REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.8626 OF 2009

The State of Tamil Nadu .....Appellant

Versus

Dr. Vasanthi Veerasekaran ....Respondent

WITH

CIVIL APPEAL NOS.8625, 8627 and 8630 of 2009

J U D G M E N T

A.M. Khanwilkar, J.

1. These appeals emanate from the common judgment and order of the High Court of Judicature at Madras dated 28th April, 2006 disposing of the concerned writ petitions instituted by the private respondent(s) in the respective appeals. Although four separate writ petitions were filed, one common factum noticed

from the factual narration in the impugned judgment is that the property owned and possessed by the private respondents in the concerned appeals came to be acquired for the purpose of implementing the "Mass Rapid Transport System" (for short "**MRTS**") Railway Project, under the provisions of the Land Acquisition Act, 1894 (for short "**1894 Act**"). After following due process, the acquisition proceedings culminated with the passing of the award and taking over of possession of the concerned property. After possession was taken, the subject property was made over to the appropriate authority for implementation of the Railway Project.

2. The private respondent(s) in the respective appeals had, however, unsuccessfully challenged the acquisition proceedings by filing writ petitions in the High Court. While rejecting the challenge, the High Court vide order dated 12th December, 2003 observed that the appropriate authority of the State Government ought to consider the representation made by the private respondents in the concerned appeals for allotment of a housing site by way of rehabilitation as a special category of displaced

persons, in view of the dictum presumably in ***Hansraj H. Jain Vs. State of Maharashtra and ors.***[1] (incorrectly mentioned as Lakhjit Singh Vs. State of Punjab-1993 AIR SCW 2938 which is a decision in a criminal matter). The operative part of the said order reads thus:

> "5. The learned counsel for the petitioner while relying upon the pronouncement of the Supreme Court reported in AIR 1986 SC 2025, AIR 1988 SC 2181, AIR 1991 SC 90 and AIR SCW 1993 @ 2923, persuasively contended that there could be direction to the State Government to allot lands from any one of the Housing schemes in the city. There is forece and substance in this contention.
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> 6. In the circumstances, the present applications taken out by the petitioners do deserve further consideration and the petitioners request for housing site deserves to be considered by the State by way of rehabilitation.
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> 7. Hence, it is made clear that in the event of the petitioners applying to the State Government and Tamil Nadu Housing Board for allotment of house sites in any one of the housing projects promoted by the Tamil Nadu Housing Board, their request shall be considered for allotment of lands, as a special category of displaced persons by the acquisition of lands for the railways as has been held by the Supreme Court in Lakhjit Singh Vs. State of Punjab reported in 1993 AIR SCW 2938.
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> 8. With the above observations, the above miscellaneous petitions are ordered accordingly."

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1 (1993) 3 SCC 634

3. In furtherance of the direction given by the High Court, the private respondent(s) pursued representation before the State Government. Eventually, the State Government declined to grant any relief to the private respondent(s) and communicated its decision to them vide letter dated 26th May, 2005. It may be apposite to reproduce one such communication, issued to the private respondent in Civil Appeal No.8625 of 2009 and Civil Appeal No.8630 of 2009. The same reads thus:

"GOVERNMENT OF TAMIL NADU

Housing and Urban
Development Department
Secretariat, Chennai-9

From
Thiru Lal Rawana Sailo,
I.A.S.,
Secretary to Government

Letter
No.41629/UD3(2)/2003-13
Dated: 26.05.2005

To
Thiru P. Arivudainambi,
MIG No.3, Santhome High
Road,
Foreshre Estate,
TNH Board,
Chennai-600028.

Tmt. S. Sulochana,
19, Leith Castle Street,
Sea View Apartments,
Santhome,
Chennai-600028

Sir/Madam,

Sub: Land Acquisition-Mass Rapid Transit System-Lands acquired for Mass Rapid Transmit Syste, S.No.300/12 measuring 5445 sq.ft. belonging to Tmt. S. Sulochna-S.No.300/13 measuring 5554 sq.ft. belonging to Thiru P. Arivudainambi-Request for allotment of plots-requested.

Ref: 1. High Court order dated 01.12.2003 in WPMP No.23077/2003 and W.P. No.3372/2003 etc.
2. High Court of Madras order dated 12.12.2003 in W.P.M.P. No.28883/2003 in W.P. No.3372/2003 etc.
3. Your lawyer Notice dated 10.11.2004.
4. Your petition dated 01.08.2004, 21.02.2005 and 21.04.2005.
5. High Court order dated 04.03.2005 and 18.03.2005 in W.P. No.7469/2005.

In the High Court order first cited, the Hon'ble Court has dismissed your W.P.M.P.23078/2003 and 11290/2003.

