
(2008) 03 MAD CK 0029

In the Madras High Court

Case No : Writ Petition No. 36963 of 2007 and M.P. No. 1 of 2007

Kannammal and Others

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 27-03-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 16(B), 23(1A), 23(2), 4(1), 48B

Citation : (2008) 03 MAD CK 0029

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : R. Muthukumarasamy and P. Arivudainambi, for the Appellant; P.S. Raman A.A.G. for L.S.M. Hasan Fizal, Government Advocate for R. 1 and R. Girirajan for R. 2 to R. 4, for the Respondent

Final Decision : Dismissed

Judgement

P. Jyothimani, J.—The writ petition is filed against the letter of the first respondent, the Secretary to Government, Housing and Urban

Development Department dated 18.06.2007, by which considering the representation of the petitioners dated 20.12.2006 in the light of the order

of this Court dated 07.03.2007 made in W.P. No. 8173 of 2007, the claim of exemption from land acquisition proceedings in respect of the

properties comprised in Survey No. 12/3 to the extent of 3.26 acres of lands was rejected on the basis that the lands acquired are still required for

the public purpose.

2. The petitioners are the owners of the lands to the extent of 3.26 acres, comprised in S.F. No. 12/3 situated at Krishnarayapuram Village,

Coimbatore North Taluk, Coimbatore District. The lands were acquired by the first respondent, by notification u/s 4(1) of the Land Acquisition

Act, 1894 (Central Act) (in short, "the Act") published on 07.03.1983 and declaration u/s 6 of the Act on 19.3.1986, and subsequently, award

was passed on 21.08.1987. The writ petitions filed against the acquisition proceedings were dismissed on 02.08.2000 on the ground of laches,

however, giving liberty to the petitioners to approach the first respondent for reconveyance of the lands u/s 48B of the Act.

2(a). Based on that, the petitioners have made representation for reconveyance on 23.10.2000, since the Scheme under which lands were

acquired was not proceeded with and further, the petitioners were under the impression that the Scheme has been dropped. According to the

petitioners, neighbouring lands at Krishnarayapuram Village to the extent of 41 acres were also acquired under the Scheme and in the writ petitions

filed by various owners, the acquisition in respect of certain portions were set aside. The first respondent has also excluded some of the lands

comprised in Survey No. 2 to 6 at Ganapathi Village, Coimbatore.

2(b). It was, again the petitioners made representation on 20.12.2006, seeking for reconveyance. Since no order was passed, the petitioners filed

W.P. No. 8173 of 2007, which was disposed of on 07.03.2007 with a direction to the first respondent to dispose of their representation. It is also

the case of the petitioners in the affidavit that even after the above said order passed by the High Court, respondents 2 to 4 took steps to allot

properties to the third parties, when representation of the petitioners for reconveyance was pending.

2(c). The petitioners have filed W.P. No. 31906 of 2007 forbearing the respondents from allotting the property to the third parties till their writ

petition is disposed of. When the matter came up, the learned Additional Government Pleader produced the impugned order before this Court, by

which the first respondent has rejected the representation of the petitioners made u/s 48B of the Act. In those circumstances, the above said writ

petition was directed to be withdrawn with liberty to challenge the order dated 18.06.2007. In the light of the said permission, the present writ

petition is filed challenging the impugned order.

2(d). Out of 40.59 acres of lands relating to which land acquisition proceedings are initiated, the petitioners are owning 3.26 acres in S. No. 12/3.

In respect of 28.70 acres of land in Survey Nos. 10/3, 11/3, 13, 14, 15/1&2, 16,

17/1, 17/3a & 3b, 18/1C and 22, the land acquisition

proceedings were abated, since declaration were not made. Out of the remaining 11.89 acres of land, in respect of 1.81 acres of land in S. No.

19/1, the proceedings were quashed in W.P. No. 4188 of 1985, which was confirmed in W.A. No. 738 of 1996 dated 16.07.2001. In respect of

1.37, 1.88, 0.28 and 1.59 acres comprised in S.Nos.3/1C, 18/1C, 18/2, 18/3A and 18/3B and 22/1, they are retained for residential and

commercial purposes by the owners and thus, the lands are not covered by the acquisition proceedings. Therefore, according to the petitioners,

except their lands, the respondents have dropped further proceedings in respect of all other lands.

