



W.P.Nos.10716 to 10718 of 1988, W.P.(MD) Nos.27499 & 27500 of 2022,
1003 & 4343 of 2023 and W.A.(MD)Nos.1633 to 1645 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on 14.08.2023

Delivered on 31.08.2023

CORAM:

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

**W.P.Nos.10716 to 10718 of 1988, W.P (MD) No.27499 & 27500 of 2022,
1003 & 4343 of 2023 and W.A.(MD)Nos.1633 to 1645 of 2016
and W.M.P.(MD) No.949 of 2023 in W.P.(MD) No.1003 of 2023
and W.M.P.(MD) No.4088 of 2023 in W.P.(MD) No.4343 of 2023
and C.M.P.(MD) No.12428 of 2016 in W.A.(MD) No.1633 of 2016
and C.M.P.(MD) No.12414 of 2016 in W.A.(MD) No.1634 of 2016
and C.M.P.(MD) No.12415 of 2016 in W.A.(MD) No.1635 of 2016
and C.M.P.(MD) No.12416 of 2016 in W.A.(MD) No.1636 of 2016
and C.M.P.(MD) No.12417 of 2016 in W.A.(MD) No.1637 of 2016
and C.M.P.(MD) No.12418 of 2016 in W.A.(MD) No.1638 of 2016
and C.M.P.(MD) No.12419 of 2016 in W.A.(MD) No.1639 of 2016
and C.M.P.(MD) No.12420 of 2016 in W.A.(MD) No.1640 of 2016
and C.M.P.(MD) No.12421 of 2016 in W.A.(MD) No.1641 of 2016
and C.M.P.(MD) No.12422 of 2016 in W.A.(MD) No.1642 of 2016
& C.M.P.(MD) Nos.12423 & 12424 of 2016 in W.A.(MD) No.1643 of 2016
& C.M.P.(MD) Nos.12425 & 12426 of 2016 in W.A.(MD) No.1644 of 2016
and C.M.P.(MD) No.12427 of 2016 in W.A.(MD) No.1645 of 2016**

W.P.No.10716 of 1988:

- 1.Gunavathi
- 2.T.Sankaran
- 3.T.Murugesan (Deceased)
- 4.V.Kandasamy
- 5.M.Malarkodi
- 6.M.Umavathi
- 7.M.Vijay Amirtharaj

... Petitioners

(P5 to P7 are substituted as LR's of
deceased T.Murugesan as per Order
dated 31.03.2015 by TRJ in M.P.No.
34/2015 in W.P.No.10716 of 1988)



W.P.Nos.10716 to 10718 of 1988, W.P.(MD) Nos.27499 & 27500 of 2022,
1003 & 4343 of 2023 and W.A.(MD)Nos.1633 to 1645 of 2016

-VS-

- 1.The Government of Tamil Nadu,
represented by the Secretary to Government,
Housing and Urban Development Department,
Madras – 9.
- 2.The Special Tahsildar (Land Acquisition),
Neighbourhood Scheme,
Tuticorin.
- 3.Manickavel
(R3 impleaded vide Court order dated
12.03.2020 in W.M.P.No.20093/2019
in W.P.No.10716/1988 by SSSRJ & CSNJ)
- 4.The Chairman,
Tamil Nadu Housing Board,
CMDA Complex, E & C Market Road,
Koyambedu, Chennai – 600 107.
- 5.The Executive Engineer,
Tirunelveli Housing Unit,
Tamil Nadu Housing Board,
Tirunelveli.
(R4 & R5 are suo motu impleaded vide
Court Order Dated 02/08/2023 in W.P.
Nos.10716 to 10718 of 1988 & 4343/2023
and W.A.(MD) Nos.1633 to 1645/2016 by
SSSRJ and DBCJ)

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records relating to G.O.Ms.No.631, Housing and Urban Development, dated 26.06.1985 published in the Tamil Nadu Government Gazette, Part II, Section 2, Supplement, dated 10.07.1985, in publishing notification under Sec.4(1) of the Land Acquisition Act, 1894, G.O.Ms.No.1173, Housing and Urban Development, dated 29.07.1986 published in the Tamil Nadu Government Gazette, dated 30.07.1986 in publishing Declaration under Sec.6 of the Land



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Acquisition Act, 1894 and Award No.2/88, dated 29.07.1988 passed by the
second respondent and quash the same.

