



W.P.(MD).Nos.4065 and 7168 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 01.08.2022

ORDER PRONOUNCED ON : 06 .09.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).Nos.4065 and 7168 of 2013

and

MP(MD).Nos.1 and 3 of 2013

A.Pushpakala

... Petitioner
(In W.P(MD)No.4065 of 2013)

1.S.Vedhanayagam

2.S.Chellathurai Tagore

3.S.Daniel Vedhanayagam

4.A.Rathinam

... Petitioners
(In W.P(MD)No.7168 of 2013)

Vs.

1.The Secretary to Government,
Backward Classes and Most Backward
Classes Welfare Department,
Fort St.George,
Chennai-600 009.

2.The Commissioner,
Most Backward and Denotified Community,
Chepauk,
Chennai-600 005.



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3.The Principal Secretary and
The Commissioner for Land Administration,
Office of Land Administration,
Chepauk,
Chennai-600 005.

4.The District Collector,
Tuticorin District,
Korampallam,
Tuticorin-628 101.

5.The Special Tahsildar,
Land Acquisition,
Adhi Dravidar Welfare,
Tuticorin-628 101.

..... Respondents
(In both cases)

PRAYER IN W.P(MD)No.4065 of 2013: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the Proceedings in G.O.(Nilai)No.12 Department of Backward Classes and Most Backward Classes Welfare, dated 15.02.2013 on the file of the first respondent herein and to quash the same and direct the first respondent herein to release the lands bearing Survey No. 36/1 to an extnt of 1.22.0. hectare in Senthilampannai Village, Tuticorin District, under Section 48-B of the Land Acquisition Act, within a time frame as may be fixed by this Court.

PRAYER IN W.P(MD)No.7168 of 2013: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings in G.O.(Nilai)No.12 Department of Backward Classes, and Most Backward Classes Welfare, dated 15.02.2013 on the file of the first respondent herein to release the lands



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bearing Survey No.36/1, to an extent of 1.07.0 hectare in Senthilampannai Village, Tuticorin District, under Section 48-B of the Land Acquisition Act, within a time frame as may be fixed by this Court.

For Petitioners : Mr.G.Prabhu Rajadurai
(In both cases)

For Respondents : Mr.P.Thambidurai
Government Advocate
(In both cases)

COMMON ORDER

Both the writ petitions have been filed challenging an order passed by the first respondent, under which the request of the petitioners for releasing the lands from the acquisition proceedings have been rejected.

2. The petitioner in W.P(MD)No.4065 of 2013 has purchased an extent of 1.22.0 hectares of land under a registered sale deed, dated 08.08.1991. The petitioners in W.P(MD)No.7168 of 2013 have purchased 1.07.0 hectares of land in Survey No.36/1. Both these lands were subjected to acquisition proceedings by way of a notification under Section 4(1) of the Land Acquisition Act 1894, dated 28.12.1993. Despite objections from the land owners, a declaration under Section 6 of the said Act was issued. According



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to the petitioners, they have not been issued notice at any stage of the proceedings and hence, such proceedings are per-se illegal and the same cannot bind the original owners.

3. The petitioners have further contended that on enquiry, they were informed that adjacent Survey No.36/2, which was owned by one Malai and Kirubakaran Manuel were also acquired under the same acquisition proceedings. The said owners have filed W.P.No.1055 of 1997 before the Principal Bench of Madras High Court and the writ petition was allowed on 08.10.2003, quashing the entire acquisition proceedings. The said order was accepted by the Government and G.O.(2D) No.57, dated 01.12.2008 was passed by the first respondent herein releasing the survey numbers covered in the said High Court order.

4. The petitioners had made a representation on 29.10.2008 to the first respondent herein. The fourth respondent had forwarded a report on 21.07.2009 recommending for release of the lands covered in Survey No.36/1 also to the Commissioner, Land Administration, Chennai. The first respondent had not initiated any action on the basis of the said report. Hence, the petitioner in W.P(MD)No.4065 of 2013 had filed W.P(MD)No.10097 of



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2010, in which orders were passed on 05.08.2010 directing the authorities to consider the request. The petitioners in W.P(MD)No.7168 of 2013 had filed W.P(MD)No.10098 of 2010, in which orders were passed on 05.08.2010 to consider the request of the petitioners.

