M.R. Srinivasan and Others Vs The State of Tamilnadu and Others

Court: Madras High Court

Date of Decision: Aug. 27, 2012

Acts Referred: Constitution of India, 1950 â€" Article 14, 226, 300A
Land Acquisition Act, 1894 â€" Section 10, 16, 17, 17(1), 17(2)

Citation: (2013) WritLR 108

Hon'ble Judges: K.N. Basha, J

Bench: Single Bench

Advocate: R. Syed Mustafa, for the Appellant; S. Gomathinayagam A.A.G. Assisted by 1, Ms. V.M. Velumani, Special Government Pleader 2 for RR 1 to 4, Mr. N. Srinivasan, A.G.P. and Mrs. S. Hemaltha for R5, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

K.N. Basha, J.
The challenge in this writ petition is to the order dated 04.07.2008 made in letter MS. No. 123 passed by the first

respondent with a prayer to quash the same and consequently directing the respondents to re-convey the lands to an extent of 1.62 acres

comprised in pymash No. 72/Part Survey No. 19 corresponding to present T.S. No. 22/Part in Block No. 5, Venkatapuram Village in the Taluk

of extended areas, Madras District in the Registration Sub-District of Saidapet to the petitioners as provided u/s 48-B of the Land Acquisition Act.

The brief facts of the case which are necessary for disposal of this writ petition is to be stated here under:

1.1. The subject lands measuring about 1.62 acres comprised in paimash No. 72 part, S. No. 19, T.S. No. 22/2 of the Village Zamin

Venkatapuram, Chennai was acquired under the Land Acquisition Act by the Government of Tamil Nadu through the Department of Industries,

Labour and Cooperation for the public purpose of construction of hostel and buildings for the Central Cooperative Institute, Chennai. The

notification u/s 4(1) read with Section 17(1) of the Land Acquisition Act, 1894 [hereinafter referred to as ''Act''] was published at page 301 of

Part of the Tamil Nadu Government Gazette dated 31.08.1960. The declaration u/s 6 read with Section 17(2) of the Land Acquisition Act, 1894

was published at page 782 of Part III of the Fort St. George Gazette dated 16.11.1960- The Government claimed to have taken possession from

the erstwhile owners and handed over to the Cooperative Department on 24.11.1960 after the publication of notice under Sections 9(1) and 10 of

the Land Acquisition Act, 1894.

1.2. An award was passed in award No. 4/1961 by the Personal Assistant to the erstwhile Collector, who was the Land Acquisition Officer,

Chennai, fixing the compensation as Rs. 33,947.60 for the erstwhile owner M/s. Manali Ramakrishna Mudaliar and Manali Parthasarathy Mudaliar

and they have also received the compensation amount. The said Manali Parthasarathy Mudaliar and Manali Ramakrishna Mudaliar expired on

29.05.1999 and 23.04.2002 respectively, survived by the petitioners herein who are their legal heirs.

1.3. Since the subject land was not utilized for the purpose for which it was acquired or for any other public purpose for a period of more than 40

years, the petitioner made representations to the respondents 1 and 2 on 19.04.2005 and on 19.06.2005, seeking for the relief of re-conveyance

of the subject lands and expressed their willingness to repay the compensation paid by the Government as per Section 48-B of the Act which

introduced by the Land Acquisition (Tamil Nadu Amendment) Act 1996. Since no orders were passed on the said representations, the petitioners

preferred a writ petition in W.P. No. 49265/2006 seeking a Mandamus directing the first respondent to consider and to pass orders on the

petitioners" representation dated 16.11.2006. The said writ petition was disposed of by this Court by the order dated 02.01.2007 directing the

respondents to consider the representation and to pass orders in the light of the ratio laid down in 2006 (4) CTC 290 [R. Shanmugam and Others

v. The State of Tamil Nadu rep. By its Secretary, Housing & Urban Development, Fort St. George, Chennai 600009]. Pursuant to the said order

of this Court, the first respondent by the order dated 20.03.2007 rejected the claim of the petitioners on the ground that the said lands are in the

possession of the Government for more than 40 years and as such, the request for re-conveyance could not be acceded to.

1.4. Aggrieved by the said order, the petitioners preferred a writ petition in W.P. No. 26990/2007 and the same was disposed of on 10.09.2007

by setting aside the order of the first respondent dated 20.03.2007 with a direction to the first respondent to consider the petitioners representation

afresh after affording opportunity to the petitioners holding that the reason of possession of the land for more than 40 years was not a valid one.

Again the petitioners made representations dated 03.10.2007 and 07.01.2008 requesting them to consider the claim in the light of the observations

made by this Court in the above said order. As the first respondent has not complied with the said order, the petitioner preferred Contempt

Petition No. 495/2008. On receipt of the notice in the contempt petition, the first respondent, without affording any opportunity to the petitioner,

had passed an order in Letter No. 32001/CK/2006/8 dated 26.06.2008, thereby rejecting the claim of re-conveyance stating that the power u/s

48B to re-convey is only discretionary and the same cannot be exercised after 40 years.

1.5. During the pendency of the contempt petition, the first respondent was directed to withdraw the order dated 26.06.2008 and was thereafter,

directed to pass an order in compliance of the order passed by this Court in W.P. No. 26990/2007 dated 10.09.2007. Pursuant to the said

direction, the first respondent issued a notice of hearing to be held on 04.07.2008 and on the same day, the first respondent passed a fresh order

in Letter No. 123 dated 04.07.2008 holding that the acquired land could not be utilized due, to severe financial constraints and by mistake the

lands were occupied by the Highways Department and necessary steps have been taken to retrieve the lands from the Highways Department.

Accordingly, the first respondent rejected the claim of the petitioners. Being aggrieved by the said order, the present writ petition is preferred

before this Court with the above said prayer.

2. Mr. Syed Mustafa, learned counsel for the petitioner while assailing the impugned order, put forward the following contentions:-

1. The Subject land was acquired as early as in the year 1961 and the Award was passed on 15.03.1961, but the subject land is not utilised for

the specific purpose of putting up a construction of hostel building for the Central Cooperative Training Institute for the last more than 47 years and

as such, the petitioners are entitled to seek the relief of re-conveyance of the land u/s. 48-B of the Act.

2. The petitioner has not challenged the 4[1] Notification or the Declaration u/s. 6 of the Act and as such, the question of delay and laches cannot

be attributed to the petitioners who are the legal heirs of the original owners. On the other hand, the Government cannot have any premium for

condoning their laches and mistakes as the law is common to both the citizen and the Government.

3. The subject land is not in the, possession of the Cooperative Institute and the said factor is substantiated by the issuance of G.O.Ms. No. 24,

Cooperative, Food and Consumer Protection [CK] Department dated 17.03.2009 as well as the averments contained in the counter affidavit filed

by the 1st respondent dated 23.04.2012.

4. The documents produced by the respondents itself shows that the possession of the subject land is with the Highways Department and a private

body, viz., the 5th respondent herein and even the writ petition filed by the 5th respondent Association in WP. No. 12209/2009 was also

dismissed by this Court by the order dated 05.10.2010 by recording a finding to the effect that the possession of the 5th respondent is illegal.

5. The Government Order in G.O.Ms. No. 24 dated 17.03.2009 was passed only after the admission of the writ petition in WP. No. 12209/2009

and after the issuance of Rule Nisi, with a view to defeat the claim of the petitioners herein.

6. The respondents have not come forward with a consistent stand to the effect that in the counter affidavit, it is stated in the earlier paragraphs that

due to financial constraint, the respondents were not able to commence the construction; but in the latter paragraphs, it is stated that the financial

constraint is not the reason for the delay in putting up the construction; on the other hand, it is stated that a fund of Rs. 6 crores is available for the

purpose of construction of hostel.

7. The counter filed in this writ petition itself clearly shows that the Cooperative Institute is not at all aware about the possession of the land by the

Government and the 3rd respondent has inspected and found the encroachment only during the pendency of the writ petition in WP. No.

