

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON 12/12/2014

DATED: 05/01 /2015

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THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.6120 of 2013 &
M.P.Nos.1 and 2 of 2013 &
M.P.No.1 of 2014

Manokaran Petitioner
Vs.

1. The Secretary to Government,
Housing and Urban Development Department,
For St.George, Chennai - 600 009.
2. The Managing Director,
Tamil Nadu Housing Board,
Nandanam, Anna Salai, Chennai-35.
3. The Executive Engineer / Administrative Officer,
Tamil Nadu Housing Board, Salem Housing Unit,
Salem - 636 008. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for a Writ of Certiorarified Mandamus, to call for the entire records relating to the impugned order passed by the third respondent in his Letter No.Ni.A.1/7337/79, dated 25.02.2013 and quash the same and consequently direct the respondents to re-convey the petitioner's land situated in S.No.83/3, Ayyamperumalpatti Village, Salem Taluk & District to the extent of 0.93 acres of land to the petitioner.

For Petitioner : Mr.C.Prakasam
For Respondents : Mr.S.Gomathinayagam
Additional Advocate General
Assisted by
Mr.M.S.Ramesh
Additional Government Pleader for R1

Mr.R.V.Balu (TNHB) for R2 and R3

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O R D E R

The short facts of the case are as follows:-

The petitioner submits that he is owning a land to an extent of 0.93 acres situated in S.No.83/3, Ayyamperumalpatti Village, Salem Taluk and District. In the year 1981, the Tamil Nadu Government acquired his land for the purpose of implementing the Housing Scheme i.e., construction of houses by the Tamil Nadu Housing Board. In this connection, the Government of Tamil Nadu issued 4(1) Notification in G.O.Ms.No.371, Housing and Urban Development Department dated 03.06.1981, after that under Section 6 Declaration was published in G.O.Ms.No.449, Housing and Urban Development Department, dated 12.06.1984, but subsequently after lapse of two years, the award has been passed on 19.09.1986 in Award No.13 of 1986-1987.

2. The petitioner further submits that after acquisition of his land in the year 1981, the Housing Board had not at all implemented any scheme for construction of houses in his land and till date, he is in possession of the said land. The petitioner further submits that since he is an agriculturist, he is not fully aware of the land acquisition proceedings as well as the provisions of the Land Acquisition Act and after consulting law knowing persons, then only he came to understand that he should ask for re-conveyance as he should make written representation under Section 48-B of Land Acquisition Act instead of sending written representation for exclusion of his land from Land Acquisition Proceedings.

3. The petitioner further submits that he came to understand that this Hon'ble Court as well as Hon'ble Supreme Court was pleased to pass orders with regard to re-conveyance of the land to the original owners on the ground that, if the Government or Housing Board has not implemented the housing scheme, i.e., construction of the houses for more than 15 years to 20 years, then the landowners can be entitled to get relief under the provisions of Land Acquisition Act, specifically under Section 48-B of the Land Acquisition Act. Accordingly, he made written representation requesting the first respondent herein to re-convey the land under Section 48-B of the Land Acquisition Act. The petitioner further submits that the first respondent is also aware that this Court was pleased to pass orders in the batch of Writ Appeals in W.A.Nos.422 of 2011 etc., dated 14.09.2011 with regard to re-conveyance of land,

"It is seen that theme 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 1994 being W.P.No.12201 of 1994 etc., challenging the

