

(2009) 11 MAD CK 0080

In the Madras High Court

Case No : Writ Petition No. 21810 of 2009

K. Sivakami, K. Mohan Kumar, K. Senthil Nathan and K.
Suresh Kumar

APPELLANT

Vs

The Secretary to Government, Housing and Urban
Development Department, The Chairman, Tamil Nadu
Housing Board, The District Collector and The Special
Tahsildar, Land Acquisition Housing Scheme

RESPONDENT

Date of Decision : 04-11-2009

Acts Referred:

Constitution of India, 1950 — Article 14

Land Acquisition Act, 1894 — Section 23(1A), 23(2), 4(1), 48B, 5A

Tamil Nadu Land Acquisition (Amendment) Act, 1996 — Section 48B

Citation : (2010) WritLR 570

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : D. Krishnakumar, for the Appellant; R. Murali, Government Advocate for respondents 1, 3 and 4 and Vijayakumar, for 2nd respondent, for the Respondent

Final Decision : Allowed

Judgement

P. Jyothimani, J.—The writ petition is directed against the order of the first respondent dated 13.10.2009 under which the first respondent,

relying upon the letter of the second respondent dated 11.9.2009, has rejected the claim of the petitioners made u/s 48B of the Land Acquisition

Act (for brevity, "the Act") for reconveyance of the lands comprised in Survey Nos. 13/2, 13/3, 14/1A, 14/1B and 15/1 in Vellakinar Village,

Coimbatore District.

2. The factum of acquisition of the said lands along with various other lands by the Government for the benefit of the second respondent is not in

dispute. It is stated that the award was passed in respect of these lands on 28.9.1998 in Award No. 4 of 1998 and it is the case of the second

respondent that possession has been taken on 30.10.1998. It is the case of the petitioners, who are the owners of the above lands which were

acquired along with larger extent of properties in the adjacent survey numbers, that the lands acquired, including that of the petitioners, are not used

for the purpose for which it was acquired and according to the petitioners, even though various issues are raised about the legality or otherwise of

the enquiry conducted u/s 5A of Act, the lands have been kept vacant for many years.

3. In the application filed by the petitioners u/s 48B of the Act requesting for reconveyance of agricultural lands measuring an extent of 2.83.0

Hectares, the petitioners have specifically stated that many of the adjacent lands comprised in various survey numbers have been deleted from the

land acquisition proceedings and restored to the land owners. The specific plea taken by the petitioners in the said application in this regard is as

follows:

We also have come to know that the following lands adjacent to our lands namely, Survey Nos. 10/1, 10/2, 15/2, 60, 61, 62/1, 63, 64, 65, 66,

67/1, 68/1, 69/1, 2, 72, 73, 74, 75, 37, 38, 39, 90, 91, 92 and 93, 94, 95, 96, 97, 98, 99, 100, 101 and 102 in Vellakkinaru Village,

Coimbatore District have been deleted from the land acquisition proceedings and those lands were restored to the landowners.

4. In respect of survey Nos. 10/1 and 10/2, which were also subject matter of acquisition along with the present lands, it is seen that the land

owners have approached this Court by filing W.P. No. 18195 of 1998 and this Court, by order dated 24.11.2006, while allowing the writ

petition, has quashed the land acquisition proceedings. However, it is the case of the learned Counsel for the second respondent that against the

said order of the learned Single Judge, writ appeal has been filed and admittedly, there is no interim order.

5. Again, in respect of another adjacent land comprised in Survey No. 15/2, the owners have filed W.P. No. 18272 of 1998 and this Court, by

order dated 17.3.2008, has quashed the acquisition proceedings on various grounds, including that notification u/s 4(1) of the Act was issued in the

name of a dead person. It is stated by the learned Counsel for the second respondent that as against the said order also an appeal has been filed with a condone delay petition and the same is pending at that stage.

6. Mr. D. Krishna Kumar, learned Counsel appearing for the petitioners has also brought to the notice of this Court other orders stated to have been passed relating to the same project wherein the land acquisition proceedings have been set aside by this Court. It is also seen that in respect of Survey Nos. 3/1A, 3/1C, 4/2B1, 4/2B2, 4/3C1 and 4/3C2 which also form part of the same stretch of land, on the owners filing a writ petition in W.P. No. 18322 of 2008, this Court, by order dated 13.4.2009, has quashed the land acquisition proceedings.

7. However, under the impugned order passed by the first respondent, which is stated to be on the basis of a communication from the second respondent for whose purpose the lands were acquired, the first respondent has not considered the said aspect raised by the petitioners in the application filed u/s 48B of the Act, as enumerated above. The first respondent has only passed the following order in that regard:

4. The Managing Director, Tamil Nadu Housing Board has further stated that the notice were served to the petitioners, as per L.A. Act except S.