49265/2006, which shows that they have no inclination to use the subject land for the specific purpose for which it was acquired, viz., for the

purpose of putting up the construction of hostel for the Central Cooperative Training Institute.

8. There is no explanation for the inordinate delay of more than 47 years for not utilising the subject land for the specific purpose for which it was

acquired and the respondents made an attempt to give certain explanations only during the course of filing the counter affidavit dated 23.04.2012.

The respondents have also not come forward with any explanation as to how the subject land was unauthorisedly occupied by the Highways

Department and the 5th respondent herein and the statement made by the respondents 2 and 3 in their counter dated 24.04.2009, reveals that the

respondents placed reliance on G.O.Ms. No. 1814, Public Services, dated 21.05.1956 stating that the said Government order was passed for

allotting an extent of 7 grounds 1065 sq. ft. in favour of the 5th respondent Association, viz., Tamilnadu Highways Engineers. On the other hand, a

perusal of the said Government order dated 21.05.1956 discloses that the said order was passed only for the purpose of recognizing the 5th

respondent Association and not for allotting any land much less the subject land which was acquired only during the year 1960-61. The lethargic

attitude and inordinate delay for using the subject land for the purpose for which it was acquired clearly show that there is no meaning for

invocation of emergency provision u/s. 17 of the Land Acquisition Act.

9. Learned counsel would also submit that even assuming that the respondents are contending to the effect that the subject land was already

acquired and as such, the same is vested with the Government as per the provision u/s 16 of the Act, such vesting of the land means vesting with

the respondents without any encumbrance.

2.1. In support of his contentions, the learned counsel for the petitioners placed reliance on the following decisions:-

[a] Office of The Chief Post Master General and Others Vs. Living Media India Ltd. and Another,

[b] Anand Singh and Another Vs. State of Uttar Pradesh and Others,

[c] Bangalore City Cooperative Housing Society Ltd. Vs. State of Karnataka and Others,

[d] Darshan Lal Nagpal (dead) by L.Rs. Vs. Government of NCT of Delhi and Others,

[e] Unreported Judgment of a Division Bench of this Court in WA. Nos. 1152, 196/2005 & 324/2007 dated 25.10.1996, 19.04.2007 and

26.04.2007 respectively;

[f] 1951 MLJ 477 [Delhi Administration Vs. Gurdip Singh Uban and others]

[g] STC 1986 Vol. 63 [Lokkaju Satyanarayana V. Majati Venkatarattamma and another]

[h] Delhi Administration Vs. Gurdip Singh Uban and Others,

[i] Tamil Nadu Housing Board Vs. Mrs. Uma Maheswari Ramasamy and Others,

[j] Destruction of Public and Private Properties Vs. State of A.P. and Others, and

[k Destruction of Public and Private Properties Vs. State of A.P. and Others,

3. Per contra, Mr. S. Gomathinayagam, learned Additional Advocate General appearing for the respondents 1 to 5, while refuting the contentions

of the learned counsel for the petitioners, put forward the following submissions:-

1. The writ petition is not maintainable on the ground of delay and laches as the award was passed as early as in the year 1961 whereas the

present writ petition is filed only in the year 2008 and there is no explanation for such delay. After the 4[1] notification issued on 31.08.1960, the

Declaration u/s. 6 of the Act was made and physical possession of the subject land was taken over after passing of the Award on 15.03.1961.

The original owners having received the compensation, have no locus standi of questioning or challenging the acquisition in the year 2008. After

passing of the Award, the writ petition is not maintainable.

2. The petitioners cannot invoke section 48-B of the Act as they are only the legal heirs of the original owners and that the original owners have

already received the compensation from the Government. Once the acquisition was made and possession was taken over, the property is vested

with the respondents and the respondents are having the title over the subject property and the petitioners have no right to challenge the acquisition

or seek the relief of re-conveyance.

3. The Government passed an order in G.O.Ms. No. 24 dated 17.03.2009 for taking possession of the subject land from the Highways

Department which clearly shows that the respondents are keen in utilising the subject land for the purpose for which it was acquired.

4. The writ petition filed by the 5th respondent Association in WP. No. 12209/2006 challenging G.O.Ms. No. 24 dated 17.03.2009 was

dismissed by this Court by the order dated 05.10.2010 wherein it is stated by this Court that when the Government has acquired the land for

specific purpose, it is for them to decide as to how it should be utilised and merely because the petitioner Association [5th respondent in the

present writ petition] has put up the construction, over the land for which, they have no right, they have no legal right to question the propriety of

the Government in handing over the entire extent of land with buildings to the Cooperative Department, to which, it was acquired. Therefore,

G.O.Ms. No. 24, dated 17.03.2009 was upheld by this Court in the said writ petition and as such, the petitioners have no locus standi to claim the

re-conveyance of the subject land.

5. Even assuming that the subject land is not utilised for the specific purpose for which it was acquired, it is open to the Government to use the said

land for any other public purpose.

6. If the subject land is not required for the specific purpose for which it was acquired or for any other public purpose, the Government has to take

steps to sell the property only through public auction and the petitioners cannot claim that the subject land should be re-conveyed to them.

3.1. In support of his contentions, the learned Additional Advocate General, placed reliance on the following decisions:-

[a] Chandragauda Ramgonda Patil and Another Vs. State of Maharashtra and Others,

[b] C. Padma and Others Vs. Dy. Secretary to the Govt. of T.N. and Others,

[c] State of Kerala and others Vs. M. Bhaskaran Pillai and another,

[d] The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others,

[e] Northern Indian Glass Industries Vs. Jaswant Singh and Others,

[f] Tamil Nadu Housing Board Vs. Keeravani Ammal and Others,

[g] Tamil Nadu Housing Board Vs. L. Chandrasekaran and Others,

[h] 2010 [2] SCC 801 [A.S. Naidu and others vs. State of Tamil Nadu and others];

[i] R. Shanmugam Gounder, rep. by his Power Agent K.V. Jayaraman Vs. The State of Tamil Nadu

[j] S. Jaya Mohan Vs. State of Tamil Nadu,

4. Learned counsel appearing for the 5th respondent would submit that the portion of the subject land which was in the possession of the 5th

respondent was already surrendered and handed over to the Government after the dismissal of the writ petition in WP. No. 12209/2009 by this

Court by the order dated 05.10.2010.

5. This Court carefully considered the rival contentions put forward by either side and also perused the entire materials available on record

including the affidavit filed by the petitioners, counter affidavit filed by the respondents and the impugned order passed by the first respondent

dated 04.07.2008.

I. Whether there is a need for invoking the provision u/s 16-B of the Act ?

6. At the outset, it is to be stated that Award No. 4/1961 dated 15.03.1961 was passed for acquiring the subject land to an extent of 1.62 acres.

The said portion of the Award is incorporated here under:-

The Government [Industries, Labour and Co-operation Department] ordered the acquisition of the land in paymash No. 72 part of Zamin

Venkatapuram village in the extended areas of the City since taken over by the Government, for the construction of hostel and buildings for the

Central Co-operative Institute, Madras. The Notification under sec. 4[1] read with sec. 17[4] of the Land Acquisition Act was published at page

301 of Part II-I of the Fort St. George Gazette dated 31.08.1960. The declaration u/s, 6 read with section 17[2] of the Land Acquisition Act was

published at page 782 of Part II-I of the Fort St. George Gazette dated 16.11.1960. Possession of the land was taken and handed over to the

Co-operative Department on 24.11.1960 after the publication of the notice u/s. 9[1] and 10 of the Land Acquisition Act.

In the said Award, the subject property was described as here under:-

Description:-The land taken possession of was a vacant land. There were no trees or structures.

In the counter filed by the respondents 2 and 3, at paragraph 6, it is stated as here under:-

6. It is submitted that as soon as the Award was passed, registered holder of the property, ceases his rights over the property in favour of the

Government and the land owners have no rights to claim any portion or any bit of land already handed over to the Government. The Government

reserve their rights over the property. The petitioners have no locus standi to claim any right over the land.

