



WEB COPY



W.P.No.17618 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.17618 of 2022
and W.M.P.No.16887 of 2022

M. Durai

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Housing and Urban Development Department,
Secretariat, Fort St. George,
Chennai – 600 009.

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

3.The District Collector,
Chennai,
Chennai District.

4.The Tahsildar,
Alandur,
Chennai – 600 041.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, quashing the impugned order passed by the 1st respondent in letter No.17336/LA-1(1)



W.P.No.17618 of 2022

2021-5 dated 27.04.2022 and directing the 1st respondent to consider the representation dated 22.02.2019 for re-conveyance of the unutilised land under Section 101 of the new Land Acquisition Act 30/2013 r/w Sec.48B of the Land Acquisition Act 1894 comprised in S.No.86/14 measuring 0.51 cents Avvai Nagar and S.No.98/6 measuring 0.15 cents, Nethaji Nagar both in Thiruvannamiyur Village.

For Petitioner : Mr.P. Mahadevan

For Respondent : Mr.P. Sathish, [R1, R3 & R4]
Additional Government Pleader
Mr.A.M. Ravindranath Jeyapal [R2]

ORDER

Claiming that the lands comprised in S.No.86/14 measuring 0.51 cents Avvai Nagar and S.No.98/6 (hereinafter called as the subject lands) measuring 0.15 cents, Nethaji Nagar both in Thiruvannamiyur Village, are kept unutilized even after the conclusion of the acquisition under the Land Acquisition Act, 1894, the petitioner seeks for re-conveyance of the lands by invoking Section 101 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter called as 'the Act of 2013').



W.P.No.17618 of 2022

WEB COPY

2. The second respondent/Housing Board, in their counter-affidavit have stated that under the proceedings initiated under the old Land Acquisition Act, an award was passed for the subject lands and the possession was also taken.

3. The learned counsel for the petitioner also admits that the possession of the subject lands are now vested with the Housing Board.

4. It is also the case of the Housing Board that pursuant to the acquisition and taking over possession of these lands, they had obtained Layout approval for Besant Nagar Phase-II scheme for lands comprising in various survey numbers including Survey Nos.86/14 and 98/6 and the plots were also allotted of the public. As such, the very claim of the petitioner that the subject lands have been kept unutilized, stands disproved.

5. This apart, the petitioner cannot invoke the provisions of Section 101 of the Act of 2013, for the purpose of seeking for return of the unutilized lands, which was acquired under the old Act of 1894.



W.P.No.17618 of 2022

6. The Hon'ble Supreme Court in the case of '**Indore Development**

Authority Vs. Manoharlal & others' reported in '**(2020) 8 SCC 129**', had ratified this proposition by stating that the provisions of Section 101 of the Act of 2013, cannot be applied to that possession under the Act of 1894.

The relevant portion of the order reads as follows:-

“.....361. Section 24 deals with lapse of acquisition. Section 101 deals with the return of unutilized land. Section 101 cannot be said to be applicable to an acquisition made under the Act of 1894. The provision of lapse has to be considered on its own strength and not by virtue of Section 101 though the spirit is to give back the land to the original owner or owners or the legal heirs or to the Land Bank. Return of lands is with respect to all lands acquired under the Act of 2013 as the expression used in the opening part is "When any land, acquired under this Act remains unutilized". Lapse, on the other hand, occurs when the State does not take steps in terms of Section 24(2). The provisions of Section 101 cannot be applied to the acquisitions made under the Act of 1894. Thus, no such sustenance can be drawn from the provisions contained in Section 101 of the Act of 2013. Five years' logic has been carried into effect for the purpose of lapse and not for the purpose of returning the land remaining unutilized under Section 24(2).”.....



W.P.No.17618 of 2022

WEB COPY

7. It is rather disappointing to note that, though the lands have been acquired way back in the year 1986 and possession has also been taken and the property has been allotted to the general public, the petitioner and others have been indulging in various litigations by filing of Writ Petitions before this Court. On the facts that stand clear on the face of the records, the petitioner cannot have any locus to file the Writ Petition seeking for re-conveyance of the acquired lands. As such, there are no merits in the present Writ Petition.

8. Accordingly, the Writ Petition stands dismissed. No costs. Connected miscellaneous petition is closed.

05.04.2023

Speaking order/Non-speaking order

Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

Sni