Nos. 10/1 and 10/2 for which award has been passed already in Award No. 2/99, dated 31.12.1999. There was no decision made in the said lands as mentioned in your letter dated 27.11.2008. The above lands are essentially required for implementing housing scheme, and your land is situated in the middle of the layout for a comprehensive Housing Schemes. The Tamil Nadu Housing Board, has therefore, suggested to reject the request for reconveyance of the land.

8. Even though it is stated that there is deletion made in the said lands as mentioned by the petitioners in the letter dated 27.11.2008, the fact remains that in respect of some of the lands, as stated above, the land acquisition proceedings were quashed and the said aspect has not been taken note of by the first respondent while passing the impugned order. It is relevant to point out at this stage that the orders of this Court, as enumerated above, are all much before the date of the impugned order and therefore, it cannot be said that the first respondent was not aware of the orders passed by this Court. In respect of the other lands, except making a

bald statement that the said lands are not deleted from land

acquisition proceedings, the objections raised by the petitioners have not been considered by application of mind by the first respondent.

9. It is true that the right given to the owner for reconveyance u/s 48B of the Land Acquisition Act is not a matter of course. It is for the

acquisitioning authorities to decide and if really the purpose for which the acquisition was made continues, there is no question of reconveyance u/s

48B of the Land Acquisition Act. Even if the acquisitioning authority decides not to use it for the purpose acquired, it is well settled that as a matter

of right the owners cannot claim back the land by way of reconveyance. But, the right given to the owners u/s 48B of the Land Acquisition Act is a

substantial right, which is available to the extent that the claim of the owners has to be considered by the authority by application of mind. That was

the decision taken by the First Bench of this Court in *R. Shanmugam and Ors. v. The State of Tamil Nadu and Ors.* 2006 [4] CTC 290. The

Division Bench has held that u/s 48B of the Act the conditions stipulated are (i) the land must vest with the Government; (ii) in the opinion of the

Government, the land must not be required for any other public purpose; and (iii) the said land can be reconveyed to the original owner who is

willing to repay the amount that was paid to him at the time of acquisition of the land. While explaining so, the Division Bench has held that the

power u/s 48B of the Act, which is a vital power, cannot be exercised mechanically without application of mind, holding that fairness is inherent in

the guarantee of equality provided under Article 14 of the Constitution of India. The operative portion of the judgment is as follows:

35. In order to apply the provisions of Section 48B 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 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 u/s 48B. 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 u/s 48B 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 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 element of right for consideration of their claim for re-conveyance in terms of Section 48B.

The Division Bench has also taken note of the contention of the Tamil Nadu Housing Board that the land still is required for the Housing Scheme and that the owners have already received the compensation and held that the mere fact that compensation has been received does not prevent the owner from making request to the Government u/s 48B of the Act, in the following words:

38. For rejecting the request of the land owners, the Government has given two reasons viz., (1) the land owners have been awarded compensation and possession of the land has been given to the Housing Board, and (2) the land is still required for Housing Scheme. Insofar as the first reason, we are of the opinion that the same cannot be held good in view of the specific provisions of Section 48B enabling the land owners to make the application for re-conveyance. Mere fact that they have received compensation does not prevent them from making a request to the Government invoking Section 48B of the Act for re-conveyance of the unutilised lands. Insofar as the second reason, it must be kept in mind that

though the proposal was made by the Housing Board to the Government for acquiring an extent of 1997.02 acres of patta land, ultimately, the

Government could pass award only in respect of 662.96 acres and even out of the said extent of the land, only an extent of 105.61 acres was

taken possession and handed over to the Housing Board. But the Board could utilise only an extent of 21.47 acres of land for Housing Scheme. In

view of the above undisputed facts, we are of the considered view that the Government have not applied their mind to the above aspects while

they came to the conclusion that the land is still required for Housing Scheme.

10. Applying the above dictum laid down regarding the power of the Government u/s 48B of the Act to the facts and circumstances of the present

case, there is no difficulty to conclude that the first respondent has not applied its mind taking note of the various objections raised by the

petitioners in the application made u/s 48B of the Act dated 27.11.2008.

In such view of the matter, this writ petition is allowed and the impugned order of the first respondent is set aside and the matter is remanded to the

first respondent for fresh consideration with a direction to the first respondent to take note of the various objections raised by the petitioners in the

application made u/s 48B of the Act dated 27.11.2008 and pass appropriate orders, giving opportunity to the petitioners and the second

respondent to produce records, if called for. Such orders shall be passed by the first respondent expeditiously, in any event within twelve weeks

from the date of receipt of a copy of this order. No costs. Consequently, M.P. No. 1 of 2009 is closed.