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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.01.2025

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

S.A.(MD)No.115 of 2017

and

C.M.P(MD)No. 1963 of 2017

1. The General Manager,
Madurai Telecom District,
Bharat Sansar Nigam Limited.
2, V.P.Rathnasamy Nadir Road,
Madurai-625 002.

2. The Divisional Executive Engineer,
Ellis Nagar Telephone Extension,
Ellis Nagar, Madurai-10.

... Appellants

Vs.

1. S.Mohandoss, S/o.Soundara Doss,
No.E-190, Santhanam Road,
T.V.S.Nagar, Madurai – 10.
2. The Secretary to Government,
Housing and Urban Development Department,
Government of Tamil Nadu Fort St.George, Chennai-600 009.



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3. The Executive Engineer and Administrative Officer,
Tamil Nadu Housing Board,
Special Division, Ellis Nagar, Madurai-10

4. The Chairman, O/o.Chairman,
Tamil Nadu Housing Board,
No.331, Anna Salai, Nandanam,
Chennai - 600 035.

5. S.Prabakaradoss

6. S.Salomon Baskaradoss

7. Selvarani

8. Salomi

9. Jesudoss

... Respondents

[4th respondent is impleaded as per order of this Court, dated 27.09.2023]

[Respondents 5 to 9/LRs of the 1st respondent's father are impleaded vide order of this Court, dated 07.01.2025]

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the Judgment and Decree dated 17.02.2016 made in A.S.No.68 of 2015 on the file of the Principal Sub Court, Madurai confirming the Judgment and Decree dated 05.08.2014 made in O.S.No.20 of 2004 on the file of the Additional District Munsif Court, Madurai and allow this Second Appeal.



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For Appellants : M/s.K.Govindarajan
For Respondents : Mr.Babu Rajendran, for R-1
Mr.C.Satheesh,
Government Advocate, for R-2
Mr.A.Kannan, for R-3 & R-4

JUDGMENT

This Second Appeal is filed by the 3rd and 4th defendants in the suit to set aside the Judgment and Decree, dated 17.02.2016 passed in A.S.No.68 of 2015 on the file of the Principal Sub Court, Madurai confirming the Judgment and Decree dated 05.08.2014 passed in O.S.No.20 of 2004 on the file of the Additional District Munsif Court, Madurai.

2. The plaintiff in the suit is the 1st respondent herein, the defendants 1 and 2 in the suit are the respondents 2 and 3 herein and the defendants 3 and 4 in the suit are the appellants herein. For the sake of convenience, the parties shall be referred as plaintiff and defendants as per ranking in the suit. The 4th



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respondent was dismissed for default and restored by Order of this Court, dated 21.01.2025.

3. The suit in O.S.No.20 of 2004 was filed for mandatory injunction directing the defendants to hand over the possession of the suit property or to grant alternative site for the same measurement of the suit property to the plaintiff.

4. The brief facts as stated in the plaint is that the plaintiff is the owner of the land situated in S.No.5/3B, 2B in Ponmeni Village, Madurai South Taluk to the extent of 9 cents. The plaintiff's father namely Mr.S.Soundara Doss had purchased the suit property from one Chelladurai on 14.07.1952 vide registered sale deed for valuable consideration, thereafter was in possession and enjoyment of the property and was intending to construct house. Originally the land was classified as “wet land” in revenue records and the plaintiff was paying kist to the government for the said land. The Government sought to acquire the lands in Ponmeni Village for formation of Housing Scheme namely “Ellis Nagar”



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and issued Section 4(1) notification dated 07.02.1957 under Land Acquisition Act [hereinafter referred as 'the Act'], along with adjoining lands. Then issued G.O. Ms.No.B10 Housing and Urban Development, dated 17.02.1979. Further issued G.O.Ms.No.124B Housing and Urban Development dated 24.09.1990 under Section 6 of the Act, declaring the above lands are acquired for public purpose. The land owners have preferred batch of writ petitions which were allowed vide order dated 07.04.1983 and the notification issued under Section 6 of Land Acquisition Act was quashed. However, Section 4(1) notification of the Act was left open for the Government to decide, if so advised.

