

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.8746 of 2013
and
M.P.Nos.1 of 2013 & 1 of 2014

M.Pavalakodi ... Petitioner

vs.

1.The Secretary to Government
Housing and Urban Development
Department
Fort 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 filed under Article 226 of the Constitution of India for a writ of certiorarified mandamus to call for the records relating to the impugned order passed by the third respondent in his letter No.LA1/7337/79, dated 08.03.2013 and quash the same and consequently direct the respondents to reconvey the petitioner's land situated in S.Nos.68/3 & 6, Ayyamperumalpatti Village, Salem Taluk & District to the extent of 1.83 Acres of land to the petitioner.

For Petitioner : Mr.C.Prakasam

For Respondents : Mr.S.Gomathinayagam
Addl.Advocate General
assisted by Mr.M.S.Ramesh
Addl.Govt. Pleader for R1
Mr.R.V.Babu, H.B., for R2 & R3

* * * * *

O R D E R

Reserved on : 12.12.2014

Pronounced on: 05.01.2015

The prayer in the writ petition is for issuance of a writ of certiorarified mandamus to quash the impugned order, dated 08.03.2013, passed by the third respondent and consequently to direct the respondents to reconvey the petitioner's land, comprised in S.Nos.68/3 & 6 of Ayyamperumalpatti Village, Salem Taluk & District, measuring an extent of 1.83 Acres to the petitioner.

The short facts of the case are as follows:

2. The petitioner submits that she is having own land comprised in Survey Nos.68/3 & 6, Ayyamperumalpatti Village, Salem Taluk and District. In the year 1981, the Tamil Nadu Government acquired her land to the extent of 1.83 Acres for the purpose of implementing the Housing Scheme i.e., construction of houses by the Tamil Nadu Housing Board and in this connection the Government issued a 4(1) notification vide G.O.Ms.No.455, Housing and Urban Development Department, dated 23.06.1981, after that under Section 6 of the Land Acquisition Act, a declaration was published vide G.O.Ms.No.538, Housing and Urban Development Department, dated 07.07.1984, but subsequently after a lapse of two years the award has been passed on 23.09.1986 in Award No.07 of 1986-1987.

3. Further, she submits that after acquisition of her land during 1981, the Housing Board not at all implemented any scheme for construction of houses in her land and till today she is in possession of the said land. Since she is an agriculturist, she is not fully aware the land acquisition proceedings as well as the provisions of the Land Acquisition Act and after consulting law knowing persons she came to understand that she should ask for re-conveyance and she should made written representation under Section 48-B of the Land Acquisition Act instead of sending written

representation for exclusion of her land from Land Acquisition Proceedings.

4. The petitioner further submits that she came to understand that the Honourable Supreme Court and this Court were 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 is not implemented the housing scheme for more than 15 to 20 years, then the land owners can entitle to get the relief under the provisions of the Land Acquisition Act specifically under Section 48-B of the Land Acquisition Act.

5. Further, she submits that the respondents may aware that this Court was pleased to pass an Order in a batch of writ appeals in W.A.Nos.422 of 2011 etc., dated 14.09.2011 with regard to re-conveyance of land, wherein it is observed that:

"It is seen that these 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 spent 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 or reconveyance. Another batch of cases were filed during 1996 in W.P.Nos.9747 to 9749 of 1996, challenging the notification issued under Sec.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, TN MANU/TN/0526/2020 was allowed and the notification was quashed. In Chinnayyagounder v. 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.Muraisamy 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 the Court. In Tmt.Leelavathi vs. State of Tamil Nadu, reported in MANU/TN/0586/2008 and in Dhandapani and another v. State of Tamil Nadu, 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, TN MANU/TN/0526/2010, Chinnayyagounder v. State of Tamil Nadu, 2003 (2) MLJ 481, Arumuga Gounder vs. State of Tamil Nadu, reported in MANU/TN7522/2006, 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, 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 that 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 2011, dated 16.08.2011 (2011) 5 CTC 503, were disposed in favour of the land owners and yet another Judgment delivered by the Division Bench of this Court by citing the Supreme Court Judgment made in the case of Hariram vs. State of Haryana (2010) 2 CTC 336, regarding with 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 it was acquired for a very long time then the land owners are entitled to get an order from the Government for re-conveying their land."

