



W.A.Nos.1413 of 2017 etc. batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.B. BALAJI

**W.A.Nos.1413 to 1432 of 2017 &
CMP Nos.19256 to 19275 of 2017**

W.A.No.1413 of 2017

1.The Chairman
Tamil Nadu Housing Board,
Nandanam,
Chennai-600 035.

... Appellant

versus

1. M.Subban
2.The Secretary
Housing and Urban Development Department,
Secretariat,
Fort St.George,
Chennai -600 009.

... Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letter Patent
against the order dated 15.10.2014 in W.P. No.44492 of 2006.



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For Appellant : Mr.A.M.Ravindranath Jeyapaul,
Standing Counsel (TNHB)
(W.A.Nos. 1413 to 1432 of 2017)

For Respondents : Mrs.Geetha Thamaraiselvan
Special Government Pleader
for second respondent
(in W.A.Nos. 1413 to 1418 of 2017)
for fifth respondent
in W.A.No.1418 of 2017

Mrs.R.L.Karthika,
Government Advocate
for second respondent
in W.A.No.1419 of 2019
Mrs.R.L.Karthika
Government Advocate
for 9th respondent
in W.A.No.1420 of 2017
for third respondent
in W.A.No.1421 of 2017
for 7th respondent
in W.A.No.1422 of 2017
for third respondent
in W.A.No.1423 of 2017
for 8th respondent
in W.A.No.1424 of 2017
for third respondent
in W.A.No.1425 of 2017

Mr.P.Rajarajeswari
Government Advocate
for 6th respondent
in W.A.No.1426 of 2017
for second respondent
in W.A.Nos.1427 to 1431 of 2017
for 9th respondent
in W.A.No.1432 of 2017



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No appearance for first respondent
(in W.A.No.1413 to 1415, 1417
of 2017)

No appearance for respondents
Nos.1 to 4 in W.A.No.1418 of 2017

No appearance for first respondent
in W.A.No.1419 of 2019

No appearance for respondents
Nos.1 to 8 in W.A.No.1420 of 2017

No appearance for first respondent
in W.A.No.1421 of 2017

No appearance for respondent
Nos.1 to 6

in W.A.No.1422 of 2017

No appearance for respondent
Nos.1 & 2

in W.A.No.1423 of 2017

No appearance for respondent
Nos.1 to 7

in W.A.No.1424 of 2017

No appearance for respondent
Nos.1 to 5

in W.A.No.1426 of 2017

No appearance for first respondent
in W.A.Nos.1427 to 1431 of 2017

No appearance for respondent
Nos.1 to 8

in W.A.No.1432 of 2017

No appearance for first respondent
in W.A.Nos.1521 to 1523 of 2017

Mr.C.Prakasam

for second respondent

in W.A.No.1421 of 2017

for respondents 1 and 2

in W.A.No.1425 of 2017

Mr.A.R.L.Sundaresan,



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Senior Counsel for
Ms.S.A.Kanmani
for first respondent in
WA.No.1416 of 2017

COMMON JUDGMENT

(Judgment of the Court was delivered by *D.KRISHNAKUMAR, J.*)

Since the issue involved in all the writ appeals is one and the same, a common order is passed in all the writ appeals.

2. The brief facts leading to the filing of the present writ appeals are as follows:

2.1. The second respondent-Government has issued a notification under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as the Old Act, 1894) vide G.O.Ms.No.755, Housing and Urban Development dated 04.09.1981 and G.O.Ms.No.1042, Housing and Urban Development Department, dated 21.01.1982 for the acquisition of land belonging to the first respondents/land owners, in the above writ appeals, in Ayyamperumalpatti Village and Kannankurichi Village for the formation of a Neighbourhood Scheme and the same was published in Tamil



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Nadu Government Gazette and Draft Declaration under Sections 6 and 7 of the Old Act, 1894 was also approved.