5. The request of both the petitioners was rejected by the fifth respondent on 26.11.2010. The petitioners had filed W.P(MD)Nos.2246 of 2011 and 11658 of 2011 challenging the said order. W.P(MD)No.2246 of 2011 was dismissed on 10.11.2011 and W.P(MD)No.11658 of 2011 was dismissed on 20.10.2011. The petitioners have filed W.A(MD)Nos.1405 of 2011 and 1406 of 2011. Both the writ appeals were heard together and a common order was passed on 02.03.2012 directing the parties to approach the Commissioner, Land Acquisition. Based upon the directions of this Court, the present impugned orders have been passed by the first respondent herein on 15.02.2013, rejecting the request of the petitioners for releasing the lands from the acquisition proceedings. The said orders are under challenge in the present writ petitions.

6. The learned counsel for the petitioners have contended that no proper notice was issued to the land owners at any stage of the proceedings



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and hence, the proceedings are per-se illegal and they will not bind the original owners. They further contended that when a portion of the acquired property has already been released by the Government, the same conditions are equally applicable to the writ petitioners also. Therefore, the lands of the writ petitioners also ought to have been released by the Government. They further contended that the recommendation of the fourth respondent herein, dated 21.07.2009 ought to have been considered by the first respondent in proper perspective and should have ordered release of the lands. Since the lands covered in W.P.No.1055 of 1997 were already released, the lands belonging to the present writ petitioners cannot be used for any purpose.

7. They further contended that the lands have not been utilized for so many years from the date of acquisition and hence, they may be returned to the original owners. They further alleged that the first respondent cannot pick and choose some land owners and release their lands from acquisition and deny the same benefit to the other land owners by creating an artificial distinction. They further contended that the scheme itself could not be enforced on account of the release of the land to an extent of 1.24.5 hectares in Survey No.36/2B, which was dealt with in W.P.No.1055 of 1997. The lands have been kept unused for more than 20 years and hence, the lands should have been returned to the original owners.



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8. Per contra, the learned Government Advocate appearing for the respondents had contended that the facts in W.P.No.1055 of 1997 are completely different from the facts in the present case. In W.P.No.1055 of 1997, the land owners have purchased the property in the year 1993 and the revenue records were also mutated in their name. However, notifications were issued in the name of their vendor. Hence, the acquisition proceedings were quashed by this Court. But, in the present cases, all the proceedings have been issued only in the name of the writ petitioners and hence, the petitioners cannot contend that they are being discriminated. The learned Government Advocate for the respondents had further contended that the report of the fourth respondent, dated 21.07.2009 is only a recommendation and ultimate decision has to be arrived at only by the first respondent herein. The learned Government Advocate for the respondents had further contended that Section 4(1) notification was issued on 28.12.1993 and a declaration under Section 6 of the Act was issued on 20.12.1996. An award was passed on 20.01.1997. After 14 years, the present proceedings have been initiated for release of lands. The lands have got vested with the Government under Section 16 of the Act and after such a long lapse of time, the present request cannot be entertained.



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9. The learned Government Advocate for the respondents has further contended that the process of finalising the list of beneficiaries is going on and the property would be subdivided and pattas would be issued to the beneficiaries. Hence, he prayed for dismissal of the writ petitions.

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

11. There is no dispute that the petitioners are the owners of the respective extent of land in Survey No.36/1. The said lands were acquired along with the lands in other survey numbers by way of a notification under Section 4(1) of the Act on 28.12.1993. A declaration was published under Section 6 of the Act on 20.12.1996. An award under Section 11 was passed on 20.01.1997. Though the petitioners have contended that no notices were issued to them at any stage of the acquisition proceedings, the respondents have specifically denied the same and contended that notices were issued to the writ petitioners at all stages of the acquisition proceedings. The petitioners have not been able to produce any document to the fact that the entire acquisition proceedings have happened behind their back. In fact, they are even aware of the acquisition of their adjacent survey number and the fact that those lands were released by the Government. Hence, the contention of



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the writ petitioners that at no point of time, they were aware of the acquisition proceedings is not factually correct.

12. The petitioners have mainly relied upon an order of the Principal Bench of Madras High Court made in W.P.No.1055 of 1997, dated 08.10.2003. A perusal of the above said order would clearly indicate that the acquisition proceedings were quashed by the Principal Bench of Madras High Court mainly on the ground that the petitioners have not been issued with any 4(1) notification, despite their names being found in the revenue records. The prayer in the writ petition clearly indicates that the petitioners had sought to quash the acquisition proceedings only in relation to Survey No.36/2B. Hence, the allowing of the said writ petition by this Court is restricted only to Survey No.36/2B and not the entire acquisition proceedings have been quashed. That apart, the acquisition proceedings have been quashed for the said survey number only on the ground that there is violation of principles of natural justice. The petitioners in the present cases have failed to establish before this Court that there was any violation of principles of natural justice in issuing any notice at any stage of the acquisition proceedings. Hence, the petitioners cannot take advantage of the orders of the Principal Bench of Madras High Court in W.P.No.1055 of 1997.