6. The petitioner further submits that in the said circumstances, she made a request before the first respondent to pass order under Section 48-B of Land Acquisition Act for re-conveying her land situated in Survey Nos.68/3 & 6, Ayyamperumalpatti Village, Salem Taluk and District, to the extent of 1.83 Acres of land to her. In this connection, she made a written representation on 21.01.2013 in that written representation, she expressed her 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 do not have any power or jurisdiction to reject the petitioner's request as per Section 48-B of the Land Acquisition Act only the Government alone i.e., the first respondent having power to pass orders under Section 48-B of the Land Acquisition Act. But, now the third respondent passed the impugned order in his Letter No.LA.1/7337/79, dated 08.03.2013, whereby rejecting her

request for re-conveyance of the said land. Hence, this writ petition has been filed.

7. The third respondent Executive Engineer and Administrative Officer, Tamil Nadu Housing Board has filed a counter statement and resisted the writ petition. He submits that the Tamil Nadu Housing Board, Salem Housing Unit proposed for Housing Scheme in S.No.68/3 etc., measuring an extent of 29.36 Acres including the petition mentioned land in Survey Nos.68/3 & 6 in Ayyamperumalpatti Village, Salem Taluk and Salem District. The notification under Section 4 (1) of the Land Acquisition Act, 1894 was approved in G.O.Ms.No.455, Housing and Urban Development Department, dated 23.06.1981. The draft declaration under Section 6 of the Land Acquisition Act was approved in G.O.Ms.No.538, Housing and Urban Development Department, dated 07.07.1984. After completion of land acquisition proceedings, the award was passed by the Land Acquisition Special Tahsildar, Salem in Award No.7/1986-1987, dated 23.09.1986. As per the award, the land is registered in the name of Karuppan Chetti @ Palniyappa Gounder, P.Muthusami, V.Manickam, Pavalakodi and the award amount of Rs.84,752.85 and Rs.59,508.30 has been deposited by the Land Acquisition Officer under Sections 30 and 31(2) of the Land Acquisition Act to the Sub-Court, Salem, for the lands in Survey Nos.68/3 and 68/6 respectively.

8. He further submits that after passing the award, the acquired lands in Survey Nos. 68/3 and 68/6 and some other acquired landed possession were taken over by the Land Acquisition Special Tahsildar and handed over to the Tamil Nadu Housing Board, Salem Housing Unit, on 19.11.1986. After taking possession of the acquired lands, Patta was also transferred by the Revenue Authorities in the name of Tamil Nadu Housing Board, Salem Housing Unit, under Patta No.446. The petitioner filed W.P.No.1488 of 1987 before this Court challenging the acquisition proceedings and the same was dismissed.

9. Further, he submits that the petitioner is fully aware of the land acquisition proceedings as she had requested for reconveyance of the acquired lands. The Land Acquisition Officer passed the award vide Award No.7/86-87, dated 23.09.1986 and the possession of the acquired lands were taken over on 19.11.1986 and mutation of revenue records also in the name of Tamil Nadu Housing Board, Salem Housing Unit. The possession of the land has already been taken and Housing Scheme will be processed along with adjacent land in Survey No.82/6 shortly. The preparation of layout is under process. Therefore, the lands in Survey Nos. 68/3 and 68/6 are essentially required for formation of Comprehensive Housing Scheme. The petitioner had given a representation on 21.01.2013 requesting

re-conveyance of the acquired lands in Survey Nos.68/3 and 68/6. The requisition was rejected by the first respondent. The allegation of the petitioner that the third respondent rejected the petitioner's representation is false. The first respondent is the superior of the third respondent, who rejected the petitioner's representation and the same was communicated to her as these acquired lands are essentially required for implementing the Comprehensive Housing Scheme by the Tamil Nadu Housing Board, in these circumstances re-conveyance of the above said lands is not possible.