2.2. When the acquisition proceedings reached the above stage, some of the land owners/private respondents filed writ petitions before this Court and the same were dismissed. Challenging the said order of dismissal, some of the land owners/private respondents filed writ appeals before this Court. This Court, by a common order dated 16.10.1997, disposed of these writ appeals with a liberty to the land owners/private respondents to agitate their contention that the award was passed beyond the period of limitation and also to approach the Government for exemption of their lands from acquisition. While so, Government came out with a G.O.Ms.No.254 (Housing & Urban Development Department) dated 06.10.2003 proposing to re-convey the lands which were not subjected to any use by the Housing Board. Consequent to the same, land owners/private respondents made representations to the authorities concerned for exemption of their lands from the acquisition proceedings and re-conveyance under Section 48(b) of the Old Act, 1894 and on the failure of the authorities to consider the same, some of the land owners/private respondents



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approached this Court by way of writ petitions. This Court, disposed of those writ petitions with a direction to the Government to pass orders on the respective representations of the land owners/first respondents. Since the representations were not considered, the land owners/private respondents, filed writ petitions before the Writ Court for the issuance of a writ of Mandamus directing the authorities to re-convey the land to the land owners/private respondents in the aforementioned village. As a common issue has been raised in all the writ petitions, this Court, by a common order dated 15.10.2014 in W.P.Nos.44492 of 2006 etc. Batch, had allowed these writ petitions. Challenging the said common order dated 15.10.2014 passed in W.P.Nos.44492 of 2006 etc. Batch, the appellant Housing Board has preferred these intra court appeals.

3. Though notice has been served to all the land owners/private respondents in these writ appeals, counsel for some of the private respondents have only appeared before this Court. None appeared for the remaining private respondents.

4. According to the appellant Housing-Board, the prayer as sought for in all the writ petitions was to re-convey the land to the



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land-owners/private respondents under Section 48 (b) of the Old Act, 1894. The grounds raised in the writ petitions also were only for the re-conveyance of the land to the respective land owners. When such is the case, during the course of argument, without providing opportunity to the appellant Housing Board, the Writ Court has proceeded to consider the issue under Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (hereafter referred to as the 'New Act 30 of 2013'), when the prayer was altogether different. Finally, the Writ Court held that the land owners/private respondents are entitled for the relief under Section 24 (2) of the New Act 30 of 2013 and allowed the writ petitions. According to appellant Housing Board, the learned Single Judge during the course of argument has not provided an opportunity to the appellant Housing Board to put forth their stand on this aspect and submit records before the Writ Court to show that possession has already been taken by the Housing Board and compensation amount has also been either paid or deposited before the appropriate forum. On this ground, the appellant Housing Board seeks for setting aside order of the writ court.



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5. Learned Standing Counsel for the appellant-Housing Board submitted that when the relief sought for in the writ petitions was for re-conveying the respective portion of the land to the land owners therein under Section 48 (b) of the Old Act, 1894, whereas the Writ Court granted relief by invoking the provisions under Section 24(2) of the New Act 30 of 2013. Learned Standing Counsel further submits that Section 24(2) of the New Act 30 of 2013, would come into operation in cases where award has been passed under the Old Act, 1894, five years or more prior to the commencement of New Act, 30 of 2013, where either physical possession has not been taken or compensation has not been paid. The Learned Standing Counsel also submits that in the matter on hand provisions of Section 24(2) of the New Act, 30 of 2013 are not applicable as the land has already been taken possession and compensation amount has also been either paid or deposited into Court. Learned Standing Counsel further argues that as the acquired land has already been transferred to the Housing Board, the Government cannot exercise power under Section 48 (b) of the Old Act, 1894, and re-convey the land to the original owner of the land.



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6. Learned counsel appearing for the land owners/private respondents in some of the writ appeals fairly seeks before this Court that the prayer as sought for by the land owners/private respondents is to re-convey of the land under Section 48 (b) of the Old Act, 1894 and no relief has been sought under Section 24 (2) of the New Act, 30 of 2013. Hence, they seek to remit back the matter to the writ Court and the same shall be considered by providing an opportunity to the land owners/private respondents to raise additional grounds, if any, after making amendment to the prayer.

7. Heard the parties and perused the materials on record.

8. The short point involved in the present writ appeals is whether the writ court is right in allowing the writ petition by invoking the provisions under Section 24 (2) of the New Act, 30 of 2013. It is an undisputed fact that the prayer as sought for in the writ petitions is only to re-convey the land under Section 48 (b) of the Old Act, 1894. During the course of the argument before this Court, it is rightly pointed out by the learned Standing Counsel for the appellant Housing Board that when no such pleading or ground has been taken in the



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writ petitions and also prayer for the invocation of the provisions under Section 24 (2) of the New Act, 30 of 2013, and the prayer, as sought for was only for re-conveying of the land, the Writ Court has exceeded its jurisdiction and has granted the relief which was not sought by the respondent in the prayer. Therefore, such relief granted by the Writ Court is beyond its jurisdiction and therefore, the same is liable to set aside.

