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W.A.No.2301 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

W.A.No.2301 of 2021
and
C.M.P.No.11387 of 2021

D.Selvaraj

... Appellant

Vs.

1.The State of Tamil Nadu,
Rep. by its Principal Secretary,
Home Department (Prison 4),
Fort St. George, Chennai – 600 009.

2.The Revenue Divisional Officer,
Vellore.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order of the learned Judge made in W.P.No.3000 of 2017 dated 13.07.2021.

For Appellant

: Mr.N.G.R.Prasad
For Mr.R.Thirumoorthy

For R1 & R2

: Mr.D.Gopal
Government Advocate



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J U D G M E N T

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[Judgment was delivered by **S.M.SUBRAMANIAM, J.**]

The writ appellant before us instituted writ proceedings seeking re-conveyance of the acquired property under Section 48-B of the Land Acquisition Act, 1894 relating to property situated in Thorappadi Village, Vellore District and comprised in Survey No.36/1 measuring 1.02 acres, S.No.37/2 measuring 1.00 acres and S.No.41/2 measuring 0.77 acres in all measuring 2.79 acres.

2. It is not in dispute that the subject properties were acquired by the Government and an award was passed on 06.08.1943. The only point raised by the writ appellant is that the land acquired was not utilised for the purpose for which it was acquired. Since the acquired land was not utilised by the Government, representations were sent to the Government to re-convey the land under Section 48-B of the Land Acquisition Act. The said application was rejected and thus, the writ petition was instituted. The Writ Court dismissed the writ petition mainly on the ground that the land acquired in the year 1943 cannot be re-conveyed and more so, the provisions of the new



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Land Acquisition Act of the year 2013 cannot be applied in the present case.

The learned Single Judge relied on the judgement of the Constitution Bench of the Hon'ble Supreme Court of India in the case of ***Indore Development Authority vs. Manoharlal*** and Others reported in ***(2020) 8 SCC 129***.

3. Mr.N.G.R.Prasad, learned Senior Advocate appearing on behalf of the appellant would contend that the appellant made several representations to the Government to re-convey the land. The land has not been utilised for public purposes and therefore, the appellant is entitled for re-conveyance of the acquired land under Section 48-B old Land Acquisition Act.

4. Mr.D.Gopal, learned Government Advocate appearing on behalf of the respondents would oppose by stating that the learned Single Judge considered the legal principles settled by the Constitution Bench in the Indo Development Authority's case. Admittedly, the acquisition was made in the year 1943. The Government allotted the land to the Prison Department. The Prison Department is utilising the land for various purposes. It has been used as open air jail and for agricultural purposes. Employees quarters are also constructed. Remaining lands are utilised for various purposes including for



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reformation of prisoners. Thus, the claim of the petitioner was rightly rejected by the Government and the confirmed by the learned Single Judge.

5. Mr.N.G.R.Prasad, learned Senior Advocate would submit that an Advocate Commissioner appointed by this Court submitted a report stating that the land has not been utilised by the Prison Department. Therefore, the said report is to be considered for the purpose of re-conveying the acquired land.

6. We have considered the rival submissions made between the parties to the *lis* on hand.

7. Admittedly, the subject property was acquired in the year 1943. The writ appellant is one of the legal heirs of the erstwhile land owners. The legal heirs have submitted an application before the Government on 20.02.2006 and subsequently. Since the representations sent from the year 2006 were not considered, they have filed a writ petition in W.P.No.19103 of 2006 and the learned Single Judge passed an order on 23.06.2006 directing the Government to consider the representation and pass orders. Pursuant to the



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said direction, the impugned order dated 09.12.2016 was passed by the Principal Secretary to Government, Home Department, Government of Tamil Nadu. The said order came to be challenged in the writ petition in W.P.No.3000 of 2017.

8. Pertinently, the representations submitted after a lapse of about 63 years was not considered by the Government. The erstwhile land owners from whom the lands were acquired had not taken any action for about 63 years. Admittedly, the lands vest with the Government from the year 1943 onwards. The Government became the absolute owner of the lands and compensation were settled to the erstwhile land owners. Therefore, the representation submitted after a lapse of 63 years for re-conveyance of land cannot be considered.

9. The practise of restoring the dead cause of action at no circumstances be encouraged by the High Courts. In respect of lapsed cause of actions, litigants are submitting representations to the Government Authorities and thereafter filing a writ petition and securing an order to consider the representation. The Authorities passing orders on merits are



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challenged by way of further writ petitions and cause of action, which has been lapsed are restored for the purpose of re-adjudication of issues on merits. Such practises cannot be encouraged by the Courts.

10. Aggrieved person has to approach the Court within a reasonable period of time. Indirect way of restoring the cause of action after a lapse of several years is not a ground to adjudicate the issues on merits and to consider the relief. Once the land vest with the Government, the Government is empowered to utilise the land for public purposes.