A reading of the above statement made in the Award as well as the statement made in the counter affidavit filed by the respondents 2 and 3 makes

it crystal clear that the subject land was acquired by the Government and as such, it is to be stated that the subject land is vested only with the

Government. It is pertinent to note that the Government, viz., the Industries, Labour and Co-operation Department, as per the Award has not

transferred the title to any other Department or to any other requisition body, viz., Tamil Nadu Housing Board, Chennai Metropolitan

Development Authority or any other Corporation. Therefore, there is no question of invoking the provision u/s. 16-B of the Act enabling the

Government to forfeit the subject land from any requisition body in the event that the subject land was not utilised for the specific purpose for

which it was acquired. At this juncture, it is relevant to extract Section 16-B of the Act which reads as here under:-

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 hag had a reasonable opportunity of being heard.

At this juncture, it is to be stated that even the learned Additional Advocate General has submitted that there is no necessity for the Government to

invoke the provision U/S. 16-B of the Act even assuming that the subject land was not utilised for the specific purpose for which it was acquired

by any other requisition body. On the other hand, it is all along contended by the learned Additional Advocate General that the subject land was

already vested with the Government and the Government is keen in utilising the subject land for the specific purpose for which it was acquired, viz.,

for the purpose of constructing hostel and buildings for the Central Co-operative Institute. Therefore, as far as the case on hand is concerned, this

court is only required to find out whether the petitioners have made out grounds for seeking the relief of re-conveyance of the subject land by

invoking the provision u/s. 48-B of the Act.

II. Whether the subject land is not utilized for the specific purpose for which it was acquired till date ?

7. Before proceeding to consider the crux of the question involved in this matter, viz., whether the petitioners are entitled to seek the relief of re-

conveyance of the subject land by invoking the provision u/s 48-B of the Act on the ground of non-utilization of the subject land for the specific

purpose for which it was acquired and that too, by invoking the emergency provision u/s 17 of the Act for more than a period of 47 years, it is

relevant to refer to the provision u/s. 48-B of the Act which reads as here under:-

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 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.

8. It is pertinent to note that section 48-B of the Act was introduced only through the Tamil Nadu Amendment, viz., as per the Land Acquisition

[Tamilnadu Amendment] Act, 1996 [Tamilnadu Act No. 16 of 1997]. The object of introducing the said provision is stated in clause [viii], which

reads as here under: -

[viii] There is no provision in the Land Acquisition Act, 1894 [Central Act of 1894] for reconveyance of the land to the original owner after taking

possession of the land, if the land is not required by the Government. Hence, it has been decided to insert a new provision as section 48-B for this

purpose.

As far as the case on hand is concerned, the undisputed fact remains that the subject land is not utilised for the specific purpose for which it was

acquired, viz., for the purpose of constructing hostel and buildings for the Central Cooperative Institute till date. It is curious to note that admittedly,

the subject land was under the unauthorised occupation of the 5th respondent Association and the Highways Department. The respondents 2 and

3, in their counter affidavit, have specifically stated as here under:-

3...

...Record reveal that the land had been inspected by the then Tahsildar in 2006 and found that there were pucca buildings in extents over the land.

Further in G.O.Ms. No. 1814, Public Services, dated 21.05.1956. The Government had allotted an extent of 7 Grounds 1065 sq. ft. or

thereabout in favour of the Association of Tamil Nadu Highways Engineers. The allottee had raised a compound wall on all sides and the

Association has constructed building with a plinth area of 2 grounds 457 sq. ft. which is reported to be used as a guest house for Highways

Engineers. There are two more buildings maintained by the Highways Department.

The said categorical statement made by respondents 2 and 3 in the counter affidavit filed by them on 24.04.2009 makes it abundantly clear that

only in the year 2006, the 3rd respondent herein made an inspection and found pucca buildings on the subject land. It is further stated that a

portion of the said land was allotted by the Government in favour of the 5th respondent herein as per G.O.Ms. No. 1814 dated 21.05.1956 and

thereafter, the allottee has raised a compound wall on all sides and constructed building with a plinth area of 2 grounds 457 sq. ft. which is

reported to be used as a guest house for Highways Engineers. It is also stated that there are two more buildings maintained by the Highways

Department. It is pertinent to note that the respondents have not produced a copy of G.O.Ms. No. 18 14 dated 21.05.1956. On the other hand,

learned counsel for the petitioners produced a copy of G.O.Ms. No. 1814, dated 21.05.1956. A perusal of the said order reveals that the said

Government order was passed only for recognizing the 5th respondent Association and the same was not passed for allotting any land much less

the subject land to the 5th respondent Association. It is relevant to incorporate G.O.Ms. No. 1814, Public Services, dated 21.05.1956, which

reads as here under:-

Pub.[Ser-C] Deptt.

G.O.Ms. No. 1814 Dated 21.05.1956

Service Associations Association of Madras State Highway Engineers Recognised.

ORDER:-

The Government hereby accord official recognition to ""The Association of Madras State Highway Engineers"" subject to the rules issued in

G.O.Ms. No. 1160, Public [General-B] dated 11th May, 1948 and to any rules which may hereafter be brought into force in respect of such

Associations of Government Servants.

2. The Association shall submit its representations to Government through the Chief Engineer [Highways], Madras, it shall submit promptly to

Government for approval of any change in its rules and bye-laws and also any change in its headquarters and address. It shall also submit to

Government promptly a copy of every publication of the Association.

3. The following item shall be added to section II of the List of Service Associations recognized by Government in Memorandum No. 1632-2,

Public [Services] dated the 20th August 1928 --

73. The Association of Madras State Highway Engineers.

To

The Secy., the Association of Madras State

Highways Engineers through the C.E., [H],

Madras, [w.e.f.]

Copy to [1]the C.E. [H]., Chepauk, Madras.

[2] to P.W. Deptt.

[3] to Deptts. of Sectt.

9. Yet another fact to be borne in mind is that according to the Government, the 5th respondent Association was under the unauthorised

occupation of the subject land which fact is very much evident from the Government Order passed in G.O.Ms. No. 24 dated 17.03.2009. A

perusal of the said order reveals that the said order contains a contradictory statement regarding the possession of the 5th respondent Association.

In paragraph 7 of the said Government Order, it is stated that earlier, there had been two allotments, one to Highway Engineers Association and

another to Cooperative Training Institute, It is to be reiterated that respondents 2 and 3 have claimed in their counter that during the inspection of

the 3rd respondent in the year 2006, it was found that there were pucca buildings and it is further stated that as per G.O.Ms. No. 1814 dated

21.05.1956, the Government had allotted an extent of 7 grounds 1065 sq. ft., in favour of the 5th respondent herein. It is to be stated that the so-

called allotment has been made much prior to the acquisition of the subject land as the subject land was acquired only in the year 1960 and the

Award was passed on 15.03.1961. Therefore, the said statement made in the counter by the respondents 2 and 3 must be factually incorrect.

Added to the above said infirmity and inconsistency in the stand taken by the respondents 2 and 3. it is to be noted that in paragraph 8 of G.O.Ms.

No. 24 dated 17.03.2009, it is stated as here under:-

8. In order to consider the matter afresh, the Chief Engineer [General] and the Registrar of Cooperative Societies were consulted on the following

points:-

i] as to why the Hostel and building were not constructed when the land under reference stands registered in the name of Central Cooperative

Hostel and building as per the Town Survey Land Register; and

ii] how the said land went into the hands of Highways Department.

A reading of the above said averment or statement made in the above mentioned Government order makes it abundantly clear that the Government

itself is not aware of as to how the subject land went into the hands of the Highways Department. It is further relevant to note the subsequent

paragraphs, viz., paragraphs 10 and 11, which read as follows :-

10. The Chief Engineer [General] Highways Department has now informed that the Superintending Engineer [H] Chennai has obtained and

furnished the Chitta Adangal for the survey number 19 and T.S. No. 22 of Venkatapuram village from the Revenue authorities and on perusal of

the details obtained from the Revenue authorities, the land in question was acquired by the Highways Department for the Highways Research

Station and Highways work shop during the year 1959 and at present, the part offices of Highways Research Station, Superintending Engineer [H]

project, Chennai and the Highways Engineers Association Officers etc., are functioning in the above said lands and there is a proposal to construct

office complex for Highways Department in the remaining vacant land available. He has also informed that since the land in question was in

possession of Highways Department for more than 50 years and the records pertaining to the above lands were not available in the sub-ordinate

offices, and there is no possibility to furnish the reasons for not constructing tile Hostel and building in the above said land and also how the lands

have come to Highways Department. He has sent the Chitta, adangal and survey number 19 of Venkatapuram village obtained from the Revenue

Authorities for information and perusal.

