



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A.No.811 of 2022

D.Gnanammal (deceased)

1.D.Thulukkanam

D.Manoharan (deceased)

2.D.Rajendran

3.D.Loganathan

4.D.Thirumal

5.Indirani

6.Jayasubha

7.M.Jothi

8.M.Mohankumar

9.M.Divakar

10.M.Udhayavani

.. Appellants/Petitioners

(Appellants 1 to 4 and deceased D.Manoharan
are sons of Duraisamy Naicker)

(Case-title amended as per the order dated 30.9.2019
in W.M.P.No.28438 of 2018 in W.P.No.17765 of 2012)

(Appellants 7 to 10 impleaded as LR's of the deceased
D.Manoharan as per the order dated 26.10.2021
in W.M.P.No.23300 of 2021 in W.P.No.17765 of 2012)

Vs

1.The State of Tamil Nadu,
rep. by the Secretary to Government,
Housing and Urban Development Department,
Secretariat, Chennai - 600 009.

2.The Member Secretary,
Chennai Metropolitan Development Authority,
Gandhi Irwin Road, Chennai-8.

3.The Managing Director,
Tamil Nadu Slum Clearance Board,
Kamarajar Salai, Chennai - 5. .. Respondents/Respondents



(Respondent No.3 impleaded as per order dated 30.09.2019 in W.M.P.No.24837 of 2018 in W.P.No.17765 of 2012)

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 26.10.2021 in W.P.No.17765 of 2012.

Prayer in W.P.No.17765 of 2012 : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the first respondent in Letter No. 640/UD3 (1)/2005/3 dated 23.5.2005 and quash the same and direct the 1st respondent to reconvey the petitioner land in S.No.314/8, 316/5, 356/7 to an extent of 0.51.5 hectares at No.148 Edayanchavady Village Ponneri Taluk Trivellore District which is the subject matter of Section 6 Declaration under the Land Acquisition Act dated 06.03.1992 to the petitioners.

For the Appellants : Mr.T.P.Segar

For the Respondents : Mr.P.Muthukumar
State Government Pleader
for respondent No.1

: Mr.Seshubalan Raja
for M/s.Siva & Sesu
Associates
for respondent No.2

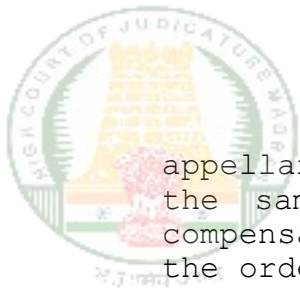
: Mr.Rajasekar
Standing Counsel
for respondent No.3

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

The writ appeal has been filed to assail the judgment dated 26.10.2021 dismissing the writ petition for challenge to the order dated 23.5.2005.

2. It is a case where the respondents had taken steps to acquire the land and, accordingly, after completion of the process given under the Land Acquisition Act, 1894 [for brevity, "the Act of 1894"], the award was passed. The acquisition of land was challenged by the appellants by maintaining a writ petition, but remained unsuccessful. Thus, so far as the acquisition of land is concerned, it attained finality. The



appellants filed a reference for enhancement of compensation and the same is pending before the Sub Court. The amount of compensation was deposited in the civil court, as is narrated in the order impugned.

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3. Learned counsel for the appellants submits that even if the acquisition proceedings had attained finality, they are having right to seek re-conveyance of land under Section 48-B of the Act of 1894. The application seeking re-conveyance of land was submitted, but was rejected by order dated 23.5.2005 and challenged in the writ petition.

4. Learned counsel for the appellants further submits that the appellants are still in possession of the land and, thus, the land should have been re-conveyed in favour of the appellants, but the learned Single Judge dismissed the writ petition. The prayer is to cause interference with the order of the learned Single Judge, with the grant of prayer.

