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W.P.No.598 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.598 of 2020

G.Arthirasasivakumar

...Petitioner

-Vs-

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

2.The Tamil Nadu Housing Board,
rep. by its Chairman/Managing Director,
No.331, Anna Salai,
Nandanam,
Chennai – 35.

3.The Special Tahsildar (Land Acquisition),
Housing Scheme Unit – II,
Coimbatore – 641 018.

4.The Tahsildar,
Coimbatore North Taluk,
Coimbatore – 641 018.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a direction in the nature of Writ of Declaration, declaring that the land acquisition proceedings initiated under the Land



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Acquisition Act, 1894 in respect of House Site Bearing Site No.42 measuring an extent of 2100 sq.ft., comprised in S.F.Nos.315/2A & 315/2B of Kalapatti Village, Coimbatore North Taluk, Coimbatore District covered by the Notification issued under Section 4(1) of the Land Acquisition Act, 1894 vide G.O.Ms.No.216 Housing and Urban Development Department dated 28.02.1994 and Section 6 Declaration vide G.O.Ms.No.562 Housing and Urban Development Department deemed to have lapsed and pass such further orders.

For Petitioner : Mr.P.V.Balasubramaniam,
Senior Counsel
for Mr.M.Jayaraj

For R1, R3 & R4 : Mrs.R.L.Karthika
Government Advocate

For R2 : Mr.V.Gunasekar
Standing Counsel

ORDER

This writ petition is filed for issuance of a Writ of Declaration, declaring that the land acquisition proceedings initiated under the Land Acquisition Act, 1894, in respect of House Site Bearing Site No.42 measuring an extent of 2100 sq.ft., comprised in S.F.Nos.315/2A & 315/2B of Kalapatti Village, Coimbatore North Taluk, Coimbatore District, are covered by the Notification issued under Section 4(1) of the Land Acquisition



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Act, 1894, vide G.O.Ms.No.216 Housing and Urban Development Department dated 28.02.1994 and Section 6 Declaration vide G.O.Ms.No.562 Housing and Urban Development Department deemed to have lapsed.

2. Brief facts which are necessary for the disposal of this writ petition are as follows:

2.1 An extent of 6.00 acres of land in S.F.No.315/2A and 315/2B of Kalapatti Village originally belonged to one Natha Gounder vide a sale deed dated 18.02.1943 registered as Doc.No.3962/1943 with Coimbatore SRO. After the demise of the said Natha Gounder, his legal heirs, i.e., his sons Chinnia Gounder, Periakutty and Valliammal (daughter) along with their lineal descendants, i.e., Chinnia Gounder's sons Marudhachalam, Kaliappan, Periyakutty's son Palanisamy and Valliammal's sons Krishnasamy and Seethapathi had converted the said 6.00 acres of land in S.F.No.315/2A and 315/2B into a housing layout with the approval of Directorate of Town and Country Planning vide their approval No.LP/D.D.P.No.1282/1989.

2.2 The said Marudhachalam, Kaliappan, Palanisamy, Velliammal, Krishnasamy and Seethapathi had executed a General Power of Attorney in respect of their respective shares in the said layout in favour of the said



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Chinnia Gounder and Periakutty registered as Doc.No.20 of 1990 in Book IV

of Gandhipuram SRO. Thereafter, on 28.05.1990, the said Chinnia Gounder and Periakutty, for themselves and as duly constituted attorneys of the said Marudhachalam, Kaliappan, Palanisamy, Velliammal, Krishnasamy and Seethapathi sold Site No.42 in the said layout measuring an extent of 2100 Sq. Fts with specific boundaries and measurements to one Kousalya for a sale consideration of Rs.8,400/- vide a sale deed registered as Doc.No.3083 of 1990 with Gandhipuram SRO. The said Kousalya was in peaceful possession and enjoyment of the said Site No.42 from the date of the aforementioned sale and on 19.10.2012 she sold the said Site No.42 to one L.Srinivasan for a sale consideration of Rs. 16,80,100/- vide a sale deed registered as Doc.No.6808 of 2012 with Gandhipuram SRO.