Section 4(1) Notification, the 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 superstructure and keep the land idle, if the scheme could not be successfully implemented. Therefore, this Court permitted the petitioners therein to approach the Government seeking exemption of re-conveyance. Another batch of cases were filed during 1996 in W.P.Nos.9747 to 9749 of 1996, challenging the notification issued under Section 4(1) and Section 6 of the Act and the notifications were set-aside, with the further observation that the Government will take into account ground realities before proceeding with the acquisition. The other writ petition challenging the same acquisition proceedings in Dr.N.Natarajan Vs. Government reported in TN MANU/TN/0526/2020 was allowed and the notification was quashed. In Chinnayyagounder Vs. State of Tamil Nadu, 2003 (2) MLJ 481, the challenge was to the same acquisition proceedings and 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. State of Tamil Nadu reported in MANU/TN/7522/2006, 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 Vs. 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 that it is not in dispute that the entire Kalapatti Neighbourhood Scheme has been dropped in view of the several orders passed by this Court. In Tmt.Leelavathi Vs. State of Tamil Nadu reported in MANU/TN/0586/2008 and in Dhandapani and another Vs. State of Tamil Nadu reported in 2008 (5) MLJ 1416, the learned Single Judges of this Court have quashed the notifications and took note of the fact that the entire Kalapatti Neighbourhood 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 Judgment and allowing the writ petitions, wherever prayer was made for quashing the acquisition proceedings.

As noticed above, in the earlier batch of appeals, this Court after taking note of the decisions in Writ Petition Nos.12201 of 1994 etc., batch dated 20.03.2001, Dr.N.Natarajan Vs. Government of Tamil Nadu reported in MANU/TN/0526/2020, Chinnayyagounder Vs. State of Tamil Nadu reported in 2003 (2) MLJ 481, Arumuga Gounder Vs. State of Tamil Nadu, reported in MANU/TN/7522/2006, M.Duraisamy Vs. State of Tamil Nadu reported in 2007(3) MLJ 288, Tmt.Leelavathi Vs. State of Tamil Nadu reported in MANU/TN/0586/2008 and in Dhandapani and another Vs. State of Tamil Nadu reported in 2008 (5) MLJ 1416, quashed the Notification, and held that the learned Single Judge was perfectly justified in allowing the writ petitions by following the earlier Division Bench Judgments.

In view of the matter, we have no hesitation to hold that the issues raised in these batch of appeals are squarely covered by the earlier decisions rendered by this Bench in W.A.Nos.252 to 255 of 2011, dated 16.08.2011 and also taking note of the fact that there are several Division Bench decisions of this Court, quashing the notifications in respect of the same scheme on identical grounds. Therefore, we see no reason to interfere with the order passed by the learned Single Judge in allowing the writ petitions and also in another batch of Writ Appeals in W.A.Nos.252 to 255 of 201, dated 16.08.2011 (2011 (5) CTC 503) were disposed in favour of the landowners and yet another judgment delivered by the Division Bench of this Court by citing the Hon'ble Supreme Court Judgment made in the case of Hariram Vs. State of Haryana (2010 (2) CTC 336) with regard to re-conveyance to the original owners passed orders in W.A.Nos.1652 of 2010 etc., (2010 (5) CTC 261), whereby observed that if it is the land not utilized for which purpose was acquired for a very long time, then the landowners are entitled to get an order from the Government for re-conveying their land."

4. The petitioner further submits that in the said circumstances, he made request before the first respondent to pass order under Section 48-B of Land Acquisition Act for re-conveying his land situated in S.No.83/3, Ayyamperumalpatti Village, Salem Taluk and District to the extent of 0.93 acres of land to him. In this connection, he made written representation on 11.01.2013 and in that written representation, he expressed his readiness to pay whatever the necessary cost spent by the first respondent for acquisition proceedings. After receipt of the said representation, the third respondent who does not have any power or jurisdiction to reject his request as per Section 48-B of Land Acquisition Act and only the Government alone, i.e., the first respondent herein is having power to pass orders under Section 48-B of Land Acquisition Act. But, now

the third respondent passed the impugned order in his Letter No.Ni.A.1/7337/79, dated 25.02.2013, whereby rejecting his request for re-conveyance of the said land. Hence, the petitioner entreats the Court to allow the above writ petition.

