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W.A. No.1632

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2022

CORAM:

**THE HON'BLE MR.JUSTICE T.RAJA
AND
THE HON'BLE MR.JUSTICE K. KUMARESH BABU**

**W.A. No.1632 of 2018
and C.M.P.No.13187 of 2018**

The Executive Engineer and Administrative Officer,
Besant Nagar Division,
Tamil Nadu Housing Board,
No.48, Dr.Muthulakshmi Road,
Adyar, Chennai – 600 020.

... Appellant

VS

1. A.L.Vellaichamy

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

... Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, prays to set aside the order made in W.P.No.10820 of 2010, dated 10.04.2014.

For Appellant : Mrs.C.Shyaamala
For Respondents : Mr.K.V.Viswanathan for R1

: Mr.V.Manoharan for R2
Additional Government Pleader



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JUDGMENT

(Judgment of the court was delivered by K.Kumaresh Babu, J.)

This writ appeal has been preferred by the Executive Engineer and Administrative Officer, the Tamil Nadu Housing Board challenging the order of the learned Single Judge passed in W.P.No.10820 of 2010 dated 10-04-2014, wherein, the learned Judge was pleased to quash the order passed by the appellant directing the first respondent to remove the unauthorized encroachment made by him in survey number 390/4 of Shollinganallur village which has been acquired by the appellant for implementing Shollinganallur neighbourhood scheme. The learned Judge further directed the Authorities to consider and allot the land along with building constructed thereon to the extent of the land on which the first respondent has put up construction by collecting development charges as directed by a Division Bench in the judgment reported in **2007 (5) MLJ 1327**.

2. The case of the appellant is that the land in issue has been acquired by the appellant for implementation of Shollinganallur neighbourhood scheme. Award was also made on 28-06-1993 in Award No.2/93. Under the Award, it has been noted that the legal heirs of the original owner has stated that they have sold the lands in favour



of the first respondent and others but, however, they were not able to give details. It was also noted in the Award enquiry that interested persons had not appeared and hence the compensation was directed to be kept in Court deposit as per the provisions of Land Acquisition Act. It is also the case of the appellant that after taking possession of the lands, the Land Acquisition Authorities handed over the same to the appellant on 14/10/1993. It was also submitted that the Court deposit was also made on 02/08/1994.

3. It is the case of the appellant that the first respondent encroacher who after acquisition has entered the property and put up a construction. He had challenged the acquisition by way of a writ petition in WP.No.16138 of 1997 which was dismissed on 29/10/1997. He had filed an application in W.M.P.No.28334 of 1997 seeking modification of the order dated 29.10.1997 by issuing suitable directions to consider the application for reconveyance, which was directed to be considered by the order dated 27/03/1998. It is the further case of the appellant, as the land in question was already taken possession by the appellant, the power under Section 48B could not be exercised by the Government. Hence notice dated 06/05/2010 has been issued calling upon the first respondent to remove the encroachment within a period of 10 days failing which the same would be removed and the cost of which would be collected



from the first respondent. The first respondent challenged the notice with a consequential relief of re-conveyance which was stoutly opposed by this appellant.

The learned Single Judge on erroneous consideration of facts relying upon a judgement reported in **2007 (5) MLJ 1327** has quashed the notice dated 6-5-2010 and directed allotment of the land in which the first respondent had put the construction by collecting development charges.

4. The reasoning assigned by the learned Judge is contrary to the facts of this case, as, according to the appellant, the prayer sought for by the writ petitioner is for a reconveyance of the land and the lands have been handed over to the Housing Board. The writ petition itself is not maintainable as the 2nd respondent cannot exercise the powers under Section 48B of the Land Acquisition Act, 1894. The further attack on the impugned order is that the 1st respondent/ writ petitioner was a rank trespasser and therefore he would not be entitled to claim the reconveyance of the land and the construction put up by him has to be removed.

5. The learned counsel for the appellant had vehemently contended that the learned Single Judge was wholly erroneous in setting aside the eviction notice dated 06.05.2010. The 1st respondent is a rank trespasser of the lands that has been



acquired for the benefit of the public by developing the acquired lands for a neighborhood scheme. She had also further urged this Court that the learned Judge ought not to have directed the Board to follow the Resolution dated 02.07.1986 as the same has been withdrawn by the Board even as early as on 29.08.2002 and hence, sought interference to the order impugned in this appeal.

6. On the contrary, learned counsel for the 1st respondent had submitted that he is the owner of the property by having purchased the same under a registered Sale Deed dated 12.11.1986, much before the land acquisition proceedings were initiated. When the land acquisition proceedings initiated on 14.05.1990, neither the appellant nor the 2nd respondent had verified the ownership of the properties before initiating the land acquisition proceedings. Even after the initiation of the proceedings, the vendor of the petitioner had informed the Authorities during the Section 5A enquiry as well as in the Award enquiry that he had sold the land to named individuals including the 1st respondent/ writ petitioner and even thereafter, they had not caused any verification with the Registration Department, which is an arm of the Government. Had they verified the Encumbrance Certificate, it would have thrown light of the details of the purchasers, based on which, they could have issued further notices. Having known that the lands have been sold much before the notification and



failing to find out the details of the purchasers, the appellant cannot term the 1st respondent as a rank encroacher. Further Resolution of the appellant dated 02.07.1986, in Resolution No. 67/86, they have taken a conscious beneficial decision of reconveying the lands to the erstwhile land owners who had constructed the houses, even after the publication of the notification under Section 4(1) of the Land Acquisition Act, 1894 subject to the condition that they paid the development charges.