2.3 The said L.Srinivasan was in peaceful possession and enjoyment of the said Site No.42 from the date of the aforementioned sale and on 29.11.2017, he sold the said Site No.42 to the petitioner for a sale consideration of Rs.11,25,600/- vide a sale deed registered as Doc.No.8859 of 2017 with Gandhipuram SRO. After verifying the title of his vendor and his predecessors-in-title and also after making local enquiries with regard to statutory encumbrances and attachments over the subject matter property, the



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petitioner has purchased Site No.42 and ever since the date of purchase, he has been in peaceful possession and enjoyment of Site No.42.

3. Learned senior counsel appearing for the petitioner submitted that the petitioner has applied for patta in respect of the said Site No.42 with the Tashildar / 4th respondent herein. Subsequently, the petitioner came to know that the subject matter land had already been acquired by the 1st respondent for the formation of a housing scheme by the 2nd respondent. Immediately, the petitioner enquired his vendor and also the Revenue Authorities. After persistent efforts, the petitioner came to know that the 1st respondent issued 4(1) Notification under the Land Acquisition Act, 1894 and sought to acquire the land comprised in S.Nos.313/1, 313/2 313/3, 313/4 314/1 & 314/2, 315/1, 315/2A, 315/2B etc., for the construction of houses under the Neighbourhood Scheme of Tamil Nadu Housing Board vide G.O.Ms.No.216, Housing and Urban Development Department dated 28.02.1994 and subsequently issued under Section 6 Declaration vide G.O.Ms.No.562 Housing and Urban Development Department dated 14.06.1995. The petitioner also came to know that the Land Acquisition Officer had conducted Section 5A enquiry and his predecessor-in-title had



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filed objections but the Land Acquisition Officer, despite the objections, proceeded with the acquisition.

4. Learned senior counsel further submitted that the petitioner found out that his predecessors-in-title, Mr.Chinnia Gounder and others filed a Writ Petition before this Court in the year 1996, which was taken into file as W.P.No.5714 of 1996 and W.P.No.5715 of 1996 in respect of the neighbouring lands which also belong to them, i.e., with respect of lands in S.F.Nos. 313/1 313/2 313/3. 313/4, 314/1 & 314/2 315/1 and subsequently, the said Writ Petitions were allowed and the land acquisition proceedings were quashed by this Court vide its order dated 30.04.2003. And also, the appeal filed by the respondents herein against one batch of writs decided in favour of the land owners taken into file as WA.No.252/2011, WA.No.253/2011 WA.No.254/2011, WA.No.255/2011 were also dismissed, upholding the orders passed in favour of the land owners.

5. Learned senior counsel further submitted that the petitioner's predecessors-in-title were in peaceful possession and enjoyment of the said Site No.42 and the physical possession of the said Site has not been taken over by the Land Acquisition Officer and handed over to the 2nd respondent so far. The respondents have not paid compensation to his predecessors-in-



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title nor deposited the same into the Jurisdictional Court as far. As stated above, the physical possession of the said Site No.42 continued to be with his predecessors-in-title and subsequently to the petitioner and the petitioner was in peaceful possession and enjoyment of the said Site No.42.

6. Learned senior counsel further submitted that the subject matter land in S.F.Nos.315/2A & 2B is not all required for the 2nd respondent for the purpose for which it was acquired. The subject matter land is not fit for the proposed housing scheme of the 2nd respondent and also the vast extent of lands acquired by the 2nd respondent for the said scheme in Kalapatti Village has been completely abandoned. Substantial areas have been excluded either before Section 4(1) notification or after Section 4(1) Notification or in some cases, even after the award was passed.

7. Learned senior counsel further submitted that this Court has quashed many proceedings initiated under Section 4(1) and Section 6 Declaration relating to Kalapatti Housing Scheme and such quashing proceedings have not been challenged by the respondents. For instance, this Court quashed the proceedings related to Kalapatti Village in the Judgments reported in 2003 (2) MLJ 481, 2007 (2) CTC 465, 2008 (2) CTC 490, 2008



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(5) MLJ 1416, 2011 (5) CTC 503. Therefore, the continuation of the land acquisition proceedings is not est in the eye of law. Hence, the petitioner has approached this Court by way of filing this present writ petition.

