



W.P.(MD) No.10272 of 2015

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 21.10.2024

PRONOUNCED ON : 28.10.2024

CORAM

THE HONOURABLE Ms.JUSTICE **P.T.ASHA**

**W.P.(MD) No.10272 of 2015**

1.S.Tajudeen

2.S.S.Jahangir (died)

3.F.Ruthuba

4.A.Kathoon

5.Najima Banu

6.Amsath Banu

7.Mohammed Ismail Sait

8.Rahmathul Aarifa

*(P5 to P8 have been substituted for the  
deceased second petitioner vide order  
dated 09.08.2018)*

... Petitioners

/vs./



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- 1.The Secretary,  
Public Works Department,  
Government of Tamil Nadu,  
St.George Fort,  
Chennai.
- 2.The Executive Engineer,  
Public Works Department,  
Water Resources Department,  
Gokale Road,  
Tallakulam,  
Madurai.
- 3.The District Collector,  
Collectorate Buildings,  
Madurai 625 020.
- 4.The District Revenue Officer,  
Collectoate Buildings,  
Madurai 625 020.
- 5.Aatham Charitable Trust,  
through its Managing Trustee,  
4/2, Kayithemilath Nagar,  
East Veli Street,  
Madurai 1.
- 6.P.N.S.S.Mohamed Kalithuthin Olith
- 7.K.Mujiba Begum
- 8.A.Sulaiha Begum
- 9.N.S.S.K.Peer Mohammed Iqbal
- 10.A.Anitha Parveen

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11.P.N.S.S.K.Sheik Abdullah

12.Sarputheen

13.A.Shameem

14.M.Mariyam

15.Mohamed Hussain

16.B.Abdul Huk

17.Thahira Banu

*(R6 to R17 have been impleaded  
vide order dated 15.09.2023)*

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 2nd Respondent herein in his proceedings in Ka.No.Va.3/M10 /R/Ko.23/2015 dated 12.01.2015 and quash the same and further direct the respondents 1 to 4 herein to pass appropriate orders and re-convey the land in T.S No.1225/2 of East Madurai Village at Survey Ward No. 9, Block No.12 to an extent of 4364 Sq.ft within limits of Madurai City Corporation to the petitioners as per Section 48(B) of the Land Acquisition Act 1894.

For Petitioners : Mr.M.Meenakshi Sundaram Senior Counsel for  
Mr.D.Nallathambi



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For R1 to R4 : Mr.Veera Kathiravan  
Additional Advocate General assisted by  
Mr.D.S.Nedunchezian,  
Government Advocate  
For R5 : Mr.C.M.Arumugam  
For R6 : Mr.T.Anbarasu  
For R7 to R11 : Mr.Shaji Chellam

### **ORDER**

The above writ petition has been filed by the petitioners seeking reconveyance of the property that has been acquired by the respondents in the year 1969 for constructing a sand vent into the Panaiyur Channel.

2. The brief facts which are required for disposing of the writ petition are as follows:-

2.1. The petitioners would submit that an extent of 4364 sq.ft.,in S.No. 1225/2 of East Madurai Village, Survey Ward No.9, Block No.12, Madurai City Municipal Corporation, which belonged to the petitioner's grandmother, Mariam Beevi, had been acquired for the public purpose of constructing the sand vent to the Panaiyur Channel as per notification dated 26.03.1969. The compensation in respect of the lands as fixed by the Land Acquisition Officer, namely the Revenue Divisional Officer, Madurai, was too low and therefore, the matter was referred to



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the Land Acquisition Tribunal/I Additional Subordinate Judge, Madurai, in LACOP.No.39 of 1971 at the request of the petitioners' maternal grandmother, Mariam Beevi. By an order dated 18.07.1972, the Land Tribunal enhanced and fixed the value of the land at Rs.4/- per sq.ft., as against the sum of Rs.2.50/- per sq.ft., fixed by the Land Acquisition Officer.

