
(2010) 04 MAD CK 0162
In the Madras High Court
Case No : Writ Petition No. 42699 of 2002

J. Kalyani

APPELLANT

Vs

The State of Tamilnadu

RESPONDENT

Date of Decision : 01-04-2010

Acts Referred:

Land Acquisition Act, 1894 — Section 16, 48B

Citation : (2010) 04 MAD CK 0162

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : V. Subramanian, for McGan Law Firm, for the Appellant; M. Dhandapani, Special Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The petitioner was an erstwhile owner of the land in Survey No. 313/6B to the extent of 8 Cents in Keelkattalai Village,

Madipakkam Post II, Tambaram Taluk, Kancheepuram District. The said lands were acquired as part of a larger extent of land for the purpose of

laying a 200 feet road, otherwise known as Bye-Pass Road. It is the case of the petitioner that out of the 50 Cents of land acquired from her, 42

Cents of land has been utilised and the balance 8 Cents remain unutilized. Earlier, the petitioner filed W.P. No. 9484 of 1999 and this Court, by an

order dated 12.12.2000, directed the petitioner to make appropriate representation to the first respondent. Therefore, she made a representation

dated 21.2.2001 seeking reconveyance of the land.

2. On receipt of petitioner's representation, the first respondent/State consulted the Tamil Nadu Housing Board and after getting their report dated

30.11.2001, passed the impugned order dated 24.4.2002. In the impugned

order, the State Government refused to part with the land and held that the request for reconveyance cannot be considered. They had stated that the land which is acquired is adjacent to the Outer Ring Road and therefore, the lands which are adjacent to the lands have also been acquired and award has been passed. The Government has intention to integrate all the acquired lands and to make an approach road and the lands are very much required. It is against this order, the present writ petition has been filed.

3. Pending the writ petition, this Court declined to grant any interim relief. Subsequently, when the matter came on 16.9.2003, this Court held that the petitioner claims dispossession of land and therefore, status-quo can be maintained.

4. On notice from this Court, the respondents have filed written instructions. The Executive Engineer and Administrative Officer, Besant Nagar

Division stated that after following due procedure, an award was passed in Award No. 2 of 1993, dated 30.9.1993. It is also stated that the land

has been taken over by the Housing Board from the Land Acquisition Officer on 7.7.1994 and the compensation of a sum of Rs. 8,499/- was

ordered to be paid to the petitioner.

5. In the light of the stand taken by the respondents, the said land is required for further expansion. The argument of the petitioner that the land

being unutilized should be reconveyed to the petitioner cannot be accepted. The Supreme Court in Tamil Nadu Housing Board Vs. Keeravani

Ammal and Others, had observed in paragraph [11] that Section 48B introduced into the Act in the State of Tamil Nadu is an exception to this

rule and such a provision has to be strictly construed and strict compliance with its terms is insisted upon.

6. Very recently, in Tamil Nadu Housing Board Vs. L. Chandrasekaran and Others, , the Supreme Court, after dealing with the scope of Section

48B of the Act, in paragraphs [18] and [19] held as follows:

18. It need no emphasis that in exercise of power u/s 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 u/s 48B 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 utilized for any public purpose other than the one for which it was acquired.

19. Before concluding, we may notice the judgment of this Court in Tamil Nadu Housing Board v. Keeravani Ammal (supra). The question

considered in that case was whether the Division Bench of the High Court could direct release of the acquired land which had been transferred to

the appellant-Board. While setting aside the impugned order, this Court observed:

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 the 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.

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.

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: (SCC p.433, para 4)

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 a

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.

7. The counsel for the petitioner contended that right from the acquisition proceedings she is in possession of the land and even this Court has

ordered status-quo and therefore, it can be proved that the land was not put to use. When once a valid acquisition has taken place and there is no

further challenge to the award passed by the authority, by virtue of Section 16 of the Land Acquisition Act, the said land vests with the State free

from all encumbrances. The Act does not contemplate any physical possession, as held by the Supreme Court in Tamil Nadu Housing Board Vs.

A. Viswam (Dead) by Lrs., . In that case, after considering the judgment in

Balwant Narayan Bhagde Vs. M.D. Bhagwat and Others, , the

Supreme Court observed that while taking possession of a large area of land a pragmatic and realistic approach had to be taken. The Supreme

Court then examined the context under which the judgment in Balwant Narayan Bhagde case had been rendered and held as under:

It is settled law by series of judgments of this Court that one of the accepted modes of taking possession of the acquired land is recording of a

memorandum or Panchnama by the LAO in the presence of witnesses signed by him/them and that would constitute taking possession of the land

as it would be impossible to take physical possession of the acquired land. It is common knowledge that in some cases the owner/interested

person may not cooperate in taking possession of the land.

8. The said judgment came to be quoted with approval and followed by the Supreme Court in Sita Ram Bhandar Society, New Delhi Vs. Lt.

Governor, Govt. of N.C.T. Delhi and Others, . In paragraph [9], it was observed as follows:

It would, thus, be seen from a cumulative reading of the aforesaid judgments, that while taking possession of a large area of land with a large

number of owners, it would be impossible for the Collector or the revenue official to enter each bigha or biswa and to take possession thereof and

that a pragmatic approach has to be adopted by the Court. It is also clear that one of the methods of taking possession and handing it over to the

beneficiary Department is the recording of a panchnama which can in itself constitute evidence of the fact that possession had been taken and the

land had vested absolutely in the Government.

9. Therefore, the argument that she is in physical possession does not help the case of the petitioner, especially when the Executive Engineer and

Administrative Officer has stated that the Land Acquisition Officer has given delivery of the land in Survey No. 313/6B to the Housing Board.

In the light of the above, there is no case made out. This writ petition stands dismissed. No costs. Consequently, W.M.P. No. 62957 of 2002 is

closed.