8. In addition to the above submission, the learned senior counsel for the petitioner relied upon the following judgments, wherein the acquisition proceedings in respect of the subject matter property in Kalapatti Village, Coimbatore District, have been quashed by this Court:

- 1) The judgment of the learned Single Judge of this Court reported in *(2003) 2 MLJ 481*, in the case of *Chinnayya Gounder and others Vs. The State of Tamil Nadu* in *W.P.No.15714 of 1996* dated *30.04.2003*.
- 2) The judgment of the Division Bench of this Court reported in *(2011) 5 CTC C 503*, in the case of *Tamil Nadu Housing Board Vs. Mrs.Uma Maheswari Ramasamy and Others* in *W.A.Nos.252 to 255 of 2011* dated *16.08.2011*.
- 3) The judgment of the Division Bench of this Court reported in *(2007) 54 AIC 815*, in the case of *M.Duraisamy Vs. State of Tamil Nadu* in *W.A.No.2246 of 2001* dated *06.02.2007*.
- 4) The judgment of the learned Single Judge of this Court in the case of *S.Sureshkumar Vs. The Government of Tamil Nadu, Rep. by its*



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Secretary, Housing and Urban Development Department, Chennai –

600 009 and others in W.P.No.7829 of 2015 dated 04.11.2015.

5) The judgment of the learned Single Judge of this Court in the case of ***R.Ganesan and others Vs. The State of Tamil Nadu, Rep. by its Secretary, Housing and Urban Development Department, Chennai – 600 009 and others in W.P.No.11778 of 2013 dated 02.12.2019.***

6) The judgment of the learned Single Judge of this Court in the case of ***Rajagopalan Vs. The Principal Secretary to Government, Housing and Urban Development Department, Fort St. George, Chennai – 600 009 and others in W.P.No.13851 of 2021 dated 22.12.2023.***

9. A counter affidavit was filed on behalf of the second respondent dated 10.11.2020 and the relevant portion is extracted hereunder for better appreciation and understanding:

“5. It is submitted that, the petitioner is a subsequent purchaser in the year of 2017. As per the award, the notified persons for the S.F.Nos.315/2A are: -

- 1) Thiru. Sethapathy, S/o. Subbanna Gounder*
- 2) Tmt.K.G.Kousalya, W/o. Ezhil Arasan*
- 3) Tmt.Ayyammal, W/o.Arumugham*

Thiru. Krishnasamy, S/o. Subbanna Gounder is the notified persons for the S.F.No.315/2B.

The petitioner purchased the subject lands vide Doc. No. 8859/2017 dated 29.11.2017 by executing the Sale



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Deed itself is illegal when the property which was covered under the Land Acquisition proceedings and the Award dated 13.6.97 was passed (For the SF No.315/2A & 315/2B) has attained finality. Hence the subsequent purchaser filed this writ petition which is not maintainable as per law.”

10. Heard both sides and perused the materials placed on record.

11. In the present case, the land acquisition proceedings were initiated under the Land Acquisition Act, 1894 in respect of House Site Bearing Site No.42 measuring an extent of 2100 sq.ft., comprised in S.F.Nos.315/2A & 315/2B of Kalapatti Village, Coimbatore North Taluk, Coimbatore District, covered by the Notification issued under Section 4(1) of the Land Acquisition Act, 1894, vide G.O.Ms.No.216 Housing and Urban Development Department dated 28.02.1994 and Section 6 Declaration vide G.O.Ms.No.562 Housing and Urban Development Department. The above said land is acquired for the construction of houses under the Neighbourhood Scheme of Tamil Nadu Housing Board vide G.O.Ms.No.216, Housing and Urban Development Department dated 28.02.1994.

12. The learned senior counsel has relied on several judgments in which this Court has quashed the acquisition proceedings in respect of the



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subject matter property in Kalapatti Village, Coimbatore District, and it is pertinent to extract the relevant portion of the judgments in each case, which reads as follows:

- (1) The judgment of the learned Single Judge of this Court reported in **(2003) 2 MLJ 481**, in the case of **Chinnayya Gounder and others Vs. The State of Tamil Nadu** in **W.P.No.15714 of 1996** dated **30.04.2003**, which held as follows:

“8. For the aforesaid reasons, I am inclined to accept the contention of the petitioners that mandatory provisions have not been complied and the principles of natural justice had been violated. In view of the aforesaid reasonings, the land acquisition proceedings are to be quashed and it is unnecessary to deal with other contentions raised by the petitioners.