2.2. The petitioners would submit that possession of the lands were taken over by the respondents in the year 1969-1970. However, the land was not put to the use for which it had been acquired. Further, the land was leased to a private Trust by the Executive Engineer, PWD Water Resources Department, Periyar Vaigai Division, Madurai -2. Therefore, it is the contention of the petitioners that under Section 16B of the Land Acquisition Act, 1894, the Government should pass orders forfeiting the land, vest the land on to them free from all encumbrances and as per Section 48B of the Land Acquisition Act, 1894, reconvey the land to the petitioners. The basis on which the above request has been made is on the ground that the property has not been put to the use for which it has been acquired and that it continues to remain vacant without being utilized by the respondents.



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2.3. The petitioners would submit that they have made a representation dated 11.04.2012 through their counsel, to which there was no positive action on the side of the respondents. Once again, a representation dated 16.07.2012 was sent stating that the respondents should invoke Sections 16B and 48B of the Land Acquisition Act and pass suitable orders to reconvey the land to the petitioners. On receipt of this request, the fourth respondent had sent a letter dated 16.08.2012 to the Revenue Divisional Officer, Madurai, to send the proposal along with the papers. As there was no further action, the petitioners had filed a writ petition in W.P.(MD) No.16935 of 2012 before this Court and by an order dated 28.04.2014, this Court had directed the third respondent to consider and pass orders on the petitioners' representation dated 16.07.2012 within a period of 12 weeks. After the receipt of the order, the second respondent by his impugned order dated 12.01.2015 in Ka.No.Va.3/M10 /R/Ko.23/2015 had rejected the request of the petitioners stating that the lands continue to be in the control of the Madurai Corporation. Aggrieved by the same, the writ petition has been filed.



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3. A counter statement has been filed by the second respondent, wherein they had stated that the Madurai Corporation was carrying on the work under the Central Government Scheme JNNURM of laying a reinforced cement concrete wall and floor in the Panaiyur Channel and on completion of this work, the utility of the sand vent would be increased. They had further gone on to state that the lands were intended to be put to use for the public purpose and there was no question of handing it over to the petitioners.

4. The fifth respondent had filed a counter stating that they were an unnecessary party to the proceedings, as there was no subsisting lease between them and the respondents.

5. The argument that has been advanced on the side of the petitioners by Mr.Meenakshi Sundaram, learned Senior Counsel is that though the property had been acquired and possession was handed over in the year 1969-1970, the lands have not been put to use and the sand vent which had been put up had also been sealed by putting up a concrete wall. That apart, it is also his argument that the alleged sand vent cannot by any stretch of imagination be called the sand vent as



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it does not conform to the characteristics of a sand vent and to buttress this argument, photographs of various sand vents have been produced for the scrutiny of this Court.

6. He would further submit that the Advocate Commissioner appointed by this Court had also given a report that the sand vent is in existence, but the same has been closed with the concrete wall and that there is no outflow of water through the sand vent and it is only the stagnated water that has been discharged from the western side wall, which had been leased out by the petitioners to the fifth respondent and the pipeline in the river bed is also not discharging any water. Therefore, it is the argument of the learned Senior Counsel that the land which has been acquired has not been utilized for the purpose for which it has been acquired nor put to any other use for the public purpose. Therefore, he would submit that the impugned order is perverse and the lands ought to be reconveyed to the petitioners.

7. The learned Senior Counsel would place reliance on the judgments of two Division Benches of this Court, the first of which is reported in **2006 4 CTC**



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290 (R.*Shanmugam and others Vs. Ammasi Kutty and another*), wherein one of the points for consideration was whether the land owners had a vested right to seek for reconveyance of an un-utilized land under Section 48B of the Land Acquisition Act, 1894. He would place reliance upon para 33, 34, 36 and 38 to 41 of the said judgment, which reads as under:

*"33. As the provision of Section 48B is unique and is contemplated only by Tamil Nadu Amendment Act, the purport of that Section must be considered with reference to the object and reasons. By the above provision, the erstwhile owners are entitled to make request to the Government for re-conveyance of the land, of course, subject to their willingness to repay the amount paid to them under the Act for acquisition of land inclusive of the amount referred to in Sub-section (1-A) and (2) of Section 23, if any, paid under this Act. By the provision of Section 48-B an element of right to repossess the land by way of re-conveyance is conferred on the owners, of course, subject to the compliance of Section 48-B. Issue of re-conveyance under Section 48-B, came up for consideration before a Division*



