



W.P(MD)No.1169 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 12.09.2022
DELIVERED ON : 16.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.1169 of 2012

Anto Rotriguez (Died)

... Petitioner

2.Mervin

3.Sharmila

4.Micheline Meera

5.Uttham Rodringuez

6.Nisha

... Proposed Petitioners

(Petitioners 2 to 6 are substituted vide Court order, dated 15.07.2022 in W.M.P(MD)No.11116 of 2022 in W.P(MD)No. 1169 of 2012)

Vs.

1.The State of Tamil Nadu,
Represented by its Secretary,
Industries Department,
Fort St.George,
Chennai.

2.The District Collector,
Thoothukudi District,
Thoothukudi.

3.The District Revenue Officer,
Thoothukudi District, Thoothukudi.

1/16



W.P(MD)No.1169 of 2012

4.The Sub Collector,
Thoothukudi,
Thoothukudi District.

5.The Special Tahsildar,
Land Acquisition (Industries),
Thoothukudi.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings made in E2/17852/2011, dated 14.12.2011 issued by the second respondent and quash the same and consequently direct the respondents to extend the benefit as per the G.O.Ms.No.1242 Industrial Department, dated 07.09.1981 and handover the land to the petitioner in Survey Nos.1139/4, 1139/2A and 1672/2 for extend 12.41 Acres in Meelaviddan Village Part-2 Thoothukudi Taluk & District.

For Petitioner : Mr.K.Mahendran

For Respondents : Mr.A.Baskaran
Additional Government Pleader

ORDER

The present Writ Petition has been filed challenging the order passed by the second respondent herein, under which, the request of the petitioner for reconveyance of the acquired land was rejected.



W.P(MD)No.1169 of 2012

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2. According to the petitioner, an extent of 12.41 acres in Meelaviddan Village, Thoothukudi Taluk, falling under Survey Nos. 1139/1A, 1139/1B and 1677/2 were acquired by the respondent authorities under the Land Acquisition Act, 1894 in the year 1971. Thereafter, the first respondent has passed G.O.Ms.No.1242 Industries Department, dated 07.09.1981, denotifying salt pan lands for an extent of 39.99 acres and the said lands were restored to the original owners. Thereafter, a consequential Government order in G.O.Ms.No.206 Industries (MIH.II) Department was passed on 26.02.1986, under which, a denotification was issued.

3. According to the learned Counsel for the petitioner, Survey Nos. 1673/2 and 1674 of the same Village were denotified under the above said Government orders. The learned Counsel for the petitioner has further submitted that when a portion of the land that was already acquired, was released in favour of certain owners, the petitioner cannot be discriminated. According to the learned Counsel for the petitioner, the petitioner stands on the similar footing and hence, the lands acquired by the respondent authorities should have been restored to the writ petitioner. Hence, the



W.P(MD)No.1169 of 2012

petitioner gave a representation on 19.11.2010 to the respondents to hand over the lands to the writ petitioner. Since his representation was not considered, the petitioner had filed W.P(MD)No.9093 of 2011. The learned Single Judge of this Court by an order, dated 12.08.2011, has directed the respondent authorities to consider the representation of the petitioner subject to the petitioner's producing all the relevant and authentic document to prove his claim. Thereafter, the second respondent herein has passed the present impugned order on 14.12.2011. As per the said impugned order, the second respondent herein has stated that the lands that were already acquired from the petitioner are very much required for the development of industries. The second respondent has further found that G.O.Ms.No.206, dated 26.02.1986 relates only to two survey numbers and it does not relate to the writ petitioner. Since the lands sought to be released, fall under the classification of industrial Poromboke, the request of the petitioner cannot be considered. The said order is under challenge in the present writ petition.

4. The learned Counsel for the petitioner has contended that the Government has chosen to release 39.99 acres by, passing an order in G.O.Ms.No.1242, dated 07.09.1981. Thereafter, an amendment has been



W.P(MD)No.1169 of 2012

issued by way of G.O.Ms.No.206, dated 26.02.1986, under which, the already acquired 39.99 acres were sought to be released. The petitioner stands on a similar footing on par with the persons whose lands have been acquired and later released by the Government. The Government cannot discriminate between the land owners. Once the Government decides to release the adjacent lands, Government ought to have released the land of the writ petitioner also, based upon the representation made by the writ petitioner. The learned Counsel for the petitioner has further contended that the second respondent has not properly appreciated the facts placed before him and he has arrived at an erroneous consideration that the lands are required for industrial purposes.

