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W.P. No.18367/2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
25.10.2025	12.11.2025

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

**W.P. NO.18367 OF 2022
AND
W.M.P. NO. 17719 OF 2022**

Mrs.Parameswari

.. Petitioner

- Vs -

1. The State of Tamil Nadu
Rep. By the Secretary to Government
Housing & Urban Development Dept.
Fort St. George, Chennai 600 009.
2. The Tamil Nadu Housing Board
Rep. By its Managing Director
Nandanam, Chennai 600 035.
3. The Manager (Marketing & Service)
Tamil Nadu Housing Board
Besant Nagar Division No.48
Dr.Muthulakshmi Salai, Adyar
Chennai 600 020.
4. The Executive Engineer &
Administrative Officer
Tamil Nadu Housing Board



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Besant Nagar Division No.48
Dr.Muthulakshmi Salai, Adyar
Chennai 600 020.

5. Sri Ramachandra Education & Health Trust
Rep. By its Managing Trustee
No.25, Sir C.V.Raman Road, Alwarpet
Chennai 600 018.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records relating to the impugned orders in G.O. Ms. No.208 dated 12.06.1998 passed by the 1st respondent and Board Proceeding of the Tamil Nadu Housing Board, 2nd respondent dated 01.07.2014 and consequential sale deed dated 16.07.2014 vide Doc. No.7806 of 2014 registered on the file of Sub Registrar, Chennai South Joint-I and impugned letter No.HS/4067/1987 of the 4th respondent dated 22.07.2022 insofar as the petitioner share of 10254 sq.ft. out of 0.94 acres in S. No.102/2 quash the same and direct the 4th respondent to convey my share of 10254 sq.ft. out of 0.94 acres of land in S. No.102/2, Thiruvanmiyur Village in terms of Section 72 of Tamil Nadu State Housing Board Act, 1961.

For Petitioner : Mr. C.Selvaraj, for
M/s. D.Prabhu Mukunth
Arun Kumar



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For Respondents : Mr. M.Rajendran, AGP for R-1
Mr.D.Veerasekaran for RR-2 to 4
Mr. N.L.Rajah, SC &
Mr. T.Gowthaman, SC for
M/s.BFS Legal for R-5

ORDER

The action of the 2nd respondent in alienating the property by means of sale to the 5th respondent on the basis of the approval granted by the 1st respondent citing the said sale as being for public purpose is put in issue before this Court through the present petition.

2. It is the averment of the petitioner that the property comprised in S. No.102/2 to an extent of 0.94 cents at No.140, Thiruvanmiyur Village was allotted to the ancestors of the petitioner through a family partition, which thereafter devolved on the petitioner in and by which she was entitled to 1/5th share.

3. It is the further averment of the petitioner that the Tamil Nadu Housing Board (for short 'the Board') sought acquisition of an area of 96.92 acres of land comprised in various survey numbers for the purpose of developing the Besant Nagar Phase II Scheme and, accordingly, G.O. Ms. No.1096 dated 17.07.1978 was



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issued u/s 4 (1) of the Land Acquisition Act, 1894, which was published in the official gazette on 9.8.1978, in which the lands in S. No.102/2 was included in Schedule I of the notification.

4. It is the further averment of the petitioner that after the issuance of the notification, persons connected with the 5th respondent manoeuvred to acquire the lands secretly and by illegal means in violation of the provisions of the Land Acquisition Act. Sale deeds in favour of 12 persons, vide Doc. Nos.1613 to 1619 of 1981 dated 17.6.1981 and Doc. Nos.1620 to 1624 of 1981 dated 19.06.1981 were registered on the file of the Sub Registrar, Saidapet, which was at the behest of the 5th respondent, which would be evident from the settlement/gift deeds executed by 9 persons vide Doc. Nos.2033, 2036, 2093, 2094, 2100, 2101, 2102, 2265 and 2437 of 1995 and three sale deeds in Doc. Nos.2435, 2436 and 2439 of 1995 were registered on the file of the Sub Registrar, Saidapet, in favour of the 5th respondent measuring an extent of 0.94 cents in S. No.102/2. It is the further averment of the petitioner that the manner in which the aforesaid documents of the year 1981 and 1995 were executed would clearly reveal the manner in which the 5th respondent had obtained the property, which is with a pre-determined



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motive to get the property through the Tamil Nadu Housing Board by fraudulent means in violation of the provisions of the Land Acquisition Act and the Tamil Nadu State Housing Board Act.

5. It is the further averment of the petitioner that on the date when the documents dated 17.6.1981 and 19.6.1981 were executed, the petitioner was only 15 years old, though she was shown as one of the vendors, but the petitioner did not execute any document nor was a party to any registered documents.

6. It is the further averment of the petitioner that during the subsistence of Section 4 (1) notification, the mother of the petitioner, viz., Nalini, died on 27.6.1979 and her four children, being the legal heirs were entitled to 1/4th share in S. No.102/2. After the death of the petitioner's mother, the elder brother of the petitioner, during the subsistence of the land acquisition proceedings, had sold the land, without the authorisation of the petitioner, as on the said date of sale, the petitioner was only aged 15 years and the sale deeds in respect of 10254 sq.ft. of land, which fell to the share of the petitioner, was fraudulently sold under the sale deeds in Doc. Nos.1613 to 1619 of 1981 dated 17.6.1981 and Doc. Nos.1620



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to 1624 of 1981 dated 19.6.1981. It is the further case of the petitioner that she obtained the age proof document only on 20.01.2021 and further avers that the signature in the sale deed is not her signature.

7. It is the further case of the petitioner that G.O. No.667 dated 6.8.1981 had come to be published in the official gazette on 8.8.1981 in which certain lands were dropped from the land acquisition proceedings and Section 6 Declaration was issued in respect of the lands in S. No.102/2 under Schedule I of the Declaration. Subsequently, award was passed in Award No.3/1986 dated 23.9.1986 which covers 0.94 acres of land in S. No.102/2 along with land in other survey numbers.

8. It is the further case of the petitioner that the 4th respondent, in his reply dated 22.7.2021 had stated that the land in S. No.102/2 stood in the name of Nalini, Nageswaran and Krishnan under Patta No.1393 and further had stated, contrary to the Land Acquisition Act and the Tamil Nadu Housing Board Act, 1961, that compensation had been given to the persons who had purchased the lands



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during the subsistence of the acquisition and, thereafter, the land was also handed over to the Tamil Nadu Housing Board on 28.10.1986.

9. It is the further averment of the petitioner that much after the award was passed, the 5th respondent surreptitiously obtained settlement deeds in vide Doc. Nos.2033, 2036, 2093, 2094, 2100, 2101, 2102, 2265 and 2437 of 1995 and three sale deeds in Doc. Nos.2435, 2436 and 2439 of 1995 were registered on the file of the Sub Registrar, Saidapet, measuring an extent of 0.94 cents in S. No.102/2 and the 5th respondent had also managed to get the documents in their name to the extent of 7.44 acres of land.

10. It is the further case of the petitioner that the Trustee of the 5th respondent Trust, viz., Mr.N.P.V.Ramasamy Udaiyar, through an undated letter, sought for exemption of lands, which had been obtained by the Trust after issuance of Section 4 (1) Notification in which award was already passed in respect of an extent of 7.99 acres and the Principal Secretary to Government, Housing & Urban Development Department, with scant regard to the provisions of the Land Acquisition Act and the Tamil Nadu State Housing Board Act issued a letter



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exempting the lands belonging to the 5th respondent in S. Nos.78/7, 78/8 and other survey numbers measuring about 8.94 acres.

11. Thereafter, the Government, vide G.O. Ms. No.208, Housing & Urban Development dated 12.6.1998 issued orders to allot land measuring an extent of 7.44 acres comprised in S. Nos.78/7, 78/8, 78/9, 78/10, 78/11, 78/13, 78/14, 86/1, 86/2, 86/3, 102/2, 102/5, 103/6, 103/7, 103/8 and 103/9 of Thiruvanmiyur Village on collection of land cost as per the rules and regulations of the Board to the 5th respondent.

12. The 5th respondent requested the Government to allot the lands and was willing to pay the land cost as ordered by the Government in its letter dated 15.10.1998. Thereafter, the Board, based on Board Resolution No.9.10 dated 1.7.2014, decided to sell the lands to an extent of 7.44 acres to the 5th respondent and sale deed to this end was executed by the 4th respondent in favour of the 5th respondent for a total sale consideration of Rs.33,46,79,000/- vide Doc. No.7806 of 2014 on the file of Sub Registrar, Chennai South Joint-I dated 16.7.2014.



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13. It is the further averment of the petitioner that on the lands, which are alleged to have been allotted for public purpose, the 5th respondent has built a Kalyana Mandapam and using it as a revenue generating project, wherein only the cream of the society conduct marriages.

14. In this backdrop, it is the averment of the petitioner that the allotment of the lands to the 5th respondent pertaining to S. No.102/2 is not only based on void documents, but also void as per the Land Acquisition Act and if at all the Board wanted to dispose of the land u/s 72 of the Tamil Nadu State Housing Board Act, the procedure contemplated under the said Act ought to have been followed which has not been followed and, therefore, the entire transaction is vitiated by fraud, collusion to benefit the 5th respondent.

15. It is the further averment of the petitioner that to the representation of the petitioner dated 27.4.2021, the 4th respondent, vide its reply dated 22.7.2021, had stated that there was a sale during the subsistence of Section 4 (1) notification and, therefore, the award amount was settled to the subsequent purchasers, which is contrary to the provisions of the Land Acquisition Act and the



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Housing Board Act and further the letter of the 4th respondent itself reveals that there is an admission of fraud and collusion between the Board, the Government and the 5th respondent. Therefore, left with no other efficacious remedy, the present writ petition has been filed for the relief supra.

16. Learned counsel appearing for the petitioner submitted that G.O. Ms. No.208 dated 12.6.1998 passed by the 1st respondent and the consequential Board Proceedings of the Board dated 1.7.2014 and the consequential sale deed dated 16.7.2014 entered into between the 4th respondent and the 5th respondent are vitiated by fraud and collusion and is contrary to the provisions of the Land Acquisition Act and the Housing Board Act.

17. It is the further submission of the learned counsel that once the lands are acquired and vests with the Board, parting with the same can be done only in conformity with Section 72 of the Housing Board Act and any disposal of the land not in conformity with the provisions of the Housing Board Act is void ab initio and the entire transaction has been secretly done only to the detriment of the general public and playing upon a fraud on the original owner.



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18. It is the further submission of the learned counsel that the sale deed entered into by selling the property belonging to the share of the petitioner is impermissible, as the petitioner was aged only 15 years on the date of the said sale and, therefore, the sale could not have been concluded. Further, the signature of the petitioner in the sale is a forged signature and, therefore, the sale deed itself is void.

19. It is the further submission of the learned counsel that the fraud and collusion in acquiring the property to a vast extent and releasing a portion of the property by the Board would clearly indicate that the public purpose, which has been spelt out in the acquisition is only to shield the true purpose of the acquisition, to wit the release of lands at a paltry sum to the 5th respondent herein.

20. It is the further submission of the learned counsel that the 5th respondent has entered into sale, pending Section 4 (1) notification only in respect of a meagre portion of the property and through third parties, the lands of the



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petitioner and her family members have been purchased pending the Section 4 (1) notification and, thereafter, after a period of time, the said lands have been parted by the said purchasers in favour of the 5th respondent through settlement deeds, which itself clearly shows that the acquisition of lands are not for a public purpose, even at the first instance, but only a shield at the initial point of time, so as to give the property to the 5th respondent under a collusive act at a later point of time.

21. It is the further submission of the learned counsel that the settlement deed, in all 9 of the 12 transactions, of which three alone are sale deeds, executed by the settlor would clearly reveal that the settlor has only acted at the behest of the 5th respondent for the benefit of the 5th respondent by purchasing the lands, which have been later settled to the 5th respondent, in which settlement it is claimed that the lands have been settled in favour of the 5th respondent in view of the charitable activities in the form of health care provided by the 5th respondent.

22. In this regard, it is the submission of the learned counsel that though the properties, initially settled in favour of the 5th respondent, which has later



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been given to the 5th respondent by the Board under the guise of public purpose, has been put to use only as a Kalyana Mandapam, which is not a charitable activity, but the said Kalyana Mandapam is a revenue generating activity, which is utilised by the creamy layer in the society to conduct marriages and other activities.

23. It is the further submission of the learned counsel that even according to the sale deed entered into between the 4th and 5th respondents, there is a specific imposition on the purchaser that the property, which is conveyed shall be used only for the purpose for which it is allotted, viz., public purpose/institutional use zone. However, the lands have been put to use for commercial purpose under the guise of a public utility, which is *per se* impermissible.

