



WEB COPY



W.P.No.13805 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.08.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.13805 of 2018
and W.M.P.No.16293 of 2018

Smt.Rajeswari Venkatesan

..Petitioner

Vs.

1.The State of Tamil Nadu,
rep.by its Commissioner and Secretary,
Housing and Urban Development,
Fort St.George,
Chennai 600 009.

2.The Chairman cum Managing Director,
Tamil Nadu Housing Board,
Nandhanam, Chennai 600 035.

3.The Executive Engineer and
Administrative Officer,
Salem Housing Unit,
Tamil Nadu Housing Board,
Ayyanthirumaaligai, Salem 3.

4.The Special Tahsildar,
(Land Acquisition),
Neighbourhood Scheme,
Salem, Salem District.

...Respondents



W.P.No.13805 of 2018

Prayer: Writ petition has been filed under Article 226 of the Constitution of India to issue a writ of declaration declaring the Land Acquisition Proceedings initiated under the Land Acquisition Act 1894 in respect of Land bearing Survey No.242/7 at Jakkir Ammapalayam Village, Salem Taluk, Salem District, measuring 3948 Sq.Ft. covered by Notification under section 4(1) of the land acquisition Act 1894 vide G.O.Ms.No.525, Housing and Urban Development, dated 25.05.1985 and declaration under section 6 of the Land Acquisition Act, 1894, vide G.O.Ms.No.1408, Housing and Urban and Development department, dated 03.09.1986, deemed to have lapsed in view of section 24(2) of right to fair compensation and transparency in Land Acquisition rehabilitation and resettlement Act 2013.

For Petitioner : Mr.M.S.Govindarajan
For Respondents : Mr.G.Krishna Raja
Additional Government Pleader

ORDER

This Writ Petition has been filed for issuance of writ of declaration declaring the Land Acquisition Proceedings initiated under the Land Acquisition Act 1894 in respect of Land bearing Survey No.242/7 at Jakkir Ammapalayam Village, Salem Taluk, Salem District, measuring 3948 Sq.Ft. covered by Notification under section 4(1) of the land



W.P.No.13805 of 2018

WEB COPY

acquisition Act 1894 vide G.O.Ms.No.525, Housing and Urban Development, dated 25.05.1985 and declaration under section 6 of the Land Acquisition Act, 1894, vide G.O.Ms.No.1408, Housing and Urban and Development department, dated 03.09.1986, deemed to have lapsed in view of section 24(2) of right to fair compensation and transparency in Land Acquisition rehabilitation and resettlement Act 2013.

2. The case of the petitioner is that she is the owner of the property comprised in S.F.NO.242/7 situated at Jakkir Ammaplayam Village, Salem Taluk, Salem, measuring about 3948 sq.ft and the same was purchased in the year 1982 and from the date of purchase, she is in possession and enjoyment of the same. While being so, the respondents had initiated a land acquisition proceedings against the petitioner and issued notification under Section 4(1) of the Land Acquisition Act, 1894 vide G.O.Ms.No.525, Housing and Urban Development Department, dated 25.05.1985 and Declaration under Section 6 of the Act, dated 03.09.1986. Challenging the acquisition proceedings, the petitioner had filed W.P. No.11039/1986 and this Court was pleased to allow the writ



W.P.No.13805 of 2018

petition on 28.11.1991, against which the respondents had filed an appeal in W.A.NO.1247/1994 and the same was allowed on 04.10.1996, with a direction directing the petitioner to seek for reconveyance, however the Government has rejected the petitioner's request for reconveyance. Against which, the petitioner had filed W.P.No.6910/2000, questioning the rejection and it was allowed on 09.04.2002, challenging the said order, the Government has preferred W.A.Nos.328/2003 and 282/2005 and this Court was pleased to direct the Government to reconvey only the built up area and contiguous area to the built up area and the said Writ Appeals were dismissed. Even then the possession was not taken and compensation amount was not paid and in order to avail benefit under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013, this writ petition is filed.

3. The learned counsel appearing for the petitioner submitted that though earlier the petitioner had filed Writ Petition challenging the acquisition proceedings, which was allowed in favour of her, in the Writ



W.P.No.13805 of 2018

WEB COPY

Appeal in W.A.Nos.328/2003 and 282/2005, the Division Bench of this Court held that the petitioner is entitled to retain the construction as per the Housing Board Resolution No.67/1986, dated 27.07.1986. Even such observation made in favour of the petitioner, the possession was not taken in the manner known to law in respect of the remaining portion of property and further the compensation amount was also not deposited in terms of Section 24(2) of the Right to Fair Compensation Act and hence, the entire acquisition proceedings deemed to be lapsed and prays for allowing of this petition.