For Petitioners : Mr.P.Srinivas
For Respondents 1, 2, 4 & 5 : Mr.R.Baskaran
Additional Advocate General
Assisted by Mr.A.Kannan
Standing Counsel
For 3rd Respondent : Mr.T.Lenin Kumar

COMMON ORDER

[Order of the Court was made by S.S.SUNDAR, J.]

Since all the above Writ Petitions and Writ Appeals are in relation to
the acquisition proceedings, though for different reliefs, they are taken up
together for hearing and disposed of by this common order.

2. Brief facts that are necessary for disposal of these batch of cases are
as follows:-

(a) Three different notifications were issued under Section 4(1) of the
Land Acquisition Act, 1894, vide G.O.Ms.No.631, Housing and Urban
Development Department, dated 26.06.1985, G.O.Ms.No.607, Housing and
Urban Development Department, dated 17.06.1985 and G.O.Ms.No.628,
Housing and Urban Development Department, dated 26.06.1985 to acquire
large junk of land for formation of Neighbourhood Scheme of Tamil Nadu
Housing Board in Sankaraperi Village near Tuticorin.



W.P.Nos.10716 to 10718 of 1988, W.P.(MD) Nos.27499 & 27500 of 2022,
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(b) The owners of the land in S.Nos.122/2, 124/1A, 131/1, 122/1B and 125/2 filed W.P.No.10716 of 1988, challenging the notification issued vide G.O.Ms.No.631, Housing and Urban Development Department, dated 26.06.1985 and the declaration under Section 6 of the Land Acquisition Act in G.O.Ms.No.1173, Housing and Urban Development Department, dated 29.07.1986. Similarly, the land owners in respect of S.Nos.8/2B, 8/2A and 8/3B filed W.P.(MD) No.10717 of 1988, challenging the notification issued under Section 4(1) of the Land Acquisition Act vide G.O.Ms.No.607, Housing and Urban Development Department, dated 17.06.1985 and the declaration under Section 6 of the Land Acquisition Act in G.O.Ms.No.1172, Housing and Urban Development Department, dated 29.07.1986 and the land owners in respect of S.Nos.137/1A1, 120/2, 119/1A, 134/2B2 and 137/1A1 filed W.P.(MD) No.10718 of 1988, challenging the notification issued under Section 4(1) of the Land Acquisition Act vide G.O.Ms.No.628, Housing and Urban Development Department, dated 26.06.1985 and the declaration under Section 6 of the Land Acquisition Act in G.O.Ms.No.1171, Housing and Urban Development Department, dated 29.07.1986. In all the Writ Petitions, the Award Nos.2/88, 3/88 and 1/1988, dated 29.07.1988, passed in respect of the lands covered by 3 different set of acquisition proceedings, referred to above were also challenged.

(c) One of the grounds raised in all the above three Writ Petitions is that the enquiry under Section 5-A of the Act was not properly conducted



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and that the acquisition proceedings culminated into issuance of a declaration under Section 6 of the Land Acquisition Act is without providing reasonable opportunity of being heard. A specific contention was also raised with reference to Rule 3(b) of the Rules framed under the Land Acquisition Act by the State Government.

(d) It appears that several Writ Petitions were filed by various land owners challenging the same notifications. Some of the Writ Petitions i.e., W.P.Nos.10939 to 10941 of 1987 came before a learned Single Judge and a learned Single Judge of this Court, after recording a finding that the procedure under Rule 3(b) of the Rules framed by Government of Tamil Nadu under Section 55(1) of the Act had not been followed and following the consistent view taken by this Court in several judgments, particularly the Division Bench of this Court in ***N.D.Ramanujam v. Collector of Madras and 2 others (1994 WLR 326)*** and another judgment in ***Kadirvelu Mudaliar v. State of Tamil Nadu (1987 W.L.R. 182)*** held that enquiry ought to have been conducted after the communication of the remarks of the requisition department to the land owners. Recording the fact that the mandatory rule had not been complied with, the learned Single Judge held that the acquisition proceedings is vitiated and all the Writ Petitions were therefore, allowed quashing the notifications issued under Section 4(1) and the declaration under Section 6 of the Land Acquisition Act by order dated 03.03.1997. On the same date, the learned Single Judge also allowed



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W.P.Nos.11756, 11757 and 12138 of 1988 following the elaborate order in
the batch of cases challenging the same notification.