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*Bench of this Court in the judgment reported in SOUTHERN RAILWAYS ETC., VS S. PALANIAPPAN AND OTHERS ( 2005(2) LW 325). In the said judgment, the Division Bench while considering the issue as to the willingness of the land owners and the right of the Government to accept the willingness, has held in para 33,34 and 35 as follows:*

*"33. Mr. R. Krishnamoorthy, learned senior counsel for the respondents-land owners placed reliance on the decision of a learned single Judge in M. Manimegalai vs State of Tamil Nadu, 2004 Writ L.R.789 (vide paragraph-10) wherein it was observed:*

*"Section 48-B has been introduced with a view to protect the interest of the persons from whom the land has been acquired but not utilised. Such provision is a benevolent provision. Even though it is not specifically indicated in Section 48-B regarding the right of such a person to file application, it is obvious that such a person has to indicate his*



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*willingness to get the land back subject to repayment of the compensation"*

*34. We respectfully do not agree with the learned single Judge that Section 48-B has been introduced only to protect the interest of the persons from whom the the land has been acquired. In our opinion, Section 48-B can also protect the interest of the State Government which wants to re-convey the land which it had acquired, but in such a case the State Government must get the consent of the erstwhile land owner before it can re-convey the land to him under Section 48-B. The State Government cannot act unilaterally in this connection as already held above.*

*35. For the reasons given above, we are of the opinion that the impugned order dated 3.12.2003 does not fall within the ambit of Section 48-B as it is a unilateral act and hence, it has to be declared as*



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*invalid, because by a mere executive order, unsupported by statute, land which stands vested in the State Government under [Section 16](#) of the Land Acquisition Act cannot be unilaterally re-conveyed by the State Government to the erstwhile land owners."*

*34. It is well settled principle of law that ordinarily the Court should give a plain and literal meaning while interpreting the statute. In SWEDISH MATCH AB VS SECURITIES AND EXCHANGE BOARD, INDIA ( AIR 2004 SC 429), the Supreme Court has held that where the words of a statute are absolutely clear and unambiguous, recourse cannot be resorted to the principles of interpretation other than the literal rule. In PRAKASH NATH KHANNA VS CIT (2004(9) SCC 686, the Supreme Court has held that the language employed in a statute is the determinative factor of the legislative intent. The legislature is presumed to have made no mistake. The presumption is that it intended to say what it has said. Assuming there is a defect or an omission in the words used by the legislature, the Court cannot*



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*correct or make up the deficiency especially when a literal reading of produces an intelligible result.*

.....

*36. In view of the above discussions, we hold that the Government in exercise of the power under [Section 16-B](#) of the Act can forfeit the land from the Tamil Nadu Housing Board as penalty and on such forfeiture, the land shall vest in the Government in Revenue Department free from all encumbrances. Once such vesting takes place, the Government shall consider the request, if any, received from the land owners expressing their willingness for re-conveyance and may accept or reject. Such exercise of power is discretionary and the owners have no right to seek for automatic re-conveyance of land. The Tamil Nadu Housing Board has no power under [Section 72](#) of the Act to dispose of unutilized land and such power shall only vest with the Government under [Section 16-B](#) of the Land Acquisition Act.*

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38. For rejecting the request of the land owners, the Government has given two reasons viz., (1) the land owners have been awarded compensation and possession of the land has been given to the Housing Board and (2) the land is still required for Housing scheme. Insofar as the first reason, we are of the opinion that the same cannot be held good in view of the specific provisions of Section 48-B enabling the land owners to make the application for reconveyance. Mere fact that they have received compensation does not prevent them from making a request to the Government invoking [Section 48-B](#) of the Act for reconveyance of the unutilised lands. Insofar as the second reason, it must be kept in mind that though the proposal was made by the Housing Board to the Government for acquiring an extent of 1997.02 acres of patta land, ultimately, the Government could pass award only in respect of 662.96 acres and even out of the said extent of the land, only an extent of 105.61 acres was taken possession and handed over to the Housing Board. But the Board could utilise only an extent of 21.47 acres of land for Housing Scheme. In view of the