10. The third respondent further submits that the Hon'ble Supreme Court in Tamil Nadu Housing Board v. Keeravaniammal, (CTC) 447 SC, held that the Land Acquisition Act, 1894 under Section 48-B where Award has been passed and possession has been taken, the compensation payable under the award has been deposited. The request of the petitioner to reconvey the land is not considered favourably and rejected. No writ petition is filed challenging the rejection of the representation to re-convey the land and no prayer of writ of certiorari to quash such rejection. Such order of rejection become final. Further, it has been held that Section 48-B was introduced into the act only in the State of Tamil Nadu as an exception and such provision has to be strictly construed accordingly and strict compliance with it's terms should be insisted upon.

11. He further submits that in Mohammed Ibrahim vs. Annavasal Panchayat Union, rep.by it's Chairman Annavasal and others, 2012 (2) CTC 389, this Court has 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 the purpose for which it was acquired. Thus, invocation of Section 48-B of the Act for re-conveyance of land would not arise in this situation.

12. Further, he submits that in S.Balasubramaniam v. Secretary to Government and another, reported in 2012 (4) CTC 510, this Court has 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's, 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. The 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 reconveyance 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 reconveyance 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."

13. Further, he submits that the ex-land owner had given representation under Section 48(B) of the Land Acquisition Act, 1894 on 21.01.2013 and the same was rejected by the first respondent on 17.05.2013, on the ground that the land is essentially required for Comprehensive Housing Scheme.

14. The highly competent counsel Mr.C.Prakasam appearing for the petitioner submits that the respondents had issued a notification in the year 1981 for acquiring the petitioner's land to an extent of 1.83 Acres for the purpose of a Neighbourhood Scheme. After notification, a declaration was published on 07.07.1984 i.e., after a lapse of two years and Award has been passed on 23.09.1986. As such, the third respondent has committed a lapse for acquiring the said land. As on date the acquired lands are still vacant, hence the petitioner made a representation to the respondents under Section 48-B of the Land Acquisition Act, 1894 for reconveyance of the land in the name of the petitioner, the same was rejected stating that the preparation of layout is under process and the acquired land is essentially required for formation of Comprehensive Housing Scheme.

15. The very competent counsel further submits that the land had been acquired in the year 1984 and after acquiring the said land the housing scheme had not been implemented, as such the respondents' proposal has been defeated. Further, the petitioner filed a writ petition before this Court to consider her representation, dated 21.01.2013, and the same was considered by this Court and directed the respondents 1 and 2 to consider the petitioner's representation on merits. However, the said representation has not been disposed by the respondents 1 and 2 on merits, after prior notice to the petitioner, as such, the impugned order passed by the third respondent is not suitable since it is found inappropriate.

16. The highly competent counsel, in support of his contention, has placed reliance upon the Judgment passed by the Hon'ble Division Bench of this Court, dated 29.10.2014, in W.A.No.2254 of 2001, Varadaraja Naicker v. The Special Tahsildar (Land Acquisition) and another and Order of this Court, dated 27.06.2014, W.P.No.10010 of 2014, B.Rukmani and others v. The Member Secretary, C.M.D.A., and another.

17. In W.A.No.2254 of 2001, Varadaraja Naicker v. The Special Tahsildar (Land Acquisition) and another, the Hon'ble Division Bench of this Court has observed as follows:

"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 had 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 reconvey 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 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."

18. In W.P.No.10010 of 2014, B.Rukmani and others v. The Member Secretary, C.M.D.A., and another, this Court has observed as follows:

"12.The ratio decidendi laid down by the Hon'ble Apex Court followed by the Division Bench as stated supra is squarely applicable to the facts of the present case, wherein also, the compensation which is not received by the land owners, is deposited in the Revenue account and is not equated to "paid to the land owners or persons interested". In the present case, the award, having been passed before 20 years prior to new Act and the possession having not been taken and compensation amount having not been deposited in the court concerned, the acquisition proceedings initiated in respect of the land in question is deemed to have lapsed."

Hence, the learned counsel prays this Court to allow this writ petition.

