

**(2008) 10 MAD CK 0090**

**In the Madras High Court**

**Case No :** Writ Petition No's. 41736, 41755, 42094 and 41758 of 2002 and  
W.P.M.Ps. 61709, 61710, 62153 and 62154 of 2002

Tamil Nadu Central Excise and Customs Employees Co-  
operative House Building Society

APPELLANT

Vs

The Government of Tamil Nadu

RESPONDENT

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**Date of Decision :** 29-10-2008

**Acts Referred:**

Land Acquisition Act, 1894 — Section 36, 4(1), 48, 48B, 6

**Citation :** (2008) 10 MAD CK 0090

**Hon'ble Judges :** K. Chandru, J

**Bench :** Single Bench

**Advocate :** G. Ramachandran, for the Appellant; Balakrishnan, A.G.P and A.  
Vijayakumar, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

K. Chandru, J.—These four writ petitions are filed by one and the same Co-operative Society. It is claimed that the said Co-operative

Society is a house building Society, representing the employees of Central Excise and Customs. The said Society, in these writ petitions, challenges

the acquisition proceedings, which has culminated in a final award u/s 6 of the Land Acquisition Act.

2. Admittedly neither the Society nor the members of the Society are the owners of the land, which are sought to be acquired by the State

Government from the Tamil Nadu Housing Board for the purpose of metro railway. In these writ petitions, the Housing Board has not been made

as a party. Neither Section 4(1) Notification nor Section 6 declaration is also filed before the Court. The impugned order is a notice issued by the

Acquisition Officer asking the Society to hand over possession. The petitioner

association, by challenging the said notice, which cannot be a substitute for the Notification u/s 4(1) or u/s 6, filed the writ petition.

3. The learned Counsel for the petitioner submitted that the Society is having 1200 members and purchased the lands from the original owners through sale Deeds for valuable consideration and they should not be deprived of the fruit of such purchase.

4. In the present case the acquisition proceedings were notified by the Government as early as 11.6.1975 and the draft declaration has also been made u/s 6 of the Act. It is at this stage the petitioner Society moved the Government by a representation dated 2.12.1987 asking the Government to exclude certain Survey Numbers which are allegedly purchased by them for providing houses to their members.

5. The Government by an order dated 3.1.1989 agreed to exclude the said land on certain conditions. One of the conditions was that the original owners should withdraw the reference made against the acquisition and also the writ petitioners, who have challenged the acquisition, to sell the land to the Society.

6. The second condition was that the Society should give an undertaking to the Member Secretary, M.M.D.A. that they will leave the land acquired for ICC rail within their land as and when the alignment is finalised.

7. Pursuant to the provisional decision, the District Revenue Officer, Chingleput, was directed to send proposal for sending a draft withdrawal notification for approval, after the conditions imposed by the Government are fulfilled. For some reason or other these conditions are not fulfilled

and the Government by an order dated 14.10.1993 cancelled the proposal to exclude these lands and it was specifically stated that neither the land

owners nor the Society have honoured these two conditions stipulated in the letter first given by the Government. Further permission was given to

the Acquisition Officer to proceed with the acquisition, which ultimately resulted in a final award being passed.

8. It is in the meanwhile the petitioner Society sent a further representation to the State Government requesting them to reconsider their stand. On

the basis of their representation some remarks were also called for from the District Revenue Officer(Projects), Tamil Nadu Housing Board.

9. It is also seen that in one of the replies sent by the District Revenue Officer

dated 20.12.2001, it is recommended that the request of the petitioner Society can be reconsidered and they can be given an opportunity. But there is no record to show that the Government had reconsidered its decision. On the contrary, the acquisition proceedings are finalised.

10. It is at this juncture, the impugned notice was issued to the petitioner Society dated 27.9.2002 asking them to vacate the premises. The members of the petitioner Society have rushed to this Court and filed the present writ petitions.

11. The learned Counsel for the petitioner contended that once the Government has given a proposal and that proposal also has been fulfilled, it is not open to the Government to go back on the proposal to exclude the lands. Even on the petition submitted by the petitioner Society seeking for reconsideration the District Revenue Officer(Projects), Tamil Nadu Housing Board, has recommended their case. But that has not been considered. Therefore the petitioner Society is before this Court challenging the acquisition proceedings.

12. However, no reply is forthcoming from the learned Counsel for the petitioner with reference to the pertinent materials that should have been enclosed for challenging Section 4(1) Notification and Section 6 declaration. Further the petitioner Society is only a subsequent purchaser and they have no locus standi to challenge any such proceedings. The petitioner's right to seek for exclusion of the land if at all can be referred to u/s 48 of the Land Acquisition Act and Section 48 reads as follows:

48.The Completion of Acquisition not compulsory, but compensation to be awarded when not completed \_ (1) except in the case provided for in

Section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the

damage suffered by the owners in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested

together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of part III of this Act shall apply, so far as may be, to the

determination of the compensation payable under this Section.

13. The Supreme Court vide its judgment in *M/s. Larsen and Toubro Ltd. Vs. State of Gujarat and Others*, had categorically held that even for

exclusion, Notification has to be Gazetted for the completion of the proceedings u/s 48 and the proposal of the Government cannot be held to be a

final order in this regard.

14. In the present case, not only the proposal remained as a proposal but there is a positive direction by the Government to cancel the earlier offer

made by them. Therefore the claim of the petitioner Society in seeking exemption u/s 48 of the Act will no longer survive, since the Government

had not accepted that proposal for exclusion.

15. Admittedly, in the present case the acquisition is from the Housing Board and the Housing Board has not been made as a party. Once the

process of acquisition completed the only remaining provision by which any person can get exclusion from the acquired land is by having resort to

Section 48-B of the Land Acquisition Act. When the interpretation of Section 48-B of the Act came before the Supreme Court, the Supreme

Court in the judgment in *Tamil Nadu Housing Board v. Keeravani Ammal and Ors.* AIR 2007 SCW 2602 had dealt with the same. Paragraph 11

of the said judgment can be usefully extracted below:

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 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.

16. Therefore it is for the petitioner Society to workout their remedies u/s 48-B of the Act, that too only stepping into the shoes of the original land

owners and not as a 3rd party. Hence, all these writ petitions are misconceived and accordingly, dismissed as devoid of merits. No costs.

Consequently, connected miscellaneous petitions are dismissed.