5. The first respondent has not filed any counter statement in the above writ petition. However, the first respondent herein has filed a counter statement in the connected writ petition in W.P.No.6119 of 2013. The highly competent counsel appearing for the first respondent requests this Court that the counter statement filed in the connected writ petition in W.P.No.6119 of 2013, may be taken into consideration in the above writ petition also since the facts are one and the same. The counter statement filed by the first respondent in Writ Petition No.6119 of 2013, reads as follows:-

(i) The first respondent submits that the Tamil Nadu Housing Board of Salem Housing Unit has proposed acquisition of lands for Housing Scheme in S.F.No.68/3 etc., measuring an extent of 42.69 acres including petitioner's land at Salem of Ayyamperumalpatti Village, Salem Taluk and District. The Notification under Section 4 (1) of the Land Acquisition Act, 1894 (Central Act 1 of 1894) (herein after referred to as "the Act") was approved in G.O.(Ms)No.455, Housing and Urban Development Department, dated 23.06.1981 and was published in the Tamil Nadu Government Gazette No.28/A at Pages 3 and 4 Supplemental to Part II Section 2, dated 22.07.1981. The enquiry under Section 5-A of the Land Acquisition Act was conducted by the Special Tahsildar (LA), Neighbourhood Scheme, Salem on 21.12.1981. The 3(b) enquiry was conducted by the Special Tahsildar (LA), Neighbourhood Scheme, Salem on 07.06.1982. The first respondent further submits that the Draft Declaration under Sections 6 and 7 of the Act was approved in G.O.(Ms)No.538, Housing and Urban Development Department, dated 07.07.1984 and was published at pages 1 to 5 in the Extraordinary issue of Tamil Nadu Government Gazette No.28, dated 18.07.1984. The Award enquiry was conducted by the Special Tahsildar (LA), Neighbourhood Scheme on 12.09.1986 for the above said land. The award was passed by the Special Tahsildar (LA), Neighbourhood Scheme, Salem for an extent of 29.86 acres including the petitioner's land. The first respondent further submits that as per the award report bearing S.F.No.82/1 measuring an extent of 2.74 acres stands registered in the Name of Srinivasan, Palanisamy, Prakasam, Namachivayam S/o.Duraisamy. The compensation amount awarded to them of Rs.1,93,810.05 for S.F.No.82/1 was deposited into Sub Court, Salem by the Land Acquisition Officer.

(ii) The first respondent further submits that the above said lands were taken over on 19.11.1986 from the Special Tahsildar (LA). These lands could not be utilized by the Tamil Nadu Housing Board for Housing Scheme since the surrounding lands are under Court case. After disposal of the case, the layout was prepared through approach from Varama Garden Private Road and got approved by the

Board vide Town Planning / Tamil Nadu Housing Board No.7/2013, dated 08.02.2013. The same was sent to the Salem Local Planning Authority and they approved the road pattern. Based on that the scheme proposal for construction of various types of houses has been submitted to Board, which is under scrutiny for getting approval. The first respondent further submits that the Tamil Nadu Government acquired the lands in Salem District and Taluk, Ayyamperumalpatti Village bearing S.F.No.68/3 etc., measuring an extent of 42.69 acres including the petitioners land in S.F.No.82/1 (2.74 acres) for the purpose of constructing houses by the Tamil Nadu Housing Board for the general public. The Land Acquisition Officer, Neighbourhood Scheme, awarded compensation for the petitioners land of Rs.1,93,810.05 for S.F.No.82/1 which was deposited in Sub Court, Salem. After passing of the award (Award No.7/86-87, dated 23.09.1986), the land was taken over by the Land Acquisition Officer and handed over to Tamil Nadu Housing Board on 19.11.1986. Now, the Tamil Nadu Housing Board got approval from the Director of Town and Country Planning for the layout for construction of 262 Houses and flats and also the Tamil Nadu Government has provided a sum of Rs.4,572.00 Lakhs for the construction works.