19. The highly competent Additional Advocate General submits that the subject landed property had been acquired after observing necessary legal formalities as per the old Act. The initial notification had been issued in the year 1981 and a draft declaration was published under Section 6 of the Land Acquisition Act, on 07.07.1984 and thereafter the award No.7/1986-1987, dated

23.09.1986, was passed. At the time of initiating acquisition proceedings, the subject land was registered in the name of Karuppan Chetti @ Palniyappa Gounder, P.Muthusami, V.Manickam and Pavalakodi. The award amount of Rs.84,752,85 and Rs.59,508.30 have been deposited by the Land Acquisition Officer under Section 30 of the Act to the Sub-Court, Salem.

20. The very competent Additional Advocate General additionally submits that the acquired lands were handed over to the Tamil Nadu Housing Board by the Special Tahsildar/Land Acquisition Officer. Therefore, all the records have been mutated in the name of Tamil Nadu Housing Board. The very same petitioner has filed a writ petition before this Court on an earlier occasion and the same was dismissed on merits. Further, the preparation of the layout is under process for implementing the Comprehensive Housing Scheme. Under such circumstances, the petitioner made a representation before the respondents for re-conveyance of the acquired land and the same was rejected after assigning valid reasons.

21. Further, the compensation amount had been deposited before the Sub Court, Salem and the same was intimated to the petitioner herein. The acquired landed property is absolutely required for the formation of Comprehensive Housing Scheme at Salem. The Patta also transferred in the name of Housing Board. The petitioner made a representation as an after-thought, hence the learned Additional Advocate General entreats the Court to dismiss the writ petition. Since there is no lapse or shortcoming or lacuna for acquiring the said land under the old Act, the neighbourhood housing scheme is of paramount importance.

22. Per contra, the highly competent counsel Mr.C.Prakasam submits that the acquisition proceedings had been initiated by the Land Acquisition Officer in the name of the erst-while owner and not in the name of the petitioner. Further, the compensation amount was not paid to the petitioner besides the petitioner is in possession and enjoyment of the said property. The respondents sofar have not implemented the said housing scheme. The draft declaration was issued in the year 1984 and the award was passed in the year 1986. After a lapse of 28 years, the neighbourhood scheme has not been implemented, as such the petitioner's land is not absolutely required for the said purpose. Further, the petitioner is in possession and enjoyment of the said property. The Land Acquisition Officer had handed over the land only symbolically. As such the entire proceedings for acquiring the said lands acquires the state of lapsing.

23. From the above discussions, this Court is of the opinion that:

- (i) The third respondent had acquired the said land in the year 1984 after necessary notification, dated 07.07.1984. The award was passed on 23.09.1986 in award No.07 of 1986-1987 ie., after a lapse of two years, as such the Land Acquisition Officer had not strictly adhered to the land acquisition proceedings as per the old Act. Therefore, there is a lapse on the side of the respondents.
- (ii) The award amount had been deposited in the name of the erstwhile owner, but not to the present owner namely the petitioner herein as such the land acquisition proceedings is not properly followed.
- (iii) The 4(1) notification was issued in the year 1981 and declaration under Section 6 of the Land Acquisition Act was published in the year 1984 and award was passed in the year 1986 and possession was taken over in the year 1986. As on date the Comprehensive Housing Scheme has not been implemented, as such there is a huge delay i.e., about 28 years for implementing the scheme and the acquired land is still vacant. Under such circumstances, the acquired land if re-conveyed to the petitioner, the respondents will not be prejudiced or put into hardship or any other irreparable loss, since the compensation amount is lying in the Court custody.

24. Considering the facts and circumstances of the case and arguments advanced by the learned counsels on either side and on perusing the typed set papers of both parties and the views (i) to (iii) mentioned above, this writ petition is allowed and the impugned order, dated 08.03.2013, passed by the third respondent is quashed. Further, this Court directs the respondents to reconvey the petitioner's land situated in Survey Nos.68/3 and 68/6, Ayyamperumalpatti Village, Salem Taluk & District to the extent of 1.83 Acres of land to the petitioner. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

krk

To:

1.The Secretary to Government,
Housing and Urban Development
Department,
Fort 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.

+1cc to Mr.C.Prakasam, Advocate Sr 133

+1cc to Mr.R.V.Babu, Advocate Sr 311

+1cc to Govt. Pleader Sr 256

BVR(CO)
km/30.1.

W.P.No.8746 of 2013

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