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**(2015) 09 MAD CK 0046**

**In the Madras High Court**

**Case No :** W.P. (MD) No. 20045 of 2013 and M.P. (MD) Nos. 1, 2 of 2013

B. Rajagopalan

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

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**Date of Decision :** 30-09-2015

**Acts Referred:**

Land Acquisition Act, 1894 — Section 18, 28-A, 4(1), 5(A)  
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 18(1), 24(2), 31(2)

**Citation :** (2015) 09 MAD CK 0046

**Hon'ble Judges :** R. Mahadevan, J.

**Bench :** Single Bench

**Advocate :** Niranjan S. Kumar, for the Appellant; S. Chandrasekar, Government Advocate, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

R. Mahadevan, J.—Seeking a Writ of Certiorarified Mandamus to quash the order passed by the first respondent vide Letter No. 26310/NiA3(1)/2013-4, dated 21.11.2013 and direct the respondents 1 and 2 to re-convey the land in Survey No. 38/1, to an extent of 44 cents in Silayaneri Village, Madurai North Taluk, Madurai District, to the petitioner, this writ petition has been filed.

2. Heard both sides.

3. The case of the petitioner, in nutshell, is as follows:

3.1. The petitioner purchased the land to an extent of 44 cents in S. No. 38/1 in Silayaneri Village, Madurai District, by a registered sale deed in Document No. 3340, dated 07.11.1973 and he became the absolute owner of the same. On 12.03.1982, the Special Tahsildar (Land Acquisition), Madurai North Neighbourhood Project, informed the petitioner that his land was acquired by the Government and an award also came to be passed to that effect.

3.2. The main grievance of the petitioner is that the said land acquisition

proceedings were initiated by the authorities concerned in violation of principles of natural justice, as no notice was issued thereon. On a query made by the petitioner to the Special Tahsildar regarding the details of acquisition, the petitioner was informed that a sum of Rs. 50/- per cent was fixed in the award. The petitioner made several representations to the Special Tahsildar to refer the matter to the civil Court for enhancement of the compensation fixed by the Land Acquisition Officer. Despite the same, a notice dated 30.09.1982 was sent to the petitioner informing that a total compensation of Rs. 2,530/- was fixed in respect of the land of the petitioner.

3.3. The petitioner was kept in dark about the award passed in respect of the land of the petitioner and therefore, he filed a writ petition in W.P. No. 8828 of 1982 before this Court and by virtue of the order dated 25.10.1990, the Special Tahsildar, vide his communication dated 01.04.1991, furnished a copy of the award dated 09.09.1982.

3.4. Meanwhile, the Land Acquisition Tribunal enhanced the compensation to a sum of Rs. 1,500/- per cent with 30% solatium amount and interest was also fixed at the rate of 12% per annum on the market value of the land from the date of the notification under Section 4(1) of the Land Acquisition Act, 1894, (in short "the Act") till the date of award. Therefore, the petitioner also made a representation to the authorities concerned seeking redetermination of the compensation under Section 28-A of the Act, however, no action was taken so far.

3.5. In the meantime, the petitioner received a communication from the Special Tahsildar that the award amount in respect of the land of the petitioner was kept in the Revenue Deposit and it had expired and a special permission had to be obtained from the Chief Auditor of the State and till such time, the same could not be released.

3.6. On 24.11.2003, the petitioner made a representation to the third respondent seeking to reconvey the land to him, which was replied by communication dated 31.12.2003 to the effect that the plea of the petitioner would be considered on the basis of the reply of the Managing Director of the Tamil Nadu Housing Board. Since no action was forthcoming, he filed W.P.(MD) No. 12905 of 2013 seeking a direction to reconvey the land to the petitioner. Pendency of the said writ petition, the impugned order came to be passed rejecting the claim of the petitioner, aggrieved by which, the present writ petition is filed.

4. On notice, the respondents 1 and 4 filed the counter affidavit denying the claim of the petitioner and contended that the plea of the petitioner for re-conveyance of his land could not be considered for the reason that a fresh proposal for construction of the dwelling houses in the land in question has been approved and hence, prayed for the dismissal of this writ petition.