5. The plaintiff's father had filed W.P.No.8055 of 1982 and the same was allowed on 07.04.1983, wherein Section 6 notification of the Act was quashed with specific direction given to resume at 4(1) notification stage. Since the Government has not preferred any appeal, the Order had attained finality. The Government ought to have issued section 6 notification of the Act, within a period of three years, based on the 4(1) notification of the Act. However, even after 12



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years, Section 6 notification of the Act was not issued. Hence the notification issued under Section 4(1) of the Act has suffered a natural death and proceedings had lapsed. Hence, the present plaintiff had filed a writ petition in W.P(MD)No. 1881 of 1991 for Writ of Certiorari to quash the proceedings of the government and cancel notification Section 4(1) of the Act. However, the defendants only to defeat the order of this Court by setting up the Telecommunication Department as though they got the lands transferred to it from the Housing Board and the Telecommunication Department making arrangements to fence the lands including the suit property, the plaintiff objected and stopped the fencing. The plaintiff has formed a Society called “Madurai Ellis Nagar Land Owners Society” and registered under Societies Act No.97/1980.

6. The society had raised objections not to interfere in the suit property and adjacent lands since that the Association had filed W.P(MD)No.2320 of 1985 restraining the Government from interfering with the possession of the members plots and interim injunction was also granted. After that the



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Government has no control or right over the plots in S.Nos.6/2A and 5/3B2 in Ponmeni Village. When declaration under Section 6 of the Act has been quashed by Courts, all proceedings subsequent to and from Section 6 declaration would be rendered invalid. Therefore, even if any transfer was made by the defendants in favour of the Telecommunication on the strength of the Section 6 declaration, it ought to be struck down as null and void. Hence the plaintiff filed W.P.No.1881 of 1991 along with W.M.P(MD)No.10901 of 1991 for an order of injunction restraining the Telecommunication Department from taking possession. Finally, the writ petition was allowed by quashing the notification under Section 4(1) of the Act. The Judgment passed by this Court has attained finality since there is no appeal. Even during the pendency of the above litigation, the defendants had put up construction by putting compound wall in the Ellis Nagar Telephone Exchange. Therefore, the suit was filed for handing over the land or to provide alternative site.



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7. The Housing Board has filed written statement stating that the suit was filed after issuing notice under Section 138 of the Tamil Nadu Housing Board Act and on this ground alone the suit is liable to be dismissed in limini. The suit property was acquired by the Land Acquisition Officer after following all the legal formalities, the possession was taken over by the Government with the consent of the land owners and later on handed over to the Housing Board. The suit property is meant for public purpose and the same cannot be reconveyed to the plaintiff. The suit property has already been utilised and after knowing the said fact the plaintiff's father had filed writ petitions. Therefore the present suit is bad in law and prayed to dismiss the suit.

8. The defendants 3 & 4, namely the General Manager Madurai Telecom District, BSNL and the Divisional Exchange Engineer, Ellis Nagar Telephone Exchange had filed a detailed counter wherein it is stated that the Department of Telecommunication had purchased the land admeasuring about 37 grounds and 1892 square feet comprised in various survey numbers by paying sale



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consideration for construction of Telephone Exchange building in Ellis Nagar, hence the sale is valid. The plaintiff cannot now question the sale before this Court and prayed to dismissed the suit.

9. After considering the facts and circumstances, the Trial Court has decreed the suit. Aggrieved over, the BSNL had preferred Appeal Suit. It is pertinent to state that the Housing Board has not preferred any Appeal Suit. The Appeal Suit filed by BSNL was dismissed, hence the present second appeal is preferred by BSNL.

10. At the time of admission, the second appeal is admitted on the following substantial questions of law:

- i. Whether the Courts below ought to have held that the appellants herein have perfected their title by adverse possession?*
- 2. Whether the suit in question is barred by limitation?*
- 3. Whether the suit has been properly framed since even according to the plaintiff the suit property is located in the*



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middle of the appellants' compound and since the plaintiff himself has sought the alternative relief or being allotted an alternative site?

11. Pending the Second appeal, the Housing Board has come forward to grant alternative site. The Housing Board had considered the issue which is evident from various communications, dated 04.04.2017, 05.04.2017, 05.06.2017, 20.06.2017 and 31.08.2017. The alternative site is identified and the details of the site is submitted before this Court and the same is extracted hereunder:

1. in S.No.19/1 measuring with 2.97 cents
2. in S.No.19/3 measuring with 2.57 cents and
3. in S.No.220/5A Part measuring with 4.49 cents of Land in which the st respondent S.Mohan Doss can get for his 9 cents of Land as an Alternative Site as directed by this Court.

