

Tamil Nadu Housing Board vs Keeravani Ammal & Ors on 15 March, 2007

Equivalent citations: AIR 2007 SUPREME COURT 1691, 2007 (9) SCC 255, 2007 AIR SCW 2602, (2007) 53 ALLINDCAS 73 (SC), (2007) 2 CTC 447 (SC), (2007) 3 SUPREME 216, (2007) 3 ALLMR 344 (SC), 2007 (2) CTC 447, (2008) 1 MAD LW 15, 2007 (3) ALL MR 344, 2007 (4) SCALE 423, 2007 (53) ALLINDCAS 73, (2007) 2 MAD LJ 863, (2007) 2 RECCIVR 516, (2007) 3 ICC 757, (2007) 67 ALL LR 827, (2007) 3 ALL WC 2276, (2007) 3 CIVLJ 541, (2007) 2 UC 1114, (2007) 4 SCALE 423

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Bench: C.K. Thakker, P.K. Balasubramanyan

CASE NO.:

Appeal (civil) 5928-5929 of 2004

PETITIONER:

TAMIL NADU HOUSING BOARD

RESPONDENT:

KEERAVANI AMMAL & ORS

DATE OF JUDGMENT: 15/03/2007

BENCH:

C.K. THAKKER & P.K. BALASUBRAMANYAN

JUDGMENT:

J U D G M E N T [with C.A. No. 5932 of 2004, C.A. No. 5938 of 2004, C.A. No. 5933 of 2004 and C.A. No. 5934 of 2004] **P.K. BALASUBRAMANYAN, J.**

1. Forty-three writ petitioners, the contesting respondents in these appeals, approached the High Court of Madras with W.P. No. 1109 of 2000 praying for the issue of a writ of mandamus directing the State of Tamil Nadu, its officers and the Tamil Nadu Housing Board to re-convey the lands comprised in Survey Nos. 237, 238/1, 238/2 and 238/3 in all 2.43 acres, in Padi village presently in Ambattur Taluk and for passing such further orders as deemed by the court to be fit and proper. The Writ Petition was filed through a power of attorney. It was stated that the properties belonged to one Maniappa Naicker and it was inherited by his four sons and their successors. It was asserted that the writ petitioners were the absolute owners of the property as legal heirs and are in lawful possession and enjoyment of the said property. The writ petitioners were in joint possession and they were the joint owners of the property. The land was sought to be acquired for housing purposes. It was

conceded that a notification under Section 4(1) of the Land Acquisition Act was published on 12.7.1975 followed by a declaration under Section 6 of that Act on 29.11.1978, followed up by an Award on 7.10.1992. It was stated that the petitioners reliably understood that the appropriate authorities had passed orders for dropping the Scheme for which the acquisition was made. Thus, the valuable lands of the petitioners were kept idle and it caused great hardship to them. For 21 years no progress had been made. If the lands that were acquired were not being used for the purpose for which it was intended to be utilised, the writ petitioners could very well put the land to their own use. The piece of land was a low lying area and a large amount has been spent by the writ petitioners recently for filling up and raising the level of the land. A representation was made to the Secretary to the Government in the Revenue Department for taking steps under Section 48 of the Land Acquisition Act, de-notifying or excluding the lands from acquisition. But unfortunately, the request of the writ petitioners has not been considered favourably. The lands had not been taken possession of by the respondents. The writ petitioners had earlier filed W.P. No. 19162 of 1999 before the High Court praying for the issue of a writ of mandamus directing the respondents therein not to interfere with the peaceful possession of the writ petitioners. But the said Writ Petition was dismissed as not pressed with liberty given to the petitioners to file a fresh Writ Petition incorporating a proper prayer. Hence the present Writ Petition was being filed. We have already adverted to the prayer that was made.

2. The respondents in the Writ Petition submitted that earlier, an application had been made by the writ petitioners under Section 48B of the Land Acquisition Act as amended in the State of Madras, but the said request had been rejected by the Government. It is significant that there is no challenge to such a rejection in the Writ Petition and no prayer for a writ of certiorari to quash such an order. It was also contended that the Scheme was very much alive and the lands are intended to be utilised for the purpose for which the acquisition was made. The delay in putting it to use was because of various litigations that had been initiated. The possession of the lands had been taken and made over to the Tamil Nadu Housing Board. The writ petitioners were not entitled to any relief. The competence of the writ petitioners to maintain the Writ Petition was also questioned.

3. The learned single judge proceeded on the basis that the Writ Petition was filed for the issue of a writ of mandamus directing the respondents therein to re-convey the lands involved in the Writ Petition in terms of Section 48B of the Act as inserted in the State of Tamil Nadu. The court proceeded to state that by way of earlier order dated 2.7.1999, a notification in respect of other lands acquired for the purpose of the Scheme had been quashed and re-conveyance ordered and since there was no further development in respect of the lands which were taken possession of by the Tamil Nadu Housing Board, there should not be any impediment in the way of the respondents in disposing of the representation of the writ petitioners dated 18.3.1998 seeking re-conveyance of the lands under Section 48B of the Land Acquisition Act. The learned Judge did not advert to the fact that a request made earlier in that behalf by the writ petitioners, stood rejected and there was no challenge to that rejection. The learned single judge ended up by directing the State of Tamil Nadu to pass appropriate orders on the representation given on behalf of the writ petitioners within three months from the date of receipt of a copy of his judgment.