11. The case on hand is also a case where representations are submitted after a lapse of 63 years and thereafter, a writ petition was filed and pursuant to the directions to consider the representation the impugned order in the writ petition dated 09.12.2016 was issued.

12. Reconveyance of land under Section 48-B cannot be claimed as an absolute right. It is a policy decision which is to be taken by the Government, since after acquiring the land the Government became the absolute owner.



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13. Regarding the utilisation of the acquired land, the Prison Department filed a counter affidavit stating that the lands are in complete utilisation of Department of Prisons and Correctional Services. The details regarding the utilisation of acquired land has been stated as follows;

“4. It is further submitted that land in S.No.37/2 has been used for Agriculture and Horticulture and the yield is used for preparing daily food for prisoners during rainy season. It is also stated that Rule 776 of TN Prison Rules, 1903, clearly emphasized that as far as possible the vegetables required for prisoners shall be raised on Prison grounds. If, it is not possible, reasons shall be recorded and next preference shall be given to such of the crops grown in the surrounding area and those crops shall be raised on the prison grounds. As per Rule 777 of TN Prison Rules, 1983 vegetables required for the prisoners' consumption shall be grown in the prison garden. The aim is to utilize the prison garden to the best advantage to grow more vegetables and to avoid purchase of vegetables from outside. As per Rule 780, whole of the prison land between the outer and inner walls as well as outside the prison walls that may be available for



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cultivation shall be cultivated to the best advantage. As per Rule 781, all spare lands shall be utilized for growing grains, fodder for the cattle or such other crops suitable for cultivation. In accordance with the above said prison rules, various types of agricultural crops and horticultural items have been grown in the Vellore Prison land such as, greens and vegetables Brinjal, Ladies finger, Cluster beans, Snake guard, Raddish, Tomato, Beetroot, Cabbage, Greengram. Groundnuts, Blackgram, etc., have been cultivated in the Vellore Prison land. The following are the details of agricultural production in Central Prison, Vellore from the year 2014 to till date.

Sl. No.	Year	Quantity Produced in Kgs.	Total Value of Production Rs.
1.	2014	11536.500	1,86,432.00
2.	2015	19281.140	3,22,996.00
3.	2016	14053.500	3,60,502.00
4.	2017	8625.000	1,67,986.00
5.	2018	7667.00	2,77,661.00
6.	2019	2874.00	82,511.00
7.	2020	6448.00	2,29,296.00
8.	2021	4320.00	76,798.00
9.	2022	1535.00	99,749.00



Sl. No.	Year	Quantity Produced in Kgs.	Total Value of Production Rs.
10.	2023	3056.00	2,21,582.00

It is further submitted that at present in that land cattle fodder is under cultivation which is utilized for 27 milchy cows kept in the mini diary farm maintained by the Department of Prisons and Correctional Services. The photographs of the cultivation activities carried out in the said survey number S.No.37/2 are annexed herewith.

5. It is submitted that in Central Prison, Vellore the staff strength is 307 and are working in various categories. As per the recommendations of the All India Committee on Prison Reforms, quarters shall be provided to all the staff working in Prison near to Prison premises. The objective of providing quarters to the staff near the Prison premises, is to mobilize the staff in case of any emergency like riot, attack from outside etc. But, all the prison staff do not have quarters. Hence, quarters are being constructed in phased manner to achieve the objective of quarters for all the prison staff. Accordingly, three quarters have been built in



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S.No.36/1 and quarters for Assistant Jailor and Chief Head Warder have been built in S.No.41/2, in the year 2012 by PWD. Further 2 nos. of quarters for Deputy Jailor, 4 nos. of quarters for Chief Head Warders and 6 nos. of quarters for Grade I and II Warders by the Tamil Nadu Police Housing Corporation. Further 30 nos of quarters have been built for Grade I and II Warders by the Tamil Nadu Police Housing Corporation during 2017.

6. Further it is submitted that there was a proposal for construction of Open Air Prison adjoining the Central Prison, Vellore and the same was commended during the year 2019. Hence it is submitted that the available prison land acquired in the year 1943 has been properly utilized for the use of prisoners and prison staff and the same cannot be dispensed with now.”

14. If at all the lands acquired is not utilised by the Prison Department, the Government may take a decision to utilise the said lands for any other public purposes. Contrarily, the legal heirs of the erstwhile owners of the acquired lands cannot claim re-conveyance after a lapse of 63 years by



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merely submitting a representation and by restoring the lapsed cause of action.

15. The learned Single Judge has considered the principles settled by the Constitution Bench of the Hon'ble Supreme Court of India in Indore Development Authority's case and therefore, we do not find any infirmity in dismissing the writ petition. Consequently, the Writ Appeal is devoid of merits and stands dismissed. Connected Miscellaneous Petition is closed. However, there shall be no order as to costs.

[S.M.S., J.] [C.K., J.]
06.06.2024

Jeni
Index : Yes
Speaking order
Neutral Citation : Yes

To

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Home Department (Prison 4),
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2. The Revenue Divisional Officer,
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