12. The plaintiff has also agreed and accepted that they are ready and willing to take alternative site but the said acceptance is without prejudice to other conditions and development charges, to this effect the plaintiff has also filed an



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affidavit. The defendants had filed a rough calculation wherein it is stated that the development charges would be approximately Rs.16,50,000/- and the same is subject to modifications.

13. For demanding developing charges, the plaintiff objected to the same. The contention of the plaintiff is that till now the defendants had not paid a single penny towards the award to the plaintiff, in such circumstances, claiming development charges is not correct. But the defendant submitted that the award was deposited in the Court, hence claiming development charges is legally valid. The Learned Counsel appearing for the plaintiff to substantiate his contention had relied on the judgment dated 30.08.2023 passed in L.Manickasundaram Vs. The Chairman, Tamil Nadu Housing Board in W.P.No.4571 of 2022, wherein it is held that

“8.Housing Board still cannot understand this order written in absolutely simple and understandable English. Finally, after nearly 32 years since TNHB ignited the agony of the petitioner, provided them with a calculation statement dated 27.01.2022. They have calculated the cost of the land as on 07.03.2000 at Rs.29,90,401/- for the petitioner.



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Interestingly, if not shamelessly, for all the default which the TNHB had made in not doing, what it should have done immediately after the order of the Division Bench dated 25.04.2000, by picking a calculator and pressing the numbers, it slapped interest on the above referred to sum and fixed the total cost at Rs.1,71,38,000/- for the petitioner.

9.Inexplicable are the ways of TNHB, if only this Court needs to show some degree of respect to it. Here is an entity, an instrumentality of the State, which chose to expropriate the citizens of their property, make promises, invite judicial orders, but still never has an intention to show any respect to any of them. They are in their own zone, which is far beyond the milky way, as its altitude is disconnected with the legal process of this Country. This is evident.

10.For all its default, it has slapped the interest on the petitioner. This is untenable, unless this Court wants to patronise patent illegality, and gross contempt of its own process.”

14. After hearing the rival submissions this Court is of the considered opinion that merely depositing the amount in the Court is not sufficient to fulfil the statutory obligation of paying the compensation to the land owners. Therefore the contention of the defendant is rejected. Further if the compensation is not paid to the land owner, then the land owner is entitled to compensation under the Right



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to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RFCTLARR Act), the new Act. If the amount is quantified under the new Act, then the defendant ought to have paid more amount. If the said amount is taken into account, then the proposed development charges is meagre amount. In such circumstances, then the defendant would be in disadvantageous situation. Further as rightly held in the aforesaid judgment, for the default of the defendant, the plaintiff cannot be directed to pay the development charges. Therefore, this Court is of the considered opinion that the defendant/Housing Board cannot impose any development charges on the plaintiff.

15. However, the plaintiff is directed to pay the registration fee alone for execution of the sale deed. The same shall be executed within a period of five months from the date of receipt of a copy of the Judgement. This Court is with the fond hope that the Housing Board will not seek any extension of time for executing the sale deed has granted a longer time for registration of sale deed.



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16. With these directions, this Second Appeal is disposed of. No
Costs. Consequently, connected miscellaneous petition is closed.

21.01.2025

Index : Yes / No
NCC : Yes / No

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Note : Issue a copy of Judgment on 14.02.2025



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TO:

1. The Principal Sub Court, Madurai.
2. The Additional District Munsif Court, Madurai
3. The Secretary to Government,
Housing and Urban Development Department,
Government of Tamil Nadu Fort St.George,
Chennai-600 009.
4. The Executive Engineer and Administrative Officer,
Tamil Nadu Housing Board,
Special Division, Ellis Nagar, Madurai-10.
5. The Chairman, O/o.Chairman,
Tamil Nadu Housing Board,
No.331, Anna Salai, Nandanam,
Chennai - 600 035.
- 6.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

KSA

Judgment made in
S.A.(MD)No. 115 of 2017

Dated:**21.01.2025**