2(e). The impugned order of rejection of the application filed u/s 48B of the Act is arbitrary and according to the petitioners, the point raised in the

impugned order that the respondents are still interested and proceeded with the public purpose is not valid. The petitioners also challenge the

impugned order on the ground that it is mala fide. It is the further case of the petitioners that the first respondent ought to have independently

appreciated the facts of the case while exercising the powers under Sections 48-B and 16-B of the Act and the reliance placed on by the first

respondent the Housing Board's letter for rejecting the claim is not permissible. Further, it is challenged on the ground that the purpose for which

the lands were acquired is no more in existence and the reason given in the present impugned order is invented to defeat the rights of the petitioners

for reconveyance.

3. Respondents 2 and 4 have filed their counter affidavit. The said respondents, for whose benefit acquisition proceedings are completed earlier

under the Land Acquisition Act (Central Act) would submit that Section 4(1) notification in respect of 40.59 acres was issued in G.O. No. 551

Housing and Urban Development Department dated 07.03.1983, however, since in respect of 28.70 acres certain court cases were pending, the

approval for the said extent was deferred and approval to the extent of 11.89 acres has been made and 1.81 acres of land has been deleted due to

Court stay order.

3(a). In respect of the properties of the petitioners in S. No. 12/3 to the extent of 3.26 acres at Krishnarayapuram Village, Ganapathy,

Coimbatore, award was passed for an amount of Rs. 1,19,316/- and the same has been deposited in Court account and the said land has been

handed over by the Special Tahsildar (land Acquisition) to Tamil Nadu Housing Board on 21.04.1988. A lay out plan has been prepared and

approval was got from the Director of Town and Country Planning, Chennai in 2001, comprising of 54 plots to accommodate the allottees under

HIG, MIG and LIG Scheme and based on the layout, a Scheme has been prepared for getting approval from the Board on 19.05.2006.

3(b). The Housing Board has called for the demand details for taking over the Scheme. 521 applications along with registration fees were received

and therefore, there was good response and the Board has passed a resolution on 08.12.2006, approving the Scheme proposing to construct 54

Nos. of HIG, MIG and LIG houses in the approved lay out of an extent of 3.26 acres in S.F. No. 12/3, Krishnarayapuram Village, Ganapathy,

Coimbatore District for a value of Rs. 251.00 lakhs.

3(c). As per the decision of the Board, a Self Finance Scheme was proposed and the demand was heavy in the sense that as against 54 plots,

nearly 151 applications were received and 15% of initial deposit to an extent of 186 lakhs have been collected by the Board and the technical

sanction was also obtained and tenders were invited from approved contractors. The work was awarded to approved contractor by agreement

No. 20/07-08 and the site was handed over on 21.11.2007 with the time limit of six months to complete the scheme, viz., on or before 20.5.2008.

3(d). It is also stated in the counter that from 21.11.2007, the construction of 54 houses has been commenced and they are at various stages.

Before commencement of the work, the planning approval as well as No Objection Certificate from local body has been obtained. It is also stated

that the building licence fees, service charges and Tamil Nadu Labour Welfare General Fund, etc. have been paid to the local body and the

Government has approved the allotment of houses under discretionary quota by conducting drawal of lot to fix the bona fide applicants and the

Government has fixed 26.12.2007 for making allotment. It is stated that the entire construction of houses will be completed on 20.5.2008 and the

allottees will be handed over with respective houses. 3(e). According to respondents 2 and 4, the Board has invested huge amount towards land

cost, contractors payment, supervision charges, payment towards layout approval, No Objection Certificate payment, materials testing payment, encroachment safe guarded measures payment, Tamil Nadu Electricity Board payment, demand advertisement charges, etc. It was in those circumstances, the preliminary work in respect of plots which commenced even in 1999 is going on. The Housing Board has proposed to implement the housing scheme in a vast manner and accordingly, the construction of 54 houses was approved. In such circumstances, the claim of the petitioner cannot be accepted. It is also the case of the respondents that once the land acquisition proceedings are completed, the property vests with the Government and therefore, the reconveyance is not a matter of right.