(iii) The first respondent further submits that the petitioner was fully aware about the Land Acquisition Proceedings. The petitioner now requested re-conveyance of the land for the said land already possession has been taken and the scheme also going to be implemented. In these circumstances, re-conveyance of the land is impossible. The first respondent further submits that the petitioner has given a representation on 11.01.2013 requesting re-conveyance of the land. The requisition also rejected by the Managing Director, Tamil Nadu Housing Board. The petitioner's allegation is that the third respondent rejected the petitioner's requisition is false. The second respondent who is the superior to the third respondent is rejected the petitioner's requisition. The first respondent further submits that the Hon'ble High Court in Mohammed Ibrahim Vs. Annavasal Panchayat Union Rep. by its Chairman Annavasal and others (2012 (2) CTC 389) observed as follows:-

"Application of Section 48-B will arise only if the requisitioning body did not use the land for the purpose for which it was acquired."

In the instant case, land had been put to use for purpose for which it was acquired. Thus invocation of Section 48-B of the Land Acquisition Act for re-conveyance of land would not arise in this situation. The first respondent further submits that this Court in S.Balasubramaniam Vs. Secretary to Government, Revenue Department, Fort St. George, Chennai-9 and another (2012 (4) CTC 510) observed as follows:-

"As the value of the property has gone up. The petitioner attempts to get the property by abusing the process of Court, after a lapse of 60 years. As the value of the properties is sky rocketing, the petitioner is trying his luck by these proceedings and such a claim is not sustainable in law. If the claims like petitioner are entertained by this Court, it will open a Pandora's box thereby many claims by erstwhile owners, whose properties were acquired for public purposes, would be made and it would not be in the interest of public. These matters already reached finality about 50 years ago and the same cannot be reopened. Rights of the parties already got crystallized long back and the needle of the clock cannot be put in reverse. The claim itself is against the public interest, which has to be rejected in limini."

"When such is the position, the petitioner cannot approach the respondents for re-conveyance of the land which was acquired over decades ago. The attempt of the petitioner is nothing but an abuse of process of law. For having indulged in abuse of process of law and sought for re-conveyance of the property, which was acquired as early as 1949, the petitioner is liable to be slapped with very heavy cost. However, due to judicial restraint, this Court is not awarding any cost. Accordingly, the writ petition is dismissed with the above observations."

The first respondent further submits that with respect to the petitioner's land, award was passed in the year 1986. After passing of the award, the land handed over to the Tamil Nadu Housing Board on 19.11.1986. The Director of Town and Country Planning also approved proposal for layout for construction of 262 houses and flats. Hence, the first respondent entreats the Court to dismiss the writ petition.

6. The third respondent has filed a counter affidavit and opposed the writ petition. The third respondent further submits that the Tamil Nadu Housing Board of Salem Housing Unit has proposed acquisition of lands for housing scheme in S.F.No.83/1 etc., measuring an extent of 44.34 acres including petitioner's land at Salem of Ayyamperumalpatti Village, Salem Taluk and District. The Notification under Section 4(1) of the Land Acquisition Act was approved in G.O.Ms.No.371, Housing & Urban Development Department dated 03.06.1981 and was published in Tamil Nadu Government Gazette No.23/A at pages 8 to 18 Supplemental to Part II Section 2 dated 17.06.1981 and the errata published in Supplemental Part II Section 2 of Tamil Nadu Government Gazette No.31A dated 12.08.1981 at page No.5. The enquiry under Section 5A of the Land Acquisition Act was conducted by the Special Tahsildar (LA), Neighbourhood Scheme, Salem on 12.10.1981. The 3(b) enquiry was conducted by the Special Tahsildar (LA), NHS, Salem on 18.03.1982. The third respondent further