9. For the aforesaid reasons, the writ petition is allowed and the land acquisition proceedings are quashed. There will be no order as to costs.”

- (2) The judgment of the Division Bench of this Court reported in **(2007) 54 AIC 815**, in the case of **M.Duraisamy Vs. State of Tamil Nadu** in **W.A.No.2246 of 2001** dated **06.02.2007**, which held as follows:

“6. Apart from the above information, it is not in dispute that the entire Scheme, viz., "Kalapatty Neighbourhood Scheme" has been dropped in view of several orders passed by this Court.



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7. Taking note of all these aspects and of the fact that neither the petitioner nor the erstwhile owner of the land was issued notice in the acquisition proceedings, we are of the view that the entire action taken under the Land Acquisition Act cannot be sustained. Accordingly, the review application is allowed. Consequently, the entire land acquisition proceedings are quashed. The judgment dated 11.08.2006 made in Writ Appeal No.2246 of 2001, is set aside and the appeal stands allowed, setting aside the order dated 11.07.2001 made in writ Petition No.9521 of 1994. No costs.”

(3) The judgment of the Division Bench of this Court reported in ***(2011) 5 CTC 503***, in the case of ***Tamil Nadu Housing Board Vs. Mrs.Uma Maheswari Ramasamy and Others*** in ***W.A.Nos.252 to 255 of 2011*** dated ***16.08.2011***, which held as follows:

“8. It is seen that these batch of writ petitions are not the first set of cases, which were decided by this Court, challenging the same acquisition proceedings. It appears that the first batch of writ petitions were filed during the year 1994, being W.P. No. 12201 of 1994 etc. challenging the Section 4(1) notification, and those writ petitions were disposed of by a common judgment dated 20.03.2001, by observing that it may not be proper for the State Government to spend huge public money for the acquisition proceedings, to acquire the lands of the Petitioners therein with superstructures and keep the land idle, if the scheme could not be successfully implemented. Therefore, this Court



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*permitted the Petitioners therein to approach the Government seeking exemption or re-conveyance. Another batch of cases was filed during the year 1996, in W.P. Nos. 9747 to 9749 of 1996, challenging the notification issued u/s 4(1) and Section 6 of the Act, wherein the notifications were set aside, with the further observation that the Government will take in to account the ground realities before proceeding with the acquisition. The other writ petition challenging the same acquisition proceedings in Dr. N. Natarajan v. Government of T.N. , was allowed and the notification was quashed. In Chinnayya Gounder, Peria Kutti Gounder and Valliammal Vs. The State of Tamil Nadu, the challenge was to the same acquisition proceedings, where the writ petition was allowed and the acquisition was quashed. While allowing the said writ petition, the Court took note of the fact that they were approved layouts and even as per the policy of the Government, those lands are not to be acquired. It is seen that the Division Bench of this Court, in more than one decision, has quashed the land acquisition proceedings in respect of the same scheme. **In Arumuga Gounder Vs. The State of Tamil Nadu, the Hon'ble Division Bench presided by Justice P.Sathasivam (as he then was) observed that the entire Kalapatti Neighbourhood Scheme has not been implemented till date and several orders have been passed by this Court, quashing the acquisition proceedings. In M. Duraisamy v. State of Tamil Nadu reported in 2007 (3) MLJ 288, another Division Bench of this Court, quashed a notification in respect of the same scheme and observed***



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that it is not in dispute that the entire Kalapatti Neighbourhood Scheme has been dropped in view of several orders passed by this Court. In Smt.Leelavathi Vs. The State of Tamil Nadu, and in Dhandapani and Karunaiammal Vs. The State of Tamil Nadu, the learned Single Judges of this Court have quashed the notifications taking note of the fact that the entire Kalapatti Neighborhood Scheme has been dropped. Therefore, we have No. hesitation to hold that the learned Single Judge was perfectly justified in following the earlier Division Bench judgments and allowing the writ petitions, wherever prayer was made for quashing the acquisition proceedings.”