(e) Since several other Writ Petitions filed by other land owners challenging the land acquisition proceedings were allowed on the ground of violation of non-observance of Rule 3(b) of the Rules then in vogue, this Court by order 25.07.1997, allowed W.P.No.10716 to 10718 of 1988 following, the previous judgments holding that similar notification had already been quashed and that the three Writ Petitions in respect of different parcels of land covered by same / similar notification for the same purpose.

(f) Aggrieved by the order dated 25.07.1997 in W.Ps.10716 to 10718 of 1988, Government of Tamil Nadu, represented by the Commissioner and Secretary to Government, Housing and Urban Development Department, Madras – 9 along with Special Tahsildar (Land Acquisition) Neighbourhood Scheme, Tuticorin, filed W.A.Nos.1094 to 1096 of 2006. The Division Bench, however, allowed the Writ Appeals and remitted the matter for fresh disposal to learned Single Judge by order dated 08.08.2008. Paragraph Nos.5 to 7 of the said judgment read as follows:

“5. In matters relating to land acquisition, the cases of individual landholders are to be looked into and to be determined on the merits of each case. We are of the view that the learned Single Judge ought not have allowed the writ petitions without discussing the relevant facts, giving reference of a case and without discussing the relevant facts and law as was involved in the said case.



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6. For the reasons aforesaid, we set aside the impugned order dated 25.7.1997 passed in W.P.Nos.10716 to 10718 of 1988 and remit the cases to the learned Single Judge for their determination on merits.

7. The writ appeals stand disposed of with the aforesaid observations. There will be no order as to costs. Consequently, the connected miscellaneous petitions are closed.”

(g) After remand, the Writ Petitions are still pending. During the pendency of three Writ Petitions several other Writ Petitions were filed to direct the Chairman and the Executive Engineer of Tamil Nadu Housing Board to issue No-objection Certificates with respect to several parcels of land covered by the notices issued to secure the lands. The said Writ Petitions viz., W.P.Nos.19014, 19013, 17458, 17375, 17374, 17390, 17376, 19015, 19023, 17368, 19024, 19022 and 6791 of 2013 were allowed by the learned Single Judge of this Court recording the submission of learned counsel for the official respondents that the entire scheme had been dropped. Though separate orders were passed by the learned Single Judge of this Court, following the orders passed in other Writ Petitions, the order would indicate the fact that the orders were passed by the learned Single Judge purely based on the representation of the learned counsel appearing for the official respondents reporting that the land acquisition proceedings have been withdrawn. As against the order of the learned Single Judge in the above Writ Petitions, Writ Appeals in W.A.(MD) Nos.1633 to 1645 of 2016 have been filed by the respondents in the Writ Petitions.



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(h) W.P.(MD) No.1003 of 2023 is filed by one P.Jeya Chandran for issuance of a Writ of Mandamus, directing the respondents, namely, the Managing Director, Tamil Nadu Housing Board and the Executive Engineer, Tirunelveli Housing, Tamil Nadu Housing Board to issue “No Objection Certificate” to the petitioner with regard to the landed property of an extent of 50 cents situate in Survey Number 137/1A1, Sankaraperi Village, Tuticorin District. The petitioner appears to be the person claiming right under the land owner whose writ petition was allowed by this Court earlier.

(i) W.P.(MD) No.4343 of 2023 is the Writ Petition filed by the petitioner in W.P.(MD) No.1003 of 2023 for issuance of Certiorarified Mandamus to quash the proceedings of the Executive Engineer of Tamil Nadu Housing Board rejecting the representation of the petitioner to grant “No Objection Certificate” citing the land acquisition proceedings.

(j) W.P.(MD) Nos.27499 and 27500 of 2022 are filed to direct the Managing Director, Tamil Nadu Housing Board and the Executive Engineer, Tirunelveli Housing Unit to issue “No Objection Certificate” to the petitioners' properties situated in Plot Nos.6 and 9 respectively in Survey No.122/2, Sankaraperi Village, Thoothukudi Taluk and District in the light of the order passed by this Court in W.P.(MD) No.17375 of 2013 dated 28.10.2013.