submits that Draft Declaration under Sections 6 and 7 of the Land Acquisition Act was approved in G.O.Ms.No.449, Housing & Urban Development Department dated 12.06.1984 and was published at pages 1 to 5 in the extra ordinary issue of Tamil Nadu Government Gazette No.248, dated 14.06.1984. The Award enquiry was conducted by the Special Tahsildar (LA), Neighbourhood Scheme on 11.09.1986 for the above said land. The award was passed by the Special Tahsildar (LA), Neighbourhood Scheme, Salem for an extent of 13.99 acres including the petitioner's land. As per the award report bearing the S.F.No.83/3 measuring an extent of 3.59 acres stands registered jointly in the name of Thirisangu S/o.Perumal Gounder, Manokaran, S/o.Dharmalingam. They are given consent to get the compensation with objection for Higher compensation. Hence, the compensation amount awarded to them of Rs.1,69,385.60 for S.F.No.83/3 was deposited into Sub Court, Salem by the Land Acquisition Officer.

7. The third respondent further submits that the said land was taken over on 09.11.1995 from the Special Tahsildar (LA). These lands could not be utilized immediately by the Tamil Nadu Housing Board for Housing Scheme since the surroundings lands are under Court case. After disposal of the case, the layout was prepared through approach from Varama Garden private road and got approved by the Board vide TP/TNHB No.7/2013, dated 08.02.2013. The same was sent to the Salem Local Planning Authority and they have approved the road pattern. Based on that, the scheme proposal for construction of 262 houses under G+1 pattern was approved by the Board for Rs.3834 lakhs on 25.03.2013. The third respondent further submits that the Tamil Nadu Government acquired the lands in Salem District and Taluk, Ayyamperumalpatti Village bearing S.F.No.83/1 etc., measuring to an extent of 44.34 acres including the petitioner's land in S.F.No.83/3 for the purpose of constructing houses by the Tamil Nadu Housing Board for the public. The Land Acquisition Officer, Neighbourhood Scheme, awarded compensation for the petitioner's land of Rs.1,69,385.60 for S.F.No.83/3 which was deposited in Sub Court, Salem. After passing of the Award (Award No.13/86-87, dated 23.09.1986), the land was taken over by the Land Acquisition Officer and handed over to Tamil Nadu Housing Board on 09.11.1995. Now, the Tamil Nadu Housing Board submitted the layout for approval from the Salem Local Planning Authority for construction of various types of houses and flats. In addition, the Tamil Nadu Housing Board has provided a sum of Rs.3834 lakhs for the construction works. The third respondent further submits that the petitioner was fully aware about the Land Acquisition Proceedings. The petitioner now requested re-conveyance of the land for the said land already in possession has been taken and the scheme also going to be implemented. In these circumstances, re-conveyance of the land is not impossible. The third respondent further submits that the petitioner has given a representation on 11.01.2013 requesting re-conveyance of the land. The requisition also rejected by the requisitioning body of Tamil Nadu Housing Board.

8. The third respondent further submits that the Hon'ble High Court in 2012 (2) CTC 389 observed as follows:-

"The Land Acquisition Act 1894 (1 of 1894) Section 48-B Application under Section 48-B will arise only when requisitioning body did not use land for purpose for which it was acquired. In the instant case, land had been put to use for purpose for it was acquired - Thus invocation of Section 48-B for re-conveyance of land would not arise in this situation."

The third respondent further submits that the Hon'ble High Court in 2012(4) CTC 510 observed as follows:-

"Land Acquisition Act, 1894 (1 of 1894), Section 48-B, Re-conveyance of land - petitioner seeking re-conveyance of land acquired for purpose of burial ground in the year 1949 - representation made by petitioner, was rejected by Government - Matter has reached finality about sixty years ago and same cannot be reopened - Rights of parties has already crystallized along back and needle of clock cannot be put in reverse - petitioner cannot compel Government to re-convey land after six decades - Government has stated that land is needed for public purposes - Only after subjective satisfaction that land is not required. Government can transfer to erstwhile owner - It is not mandatory for Government to transfer such lands - Petitioner attempts to get property by abusing process of Court after a lapse of sixty years - Since value of property is sky rocketing, petitioner is trying his luck - If claim made by petitioner is entertained, it will open a Pandora's Box - petitioner is not having any right over property - He can at best be called a stranger with a false claim - Due to rise in population there is increasing number of deaths - Expansion of burial ground is certainly a necessity - writ petition dismissed."