(4) The judgment of the learned Single Judge of this Court in the case of *S.Sureshkumar Vs. The Government of Tamil Nadu, Rep. by its Secretary, Housing and Urban Development Department, Chennai – 600 009 and others* in W.P.No.7829 of 2015 dated 04.11.2015, which held as follows:

“3.The learned Standing Counsel for the respondent/Housing Board as well as the learned Government Advocate for respondents 1 and 3 do not dispute the position, and agree that the Writ Petition can be disposed of on the same lines.”

(5) The judgment of the learned Single Judge of this Court in the case of *R.Ganesan and others Vs. The State of Tamil Nadu, Rep. by its*



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Secretary, Housing and Urban Development Department, Chennai –

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held as follows:

*“2. The first petitioner is the owner of the land and the petitioners 2 to 25 2 pg 61 & 62 are the purchasers of housing plots in a layout developed by the first petitioner which was approved by the Principal Secretary, Town Planning Authority, Coimbatore by proceedings dated 21.08.1990. The lands owned by the first petitioner oner was subject to land acquisition pro subject to land acquisition proceedings by issuance of the impugned notification under Section 4(1) of the Act dated 17.09.1991. It is not disputed by the respondents that the name of the first petitioner finds place in the notification issued under Section 4(1) of the Act. The first petitioner after obtaining approval of the layout by proceedings dated 21.08.1990 has divided the land into plots and sold the same in favour of the petitioners 2 to 25. Majority of the petitioners 2 to 25 have in turn obtained approval of building plan and put up construction of their individual houses and are residing there. The revenue officials have granted patta to the petitioners 2 to 25 by proceedings dated 13.09.2011. Thus the land has been fully utilized by the petitioners and they are in uninterrupted possession and enjoyment of the land. **The purpose of acquisition was to form a Neighborhood Scheme of Tamil Nadu Housing Board in Kalapatti Village, Coimbatore District. The 4(1) notification and the declaration under***



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Section 6(1) of the Act which is the subject matter of challenge in this writ petition was challenged in the year 2003 itself by other land owners in W.P.No.13616 of 2003. The said writ petition along with other batch of cases where writ petitions were filed questioning the acquisition proceedings were clubbed together in W.P.Nos. 16417 of 1998, etc batch and were allowed by common order dated 30.08.2010. The writ appeals against the said decision before the Division Bench to which was a party in W.A. Nos. 422 of 2011 etc. batch were dismissed by common judgment dated 14.09.2011. The respondents had filed Special Leave Petitions before the Hon'ble Supreme Court in Special Leave to Appeal (Civil) Nos.6063-6066/2012 which were dismissed by order dated 13.04.2012. Another batch of Special Leave Petitions in Special Leave to Appeal (Civil) Nos. 14582-14634/2012 were dismissed by order dated 19.09.2012. All the above decisions have become final and the lands which were sought to be acquired from the respective writ petitioners were quashed. Consequently, those writ petitioners are in possession and enjoyment of the said lands. The petitioners are before this Court by filing this writ petition in the year 2013 seeking for an identical relief as that of in W.P.No.13616 of 2003. Under normal circumstances, the only option available to this Court is to apply the decision in the aforementioned case and allow the writ petition.

7. Since the learned Advocate General has raised a preliminary objection as regards the maintainability of the



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writ petition on three grounds as mentioned above, the Court proceeds to decide the same at the first instance. It is not in dispute that the first petitioner is the registered land owner and his name found place in the Section 4(1) notification issued in G.O.Ms.No.1216, Housing and Urban Development Department dated 17.09.1991 and Section 6(1) declaration in G.O.Ms.No.934, Housing and Urban Development Department dated 31.12.1992. The very same notifications were the subject challenge in W.P.No.13616 of 2 matter of challenge in W.P.No.13616 of 2003 and the notifications were quashed. It may be true that the first petitioner was not the petitioner in W.P.No.13616 of 2003, yet as on date, G.O.Ms.No.1216, Housing and Urban Development urban Department dated 17.09.1991 and G.O.Ms.No.934, Housing and Development Department dated 31.12.1992 have been quashed and does wtf survive, that would mean that it is quashed for all purposes and the Housing Board cannot take a stand that it is quashed in respect of those petitioners alone. If that is so, then the Housing Board should have taken appropriate observations either before the learned Single Bench or before the Hon'ble Division Bench. Therefore, this Court finds that there is no reason to deny the benefit of the order in W.P.No.13616 of 2003 to the present writ petitioners. Having held so, it has to be decided as to whether the petitioners can be denied the relief as the argument of the learned Advocate General is that each and every writ petition in the batch was considered by the learned Single Bench on its merits and findings, have been