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*above undisputed facts, we are of the considered view that the Government have not applied their mind to the above aspects while they came to the conclusion that the land is still required for Housing Scheme.*

*39. In our opinion, merely because possession is taken and the lands are handed over to the Housing Board, the power of the State Government to forfeit the land under [section 16-B](#) of the Act, is not curtailed. The said power is independent and exclusive. In the event, the lands are unutilised by the Board for quite long number of years, the State Government has the power to forfeit the lands by way of penalty. Of course, the fact that Section 17-A was repealed was not brought to the notice of the learned single Judge and consequently, the learned single Judge has held that there is vesting of land in Housing Board under Section 17-A. In view of Section 162 of TNHB Act, 1961 the City Improvement Trust Act, 1950 was repealed and consequently, Section 17-A was also repealed. In the circumstances, there cannot be any vesting of the*



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*land on the Housing Board under Section 17-A as well as the Government under Section 16 of the Central Act simultaneously.*

*40. On a challenge to the above impugned orders, the learned Single Judge has dismissed the Writ Petitions mainly on the ground that the land handed over to the Housing Board shall vest in the Housing Board under [Section 17-A](#) of the Act and there cannot be a further vesting in the State Government under Section 16-B. In our opinion, the said finding is unsustainable in view of the fact that Section 17-A was repealed by the provisions of Section 162 of the Tamil Nadu Housing Board Act which was enacted in the year 1964. As on today, [Section 17-A](#) is not in the Text Book and the only provision holding the field is Section 16-B, empowering the State Government for forfeiture of the unutilised lands from the Housing Board by way of penalty.*

*41. For the foregoing reasons, all the Writ Appeals are allowed and the impugned orders are set aside and the matters are remitted to the State Government for reconsideration of the applications made by the appellants for re-conveyance*



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*under Section 48-B of the Act on merits in accordance with law and in the light of the findings rendered by us in this judgment. Such exercise shall be completed within a period of three months from the date of receipt of copy of this judgment. No costs. Consequently, W.P.M.P.Nos.1002 and 1003 of 2006 are closed."*

8. The second judgment relied upon is the one reported in **(2015) 5 MLJ 60 (Commissioner, Ambattur Municipality, Chennai 600 053 Vs. Government of Tamil Nadu, represented by its Secretary, Housing and Urban Development Department, Chennai and others)**, wherein the reliance was placed at para 36, which reads as under:-

*"36. In the light of all the above material information, the factual position, the rival claims made by the parties, the Advocate Commissioner's report, the affidavit of the Managing Director, TNHB, and the objections made thereon, we feel it appropriate that a decision by the appropriate Government in this case applying Section 48B the Act and the ruling of the Supreme Court in respect of re-conveyance would be justiciable. Accordingly, while setting aside the impugned*



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*order of the authorities concerned dated 03.08.2007 and also the impugned order of the learned Single Judge dated 29.01.2014 made in W.P.No.32034 of 2007 to the extent of ordering reconveyance of the lands to the writ petitioners, the matter is remanded back to the Government to consider the claim of the writ petitioners in accordance with law by applying [Section 48-B](#) of the Act and also the ruling of the Supreme Court and take a decision within a period of eight (8) weeks from the date of receipt of a copy of this judgment."*

9. Resting his arguments on these two judgments, the learned Senior Counsel would submit that the property in question ought to be reconveyed back to the petitioners. He would further submit that reading of Section 101 of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 (*herein after referred to as Fair Compensation Act*) would clearly highlight the intent of the legislature to reconvey the un-utilized lands back to the land owners.



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10. He would submit that with the passage of time, the legislature in its wisdom taking into consideration the circumstances where in many cases the lands that had been acquired are not actually put to use for which it has been acquired or has not been utilized to the entire extent of land acquired, had incorporated Section 101 of the Act making it mandatory that if within 5 years, the lands are not put to the use for which it has been acquired, then it **shall be** reconveyed to the land owners. He would therefore submit that this Court should take the March of Law into consideration and reject the contention put forward by the respondents.