5. Mr. Niranjana S. Kumar, learned Counsel for the petitioner made the following submissions:

5.1. The petitioner, a senior citizen, was made to run from pillar to post to get compensated for his land acquired by the Government for a public purpose since 1982 and it continues till now.

5.2. The primary contention put forth by the petitioner is that he was not at all put on notice before initiating the land acquisition proceedings and he was just informed the result of such proceedings and thereby, handicapped him to move for any relief.

5.3. All the attempts made by the petitioner for his legal plea for redetermination of the meagre compensation fixed by the Land Acquisition Officer, ended in futile exercise.

5.4. On the other hand, the request for re-conveyance of the land acquired for public purpose, being not utilised for the same, was also rejected by way of the impugned order.

5.5. The petitioner is entitled to the compensation as per the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (in short "2013 Act"), for, the award in the case on hand was passed in the year 1982, i.e. more than five years prior to the commencement of the 2013 Act. In support of the said contention, he placed reliance on the decision of the Honourable Supreme Court in *Pune Municipal Corporation and Another Vs. Harakchand Misirimal Solanki and Others*, .

5.6. Relying upon the decision of this Court in *iGATE Global Solutions Limited Vs. The State of Tamil Nadu*, and the decisions of the Honourable Supreme Court in (i) *Karnail Kaur Vs. State of Punjab* and (ii) *Sita Ram Vs. State of Haryana*, , he contended that even after five years of the award, the compensation was neither paid nor deposited as contemplated under Section 31(2) of the 2013 Act, the legal fiction under Section 24(2) of the 2013 Act would come into play and the entire acquisition proceedings would lapse and therefore, the rejection of the plea of the petitioner for re-conveyance of the land would be invalid.

5.7. He, therefore, prayed for quashing the impugned order and for a direction to the respondents 1 and 2 to reconvey the above said land in favour of the petitioner.

6. Per contra, Mr. S. Chandrasekar, learned Government Advocate appearing for the respondents 1 and 4, placing heavy reliance on the counter affidavit filed by the respondents 1 and 4, contended inter alia, thus:

6.1. The notification under Section 4(1) of the Act, was approved by the Government in G.O. Rt. No. 126, Housing and Urban Development Department, dated 29.04.1977 and published in the Tamil Nadu Gazette, dated 25.05.1977.

6.2. The enquiry under Section 5(A) of the Act was conducted on 10.08.1977 and 12.08.1977 and Draft Declaration was also approved by the Government, vide G.O.MS. No. 634, Housing and Urban Development Department, dated

14.05.1980, and published in the Tamil Nadu Gazette, dated 21.05.1980.

6.3. The petitioner appeared in person during the award enquiry on 12.03.1982 and 13.03.1982 and produced the sale deeds relating to the land in dispute.

6.4. The allegation of the petitioner that he was not put on notice, is denied by the respondents 1 and 4, on the ground that he appeared for the enquiry and submitted his objection for the said acquisition proceedings and hence, the question of violation of principles of natural justice does not arise at all.

6.5. The earlier writ petition filed by the petitioner in W.P. No. 8828 of 1982 was dismissed by this Court on 28.10.1990 and it attained finality.

6.6. The land in question was already handed over to the Tamil Nadu Housing Board, on 06.10.1982 itself and therefore, the plea of the petitioner for re-conveyance was not considered by the Government and the impugned order came to be passed.

6.7. Now, a fresh proposal for construction of the dwelling units, in the land in question has been approved by the Government and hence, prayed for the dismissal of this writ petition.

6.8. In support of his arguments, he relied on the judgment of the Honourable Supreme Court in Tamil Nadu Housing Board v. Keeravani Ammal and others [Appeal (Civil) Nos. 5928-5929 of 2004, decided on 15.03.2007].

7. No counter affidavit has been filed by the respondents 2 and 3, however, the learned Counsel for the respondents 2 and 3 supported the impugned order and prayed for the dismissal of this writ petition.