7. In fact, this Court by its order dated 27.03.1998 made in W.M.P.28334 of 1997 in W.P.No.16138 of 1997 had permitted the respondent to make appropriate application to the appellant seeking for reconveyance in conformity with the Resolution dated 02.07.1986. The appellant had not passed any orders on the application made by this respondent. However, the appellant had issued a proceeding dated 06.05.2010, calling upon the petitioner to remove the encroachment treating 1st respondent as a trespasser, which was the subject matter in the writ petition in W.P.No.10802 of 2020.

8. The learned Single Judge after considering the case of the parties was fully convinced that the case of the 1st respondent deserves to be considered on par with the



land owners, covered under the decision of a Division Bench of this Court reported in **2007 (5) MLJ 1327** and hence, set aside the eviction notice dated 06.05.2010 and had consequently, directed the appellant to consider and allot the land along with the building constructed thereon to the extent of the construction made after collecting the developmental charges. Hence, the present Writ Appeal.

9. The learned counsel for the petitioner had also requested us to take a judicial notice of the fact that the lands in issue are now part of the Greater Chennai Corporation.

10. The learned counsel for the 1st respondent vehemently contended that it is the fault of the appellant and the Government in not identifying the actual owners of the land. The 1st respondent had purchased the land as early as on 12.11.1986 and the acquisition proceedings were initiated only in the year 1990. It is an admitted case of the appellant that they were informed by the original owner that they had sold the lands to the third party and in respect of the said lands they did not envisage any interest in the acquisition proceedings. He had also further contended that the resolution dated 02.07.1986 would squarely apply to his case and he is entitled for allotment of the land in which he had constructed his building. He has also submitted



that the 1st respondent will be depositing the developmental charges and comply with the conditions stipulated in the Resolution. He heavily placed reliance on the judgment reported in **2007 5 MLJ 1327** and claimed that the persons who are similarly placed like him in another acquisition proceedings were extended the benefit of the Resolution and the Housing Board was directed to allot lands in which the buildings was constructed after collecting the developmental charges.

11. We have given our careful consideration to the arguments made by the learned counsels appearing on both sides and to the materials placed before us.

12. On careful consideration of the facts, it would be seen that the 1st respondent herein had originally challenged the acquisition proceedings by filing W.P.No.16138 of 1997 which came to be dismissed by the learned Single Judge of this Court vide order dated 29.10.1997. The 1st respondent had preferred a miscellaneous petition in W.M.P.No.28334 of 1997 in the said writ petition seeking for modification of the order dated 29.10.1997 by issuing a suitable direction for considering his case on the ground that he had built his house, in the light of the judgment made by a Division Bench of this Court in W.A.No.660 of 1987.



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13. The learned Single Judge, after considering the same had permitted the 1st respondent to take out an appropriate application in conformity with the Resolution No.67/86 dated 02.07.1986 passed by the appellant and had directed the Housing Board to consider the request and pass orders in accordance with the law. It is also seen that the 1st respondent had sent a representation as early as on 27.04.1998 which has not been considered till date and of passing the order in the writ petition. Against which this appeal has been preferred.

14. The contention of the appellant that the Resolution has been withdrawn as early as in the year 2002 is without any substance. As stated above, the learned Single Judge of this Court, much earlier to the withdrawal of the said Resolution, had directed the Authorities to consider the case of the 1st respondent in the light of the said Resolution even in the year 1998. The Authorities having slept over the matter, without considering the same, cannot now be heard to say that the 1st respondent would not be entitled to the benefit of the beneficial Resolution, as the same has been withdrawn. It is pertinent to note that the Authorities have taken a conscious decision of allotting the lands in which the land owners have put up construction for their residential purposes by collecting the development charge, taking into consideration,



the sufferings of such land owners. In the present case, based on the liberty given by the learned Single Judge of this Court, the 1st respondent had also made an application as early as in the year 1998. The Authorities had not moved their fingers and now they cannot at any stretch of imagination claim that the said Resolution now cannot be applied to the case of the petitioner, as the same has been withdrawn in the year 2002 itself.

15. Further, the 1st respondent cannot be termed an encroacher as he had purchased the property much before the Land Acquisition proceedings initiated. As per the award, the appellant itself has made a Court deposit of the compensation in favour of the 1st respondent recognising as a owner/ interested person. Hence, the notice dated 06.05.2010, treating the 1st respondent as an encroacher is far fetched, in the light of the fact that it was the appellant who in disregard to the order passed as early as 27.03.1998 has slept over the issue.

16. In view of the above, we find that the order passed by the learned Single Judge in W.P.No.10820 of 2010 dated 10.04.2010 requires no interference and in the result, the appeal fails and is dismissed. No costs. Consequently, connected miscellaneous petition if any, is closed.



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Index: Yes/no
Speaking/non-speaking
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(T.R, J.)

(K.B.,J.)

28.06.2022

To

The Secretary to Government,
Housing and Urban Development,
Fort St.George,
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