24. It is the further submission of the learned counsel that even the very settlement and subsequent sale of the property in favour of the 5th respondent would clearly establish that the acquisition is nothing but a land scam enacted by the Board to the benefit of the 5th respondent. Further, the representation submitted by the petitioner in this regard has been replied that the Government



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has granted sanction to part with the lands, though the Government u/s 16-B and 48-B of the Land Acquisition Act does not have power to sell the property, but could only use the property for any other public purpose or else put the property on public auction and if it is not required otherwise, the same could be given back to the original owner of payment of land cost. However, without there being any public purpose involved in the utilisation of the land by the 5th respondent, under the guise of public purpose, the lands have been parted with by the 4th respondent in favour of the 5th respondent, which could not be done, as at best, the said property could only be put on public auction if the Government was not inclined to give back the same to the original owner. This clearly shows that there has been a fraud and collusion between the respondents so as to usurp the properties of the petitioner under the guise of acquisition.

25. It is the further submission of the learned counsel that the act of the 2nd and 4th respondents in selling the property acquired to the 5th respondent is a clear act of breach of trust imposed which attracts the invocation of Section 409 IPC.



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26. In support of the aforesaid contentions, learned counsel placed reliance on the following decisions :-

- i) *R.Shanmugam & Ors. – Vs – State of Tamil Nadu & Ors. (2006 (4) CTC 290);*
- ii) *Shiv Kumar & Anr. – Vs – Union of India & Ors. (2019 (10) SCC 229; and*
- iii) *Mannalal Khetan & Ors. – Vs – Kedar Nath Khetan & Ors. (1977 (2) SCC 424)*

27. Per contra the respective learned senior counsel appearing for the 5th respondent submitted that the writ petition is based wholly on assumptions and surmises and there is no element of arbitrariness or jurisdictional error or perversity involved and no legal ground has been made out to challenge the G.O. under which the subject property was sold to the 5th respondent.

28. The first and foremost contention advanced by the learned senior counsel for the 5th respondent is that the petitioner has no *locus standi* to file the present petition. It is the submission of the learned senior counsel that pending the Section 4 (1) notification, the property was sold by the petitioner and other siblings of the petitioner to third parties, viz., Haneefa and 11 others and the



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petitioner having not challenged the said transactions, is trying to utilise the writ jurisdiction of this court to get a back door entry.

29. It is the further submission of the learned senior counsel that the petitioner claims her age to be 15 years at the time when the sale transaction was entered into, however, no material has been placed to prove the same but for a certificate obtained in the year 2021 and further the petitioner has not taken any steps to challenge the sale deed claiming her age as 15 when the sale deed was executed and in the absence of any challenge to the said sale deed, the petitioner cannot have any *locus* to challenge the sale made by the 4th respondent in favour of the 5th respondent.

30. It is the further submission of the learned senior counsel that the initial sale had taken place in the year 1981, almost 45 years back and the said sale has not been challenged till date before the appropriate civil forum; rather, by means of the present writ petition, the petitioner is trying to adjudicate her right to the property before this Court, which cannot be done in the present petition.



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31. It is the further submission of the learned senior counsel that the plea of the petitioner is hit by the law of limitation. It is the contention of the learned senior counsel that even if the claim of the petitioner that she was only 15 years at the time of execution of the sale deed in the year 1981, she having turned 18 years in the year 1984 ought to have challenged the sale deed at the latest by 1987 and having not challenged the said sale deeds, having kept silent for 20 years, the petitioner cannot seek to achieve what she has not done by invoking the writ jurisdiction of this Court and her act is hit by severe delay and laches.

32. It is the further submission of the learned senior counsel that the petitioner cannot claim herself to be a person affected or that there was any breach of statutory or legal right, which has forced the petitioner to file the present writ petition. Unless the petitioner shows breach of a statutory or a legal right, the petitioner cannot maintain a writ petition to enforce a right, which is not available to the petitioner as a matter of legal right or a statutory right.

33. It is the further submission of the learned senior counsel that the petitioner having sold her share of the property to Mr.Haneefa and 11 others, the



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petitioner has lost her right to question any proceedings including the acquisition of land done by the 2nd respondent in respect of the property comprised in S. No.102/2 admeasuring Acre 0.94 cents. If at all any claim/disputes to be raised, the same can be raised by the previous owners of the property, viz., M.Haneefa and 11 others and not by the petitioner as the subsequent purchaser alone has the right to question the acquisition of S. No.102/2.

34. It is the further submission of the learned senior counsel that the writ petition has been filed almost four decades after the Section 4 (1) notification and the petitioner has not explained the delay in a satisfactory manner and on the ground of inordinate and unexplained delay, the writ petition deserves to be dismissed for delay and laches.

35. It is the further submission of the learned senior counsel that the petitioner is not the owner of the land before Section 6 Declaration was issued, she having parted with the said land by way of sale in the interregnum period between the Section 4 (1) Notification and Section 6 Declaration. It is the submission of the learned senior counsel that without admitting that even if the



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land is to be reconveyed u/s 48-B of the Land Acquisition Act, it could only be reconveyed back to the owner, viz., M.Haneefa and 11 others and not to the petitioner and her family members as on the date when Section 6 Declaration was issued, M.Haneefa and 11 others were the holders of title to the property.

36. It is the further submission of the learned senior counsel that once the land is acquired by the Government, the land owner becomes *persona non grata* as the lands vests with the Government and, thereafter, the State cannot be divested and as the owner, the State even has the right to change the user u/s 48-B of the Act, which has been introduced into the statute.

37. It is the submission of the learned senior counsel that though vast extent of lands were acquired for the development of Tiruvanmiyur Housing Board Scheme, after development, since the portion of the lands acquired were no longer required for the said public purpose, the lands stood vested with the State and the 5th respondent, which is established solely to serve the public, had applied for conveying the lands to the Trust to utilise the said land for a different public purpose. In the backdrop of the requirement, the Government had



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identified a different public purpose and had permitted the Board to part with the lands by way of sale by invoking the power u/s 48-B of the Land Acquisition Act, which cannot be said to be erroneous or perverse.

38. It is the further submission of the learned senior counsel that the legislative intent behind the enactment of Section 48-B of the Land Acquisition Act, 1894, is only to provide a level playing field between the acquisition for the purpose of Housing Board and for other acquisition. From the ratio laid down in a catena of judgments, it could easily be inferred that the true test for the application of Section 48-B is only to see if the land is required for the purpose for which it was acquired or for any other public purpose and in the light of the utilisation of land by the Government through G.O. Ms. No.208, to be used for a different public purpose, the same is well within the ambit of Section 48-B and, therefore, the writ petition deserves to be dismissed, moreso, the petitioner has no *locus standi* to question the transfer.

39. It is the further submission of the learned senior counsel that it is not the case of the petitioner that the land was not utilised by the State nor the said



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land was not utilised for a different public purpose. The lands in S. No.102/2 is being used for a public purpose by the 5th respondent for over 12 years and the greater public are benefitted from the service rendered by the 5th respondent. As on date, Haneefa and 11 others have not questioned the land being used for a different purpose and the petitioner not being a person aggrieved, is not entitled to question the impugned order.

40. It is the further submission of the learned senior counsel that the stand of the petitioner that the sale has not been done by the Board in conformity with Section 72 of the Housing Board Act is grossly erroneous, as clause (b) of sub-section (2) of Section 72 of the Housing Board Act provides that whenever the Board decides, among other things, to sell any land acquired by it from any person, it shall offer to the said person or his heirs, executors or administrator a prior right to purchase such land for an amount or at a rate to be fixed by the Board. However, the said provision contemplates only to the owner of the land and as on the date of Section 6 Declaration, the lands having been sold by the petitioner to Haneefa and 11 others, the petitioner has no right to the benefit of



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Section 72 and if at all it is only Haneefa and the 11 other persons, who are aggrieved, who could seek recourse to Section 72 of the Housing Board Act.

41. It is the further submission of the learned senior counsel that if at all the petitioner wants to claim any right under the garb of sale of the property when she was a minor, she has to file a civil suit and obtain a decree and in the absence of her right been adjudicated in a civil suit, the petitioner cannot, by raising the ground of fraud and collusion in allotment, claim to unsettle the issue, which has been settled by the present Government Order, permitting the sale of the property by the Board to the 5th respondent. Therefore, the claim of the petitioner for reconveyance of land u/s 48-B does not arise as she is neither the owner of the property at the material point of time, nor has established her right to claim locus to seek for reconveyance in her name.

42. It is the further submission of the learned senior on the issue of moulding of relief under Article 226 of the Constitution, that while the court has the power to mould the relief, it could be done only when the petitioner is having a legitimate right and *locus standi* and if the petitioner has no *locus standi*, the



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court cannot go about moulding the relief. It is the further submission of the learned senior counsel that even if the court feels that there is a public cause involved, the court could only treat the matter as a public interest litigation and refer the matter before the Hon'ble Chief Justice. However, in the present case, the lands having been allotted for a public purpose and has been put to use for the benefit of the public and the funds realised from the said lands being used for public purpose as is evident from the tax statements filed by the petitioner, even the said recourse is not available in the present case.

43. It is the further submission of the learned senior counsel that it is the duty of the Board to comply with the directions given by the Government u/s 155 of the Housing Board Act and in the present case, the Government having directed the Board to sell the land to the 5th respondent, the Board had only complied with the directions of the Government, which is well within the ambit of Section 155 of the Housing Board Act and, therefore, the said act does not require any interference at the hands of this Court.



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44. In support of the aforesaid contentions, learned senior counsel for the 5th respondent placed reliance on the following decisions :-

- i) *R.Shanmugam & Ors. – Vs – The State of TN & Ors. (2006 (4) CTC 290);*
- ii) *R.Rajathi – Vs – The Secretary & Ors. (W.P. (MD) No.2660/2014 – Dated 12.07.2021);*
- iii) *Chairman, Thiruvottiyur Municipality & Ors. – Vs – R.Revathy & Ors. (2018 (2) MLJ 288);*
- iv) *C.Padma & Ors. – Vs – The Secretary & Ors. (1997 (2) SCC 627);*
- v) *Tamil Nadu Arasu Kooturuvuthurai Oanuyalargal Sangam & Ors. – Vs – M.R.Srinivasan (2015 SCC OnLine Mad 8195);*
- vi) *State of Kerala & Anr. – Vs – M.Bhaskaran Pillai & Anr. (1997 (5) SCC 432);*
- vii) *Ayaaubkhan Noorkhan Pathan – Vs – State of Maharashtra & Ors.(2013 (4) SCC 465); and*
- viii) *TNHB, Chennai – Vs – M.Meiyappan & Ors. (2011 (1) CTC 714)*

45. This Court gave its careful consideration to the submissions advanced by the learned counsel on either side and perused the materials available on record as also the decisions relied on by the parties.

46. Before advertng to the law on the issue, few facts, which are admitted and which have a bearing on the adjudication in the present case, requires to be adverted to.



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47. Vast extent of lands to the extent of about 96.92 acres were sought to be acquired by the Board for which a notification u/s 4 (1) of the Land Acquisition Act, 1894, was issued on 17.7.1978 followed by the issuance of Declaration u/s 6 on 6.8.1981, which was published in the Government Gazette on 8.8.1981 on which date, 96.92 acres of land, which was the subject matter of acquisition u/s 4 (1) stood vested in the Government.

48. There is no quarrel with the fact that 0.94 acres of land in S. No.102/2 of Thiruvanmiyur Village, belonged to the petitioner, which was also included in the larger extent of 96.92 acres. Pursuant to the Declaration u/s 6, award came to be passed on 23.9.1986.

49. The extent of 0.94 acres was jointly owned by Tmt.Nalini and her two sons Nageswaran and Krishnan. However, pending the notification u/s 4 (1) of the Land Acquisition Act, 1894, Tmt.Nalini died on 27.06.1979 and in respect of the lands belonging to her, her four children, including the petitioner became entitled to 1/4th share as the legal heirs of the said Nalini. However, it is the specific case



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of the petitioner that pending the 4 (1) Notification, at which point of time she was aged about 15 years, her elder brothers, Nageswaran and Krishnan sold the entire property, including her share of the property to Haneefa and 11 others vide Sale Deeds in Doc. Nos.1613 to 1619 of 1981 dated 17.06.1981 and Doc. Nos.1620 to 1624 of 1981 dated 19.6.1981, which were registered on the file of the Sub Registrar, Saidapet. After the sale of the property to the aforesaid persons, Declaration u/s 6 of the Land Acquisition Act, 1894, was issued vide G.O. Ms. No.667 dated 6.8.1981, which was published in the Government Gazette on 8.8.1981. From the above chronology of events, it is clear that within a period of one and half months from the date of the aforesaid sale, the Declaration u/s 6 came to be issued.