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13. The petitioners have further contended that the lands which were acquired have not been utilized for more than 20 years and hence, the same may be released from acquisition proceedings. They have further contended that since a portion of the land has already been released pursuant to the orders of the Principal Bench of Madras High Court in W.P.No.1055 of 1997, the entire project cannot be proceeded with and hence, Survey No.36/1 may also be released.

14. The respondents in their counter have pointed out that they are about to finalise the list of beneficiaries, to whom plots are to be allotted out of the acquired lands. Hence, it is clear that the project has not collapsed and the first respondent is utilizing the said lands for allotting plots to the beneficiaries. Some delay on the part of the authorities in identifying the beneficiaries and allotting the plots, cannot be a ground to release the lands from the acquisition proceedings.

15. The Hon'ble Supreme Court in a judgment reported in **2007 (9)SCC 255 (T.N.Housing Board Vs. Keeravani Ammal and others)** in paragraph no.13 and 14 as held as follows:



“13. It is clearly pleaded by the State and the Tamil Nadu Housing Board that the Scheme had not been suspended or abandoned and that the lands acquired are very much needed for the implementation of the Scheme and the steps in that regard have already been taken. In the light of this position, it is not open to the court to assume that the project has been abandoned merely because another piece of land in the adjacent village had been released from acquisition in the light of orders of the Court. It could not be assumed that the whole of the project had been abandoned or has become unworkable. It depends upon the purpose for which the land is acquired. As we see it, we find no impediment in the lands in question being utilised for the purpose of putting up a multi-storied building containing small flats, intended as the public purpose when the acquisition was notified. Therefore, the High Court clearly erred in proceeding as if the Scheme stood abandoned. This was an unwarranted assumption on the part of the Court, which has no foundation in the pleadings and the materials produced in the case. The Court should have at least insisted on production of materials to substantiate a claim of abandonment.

14. We have already noticed that in the Writ Petition, there are no sufficient allegations justifying interference by the Court. Mere claim of possession by the writ petitioners is not a foundation on which the relief now granted could have been rested either by the learned Single Judge or by the Division



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Bench of the High Court. On the materials, no right to relief has been established by the writ petitioners.”

16. A perusal of the judgment of the Hon’ble Supreme Court reveals that when the acquired land is needed for the implementation of the scheme and steps have already been taken, the Court should not assume that the project has been abandoned merely because another piece of land in the adjacent village had been released from the acquisition in the light of the orders of the Court. The Hon’ble Supreme Court has further held that mere claim of possession by the writ petitioners is not a foundation, on which the relief under Section 48-B could have been rested by the High Court.

17. The Hon’ble Supreme Court in a judgment reported in **2010 (2)SCC 786 (Tamil Nadu Housing Board Vs. L.Chandrasekaran (Dead) by legal heirs and others)** in paragraph no.28 as held as follows:

“28. It need no emphasis that in exercise of power under Section 48-B of the Act, the Government can release the acquired land only till the same continues to vest in it and that too if it is satisfied that the acquired land is not needed for the purpose for which it was acquired or for any other public



purpose. To put it differently, if the acquired land has already been transferred to other 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.”

18. A perusal of the judgment of the Hon'ble Supreme Court will clearly reveal that the Government has got powers to release the acquired land only till it continues to vest with the Government and it is not needed for the purpose, for which it was acquired or for any other public purpose. The Hon'ble Supreme Court has further held that if the acquired land has already been transferred to other agency, the Government cannot exercise power under Section 48-B of the Act and reconvey the same to the original owner. In the present case, admittedly the acquired lands have been transferred to the second respondent herein for grant of free housing patta. The present impugned order has been passed by the first respondent herein. A perusal of the impugned order further indicates that the first respondent has sought for a report from the second respondent and as per the said report, dated 09.11.2012, a direction has been issued for expediting grant of patta to the



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beneficiaries. Hence, it is clear that after expiry of 20 years, the petitioners have approached this Court seeking reconveyance and hence, the present writ petitions are not maintainable.

19. In view of the above said facts, both the writ petitions are dismissed. No costs. Consequently, connected Miscellaneous petitions are closed.

06.09.2022

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Internet : Yes/No

Index : Yes/No

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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

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