11. On a thorough perusal of the correspondence, it was noticed that no conclusive or documentary evidence is available with the Registrar of

Cooperative Societies, and tile Chief Engineer, Highways Department. It is evident that the land which was originally acquired for Cooperation

Department, has been in possession for the past 45 years in Highways Department without any proof of transfer of the said land in the Highways

Department,

It is pertinent to note that in the above incorporated paragraphs of G.O.Ms. No. 24 dated 17.03.2009, it is clearly stated that the Highways

Department was occupying the subject land for more than 50 years and it is curiously stated that records pertaining to the said possession, were

not available. Again, it is reiterated in paragraph 11 that there is no conclusive or documentary evidence available with the Registrar of Cooperative

Societies and the Chief Engineer, Highways Department with regard to the transfer or possession of the subject land in question. Therefore, the

present version of the respondents to the effect that the subject land was allotted to the Highways Department through a proper Government order

is unacceptable and the said statement is not at all correct not only in view of the inconsistent statements made by the respondents 2 and 3 in their

counter, but also on the basis of the statement made in G.O.Ms. No. 24 dated 17.03.2009. The above said facts demonstrate the indifferent

attitude of the respondents in not taking any steps to utilise the subject land for the specific purpose for which it was acquired for more than a

period of 47 years. At the risk of repetition, it is to be reiterated that the respondents 1 to 3 have not raised their little fingers to take even a single

step to utilise the subject land for the specific purpose of constructing hostel and building for the Central Cooperative Training Institute. With this

background of factual position, let me now consider the other questions involved in this matter.

III. Whether the writ petition is liable to be dismissed on the ground of delay and laches?

10. Learned Additional Advocate General firstly contended that the writ petition itself is not maintainable on the ground of delay and laches as the

acquisition of the subject land was in the year 1960 whereas the petitioners have come forward with the writ petition only in the year 2006, It is

also contended that the petitioners are only the legal heirs of the original owners and the original owners have already received the compensation. I

am unable to countenance the said contention for the simple reason that the respondents 1 to 3 have not taken any single action or step for putting

up the construction of Hostel Building for the Central Cooperative Training Institute in the subject land, i.e., for the specific purpose for which it

was acquired, till the year 2006. Such being the position, the respondents have no right to throw blame on the petitioners on the ground of delay

and laches as it is already pointed out that only after the filing of the writ petition by the petitioners during the year 2006 in WP. No. 49205/2006,

the 3rd respondent herein is said to have inspected the subject land and found pucca buildings erected on the said land by the 5th respondent

Association and the Highways Department. It is to be stated at this stage that the said writ petition was disposed of by this Court on 02.01.2007

directing the 1st respondent therein to consider the petitioners'' representation dated 16.10.2006.

11. At this juncture, it is relevant to refer the following decisions of the Hon''ble Apex Court:--

[a] In Office of The Chief Post Master General and Others Vs. Living Media India Ltd. and Another, the Hon''ble Apex Court has held as here

under: -

Unless the Government Departments or instrumentalities have reasonable and acceptable explanation for the delay and there was bona fide effort,

there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural

red-tape in the process. The Government Departments are under a special obligation to ensure that they perform their duties with diligence and

commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for Government Departments. The law shelters

everyone under the same light and should not be swirled for the benefit of a few. The claim on account of impersonal machinery and inherited

bureaucratic methodology of making several notes cannot be accepted in view of the modem technologies being used and available. The law of

limitation undoubtedly binds everybody including the Government.

(emphasis supplied by this Court)

[b] In Anand Singh and Another Vs. State of Uttar Pradesh and Others, the Hon''ble Apex Court has held as follows:-

...

48. As regards the issue whether pre-notification and post-notification delay would render the invocation of urgency power void, again the case

law is not Consistent. The view of this Court has differed on this aspect due to different fact situation prevailing in those cases. In our opinion such

delay will have material bearing on the question of invocation of urgency power, particularly in a situation where no material has been placed by the

appropriate Government before the Court justifying that urgency was of such nature that necessitated elimination of enquiry u/s. 48-A.

[emphasis supplied]

...

50. Use of the power by the Government u/s. 17 for ""planned development of the city"" or ""the development of residential area"" or for ""housing

must not be as a rule but by way of an exception. Such exceptional situation may be for the public purpose, viz., rehabilitation of natural calamity

affected persons; rehabilitation of persons uprooted due to commissioning of dam or housing for lower strata of the society urgently; rehabilitation

of persons affected by time-bound projects, etc. The list is only illustrative and not exhaustive. In any case, sans real urgency and need for

immediate possession of the land for carrying out the stated purpose, heavy onus lies on the Government to justify the exercise of such power.

[c] In Bangalore City Cooperative Housing Society Ltd. Vs. State of Karnataka and Others, the Hon''ble Apex Court has held that when an

acquisition for the benefit of a private body and any delay in challenging the same can be condoned and the purpose was held to be not a public

purpose. Ultimately, the Hon''ble Apex Court in the said decision has held that the framers of the Constitution have not prescribed any period of

limitation for filing petition under Article 226 of the Constitution of India as the said jurisdiction is essentially an equity jurisdiction.

[d] In yet another decision reported in Darshan Lal Nagpal (dead) by L.Rs. Vs. Government of NCT of Delhi and Others,], the Hon''ble Apex

Court has held as here under:-

The compulsory acquisition of land has generated enormous litigation in the country in last more than five decades and the Supreme Court has been

repeatedly called upon to adjudicate upon the legality of the notifications issued under the Act. Although, it is neither possible nor desirable to lay

down any straitjacket formula which can be applied to each and every case involving challenge to the acquisition of land by invoking the urgency

provision. What needs to be emphasised is that although in exercise of the power of eminent domain, the State can acquire the private property for

public purpose, it must be remembered that compulsory acquisition of the property belonging to a private individual is a serious matter and has

grave repercussions on his constitutional right of not being deprived of his property without the sanction of law Article 300-A and the legal rights.

Therefore, the State must exercise this power with great care and circumspection. At times, compulsory acquisition of land is likely to make the

owner landless. The degree of care required to be taken by the State is greater when the power of compulsory acquisition of private land is

exercised by invoking the provisions like the one contained in section 17 of the act because that results in depriving the owner of his property

without being afforded an opportunity of hearing.

The above said principles laid down by the Hon"ble Apex court in the decisions cited supra, are squarely applicable to the facts of the instant case

as in this case, it is already pointed out that the subject land was acquired by initiating Land Acquisition proceedings and by invoking the

emergency provision u/s. 17 of the Act. In spite of the same, the respondents 1 to 3 have not taken any steps to utilise the subject land for the

specific purpose for which it was acquired for the last more than four decades, viz., for constructing hostel and building for the Central Cooperative

Training Institute, till date and such being the position, it cannot be contended by the respondents 1 to 3 that the writ petition filed by the petitioners

is liable to be dismissed on the ground of delay and laches. This Court is of the considered view that the petitioners, being the legal heirs of the

original owners, are entitled to seek the relief of reconveyance u/s 48-B of the Act.

IV. Whether the writ petition is maintainable even after passing of the award and after receipt of the compensation by the original owners, as the

petitioners have not challenged the acquisition proceedings ?