50. Pursuant to the Declaration u/s 6, Award came to be passed on 23.9.1986 in respect of 0.94 acres of land in S. No.102/2 along with the other lands. It is the further stand of the 1st respondent that the compensation was given to the persons, who had purchased the lands pending Section 6 Declaration. Thereafter, the lands which stood vested with the Government were handed over to the Board on 28.10.1986.

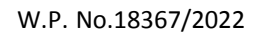


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51. During the year 1995, almost nine years from the date of the award and the handing over of the lands to the Board, total of 9 settlement deeds came to be executed of which 4 Nos. were executed on 30.4.1995, 3 Nos. were executed on 2.6.1995 and 1 No. each was executed on 12.6.1995 and 22.6.1995 while 3 sale deeds dated 22.6.21995 were executed, in favour of the 5th respondent. By the 9 settlement deeds, an extent of 70 cents were settled in favour of the 5th respondent, while purchase was made in respect of 24 cents.

52. Pursuant to the purchase communication was addressed by the 5th respondent to the Board seeking reconveyance/exemption in respect of an extent of 8.94 acres, of which 7.99 acres were acquired and 0.95 acres were pending acquisition by the Board through the aforesaid acquisition proceedings. The said request was forwarded by the Board to the Government in and by which the Board had recommended reconveyance/exemption resulting in the issuance of G.O. Ms. No.208 dated 12.6.1998 by which an extent of 7.99 acres from the total extent of acquired lands was permitted to be reconveyed while 0.95 acres was exempted, so as to enable the 5th respondent to use the same for alleged



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in the year 1995. Thereafter, by the resolution of the Board dated 1.7.2014, the lands were permitted to be sold and were sold to the 5th respondent for a sale consideration of Rs.33,46,79,000/- on 16.7.2014. After a period of around eight years from the date of the sale, the present writ petition has come to be filed, with the averments as culled out supra.

53. In the backdrop of the aforesaid factual position, the following issues have been raised on behalf of the parties for consideration in the present petition:-

- i) *Whether the writ petition is maintainable at the instance of the erstwhile original owner of the property and whether this Court is empowered to adjudicate the writ petition in exercise of its extraordinary powers under Article 226 of the Constitution.*
- ii) *Whether the petitioner herein, as the original owner, is entitled to claim reconveyance of the*



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- acquired land u/s 48-B of the Land Acquisition Act, 1894.*
- iii) *Whether the alienation of the lands by way of sale made to the 5th respondent by the Housing Board on the basis of the order of the Government is in consonance with the provisions of the Land Acquisition Act, 1894.*
- iv) *Whether the impugned order in G.O. Ms. No.208 dated 12.6.1998 is in terms with the provisions of the Land Acquisition Act and Housing Board Act.*

54. Before turning to address the issues that have been framed above, the law on the subject, which have a bearing on the manner in which adjudication is to be made, requires to be looked into, as this Court is exercising its extraordinary and inherent jurisdiction, which has to be used carefully, sparingly and justifiably.

55. In *Ayaaubkhan case (supra)*, the circumstances in which the legal right of a person to seek for protection of his/her rights by invoking the extraordinary



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jurisdiction of the Court under Article 226 of the Constitution was deliberated by the Apex Court and in the said context, the Apex Court held as under :-

“9. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the Authority/Court, that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the Appellant that there has been a breach of statutory duty on the part of the Authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that, the relief prayed for must be one to enforce a legal right. Infact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the Appellant himself,



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who complains of infraction of such right and approaches the Court for relief as regards the same. (Vide: State of Orissa v. Madan Gopal Rungta MANU/SC/0012/1951 : AIR 1952 SC 12; Saghir Ahmad and Anr. v. State of U.P. MANU/SC/0110/1954 : AIR 1954 SC 728; Calcutta Gas Co. (Proprietary) Ltd. v. State of West Bengal and Ors. MANU/SC/0063/1962 : AIR 1962 SC 1044; Rajendra Singh v. State of Madhya Pradesh MANU/SC/0690/1996 : AIR 1996 SC 2736; and Tamilnad Mercantile Bank Shareholders Welfare Association (2) v. S.C. Sekar and Ors. MANU/SC/8375/2008 : (2009) 2 SCC 784).

10. A "legal right", means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, "person aggrieved" does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must therefore, necessarily be one, whose right or interest has been adversely affected or jeopardised. (Vide: Shanti Kumar R. Chanji v. Home Insurance Co. of New York MANU/SC/0017/1974 : AIR 1974 SC 1719; and State of Rajasthan and Ors. v. Union of India and Ors. MANU/SC/0370/1977 : AIR 1977 SC 1361).

* * * * *

13. This Court, even as regards the filing of a habeas corpus petition, has explained that the expression, 'next friend' means a person who is not a total stranger. Such a petition cannot be filed by one who is a complete stranger to the



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person who is in alleged illegal custody. (Vide: Charanjit Lal Chowdhury v. The Union of India and Ors. MANU/SC/0009/1950 : AIR 1951 SC 41; Sunil Batra (II) v. Delhi Administration MANU/SC/0184/1978 : AIR 1980 SC 1579; Mrs. Neelima Priyadarshini v. State of Bihar MANU/SC/0253/1987 : AIR 1987 SC 2021; Simranjit Singh Mann v. Union of India MANU/SC/0058/1993 : AIR 1993 SC 280; Karamjeet Singh v. Union of India MANU/SC/0059/1993 : AIR 1993 SC 284; and Kishore Samrite v. State of U.P. and Ors. MANU/SC/0892/2012 : JT (2012) 10 SC 393).

* * * * *

16. In Ghulam Qadir v. Special Tribunal and Ors. MANU/SC/0608/2001 : (2002) 1 SCC 33, this Court considered a similar issue and observed as under:-

There is no dispute regarding the legal proposition that the rights under Article 226 of the Constitution of India can be enforced only by an aggrieved person except in the case where the writ prayed for is for habeas corpus or quo warranto. Another exception in the general rule is the filing of a writ petition in public interest. The existence of the legal right of the petitioner which is alleged to have been violated is the foundation for invoking the jurisdiction of the High Court under the aforesaid article. The orthodox rule of interpretation regarding the locus standi of a person to reach the Court has undergone a sea change with the



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development of constitutional law in our country and the constitutional Courts have been adopting a liberal approach in dealing with the cases or dislodging the claim of a litigant merely on hyper-technical grounds.

---- In other words, if the person is found to be not merely a stranger having no right whatsoever to any post or property, he cannot be non-suited on the ground of his not having the locus standi.

15. In view of the above, the law on the said point can be summarised to the effect that a person who raises a grievance, must show how he has suffered legal injury. Generally, a stranger having no right whatsoever to any post or property, cannot be permitted to intervene in the affairs of others.

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22. Thus, from the above it is evident that under ordinary circumstances, a third person, having no concern with the case at hand, cannot claim to have any locus-standi to raise any grievance whatsoever. However, in the exceptional circumstances as referred to above, if the actual persons aggrieved, because of ignorance, illiteracy, in articulation or poverty, are unable to approach the court, and a person, who has no personal agenda, or object, in relation to which, he can grind his own axe, approaches the court, then the court may examine the issue and in exceptional circumstances, even if his bonafides are doubted, but the issue raised by him, in the



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opinion of the court, requires consideration, the court may proceed suo-motu, in such respect."

(Emphasis added)

56. In *M.R.Srinivasan case (supra)*, the Division Bench of this Court had delineated the situations where the extraordinary powers of this Court can be called into play, where the Division Bench had held that extraordinary situations warrant extraordinary remedies and in the said context held as under :-

"55. The question as to whether we would exercise such a power in a given case is completely different, from the pure and simple fundamental question of law as to the very existence of the power. We may choose to exercise the power to entertain a second review petition only in extraordinary situations, where a gross injustice, so palpable to a normal person, had been done to the party and it is seen that remedying such an injustice is far more important than the sanctity of the rules of procedure. Therefore keeping these principles in mind, we shall take up at a later point of time (i) the parameters subject to which we would exercise such a power and (ii) the question as to whether the State of Tamil Nadu satisfies those parameters in the case on hand."

(Emphasis Supplied)



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57. It has been the consistent view of the courts that delay and laches on the part of the litigating party in approaching the courts strike at the root of the matter and the Courts, exercising its jurisdiction under Article 226 of the Constitution should be slow, more so when the relief sought for is barred under the law of limitation. Reference can be had to the decision in *Meiyappan case (supra)*, wherein, placing reliance on the decision in ***Durga Prashad – Vs – Controller of Imports & Exports (1969 (1) SCC 185)***, which had in turn placed reliance on the decision of the Constitution Bench of the Apex Court in ***Narayani Debi Khaitan – Vs – State of Bihar ((Civil Appeal No.140 of 1960 – Dated 22.9.1964)***, the Apex Court held as under :-

“15. In Durga Prashad v. Chief Controller of Imports and Exports MANU/SC/0004/1968 : (1969) 1 SCC 185, this Court had held that it is well-settled that the relief under Article 226 is discretionary, and one ground for refusing relief under Article 226 is that the petitioner has filed the petition after delay for which there is no satisfactory explanation. It was noted that:

“4. Gajendragadkar, C.J., speaking for the Constitution Bench, in Smt Narayani Devi Khaitan v. The State of Bihar C.A. No. 140 of 1964 observed:



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It is well-settled that under Article 226, the power of the High Court to issue an appropriate writ is discretionary. There can be no doubt that if a citizen moves the High Court under Article 226 and contends that his fundamental rights have been contravened by any executive action, the High Court would naturally like to give relief to him; but even in such a case, if the petitioner has been guilty of laches, and there are other relevant circumstances which indicate that it would be inappropriate for the High Court to exercise its high prerogative jurisdiction in favour of the petitioner, ends of justice may require that the High Court should refuse to issue a writ. There can be little doubt that if it is shown that a party moving the High Court under Article 226 for a writ is, in substance, claiming a relief which under the law of limitation was barred at the time when the writ petition was filed, the High Court would refuse to grant any relief in its writ jurisdiction. No hard and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. That is a matter which must be left to the discretion of the High Court and like all matters left to the discretion of the Court, in this matter too discretion must be exercised judiciously and reasonably.



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(Emphasis Supplied)

58. The major part of the contention of each side revolves around the invocation of Section 48-B of the Land Acquisition Act and the manner in which the lands, which have been acquired by the Government, have to be dealt with, if the said lands are not put to use for the purpose for which it was acquired. In that context, the following decisions were pressed into service by the learned counsel appearing on either side :

i) R.Shanmugam & Ors. – Vs – State of TN & Ors.

“18. Insofar as the lands acquired for public purpose for being utilised by the State Government, there is no difficulty in holding that in the event, such lands are not utilized for the purpose for which it was acquired, the Government may utilize the same for other public purpose. In the event the Government decides not to utilize the land for any other public purpose, it may, in exercise of powers under Section 48-B, re-convey the land to the erstwhile owners or may sell the land in public auction. Can it be said that the same principle would apply to TNHB as well for disposal of unutilised land by itself in exercise of power under Section 72 of the TNHB Act. In our opinion, TNHB has no such power.



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19. *Whether Section 16-B could be invoked for forfeiting the land as penalty, when the land was acquired and transferred to the Board for execution of the housing scheme or improvement scheme by the Board and such land is not utilized by the Board, more particularly, in view of Section 72 of the TNHB Act? As per Section 70, the land required by the Board for implementation of the scheme shall be acquired under the Central Act. Once the lands are acquired and transferred to the Housing Board, such lands shall vest in Housing Board in order to develop, to form layout, to construct houses or to make plots and to dispose of such plots or houses under Section 72 under the Scheme. A plain reading of Section 72 shows that the Housing Board is empowered to retain or lease, sell exchange or otherwise to dispose of the land vested in or acquired by it under the Act. In the event the lands are unutilized and are kept vacant, such lands cannot be dealt with by Housing Board in exercise of its power under Section 72 as such disposal will be outside the scope of the scheme. The power of the Board to dispose of the land under Section 72 must be read in the context of the power of the Board to frame a housing and improvement scheme and such disposal must be as per the scheme and not otherwise.*

20. *It must be kept in mind that the Housing Board was constituted only for framing and implementing Housing and Improvement Schemes. Incidentally, it is also conferred with the power to dispose such land or houses to eligible buyers at*



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the affordable market price. The legislature never intended to confer a power on the Housing Board to frame schemes and to make profit out of such schemes.

** * * * **

22. Section 48-B was introduced by the Land Acquisition (Tamil Nadu Amendment Act, 1996 (Act 16/1997), keeping in mind that there is no provision in the Central Act for re-conveyance of the land to the original owner after taking possession of the land if the land is not required by the Government. Section 48-B of the Tamil Nadu Amendment Act reads as follows:

Transfer of land to original owner in certain cases:

Where the Government are satisfied that the land vest in the Government under this Act is not required for the purpose for which it was acquired, or for any other public, the Government may transfer such land to the original owner who is willing to repay the amount paid to him under this Act for the acquisition of such land inclusive of the amount referred to in sub-section (1-A) and (2) of Section 23, if any, paid under this Act"

23. The inserted provision contemplates that in case the Government are satisfied that the land vest in the Government is not required for the purpose for which it was acquired or for any other public, they may transfer such land to the original owner who is willing to repay the



amount paid to him for the acquisition of such land inclusive of the amount referred to in sub-sections (1-A) and (2) of Section 23, if any, paid under the Act. When once the land vest in Government under Section 16-B, it is obligated to consider the request of the original owner who is willing to repay the amount for transfer of the land to such original owner.