The third respondent further submits that with respect to petitioner's land, award was passed in the year 1986. After passing of the Award, the land was handed over to the Tamil Nadu Housing Board on 09.11.1995 by the Special Tahsildar (LA), NHS, Salem. The Local Planning Authority, Salem has approved the road pattern for the construction of 262 houses and flats. The Tamil Nadu Housing Board is also provided a sum of Rs.3834/- lakhs for the construction work and the land is very much essential for implementation of housing scheme. Hence, the third respondent entreats the Court to dismiss the above writ petition.

9. The highly competent counsel Mr.C.Prakasam appearing for the petitioner submits that the first respondent had issued 4(1) notification in G.O.Ms.No.371, Housing and Urban Development Department dated 03.06.1981, for acquiring the petitioner's land under the Old Act. Thereafter, a draft declaration was published on 12.06.1984. Subsequently, after a lapse of two years, the award has been passed in Award No.13 of 1986-1987. As such, the award has not been passed within two years as per law. Therefore, the acquisition proceeding has become lapsed. He further submits that the petitioner is an agriculturist and he and his family is depending upon the cultivation of his land for his livelihood. The petitioner was not aware of the Land Acquisition Proceedings. The petitioner made a representation on 11.01.2013 under Section 48-B of the Land Acquisition Act for re-conveyance of the land to him since the acquired lands are kept vacant. The respondents had not implemented the Neighbourhood Scheme for the past 25 years. As such, the original purpose was defeated. Further, the petitioner has not received any compensation for his land. Further, the respondents have taken a symbolic possession of the land, but not in actuality in terms of physical possession. Therefore, the petitioner is entitled to seek relief under Section 24(2) of the New Act 30 of 2013. The highly competent counsel has cited a judgment in Writ Appeal No.422 of 2011, etc., in which, the landowners have obtained remedy for re-conveyance and as such, the petitioner is entitled to receive similar remedy since the instant case is also similar in nature. The highly competent counsel has cited the following judgments in support of his contentions:-

(i) W.P.Nos.8497 and 8498 of 2000, (dated 12.08.2014)

"10. Considering these undisputed facts with regard to the possession of the land with the petitioners and in view of Section 24(2) of the Central Act 30 of 2013 and in view of the decision of the Hon'ble Supreme Court reported in (2014) 3 SCC 183 (Pune Municipal Corporation and another v. Harakchand Misirimal Solanki and others), which has been followed by the Division Bench of this Court in W.A.No.918 of 2010 dated 03.04.2014 (P.Jayadevan v. The State Government, rep. by its Secretary, to Government, Housing and Urban Development Department, Fort St. George, Chennai-9 and others), we are of the view that the petitioners are entitled to succeed in W.P.No.8498 of 2000 and the entire acquisition proceedings have to be declared as lapsed by virtue of introduction of Section 24(2) of the Land Acquisition Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013)."

(ii) W.A.No.2254 of 2001, dated 29.10.2014

"9. Since the lands in question belonging to the appellant have not been taken possession within 5 years, Section 24(2) of the Act would have application and therefore, Land Acquisition Proceedings initiated against the appellant herein shall be deemed to have been lapsed. That apart, in compliance of the judgment rendered by the Constitution Bench of the Hon'ble Supreme Court of India (cited supra), the Government has withdrawn the land acquisition proceedings in respect of some landowners in G.O.Ms.No.70, dated 01.03.2007 and the appellant herein has also submitted a representation for withdrawal of land acquisition proceedings and applying the Principle of Parity, he is also entitled for similar benefit, subject to the condition that if he has received any compensation, he shall be liable to remit the same to the Government.