9. On a perusal of the order impugned in the present Writ Appeals, it seems that the Writ Court had discussed the provisions under Section 24(2) of the New Act, 30 of 2013 following the decision of the Hon'ble Supreme Court in the case of ***Pune Municipal Corporation and another vs Harakchand Misirimal Solanki and Others reported in 2014 (1) CTC 755***. In paragraph 21 of the said judgment, the Supreme Court has held that **as per the provisions under Section 24(2) of the New Act 30 of 2013**, land acquisition proceedings initiated under the Old Act, 1984, are deemed to have lapsed where award has been made five years or more prior to the commencement of 2013 Act and possession of the land is not taken or compensation has not been paid. Further in paragraph 11 of the Writ



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Court order, it has been observed that possession has not taken over in respect of some of the land owners/private respondents.

10. Learned Standing Counsel for the appellant Housing Board also relied upon the judgment of the Hon'ble Supreme Court, ***Pune Municipal Corporation and another vs Harakchand Misirimal Solanki and Others reported in 2014 (1) CTC 755*** which was subsequently overruled in ***Indore Development Authority vs Manoharlal and Ors reported in (2020) 8 SCC 129***. Learned Standing Counsel for the appellant housing board would submit that in the light of the decision of the Hon'ble Supreme Court in the case ***Land Acquisition Collector vs Jai Prakash Tyagi & Ors 2023*** following the ***Indore Development Authority vs Manoharlal and Ors reported in (2020) 8 SCC 129***, once possession is taken over by the requisite body, Section 24(2) of the New Act 30 of 2013, would not attract and the same is not deemed to be lapsed. Therefore, the order of the Writ Court is liable to be set aside. There is some force on the contention of the appellant Housing Board to interfere with the said order of the Writ Court.



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11. All these are disputed facts. According to the appellant Housing Board though compensation amount has been deposited, the Writ Court has not provided opportunity to the appellant to place all the relevant records and file the statement before the Writ Court.

12. According to appellant Housing Board, learned Single Judge has considered under the provisions of Section 24 (2) of the New Act, 30 of 2013 in the Writ Petitions, based on the arguments advanced by the land owners/private respondents without providing opportunity to the appellant Housing Board.

13. We also feel that the prayer as sought for in the writ petitions was for mandamus to re-convey the land under Section 48 (b) of the Old Act, 1894, but in the impugned order passed by the Writ Court, had considered provision under Section 24(2) of the New Act 30 of 2013 and allowed the writ petitions, invoking the provisions under Section 24(2) the New Act 30 of 2013, and held that the acquisition is deemed to be lapsed. In the grounds raised in the writ appeals, appellant Housing Board has clearly stated that the possession has already been taken by the appellant Housing Board and the



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compensation amount has already been deposited as per the provisions of the Act. Therefore, writ petitioner raised new grounds at the time of the hearing of the writ petitions, without seeking such a relief in the prayer.

14. This Court is satisfied that the order passed by the Writ Court is beyond the scope of the prayer sought for in the writ petitions, as the relief as sought for by the land owners/private respondent is only under Section 48 (b) of the Old Act, 1894 and no relief as prayed for by the land owners/private respondents under Section 24(2) of the New Act 30 of 2013.

15. Considering the above said fact, and submissions made by the learned Standing Counsel for the appellant Housing Board, we are satisfied that the Writ Court has not provided sufficient opportunity to the appellant Housing Board to submit the relevant records before the Writ Court. Therefore, we have no hesitation to set aside the order passed by the Writ Court. Accordingly, the orders passed by the Writ Court, are set aside and consequently, the matter is remitted back to the Writ Court to take appropriate decision and decide the issue afresh



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on its own merits at the earliest, after proving opportunity to the Housing Board to submit their records.

16. With the above liberty, the impugned common order dated 15.10.2014 passed by the Writ Court in W.P.Nos.44492 to 44496, 44498 to 44500, 44502 & 44503, 44506 to 44515 of 2006, are set aside and consequently, these writ appeals stand allowed. There will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

[D.K.K., J.] [P.B.B., J.]
03.08.2023

Index : Yes/No
Neutral Citation : Yes/No
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To

The Secretary
Housing and Urban Development Department,
Secretariat,
Fort St.George,
Chennai -600 009.



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D.KRISHNAKUMAR, J.
and
P.B. BALAJI, J.

(mrn)

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