24. The next question that arises for our consideration is as to whether the original owner has any vested right?

*25. Right to property is not a fundamental right after the insertion of Article 300-A by the Constitution (Forty Fourth Amendment) Act, 1978, but such right is still a constitutional right. In terms of Article 300-A, "No person shall be deprived of his property save by authority of law". The provisions of the Principal Act provide such authority to the State and Central Government, as the case may be, to acquire the land for public purpose. As the acquisition of land deprives the constitutional rights of the land owners, stringent provisions are made for acquisition and payment of reasonable compensation. The right to acquire land by the Government is sovereign power of eminent domain as held by the Supreme Court in *Jilubhai Nanbhai Khachar v. State of Gujarat*, 1995 Supp.(1) SCC 596.*



26. In *Chandragauda Ramgonda Patil v. State of Maharashtra*, 1996 (6) SCC 405, the Supreme Court has observed as follows:

“We do not think that this Court would be justified in making direction for restitution of the land to the erstwhile owners when the land was taken away back and vested in the Municipality free from all encumbrances. We are not concerned with the validity of the notification in either of the Writ Petitions. It is axiomatic that the land acquired for a public purpose would be utilized for any other public purpose, though use of it was intended for the original public purpose. It is not intended that any land which remained unutilized, should be restituted to the erstwhile owner to whom adequate compensation was paid according to the market value as on the date of the notification. Under these circumstances, the High Court was well justified in refusing to grant relief in both the Writ Petitions”

* * * * *

32. In fact, the Supreme Court has observed that the Government is also entitled to dispose of the unutilized land, of course, by public auction and necessarily need not be re-conveyed to the erstwhile owner in the judgment



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reported in *State of Kerala v. M. Bhaskaran Pillai*, 1997 (5) SCC 432. The relevant portion reads 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 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



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auctions so that the public also gets benefited by getting a higher value”

32. As the very object of the Amendment Act introducing Section 48-B indicates that for insertion of the said provision enabling the State Government to re-convey the unutilised lands to the erstwhile owners subject to the conditions enumerated in that Section. This provision was inserted keeping in mind that there is no provision in the Central Act enabling the Government to re-convey the unutilised land. Of course, the Supreme Court in all the above judgments had considered the power of the Government to withdraw the land acquisition proceedings under Section 48 of the Central Act. That Section contemplates that the Government shall be at liberty to withdraw the acquisition proceedings of any land of which possession has not been taken. While considering the scope of Section 48, the Supreme Court has held that the Government is empowered to withdraw the acquisition but even then, in the absence of any vested right on the erstwhile owners, the Government cannot be compelled to withdraw the acquisition proceedings and re-convey the land. Equally, the Government also cannot unilaterally withdraw the acquisition without the consent of the erstwhile owners.

33. As the provision of Section 48-B is unique and is contemplated only by Tamil Nadu Amendment Act, the



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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-sections (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 Bench of this Court in the judgment reported in Southern Railways, etc. v. 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 paras 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 v. State of Tamil Nadu, 2004 W.L.R. 789 (vide paragraph-10) wherein it was observed:



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“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 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 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 invalid, because by a mere executive order,



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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 v. Securities and Exchange Board of 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 v. 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 correct or make up the deficiency especially when a literal reading of produces an intelligible result.

35. In order to apply the provisions of Section 48-B of the Tamil Nadu Amendment Act, 1996, firstly, the land must vest with the Government under the Act in Revenue Department, and secondly, in the opinion of the State Government, such land is not required for any other public



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purpose and thirdly, the said land can be re-conveyed to the original owner who is willing to repay the amount that was paid to him under the Act for the acquisition of such land inclusive of the amount referred to in sub-sections (1-A) and (2) of Section 23, if any, paid under the Act. The power of the Government to transfer such land to the original owner is only discretionary. Where the lands are forfeited by the Government from the Housing Board, it can be utilised by the Government for any other public purpose. In the event, the Government is of the opinion that the lands are not required for any other public purpose, then it must consider re-conveyance of the land under Section 48-B. Only in the event, the Government is of the view that the lands cannot be re-conveyed, it may resort to dispose the land by public auction. However, the exercise of the power under Section 48-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



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

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.”

(Emphasis Supplied)



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ii) Chairman, Tiruvottiyur Municipality & Ors. – Vs –
R.Revathy

“34. The Supreme Court in Keeravani Ammal (cited supra) considered the scope and ambit of Section 48-B of the Land Acquisition Act. The Supreme Court made it very clear that there is no vested right to the land owner to claim reconveyance. The Supreme Court, in the said decision, by quoting an earlier judgment in State of Kerala v. M. Bhaskaran Pillai [MANU/SC/0731/1997 : (1997) 5 SCC 432] indicated that in case the land is not required for the purpose for which it was acquired, it should be sold through public auction and the provision like Section 48-B is an exception to the said rule and as such, it should be construed very strictly and the Court must insist upon strict compliance with its terms.

35. The Hon'ble Supreme Court in Tamil Nadu Housing Board v. L. Chandrasekaran (dead) by Lrs. and others [MANU/SC/0069/2010 : (2010) 2 SCC 786] once again considered the right claimed by the erstwhile land owners under Section 48-B for reconveyance and made the legal position very clear that there is no question of reconveyance by the Government, in case, the land had already been transferred to the requisitioning body and the latter had utilised substantial portion thereof for execution of the Scheme and for other public purpose. The following observation would make the position clear:-



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"28. It need no emphasis that in exercise of power under Section 48-B of the Act, the Government can release the acquired land only till the same continues to vest in it and that too if it is satisfied that the acquired land is not needed for the purpose for which it was acquired or for any other public purpose. To put it differently, if the acquired land has already been transferred to other agency, the Government cannot exercise power under Section 48-B of the Act and reconvey the same to the original owner. In any case, the Government cannot be compelled to reconvey the land to the original owner if the same can be utilised for any public purpose other than the one for which it was acquired."

59. In the light of the ratio laid down by the Courts in the aforesaid decisions, the facts in the present case have to be looked at in relation to the provisions of the Land Acquisition Act, 1894 and the Housing Board Act to answer the issues that have been framed by this Court above.

ISSUE NO. 1 :



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Whether the writ petition is maintainable at the instance of the erstwhile original owner of the property, and whether this Court is empowered to adjudicate the writ petition in exercise of its extraordinary powers under Article 226 of the Constitution.

60. The ratio laid down in *Ayaubkhan case (supra)* gives a clear picture as to when a person would have right to seek for relief before a court of law. The decision clearly postulates that the rights under Article 226 of the Constitution of India can be enforced only by an aggrieved person except in the case where the writ prayed for is for habeas corpus or quo warranto. Another exception in the general rule is the filing of a writ petition in public interest. Therefore the clear conspectus is that where the legal right of the person is alleged to have been violated, then there is a foundation on which the writ jurisdiction can be invoked. Howsofar liberal approach could be taken, though interpretation of the orthodox rule of enforcement has undergone a sea change, nevertheless, the base cannot be shaken that there should be a right, which has been infringed, which alone would form the basis for invocation of the writ jurisdiction of the constitutional courts.



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61. In this backdrop, this Court has to find out whether there is infringement of the legal right of the petitioner, which warrants the invocation of the extraordinary jurisdiction of this Court under Article 226 of the Constitution.

62. The foundation of the case of the petitioner is that the portion of the lands to which the petitioner has a right devolved upon her on the demise of her mother and she was entitled for 1/4th share. The mother of the petitioner, viz., Nalini, passed away on 27.6.1979. However, even prior to the demise of the said Nalini, the notification u/s 4 (1) of the Land Acquisition Act, 1894, had come to be issued on 17.07.1978. It is the case of the petitioner that she was aged 15 years on the date when the 4 (1) notification was issued and without her knowledge, the lands were sold to third parties on 17.6.1981 and 19.6.1981 through various sale deeds, which were registered at the Sub Registrar Office, Saidapet.

63. The writ petition has come to be filed in the year 2022, almost 44 years after the 4 (1) notification. In fact, the Declaration u/s 6 of the Land Acquisition Act had come to be issued on 9.8.1981 and the award had come to be passed on



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23.9.1986. By the time the Declaration u/s 6 had come to be issued and also the award had been passed, the petitioner had attained majority. But curiously, the petitioner has not taken any steps to challenge either the acquisition of lands or the sale of the lands by making the very same claim inspite of the fact that it is the claim of the petitioner that she was a minor then and that her signature had been forged.

64. It is also to be pointed out that after the passing of the award, in the year 1986, the lands were transferred by the purchasers to the 5th respondent by way of settlement deeds in the year 1995 and even during that point of time when the settlement deeds were entered into the same was not questioned by the petitioner.

65. It is to be pointed out that the petitioner, had all along, for the past four decades and a half kept silent without taking any action and had come before this Court only in the year 2022 by claiming that after she obtained her birth certificate in the year 2021, she had knocked the doors of this Court through the present writ petition. The petitioner had attained majority when the Declaration u/s 6 and the



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award had come to be passed, but the petitioner had not taken any steps to challenge the sale of the lands to third parties by her elder brothers. If really the petitioner was aggrieved by the sale of the lands, she ought to have challenged the sale by filing appropriate suit before the civil court challenging the alienation by her brothers. Further, the claim of the petitioner that she was aged only 15 years at the time the sale deeds were executed and she had obtained her birth certificate only in the year 2021 also does not in any way give impetus to the case of the petitioner for the simple reason that this Court is not inclined to accept the fact that the petitioner was not privy to the happenings with respect to the sale of the lands as it is a familial affair. In fact, it is not even the claim of the petitioner that she was not aware of the sale of the lands, leave alone the acquisition proceedings. When there is no averment in the petition to the aforesaid effect, the silence of the petitioner all along cannot be the basis for this Court to grant any relief to the petitioner, at this distant point of time, merely on the basis of her claim that she was a minor when the lands were sold to third parties as the said claim has not been adjudicated by any civil forum till date.



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66. True it is that on the date when the Declaration u/s 6 had come to be passed, the petitioner was not the owner of the lands, the lands having already been purchased by Haneefa and 11 others. On the basis of the age claim, neither her age had been adjudicated nor the sale had been put in issue by the petitioner before the civil court and, therefore, on the date when the Declaration u/s 6 was issued, the petitioner not being the owner of the property, cannot question the Declaration nor challenge the award passed thereafter in the year 1986 and seek for the benefit u/s 48-B of the Land Acquisition Act. Therefore, applying the principles enunciated by the Apex Court in a series of judgments, of which one such decision is *Ayaaubkhan case (supra)*, it could safely be concluded that the petitioner having no right over the property on the date when the Declaration u/s 6 had come to be issued, cannot be said to have suffered any legal injury and, therefore, has no right to question the acquisition proceedings.

67. It is to be noted that the lands have been parted with way back in the year 1981 and the said sale transaction having not been challenged, could reconveyance be sought for by the petitioner u/s 48-B of the Land Acquisition Act. However, could the silence and inaction of the petitioner for a long time forming



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the basis to negative her claim would tie the hands of this Court from deliberating the issue with regard to the reconveyance/exemption of the acquired lands in favour of the 5th respondent, which could be done by the Government u/s 48-B only for any other public purpose and not otherwise. Further, one important aspect which also requires to be looked into is the larger public prejudice that is alleged to have been caused in the present case, as the lands which were acquired for a public purpose were reconveyed/exempted in favour of the 5th respondent after a decade from the date of the award, though it is claimed to be settled/purchased by the 5th respondent almost a decade after the passing of the award, though the 5th respondent was formed in the year 1985. Further, the purchase made in the year 1985 by Haneefa and 11 others were sought to be settled/sold in favour of the 5th respondent in the year 1995, inspite of the fact that the said subsequent purchasers have received the compensation on the basis of the award way back in the year 1986.