5. We have considered the submissions and perused the records.

6. The facts available on record show that after completion of the proceedings for acquisition of land and passing of the award, the compensation was deposited in the civil court. The possession of the land was taken and as per the affidavit given by the respondents, it is being used for construction of houses under the EWS Housing Scheme. The construction to the extent of 80% has already been completed. As against the aforesaid, the appellants submit that they are still in possession of the land, without narrating the aforesaid fact in the writ appeal, and in any case, paragraph 8 of the judgment of the learned Single Judge, wherein the relevant portion of the affidavit given by the respondents is quoted, is extracted hereunder:

"8. In this regard, the learned counsel would rely upon the following averments made in the counter affidavit filed by the third respondent, which reads thus,

'Inasmuch as the interested persons have not participated for any enquiry during the land acquisition process and in the absence of any documentary evidence in proof of their claim over the title of the property, the apportionment of the ownership and compensation could not be dispersed. Hence, the entire amount of compensation as worked out was ordered to be kept in Civil Court Deposit and the following persons namely 1) Tmt.Vanammal D/o Late Shanmuga Naicker 2)



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S.Kamsala D/o Late Shanmuga Naicker have been included as interested persons and a reference under Section 30 and 31(2) made to Sub-Court, there were no trees or buildings on the land the same was also mentioned in the award No.2/2001 dated 03/08/2001. The competition amount of Rs.18,00,000/- for the award No.2/2001 dated 03/08/2001 deposited at Sub-Treasury, Ponneri Vide Chalan No.1534 and 1535 dated 14.09.2001. The land was vacant and till now vacant and no residence is located in the land bearing S.No.357/5 as stated by the petitioner. The land was acquired by TNHB for housing project and the transferred to CMDA and in turn to TNSCB for affordable housing. TNSCB has formulated as EWS housing scheme and got approval from Government of India under PMAY (Pradhan Mantri Awas Yojana) and the agency has been finalized for constructing 3360 EWS houses in the 19.75 Acres of land handed over to TNSCB which includes S.No.357/5. The process for implementation of EWS Housing Scheme started as soon as the land was handed over to TNSCB. A demand survey was conducted and 18,000 people responded to the survey and about 250 have paid in advance amount of Rs.10,000/- even before the commencement of the project. The case filed against acquisition was dismissed by the Hon'ble High Court in W.P.No.8850/1992 on 07/02/1999 which is admitted by the petitioner. The award for S.No.357/5 was passed on 03/08/2001 vide Award No.2/2001 after the Hon'ble High Court dismissed the cases against acquisition. Since the land is being utilized for the purpose of Housing Scheme as ordered in the Acquisition the vacant land cannot be re-conveyed to the petitioner.'"

[emphasis supplied]

7. A perusal of the facts given above shows that the possession of the entire land was taken and there was no house in existence, as claimed by the appellants. After acquisition of the land, it was transferred to CMDA and in turn to TNSCB to construct affordable houses. The construction of the houses is going on and 80% of the work has completed. The possession of the appellants has not been accepted, rather as per the affidavit given by the respondents, no house was



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agency, the Government cannot exercise power under Section 48-B of the Act and reconvey the same to the original owner. In any case, the Government cannot be compelled to reconvey the land to the original owner if the same can be utilised for any public purpose other than the one for which it was acquired."

[emphasis supplied]

12. In the instant case, the respondent authorities had transferred the land to construct affordable houses and the land has already been utilized by the construction of houses for EWS. Thus, re-conveyance is not otherwise possible, apart from the fact that it does not create a right in favour of the appellants to seek re-conveyance of the land in all circumstances and rather the decision has to be taken by the government.

13. For all the reasons given above, we do not find any ground to interfere with the order of the learned Single Judge when it does not suffer from any error. The appeal is, accordingly, dismissed. There will be no order as to costs. Consequently, C.M.P.No.5516 of 2022 is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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To

- 1.The Secretary to Government,
State of Tamil Nadu,
Housing and Urban Development Department,
Secretariat, Chennai - 600 009.
- 2.The Member Secretary,
Chennai Metropolitan Development Authority,
Gandhi Irwin Road, Chennai-8.
- 3.The Managing Director,
Tamil Nadu Slum Clearance Board,
Kamarajar Salai, Chennai - 5.

+1cc to Mr.T.P.Sekar, Advocate SR.No.23534
+1cc to Government Pleader SR.No.23669

W.A.No.811 of 2022

AJS (CO)
GMY (19/04/2022)