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W.P.(MD).No.8533 of 2012 and W.P.(MD).No.1709 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 30.01.2023

PRONOUNCED ON : 22.02.2023

CORAM:

THE HON'BLE MR.JUSTICE K. KUMARESH BABU

W.P.(MD).No.8533 of 2012
and W.P.(MD).No.1709 of 2015
and M.P.(MD).No.2 of 2012
and M.P.(MD).No.1 of 2015

W.P.(MD).No.8533 of 2012

R.Chandramohan

... Petitioner

Vs

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

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

3.The Executive Engineer,
Tamil Nadu Housing Board,
Thanjavur.

4.The Commissioner,
Pattukottai Municipality,
Thanjavur District.

... Respondents



W.P.(MD).No.8533 of 2012 and W.P.(MD).No.1709 of 2015

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PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus, calling for the records pertaining to impugned order in Letter No.S/5008/2011 dated 01.06.2012 rejecting the petitioner's application dated 21.03.2012 and quash the same and consequently direct the 3rd respondent to consider the petitioner's application dated 21.03.2012.

For Petitioner : Mr.M.Ajmal Khan
Senior Counsel
for M/s.Ajmal Associates

For Respondents : Mr.Veera Kathiravan for RR1 & 4
Additional Advocate General-III
Asst. by Farjana Ghoushia
Special Government Pleader

: Mr.M.Suresh
Standing Counsel for RR2 & 3

W.P.(MD).No.1709 of 2015

R.Chandramohan

... Petitioner

Vs

1.The State of Tamil Nadu,
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2.The District Collector,
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Page:2/14



WEB COPY

3.The Special Tahsildar (Land Acquisition),
Tamil Nadu Housing Board,
Thanjavur.

4.The Managing Director,
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5.The Executive Engineer,
Tamil Nadu Housing Board,
Thanjavur.

6.The Commissioner,
Pattukottai Municipality,
Thanjavur District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Declaration to declare that by virtue of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013), the Land Acquisition Proceedings initiated in G.O.No. 1364 dated 31.08.1987 in Survey No.196/8, 196/3, 196/11, 196/7, 197/6 and 197/8 situated at Maharaja Samuthiram Village, Pattukottai Taluk, Thanjavur District are concerned, shall be deemed to have lapsed.

For Petitioner : Mr.M.Ajmal Khan
Senior Counsel
for M/s.Ajmal Associates

For Respondents : Mr.Veera Kathiravan for RR1 to 3 & 6
Additional Advocate General-III
Asst. by Farjana Ghoushia
Special Government Pleader



WEB COPY



W.P.(MD).No.8533 of 2012 and W.P.(MD).No.1709 of 2015

: Mr.M.Suresh
Standing Counsel for RR4 & 5

COMMON ORDER

The facts leading to these Writ Petitions are that the petitioner is the owner of the agricultural lands situated in S.Nos. 196/8, 196/3, 196/11, 196/7, 197/6 and 197/8 at Maharaja Samuthiram Village, Pattukottai Taluk, Thanjavur District, measuring to an extent of about 5.26 acres. The said lands were sought to be acquired for the housing purposes.

2.The petitioners had preferred W.P.No.7116 of 1994, wherein this Hon'ble Court on a finding that the lands have already been handed over to the requisitioning body even as on 04.11.1989 had given liberty to the petitioner to approach the Government highlighting their grievance and if any such representation is made, it is for the Government to consider the same and pass orders expeditiously. Pending those writ petitions certain lands have been released on the ground that they are classified as wet lands. In the interregnum, a Division Bench of this Court in W.A.No.248 of 1997 had quashed the Section 6 declaration holding that it had lapsed by efflux of time. However, liberty was granted



W.P.(MD).No.8533 of 2012 and W.P.(MD).No.1709 of 2015

to the respondent to proceed afresh in accordance with law, in a Writ

Appeal filed by one Nagarajan and 19 others.

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3. Thereafter, the petitioner had made a representation to the respondent to release his lands. He had also moved this Court in W.P.No. 2449 of 2007 which was disposed of on 26.03.2007 to consider the representation of the petitioner. A High Level Committee Chaired by a retired Judge of this Court was appointed and the said High Level Committee had recommended to release one of the five bits of land to the lands owners by way of reconveyance by collecting the proportionate cost of the land with interest and other development charges or in the alternative to allocate one developed plot to each of the land owners at the cost price without profit, when the scheme may be taken up. As the lands were not released, the petitioner had approached this Court in W.P.No.12945 of 2010, seeking to consider his representation but the same was dismissed against which the petitioner had preferred a W.A.No. 765 of 2011. A Division Bench of this Court had issued a direction to the respondent to consider the representation of the petitioner and till such time status quo was directed to be maintained. By communication dated 28.09.2011, the petitioner was informed that his request were rejected



W.P.(MD).No.8533 of 2012 and W.P.(MD).No.1709 of 2015

against which the petitioner had preferred W.P.(MD).No.11492 of 2011 which also came to be dismissed on 28.10.2011 and the Writ Appeal preferred against the same has also been dismissed.

4.Challenging the orders of rejection, the petitioner have preferred W.P.(MD).No.7784 of 2012 and originally an order of interim stay was granted. Pending those Writ Petitions an order of rejecting the request of the petitioner for reconveyance had been made by the 3rd respondent. Hence, he has preferred these Writ Petitions.