12. The contention of the learned Additional Advocate General is to the effect that after passing of the Award and after the receipt of the

compensation by the original owners, the acquisition proceedings cannot be challenged and as such, the writ petition is not maintainable. Here

again, I am unable to countenance such contention for the simple reason that the petitioners herein have not at all challenged the acquisition

proceedings, viz., the 4[1] Notification or Declaration u/s. 6 of the Act or the Award, On the other hand, they have come forward with this petition

seeking for the relief of invocation of the provision u/s. 48-B of the Act for re-conveyance of the subject land on the ground that the said land was

not utilised for the specific purpose for which it was acquired. The decisions cited by the learned Additional Advocate General, viz.,

[a] Chandragauda Ramgonda Patil and Another Vs. State of Maharashtra and Others,

[b] Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd., and others,

[c] C. Padma and Others Vs. Dy. Secretary to the Govt. of T.N. and Others,

[d] The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others,

[e] The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others,

[f] Northern Indian Glass Industries Vs. Jaswant Singh and Others, ; are relating to challenging the land acquisition proceedings itself. But, as far as

the case on hand is concerned, it is already stated that the petitioners are not challenging the acquisition proceedings. Therefore, the decisions

relied by the learned Additional Advocate General, as stated above, are not applicable to the issue involved in this matter.

13. It is to be stated that even as per the provision u/s 48-B of the Act, in the event of invoking Section 48-B for re-conveyance of the property to

the original owner, the Government may transfer such land to the original owner if he is willing to repay the amount already paid to him under the

Act. Therefore, the reading of the provision u/s 48-B itself would make it crystal clear that the receipt of compensation is not a bar for invoking the

provision u/s 48-B for re-conveyance of the property. At this juncture, it is relevant to refer to an unreported decision of this Court in R.

Shanmugam Gounder, rep. by his Power Agent K.V. Jayaraman Vs. The State of Tamil Nadu wherein the Division Bench of this Court has held

hereunder:

38. For rejecting the request of the land owners, the Government has given two reasons, viz.,(1) the land owners have been awarded

compensation and possession of the land has been given to the Housing Board and (2) the land is still required for Housing scheme. Insofar as the

first reason, we are of the opinion that the same cannot be held good in view of the specific provisions of Section 48-B enabling the land owners to

make the application for re-conveyance. Mere fact that they have received compensation does not prevent them from making a request to the

Government invoking Section 48-B of the Act for re-conveyance of the unutilised lands....

(emphasis supplied by this Court)

The principle laid down by the Division Bench of this Court in the decision cited supra is squarely applicable to the facts of the instant case as in

this case also, the petitioners have offered to repay the compensation received after passing the award. Therefore, I hold that the contention of the

State is not substantiated and the same is, therefore, rejected.

V. Inconsistent reasons assigned for non-utilization of the subject land for the specific purpose for which it was acquired-Whether can be accepted

?

14. The first respondent rejected the petitioners claim for re-conveyance earlier by the order dated 20.03.2007 on the sole ground that the

Government has been in possession of the land for more than 40 years but the said order was set aside by this Court by the order dated

10.09.2007 in W.P. No. 26990/2007. This Court remanded the matter for fresh consideration by affording opportunity to the petitioners. As per

the second order of rejection dated 26.06.2008, the reason assigned by the first respondent was that the original owner does not have any vested

or absolute right to seek for automatic re-conveyance. In the impugned order dated 04.07.2008, it is stated that the acquired subject land could

not be utilized due to financial constraint and further, the subject land was occupied by the Highways Department by mistake. In the counter

affidavit it is stated that due to financial constraint, the respondents were not able to commence the construction, but in the latter paragraphs of the

counter, it is stated that the financial constraint is not the reason for the delay in putting up the construction and on the other hand, it is stated that a

fund of Rs. 6 Crores is available for the purpose of construction of hostel, Therefore, it is crystal clear that the respondents have not come forward

with a clear and consistent version/reasons for not utilizing the subject land for the specific purpose for which it was acquired. Therefore, the

attempted explanation to justify the non-utilization of the land for several years cannot be accepted at all.

VI. Whether the contention of the learned Additional Advocate General that the subject land is already vested with the Government and so the

petitioners cannot seek the relief of re-conveyance u/s 48-B of the Act, is sustainable ?

15. The learned Additional Advocate General took enormous pains to contend that since acquired land is already vested with the Government, the

petitioners cannot seek the relief of re-conveyance u/s. 48-B of the Act, It is also contended that the Government is still in requirement of the

subject land for the specific purpose. He would further contend that the Government is entitled to use the subject land for any other public purpose

as well, if not for the specific purpose for which it was acquired. The contention of the learned Additional Advocate General, at the first blush

appears to be impressive, but an ultimate analysis of the facts and the law involved, as discussed above, would only expose the hollowness of the

said contention. As already pointed out, the Government has not taken any step for utilising the subject land for the specific purpose of putting up

the construction of hostel and building to the Central Cooperative Training Institute or for utilising the said land for any other public purpose till

date. It is already highlighted by this Court in the earlier portion of this order that the respondents 1 to 3 were not obviously even aware of the

availability of the land in question with the Government, and it was only after the petitioners filed WP. No. 49205/2006, the respondents went in

search of the subject land and ultimately, found that buildings had already been erected by the Highways Department and the 5th respondent

Association. It is to be reiterated that the respondents I to 3 are not even aware of as to how the Highways Department and the 5th respondent

Association have come to occupy the land so as to be in possession of the same for such a long time.

16. The learned counsel for the 5th respondent Association has also submitted before this Court that the said Association is in occupation and

possession of the subject land by putting up the construction till the dismissal of the writ petition filed by them in WP. No. 12209/2009 on

05.10.2010 and only thereafter, they have surrendered the possession to the Government, It is pertinent to note that this Court while dismissing the

petition filed by the 5th respondent challenging G.O.Ms. No. 24 dated 17.03.2009, has categorically held that the 5th respondent Association has

no right to put up construction in the subject land which shows that they were under the unauthorised occupation and possession of the subject

land.

17. The learned Additional Advocate General nextly placed reliance on the decision of the Hon''ble Apex Court in Tamil Nadu Housing Board Vs.

Keeravani Ammal and Others, and submitted that if the land is not vested for any public purposes, the Government is free to dispose of the same

in any manner at the present market value and thus, the erstwhile land owner is not entitled for reconveyance. Before proceeding to consider the

ratio laid down by the Hon''ble Apex Court in the said decision, it is to be stated that section 48-B of the Act was introduced by the Tamilnadu

Amendment and the object of the same is already extracted by this Court in the earlier portion of the order of this Court. The Hon''ble Apex Court

in the said case, has held in paragraph 17 as here under:-

17. We are thus of the view that the writ petitioners, the contesting respondent 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 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 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 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.

A reading of the above said findings of the Hon''ble Apex Court in the decision cited supra makes it abundantly clear that the question relating to

the scope of section 48-B of the Act was left open. The learned Additional Advocate General strongly placed reliance on paragraph 15 of the said

decision which reads as here under:-

15. 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 a

higher value.

The Hon''ble Apex Court in the said paragraph placed reliance on its earlier decision in State of Kerala and others Vs. M. Bhaskaran Pillai and

another, . The said principle is not applicable to the State of Tamil Nadu wherein section 48-B of the Act was specifically introduced. The said

position is also made very clear by the Hon''ble Apex Court in the very same decision in paragraph 16 which reads as here under:-

16. 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.

Therefore, the contention of the learned Additional Advocate General placing reliance on the above said judgment that the erstwhile land owner

has no right to seek reconveyance cannot be accepted. In this regard, the learned counsel for the petitioners has rightly placed reliance on the

following decisions to substantiate his contention for invoking the provision u/s. 48-B of the Act:

[a] an unreported judgment of a Division Bench of this Court dated 25.10.2006 [The Managing Director, TNHB, Chennai Vs. Rangarajan and

another], wherein the Division Bench has held as follows:-

7. Recently a Division Bench of this court consisting of the Honourable Chief Justice and another learned Judge in W. A. No. 443 of 2006 batch

exhaustively analysed the power of the Government u/s 48-B and Section 16-B of the Land Acquisition Act. That judgment is since reported. In

para 17 of that judgment, this Court explained the purpose of introducing Section 16-B of the Land Acquisition Act by the Tamil Nadu Amending

Act. The court went on to hold as hereunder:-

The attention of the Government was also drawn to the fact that in certain cases the requisitioning bodies do not use the land acquired for them and

the land is not put to use for the purpose for which it was originally acquired and the lands are kept idle for years together without utilising the

same. In order to prohibit such events, the Government decided to insert a new provision viz., Section 16-B in the Central Act so as to provide

that such land may be forfeited as penalty and on such forfeiture the land shall vest in the Government in Revenue Department.