3. Learned Additional Advocate General appearing for the Tamil Nadu Housing Board and the learned counsel for the land owners fairly conceded



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that depending upon the outcome of W.P.No.10716 to 10718 of 1988 all the Writ Appeals and other Writ Petitions can be decided accordingly. In other words, the counsels submitted that all the Writ Petitions filed by the land owners should be allowed in case the Writ Petitions in W.P.No.10716 to 10718 of 1988 are allowed.

4. W.P.No.10716 to 10718 of 1988 were allowed earlier by the learned Single Judge by order dated 25.07.1997 on the short ground that the respondents have not followed Rule 3(b) in letter and spirit and that the acquisition proceedings is vitiated for violation of principles of natural justice.

5. Before 1991, Rule 3(a) and 3(b) of the Rules framed by the Government under Section 55(1) of the Act read as follows:

“Rule 3 : (a) If a statement of objections is filed by a person who is not interested in the land, it shall be summarily rejected.

(b) If any objections are received from a person interested in the land and within the time prescribed in Sub-section (1) of Section 5-A, the Collector shall fix a date for hearing the objections and give notice thereof to the objector as well as to the department or company-requiring the land, where such department is not the Revenue Department. Copies of the objections shall also be forwarded to such department or company. The department or company may file on or before the date fixed by the Collector a statement by way of answer to the



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objections and may also depute a representative to attend the enquiry, (c) On the date fixed for enquiry or any other date to which the enquiry may be adjourned by the Collector, the Collector shall hear the objector or his pleader and the representative, if any, of the department or company and record any evidence that may be produced in support of the objections.”

6. Rule 3(b) has been interpreted consistently by this Court in several judgments. The land acquisition officer is required to follow the set of procedures, while conducting enquiry under Section 5-A of Land Acquisition Act. If a person interested in the land sends his objection within the time specified, the land acquisition officer should fix a date for hearing the objections and should give notice to the objector as well as to the requisition department, when the requisition department is not the revenue department. The land acquisition officer also shall sent the copy of the objections to the requisition department. In case the requisition department submits any statement by way of answer to the objections raised by the land owners, the land acquisition officer is required to hear the objector and the representative of the requisition department on the date fixed for enquiry or any other date the enquiry is adjourned.

7. This Court consistently took the view, so that the land owners get an opportunity, particularly at the time of enquiry, to know the views of the



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requisition department on the objections raised by the land owners. In essence, this Court has categorically held that the owners of land should have reasonable opportunity to effectively put forth their objections against the acquisition. They should also be given an opportunity to meet the reasons stated by the requisition department to reject the objections. In a way the rule has been interpreted to give a fair opportunity to the land owners to raise their objections and to participate in the enquiry even to give their further objections to the remarks if any received from the requisition department.

8. The learned Additional Advocate General produced before this Court the objections raised by the petitioner and the remarks offered by the requisition department to the objections. It is seen that the remarks of the requisition department have been received by the land acquisition officer. However, the date on which the remarks offered by the requisition officer were forwarded to the land owner is not indicated. The learned counsel for the requisition department produced before this Court the objections raised by the interested persons, who were land owners, in the year 1995 and the proceedings of the land acquisition officer conducted in the year 1995. Therefore, the typed set filed by the housing board is misleading and this will not show whether the procedure under Rule 3(b) of the Rules framed under the Act had been followed by the enquiry officer pursuant to the notifications issued under Section 4(1) of the Land Acquisition Act.



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9. In the counter affidavit filed by the second respondent in all the Writ Petitions filed in 2023, it is stated that the Special Tahsildar (Land Acquisition) conducted Inspection on 20.09.1985 and there were 32 pattadars present for the enquiry. It is further stated that objections were raised only by about 10 of the Pattadars and their objections were overruled by following due process of law. Except the award proceedings and the notification issued under Section 12 of the Act communicated after the award proceedings to the respective land owners, the respondents have not produced the objections relating to the entire acquisition proceedings.

10. It is not in dispute that acquisition proceedings were initiated to acquire several parcels of land in Sankaraperi Village, Tuticorin District, for the formation of neighbourhood scheme to wit for construction of houses for economically weaker sections. Three different notifications were issued under Section 4(1) of Land Acquisition Act, as seen from the typed set of papers, and declaration was also issued under Section 6 of the Act. Thereafter, there is no indication from the files as to how the enquiry was conducted. The question as to the observance of Rule 3(b) is not seen from any records produced by the respondents. The enquiry conducted in 1995 cannot be relied upon as the declaration under Section 6 of the Land Acquisition Act should be issued after holding an enquiry under Section 5-A of the Act within a period of one year from the date of publication of the notification.