68. It is evident from Section 48-B of the Land Acquisition Act that the lands, which were acquired, had not been utilised for the public purpose for which it was acquired, but was sold by the Board in favour of the 5th respondent, which,



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as pointed out by the petitioner is bad, as Section 72 of the Housing Board Act does not permit the Board to make any outright sale, which could only deal in sale of house sites or flats for the benefit of the public and not for any individual or a Trust as the lands, which are not used by the Board, if not utilised, would return back to the coffers of the Government to be used for a different public purpose or to be sold in public auction or if not required, may be reconveyed to the owner, subject to the discretion of the Government. In this regard, useful reference can be had to the decision in *R.Shanmugam's case (supra)*, wherein the Division Bench held as under :-

“16. Coming to the word “vest” employed in Section 72 of Housing Board Act, again the said word must be construed in the context it is used. The object of the Act is only to enable the Board to frame a Housing or Improvement Scheme and execute such scheme. In the above context, the word “vesting” may relate to title or possession or some limited purpose of disposing of the same as contemplated under Section 72. As the Board has also the power to sell or dispose of the plots/flats as the case may be, the word “vesting” employed in Section 72 shall be construed to mean and include only the purpose of discharging its functions under the scheme. Such power of vesting cannot be equated to the power of vesting of the land in Government under Section 16



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of the Central Act, where the lands acquired shall vest absolutely in Government free from all encumbrances.

17. This leads us to the further question as to the exercise of the power under Section 16-B by the Government to forfeit the land vis-a-vis the power of the TNHB to exercise the power to sell, mortgage etc., under Section 72 of the TNHB Act. In this context, it would be relevant to refer to the circumstances under which the provision of Section 16-B was introduced and the object behind it. Attention of the Government was drawn to the fact that the lands acquired by Government on behalf of several requisitioning bodies and handed over to them are transferred to others without prior permission of the Government. With a view to avoid the requisitioning bodies from transferring the acquired lands or any part thereof by sales, mortgage, gift, etc., without prior permission of the Government, it became necessary for the Government to make a provision in the Central Act. The attention of the Government was also drawn to the fact that in certain cases the requisitioning bodies do not use the land acquired for them and the land is not put to use for the purpose for which it was originally acquired and the lands are kept idle for years together without utilising the same. In order to prohibit such events, the Government decided to insert a new provision viz., Section 16-B in the Central Act so as to provide that such land may be forfeited as penalty and on such forfeiture the land shall vest in the Government in Revenue Department. Section



16-B of the Tamil Nadu Amendment Act, 1996 (Act XVI of 1997) reads as under:

16-B. Land to be forfeited in certain cases:

Where the Government are satisfied that the land acquired under this Act for any public purpose as referred to in sub-section (1) of Section 4 is not used for the purpose for which it was acquired, they may, by an order, forfeit the land as penalty and the land shall vest in the Government in Revenue Department free from all encumbrances.

18. Insofar as the lands acquired for public purpose for being utilised by the State Government, there is no difficulty in holding that in the event, such lands are not utilized for the purpose for which it was acquired, the Government may utilize the same for other public purpose. In the event the Government decides not to utilize the land for any other public purpose, it may, in exercise of powers under Section 48-B, re-convey the land to the erstwhile owners or may sell the land in public auction. Can it be said that the same principle would apply to TNHB as well for disposal of unutilised land by itself in exercise of power under Section 72 of the TNHB Act. In our opinion, TNHB has no such power.

19. Whether Section 16-B could be invoked for forfeiting the land as penalty, when the land was acquired and transferred to the Board for execution of the housing scheme or improvement scheme by the Board and such land is not utilized by the Board, more particularly, in view of Section 72



of the TNHB Act? As per Section 70, the land required by the Board for implementation of the scheme shall be acquired under the Central Act. Once the lands are acquired and transferred to the Housing Board, such lands shall vest in Housing Board in order to develop, to form layout, to construct houses or to make plots and to dispose of such plots or houses under Section 72 under the Scheme. A plain reading of Section 72 shows that the Housing Board is empowered to retain or lease, sell exchange or otherwise to dispose of the land vested in or acquired by it under the Act. In the event the lands are unutilized and are kept vacant, such lands cannot be dealt with by Housing Board in exercise of its power under Section 72 as such disposal will be outside the scope of the scheme. The power of the Board to dispose of the land under Section 72 must be read in the context of the power of the Board to frame a housing and improvement scheme and such disposal must be as per the scheme and not otherwise.

20. It must be kept in mind that the Housing Board was constituted only for framing and implementing Housing and Improvement Schemes. Incidentally, it is also conferred with the power to dispose such land or houses to eligible buyers at the affordable market price. The legislature never intended to confer a power on the Housing Board to frame schemes and to make profit out of such schemes."

(Emphasis Supplied)



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69. From the above, it is manifestly clear that the power of the Board with reference to the lands acquired would only be relatable to disposing of such plot or houses/flats to eligible buyers at affordable market price and the Board has not been conferred with any power to frame schemes to make profit out of such schemes. In the present case, the Board has sold the lands to the 5th respondent, though after obtainment of permission from the Government, and in this regard, the larger allegation which is canvassed is the power of the Government and the Board to sell the lands to the 5th respondent without following the provisions of Sections 3 (f)(vi), 16-B and 48-B of the Land Acquisition Act. Therefore, the power to sell the lands by the Government, which have been acquired, with particular reference to Sections v3 (f)(vi), 16-B and 48-B of the Land Acquisition Act and the source of such power to sell requires adjudication, as this Court cannot shriek away from exercising its extraordinary and inherent jurisdiction under Article 226 to render substantial justice, when public property is involved.

70. To aid the view of this Court, the decision of the Division Bench of this Court in *M.R.Srinivasan case (supra)*, lends support, wherein the Division Bench



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has held that *“the question whether the Court would exercise such power in a give case is completely different, from the pure and simple fundamental question of law as to the very existence of the power”*. It is clear from the above that it is only the exercise of power, which is the discretion of the Court on the basis of the facts and circumstances of the case and it is not traceable to the availability of the power, as the extraordinary and inherent power is always available to the Court under Article 226 of the Constitution. The Division Bench has gone on further to hold that *“where a gross injustice, so palpable to a normal person, had been done to the party and it is seen that remedying such an injustice is far more important than the sanctity of the rules of procedure”*, then necessarily this Court should not abdicate its duty from exercising such a power as otherwise it would be failing in its constitutional obligations to the citizens.

71. Further, in *Ayaaubkhan case (supra)*, the Supreme Court had held that at the instance of a third party too, in exceptional circumstances, the court could examine the issue and if in the opinion of the court, requires consideration, the court may proceed suo motu. In the said context, the Apex Court held as under :-



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“23. Thus, from the above it is evident that under ordinary circumstances, a third person, having no concern with the case at hand, cannot claim to have any locus standi to raise any grievance whatsoever. However, in exceptional circumstances as referred to above, if the actual persons aggrieved, because of ignorance, illiteracy, inarticulation or poverty, are unable to approach the court, and a person, who has no personal agenda, or object, in relation to which, he can grind his own axe, approaches the court, then the court may examine the issue and in exceptional circumstances, even if his bona fides are doubted, but the issue raised by him, in the opinion of the court, requires consideration, the court may proceed suo motu, in such respect.”

72. Further it is also to be pointed out that unlike the Apex Court, though this Court is not clothed with the powers as available under Article 142 of the Constitution, however, it is to be pointed out that the powers of this Court under Article 226 of the Constitution are not limited as the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition and the restrictions with regard to entertainment of the petition are self-imposed restrictions as the plenary right of the High Court to issue a prerogative writ will not normally be exercised by the High Court to the exclusion of other



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available remedies unless the impugned action of the State or its instrumentality is arbitrary, unreasonable and violative of the constitutional mandate under Article 14 and, therefore, the High Court could entertain the writ if it thinks necessary to exercise such jurisdiction. (*See : ABL International Ltd. – Vs – Export Credit Guarantee Corporation of India Ltd. (2004 (3) SCC 553).*)

73. In the light of the above, this Court holds that though the petitioner has not challenged the sale made in favour of Haneefa and 11 others way back in the year 1981 and that she has also not established her age as being a minor on the date of sale and also not having challenged the acquisition proceedings, her right to agitate would be flimsy, but nevertheless, inspite of the above, considering the fact that though the lands were acquired for a different public purpose, but the said lands having not been put to use for the said purpose and that they have been sold to the 5th respondent, a larger question requires consideration as to whether the sale would fall within the ambit of public purpose to attract the application of Section 48-B of the Land Acquisition and in this backdrop, necessarily the petition has to be adjudicated on merits by this Court invoking its extraordinary and inherent jurisdiction under Article 226 of the Constitution. In



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the aforesaid circumstances, this Court holds that merely because the petitioner has not established her right to the lands would not act as a bar for this Court in maintaining the present petition, as the adjudicable issue relates to whether any fraud or collusion has taken place in the sale of the said lands to the 5th respondent by the State or its instrumentality, viz., the Housing Board.

74. In view of the discussion made above this Court holds that though the plea of the petitioner is with regard to her rights for reconveyance, which has been negative, however, the larger issue is related to the saleability of the lands made by the Board to the 5th respondent, which requires consideration, as this Court has to find out the source of power available under the Land Acquisition Act for the Government to permit sale of the lands and as public property is involved, necessarily, adjudication of this Court is permissible as this is an extraordinary situation, which warrants extraordinary remedy, which requires invocation of the extraordinary powers and, therefore, this Court holds that the writ petition is maintainable notwithstanding the rights of the petitioner, as this Court could very well, suo motu, entertain the petition to find out the reasonableness of the act of



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the State and its instrumentality, viz., the Housing Board. **Issue No.1 is answered accordingly.**

ISSUE NO.2 :

Whether the petitioner herein as the original owner, is entitled to claim reconveyance of the acquired lands u/s 48-B of the Land Acquisition Act.

75. For appreciating the merits of the petitioner's contention, reference requires to be had to Section 48-B of the Land Acquisition Act which is quoted hereunder :-

"Section: 48-B. Transfer of land to original owner in certain cases.-

Where the Government are satisfied that the land vest in the Government under this Act is not required for the purpose for which it was acquired, or for any other public purpose, the Government may transfer such land to the original owner who is willing to repay the amount paid to him under this Act for the acquisition of such land inclusive of the amount referred to



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in Sub-section (1-A) and (2) of Section 23, if any, paid under this Act.”

76. Section 48-B does not give unfettered right to the owner to claim reconveyance of the land, even if the land has not been put to use for the public purpose for which it was acquired. The request for reconveyance is only an option to the owner to make a request and it is for the Government to take a decision to part with the lands on the basis of the request of the original owner. The decision in *R.Shanmugam’s case (supra)* has captured this issue succinctly, which at the risk of repetition, is quoted hereunder :-

35. In order to apply the provisions of Section 48-B of the Tamil Nadu Amendment Act, 1996, firstly, the land must vest with the Government under the Act in Revenue Department, and secondly, in the opinion of the State Government, such land is not required for any other public purpose and thirdly, the said land can be re-conveyed to the original owner who is willing to repay the amount that was paid to him under the Act for the acquisition of such land inclusive of the amount referred to in sub-sections (1-A) and (2) of Section 23, if any, paid under the Act. The power of the Government to transfer such land to the original owner is only discretionary. Where the lands are



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forfeited by the Government from the Housing Board, it can be utilised by the Government for any other public purpose. In the event, the Government is of the opinion that the lands are not required for any other public purpose, then it must consider re-conveyance of the land under Section 48-B. Only in the event, the Government is of the view that the lands cannot be re-conveyed, it may resort to dispose the land by public auction. However, the exercise of the power under Section 48-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 absolute right to seek for automatic re-conveyance of the land, they have an



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element of right for consideration of their claim for re-conveyance in terms of Section 48-B.

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.”

(Emphasis Supplied)

77. On the crucial date when Declaration u/s 6 was issued, the petitioner was not the owner of the lands, as the lands were parted by way of sale on 17.6.1981 and 19.6.1981 to one Haneefa and 11 others. Though, as aforesaid, the petitioner claims that she was a minor on the date when the sale deed was



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registered, however, the petitioner has not challenged the validity of the said sale deeds till date by seeking appropriate relief before the civil court. In fact, till date, the validity of the said sale made by the brothers of the petitioner to which the petitioner was also a signatory, but which is alleged to be forged, has not been challenged before any court of law. Not only the period of limitation has passed, but more curiously, the petitioner has not thought it fit to question the validity of the sale deed by filing appropriate suit and making the pleadings as made herein. Such being the case, the petitioner, on the crucial date when the Declaration u/s 6 was issued, viz., on 6.8.1981, was not the owner of the lands and, therefore, the petitioner cannot seek recourse to Section 48-B of the Land Acquisition Act.

78. If at all any grievance could be raised by the owner, it could only be Haneefa and 11 others, who had purchased the property from the petitioner and it is not the petitioner, who could be construed as the owner of the lands on the date when the Declaration u/s 6 was issued, as the petitioner has neither challenged the acquisition proceedings nor challenged the sale made to Haneefa and 11 others. In the absence of any challenge made on both the counts noted



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above, the petitioner cannot claim reconveyance of the acquired land u/s 48-B of the Land Acquisition Act.

