



W.A.Nos.596 to 598 of 2017

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.596 to 598 of 2017 &
CMP Nos.8312 to 8314 of 2017**

W.A.No.596 of 2017

1.The Managing Director,
Tamil Nadu Housing Board,
Nandanam,
Anna Salai,
Chennai-600 035.

2.The Executive Engineer/
Administrative Officer,
Tamil Nadu Housing Board,
Salem Housing Unit,
Salem-636008

... Appellants

versus

1. Gandhimathi

2.Brindhvathi

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

... Respondents



W.A.Nos.596 to 598 of 2017

PRAYER: Writ Appeal filed under Clause 15 of the Letter Patent against the order dated 05.01.2015 in W.P. No.6118 of 2013.

W.A.No.597 of 2017

1.The Managing Director,
Tamil Nadu Housing Board,
Nandanam,
Anna Salai,
Chennai-600 035.

2.The Executive Engineer/
Administrative Officer,
Tamil Nadu Housing Board,
Salem Housing Unit,
Salem-636008

... Appellants

versus

1. D.Namachivayam

2. D.Srinivasan

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

... Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letter Patent against the order dated 05.01.2015 in W.P. No.6119 of 2013.



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W.A.No.598 of 2017

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1.The Managing Director,
Tamil Nadu Housing Board,
Nandanam,
Anna Salai,
Chennai-600 035.

2.The Executive Engineer/
Administrative Officer,
Tamil Nadu Housing Board,
Salem Housing Unit,
Salem-636008

... Appellants

versus

1. Manokaran

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

... Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letter Patent against the order dated 05.01.2015 in W.P. No.6120 of 2013.

For Appellants : Mr.A.M.Ravindranath Jeyapaul,
Standing Counsel (TNHB)
(in all Writ Appeals)

For Respondents : Mr.C.Prakasam
for first respondent
in W.A.No.598 of 2017
for respondent Nos.1 and 2
in W.A.Nos.596 and 597 of 2017



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Mr.K.Tippusultan
Government Advocate
for second respondent
(in W.A.No.598 of 2017)
for third respondent
in W.A.Nos.596 and 597 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.

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

2.1.The first and second respondents respectively herein are the original writ petitioners. The original writ petitioners filed WP Nos.6118, 6119 and 6120 of 2013 for a Writ of Certiorarified Mandamus calling for the entire records relating to Letter No.Ni.A.1/7337/79 dated 25.02.2013 of the Tamil Nadu Housing Board and quash the same and consequently direct the respondents to reconvey the land comprised in S.No.83/3, 82/1 and 83/3 in Ayyamperumalpatti Village, Salem Taluk & District to the respective petitioners.



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2.2. It is the case of the original writ petitioners that they are the owners of the respective lands at Ayyamperumalpatti Village, Salem Taluk. The Government of Tamil Nadu sought to acquire the said lands for the purpose of implementing housing scheme through the Tamil Nadu Housing Board. The Government issued notification under Section 4(1) of the Tamil Nadu Land Acquisition Act,(hereinafter referred to as the Old Act, 1894) in G.O.Ms.No.371, Housing and Urban Development Department, dated 03.06.1981 and G.O.Ms.No.455, Housing and Urban Development Department, dated 23.06.1981 and later passed declaration under Section 6 of the of the Old Act, 1984 vide order dated 12.06.1984 and 07.07.1984. Since the acquired lands have not been used by the Government for more than two decades, the petitioners gave a written representation dated 11.01.2013 to the first respondent Government, for re-conveyance of the land under Section 48(b) of the Old Act, 1894. After receipt of the said representations, the Tamil Nadu Housing Board, who does not have any power or jurisdiction to reject the representations as per Section 48 (b) of the Old Act, 1894, rejected the representations of the petitioners. Thereafter, the Tamil Nadu Housing Board passed an order dated 25.02.2013 rejecting the request for re-conveyance of the said



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land. Aggrieved by the said order passed by the Tamil Nadu Housing Board, the petitioners had filed the writ petitions, seeking re-conveyance of the land under Section 48(b) of the Old Act, 1984.

2.3.The learned Single Judge, allowed the writ petitions by order dated, 05.01.2015, on the ground that if the land is not utilized for the purpose for which it was acquired for a very long time, and if no physical possession of the land was taken by the Housing Board, then the landowners are entitled to get an order from the Government for re-conveying their land. The learned Single Judge also held that the petitioners are entitled to get remedy under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, (hereinafter referred to as the New Act 30 of 2013). As against the said orders, the present Writ appeals are filed.

3. 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, the Writ Court



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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 case on hand, the 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.

4. Learned counsel appearing for the land owners/private respondents in some of the writ appeals fairly submits 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



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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.

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

6. The Writ Court, while allowing the writ petitions has specifically observed as follows:

(i) There is a lapse of 27 years in implementing the Scheme;

(ii) The handing over of possession of the land to Housing Board was only symbolic and not physical and therefore the petitioners are entitled to secure remedy under Section 24(2) of the New Act 30 of 2013;

(iii) The Scheme can be arranged anywhere and;

(iv) The Scheme is only at planning stage and not materialized and further un-cultivable lands are available for implementing the Housing Scheme elsewhere. Therefore, the learned Standing Counsel for the appellant Housing Board seeks for setting aside the order of the Writ Court.



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7. A counter-affidavit has been filed by the Tamil Nadu Housing Board stating that the Writ Court has omitted to see that after passing the Award, the land was handed over to the Tamil Nadu Housing Board and the Local Planning Authority has approved the road pattern and a huge sum of Rs.3834.00 lakhs has been approved for the proposed Scheme, but simply allowed the writ petitions on the grounds (i) and (iv) mentioned supra, without appropriately discussing the issue elaborately and therefore the matter has to be remitted back to the Writ Court to consider afresh all the above aspects.

8. During the course of the argument before this Court, it is rightly pointed out by the learned Standing Counsel for the appellant board that when no such pleading or ground has been taken in the writ petition and there was also no prayer for the invocation of the provisions under Section 24 (2) of the New Act, 30 of 2013, the writ court has exceeded its jurisdiction and has granted the relief which has not been the issue raised before the learned Single Judge, particularly the specific prayer was only for re-conveyance of the land.



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9. On a perusal of the order of the Writ Court, it is seen that the Writ Court has discussed both the grounds under Section 24(2) of the New Act 30 of 2013 as well as re-conveyance of the possession of land under Section 48(b) of the Old Act, 1894 and allowed the writ petitions. Therefore, we feel that this is a fit case for setting aside the order of the writ court and remitting back since the Writ Court has not given a specific reasoned order, for allowing the writ petitions under Section 48(b) of the Old Act, 1894 and for holding that the petitioners are entitled for a relief under Section 24(2) of the New Act 30, 2013 and further since the connected writ appeals have also been allowed, the present writ petitions are also required to be remitted back for fresh consideration. Accordingly, on the aforesaid ground, the matter is remitted back to the Writ Court to consider afresh.

10. With the above directions, the orders dated 05.01.2015 of the writ court in W.P.Nos.6118, 6119 and 6120 of 2013, are set aside and consequently, these writ appeals stand allowed. Consequently, connected miscellaneous petitions are closed.

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

Index : Yes/No
Neutral Citation : Yes/No
mrn

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



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

(mrn)

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