4. Per contra, the learned Additional Government Pleader appearing for the respondents submitted that once the petitioner accepted that the land vested with the Government and sought for reconveyance in favour of her, challenging the land acquisition proceedings is not sustainable and further he submitted that the request of the petitioner for reconveyance was rejected and challenging the same, the writ petition was filed and the said Writ Petition was allowed and the Writ Appeal against the said writ petition order was negatived and it was categorically



W.P.No.13805 of 2018

held that the petitioner is not entitled for allotment of excess land in her favour other than the constructed area as per the Housing Board Resolution No.67/86, dated 27.07.1986, and hence prays for dismissal of this petition.

5. Admittedly the petitioner's land is acquired for the purpose of Housing Board scheme in the year 1985 and Section 6 declaration was made during the year 1986 and award was passed on 31.08.1988. Challenging the acquisition proceedings, the petitioner filed W.P.No.11039/1986 and the said writ petition was allowed. Against which, the State preferred W.A.No.1247/1994 and the said Writ Appeal was allowed and observed that resolution was passed in favour of the petitioner and she is entitled to retain the constructed portion, which was constructed prior to 4(1) notification dated 25.05.1985 and granted liberty to the petitioner to make representation to reconvey the property in respect of constructed portion and thereby, the petitioner has submitted application for reconveyance and the said application was rejected. Challenging the same, the petitioner has filed W.P.NO.6910/2000 and the



W.P.No.13805 of 2018

said writ petition was allowed, against which, the State has preferred W.A.Nos.328/2003 and 282/2005 and the said Writ Appeal were dismissed and the relevant portion of the Division order as follows:

"10. In the facts and circumstances and in absence of any merit, interference with the substantive part of the judgment is not called for. However, we make it clear that the 1st respondent is entitled for allotment of land along with building constructed thereon to the extent of land on which she put up construction, as per layout / constructed area of the building with set back area, whichever is higher, after payment of the development charges. After allotment of such part of the land, if there remains any excess area beyond the constructed building / layout area with set back, the 1st respondent is not entitled for allotment of such excess land in her favour, though she may claim for compensation as per law. The judgment passed by the learned single judge is modified to the extent above. The writ appeals are dismissed with the aforesaid observations. Consequently, connected miscellaneous petition is closed."

6. A close perusal of the decision of the Division Bench order makes it clear that the petitioner *is entitled for allotment of land along*



W.P.No.13805 of 2018

with building constructed thereon to the extent of land on which she put up construction, as per layout / constructed area of the building with set back area, whichever is higher, after payment of the development charges. After allotment of such part of the land, if there remains any excess area beyond the constructed building / layout area with set back, however the petitioner is not entitled for allotment of such excess land in her favour. When such categorical finding has rendered by the Division Bench, the petitioner has no right to file another writ petition seeking benefit under Section 24(2) of the Right to Fair Compensation Act and hence, the prayer sought for by the writ petitioner cannot be granted.

7. For the reasons aforesaid, this Writ Petition is dismissed. However, the petitioner is entitled to retain the constructed portion as per the judgment of the Division Bench of this Court in W.A.Nos.328 of 2003 and 282 of 2005 and the respondents are directed not to interfere with the petitioner's possession and enjoyment of the constructed portion of the property as held in the order of the Division Bench in the above said Writ Appeal. No costs. Consequently connected miscellaneous petition is



W.P.No.13805 of 2018

closed.
WEB COPY

30.08.2022

sk

To

- 1.The Commissioner and Secretary,
The State of Tamil Nadu,
Housing and Urban Development,
Fort St.George,
Chennai 600 009.
- 2.The Chairman cum Managing Director,
Tamil Nadu Housing Board,
Nandhanam, Chennai 600 035.
- 3.The Executive Engineer and
Administrative Officer,
Salem Housing Unit,
Tamil Nadu Housing Board,
Ayyanthirumaaligai, Salem 3.
- 4.The Special Tahsildar,
(Land Acquisition),
Neighbourhood Scheme,
Salem, Salem District.

M.DHANDAPANI.,J.



WEB COPY



W.P.No.13805 of 2018

sk

W.P.No.13805 of 2018

30.08.2022