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1003 & 4343 of 2023 and W.A.(MD)Nos.1633 to 1645 of 2016

11. This Court is unable to see whether the enquiry proceedings filed by the respondent relates to acquisition proceedings which are challenged in the three Writ Petitions in W.P.(MD) Nos.10716 to 10718 of 1998. Though the Division Bench earlier observed that the learned Single Judge ought not to have allowed the Writ Petitions, without discussing the relevant facts, in each case, this Court finds that the specific objections regarding rule 3(b) was not even disputed by the respondents in the Writ Petitions. In such circumstances, we see no force in the contentions raised by the official respondents before this Court.

12. Despite repeated requests to the learned Additional Advocate General to produce the files relating to the enquiry under Section 5-A of the Act, the same is not produced before this Court and no counter affidavit is filed in the three Writ Petitions in W.P.Nos.10716 to 10718 of 1988. Further, before the learned Single Judge, earlier, the Additional Government Pleader had conceded about the violation of Rule 3(b). In the absence of any material to show that the enquiry under Section 5-A of the Act was conducted following the mandatory procedures prescribed under Rule 3(b) of the Rules framed under the Act, this Court has no hesitation to hold that the acquisition proceedings challenged before this Court in W.P. Nos.10716 to 10718 of 1988 are liable to be quashed and accordingly, quashed.



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13. The petitioners in W.P.(MD) Nos.10716 to 10718 of 1988, 1003 and 4343 of 2023 have stated that the lands for which they seek “No Objection Certificate” are covered by the orders of this Court, wherein acquisition proceedings were quashed. It is also the case of the petitioners that they are in possession of the properties acquired by constructing dwelling houses and residing there. In view of the fact that the acquisition proceedings are quashed, it is no more open to the official respondents to refuse to give No Objection Certificate to the land owners including the petitioners in W.P.(MD) Nos.27499 and 27500 of 2022 and 1003 and 4343 of 2023.

14. Writ Appeals in W.A.(MD) Nos.1633 to 1645 are filed against the orders of the learned Single Judge in the Writ Petitions filed by the land owners to direct the Housing Board to issue “No Objection Certificate” with respect to the land, which is also included in the notifications issued under Section 4(1) of the Act. In view of the fact that the whole acquisition proceedings are liable to be quashed for non-observance of mandatory procedures contemplated under the Act as held by this Court in several Writ Petitions, particularly W.P.Nos.10939 to 10941 of 1987, 11756, 11757 and 12138 of 1988, all the Writ Appeals in W.A.(MD) Nos.1633 to 1645 of 2016 are liable to be dismissed.



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15. In tune with the facts recorded and the decision of this Court earlier in connected Writ Petitions and for the reasons stated above W.P. No. 10716 to 10718 of 1998 are allowed and the acquisition proceedings vide the notification issued under Section 4(1) and the declaration under Section 6 of the Land Acquisition Act including the awards passed thereunder vide Award Nos.1 to 3 of 1998 are quashed. Consequently, W.P.(MD) Nos.27499, 27500 of 2022 & 1003 and 4343 of 2023 are also allowed with a direction to the Tamil Nadu Housing Board to give “No Objection Certificate” to the petitioners with respect to their lands. The respondents shall issue “No Objection Certificate” in the prescribed format clearly indicating that the subject matter of the land is not under acquisition and the Housing Board has no further objections either for registering the documents of land or for land owners, namely, the Writ Petitioners for the lands being developed or in enjoyment of the petitioner's as absolute owner of the property within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

[S.S.S.R, J.] [D.B.C., J.]
31.08.2023

Index : Yes / No
Neutral Citation : Yes / No
sj



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To

- 1.The Secretary to Government,
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S.S.SUNDAR, J.
and
D.BHARATHA CHAKRAVARTHY, J.

sj

Pre-delivery order in
W.P.Nos.10716 to 10718 of 1988, W.P.(MD) No.27499 & 27500 of 2022,
1003 & 4343 of 2023 and W.A.(MD)Nos.1633 to 1645 of 2016

Delivered on
31.08.2023