8. I have considered the rival submissions and perused the materials available on record.

9. The point that arises for consideration in this writ petition, is, whether the land acquired by the Government in the year 1982 could be re-conveyed to the erstwhile owner, who claimed that he had not received any compensation so far, more particularly, at this point of time?

10. The facts, which are not in dispute, as culled out from the materials available on record, could be listed out thus:

10.1. The notification under Section 4(1) of the Act was issued and the petitioner appeared for enquiry on 12.03.1982 and 13.03.1982.

10.2. Since the award amount was not accepted by the petitioner, the same was deposited with the Treasury on 08.12.1982.

10.3. The petitioner has been litigating the issues, both for enhancement of the compensation and for re-conveyance of the land in question as well.

10.4. It is not in dispute that till date, the reference under Section 18 of the Act

to the civil Court was not made by the authorities concerned for enhancement of the compensation.

10.5. By the impugned order, the claim of the petitioner for re-conveyance of the land in question was struck down, on the ground that once the land was acquired for public purpose, it could not be re-conveyed at all.

10.6. Moreover, a fresh proposal has also been made to utilise the said land for public purpose.

10.7. The delay on the part of the petitioner in approaching the authorities concerned for re-conveyance would play a vital role in deciding the issue on hand.

10.8. The petitioner accepted the amount awarded by the Land Acquisition Officer subject to his objections, by his representation dated 12.03.1985. When that being the factual position, it is not known as to why it is contended on the part of the petitioner that the award amount was kept in the Treasury and he was not paid the award amount.

10.9. Till 1991, the petitioner was pursuing his remedy to receive the award amount and also sought to refer the matter under Section 18 of the Act.

10.10. From the year 2000, he started making representations to the authorities concerned seeking re-conveyance, on the ground that the said land was not put into utilisation for which purpose it was acquired and the said constant plea was rejected by the impugned order.

10.11. Challenging the same, the present writ petition is filed.

11. At the outset itself, this Court is of the view that the land in question was acquired by the Government to implement the North Neighbourhood Scheme at Madurai and after completion of the acquisition proceedings, the land was handed over to the beneficiary, namely, the Tamil Nadu Housing Board and now, it is reported that a fresh proposal has been approved by the Government for the construction of dwelling units, etc.

12. This Court is also not in a position to understand as to why the reference in the case on hand was not made so far and the answer is silent. Of course, it does not arise for consideration in the present writ petition and therefore, this has not gone into the said aspect.

13. Whether the petitioner is entitled to claim re-conveyance of the land acquired by the Government in the year 1982, at this distant point of time, is the only issue that revolves around in the present writ petition and in the opinion of this Court, the claim of the petitioner does not merit acceptance, in the light of the fresh proposal that has been approved by the Government in respect of the land in question.

14. The main contention projected by the learned Counsel for the petitioner is that the deposit of compensation amount in the Government Treasury is of no

avail and it cannot be held to be equivalent to the compensation paid to the land owners/persons interested and therefore, the land acquisition proceedings would be lapsed as per Section 24(2) of the 2013 Act.

15. In *Pune Municipal Corporation and Another Vs. Harakchand Misirimal Solanki and Others*, , the Honourable Supreme Court has held that the amount of compensation deposited in the Government Treasury was not equivalent to the compensation paid to the land owners/persons interested and if the award had been passed more than five years prior to commencement of 2013 Act, then, the land acquisition proceedings would lapse and further, held in paragraph 20 thus:

"20. From the above, it is clear that the award pertaining to the subject land has been made by the Special Land Acquisition Officer more than five years prior to the commencement of the 2013 Act. It is also admitted position that compensation so awarded has neither been paid to the landowners/persons interested nor deposited in the court. The deposit of compensation amount in the Government treasury is of no avail and cannot be held to be equivalent to compensation paid to the landowners/persons interested. We have, therefore, no hesitation in holding that the subject land acquisition proceedings shall be deemed to have lapsed under Section 24(2) of the 2013 Act."

16. The dictum laid down by the Honourable Supreme Court in *Pune Municipal Corporation v. Harakchand Misirimal Solanki* (cited supra), has been followed by this Court in *iGATE Global Solutions Limited Vs. The State of Tamil Nadu*, .