5.Heard Mr.M.Ajmal Khan, for M/s.Ajmal Associates, learned Senior Counsel appearing for the petitioner and Mr.Veera Kathiravan , learned Additional Advocate General-III, Assisted by Farjana Ghousia, learned Special Government Pleader appearing for respondent 1 and 4 in W.P.(MD).No.8533 of 2012 and for respondents 1 to 3 & 6 in W.P.(MD).No.1709 of 2015 and Mr.M.Suresh, learned Standing Counsel appearing for respondents 2 & 3 in W.P.(MD).No.8533 of 2012 and for respondents 4 & 5 in W.P.(MD).No.1709 of 2015.



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6.Mr.Ajmal Khan, learned Senior counsel appearing for the petitioner would vehemently contend that the lands belonging to the petitioner are all wet lands and therefore, exempted from acquisition for housing project. This aspect has been clearly over looked by the respondents in acquiring the lands belonging to the petitioner. He would further contend that the reasons attributed by the respondent to reject the request of reconveyance is very much arbitrary and would rely upon the recommendations of the High Level Committee which had recommended for release of atleast one bit of the land or to give a preferential allotment to the land owners by collecting the actual cost price plus interest plus any development charges.

7.He would vehemently contend that when such a Report of the High Level Committee has been made that too with the Chairman and Executive Engineer of the Housing Board as a member of the Committee. The reasons attributed in the order of rejection of request made by the petitioner for reconveyance is wholly actuated by legal malice. Learned Senior counsel would further contend that pending this Writ Petition, the land acquisition Act had been repealed by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and



W.P.(MD).No.8533 of 2012 and W.P.(MD).No.1709 of 2015

Resettlement Act, 2013 (Central Act 30 of 2013) and that by the provisions of the said enactment particularly Section 24(2), the land acquisition proceedings initiated under the old Act, where either the possession of the land has not been taken or the compensation amount has not been paid within preceding 5 years of the Act coming into force. Such land acquisition proceedings will be statutorily lapsed. In view of the said provisions, the petitioner had filed another Writ Petition in W.P.No.1709 of 2015. He would further submit that in any event the compensation amount has not been paid to the petitioner and that the possession of the land still vests with the petitioners. He would contend that the land acquisition proceedings had been statutorily lapsed invoking Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013).

8.Countering his submission, Mr.Veera Kathiravan, learned Additional Advocate General would contend that the contentions raised by the learned Senior Counsel for the petitioner, with regard to the validity of the land acquisition proceedings cannot be gone into in these Writ Petitions as they have all been upheld. He would further contend



W.P.(MD).No.8533 of 2012 and W.P.(MD).No.1709 of 2015

that when the lands have been acquired for the Housing Board and the possession of the land have been handed over to the Housing Board as early as in the year 1989, the Government does not have jurisdiction to reconvey the lands. He would rely upon the provision of the Tamil Nadu Housing Board Act, 1961 and would submit that once the land have been handed over to the Housing Board the same can be disposed of only in terms of the provisions of the enactment. He would further submit that the lands belonging to the petitioner after acquisition have been involved in a scheme and the layouts have been approved by the Competent Authority and the lands have been sold to various persons. Therefore, he would submit that the claim of the petitioner that still they are in possession of the lands will have to be negated.

9.He would further submit that the compensation amount claimed by the petitioner has been deposited in the Competent Court on 17.11.1989 in L.A.O.P.Nos.58, 59 & 60 of 1990. To substantiate the same, he had relied upon the receipt issued by the Subordinate Judge, Sub Court, Pudukottai. Hence, he would plead that the petitioners challenge to reconveyance cannot be entertained and his claim that of statutory lapse under Section 24(2) of Right to Fair Compensation and



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Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013) will also have to be fail as both possession have been taken and the compensation amount has also been deposited in the concerned Subordinate Court, Pudukottai.

10.I have considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on record before this Court.

11.It is an admitted fact that the lands have been acquired by the Government for housing purposes at the request of the Tamil Nadu Housing Board. When the lands have been acquired for the Housing Board and the possession of the lands being handed over to the Tamil Nadu Housing Board, as rightly submitted by the learned Additional Advocate General, the Government is ousted from considering any reconveyance of the lands of which the possession has already been vested with the requisitioning body. The claim of reconveyance would only be available when the Government is still in possession of the acquired lands. In this case, the acquired lands have been handed over to



W.P.(MD).No.8533 of 2012 and W.P.(MD).No.1709 of 2015

the Housing Board and the Housing Board in exercise of power of statute and Scheme, has already disposed of the lands belonging to the petitioner to various third parties by developing the lands. Hence, I do not find any infirmity in the order impugned in W.P.No.8533 of 2012.

12.Now coming to the claim of the petitioner that the land acquisition proceedings had lapsed in view of the Section 24(2) of the enactment Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013), the conditions stipulated in the said provisions is that the possession of the land should still vest with the land owner or the compensation amount not paid to the land owner within the preceeding 5 years when the enactment came into force. This provision has been interpreted by the Constitution Bench of the Hon'ble Apex Court by holding that the said two conditions should be conjunctively read and not disjunctively read. In the present case on hand, the possession of the land has been taken over and sold to various third parties. That apart when the petitioner himself has claimed for reconveyance it would only tantamount to an irresistible conclusion that the possession of the lands has already been taken. Even the compensation amount has been deposited into the



W.P.(MD).No.8533 of 2012 and W.P.(MD).No.1709 of 2015

Competent Subordinate Court for which the receipts issued by the said Court have been placed on record.

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13.In view of the same, I do not find that the land acquisition proceedings belonging to the petitioners had lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013).

14.In fine, both the Writ Petitions fail and accordingly, dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

*Index: Yes/no
Speaking/non-speaking
gba*

22.02.2023

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Page:12/14



WEB COPY

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W.P.(MD).No.8533 of 2012 and W.P.(MD).No.1709 of 2015

K. KUMARESH BABU, J.

gba

common order in
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22.02.2023