We extract para 19 hereunder:-

Whether Section 16-B could be invoked for forfeiting the land as penalty, when the land was acquired and transferred to the Board for execution

of the housing scheme or improvement scheme by the Board and such land is not utilized by the Board, more particularly, in view of Section 72 of

the TNHB Act? As per Section 70, the land required by the Board for implementation of the scheme shall be acquired under the Central Act.

Once the lands are acquired and transferred to the Housing Board, such lands shall vest in Housing Board in order to develop, to form layout, to

construct houses or to make plots and to dispose of such plots or houses u/s 72 under the Scheme. A plain reading of Section 72 shows that the

Housing Board is empowered to retain or lease, sell exchange or otherwise to dispose of the land vested in or acquired by it under the Act. In the

event the lands are unutilized and are kept vacant, such lands cannot be dealt with by Housing Board in exercise of its power u/s 72 as such

disposal will be outside the scope of the scheme. The power of the Board to dispose of the land u/s 72 must be read in the context of the power of

the Board to frame a housing and improvement scheme and such disposal must be as per the scheme and not otherwise.

We extract a part of para 21 hereunder: -

In the event, the State Government is satisfied that the land acquired and transferred to the Housing Board is not utilized for housing or

improvement scheme for the purpose for which it was acquired, in exercise of the provisions of Section 16-B, it shall forfeit the land as penalty and

thereafter the land shall vest with the Government in Revenue Department free from all encumbrances.

Of course in that judgment the Division Bench held that the land owners have no vested right to claim back the lands by way of re-conveyance as a

matter of routine.

8. Section 48-B of the Land Acquisition Act is the amendment brought by the State of Tamil Nadu. In para 32 of the judgment referred to supra, it

is held as hereunder:-

As the very object of the Amendment Act introducing Section 48-B indicates that for insertion of the said provision enabling the State Government

to re-convey the unutilised lands to the erstwhile owners subject to the conditions enumerated in that Section. This provision was inserted keeping

in mind that there is no provision in the Central Act enabling the Government to re-convey the unutilised land.

In para 33 of that judgment, it is held as hereunder:-

As the provision of Section 48B is unique and is contemplated only by Tamil Nadu Amendment Act, the purport of that Section must be

considered with reference to the object and reasons. By the above provision, the erstwhile owners are entitled to make request to the Government

for re-conveyance of the land, of course, subject to their willingness to repay the amount paid to them under the Act for acquisition of land

inclusive of the amount referred to in Sub-section (1-A) and (2) of Section 23, if any, paid under this Act. By the provision of Section 48-B an

element of right to repossess the land by way of re-conveyance is conferred on the owners, of course, subject to the compliance of Section 48-B.

Issue of re-conveyance u/s 48-B, came up for consideration before a Division Bench of this Court in the judgment reported in Southern Railways

Vs. S. Palaniappan and Others, In the said judgment, the Division Bench while considering the issue as to the willingness of the land owners and

the right of the Government to accept the willingness, has held in para 33, 34 and 35 as follows:

33. Mr. R. Krishnamoorthy, learned senior counsel for the respondents-land owners placed reliance on the decision of a learned single Judge in M

Manimegalai Vs. The State of Tamil Nadu (vide paragraph-10) wherein it was observed:

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,

[emphasis supplied]

34. We respectfully do not agree with the learned single Judge that Section 48-B has been introduced only to protect the interest of the persons

from whom the land has been acquired. In our opinion. Section 48-B can also protect the interest of the State Government which wants to re-

convey the land which it had acquired, but in such a case the State Government must get the consent of the erstwhile land owner before it can re-

convey the land to him u/s 48-B. The State Government cannot act unilaterally in this connection as already held above.

35. For the reasons given above, we are of the opinion that the impugned order dated 3.12.2003 does not fall within the ambit of Section 48-B as

it is a unilateral act and hence, it has to be declared as invalid, because by a mere executive order, unsupported by statute, land which stands

vested in the State Government u/s 16 of the Land Acquisition Act cannot be unilaterally re-conveyed by the State Government to the erstwhile

land owners.

We extract para 35 of the judgment in W.A. No. 443/2006 batch hereunder:-

In order to apply the provisions of Section 48-B of the Tamil Nadu Amendment Act, 1996, firstly, the land must vest with the Government under

the Act in Revenue Department, and secondly, in the opinion of the State Government, such land is not required for any other public purpose and

thirdly, the said land can be re-conveyed to the original owner who is willing to repay the amount that was paid to him under the 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 the Act, The power of

the Government to transfer such land to the original owner is only discretionary-Where the lands are forfeited by the Government from the Housing

Board, it can be utilised by the Government for any other public purpose. In the event, the Government is of the opinion that the lands are not

required for any other public purpose, then it must consider re-conveyance of the land u/s 48-B. Only in the event, the Government is of the view

that the lands cannot be re-conveyed, it may resort to dispose the land by public auction. However, the exercise of the power u/s 48-B cannot be

mechanical and whenever the discretion to take a decision is conferred on the authority by a statute, concept of fairness inherent in the guarantee of

equality under Article 14 of the Constitution of India must be ensured. Exercise of such discretion could be tested on fairness and reasonableness.

This is more so when such authority is bound to determine the questions affecting the right to property of individual. The decision must be

supported by reasons with materials and necessarily be an informed one. In this context, the exercise of such discretionary power as to whether the

land should be re-conveyed to the original owner or should it be sold by public auction, should not be arbitrary and unreasonable and fairness must

prevail in such decision. Though the land owners cannot have any vested or absolute right to seek for automatic re-conveyance of the land, they

have an element of right for consideration of their claim for re-conveyance in terms of Section 48-B.

9. Therefore Law is very clear on the subject concerned namely, the power of the Government to forfeit the lands which have been earlier

acquired for a public purpose and not utilised for a long period for the said purpose and on such forfeiture, the lands vest with the Government and

they can exercise the power u/s 48-B of the Land Acquisition Act. In this case, it is established that the person, who is claiming the relief is not

similarly placed like the persons, who were parties to the judgment dated 1.3-2000 in W.A. No. 2160 of 1999 in the sense, in that writ appeal

case, the acquisition proceedings was in respect of a different scheme and that acquisition proceedings have been quashed. Therefore in the

ordinary course, we should have simply allowed the writ appeal. But since the parties are litigating before the court for a long time and with a view

to avoid further delay only, we directed the Government to consider the petitioner''s earlier representation seeking re-conveyance and pass any

order as it thinks fit and that is how the order dated 4.9.2006 had come to be passed. We have already extracted the above order. From a

reading of the above order, it is clear that non utilisation of the acquired lands is attributed to the pendency of W.P. No. 15023 of 2005 and the

appeal namely, W.A. No. 1152 of 2005 (the present appeal arising there from) and the land is essentially required for the Tamil Nadu Housing

Board Scheme. These two reasons clearly indicate that there is non application of mind to relevant materials. It is not as though the issue regarding

re-conveyance is coming for the first time before the Court and on the other hand it had come before this court on umpteen number of occasions

earlier. In all those cases, the utilisation of the land for the public purpose for which it was acquired, within a reasonable time was always insisted

upon. Even in the Bench judgment of this Court in W.A. No. 443 of 2006 batch, this court was considering the reasons given for rejecting the

request in those cases. We extract hereunder, the mind of this court in that judgment in the above context:

38. For rejecting the request of the land owners, the Government has given two reasons viz.,(1) the land owners have been awarded compensation

and possession of the land has been given to the Housing Board and (2) the land is still required for Housing scheme. Insofar as the first reason, we

are of the opinion that the same cannot be held good in view of the specific provisions of Section 48-B enabling the land owners to make the

application for re-conveyance. Mere fact that they have received compensation does not prevent them from making a request to the Government

invoking Section 48-B of the Act for re-conveyance of the unutilised lands. Insofar as the second reason, it must be kept in mind that though the

proposal was made by the Housing Board to the Government for acquiring an extent of 1997.02 acres of patta land, ultimately, the Government

could pass award only in respect of 662.96 acres and even out of the said extent of the land, only an extent of 105.61 acres was taken possession

and handed over to the Housing Board. But the Board could utilise only an extent of 21.47 acres of land for Housing Scheme. In view of the

above undisputed facts, we are of the considered view that the Government have not applied their mind to the above aspects while they came to

the conclusion that the land is still required for Housing Scheme.