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recorded. This submission does not merit acceptance because after taking note of all the infirmities in the acquisition proceedings, the learned Single Bench allowed the writ petitions by a common order with common observations were made as contained in paragraphs 77 to 79 of the order. For better appreciation, the same is quoted herein below:

77. If the issues are analysed in this angle, certainly the writ petitioners have made out a case in their favour. Though an opportunity was given by the court for the Government to set right after noting the ground realities, they have not come forward to redress the grievance of the present petitioners and they themselves gave relief to certain individuals. The basis of which was not explained to the satisfaction of this Court. Therefore, this Court will have to be proceeded on the basis of the following findings

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b.....

c.....

d.....

e.....

f. When this Court recorded that proceedings have been dropped in Kalappatty village in two of the reported judgments, no attempt was made either to seek for clarification or deny the statements recorded by this Court;

g.....



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78. This Court in many cases relating to Kalapatty village found that there were approved layouts with the sanction of authorities and the Government Order itself had directed to refrain from acquiring the land which are covered by the approved layouts. Finally, after finding that there were lots of law and order problem in the area when this Court directed the State Government to take a pragmatic stand, that was also rejected. Considering the fact that in some cases, there were procedural lapse and in some cases, there were acquisition proceedings in respect of a college property which is in existence for over 10 years catering to the needs of about 3000 students, it will be unrealistic to destroy such edifice especially when the right to education is guaranteed as a fundamental right. Many of the petitioners with their ir hard earned money have purchased plots and put up constructions to have a shelter of their own. The Housing Board in the name of providing houses cannot destroy the existing shelters put up by individual endeavors.

79. In the present case, it is not a mere negative equality the petitioners are pleading. Because the State never attempted to justify the reconveyance and exclusions on the ground of either they were isolated instances or they were based on erroneous assumptions. On the contrary, the counter affidavits filed were vague and did not deal with the



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contentions raised by the petitioners in these batch of writ petitions. Under these circumstances, this Court has no hesitation to set aside the orders passed against the petitioners.”

(6) The judgment of the learned Single Judge of this Court in the case of ***Rajagopalan Vs. The Principal Secretary to Government, Housing and Urban Development Department, Fort St. George, Chennai – 600 009 and others*** in ***W.P.No.13851 of 2021*** dated ***22.12.2023***, which held as follows:

“9. To conclude, this Court directs the TNHB to issue NOC to the petitioner within four weeks from today. If however TNHB fails to issue the NOC. then all other statutory officials of the concerned Sub Registry are required to act on the basis of the copy of this order, and to make appropriate changes in their respective records.”

It is also not in dispute that the entire scheme, viz., Kalapatti Neighbourhood Scheme, has been dropped in view of the several judgments passed by this Court.

13. In view of the above judgments passed by the Division Bench of this Court as well as the learned Single Judge of this Court, the land acquisition proceedings initiated under the Land Acquisition Act, 1894, in respect of House Site Bearing Site No.42, measuring an extent of



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2100 sq.ft., comprised in S.F.Nos.315/2A & 315/2B of Kalapatti Village, Coimbatore North Taluk, Coimbatore District, are covered by the Notification issued under Section 4(1) of the Land Acquisition Act, 1894, vide G.O.Ms.No.216 Housing and Urban Development Department dated 28.02.1994 and Section 6 Declaration vide G.O.Ms.No.562 Housing and Urban Development Department, is declared as deemed to have lapsed.

J.SATHYA NARAYANA PRASAD, J.

In the result, the writ petition stands allowed. No costs.

03.07.2024

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Index : Yes/No

Speaking/Non Speaking order

To

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

2.The Chairman/Managing Director,
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3.The Special Tahsildar (Land Acquisition),
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