79. Further, in the present case, the representation submitted by the petitioner to the Housing Board has already been rejected. Though Government is the authority to reject the representation, however, it is to be pointed out that the petitioner is not the owner of the lands, which has since been acquired, as she had parted with the lands by way of sale to Haneefa and 11 others prior to the Declaration u/s 6 and, therefore, she has no right to seek for reconveyance u/s 48-B and further the power vests with the Government to either accept or reject the request for reconveyance. In the present case, the petitioner not being the owner of the lands on the date when Section 6 declaration was issued, she does not come within the ambit of the term “owner” to seek for reconveyance of the property. ***Therefore, issue No.2 is answered against the petitioner.***

ISSUE NOS.3 & 4 :

Whether the alienation of the lands by way of sale made to the 5th respondent by the Housing Board on the basis of



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the order of the Government is in consonance with the provisions of the Land Acquisition Act.

Whether the impugned order in G.O. Ms. No.208 dated 12.6.1998 is in terms with the provisions of the Land Acquisition Act and Housing Board Act.

80. It is the settled principle of law that the Government is vested with power, in exercise of its eminent domain, to take over the property of an individual for the greater benefit of the public at large without the owner's consent upon payment of just compensation. The right of an individual to own a property, though is not a fundamental right, however, it has been recognised as a constitutional right by the Apex Court under Article 300-A of the Constitution. Therefore, in exercise of the power of eminent domain, the Government has acquired the properties, which are the subject matter of the *lis* for the purpose of providing housing units through the Board. However, the purpose for which the lands were acquired, having not been fully realised, the lands were sought for allotment by the 5th respondent, which has since been permitted by way of sale, which is put in issue in the present petition, as the original land owner, through the present petition has sought for reconveyance of the lands, which, as already



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held by this Court, cannot be granted for the reasons stated supra. However, could the lands, which have been acquired for a public purpose, be allotted to the 5th respondent for any other purpose, other than public purpose or has the allotment been made for a public purpose to the 5th respondent, requires consideration of this Court.

81. To address the aforesaid issues jointly, the crucial dates with regard to the entire process of acquisition, initial sale of the lands, the settlement deeds settling the properties in favour of the 5th respondent, the seeking of exemption and the permission for the sale of the lands by the Board to the 5th respondent and the actual sale of the lands upon receipt of sale consideration by the Board requires an elaborate consideration. Instead of dovetailing the dates by paraphrasing it in extenso, a simple tabulated form would best depict the entire process and the same is culled out as hereunder :-

S. No.	Date	Description of the Transaction
1	09.08.1978	Notification issued u/s 4 (1) of the LA Act in G.O. Ms. No.1096 dated 17.07.1978
2	17.06.1981	7 Sale Deeds executed by the petitioner & her siblings in favour of the purchasers
3	19.06.1981	5 Sale Deeds executed by the petitioner &



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		her siblings in favour of the purchasers
4	08.08.1981	Declaration u/s 6 of LA Act in G.O. Ms. No.667 dated 06.08.1981
5	23.09.1986	Award No.3/1986 was passed
6	30.04.1995	4 settlement deeds entered into with the 5 th respondent by the purchasers of land from the petitioner
7	02.06.1995	3 settlement deeds entered into with the 5 th respondent by the purchasers of land from the petitioner
8	12.06.1995	1 settlement deed entered into with the 5 th respondent by the purchaser of land from the petitioner
9	22.06.1995	4 sale deeds entered into by the 5 th respondent
10	12.06.1998	G.O. Ms. No.208 permitting the Board to sell the lands to the 5 th respondent
11	16.07.2014	Impugned sale deed selling the lands by the Board in favour of the 5 th respondent

82. The purchase of lands after issuance of notification u/s 4 (1) but before the issuance of the Declaration u/s 6, though not legally bad, but the said sale would be hit by the notification u/s 4 (1) and at best, the subsequent purchaser would only be entitled to receive the compensation for the lands so acquired and



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the sale of the lands by the original owner pending notification u/s 4 (1) would render her claim for reconveyance u/s 48-B of the Land Acquisition Act as void. The said issue is no longer *res integra*, which issue has already been answered by this Court in the preceding portion of this order.

83. There could be no quarrel with the fact that lands were acquired by the Board for the formation of Besant Nagar Phase II Scheme and notification u/s 4 (1) was issued, which also comprised of the lands owned by the petitioner, which has subsequently been purchased by third parties and later settled in favour of the 5th respondent. The purchase by the third parties was pending the issuance of Declaration u/s 6 while the settlements were nine years later to the passing of the award. In fact, 9 settlement deeds were executed settling the lands in favour of the 5th respondent while after the passing of the award, 3 sale deeds had come to be executed in favour of the 5th respondent in the year 1995. By the time the 5th respondent sought for reconveyance/exemption of the lands, the lands not only stood vested in the Government, but part of the lands was also put to use, though not the lands for which reconveyance/exemption was sought for. It is also to be noted that the 5th respondent was formed in the year 1985, which is admitted,



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which clearly evidences that at the time of creation of the Trust, not only the land acquisition had taken place, but the lands also stood vested in the Government. Further, according to the 1st respondent, the compensation amount was also paid to the subsequent purchasers, in the year 1986. Therefore, the subsequent purchasers were not only well aware of the acquisition proceedings, but had also received the compensation, without any demur, which clearly shows that they were aware that the title to the lands vested in the Government on the date they executed the settlement/sale deeds.

84. However, pursuant to the settlement, representation is alleged to have been given by the 5th respondent to the Board, which, as already aforesaid, is not available in the typed set of documents and has neither been produced by the respondents, nor referenced in G.O. No.208, seeking reconveyance/exemption of the lands. On the basis of the representation, G.O. Ms. No.208 dated 12.6.1998, was issued granting permission to sell the property to an extent of 8.94 acres and the contents of the Government Order being very material for considering issue Nos.3 and 4, for the sake of better appreciation and clarity, the aforesaid Government Order is captured hereinbelow :-



உத்தரவு நகல் -

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சுருக்கம்

நில எடுப்பு - தமிழ்நாடு வீட்டுவசதி வாரியம் - சென்னை மாவட்டம், திருவான்மியூர் கிராமம் - புல எண்கள் 78/7, 78/8 முதலியவற்றில் உள்வ 8.94 ஏக்கர் நிலம் - மாற்றலிப்பு விலக்களிப்பு வழங்க ஆணை வெளியிடப்பட்டது --- 7.99 ஏக்கர் நிலம் நிலக்கிரயம் பெற்று திருத்திய ஆணை வெளியிடப்படுகிறது.

வீட்டுவசதி மற்றும் நகர்ப்புற வளர்ச்சி (நிள 2.1)த் துறை

அரசாணை நிலை எண் 208

நாள் 12.6.1998

படிக்கப்பட்டது -

- 1) அரசு கடித நிலை ஆணை எண் 413, வீட்டுவசதி மற்றும் நகர்ப்புற வளர்ச்சித்துறை நாள் 3-12-1997,
- 2) அரசு கடிதம் எண் 11929/நள 2.1/57-5, வீட்டுவசதி மற்றும் நகர்ப்புற வளர்ச்சித்துறை நாள் 3-12-1997,
- 3) தமிழ்நாடு வீட்டுவசதி வாரியத்தின் மேலாண்மை இயக்குநரின் கடித எண் நிள3(4)/24775/96 நாள் 29-7-98,

ஆணை :-

சென்னை மாவட்டம், திருவான்மியூர் கிராமம், புல எண்கள் 78/7, 78/8 முதலியவற்றில் உள்வ 8.94 ஏக்கர் நிலத்தை ஸ்ரீஇராமசத்திர கல்வி மற்றும் மருத்துவ அறக்கட்டளைக்காக தமிழ்நாடு வீட்டுவசதி வாரிய நில எடுப்பிலிருந்து வறுமற்றாஸிப்பு/விலக்களிப்பு செய்வ பர்வை (1) மற்றும் (2)ல் குறிப்பிட்டுள்ள அரசு கடிதங்களில் ஆணை பிறப்பிக்கப்பட்டது.

1. மேற்காணும் விலக்களிப்பு/வறுமற்றாஸிப்பு ஆணை ஸ்ரீஇராமசத்திர கல்வி மற்றும் மருத்துவ அறக்கட்டளைக்கு பொருத்தாது என்று வாரிய சட்ட ஆலோசகர் தெரிவித்து, இப்பொருள் சம்பந்தமாக கீழே குறிப்பிட்டுள்ளவாறு நடவடிக்கை மேற்கொள்ளலாம் என்ற சட்ட ஆலோசகரின் ஆலோசனையில் அடிப்படையில் அரசின் உத்தரவை தமிழ்நாடு வீட்டுவசதி வாரிய மேலாண்மை இயக்குநர் கோரியுள்ளார் :-

2. அரசாணையில் குறிப்பிட்டுள்ள திருவான்மியூர் கிராமம், புல எண்கள் 78/7 மற்றும் பரவற்றில் அடங்கிய 8.94 ஏக்கர் நிலத்தில் (புல எண் 78/10பி, 86/6ஏ, 86/6பி மற்றும் 86/4ல் உள்ள 1.50 ஏக்கர் நிலத்தில் நில எடுப்பு நடவடிக்கை தீவிரவையில் உள்ளதால் கூடுதலாத்தினை விலக்களிப்பு செய்யவும் வீதமுள்ள 7.44 ஏக்கர் நிலங்களை (புல எண்கள் 78/7, 78/8, 102/5, 78/9, 78.10, 78.11, 78/13, 78/14, 85/1, 86/2, 86/3, 102/2, 103/6, 103/7, 103/8 மற்றும் 103/9) ஸ்ரீஇராமசத்திர கல்வி மற்றும் மருத்துவ அறக்கட்டளைக்கு கல்வி



வாங்கி மற்றும் ஆராய்ச்சி மேற்க்கத்திற்காக கேட்டுள்ளதால் தமிழ்நாடு வீட்டுவசதி வார்ட் விதிகளின்படி நிலக்கிரயத்தை பெற்றுக்கொண்டு அறக்கட்டளைக்கு ஒதுக்கிடு செய்வாம்.

3) இப்பொருள் குறித்து அரசு மேலும் பரிசீலனை செய்கிறது. ஸ்ரீஜெயமங்கலம் கல்வி மற்றும் மருத்துவ அறக்கட்டளை சார்பாக அலுவலக வளாகம், மருத்துவ கூடம், பாடசாலை குடியிருப்பு மற்றும் மருத்துவ பொருட்கள் போகிய கிடங்கு முதலியவற்றை உத்தேசித்து உரிசைமீடும், மேலும் இந்நிலைகளை நில சொந்தக்காரர்களிடம் அறக்கட்டளை வளங்கியுள்ளதாக தெரிவித்துள்ளதால், அந்நிலைகளை அறக்கட்டளைக்கு ஒதுக்கிடு செய்வக் கேட்டுக்கொண்டிருப்பதால், இந்நிலைகளில் மேலும் விலை மதிப்பினை வாரியத்திற்கு சேலத்தியகாசுவர் கூறிமுள்ளார். திருவாரூரில் கிராமம், புல எல்கள் 78/7, 78/8, 102/7, 78/9, 78/10, 78/11, 78/13, 78/14, 86/1, 86/2, 86/3, 102/2, 103/6, 103/7, 103/8 மற்றும் 103/9 ஆகியவற்றில் 7.99 ஏக்கர் நிலம் ஆபீஸ் செய்வப்பட்டு தீர்ப்பாணை (அலாய் வறங்கப்பட்டிருப்பதால் 7.99 ஏக்கர் பரப்பளவு நிலத்தை மட்டும் தமிழ்நாடு வீட்டுவசதி வார்ட் விதிகளின்படி நிலக்கிரயம் பெற்று ஸ்ரீஜெயமங்கலம் மற்றும் மருத்துவ அறக்கட்டளைக்கு ஒதுக்கிடு செய்வ அரசு ஆணையிடுகிறது. எஞ்சியுள்ள 0.95 ஏக்கர் நிலத்தை பொறுத்தவரை புல எல்கள் 86/4 அடங்கியுள்ள அந்நிலைகளில் நில எடுப்பு நடவடிக்கை நிறுணையில் உள்ளதால் அந்நிலைத்தினை விலக்கலிடு செய்வவம் அரசு ஆணையிடுகிறது.

4) இவ்வாறானகேற்பு தக்க மேல் நடவடிக்கை எடுக்குமாறு தமிழ்நாடு வீட்டுவசதி வார்ட் மேலாண்மை இயக்குகல் கேட்டுக்கொள்ளப்படுகிறது.

(ஆளுகிடு ஆணைப்படி)

பெறுநர்

ஒயர்-
அரசு செய்வாள்

85. A perusal of the said Government Order reveals that the 5th respondent

had sought for reconveyance/exemption of an extent of 8.94 acres of land, which

had since been acquired by the Board, which forms part of S. Nos.78/7, 78/8, etc.