17. Once the conditions mentioned in Section 24(2) of 2013 Act, are fulfilled, the acquisition proceedings in respect of the land owners concerned must be deemed to have lapsed in terms of Section 24(2) of the 2013 Act and further, the second proviso to Section 24(2) of the 2013 Act, being prospective in operation, the benefit provided thereunder could not be availed by the Government. [See. *Karnail Kaur Vs. State of Punjab* ]

18. *Sita Ram Vs. State of Haryana*, , the Honourable Supreme Court dealt with Section 24(2) of the 2013 Act and held as under:

"21. In the light of the above findings recorded by us on the rival factual and legal contentions, and considering the averments made in the application and documents produced on record and after examining Section 24(2) of the Act of 2013 along with the decision of *Pune Municipal Corporation and Another Vs. Harakchand Misirimal Solanki and Others*, and other cases referred to supra, we are of the considered view that the plea of the appellant should be accepted and relief as prayed for has to be granted for the undisputed reason that the Award was passed on 08.10.2003 and five years have elapsed long back and the compensation undisputedly was not paid within 5 years to the appellant. The conditions mentioned in Section 24(2) of the Act of 2013 are satisfied by the appellant for allowing the plea as stated by him that the land acquisition proceedings in respect of his acquired land and building must be deemed to have lapsed in terms of Section 24(2) of the Act of 2013. The above mentioned three

Judge Bench decision and other cases of this Court referred to supra with regard to the interpretation made under Section 24(2) of the Act of 2013, would be aptly applicable with all fours to the fact situation in respect of the land covered in this appeal.

22. In view of the aforesaid findings and reasons recorded by us, the prayer made in the application of the appellant is allowed holding that the acquisition proceedings in respect of the appellant's land/building have elapsed. I.A. No. 5 is allowed. The appeal is disposed of in the above said terms by quashing the acquisition proceedings of the land/building of the appellant."

19. However, in the facts and circumstances of the present case, this Court, on a scrutiny of the typed set of papers, finds that the petitioner, by his representation dated 10.05.1991, expressed his willingness to accept the award lying to his credit without prejudice to his claim for enhancement of the compensation under Section 18(1) of the Act and therefore, the argument of the learned Counsel for the petitioner that the petitioner was not paid compensation, is a feeble one.

20. Further, in Tamil Nadu Housing Board v. Keeravani Ammal and others [Appeal (Civil) Nos. 5928-5929 of 2004, decided on 15.03.2007], the Honourable Supreme Court, while dealing with the issue regarding the re-conveyance of the land acquired by the Government, has held as follows:

"8. We find from the order of the learned single judge dated 2.8.2001, in the Writ Petition, the following statement recorded:

"According to the petitioners the said lands were not put into use by the fourth respondent Board for nearly 20 years. In the above said circumstances, when the petitioners approached the respondents for re-conveyance of the property by virtue of Section 48B of the Land Acquisition Act, it was rejected by the respondent. Again the petitioners made a representation to the respondents dated 18.3.98. Since the said representation of the petitioners has not been disposed of, the present Writ Petition came to be filed seeking for the issuance of a writ of mandamus directing the respondents to re-convey the lands situated in Survey Nos. 237, 238/1, 238/2 and 238/3 of Padi Village, Ambattur Taluk, M.G.R. District."

If the request of the writ petitioners for re-conveyance in terms of Section 48B of the Act stood rejected as apparently conceded by them before learned single judge, one finds it difficult to see how a second direction can be issued even in the absence of a challenge in the writ petition to the order of rejection and without examining the reasons contained therein. That order was also binding on the writ petitioners, so long as it was not got rid of. The order rejecting the request had become final and in a sense, it was not open to the learned single judge to issue the direction to consider an identical representation all over again. The Division Bench went one step further, we regret to say, without a proper consideration of the relevant aspects. The Division Bench apparently, even

without giving the Tamil Nadu Housing Board an opportunity of being heard, proceeded at the stage of admission itself to direct re-conveyance of the lands to the writ petitioners, whether it be on the first date of hearing itself or on the subsequent date as contended by learned counsel for the contesting respondents. If the Division Bench felt that there was a case to be looked into, it should have admitted the writ appeal, issued rule nisi to the parties and thereafter heard the matter and disposed it of in the light of the relevant provisions of the Act, the law bearing on the subject and the facts obtaining. Even when the Division Bench got an opportunity to correct itself on being approached by way of review, it did not utilise that opportunity.

