Registration Sub District of Saidapet and in the Registration District of Madras - Chinglepet and she is the absolute owner of the said lands.

3.The further case of the petitioners is that the petitioners are living outside Tamil Nadu and they could not visit the property prolifically. When they visited the lands, they were informed that the lands were under acquisition by the Tamil Nadu Housing Board. The petitioners had no knowledge about the acquisition proceedings. Hence, the petitioners took efforts to collect the documents and encumbrance certificates of the properties. Thereafter, the petitioners received a letter from the third respondent dated 05.02.2009 informing them that their properties were already brought to auction.

4.The further case of the petitioner is that thereafter the petitioners made representation dated 01.03.2009 to the third respondent requesting to furnish the details of the award and sought for details of the newspaper names, dates on which the public auction notices were advertised, the date of auction, the name of the participants in the bid and the details of the successful bidder etc. Thereafter, they received a letter dated 18.03.2009 from the third respondent informing them that the lands were brought to auction on 09.07.2008, the auction notice was published on 15.06.2008 and the name and details of the sixth respondent and the total amount of auction was Rs.1,73,00,000/- and that the property was handed over to the



successful bidder vide sale deed issued on 12.01.2009. Thereafter, the petitioners traced through their enquiry that the sale deed has been registered with the Sub Registrar Office at Saidapet on 11.05.2009 in document no.4474. Challenging the same, the petitioners have filed this writ petition.

5.The learned counsel appearing for the petitioners submitted that the petitioners father died on 23.10.1976. The land acquisition proceedings have been initiated against the petitioners father and no

notice was issued to his legal heirs. Without issuing any notice, the lands were acquired and award was passed which is un-sustainable one. The learned counsel further submitted that the claim of the adjacent land owners seeking re-conveyance of their lands was allowed by the Hon'ble Division Bench of this Court in W.A.No.1152 of 2005, against which the second respondent filed Special Leave Appeal (Civil) No.20398 of 2006 before the Hon'ble Apex Court and the Hon'ble Apex Court upheld the order of the Hon'ble Division Bench of this Court in W.A.No.1152 of 2005 and thereafter the second respondent re-conveyed vast extent of the adjacent land owners lands. Hence, the petitioners are also entitled for similar relief. Accordingly, the learned counsel prayed for allowing this writ petition.

6.The learned Additional Advocate General appearing for the respondents 2, 3 and 5 submitted that subject lands were acquired for the development of the area as Besant Nagar Phase - II Scheme and 4(1) Notification was published in the Tamil Nadu Government Gazette on 09.08.1978 and declaration under Section 6 of the Land Acquisition Act was published in the Tamil Nadu Government Gazette on 08.08.1981 and award was passed in Award No.6/1986, dated 23.09.1986 and the lands were handed over to the Tamil Nadu Housing Board by the Land Acquisition Officer on 30.10.1986. The subject lands stood registered in the name of Thiru Balasubramanian and Thiru R.S.Scott respectively in the village accounts. Though public notice was issued, the petitioners did not participate in the acquisition proceedings.

7.The learned Additional Advocate General appearing for the respondents 2, 3 and 5 further submitted that once award was passed, the lands vest with the Government and the lands were handed over to the Tamil Nadu Housing Board during the year 1986 itself. He further submitted that pursuant to the award, the award amount in respect of S.Nos.93/2A2 and 93/2B, a sum of Rs.12,685/- and Rs.5,969/- were deposited in the revenue deposit on 16.03.1987 itself. Thereafter, the lands were sold through public auction by the Tamil Nadu Housing Board in favour of the sixth respondent for a sale consideration of Rs.1,73,00,000/- during the year 2009. Once the land vest with the Government is



transferred to third parties, the provision under Section 48 B of the Land Acquisition Act cannot be considered. He further submitted that the issue involved in the present case is no longer res integra and it is covered by the decision of the Hon'ble Apex Court reported in (2007) 9 Supreme Court Cases 255 (T.N.Housing Board Vs. Keeravani Ammal and others). Accordingly, he prayed for the dismissal of the writ petition.

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

9.The facts in the present case is not in dispute. Admittedly, the subject lands were proposed to be acquired for the development of the area as Besant Nagar Phase - II Scheme and 4(1) Notification was published in the Tamil Nadu Government Gazette on 09.08.1978 and declaration under Section 6 of the Land Acquisition Act was published in the Tamil Nadu Government Gazette on 08.08.1981 and award was passed in Award No.6/1986, dated 23.09.1986 and the lands were handed over to the Tamil Nadu Housing Board by the Land Acquisition Officer on 30.10.1986. The petitioners neither participated in the acquisition proceedings nor challenged the acquisition proceedings.

10.When the petitioners visited the subject lands, they were informed that the lands were under acquisition by the Tamil Nadu Housing Board. Thereafter the petitioners came to know that the claim of the adjacent land owners seeking re-conveyance of their lands was allowed by the Hon'ble Division Bench of this Court in W.A.No.1152 of 2005, against which the second respondent filed Special Leave Appeal (Civil) No.20398 of 2006 before the Hon'ble Apex Court and the Hon'ble Apex Court upheld the order of the Hon'ble Division Bench of this Court in W.A.No.1152 of 2005 and thereafter the second respondent re-conveyed vast extent of the adjacent land owners lands.