5. The learned Counsel for the petitioner had relied upon the judgment of the Hon'ble Supreme Court reported in **2010 (3) SCC page 621 (Hari Ram and Another Vs. State of Haryana and Others)** to contend that different orders cannot be passed in respect of persons who are similarly situated relating to the same acquisition proceedings and for the same public purposes. If such different orders are passed, it is violative of Article 14 of the Constitution of India and the same is discriminatory. The learned



W.P(MD)No.1169 of 2012

Counsel for the petitioner also relied upon the Division Bench of this Court reported in **2011 (7) MLJ page 849 (Tamil Nadu Housing Board, Represented by its Chairman & Managing Director, Chennai-600 035 and Another Vs. Uma Maheswari Ramasamy and Others)** to contend that when a discretion is vested with the authorities, it must be done according to the rule of reasons and justice and it should not be according to the whims of the authorities and the action of the State in giving different treatment to the land owners is highly arbitrary, capricious, discriminatory and violative of Article 14 of the Constitution of India.

6. Learned Counsel for the petitioner further relied upon the judgment of the learned Single Judge of this Court reported in **2005 (1) MLJ page 724 (Selvamani and another Vs. The Government of Tamilnadu, Represented by Secretary to Government, H. &U.D. Department, Secretariat, Chennai)** to contend that where the acquired lands were not utilised for the purpose for which they were acquired, for more than 14 years, they have to be re-conveyed to the land owner under Section 48-B of the Land Acquisition Act.



W.P(MD)No.1169 of 2012

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7. The learned Counsel for the petitioner had further contended that the Government had released 39.99 acres only on the ground that the said lands were under encroachment and it is difficult to remove the said encroachment. Even in the present case, it is admitted, in the counter, that the lands have been encroached by one Suresh Babu and Thanga Mariappan. However, the Government has not specified the date on which the encroachments were removed by the Government. The counter has been filed by the Government on 03.11.2012. Hence, it is clear that on the date of filing of the writ petition, the respondent authorities have not taken possession of the property after evicting the encroachers. Therefore, according to the learned Counsel for the petitioner, a similar treatment should have been conferred upon the petitioner which was extended to the land owners of 39.99 acres. Hence, he prayed for allowing the writ petition.

8. Per contra, the learned Additional Government Pleader appearing for the respondents had contended that a total extent of 317.98 acres were acquired under G.O.Ms.No.1242, dated 07.09.1981. Out of the said 317.98 acres, 277.99 acres was handed over to the Industries Department for Adi



W.P(MD)No.1169 of 2012

Dravidars Salt Pan Workers Co-operative Society. The balance extent of 39.99 acres were under encroachment and the Government had denotified the said 39.99 acres and restored the same to the original owners. Out of the said 39.99 acres, 31.05 acres are covered by salt pan encroachments.

9. The learned Additional Government Pleader for the respondents had further contended that the writ petitioners' lands were already acquired and handed over to the Industries Department, which in turn was handed over to Adi Dravidars Salt Pan Workers Co-operative Society on 24.02.1987. That apart, the petitioners' land does not come under the denotified extent of 39.99 acres. After a spot inspection, it came to the knowledge of the respondent authorities that the survey numbers in dispute were encroached by one Suresh Babu and Thanga Mariappan and the salt pans were established by the said encroachers. The said encroachments have now been removed and possession has been taken over by the Government. Hence, the request of the writ petitioner for restoration of the said land was rightly rejected.



W.P(MD)No.1169 of 2012

10. The learned Additional Government Pleader for the respondents had further contended that the lands were acquired for industrial development and the petitioners' land cannot be re-conveyed because it is essentially needed for future development. He further contended that as per the Village records, the above said land is classified as Industrial Extension Road and hence, it is needed for the extension of road at any future point of time.

11. The learned Additional Government Pleader for the respondents had further contended that the encroachments made by salt pans alone were ordered to be re-conveyed, in view of the repeated representations from the salt pan owners. However, in the present case, the land owner was not engaged in salt pan activities. He further contended that Thoothukudi being a developing city, the requirement of the land is more for the developmental activities and hence, the request of the petitioner cannot be considered. Hence, he prayed for dismissal of the writ petition.

12. I have carefully considered the submissions made on either side.



W.P(MD)No.1169 of 2012

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13. There is no dispute that an extent of 12.41 acres of the petitioner falling under Survey Nos.1139/1A, 1139/1B and 1677/2 were acquired by the Government for industrial purposes under the Land Acquisition Act, 1894. The Government has passed G.O.Ms.No.1242, under which, it was decided to acquire an extent of 317.98 acres of land. Thereafter, the said Government order was modified by the Government by G.O.Ms.No.206, dated 26.02.1986, denotifying and releasing an extent of 39.99 acres, of which 31.05 acres are covered by salt pans. It was further stated in the said Government order that it should be denotified and restored to the original owners.

