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W.A.No.3514 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

W.A.No.3514 of 2019

and

C.M.P.No.22543 of 2019

The Chairman,
Tamil Nadu Housing Board,
Nandanam, Chennai – 600 035.

... Appellant

Vs.

1.Ranu Naicker (Died)

2.N.Ganesan Naicker

3.R.Elumalai (Died)

4.R.Munusamy

5.Savithiri

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

7.The Special Tahsildar,



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Land Acquisition VII,
Tamil Nadu Housing Board Scheme,
Nandanam, Chennai – 600 035.

8.The Member Secretary,
Chennai Metropolitan Development Authority,
Egmore, Chennai – 600 008.

9.The Commissioner,
Villivakkam Panchayat Union,
At Ambattur, Chennai – 600 008.

10.R.Datchayini (Died)

11.Ranjitham

12.Alamelu

13.Thangam

14.E.Manjula

15.E.Praveen

... Respondents

[R1 died, is substituted by respondents 10 to 13 as LR of deceased R1
R3 died, is substituted by respondents 14 and 15 as LR of deceased R3
respectively vide order dated 12.04.2024 made in CMP.Nos.21964 and
21967 of 2023 in WA.No.3514 of 2019]

[R10 died is recorded vide order dated 12.04.2024 made in
CMP.No.21791 of 2023 in WA.No.3514 of 2019]

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to allow the writ appeal by setting aside the order made in W.P.No.14166 of 2001 dated 13.06.2013.



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For Appellants	: Dr.N.Moorthi
For R1 & R3	: Steps Taken
For R10	: Died vide EB
For R2, R4, R5, R11 to R13	: No Appearance
For R6, R7 & R9	: Mr.D.Gopal Government Advocate
For R8	: Mrs.P.Veena Suresh Standing Counsel [For CMDA]
For R14 & R15	: Mrs.R.Hemalatha

J U D G M E N T

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

The respondent in the writ petition Tamil Nadu Housing Board (TNHB) is the appellant before us.

2. The respondents in the present writ appeal originally filed writ petition in W.P.No.16051 of 1993 challenging the land acquisition proceedings and the writ petition was dismissed on 27.06.2000. Again after a



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lapse of 13 years, the respondents filed another writ petition in W.P.No.14166 of 2001, which was allowed and by challenging the said writ order, the present writ appeal is filed.

3. 4(1) Notification was approved vide G.O.Ms.No.138, Housing Department dated 14.05.1975 to acquire 338.28 acres for Ramapuram Neighbourhood Scheme. Section 6 draft declaration was approved vide G.O.Ms.No.964, Housing dated 07.06.1978. Admittedly, an award was passed in Award No.5 of 1986 dated 29.08.1986. It is not in dispute that lands in Survey Nos.14/2C, 14/2B, 14/4B, 14/3B measuring totally 64.5 cents covered under the award. The compensation determined under the Land Acquisition Act was deposited before the Sub Court, Poonamalle on 14.06.1989.

4. The acquisition proceedings ended in all respects and the subject land vested with the Government. It was allotted to the Tamil Nadu Housing Board for developing Ramapuram Neighbourhood Scheme and the Housing Board has taken possession of the subject property. The original land owners in the year 2013 filed a writ petition, which was allowed, against which the



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Tamil Nadu Housing Board preferred the Second Appeal mainly on the ground that the acquisition proceedings was completed in all respects and compensation determined was also deposited in the Court. Therefore, the land vest with the Tamil Nadu Housing Board and few encroachers entered the acquired land and claiming re-conveyance of the land, which cannot be granted by this Court.

5. The learned counsel for the appellant would submit that the Neighbourhood Scheme was developed and the subject land is under the encroachment on account of the writ petition and the writ appeal pending for about 23 years.

6. Mrs.R.Hemalatha, the learned counsel for the respondents 14 and 15 would submit that the third party also had purchased the property and representations are submitted to the Government to re-convey the land under Section 48-B of the Act. The Government issued G.O.Ms.No.136, Housing and Urban Development Department dated 10.10.2023, thereby constituting Special Committee for addressing grievances. Representations submitted before the said Committee constituted is not considered.



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7. This Court is of the considered opinion that re-conveyance is the discretion conferred on the Government and Court cannot issue any directions to re-convey the land, which were already acquired for public purposes. Re-conveyance of the acquired land cannot be claimed as an absolute right, since Section 48-B is an enabling provision and the Government in its discretion has to exercise by assigning valid reasons. Erroneous exercise of discretion is also improper. While exercising the power of re-conveyance, the Government has to assign valid reasons.

8. Therefore, this Court is of the considered opinion that the respondents have rightly approached the Committee constituted by the Government and it is left open to them to pursue the application, if any pending. As far as the acquisition proceedings are concerned, the Writ Court has gone beyond the scope of the power of re-conveyance conferred on the Government land under Section 48-B.

9. Earlier writ petition filed by the very same respondents challenging the land acquisition proceedings in W.P.No.16051 of 1993 was dismissed by learned Single Judge on 27.06.2000. That being so, after a lapse of 13 years



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the Writ Court in the impugned order raised a question that why the Government has thought it fit not to exempt the land in question alone, when the Government decided to exempt the lands, which were situated around the land of the petitioners from the acquisition. The Writ Court proceeded on the premises that the case of the respondents are discriminated by the Government. In the matter of land acquisition proceedings, extent of land to be utilised for public purposes and extent of land to be exempted are to be decided by the Government, objectively and such an exercise cannot be undertaken by the Writ Court in exercise of the powers of judicial review. Merely because one portion of the land is exempted, other owners cannot claim that their lands are also to be exempted. Such a logic cannot be adopted in the land proceedings. Whether the entire land acquired is required for public purposes or portion of the land is not required for the public purposes are the policy decision to be taken at the Government level. Therefore, the respondents are at liberty to file further applications before the Government for consideration.



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10. However, we are not inclined to support the relief granted by the Writ Court and consequently, the writ order dated 13.06.2013 passed in W.P.No.14166 of 2001 is set aside and the Writ Appeal stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

[S.M.S., J.] [C.K., J.]
29.07.2024

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Index : Yes
Neutral Citation : Yes
Speaking order / Non-speaking order



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To

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