10. In the result, this Writ Appeal is allowed and the order dated 30.07.1998 made in W.P.No.11697 of 1987 is set-aside and the second respondent is directed to re-convey the lands in S.Nos.218/1B, 218/1B, 218/2B and 219/1, totally admeasuring 10.21 acres situated in Potheri Village, Chengalpattu District, to the appellant subject to the condition that if the appellant has received the compensation in terms of the Award No.7/1986, dated 17.09.1986, he shall remit back the same within a period of six weeks from the date of receipt of a copy of this order and if not, the second respondent is directed to re-convey the above said lands to the appellant herein within a period of twelve weeks from the date of receipt of a copy of this order. No costs. If the official respondents are of the opinion that the lands in question are still required for public purpose, they may do so by invoking the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013."

10. The highly competent Additional Advocate General Mr.S.Gomathinayagam appearing for the first respondent submits that the first respondent had issued in G.O.Ms.No.371, dated 03.06.1981 for acquiring the petitioner's lands and neighbouring lands for implementing Neighbourhood Housing Scheme. Thereafter, the Land Acquisition Officer had conducted an enquiry as per Section 5A of the Old Act. Thereafter, a draft declaration was published in the Government Gazette. Subsequently, an award was passed and compensation amount had been deposited into the Sub Court, Salem and the same was communicated to the landowners.

11. The highly competent Additional Advocate General appearing for the first respondent further submits that the surrounding land owners have filed Court cases. Therefore, the Scheme

could not be implemented within a reasonable period. After disposal of all Court cases, now the Scheme will be carried out at the earliest. The Tamil Nadu Housing Board had sent an approval to the Salem Local Planning Authority, for which, the Board had passed a resolution dated 08.02.2013. The respondents have acquired 42.69 acres including the petitioner's lands for the purpose of constructing houses by the Tamil Nadu Housing Board for the general public. After passing the award, the acquired lands were taken over by the Land Acquisition Officer and in turn, the said land was handed over to the Tamil Nadu Housing Board. The Tamil Nadu Housing Board had secured approval from the Town and Country Planning Department for lay out of construction of 262 houses and flats, for which, the Tamil Nadu Government has provided a sum of Rs.3,834/- lakhs towards the construction work and this is the prevailing current position.

12. The highly competent Additional Advocate General appearing for the first respondent further added that the petitioner's land is absolutely necessary for implementing the scheme. The petitioner made a representation to the respondents and requested them for re-conveyance of his lands under Section 48-B of the Old Act. The highly competent Additional Advocate General further submits that if the requisitioning body, which did not use the land for the said purpose, only then, the petitioner is entitled to get relief. In the instant case, the Tamil Nadu Housing Board had secured approval from the Town and Country Planning Department for implementing the Neighbourhood Housing Scheme in the interest of the general public. The State Government has also provided adequate funds to execute the said purpose. Hence, the highly competent Additional Advocate General entreats the Court to dismiss the above writ petition.

13. The highly competent counsel Mr.R.V.Babu, appearing for the second and third respondents submits that the petitioner's lands and along with others lands have been acquired for the purpose of implementing the Neighbourhood Scheme. The said lands were acquired after strictly adhering to the Old Act and award was also passed. As such, there is no lapse on the side of the respondents for acquiring the said land for the general public. The highly competent counsel submits that the Land Acquisition Officer after acquiring the said land has handed over the same to the Tamil Nadu Housing Board. If the above writ petition is allowed, the respondents and the general public will be put into hardship. Besides, the balance of convenience / social justice rests on the side of the respondents. Therefore, the above writ petition is not maintainable. Hence, the highly competent counsel entreats the Court to dismiss the above writ petition.