11. *Per contra*, Mr.Veerakathiravan, learned AAG assisted by Mr.D.S.Nedunchezian, learned Government Advocate would submit that the provisions of the Act will not apply to the acquisitions undertaken under the earlier Land Acquisition Act, 1894 as this is clearly barred by the provisions of Section 24(1) of the Fair Compensation Act. He would therefore submit that the argument of the learned Senior Counsel for the petitioners has to necessarily be rejected.



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12. He would submit that under Section 48B of the Land Acquisition Act, 1894, the land owner cannot as a matter of right claim reconveyance. It is only the Government, who has the discretion to reconvey the land, if they feel that the property acquired cannot be put to use for the purpose for which it is acquired or for any other public purpose. Even there, the lands had to be reconveyed only through public auction in which the land owners could also participate.

13. He would rely on the unreported order of this Court in W.P.(MD) No. 2660 of 2014 (*R.Rajathi Vs. The Secretary to Government and others*) dated 12.07.2021, where a similar issue had been considered and the learned single Judge, after considering the provisions of Section 48B of the Land Acquisition Act, 1894 and the question as to whether the provisions of the Fair Compensation Act could be looked into, ultimately held that the petitioner cannot as a matter of right seek reconveyance of the lands, which had already been acquired and possession taken by the respondents.

14. Heard the learned counsel on either side.



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15. Before proceeding to discuss the facts on hand, it would be necessary to extract the provisions of Section 48B of the Land Acquisition Act, 1894, and Section 101 of the Fair Compensation Act, which reads as under:-

*"48B. Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.*

*101. Return of unutilised land. When any land acquired under this Act remains unutilised for a period of five years from the date of taking over the possession, the same shall be returned to the original owner or owners or their legal heirs, as the case may be, or to the Land Bank of the appropriate Government by reversion in the manner as may be prescribed by the appropriate Government.*

*Explanation. - For the purpose of this section, "Land Bank" means a governmental entity that focuses on the conversion of*



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*Government owned vacant, abandoned, unutilised acquired lands and tax-delinquent properties into productive use."*

16. The points for consideration before this Court are two ie., i) whether the petitioners as a matter of right are entitled to reconveyance of the lands that had been acquired from them on account of the fact that it has not been put to the use, for which it had been acquired and ii) whether the provisions of Section 101 of the Fair Compensation Act can be applied while considering the issue of reconveyance?

17. A reading of these two provisions brings out the distinction between the two. As regards Section 48B, the discretion solely rest upon the Government and this discretion is to be exercised when it is felt that the land is not required for the purpose for which it is acquired or for any other public purpose. Therefore, it is clear that the Government has to first satisfy itself that the lands were not required and thereafter, they may transfer the lands to the original owners on repayment of the amount given as compensation as also including the amounts that are referred to in sub-section 1-A and Section 23(2) of the Act.



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18. On the contrary, a reading of Section 101 of the Fair Compensation Act makes it mandatory that if the lands are not put to the use for which it has been acquired, the same shall be reconveyed to the land owner or their legal heirs, as the case may be, or to the Land Bank of the appropriate Government by reversion in the manner as may be prescribed by the appropriate Government. Therefore, a reading of the above provision makes it clear that under the Fair Compensation Act, there is no discretion vested with the Government and that on the expiry of 5 years, it shall be reconveyed or by reversion given to the land back. However, Section 24(1)(b) of the Act makes it clear that where an award has been passed under the old Act viz., the Land Acquisition Act, 1894, the proceedings will continue only under the old Act, as if the same has not been repealed. Therefore, the petitioners cannot seek to import the provisions of Section 101 of the Fair Compensation Act into the facts of the present case.

19. The judgments which has been relied upon by the petitioners would itself state that it is only in the event, the Government is of the view that the lands are not required for any public purpose then the question of reconveyance would



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kick in. The power of the Government to transfer such land to the original owner is only the discretionary.