[emphasis supplied]

10. We have already noted that in the case on hand except utilising 2.16 acres during all these twenty years, the Housing Board had not done

anything else. They had given the facts and figures of the extents proposed to be acquired; extents left out and other details and they speak for

themselves. We have also referred to in the earlier portion of this judgment the decision of the Government in G.O.Ms. No. 190 dated 23.2.1980

wherein the Government had expressed their mind not to exploit the lands contiguous to Thiruvanmiyur namely, ""Besant Nagar Phase-II Extension

Scheme"" by the Housing Board, since it is likely to affect the ecology and environment. Having said so in G.O.Ms. No. 190 dated 23.02.1980 to

say in the letter dated 4.9.2006 that the Housing Board still wants the land, is too big a pill to swallow. From the break up details given by us

earlier regarding the extent of lands proposed to be acquired; lands left out; lands made available to the Housing Board and lands actually utilised,

clearly show that the Housing Board may not be in a position to put through any scheme at all. The non-utilisation of the lands during the pendency

of W.P. No. 15023 of 2005 and W.A. No. 1152 of 2005 cannot stand even a minute scrutiny, since the Housing Board had taken possession of

the lands as early as 30.10.1986 and there was no bar for them to exploit the lands so taken possession of by them. The challenge at that stage at

the instance of the land owner was only on the belated passing of the award. Therefore it is clear to our mind that despite the long line of decisions

by this court, the last of which was on 2.8.2006 in W.A. NO. 443 of 2006 batch (the Government has rejected the request of the petitioner only

by letter dated 4.9.2006) the Government is not prepared to apply their mind to the Law laid down by this court and consider the request for re-

conveyance, in a manner known to law. In other words, again and again we find in more or less almost all rejection letters, the Government gives

one main reason and that reason being, the Housing Board still requires the land for their scheme. This reason cannot be the reason at all in view of

the facts noted by us earlier.

11. On the facts noted above, we hold that though in normal circumstances the writ appeal should have been allowed, yet, with a view to avoid

further delay in the litigation we have given an opportunity to the Government to apply their mind to the request made by the petitioner for re-

conveyance and then decide the writ appeal based on that response. Since that rejection letter/response is erroneous on the face of it in the light of

our earlier discussion and since it is clearly seen from the content of the letter that the Government is not willing to look into the realities of the

situation as spelt out in the judgment dated 2.8.2006 in W.A. No. 433 of 2006 batch, we have no other go except to mould the relief and grant it.

Accordingly, while holding that the impugned order cannot be sustained and setting it aside, yet, we quash the order dated 4.9.2006 in letter No.

24292/LA 21/06-2 and direct the first respondent in the writ petition to exercise it''s power u/s 48-B of the Land Acquisition Act on or before

30.12.2006 by re-conveying the lands forming the subject matter of the writ petition to the writ petitioner on condition that the petitioner re-pays

the compensation, if any already received with 12% interest per annum within two weeks from the date of demand made by the Government in

regard thereto. Consequently, the connected WAMP is also closed. No costs.

The above said decision of the Division Bench of this Court is also confirmed by the Hon''ble Apex Court by dismissing the SLP as per the order

dated 15.12.2006 in Special Leave to Appeal [Civil] No. 20398/2006 [Tamil Nadu Housing Board Vs. Rangarajan and another].

[b] In yet another unreported decision of the Division Bench of this Court dated 19.04.2007 between The Managing Director, TNHB, Chennai

Vs. S. dilipan and another, the Division Bench has held as here under:-

8. Recently, the Hon''ble Supreme Court of India in the Judgment reported in Tamil Nadu Housing Board Vs. Keeravani Ammal and Others, was

dealing; with the proceedings arising out of this Court order. In the course of the Judgment, the Supreme court has observed that the power

available u/s. 48-B of the Land Acquisition Act as introduced by the State of Tamil Nadu is still available for the Government. Therefore, the

resultant position, the power available u/s. 48-B of the Land Acquisition Act is still exercisable on a well guided principles. Inasmuch as the

Supreme Court has affirmed the order of this Court in W.A. Nos. 1152/2005. It may be true that the learned Single Judge, while passing the

impugned order, appears to have been under the impression that the order of the Division Bench in WA. No. 2430/1999 [referred to in the

impugned order] clinches the issue in favour of the land owner. But factually, it does not appears to be so. Since, in the above referred to writ

appeal, the acquisition proceedings itself stood quashed. But, none-the-less, we are of the opinion that in a similar situation [non utilisation of the

lands for a long number of years] a Division Bench of this Court in WA. No. 1152/2005 affirmed the learned Single Judge''s order directing

reconveyance of the lands. Since that order of this court had been affirmed by the Supreme Court, we are of the opinion that instead of remitting

the matter back to the learned Single Judge for disposal in accordance with law and in such an event the learned Single Judge is likely to follow the

judgment of this Court in WA. No. 1152/2005, we thought that we ourselves can dispose of this writ appeal. Accordingly, findings on that angle

that there is no infirmity in the order of the learned Single Judge, we dismiss the writ appeal with the following modification:-

In this case also 36 cents out of the acquired lands remain untilised for 34 years, i.e., from 1973 when possession was taken. But, however, we

make it clear that though the learned Single Judge''s order directs the reconveyance of 80 cents of land in all in the two survey numbers referred to

above and when factually and in reality, only an extent of 36 cents is available with the Housing Board, which remains unutilised, the learned Single

Judge''s order directing reconveyance of 80 cents of land would stand modified to the extent of 1.07 acres in Survey No. 289/1 and 20 cents lies

out of 77 cents in Survey No. 291 part in Mugappair Village. All other conditions imposed by the learned Single Judge in the impugned order are

maintained. It is needless to state that this order is, based on the facts available in this case, viz., non utilisation of the lands for almost 34 years and

therefore, this order cannot be cited as a precedent in every case.

[c] A similar view was taken by a Division Bench of this Court in an unreported judgment dated 26.04.2007 [The Managing Director, TNHB,

Chennai Vs. Balammal and others] in WA. No. 324/2007, wherein the Division Bench has held in paragraph 5 as follows:-

5. Having regard to the facts noted in this case, namely, over a period of 25 years, the entire lands to an extent of 5 acres remain unutilised for

which alone the petitioner had been filed and having regard to the earlier orders of this Court directing re-conveyance on such established facts, we

are of the considered opinion the order of the learned Single Judge need not be set aside and on the other hand, it can be sustained for the reasons

given by us in this order, viz., non-utilisation of the lands for over 25 years. Accordingly, the writ appeal stands disposed of sustaining the order

impugned in the writ petition. All conditions imposed by the learned Single Judge in the order impugned shall remain intact....

[emphasis supplied]

[d] A learned Single Judge in Dharmalingam, Dhanikasalam and Loganathan Vs. The Government of Tamil Nadu and The Madras Gunny

Merchants" Association, , has held as here under: -

9. There can be no controversy that if the Government is satisfied that the land acquire under the provisions of the Act for a public purpose has not

been used for the said purpose for which it was acquired, it may, by an order, forfeit the land as penalty and thereafter the land shall vest in the

Government in Revenue Department free from all encumbrances as provided in Section 16-B of the Act, But, in the case on hand, the Government

has not so far passed any order u/s. 16-B of the Act thereby forfeiting the land as penalty. u/s 48-B of the Act, if only, the land stands vested in the

Government under the Act and if the same is not required for the purpose for which they were acquired, or for any other public purpose, the

Government, using its discretion, may reconvey such land to the original owner. But, in the case on hand, indisputably, as of now, the land stands

vested with the CMDA and not with the Government.