4. Mr.R.Muthukumarasamy, learned senior counsel appearing for the petitioners would submit that when the earlier writ petition was dismissed, liberty was given to the petitioners to make representation u/s 48B of the Act for reconveyance and pending the application u/s 48B, further proceedings were initiated for allotment to show as if the Scheme is still in existence. It is also his contention that while the acquisition was originally in respect of total extent of 40.59 acres in the said area, it is the petitioners land to the extent of 3.26 acres alone is retained. The learned senior counsel would also submit that the impugned order refers to two issues, viz., disputing the ownership of the petitioners as it is stated in para 3 of the impugned order that only if the petitioners prove their ownership as registered holders or occupiers, the claim can be entertained and secondly, the project is still continuing.

4(a). According to the learned senior counsel for the petitioners, the ownership of the petitioners over the property has never been disputed by any of the respondents at any point of time and therefore, the point raised is only a total non-application of mind. His further contention is that considering the large extent of land sought to be acquired for the Scheme, only with the retained meagre extent of land belonging to the petitioners, it is impossible to execute the said Scheme. It is his submission that the award itself is in the name of the petitioners, and in such circumstances, it is not known how the petitioners ownership is denied. It is also his submission that the case of the respondents that the Housing Project is in

operation cannot be accepted for the simple reason that the same is not possible, considering the fact that meagre extent of petitioners lands alone is available.

5. On the other hand, Mr.P.S.Raman, learned Additional General would submit that as stated in the counter affidavit in detail it is not as if the

Scheme has been dropped. In fact, he would submit that the applications have been called for from public for allotment of 54 plots under the

Housing Scheme and the applicants have also paid necessary initial charges and the developments have been effected in the sense that the property

has been handed over to the contractors for the purpose of putting up the construction and the construction is at various stages. He has also

produced photographs to show that the construction is going on in the site.

5(a). He would also rely upon the judgement of the Supreme Court in Tamil Nadu Housing Board Vs. Keeravani Ammal and Others, to

substantiate his contention that Section 48B of the Act does not confer any substantial right on the owners for reconveyance. He would also rely

upon the judgement of the Hon"ble First Bench of this Court in R. Shanmugam and Ors. v. The State of Tamil Nadu 2006 (4) CTC 290.

According to him, the present extent of land has been handed over to the Housing Board and in its turn the Housing Board has got approval for lay

out as per the Town and Country Planning Act and the building is being put up and the acquired property has been vested with the Government for

the use of the Housing Board, viz., the requisitioning body. He would also submit that the power of the Government for reconveyance u/s 48B of

the Act will apply only in respect of unused lands, whereas in the present case, the lands of the petitioners are not unused.

6. I have heard learned senior counsel for the petitioner as well as the learned Additional Advocate General for respondents and perused the entire records.

7. On the face of records it is clear and as correctly submitted by the learned Additional Advocate General that the Tamil Nadu Housing Board,

viz., the requisitioning body is using the acquired lands for the purpose of putting up housing plots in Survey No. 12/3 and obtained the lay out

approval from the competent authority. It is not in dispute that the acquisition proceedings in respect of these lands have been completed and

award has been passed much earlier. But the dispute raised by the petitioners in this case is that originally a total extent of 40 acres were sought to be acquired, whereas all the 40 acres were not used and regarding major portion of the lands, either they have been given back to the parties or the acquisition proceedings have become lapsed by virtue of the Court orders and only 3.26 acres of land belonging to the petitioners is sought to be used for the housing purpose and therefore, it is to be presumed that the entire Scheme has become impossible and in that view of the matter, application of Section 48B of the Act to reconvey must be ordered on the petitioners paying the amount received by them in addition to the amount referred to under Sections 23(1-A) and (2) of the Act.