9. It is clearly pleaded by the State and the Tamil Nadu Housing Board that the Scheme had not been suspended or abandoned and that the lands acquired are very much needed for the implementation of the Scheme and the steps in that regard have already been taken. In the light of this position, it is not open to the court to assume that the project has been abandoned merely because another piece of land in the adjacent village had been released from acquisition in the light of orders of court. It could not be assumed that the whole of the project had been abandoned or has become unworkable. It depends upon the purpose for which the land is acquired. As we see it, we find no impediment in the lands in question being utilised for the purpose of putting up a multi-storied building containing small flats, intended as the public purpose when the acquisition was notified. Therefore, the High Court clearly erred in proceeding as if the Scheme stood abandoned. This was an unwarranted assumption on the part of the court, which has no foundation in the pleadings and the materials produced in the case. The Court should have at least insisted on production of materials to substantiate a claim of abandonment.

10. We have already noticed that in the Writ Petition, there are no sufficient allegations justifying interference by the Court. Mere claim of possession by the writ petitioners is not a foundation on which the relief now granted could have been rested either by the learned single judge or by the Division Bench of the High Court. On the materials, no right to relief has been established by the writ petitioners.

11. We may also notice that once a piece of land has been duly acquired under the Land Acquisition Act, the land becomes the property of the State. The State can dispose of the property thereafter or convey it to anyone, if the land is not needed for the purpose for which it was acquired, only for the market value that may be fetched for the property as on the date of conveyance. The doctrine of public trust would disable the State from giving back the property for anything less than the market value. In *State of Kerala and others Vs. M. Bhaskaran Pillai and another*, in a similar situation, this Court observed:

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

Section 48B introduced into the Act in the State of Tamil Nadu is an exception to this rule. Such a provision has to be strictly construed and strict compliance with its terms insisted upon. Whether such a provision can be challenged for its validity, we are not called upon to decide here.

12. We are thus of the view that the writ petitioners, the contesting respondents, have not made out any case for interference by the Court or for grant of any relief to them. It is therefore not necessary for us to go into the further contention raised on the scope of Section 48B of the Act, whether the writ petitioners have established any claim to the lands, whether the re-conveyance can only be to the original owners and not to others and whether if possession has already been made over to the Housing Board, the State could exercise its power under that provision. We leave open those questions for the High Court to consider as and when the occasion arises on it being approached in the context of Section 48B of the Act. Suffice it to say that the decision of the High Court in the Writ Petition in question is totally unsustainable and deserves to be set aside.

13. We therefore allow the appeals filed by the State of Tamil Nadu and set aside all the orders passed in the Writ Petition and in the writ appeal and in the contempt of court case. We dismiss the Writ Petition filed by the writ petitioners. In view of the above position, there is no need to pass any further order in the appeals filed by the Tamil Nadu Housing Board. The above decision will govern the Tamil Nadu Housing Board also. The State of Tamil Nadu would be entitled to its costs from the writ petitioners in its appeals and the parties would suffer their respective costs in the appeals filed by the Tamil Nadu Housing Board."

21. It is well settled law that the interest of the public at large would prevail over the individuals and hence, the plea of the petitioner for re-conveyance of the land, is rightly rejected by virtue of the impugned order, on the ground that a fresh proposal has been approved by the Government for the construction of dwelling units, etc., in the land in question and hence, this writ petition fails.

22. In the result, this writ petition is dismissed, however, leaving it open to the petitioner to work out his further remedy, if any, for enhancement of the compensation, in accordance with law. Consequently, the connected

miscellaneous petitions are dismissed. No costs.