10. In this back ground, of course, without exercising its power u/s 48-B of the Act, it may not be possible for the Government to reconvey the

lands u/s 48-B of the Act to the erstwhile owners. But when a request is made by the erstwhile owners of the land in question for reconveyance on

the ground that the land has not been utilised for any public purpose for a long time, it is absolutely necessary for the Government to consider such

request in terms of section 16-B of the Act so as to examine as to whether the land in question should be forfeited. Though there is an element of

discretion with the Government u/s. 16-B of the Act to pass such an order of forfeiture, it is needless to say, such discretion should be exercised

judiciously. Refusal to examine the case in terms of Section 16-B of the Act, when a request is made by the erstwhile owners of the lands, would

amount to arbitrariness. Similar lis arose for consideration before a Division Bench of this Court in R. Shanmugam Gounder, rep. by his Power

Agent K.V. Jayaraman Vs. The State of Tamil Nadu This was a case were a request was made by the erstwhile owners of the lands to the

Government to reconvey the same u/s 48-B of the Act on the ground that the lands had not been utilised for the purpose for which they were

acquired. The Government as has been done in the instant case, rejected the said request on two grounds, viz., [1] the land owners have already

been awarded compensation and the possession of the land had also been given to the Housing Board and [2] the land was still required for

housing scheme. While considering the first reason stated in the order rejecting the request of the erstwhile owners, the Division Bench held as

follows:-

Insofar the first reason, we are of the opinion that the same cannot be held good in view of the specific provision of section 48-B enabling the land

owners to make the application for reconveyance. Mere fact that they have received the compensation does not prevent them from making a

request to the Government invoking section 48-B for reconveyance of the unutilised lands.

...In our opinion, merely because possession is taken and the lands are handed over to the Housing Board, the power of the State Government to

forfeit the land u/s 48-Bof the Act, is not curtailed/The said power is independent and exclusive, In the event, the lands are unutilised by the Board

for quit long number of years, the State Government has the power to forfeit the lands by way of penalty. Of course, the fact that section 17-A

was repealed was not brought to the notice of the learned Single Judge and consequently, the learned Single Judge has held that there is vesting of

land in Housing Board u/s. 17-A. In view of section 162 of the Tamil Nadu Housing Board Act, 1961, the City Improvement Trust Act, 1950 was

repealed and consequently, section

17. A was also repealed. In the circumstances, there cannot be any vesting of the land on the Housing Board u/s. 17-A as well as the Government

u/s. 16 of the Central Act simultaneously.

The learned Single Judge further held in the said decision that:-

47. Now, the next question is, as to whether the Government is bound to exercise its power u/s. 16-B of the Act and to recovery the same to the

erstwhile land owners, the petitioners herein. As I have already concluded hereinbefore, since the lands have been held unutilised for more than

two decades, as held by the Division Bench of this Court in R. Shanmugam and Others Vs. State of Tamil Nadu and others [supra], the

Government is obliged to examine the request of the erstwhile land ownes to issue an appropriate order for forfeiting the land in favour of the

Government.

[emphasis supplied]

Ultimately, the learned Judge directed the respondents therein to invoke the provision u/s. 16-B of the Act by passing an order forfeiting the land in

question in favour of the petitioners therein and further directed the Government to examine whether the lands in question are required for any other

public purpose and if it is found that the lands are not required for any other public purpose, then the Government shall reconvey the same to the

petitioners therein u/s. 48-B of the Act. It is also brought to the notice of this Court that the above said decision of the learned Single Judge was

upheld by the Division Bench of this Court and no appeal is preferred against the said order before the Hon''ble Apex Court.

18. The principles laid down by the learned Single Judge and the Division Benches of this Court as well as the Hon''ble Apex Court in the

decisions cited supra, make it crystal clear that the land owners can very well seek the relief of reconveyance of the properties u/s. 48-B of the Act

in the event of non-utilisation of the land for a long period for the specific purpose for which it was acquired. As it is already pointed out, in the

instant case, the subject land has not been utilised for the specific purpose for which it was acquired, viz., for putting up the construction of Hostel

and buildings for Central Cooperative Training Institute. It is also further pointed out that the respondents 1 to 3 have not raised their little finger by

taking any action to utilise the said subject land for any other public purpose at least. It is to be reiterated that only in the year 2006, that too, after

the petitioners filed WP. No. 49205/2006, the 3rd respondent suddenly woke up and inspected the subject land and found pucca buildings

erected by the 5th respondent Association and the Highways Department. Respondents 1 to 3 have not produced any material or any scrap of

document to show as to how the land was occupied by the Highways Department. It is pointed out by this Court in the earlier portion of the

judgment that the Highways Department and the 5th respondent Association were in unauthorised occupation and possession of the subject land

which necessitated the Government to pass G.O.Ms. No. 24, Cooperation, Food and Consumer Protection [CK] Department, dated

17.03.2009. The present contention of the respondents 1 to 3 that they still require the subject land for the specific purpose of constructing Hostel

and buildings for the Central Cooperative Training Institute is unacceptable for the simple reason that all along they have not taken any steps for

utilising the subject land for the specific purpose and after filing of the writ petition in the year 2006 and that too, after filing the third writ petition,

viz., the present writ petition in the year 2008, respondents 1 to 3 have come forward with the plea that they have taken steps to construct the

hostel and buildings for the Central Cooperative Training Institute by placing reliance on G.O.Ms. No. 24 dated 17.03.2009. This Court is

constrained to state that the power vested with the Government as per the amended provision u/s. 48-B of the Act should be exercised judiciously

and not arbitrarily.

19. At this juncture, it is relevant to refer a decision of the Hon''ble First Bench of this Court in Tamil Nadu Housing Board Vs. Mrs. Uma

Maheswari Ramasamy and Others, wherein the Hon''ble First Bench has held as here under:-

...

19. It is well settled that no unlimited jurisdiction is vested with any judicial or quasi-judicial forum. An unfettered discretion is a sworn enemy of

the Constitutional guarantee against discrimination. An unlimited jurisdiction leads to unreasonableness. No authority, be it administrative or judicial

has any power to exercise the discretion vested in it unless the same is based on justifiable grounds supported by acceptable materials and reasons

thereof.

20. As has been held by the Hon''ble First Bench of this Court in the decision cited supra, the respondents 1 to 3 cannot exercise their power in an

arbitrary and mechanical fashion so as to simply reject the request for reconveyance on certain imaginary or untenable grounds. The sequence of

events and the categorical statements made in the counter affidavit by the respondents 1 to 3 would make it crystal clear that the present stand

taken by the respondents 1 to 3 that they still require the subject land for the specific purpose of constructing the hostel and buildings for the

Central Cooperative Training Institute, is only imaginary, coined with a view to defeat the reasonable and genuine claim made by the petitioners for

re-conveyance of the subject property. Therefore, this contention of the learned Additional Advocate General is also rejected. In view of the

aforesaid reasons, this Court is constrained to quash the order passed by the 1st respondent. Accordingly, the impugned order dated 4.7.2008

made in letter MS. No. 123 by the 1st respondent is hereby quashed and the writ petition is allowed. The respondents are hereby directed to issue

order to re-convey the lands to an extent of 1.62 acres of land comprised in pymash No. 72/Part Survey No. 19 corresponding to present T.S.

No. 22/Part in Block No. 5, Venkatapuram Village in the Taluk of extended areas, Madras District in the Registration Sub-District of Saidapet to

the petitioners on condition that the petitioners comply with the requirement of Section 48- B of the Act to repay the compensation amount. It is

made clear that consequential order in this regard shall be issued by the respondents within a period of twelve weeks from the date of receipt of a

copy of this order. No costs,