4. The writ petitioners went up in appeal against the decision of the learned single judge. The Division Bench even without issuing notice to the Tamil Nadu Housing Board to which the property had been transferred by the State according to the State and the Board, proceeded to direct the State of Tamil Nadu and its officers to re-convey the concerned lands to the writ petitioners appellants. The Tamil Nadu Housing Board sought to challenge this order in this Court by way of Petition for Special Leave to Appeal (Civil) No. 2813 of 2002. The Petition for Special Leave to Appeal was dismissed as withdrawn in the light of the statement of the learned counsel for the Tamil Nadu Housing Board that the Board intended to file a petition for Review in the High Court. Thereafter, the Board filed a review petition in the High Court essentially contending that Section 48B had no application; that it had not been heard or notice issued to it before the allowing of the writ appeal and that the order in the writ appeal deserves to be reviewed. The Division Bench, without properly advertent to the aspects that arose for decision, simply dismissed the review petition and also closed a contempt of court case filed by the writ petitioners by granting further time to the Government to comply with the directions contained in the order of the Division Bench dated 7.12.2001. The Tamil Nadu Housing Board has come up with Civil Appeal Nos. 5928-5929 of 2004 and Civil Appeal No. 5932 of 2004 challenging the orders on the review petition, original judgment and in the contempt of court case. The State of Tamil Nadu has filed the three appeals C.A. Nos. 5934, 5938 and 5933 of 2004 challenging the orders of the Division Bench that are the subject of challenge by the Tamil Nadu Housing Board in its appeals.

5. Learned counsel for the contesting respondents relying on the decision in Kumaran Silks Trade (P) Ltd. Vs. Devendra & Ors. [(2006) 8 S.C.C. 555] raised a contention that the appeals by the Tamil Nadu Housing Board being appeals against the orders in review petition were not maintainable since the Tamil Nadu Housing Board had withdrawn the earlier Petition for Special Leave to Appeal filed by it against the original order reserving only liberty in itself to seek a review in the High Court. On the facts and in the circumstances of the case on hand, however, in our considered opinion, the withdrawal of earlier Petition for Special Leave to Appeal by the Housing Board cannot stand in the way of our examining the correctness of the decisions rendered by the High Court in view of the fact that the State of Tamil Nadu had not earlier challenged the original order of the Division Bench before this Court and now alone it seeks to challenge the original order, the order on the review petition it had filed and the order on the contempt of court case in the appeals it has filed before this Court. The principle recognised in Kumaran Silks (Supra) has no application to those appeals. Learned counsel for the contesting respondents pointed out that there was delay in filing the Petitions for Special Leave to Appeal leading to those appeals. But obviously, the delay was condoned and leave granted and we now have the three appeals before us for final hearing and disposal. In these appeals, we have necessarily to examine the correctness and propriety of the directions issued by the High Court.

6. Admittedly, the lands were acquired under the Land Acquisition Act and an Award was passed. According to the State, possession was taken after some delay in view of a number of Writ Petitions that were filed in the High Court and the compensation payable under the Award had been deposited. There is no material on the basis of which we can hold that the proceedings under the Land Acquisition Act had not been completed. In fact, the prayer in the Writ Petition is for the issue of a writ of mandamus directing the State, its officers and the Tamil Nadu Housing Board to

re-convey the property to the writ petitioners, the contesting respondents herein though there is an assertion that the writ petitioners are in possession. The learned single judge proceeded on the basis that the claim of the writ petitioners was for re- conveyance of the land under Section 48B of the Land Acquisition Act as inserted in the State of Tamil Nadu. The question therefore is whether the High Court was justified in directing the land to be re-conveyed in view of the specific stand adopted by the Housing Board and the State that the Scheme was very much in operation that necessary plans have been prepared and the project got delayed only because of the judicial intervention. We may also notice that it is the specific case of the appellants that in 1998, a claim for re-conveyance made had already been rejected. The further contention by the State and the Board was that possession of the lands having been made over to the Tamil Nadu Housing Board, Section 48B of the Act could not be invoked or the State directed to re-convey the land to the writ petitioners. The further submission was that Section 48B contemplated re-conveyance of land only to the original owner and not to anyone else and the writ petitioners were not the original owners from whom the land was acquired. In fact, it was contended that the writ petitioners have not established that they were either the representatives or the successors-in-interest of the original owners. It was asserted that, in fact, they were mere purchasers subsequent to the acquisition.

7. The allegations in the writ petition show that the prayer made by the writ petitioners to the Government was for de-notifying the lands under Section 48 of the Act. We think it proper to extract that allegation:

"I further state that I have given a representation to the Secretary to Government Revenue Department, Chennai - 600 009 and Secretary to the Government, Housing and Urban Development Dept., Fort St. George, Chennai 600 009, requesting them to take necessary steps by notifying under Section 48 of the Land Acquisition Act de-notifying or excluding the lands. But unfortunately, as far requisitions of the petitioners has not been considered favourably."

