



W.P.No.22900 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.22900 of 2021

R.Malini

...Petitioner

-Vs-

1. The Tamil Nadu Housing Board,
Rep. by its Chairman,
No.493, Anna Salai, Nandhanam,
Chennai – 600 035.

2. The Managing Director,
The Tamil Nadu Housing Board,
No.493, Anna Salai, Nandhanam,
Chennai – 600 035.

3. The Executive Engineer and
Administrative Officer,
Salem Housing Division,
Iyyanthiru Maligai Salai,
Salem – 636 008.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the first respondent to issue a no objection certificate (NOC) in the name of the petitioner for the land in part of survey No.81/2E, 81/2F and 81/2H situated at Ayyamperumalpatty Village, Salem Taluk, Salem District.



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For Petitioner : Mr.Avinash Vadhavani
For Ms. Srimathi
For Respondents : Mr.C.Kalaichelvan
Standing Counsel.

ORDER

This writ petition has been filed for direction directing the first respondent to issue no objection certificate (NOC) in the name of the petitioner for the land in part of survey No.81/2E, 81/2F and 81/2H situated at Ayyamperumalpatty Village, Salem Taluk, Salem District.

2. The case of the petitioner is that the property comprised in survey Nos.81/2E, 81/2F and 81/2H originally owned by her father, who became absolute owner by way of partition deed 06.03.1980. Thereafter the said property was gifted by her father by way of Gift deed dated 17.08.2009 registered vide document No.2435 of 2009 in respect of property comprised in survey No.81/2H and another Gift deed dated 16.09.2009 registered vide document No.2826 of 2009 in respect of the property comprised in survey No.81/2E and 81/2F. Thereafter, the petitioner deposited the said document by way of deposit of title deed with Federal bank and applied for loan. Thereafter, the property comprised in Survey No.81/2H was conveyed by the sale deed dated



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21.08.2019 in favour of one Manimegelai. When the petitioner and the purchaser presented the document for registration, it was not registered and asked for no objection certificate from the respondents. Further the petitioner availed loan and while registering the mortgage deed, the same was also rejected for the very same reasons. Therefore, the petitioner submitted representation before the respondents for issuance of no objection certificate to deal with the property. Since the same was not considered, the petitioner filed the present writ petition with the above prayer.

3. The learned counsel appearing for the petitioner relied upon the similarly placed person who approached this Court in W.P.Nos.36164 & 36165 of 2016 and this Court by an order dated 14.10.2016, directed the respondents to consider representation for granting no objection certificate. Therefore, the petitioner seeks for equality, while considering the request made by her. In support of his contention he relied upon the judgment of the Hon'ble Division Bench of this Court reported in **2011(5)CTC 503** in the case of **Tamil Nadu Housing Board and anr Vs. Uma Maheswari Ramasamy and ors.**



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4. Heard the learned counsel appearing on either side and perused the materials produced before this Court.

5. On perusal of the counter filed by the third respondent and on the submission made by the learned Standing Counsel appearing for the respondents revealed that the respondents Board applied for the acquisition of land to an extent of 42.69 acres in Mitta Ayyamperumal patty Village, Salem Taluk for the construction of houses under neighbourhood scheme. The notification under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as “Act”) was issued and the same was also published in the government gazette on 22.07.1981. Thereafter, under Section 5A of the Act, enquiry was conducted on 21.12.1981. After enquiry, declaration under Section 6 of the Act was also published in the Tamil Nadu Government Gazette on 18.07.1984.

6. Accordingly, award has been passed under Section 11 of the Act on 20.12.1988. In respect of the land comprised in survey Nos.81/2E, 81/2F and 81/2H, the successors viz., M.Velusamy &



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Arumugam had participated in the award enquiry and compensation was fixed for the 4.72 acres covered under the Award No.4/88-89 dated 20.12.1988 to the tune of Rs.3,94,492.65. Since the persons who attended the enquiry did not come forward to receive the compensation, the entire award amount was deposited before the learned Sub Court, Salem, under Section 30 and 31(2) of the Act on 17.02.1989. However, the said persons did not file any claim petition before the said Court to receive the compensation.

7. In fact, the land acquisition proceedings were challenged and the same was also confirmed by the Hon'ble Division Bench of this Court in W.A.Nos.1233 & 1238 of 1996 by an order dated 04.10.1996. Thereafter, the entire possession of the property ad measuring 1.15 acres in Survey Nos.81/2E, 81/2F and 81/2H covered in award No.4/88-89 was handed over to the respondents board on 06.10.1999.

8. On perusal of the affidavit filed in support of the writ petition and also the documents annexed in the typed set of papers, the petitioner submitted that the representation for issuance of no objection



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certificate in respect of the property comprised in Survey Nos. 81/2E, 81/2F and 81/2H and claimed to be the owner of the property by way of Gift deed dated 17.08.2009 vide document No.2435 of 2009 and another Gift deed dated 16.09.2009 vide document No.2826 of 2009 . As per the above award, the property was already handed over and taken physical possession by the respondents board in the year 1999 itself. Once the award has been passed and physical possession had been taken over, the right of the land owners, enjoyers, lessees, mortgagers, tenants and other heirs are extinguished and the property vested with the government or applying body free from all encumbrances. Subsequent to the award and payment of compensation, any further continuation of occupation is only physical control and it is not legal possession with absolute rights. Otherwise to say, it is an unauthorized encroachment evitable under the provisions of Tamil Nadu Land Encroachment Act, 1905.

9. That apart, the petitioner did not even disclose the above facts and after the award passed and possession also taken over during year 1999 itself, the petitioner cannot claim any title as per the gift deed executed in her favour in the year 2009. That apart, without even



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challenging the acquisition proceedings, the petitioner in short cut method asked for no objection certificate to deal with the property. It is nothing but clear abuse of process of law, since already the entire land has been acquired and award has been passed by the respondents board.

10. Further the land acquisition proceedings were challenged and the same was confirmed by the Hon'ble Division Bench of this Court in W.A.No.1233 & 1238 of 1996 by an order dated 04.10.1996 in respect of the very same property. Therefore, the judgments cited by the learned counsel appearing for the petitioner are not helpful to the case on hand. The prayer sought for in this writ petition cannot be granted and the writ petition is devoid of merits and liable to be dismissed.

11. Accordingly, the Writ Petition stands dismissed. There shall be no orders as to costs.

26.04.2024

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No

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G.K.ILANTHIRAIYAN. J.

rts

To

1. The Chairman,
Tamil Nadu Housing Board,
No.493, Anna Salai, Nandhanam,
Chennai – 600 035.
2. The Managing Director,
The Tamil Nadu Housing Board,
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