11.Inorder to get the similar relief, the petitioners made representation to the respondents and the petitioners received a letter from the third respondent dated 05.02.2009 informing them that their properties were already brought to auction. Thereafter they made representation dated 01.03.2009 to the third respondent requesting to furnish the details of the award and sought for details of the newspaper names, dates on which the public auction notices were advertised, the date of auction, the name of the participants in the bid and the details of the successful bidder etc. Thereafter, they received a letter dated 18.03.2009 from the third respondent informing them that the lands were brought to auction on 09.07.2008, the auction notice was published on 15.06.2008 and the same was alienated in favour of the sixth respondent for a sale consideration of Rs.1,73,00,000/-.



12. Once the land vests with the Government is alienated in favour of third parties, the question of re-conveying the land in favour of the petitioners does not arise. Further, the issue involved in the present case is no longer res integra and it is covered by the decision of the Hon'ble Apex Court reported in (2007) 9 Supreme Court Cases 255 (T.N. Housing Board Vs. Keeravani Ammal and others), the relevant portion of which reads as follows:

15. We may also notice that once a piece of land has been duly acquired under the Land Acquisition Act, the land becomes the property of the State. The State can dispose of the property thereafter or convey it to anyone, if the land is not needed for the purpose for which it was acquired, only for the market value that may be fetched for the property as on the date of conveyance. The doctrine of public trust would disable the State from giving back the property for anything less than the market value. In State of Kerala Vs. M. Bhaskaran Pillai in a similar situation, this Court observed: (SCC p.433, para 4)

"The question emerges: whether the Government can assign the land to the erstwhile owners? It is settled law that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. In case there is no other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public auction can be better utilised for the public purpose envisaged in the Directive Principles of the Constitution. In the present case, what we find is that the executive order is not in consonance with the provision of the Act and is, therefore, invalid. Under these circumstances, the Division Bench is well justified in declaring the executive order as invalid. Whatever assignment is made, should be for a public purpose. Otherwise, the land of the Government should be sold



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only through the public auctions so that the public also gets benefited by getting higher value."

16. Section 48B introduced into the Act in the State of Tamil Nadu is an exception to this rule. Such a provision has to be strictly construed and strict compliance with its terms insisted upon. Whether such a provision can be challenged for its validity, we are not called upon to decide here.

17. We are thus of the view that the writ petitioners, the contesting respondents, have not made out any case for interference by the Court or for grant of any relief to them. It is therefore not necessary for us to go into the further contention raised on the scope of Section 48B of the Act, whether the writ petitioners have established any claim to the lands, whether the re-conveyance can only be to the original owners and not to others and whether if possession has already been made over to the Housing Board, the State could exercise its power under that provision. We leave open those questions for the High Court to consider as and when the occasion arises on it being approached in the context of Section 48B of the Act. Suffice it to say that the decision of the High Court in the writ petition in question is totally unsustainable and deserves to be set aside."

(Emphasis Added)

13. However, in the present case, the fact remains that the acquisition proceedings have been initiated against the father of the petitioners who passed away during the year 1976, since the death of the petitioners father was not brought to the notice of the respondents. Hence, none of the petitioners appeared for enquiry and in their absence, award was passed. Though the respondents claim that pursuant to the award, the award amount in respect of S.Nos.93/2A2 and 93/2B, a sum of Rs.12,685/- and Rs.5,969/- were deposited in the revenue deposit on 16.03.1987 itself, the same has not yet been paid to the petitioners and no record is produced before this Court to establish that copy of the award was furnished to the petitioners in terms of Section 12 (2) of the Land Acquisition Act.



14. In view of the above, though this Court is not inclined to grant the relief sought for by the petitioners, the respondents are directed to furnish copy of Award No.6/1986, dated 23.09.1986 to the petitioners, within a period of two weeks from the date of receipt of a copy of this order. The petitioners are directed to make application to the respondents to refer the matter to the competent Civil Court in terms of Section 18 of Land Acquisition Act and Section 64 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, within a period of four weeks from the date of receipt of the award copy. If any such application is made by the petitioners, the respondents are directed to refer the petitioners' case to the jurisdictional Civil Court in terms of Section 18 of L.A. Act and Section 64 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, within a period of four weeks from the date of receipt of such application. The period during which the writ petition was pending before this Court is excluded for the purpose of limitation.

15. With the above observations, the writ petition stands dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
Department of Housing,
Fort St. George,
Chennai 600 009.
2. The Chairman,
The Tamil Nadu Housing Board,
Annasalai, Nandam,
Chennai 600 035.
3. The Executive Engineer and
Administrative Officer,
Tamil Nadu Housing Board,
No.48, Dr.Muthulakshmi Road,
Adyar, Chennai 600 020.



4. The District Collector,
Chennai.

5. The Special Deputy Collector (L & A),
The Tamil Nadu Housing Board,
Annasalai, Nandanam,
Chennai 600 035.

+1cc to M/s.A.Arulmozhi, Advocate SR. No. 24893
+1cc to Government Pleader, SR. No. 25478

W.P.No.9464 of 2010
And
M.P.Nos.1 and 2 of 2010

AJS (CO)
PR (27/04/2022)