14. According to the petitioner, when a particular extent of land is denotified and released in favour of one set of land owners, the Government cannot refuse to extend the same benefit to the writ petitioner, who is similarly placed and has suffered in the same acquisition proceedings. A perusal of G.O.Ms.No.1242, dated 07.09.1981, indicates that repeated representations have been sent by land owners and salt pan owners for exclusion of salt pan lands from the purview of land acquisition. Only this



W.P(MD)No.1169 of 2012

request has been favorably considered and an amended Government order in G.O.Ms.No.206, dated 26.02.1986, has been passed denotifying and releasing the lands to an extent of 39.99 acres. Therefore, it is clear that salt pan owners have made a request for denotifying and releasing the lands and their request was acceded to by the Government. It is not the case of the petitioner that he is also a salt pan owner and he has made a request to the Government for releasing his lands.

15. The very public purpose of acquisition is for handing over the same to Adi Dravidars Salt Pan Workers Co-operative Society. Out of the total acquisition of 317.98 acres, 277.99 acres have been allotted to Adi Dravidars Salt Pan Workers Co-operative Society. Hence, it is clear that the public purpose of acquisition is to allot the said lands for Adi Dravidars Salt Pan Workers Co-operative Society. When this being the public purpose, it may not be proper to acquire the already existing salt pan and thereafter, hand it over to a Co-operative Society. Only from this view point, the Government has decided to exempt from acquisition, the existing salt pan lands from acquisition and the same were released in favour of the original land owners. Therefore, the release of lands made in favour of the land



W.P(MD)No.1169 of 2012

owners, who were already having salt pan can never be considered to be a discriminatory activity of the Government.

16. A careful perusal of the above said Government orders will further reveal that the land owners have retained possession after acquisition proceedings and they continued their salt pan activity. This was considered to be an encroachment by the Government and hence, these lands were released from the acquisition proceedings. It is not the case of the petitioner that he was involved in salt pan activities even after the acquisition proceedings and he is on par with the other land owners in whose favour the lands were released. The encroachers, named in the counter affidavit are not the land owners. They have encroached upon the land after being acquired by the Government and they have set up a salt pan. Hence, the Government had taken steps to remove the said encroachments. Therefore, the contention of the learned Counsel for the petitioner that he stands on a similar footing with that of the land owners in whose favour lands were released is not legally sustainable.



W.P(MD)No.1169 of 2012

17. The petitioner has neither pleaded nor proved that he was also running a salt pan in the disputed survey numbers and he continued with the said salt pan activities after the acquisition proceedings. Hence, he cannot contend that he is a person who is similarly placed with those of the beneficiaries under G.O.Ms.No.206, dated 26.02.1986. Some third parties have encroached upon the petitioners' land, after acquisition and the said encroachments have been removed by the Government.

18. The learned Counsel for the petitioner has further contended that the lands have not been taken possession and they have not been utilised for the purpose for which they acquired. The respondents in their counter has specifically stated that the encroachments have been removed and they have taken possession. Further, revenue records have been mutated as Industrial Department Extension Road. The acquisition has been made for the benefit of the Industries Department and hence, the mutation of revenue records in favour of the Industries Department for the purpose of forming an extension road cannot be said to be not in consonance with the object for which the lands were acquired. Hence, the contention of the learned Counsel for the petitioner that the lands have not been put to use for so many years is not



W.P(MD)No.1169 of 2012

legally sustainable.

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19. It is therefore clear that the lands acquired from the petitioner do not stand on the same footing of that of the lands that were already released by the Government under G.O.Ms.No.206, dated 26.02.1986. That apart, the lands acquired from the petitioner have undergone mutation of revenue records in favour of the Industries Department for the purpose of extension of road for an industrial estate. Hence viewed from any angle, the request of the petitioner for reconveyance of the land to the petitioner is not legally sustainable.

20. In view of the above said discussion, there are no merits in the writ petition. The writ petition stands dismissed. There shall be no order as to costs.

16.09.2022

Index : Yes / No
Internet : Yes / No
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14/16



W.P(MD)No.1169 of 2012

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To

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The State of Tamil Nadu,
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W.P(MD)No.1169 of 2012

R.VIJAYAKUMAR, J.

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Order made in
W.P(MD)No.1169 of 2012

16.09.2022