
(2009) 11 MAD CK 0143

In the Madras High Court

Case No : Writ Petition No's. 18406 and 18407 of 2009 and M.P. No's. 1 and 1 of 2009

M. Varadaraj and M. Sangameswaran

APPELLANT

Vs

Government of Tamil Nadu

RESPONDENT

Date of Decision : 18-11-2009

Acts Referred:

Land Acquisition Act, 1894 — Section 16B, 30, 31(2), 48B

Citation : (2009) 11 MAD CK 0143

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : N. Damodaranm, for the Appellant; A. Vijayakumar, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—Heard both sides.

2. The petitioners earlier had filed writ petitions in W.P. Nos. 2964 and 2965 of 2008. The grievance of the petitioner in those writ petitions was that when they had sought for return of the acquired land by re-conveyance, the Housing Board viz.,(the second respondent) had rejected their request but they did not pass proper orders. Therefore a direction was sought to the Government to exercise its power u/s 16-B of the Land Acquisition Act, 1894 (Central Act 1/1894). This Court, by a final order dated 11.04.2008, disposed of those writ petitions with a direction to the second respondent to pass appropriate orders in terms of Section 48-B of the Land Acquisition Act.

3. Paragraph Nos. 12 and 13 of the said order reads as follows:

12. Here in this case, the only reason stated by the first respondent to reject the request for reconveyance is the objection raised by the second respondent. The Government has not considered as to whether the Tamil Nadu Housing Board's right over the property can be forfeited due to non-utilisation of the lands u/s 16-

B of the Act. The first respondent is therefore required to consider the issue u/s 16-B and thereafter it is bound to consider the request of the petitioners independently. As held by the Division Bench, even though the petitioners have no vested right to seek reconveyance, they have got a right to consider their request for reconveyance u/s 48-B read with Section 16-B of the Land Acquisition Act, 1894, on merits.

13. In view of my above findings, the impugned order is set aside with direction to the first respondent to consider the request of the petitioners as per their representation dated 09.09.2006 followed with reminder dated 19.03.2007 and pass orders thereon on merits and in accordance with Section 48-B read with Section 16-B of the Land Acquisition Act, 1894, within three months from the date of receipt of a copy of this order.

4. Pursuant to the direction given by this Court, the first respondent had passed the impugned order dated 03.08.2009. Before passing the order, the report of the District Revenue Officer (Schemes) attached to the Tamilnadu Housing Board was also taken note of. In the operative portion of the order, the State Government had stated as follows:

The compensation amount of Rs. 1,29,843/- was deposited in the Civil Court u/s 30 and 31(2) of the Land Acquisition Act. Subsequently, the petitioners have received the award amount during January 2000 from the Court. The above lands are located in the vantage point and the lands are essentially required for implementing housing scheme by Tamil Nadu Housing Board. The District Revenue Officer (Schemes), Tamil Nadu Housing Board has, therefore, requested to reject the request for conveyance of the above said land.

3. The Government examined your request in detail and decided to accept the views of the Tamil Nadu Housing Board. Accordingly, your request for conveyance of the land in S.Nos. 151/1B(0.07.0), 151/1D (0.41.0) and 151/3C (0.00.5) and 151/3B (0.01.0) Totally 0.49.5 hectares and 151/1B (0.07.0), 151/1C (0.49.0) and 151/3B (0.01) totally 0.57.0 hectares of Vilankurichi Village, Coimbatore District is rejected.

5. This order is once again challenged in these two Writ Petitions. It must be stated that re-conveyance of the land as provided u/s 48-B is not feasible. The first requirement is that the requisitioning body (TNHB) does want to use the land and then it should hand over the land to the State Government. Subsequently, the State Government must apply its mind and decide whether it can be used for any other public purpose, as already compensation amount had been paid to the erstwhile land owners. It is only when these two factors are considered, the question of re-conveyance of the lands to the original land owner will arise.

6. In fact, the Division Bench of this Court vide it's Judgment in R. Shanmuga v. State of Tamilnadu reported in 2006 (4) CTC 290, had given a limited interpretation for the exercise of power u/s 48-B of the Land Acquisition Act. In

the present case, at this stage, the exercise of power u/s 48-B had not arrived as the lands have not been handed over to the State Government by the requisitioning body. On the contrary, the requisitioning body had asserted that the lands are very much required for executing its own scheme.

7. The Supreme Court vide its judgment in Tamil Nadu Housing Board Vs. Keeravani Ammal and Others, after noticing the introduction Section 48-B in the Central Act held in paragraph No. 11, which is 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 owner? 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 assingment 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.

8. Under such circumstances, the writ petitions challenging the impugned order are misconceived and lack in merits. Accordingly, the two writ petitions are dismissed. No costs. The connected miscellaneous petitions are closed.