8. In the counter affidavit it is made clear by the respondents that in furtherance of the Scheme, they have even called for applications from public and large number of applications were received with earnest money deposit and so on and pursuant to the same, the property belonging to the petitioners which has been acquired and in respect of which the award has been passed, has ultimately vested with the Government and has later been handed over to the Housing Board for the purpose of construction of HIG, MIG and LIG houses. The counter affidavit further makes it very clear that pursuant to the handing over of the land, the Housing Board has proceeded with construction and therefore, it cannot be said that the Housing Board has not utilised the lands for the purpose for which it was handed over by the Government. It is well settled that once land acquisition proceedings are completed, the lands should absolutely vest with the Government. It is no doubt true that on completion of the acquisition proceedings, the Government has right to transfer the property to the requisitioning body, viz., the Tamil Nadu Housing Board and the Housing Board can use it for the said purpose alone. It is the right of the Government to use the property for any other purpose and the Housing Board has no right to retain the said property for any other purpose.

9. In *R. Shanmugam and Ors. v. The State of Tamil Nadu* 2006 (4) CTC 290, the Hon'ble First Bench of this Court has clearly held that u/s 16 of the Act, the lands absolutely vest with the State Government and only in cases where the State Government is of the opinion that such lands are not required for any other public purpose, the lands can be reconveyed to original

owner, who is willing to repay the amounts paid to him for

acquisition of such land. In that case, it was held that the power of the State Government to transfer such land to the original owner is discretionary.

It is also held in that case that if the land which is vested with the Government by virtue of Section 16 of the Act, is handed over to the Tamil Nadu

Housing Board, the Housing Board has no right to dispose of the unused land for any other purpose for the reason that the Government has

handed over the said land to the Housing Board. In such case, it is for the Government to get back such lands from the Housing Board and

thereafter, it can decide about the reconveyance u/s 48B of the Act, if the same are not required for any other public purpose. It is also specifically

stated that if such lands cannot be reconveyed, the Government can dispose of the same by public auction.

10. While dealing with the question of reconveyance in favour of the original owner from whom the property was acquired, it was held, by placing

reliance on the judgement of the Supreme Court in *Jilubhai Nanbhai Khachar v. State of Gujarat* 1995 Suppl.(1) SCC 596, as follows:

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 Suppl.(1) SCC 596.

26. In *Chandragauda Ramgonda Patil and Another Vs. State of Maharashtra and Others*, , 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

way 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

utilised 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 unutilised, 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.

11. On the factual position in this case, even though it is true that originally large extent of lands were acquired, subsequently, the Scheme has been

reformulated by way of Self Finance Scheme in order to allot 54 number of Housing Plots and it is not as if the Tamil Nadu Housing Board, who is

the requisitioning body is using the land for a different purpose.

12. In Tamil Nadu Housing Board Vs. Keeravani Ammal and Others, , while dealing with the rights of the erstwhile owners u/s 48B of the Act for

reconveyance, the Supreme Court has held that by applying the doctrine of public trust, the State cannot give back the property to the original

owner for the value, less than the market value. It was held that even if the property is acquired for public purpose and after public purpose was

achieved and there were still remaining lands available, it can be used for some other public purpose and even in cases where the remaining

properties are available, the properties can be disposed of by the Government instead of selling the same to the erstwhile owner, but by way of

public action for the better utilisation of public purposes envisaged under the Directive Principles of State Policy. The Supreme Court has further

held as follows:

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 48-B 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 not the scope of Section 48-B of the Act,

whether the writ petitioners have established any claim to the lands, whether the reconveyance can only be to the original owners and not to others

and whether if possession has already been made over 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 48-B 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. The Supreme Court in that case has also held that simply because a portion of the property acquired has been abandoned from the project or

released from acquisition, it does not mean that the remaining portion of the property can not be used for some other public purpose and that the

Housing Board has suspended or abandoned its Scheme.

14. In view of the above said legal position and applying the same to the factual

situation as it is narrated above, there is absolutely no difficulty to come to the conclusion that the writ petitioners are not entitled for any relief/claim in this writ petition. In view of the same, the writ petition fails and the same is dismissed. No costs. Connected miscellaneous petition is closed.

After delivering the judgment, the learned counsel for the petitioner has mentioned that an observation may be made permitting the petitioners to make a representation on the category of ex-owners. Therefore, it is open to the petitioners to make a representation to the respondents for allotment on the ex-owners category and in that event, it is for the Housing Board to decide the same on merits and in accordance with law.