
(2003) 10 MAD CK 0018
In the Madras High Court
Case No : Writ Petition No. 5717 of 2003

M Manimegalai

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 16-10-2003

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 16, 16B, 17, 17A

Citation : (2003) 10 MAD CK 0018

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : T.R. Senthilkumar, for the Appellant; N.R. Chandran, General for D. Veerasekaran, for (TNHB) and S. Gomathinayagam, Special Govt. Pleader, for the Respondent

Judgement

P.K. Misra, J.—Heard the Learned Counsels appearing for the parties. Petitioners are the owners of certain properties in Kallapatti Village,

Coimbatore District. Notification u/s 4(1) of the Land Acquisition Act, (hereinafter called the Act) was published in the Gazette dated 27.3.1991.

The land was being acquired for neighborhood scheme for and on behalf of the Tamil Nadu Housing Board, the second Respondent. The

Petitioners had filed objections. Subsequently, declaration u/s 6 had been published. In March 1994, the Petitioners received notice u/s 9(3) of the

Act. At that stage, the Petitioners filed separate writ petitions challenging the acquisition. A learned single Judge of this Court, while dismissing the

aforesaid writ petitions observed:

“However it is open to the Petitioners to make a representation before the concerned authority within a period of three months from the date of

receipt of a copy of this order, for exclusion of their lands from acquisition. If

such representation is made by the Petitioners, the concerned

authority shall consider and dispose of the same on merits, within a period of six months thereafter. Till such time, status quo shall continue.

2. On the basis of the aforesaid observation, the Petitioners filed representation dated 16.8.2001 purported to be u/s 48-B of the Act for re-

conveyance of the lands. Since no orders had been passed, the Petitioners filed W.P. Nos. 9780 & 9781 of 2002, which were dismissed. The

Petitioners filed Writ Appeal Nos. 1465 and 1466 of 2002, which were disposed of with a direction to the Government to consider and dispose

of the representation dated 16.8.2001 and pass appropriate orders in accordance with law. However, since no orders had been passed, these writ

petitions have been filed with a prayer to issue writ of mandamus directing the Respondents to re-convey the lands.

3. It is unfortunate that in spite of the specific direction of this Court, the Respondents did not dispose of the representation dated 16.8.2001.

4. Since certain questions have been raised relating to interpretation of Section 48-B and other related provisions, the matter has been heard at

length.

5. Section 48-B, which was introduced by way of State Amendment, is to the following effect:

48-B ""Transfer of land to original owner in certain cases.- Where the Government are satisfied that the land vest in the Government under this Act

is not required for the purpose for which it was acquired, or for any other public, the Government may transfer such land to the original owner who

is willing to repay the amount paid to him under this Act for the acquisition of such land inclusive of the amount referred to in Sub-section (1-A)

and (2) of Section 23, if any, paid under this Act.

6. A perusal of the aforesaid provision makes it clear that power has been given to re-convey the land acquired under the Land Acquisition Act

and vested with the Government to the original owner subject to certain conditions relating to repayment of the compensation. It has to be noticed

that Section 48-B would be applicable in respect of lands which are vested in the Government. Where, however, the lands are not vested with the

Government, obviously the Government would have no power to re-convey such land.

7. It is the contention of the Learned Counsels appearing for the State as well as the Board that in the present case, the land had been acquired for

the Housing Board and on deposit of compensation amount such land has been vested with the Housing Board. This is more particularly so by

virtue of the provisions contained in Sections 16 and 17-A, which are extracted hereunder:

16. Power to take possession. - When the Collector has made an award u/s 11, he may take possession of the land, which shall thereupon vest

absolutely in the Government, free from all encumbrances.

17-A. Transfer of land to Board. - In every case referred to in Section 16 or Section 17, the Collector shall, upon payment of the cost of

acquisition, make over charge of the land to the Board; and the land shall thereupon vest in the Board, subject to the liability of the Board to pay

any further costs which may be incurred on account of its acquisition.

8. So long as such lands remain vested with the Board, obviously power u/s 48-B cannot be exercised by the Government. Where the lands have

been acquired for a particular purpose by some other authority or company and such lands have not been used, the Government has power to

forfeit such land u/s 16-B of the Act, which is to the following effect:

16-B. Land to be forfeited in certain cases. - Where the Government are satisfied that the land acquired under this Act for any public purpose as

referred to in Sub-section(1) of Section 4 is not used for the purpose for which it was acquired, they may, by an order, forfeit the land as penalty

and the land shall vest in the Government in Revenue Department free from all encumbrances:

Provided that no order under this section, shall be made unless the person or authority aggrieved has had a reasonable opportunity of being heard.

9. Before passing any order of forfeiture, of course, the Government has to issue notice to the authority or the company concerned. These

amendments to the Central Act were effected under the State Amendment Act, 1996 (XVI of 1997). It is obvious that all these provisions have to

be read together. From the aforesaid provisions it is apparent that where the land is acquired for Housing Board, the Government has the power to

forfeit and on such forfeiture, the property again vests with the Government free from all encumbrances. At that stage, it would be open to the

Government to deal with the land in accordance with the provisions contained in the Land Acquisition Act including Section 48-B.

10. A contention was raised by the Learned Counsel appearing for the State that before action is taken u/s 16B, an application for re-conveyance

of the land u/s 48-B is not contemplated. Even though such a contention may appear to be attractive on the face of it, on a closer scrutiny, I am

unable to accept such a contention. As already indicated, all these amendments were introduced under the State Act at the same time. Section 48-

B has been introduced with a view to protect the interest of the persons from whom the land has been acquired but not utilised. Such provision is a

benevolent provision. Even though it is not specifically indicated in Section 48-B regarding the right of such a person to file application, it is obvious

that such a person has to indicate his willingness to get the land back subject to repayment of the compensation. Therefore, Such a person can

always indicate his willingness by filing a representation. Where the land is acquired by the Government for itself, obviously the land remains vested

with the Government. Similarly, where the land is acquired for any other authority or company, until action is taken u/s 16B of the Act, the land

does not get re-vested in the Government. Therefore, where the land is acquired for an authority or a company and it is not used by such authority,

such non-utilization is required to be brought to the notice of the Government so that the Government can initiate appropriate proceedings u/s 16-B

of the Act. In all such cases where the land is acquired for a company or any other authority, an affected person can make a representation so that

the Government can consider the question of forfeiture of such land u/s 16-B and thereafter take action u/s 48-B, if the facts and circumstances so

warrant.

11. Having regard to all these aspects, the writ petitions are disposed of with the following directions:

(1) The State Government has to consider whether any action is required to be taken u/s 16-B of the Act.

(2) If the Government takes a decision to forfeit the land u/s 16-B of the Act, thereafter the Government has to consider further whether the land

should be re-conveyed to the persons affected in accordance with Section 48-B of the Act.

(3) Appropriate decision in the matter should be taken within a period of four months from the date of receipt of a copy of the order.

(4) Any decision taken should be communicated to the Petitioners.

12. In the result, the writ petitions are disposed of with the above directions. No costs.