Legal opinion was sought for to which opinion has been provided that

reconveyance/exemption was not permissible and further opinion has been given

based on which communication has been addressed by the Board to the



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Government for requisite permission for sale of the property. However, curiously, neither the representation of the 5th respondent seeking reconveyance/exemption of the extent of 8.94 acres of land nor the legal opinion has been placed before this Court by the respondents. It is further to be pointed out that grant of permission for utilisation of the property for any other public purpose lies purely within the domain of the State Government and the Board is not vested with any right to seek permission for sale of the property to the 5th respondent.

86. The Board, based on the legal opinion had sought the permission of the Government for exemption in respect of the portion of lands in S. Nos.78/7 and 78/8 to an extent of 1.50 acres, where acquisition proceedings have not been completed and for further permission to sell the acquired lands, which are covered under S. Nos.78/7, 78/8, 78/9, 78/10, 78/11, 78/13, 78/14, 86/1, 86/2, 86/3, 102/2, 103/6, 103/7, 103/8 and 103/9 to the 5th respondent to an extent of 7.99 acres for the purpose of the Trust to be used for educational and research purposes.



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87. The Government Order proceeds further by stating that the Government carefully considered the proposal of the Board and also considered the fact that the 5th respondent had sought the lands for the Trust for the purpose of putting up office premises, hospital, staff quarters and godown for storing medicines and the 5th respondent has stated that it has already purchased the said lands from its erstwhile owners and also sought for the allotment of the said lands and has further stated that the entire cost of the lands has already been paid to the Board. The Government has further ordered that in respect of the aforesaid survey numbers, an extent of 7.99 acres has already been acquired and award has been passed, the Board had been directed to allot the said lands to the 5th respondent/Trust as per the provisions of the Housing Board Act and the Rules, and the Board was directed to execute the sale deed; and in respect of the balance 0.95 acres in S. No.86/4, since land acquisition proceedings are pending, the Government had ordered exemption of the said lands from the land acquisition proceedings.

88. It is to be noted that nowhere in the said Government Order, there is any reference to any public purpose being involved, which has prevailed upon the



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Government to exercise its powers u/s 48-B of the Land Acquisition Act, 1894, to pass the aforesaid Government Order. In fact, the whole of the Government Order is silent as to the public purpose involved in the said allotment. It is only stated in the Government Order that the said lands, on reconveyance, is to be put to use for the purpose of office, hospital, staff quarters and godown for storing medicines. What is more curious to be noted here is the fact that there is a categorical recording in the said Government Order that the 5th respondent has not only purchased the lands from its previous owners, but has also paid the entire cost of the land to the Board. What is sought for by the Board is only permission to reconvey the lands in favour of the 5th respondent, but the payment of sale consideration to the Board has not been whispered anywhere, nor is the letter of the Board placed before this Court for reasons best known. However, in the operative portion of the Government Order, there is a categorical recording that the sale consideration has been received by the Board. This Court is at a loss to understand as to how the sale consideration could be received by the Board even before permission could be granted by the Government for reconveyance of lands to the 5th respondent.



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89. Be that as it may. In *R.Shanmugam case (supra)*, the Division Bench of this Court, advertent to various other decisions of the Apex Court had held that lands, which are acquired for a public purpose could be utilised for any other public purpose and that any assignment of such lands made should be for a public purpose, else, the lands, which have since vested with the Government could be sold only through public auction so that the public gets benefitted by getting a higher value.

90. As already stated above, the public purpose which underlies the requisition of the said reconveyance has not been spelt out in the Government order, but from the stand of the Board the reconveyance is sought by the 5th respondent for educational and research purpose. However, the later part of the order of the Government shows that the allotment is sought for the purpose of putting up an office, a hospital, staff quarters and godown for storage of medicines. It is to be pointed out that while the recommendation by the Board is that the lands are sought for educational and research purposes, however, the Government has stated that the lands are required by the 5th respondent for



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putting up office premises, hospital, staff quarters and godown for storing medicines, which runs counter to the purpose projected by the Board.

91. When there is a clear mandate u/s 16-B and 48-B of the Land Acquisition Act with regard to the activities to which the lands acquired could be put to use if it is not used for the purpose for which it has been acquired, does the activities performed by the 5th respondent come within the ambit of the definition “*public purpose*” as provided for u/s 3 (f) of the Land Acquisition Act, 1894 is the question which falls for determination, which alone is the determinant to decide whether the parting away of the lands by the Government to the 5th respondent is within the legal frame work of the Land Acquisition Act and if not, could this Court invoke its extraordinary power to remedy the wrong.

92. As already held in the preceding paragraphs, the public purpose for which the allotment has been made is not spelt out in the impugned Government Order. It is to be noted that the Government is the repository of trust reposed on it by the general public and it should always act in a manner that does not jeopardize the trust which has been placed on it by the public. When there is no



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mention of any other public purpose, which is undertaken by the 5th respondent necessitating the allotment of lands, which is the sole criteria mandated u/s 48-B of the Land Acquisition Act, this Court has to test the allotment on the basis of the powers available to the Government, more particularly with reference to Sections 16-B and 48-B of the Land Acquisition Act and whether such allotment fulfils the criteria prescribed under the provisions of the Land Acquisition Act relating to the public purpose for which alone, the lands could be sold/allotted.

93. The manner in which lands could be acquired by the Government has been provided for in the Land Acquisition Act. There could be no quarrel with the fact that lands could be acquired by the Government only for public purpose. 'Public Purpose' is defined u/s 3 (f) of the Land Acquisition Act, which is as under:-

(f) The expression "public purpose" includes

(i) the provision of village-sites, or the extension, planned development or improvement of existing village-sites;

(ii) the provision of land for town or rural planning;

(iii) the provision of land for planned development of land from public funds in pursuance of any scheme or policy of Government and subsequent disposal thereof in



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whole or in part by lease, assignment or outright sale with the object of security further development as planned;

(iv) the provision of land for a corporation owned or controlled by the State;

(v) the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by Government, any local authority or a Corporation owned or controlled by the State;

(vi) the provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by Government or by any authority established by Government for carrying out any such scheme, or, with the prior approval of the Appropriate Government, by a local authority or a society registered under the Societies Regrastration Act, 1860, or under any corresponding law for the time being in force in a State, or a Co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State.

(vii) the provision of land for any other scheme or development sponsored by Government, or, with the prior approval of the Appropriate Government, by a local authority;



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(viii) the provision of any premises or building for locating a public office, but does not include acquisition of land for companies.”

(Emphasis Supplied)

94. The definition of ‘*public purpose*’ is far and long and it takes within its fold all the activities, which are undertaken by the Government for the welfare of the public at large. It is noteworthy to mention that clause (vi) of Section 3 (f) pertains to acquisition of land for carrying out any educational, housing, health or slum clearance scheme sponsored by the Government or by any authority established by the Government for carrying out any such scheme. However, apart from the Government or any authority established by the Government, such scheme could be undertaken by a local authority or a society registered under the Societies Registration Act or any corresponding law, which alone could undertake such activity, but with the prior approval of the appropriate Government and only such of those activities would fall within the four corners of Section 3 (f)(vi).

95. Further, the *objects and reasons which are prime for the enactment of the Land Acquisition Act clearly reveals that the said Act was enacted for*



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*empowering the Government to acquire land **only for a public purpose** or for a company, and, where it is for a company, the acquisition is subject to the provisions of Part VII.* From the above it is clear that acquisition of lands could be only for a public purpose and not otherwise, as acquisition with regard to companies is accompanied with a different set of provisions, which are to be fulfilled, if the lands are acquired for commercial purposes, which is also for the welfare of the public.

96. Therefore, of necessity, prior approval is a mandatory pre-requisite for any local authority or a registered society for bringing a particular activity under the umbrella of '*public purpose*', as defined under clause (vi) of Section 3 (f). If such approval is not obtained prior to such activity being carried on, the said activity, would not fall within the ambit of public purpose, though the said registered society or local authority may do some acts, which are beneficial for the general public. From the above provision, it is therefore clear that a semblance of a Government link with the activity is required if it is for the welfare of the general public and if the link is not there, then the said act cannot be brought within the four corners of public purpose.

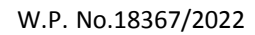


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97. It is the specific case of the 5th respondent, which is revealed through the counter as well that the 5th respondent Trust was formed in the year 1985. After formation of the Trust, the typed set of papers do not reveal that any steps were taken by the 5th respondent to address the Government seeking any lands to be acquired to address its public activity. However, it is the specific case of the 5th respondent that the lands of which reconveyance is sought, 70 cents were settled through 9 settlement deeds, while 24 cents were purchased through 3 sale deeds.

98. In fact, it is the specific case of the 5th respondent, even in the earlier round of litigation in W.P. No.25989/2014, wherein order was passed by this Court on 16.4.2015 that it had purchased the lands without being aware of the acquisition proceedings. However, what is to be noted here is the fact that of the purchase made of 0.94 acres, viz., 94 cents, 70 cents were received by the Trust in the form of settlement deeds and 24 cents were purchased, which were in the form of 9 settlement deeds and 3 sale deeds, all of which were in the year 1995. So at best, the purchase made by the 5th respondent is only to an extent of 24 cents and not the whole of 94 cents or 0.94 acres which is the subject matter of



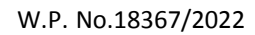
99. It is also to be noted, as stated above, that the above 9 settlement deeds and 3 sale deeds pertaining to 0.94 acres were executed only in the year 1995, though the acquisition was way back in 1978, which reached its logical conclusion by means of issuance of Declaration in August, 1981 and the award being passed in the September, 1986 and the subsequent purchasers having received the compensation amount in the year 1986 itself. It is also to be placed on record that while Section 4/1 notification was issued on 17.7.1978, which was published on 9.8.1978, the initial sale by the petitioner took place in mid June, 1981, the Declaration u/s 6 came to be issued in August, 1981, which was gazetted on 8.8.1981 and award was passed in the year 1986. However, there is a conspicuous absence of the subsequent purchasers either filing any petition for reconveyance of the land u/s 48-B or seeking enhanced compensation, but they kept silent for about a decade and, thereafter, in the year 1995, after receiving the compensation amount, they had executed the 9 settlement deeds in favour of the



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5th respondent, while 3 sale deeds have been entered into, inspite of the fact that the lands have been acquired and vested with the Government way back in the year 1981 and award has also been passed in the year 1986. At the risk of repetition, it is to be stated that on the issuance of Section 6 Declaration and Award in the year 1986, the lands stood vested in the Government.

100. What is more curious to be noted here is the fact that while the subsequent purchasers have received the compensation on the award being passed, which is evident from the counter filed by the 1st respondent, the settlement deeds relating to the said lands have come to be executed in the year 1995, when on the said date, the subsequent purchasers knew very well that the lands have been acquired and it stood vested with the Government and was transferred to the Board for which compensation was also received by them. Yet the settlement deeds proceed on the premise that the subsequent purchasers, out of love and affection, are parting with the property to the 5th respondent in recognition of the charitable activities done to the public by the 5th respondent, all along knowing very well that they do not have any title to the property and on acquisition, the property stood vested with the Government and compensation



101. Upon such settlement deeds being entered into in the year 1995, the 5th respondent has addressed the communication to the Board seeking reconveyance/exemption citing the charitable activities being undertaken by the 5th respondent, which has resulted in the Board addressing the Government for permission for sale of the lands to the 5th respondent.

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lands has been dealt with by the Division Bench in *R.Shanmugam's case (supra)*, which has already been extracted above, and particular reference can be had to paragraphs 15 to 18 of the said decision, which has since attained finality.

103. In the said decision, the Division Bench has clearly held that u/s 72 of the Housing Board Act, the word “vest” would only relate to title or possession or some limited purpose of disposing of the same, which is only to the extent of the Board’s power to sell or dispose of the plots/flats in the discharge of its functions under the scheme. Therefore, when the Board has not been vested with the power to sell the lands but only for the purpose of providing house sites and flats to the public, it is only the Government, which is vested with the power to determine as to the utilisation of the land, the communication of the Board seeking permission to sell the land to the 5th respondent for the purpose of educational and research purpose is nothing but an act beyond the power conferred u/s 72 of the Act. The request made by the 5th respondent ought to have been rejected by the Board at the threshold and it ought not have sought permission to sell the land to the 5th respondent, which is not the purpose for which acquisition was made. Therefore, to the extent of the Board seeking



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permission from the Government itself cannot be countenanced and even otherwise, if the Board was doubtful of its power, it ought to have straightaway referred the matter to the Government and ought not have sought a legal opinion with regard to the saleability of the lands as the lands have been acquired for a particular purpose and Section 72 of the Housing Board Act only delineates certain acts, which could be performed by the Board with the acquired lands and not parting with the lands by way of sale.