20. In the judgment reported in **2006 4 CTC 290** (*referred supra*), the Hon'ble Division Bench had held as follows:-

*"35..... However, the exercise of the power under [Section 4 8-B](#) cannot be mechanical and whenever the discretion to take a decision is conferred on the authority by a statute, concept of fairness inherent in the guarantee of equality under [Article 14](#) of the Constitution of India must be ensured. Exercise of such discretion could be tested on fairness and reasonableness. This is more so when such authority is bound to determine the questions affecting the right to property of individual. The decision must be supported by reasons with materials and necessarily be an informed one. In this context, the exercise of such discretionary power as to whether the land should be re-conveyed to the original owner or should it be sold by public auction, should not be arbitrary and unreasonable and fairness must prevail in such decision. Though the land owners cannot have any vested or*



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*absolute right to seek for automatic re-conveyance of the land, they have an element of right for consideration of their claim for reconveyance in terms of Section 48-B."*

21. The Hon'ble Supreme Court in the judgment reported in **1997 (5) SCC 432 (State of Kerala VS. M.Bhaskaran Pillai)** had held that the lands cannot be as a matter of right reconveyed to the land owners, but it should be put up for public auction. The learned Judges had observed as follows:-

*"In view of the admitted position that the land in question was acquired under the [Land Acquisition Act, 1894](#) by operation of [Section 16](#) of the Land Acquisition Act, it stood vested in the State free from all encumbrances. The question emerges whether the Government can assign the land to the erstwhile owners? It is settled law that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. In case there is no other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the*



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*public action can be better utilized for the public purpose envisaged in the directive principles of the Constitution. In the present case, what we find is that the executive order is not in consonance with the provision of the Act and is, therefore invalid. Under these circumstances, the Division Bench is well justified in declaring the executive order as invalid. Whatever assignment is made, should be for a public purpose. Otherwise, the land of the Government should be sold only through the public auctions so that the public also gets benefited by getting a higher value"*

22. The learned single Judge in W.P.(MD) No.2660 of 2014 (***R.Rajathi Vs. The Secretary to Government and others***) dated 12.07.2021, had observed that once the land vests with the Government, the State cannot be divested of the same, since the State has a right to change its user. In the judgment reported in ***2018 (1) CWC 81 (Chairman, Thiruvottiyur Municipality and others Vs. R.Revathy and others)***, which has been referred to by the learned single Judge, the Division Bench had held that the transfer of lands to the original land owners arise only if the Government is satisfied that the land is not required for the



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purpose for which it has been acquired or for any other public purpose and had further held that the Government cannot be compelled to reconvey the land.

23. In the instant case, the petitioners have received the compensation and in fact, the original owner of the land, namely the grandmother of the petitioners, had moved the Tribunal for an enhanced compensation, which has also been granted to them. Further, both in the impugned order as well as in the counter, the respondents have stated that the lands that are acquired are needed for the purpose of ensuring that in case of flooding, the water would flow through the sand vent, which has been temporarily closed from the Channel into the river. The work on the Panaiyur Channel also appears to be an on going work.

24. In these circumstances, the request of the petitioners for reconveyance of the land cannot be acceded to and I see no reason to interfere with the impugned order of the second respondent passed in Ka.No.Va.3/M10 /R/Ko. 23/2015 dated 12.01.2015.



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25. In the result, the Writ Petition stands dismissed. No costs.

Speaking : Yes / No  
NCC : Yes / No  
Internet : Yes / No  
Index : Yes / No

**28.10.2024**

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To

- 1.The Secretary,  
Public Works Department,  
Government of Tamil Nadu,  
St.George Fort,  
Chennai.
- 2.The Executive Engineer,  
Public Works Department,  
Water Resources Department,  
Gokale Road,  
Tallakulam,  
Madurai.
- 3.The District Collector,  
Collectorate Buildings,  
Madurai 625 020.
- 4.The District Revenue Officer,  
Collectoate Buildings,  
Madurai 625 020.

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**P.T.ASHA, J.**

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order made in

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