14. Per contra, the highly competent counsel Mr.C.Prakasam appearing for the petitioner submits that the petitioner is still in possession and enjoying the said property by way of doing cultivation. The Land Acquisition Officer stated that the property

had been acquired and handed over the same on 09.11.1995. He further submits that there is no indication or signboard or fencing around the acquired land and there is no personal security arrangement at the site so it clearly proves that the physical possession of the acquired land is not made and the occupation is under the control of the Tamil Nadu Housing Board. Therefore, the petitioner is entitled to seek remedy under Section 24(2) of the New Act. Hence, the highly competent counsel appearing for the petitioner made a deep request to discharge the petitioner's land from the said so-called acquisition proceedings.

15. From the above discussion, this Court is of the view that:-

(i) The respondents had initiated Land Acquisition Proceedings under the Old Act for acquiring the petitioner's land for forming Neighbourhood Housing Scheme, in the year 1981 and the same was completed in the year 1986. Even after a lapse of 27 years, the said Housing Scheme has not been implemented. As such, the purpose for which, the Scheme was initiated had not been resolved.

(ii) There is no material evidence that the property had been handed over to the Tamil Nadu Housing Board by the Land Acquisition Officer. There is no iota of evidence, viz., sign board, fencing or watchman / security to show that the possession is with the Tamil Nadu Housing Board. Therefore, the possession handed over by the Land Acquisition Officer to the Tamil Nadu Housing Board is treated only on a symbolic possession and not in actuality in terms of physical possession. Besides, the compensation amount has not been paid to the landowners so far. Hence, the petitioner is also entitled to secure remedy under Section 24(2) of New Act 30 of 2013.

(iii) The Housing Schemes can be arranged anywhere, but the agricultural land tilled over the centuries cannot be replaced. Therefore, the small farmer / writ petitioner and his family who is depending upon the said lands for his livelihood through cultivation should not be disturbed.

(iv) As per the counter statement filed by the respondents, it is seen that the Tamil Nadu Government has sanctioned a huge amount i.e., Rs.3,834/- lakhs for the construction of 262 houses and flats, but this is only at Planning stage and not materialized. Under the circumstances, considering the current prevailing position, if the acquired land is re-conveyed to the petitioner, the respondents will not be prejudiced, since the acquired land is lying vacant. The general public will not be affected since alternative sites especially, un-cultivable lands are available for implementing the housing scheme elsewhere. Therefore, the balance of convenience / social justice rests on the side of the petitioner since the cultivation is also of paramount importance to the general public.

16. On considering the facts and circumstances of the case and arguments advanced by the learned counsels on either side and this Court's view mentioned above (i) to (iv) and on perusing the typed set of papers, the above writ petition is allowed. Consequently, the impugned order passed by the third respondent in his Letter No.Ni.A.1/7337/79, dated 25.02.2013 is quashed. Consequently, this Court directs the respondents to re-convey the petitioner's land comprised in S.No.83/3, Ayyamperumalpatti Village, Salem Taluk & District to an extent of 0.93 acres to the petitioner within a period of three months from the date of receipts of a copy of this order.

17. In the result, the writ petition is allowed. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

r n s

-s/d-
Assistant Registrar(CO)
Dt:23/1/2015

True Copy

Sub-Assistant Registrar

To

1. The Secretary to Government,
Housing and Urban Development Department,
For St.George, Chennai - 600 009.
2. The Managing Director,
Tamil Nadu Housing Board,
Nandanam, Anna Salai, Chennai-35.
3. The Executive Engineer / Administrative Officer,
Tamil Nadu Housing Board, Salem Housing Unit,
Salem - 636 008.

+ 2 ccs to Mr.C.Prakasam, Advocate SR 244 (vidw WP 6118/13)

+ 1 cc to Mr.R.V.Babu, Advocate SR 309

+ 1 cc to the Government Pleader High Court, Madras SR 132 (Vide
WP.6118/13)

jsv(co)
prk23/1

W.P.No.6120 of 2013 &
M.P.Nos.1 and 2 of 2013 &
M.P.No.1 of 2014