104. Turning the attention to the power of the Government to grant permission to the Board to sell the land, the power is traceable to Section 48-B of the Land Acquisition Act, which has been brought in by way of amendment. This provision was inserted keeping in mind that there is no provision in the Central Act enabling the Government to reconvey the unutilised land. By the said provision, the erstwhile owners were entitled to make request to the Government for reconveyance 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-sections (1-A) and (2) of Section 23, if any, paid under this Act. However, power of consideration was vested with the State Government to



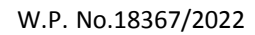
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consider such request if the State Government is of the opinion that such land is not required for any other public purpose.

105. In the present case, the lands were acquired and stood vested with the Government, which was transferred to the Housing Board for the purpose of the scheme. However, a large chunk of land remained unutilised, which is inclusive of the lands, which has since been sold. Based on the representation of the 5th respondent, the lands have been permitted to be sold. However, one of the basic ingredients of Section 48-B does not stand fulfilled, in that, the formation of opinion of the Government for allotment of the said lands for any other public purpose. However, merely quoting the activity, which is sought to be performed by the 5th respondent, the said lands have been directed to be sold to the 5th respondent upon receipt of sale consideration.

106. It is to be pointed out that *the exercise of power u/s 48-B cannot be mechanically used and whenever 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 stand fulfilled. Exercise of such*



107. The test of reasonableness and fairness while forming an opinion to sell the land to the 5th respondent by the Government is a prerequisite and whether the said opinion is on the touchstone of “*public purpose*” as provided u/s 3 (f) of the Land Acquisition Act are the main issues that require to be considered.

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for the benefit of the public to be brought within its ambit. However, certain acts, which are specifically provided in clause (vi) of Section 3 (f) confers the power on local authority and societies, which have been duly registered to undertake public activity with the prior permission of the Government, which could seek for allotment of lands for performing the tasks.

109. It is evident from clause (vi) of Section 3 (f) that acts that are performed by a local authority or a registered co-operative society with the prior approval of the Government alone would fall within the scope of Section 3 (f)(vi) and not by any other entity. Co-operative society is a creature of the statute through the constitutional mandate under Article 243ZH and 243ZI and only the co-operative societies which are creation of a statute and local authorities, would come within the ambit of clause (vi) of Section 3 (f) of the Land Acquisition Act.

110. Nowhere in the entire counter affidavit filed by the 5th respondent nor in the written arguments submitted by the 5th respondent is there any whisper that prior approval of the Government was obtained during the creation of the Trust which it is alleged was formed for carrying out public welfare schemes. In



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fact, not even during the hearing, it was submitted on behalf of the 5th respondent that prior approval was obtained before the formation of the Trust and any material in this regard has been placed before this Court. Further, it is to be noted that the 5th respondent is a Trust, which does not partake the character of a co-operative society which alone is a creature of the statute and Trust does not fit into the said criteria and, therefore, the Trust not being a creature of the statute it would not come within the purview of clause (vi) of Section 3 (f) of the Land Acquisition Act. Therefore, the acts, which are performed by the 5th respondent though could be stated to be having an element of charitable purpose, but it would not attract the definition of “*public purpose*” as defined u/s 3 (f).

111. Further, there is no material available on record, as already stated above, to show that the activities, which the 5th respondent proposes to perform had the prior approval of the appropriate Government, which alone could be the determinant factor to bring the acts performed within the ambit of “*public purpose*”. Therefore, the element of prior approval of the Government with regard to a specific activity is *sine qua non* for determining the activity performed to fall within the ambit of “*public purpose*” as defined u/s 3 (f)(vi), nevertheless



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the activities performed by the 5th respondent could never be construed to have satisfied the requirements of Section 3 (f)(vi) as the 5th respondent is a Trust and not a local authority or a co-operative, which alone are specifically included under Section 3(f)(vi). Giving any other construction than the one above would not only defeat the object and purpose of the provision, but would also pave the way for persons/institutions to seek for allotment of land by way of acquisition, breeding rampant land acquisition, which would defeat the right of individuals to property, which right, though not a fundamental right after the insertion Article 300-A by the Constitution (Forty Fourth Amendment) Act, 1978, but nevertheless is a constitutional right, which would be deprived by following the legal provisions. The safeguards provided through the legal provisions are not for defeating the rights of the individuals to the property, but are only safeguards guaranteed by law. The deprivation of the said constitutional right, by application of the provisions of the Land Acquisition Act should only be for the welfare of the public at large and not for enriching private interests/purposes. That is the only reason why the amendment u/s 48-B has been made to the Central Act, which secures the interests of both the Government, the public as also the erstwhile owner of the property.



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112. It is to be pointed out that the two limbs of Section 48-B are that the lands, which are acquired, firstly, if not used for the public purpose for which it was acquired, could be used for any other public purpose; secondly, if it remains unutilised it should be restituted to the original owner after receipt of the amount as mandated u/s 48-B. However, where no assignment is made for a public purpose and restitution to the erstwhile owner is not made by the Government, the lands, which vests with the Government, should be sold only through public auction, so that the public gets benefitted by the higher value which such land fetches. In the present case, the fulfilment of public purpose by the 5th respondent as defined u/s 3 (f) (vi) has not been deliberated upon in the aforesaid Government Order, but the lands have been permitted to be reconveyed by way of sale to the 5th respondent, thereby the Government abdicated its duty or rather eroded the confidence which the public had reposed in the Government; rather it was the duty of the Government to have auction sold the lands for higher value for the public benefit.



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113. As already stated above, formation of opinion by the Government is conspicuously absent in the impugned Government Order. In fact, the impugned order is silent on the public purpose involved and more so, the purpose for which the lands were permitted to be reconveyed by way of sale does not satisfy the requirements of public purpose as defined under clause (vi) of Section 3 (f).

114. In the present case, even a cursory perusal of clause (vi) of Section 3 (f) would reveal that the petitioner is neither the erstwhile owner of the property prior to the Declaration u/s 6 nor would fall within the ambit of local authority or registered society under clause (vi) of Section 3 (f) of the Land Acquisition Act and, in the aforesaid backdrop, the opinion formed by the Government while issuing G.O. Ms. No.208 dated 12.6.1998 is not only erroneous, but clearly reveals total non-application of mind to the provisions of the Land Acquisition Act. It is clear and unambiguous that whatever assignment is made in the form of sale or allotment, the same should be for a public purpose and if not, the land of the Government should be sold only through public auction so that the public gets benefitted by getting higher value. There is neither an informed opinion formed by the Government noting that there is any semblance of public activity involved



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in the activities of the 5th respondent, nor the 5th respondent satisfies the provisions of Section 3 (f)(vi) to seek for lands for any other public purpose and, therefore, parting with the lands is nothing but an act, which beyond the power of the Government and, therefore, the impugned Government Order suffers the vice of perversity, impermissibility and illegality.

115. Further, as has been pointed out already, the lands were acquired way back in 1981 for which award was passed in the year 1986. The lands were sought by the 5th respondent in the year 1997, though it is alleged to have received settlement of the lands in its favour from 9 persons and sale from 3 persons in the year 1995. It is to be noted that the said land owners had already received compensation from the acquisition authority for the acquired lands, but have still settled/sold the property. Therefore, from the date of their purchase in the year 1981, they were holding the property for more than 14 years and, thereafter, settled/sold the property in favour of the 5th respondent, inspite of the fact that the lands were acquired and compensation was paid to the owners of the property.



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116. In the present case, upon issuance of Declaration u/s 6 and passing of the Award, the lands stood vested with the Government and the 5th respondent had come into possession the property from the subsequent purchasers only after the award, either by way of settlement or purchase and, therefore, the 5th respondent has no right to make a representation to the Government seeking reconveyance or exemption from land acquisition proceedings, as the subsequent purchasers did not have any title to sell/settle the property which is a benefit conferred only upon the erstwhile owner of the property prior to Section 6 Declaration and not on a purchaser, who has purchased the property after the passing of the award.

117. Admittedly, lands to the extent of 70 cents were received by the 5th respondent by way of settlement, while 24 cents of land was purchased by the 5th respondent. The materials on record speak only of the said extent and that being the case, this Court is unable to understand as to the basis on which the 5th respondent had made the representation claiming reconveyance/exemption of an extent of 8.94 acres. There is no material placed by the 5th respondent to establish the manner and the period in which the balance 7 acres and odd was



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118. It is also necessary to point out that there is no iota of material to suggest as to how the activities carried on by the 5th respondent are public purpose activities as it is alleged that marriage hall has been constructed in the



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said property. Though the 5th respondent claims that the amount realised from the marriage hall is ploughed in to perform public charitable activities, as could be seen from the income tax returns, however, tax returns cannot act as evidence to hold that the realised amounts are utilised for public charitable activities, as the public purpose relates to the charitable activities that is performed by utilising the lands and not the activities that is performed for realising monetary benefit by utilising the said lands and the income tax returns showing the amounts as being ploughed in for charitable activities cannot come in aid to substantiate the case of the 5th respondent that the lands are used for public charitable purposes, more so, when it does not have the authorisation u/s 3 (f)(vi) of the Land Acquisition Act.

119. Once the lands are not utilised for public charitable purposes, then the allotment made of the said lands by invoking Section 3 (f)(vi) of the Land Acquisition Act is erroneous and the same cannot be allowed to sustain, as there is a clear infraction of the condition imposed u/s 16-B and 48-B of the Land Acquisition Act as the course open to the Government is only to go for public auction and the allotment being perverse, arbitrary and unsustainable and the same deserves to be interfered with.



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120. Considering all the above, there could be no hesitation for this Court to hold that not only there is non-compliance of the mandate imposed u/s 16-B and 48-B of the Land Acquisition Act, but there is also no formation of opinion by the Government and in the absence of the same, the proper course which ought to have been adopted by the Government is only to go for public auction, which would have been beneficial to the general public, as it would have yielded higher value for the property, but the lands have been sold to the 5th respondent for pittance by the Government, thereby the trust reposed on the Government by the general public has suffered, as the Government being a repository of the trust reposed by the public has gravely prejudiced and shattered the public cause by the passing of the impugned Government Order, which is nothing but an act of a realtor selling the property upon acquiring the same from the individuals. The Government should act as the custodian of the property for the benefit of the public and cannot jeopardize the welfare of the people for individual welfare. **Therefore, issue Nos.3 and 4 are answered against the respondents.**



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121. This Court, on the aforesaid finding, while is inclined to quash G.O. Ms.

No.208 dated 12.6.1998 and set aside the sale deed executed by the Housing Board in favour of the 5th respondent, necessarily, the Housing Board ought to return the sale consideration paid by the 5th respondent as on the basis of the allotment, the lands have been sold in favour of the 5th respondent who has paid an amount of Rs.33.5 Crores and odd as sale consideration. Accordingly, this Court is inclined to direct the Housing Board to repay the sale consideration paid by the 5th respondent along with simple interest at 6% p.a. to be calculated from the date of sale till the date of refund of the sale consideration.

122. For the reasons aforesaid, this Court issues the following directions :-

- i) *The relief of reconveyance sought for by the petitioner cannot be granted and, accordingly, the same is rejected;*
- ii) *G.O. Ms. No.208 dated 12.6.1998 passed by the 1st respondent permitting the Housing Board to sell the lands which are covered under the said Government Order is hereby quashed;*



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- iii) *As a consequence of quashment of the aforesaid G.O. Ms. No.208, the sale deed executed by the Housing Board in favour of the 5th respondent is set aside;*
- iv) *The sale consideration received by the Housing Board from the 5th respondent pursuant to the aforesaid sale transaction is directed to be refunded to the 5th respondent along with simple interest at 6% p.a. from the date of sale till the date of refund to the 5th respondent.*
- v) *The 1st respondent is directed to take over the lands and use it for any other public purpose as mandated under the provisions of the Land Acquisition Act in line with the public purpose as defined u/s 3(f)(vi) of the Land Acquisition Act;*
- vi) *This writ petition is disposed of with the aforesaid observations and directions. Consequently,*



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connected miscellaneous petition is closed. There shall be no order as to costs.

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Index : Yes / No

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To

1. The Secretary to Government
Housing & Urban Development Dept.
Government of Tamil Nadu
Fort St. George, Chennai 600 009.
2. The Managing Director
Tamil Nadu Housing Board
Nandanam, Chennai 600 035.
3. The Manager (Marketing & Service)
Tamil Nadu Housing Board
Besant Nagar Division No.48
Dr.Muthulakshmi Salai, Adyar
Chennai 600 020.
4. The Executive Engineer &
Administrative Officer
Tamil Nadu Housing Board
Besant Nagar Division No.48
Dr.Muthulakshmi Salai, Adyar
Chennai 600 020.



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M.DHANDAPANI, J.

GLN

**PRE-DELIVERY ORDER IN
W.P. NO. 18367 OF 2022**

Pronounced on



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12.11.2025