Section 48 of the Act reads as under:

"Sec.48. 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 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 owner 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 provision of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section."

On the facts pleaded it is doubtful whether the Government can withdraw from the acquisition, since the case of the State and the Housing Board is that possession has been taken and plans finalised to fulfil the purpose for which the acquisition was made. There is no plea in the writ petition that a request for re- conveyance was made in terms of Section 48B of the Act as amended in the State of Tamil Nadu. The said provision reads:

"48-B. Transfer of land to original owner in certain cases- Where the Government are satisfied that the land vested in the Government under this Act is not required for the purpose for which it was acquired, or for any other public purpose, 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."

In the grounds in the writ petition it is only asserted that the writ petitioners are in possession in spite of the acquisition. There is no ground based on Section 48B of the Act though the prayer, as noticed earlier is for the issue of a writ of mandamus to reconvey the property. It is proper to notice that no foundation had been laid for seeking such a relief. There is no plea of demand, no plea of refusal and no plea of a duty in the State to re- convey.

8. We find from the order of the learned single judge dated 2.8.2001, in the Writ Petition, the following statement recorded:

"According to the petitioners the said lands were not put into use by the fourth respondent Board for nearly 20 years. In the above said circumstances, when the petitioners approached the respondents for re-conveyance of the property by virtue of Section 48B of the Land Acquisition Act, it was rejected by the respondent. Again the petitioners made a representation to the respondents dated 18.3.98. Since the said representation of the petitioners has not been disposed of, the present Writ Petition came to be filed seeking for the issuance of a writ of mandamus directing the respondents to re-convey the lands situated in Survey Nos. 237, 238/1, 238/2 and 238/3 of Padi Village, Ambattur Taluk, M.G.R. District."

If the request of the writ petitioners for re-conveyance in terms of Section 48B of the Act stood rejected as apparently conceded by them before learned single judge, one finds it difficult to see how a second direction can be issued even in the absence of a challenge in the writ petition to the order of rejection and without examining the reasons contained therein. That order was also binding on the writ petitioners, so long as it was not got rid of. The order rejecting the request had become final and in a sense, it was not open to the learned single judge to issue the direction to consider an identical representation all over again. The Division Bench went one step further, we regret to say, without a proper consideration of the relevant aspects. The Division Bench apparently, even without giving the Tamil Nadu Housing Board an opportunity of being heard, proceeded at the stage of admission itself to direct re-conveyance of the lands to the writ petitioners, whether it be on the first date of hearing itself or on the subsequent date as contended by learned counsel for the contesting respondents. If the Division Bench felt that there was a case to be looked into, it should have

admitted the writ appeal, issued rule nisi to the parties and thereafter heard the matter and disposed it of in the light of the relevant provisions of the Act, the law bearing on the subject and the facts obtaining. Even when the Division Bench got an opportunity to correct itself on being approached by way of review, it did not utilise that opportunity.

9. It is clearly pleaded by the State and the Tamil Nadu Housing Board that the Scheme had not been suspended or abandoned and that the lands acquired are very much needed for the implementation of the Scheme and the steps in that regard have already been taken. In the light of this position, it is not open to the court to assume that the project has been abandoned merely because another piece of land in the adjacent village had been released from acquisition in the light of orders of court. It could not be assumed that the whole of the project had been abandoned or has become unworkable. It depends upon the purpose for which the land is acquired. As we see it, we find no impediment in the lands in question being utilised for the purpose of putting up a multi-storied building containing small flats, intended as the public purpose when the acquisition was notified. Therefore, the High Court clearly erred in proceeding as if the Scheme stood abandoned. This was an unwarranted assumption on the part of the court, which has no foundation in the pleadings and the materials produced in the case. The Court should have at least insisted on production of materials to substantiate a claim of abandonment.

10. We have already noticed that in the Writ Petition, there are no sufficient allegations justifying interference by the Court. Mere claim of possession by the writ petitioners is not a foundation on which the relief now granted could have been rested either by the learned single judge or by the Division Bench of the High Court. On the materials, no right to relief has been established by the writ petitioners.

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 & Ors. Vs. M. Bhaskaran Pillai & Anr.* [(1997) 5 S.C.C. 432] 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.

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 on the scope of Section 48B of the Act, whether the writ petitioners have established any claim to the lands, whether the re- conveyance can only be to the original owners and not to others and whether if possession has already been made over to 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 48B 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. We therefore allow the appeals filed by the State of Tamil Nadu and set aside all the orders passed in the Writ Petition and in the writ appeal and in the contempt of court case. We dismiss the Writ Petition filed by the writ petitioners. In view of the above position, there is no need to pass any further order in the appeals filed by the Tamil Nadu Housing Board. The above decision will govern the Tamil Nadu Housing Board also. The State of Tamil Nadu would be entitled to its costs from the writ petitioners in its appeals and the parties would suffer their respective costs in the appeals filed by the Tamil Nadu Housing Board.