2. In the High Court order second cited it has been observed by the Hon'ble Court that in the event of petitioners applying to the State Government and Tamil Nadu Housing Board for allotment of House sites in any one of the Housing projects formulated by the Tamil Nadu Housing Board, their request shall be considered. Therefore in pursuance of the orders of the Hon'ble Court your representation has been examined by the Government in consultation with the Tamil Nadu Housing Board.

3. I am, accordingly, directed to inform you that during the land acquisition process you were informed of the procedural formalities by the Land Acquisition Officer and as per statutory requirements award No.1/2003 was also passed on 08.01.2003 on land acquisition proceedings. As ordered in W.P.No.16929/99 the land in question for a public purpose. The Hon'ble Court had also on 10.10.2002 on your submission directed in W.P.No.141183/2000 and W.P.No.15974/2000 alongwith W.P.No.36980/2002 to deposit the compensation amount in the High Court which was also complied with. Therefore, the land in

question was already taken over by the Land Acquisition Officer and handed over to the Metropolitan Transport Project (Railways) for Mass Rapid Transit System scheme after observing all statutory provisions and Hon'ble Court orders.

4. You have again submitted a lawyer notice in the reference 3rd cited and sent petitions in the reference 4th cited to the Government for reconsideration of your request. Therefore, your request was once again examined by the Government in the light of the High Court orders in the reference 5th cited. The Hon'ble High Court, in the said order dated 04.03.2005 and modified on 18.03.2005, has ordered that, instead of the Housing Board, the Government would pass appropriate orders in accordance with law. Hence the whole issue was again re-examined by the Government afresh.

5. **As already submitted by the Government before the High Court on more than one occasion, I am directed to inform you that your request for allotment of land in any one of the Tamil Nadu Housing Board/Chennai Metropolitan Development Authority scheme will not arise as the lands were not acquired for the purpose of Tamil Nadu Housing Board of Chennai Metropolitan Development Authority schemes but they were acquired for Mass Rapid Transit System and handed over to the Metropolitan Transport Project (Railways) which come under Government of India for their railway scheme.** Hence acquisition of your land in S.No.300/12 measuring 5445 and 5554 sq.ft. respectively was not arbitrary or illegal in any way as all procedural formalities were gone thro' by the Land Acquisition Officer as per the Land Acquisition Act. **The lands were already vested with the Metropolitan Transport Project (Railways) for Mass Rapid Transit System and, therefore, there is no justification for allotment of land to you in any scheme area when the lands were not acquired either by Tamil Nadu Housing Board or Chennai Metropolitan Development Authority**.

> 6. I am, therefore, directed to inform you that in view of the foregoing valid reasons your request is not feasible of compliance.
>
> Your faithfully
> Sd/-
> For Secretary to Government.
>
> Copy to:
>
> The Member-Secretary, Chennai Metropolitan Development Authority, Chennai-8.
>
> The Managing Director, Tamil Nadu Housing Board, Chennai-35.
>
> The Collector of Chennai, Singaravelar Maaligai, Rajaji Salai, Chennai-I.
>
> The Special Tahsildar (Land Acquisition) MRTS, Tiurmailai Railway Station, Mylapore, Chennai-4.
>
> The Special Tahsildar, (Land Acquisition), Chennai Metropolitan Development Authority, Chennai-8 (for guidance and information)."
>
> (emphasis supplied)

The representation made by the private respondents in the other appeals, however, were not replied to, as a result of which they filed fresh writ petition(s) which were heard analogously with the writ petition(s) filed by the private respondent(s) in the aforementioned two appeals questioning the communication dated 26th May, 2005, rejecting their representation.

4. All connected writ petitions were accordingly heard and decided together by the impugned judgment. The reason which

weighed with the High Court to allow the writ petitions filed by the concerned private respondent(s) can be discerned from the discussion in paragraph Nos.6 and 7 of the impugned judgment. We deem it apposite to reproduce the same along with the operative order contained in paragraph Nos.8 and 9 of the impugned judgment. The same read thus:

> "6. We have already referred to the fact that this order has become final. Though it is stated that the petitioners/land owners deposited, the fact remains, even without resorting to acquisition proceeding, possession of the lands was forcibly taken from the petitioners. It is also not in dispute that, in order to implement the project, namely, M.R.T.S. Scheme, possession of the lands was taken forcibly and the construction work was started without awaiting for the completion of the acquisition proceedings. That was that reason for the learned Judge to pass the directions in the order dated 12.12.2003. In fact, the learned Judge heavily relied on the Supreme Court decision reported in 1993 AIR SCW 2923 (cited supra) while passing the positive direction to the Government. **As rightly observed by the learned Judge in the order dated 12.12.2003, the petitioners are entitled to alternate site under the Special Category of displaced persons due to the acquisition of their lands for the Railways.** Unfortunately, in W.P. No.39279 of 2005, the second respondent, in spite of the reasoned positive direction dated 12.12.2003 of the learned Judge of this Court, rejected the request of the petitioner. Likewise, in the other two cases, though the order was passed even as early as on 12.12.2003 and representations were made on 18.4.2005, no order has been passed by the Government till this date.
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> 7. In view of the peculiar factual position, viz, that the land of the petitioners were taken possession forcibly even before initiation of the acquisition

proceedings; and of the stand taken by the petitioners that they lost their respective housing plots; **and also taking note of the positive direction of this Court, dated 12.12.2003, to provide equivalent alternate site under the special category of displaced persons;** we are of the view that the rejection order dated 26.5.2005 passed by the Government in respect of the petitioner in W.P. No.39279 of 2005 is liable to be quashed. As far as the petitioners in W.P. Nos.11907 and 11908 of 2006 are concerned, they are also entitled to similar allotment as directed in the order dated 12.12.2003.

8. In these circumstances, we issue the following directions:-

(i) The Secretary to Government, Housing and Urban Land Development Department, Fort St. George, Chennai-9 is directed to allot alternate land to the petitioners, approximate in extent to the acquired land, within the Corporation/City limits, within a period of eight weeks from the date of receipt of copy of this order.

(ii) the petitioners are liable to pay the cost of the land as fixed by the Tamil Nadu Housing Board.

9. Writ petitions are allowed with the above directions. No costs. Connected Miscellaneous Petitions stand closed."

(emphasis supplied)

5. By these appeals, the State Government has assailed the aforementioned judgment. According to the appellant, the lands in question were acquired in accordance with law and, after following due process, possession thereof was taken over and thereafter made over to the appropriate authority of the MRTS

Project (Railways). In other words, the land was not acquired for the Tamil Nadu Housing Board as such. It is urged that the direction issued by the High Court vide the impugned judgment is on an erroneous assumption that the State Government was obliged to provide an alternative housing site to the private respondent(s) in the concerned appeals, in terms of the direction given by the High Court vide order dated 12th December, 2003. It is then contended that the direction given by the High Court in the impugned judgment is in the nature of granting an extra-legal concession by way of allotment of an alternative site in lieu of acquired lands *sans* any such legal obligation on the State under the 1894 Act or any policy in force pertaining to the project of MRTS (Railways) to be implemented by the Ministry of Railway, Government of India. The appellant has relied on the decisions of this Court to buttress the proposition that the private respondent(s) had no legal right to get an alternative housing site in such a situation. The appellant has also distinguished the reported judgments referred to by the High Court in the impugned judgment as being inapplicable to the facts of the present case.

6. The private respondent(s), on the other hand, have supported the view expressed by the High Court in the impugned judgment and would submit that the direction was in furtherance of the obligation of the State flowing from the order dated 12th December, 2003. Further, in light of the reported decisions adverted to by the High Court in the impugned judgment, it is not open to the appellant-State to deny the relief of allotment of an alternative housing site to them as a special category of displaced persons due to the stated project. In addition, the private respondent(s), during the pendency of these appeals, had filed an affidavit to place on record that in the past, the State Government exercised discretionary power to allot alternative housing site to the affected persons due to the acquisition of their land for public purposes. The private respondent(s) would submit that no interference in the fact situation of the present case is warranted and the appeals be dismissed.

7. We have heard Mr. V. Giri, learned Senior Counsel, for the appellant and Mr. A. Mariarputham, learned Senior Counsel, for the private respondent(s).

8. The foremost reason which weighed with the High Court is, the direction issued by the High Court vide order dated 12th December, 2003 had attained finality. Indubitably, that order has not been challenged by the State or any other State Authority. Nevertheless, the purport of the order is nothing more than a direction to the State Government and the Tamil Nadu Housing Board "to consider" the representation(s) made by the private respondent(s) for allotment of an alternative housing site in any one of the housing projects promoted by the Tamil Nadu Housing Board, as a special category of displaced persons. Thus, the direction is not in the nature of a peremptory direction to allot an alternative housing site despite absence of any policy with reference to the project under consideration or obligation flowing from the provisions of 1894 Act. This is the first fallacy committed by the High Court in the impugned judgment.

9. As regards the decisions of the Supreme Court referred to by the High Court, we must agree with the appellant that the same have no application to the fact situation of the present case. For, in ***State of U.P. Vs. Smt. Pista Devi and Ors.***[2], the direction was issued to the development authority which had acquired the land for the public purpose of developing housing schemes with a view to provide housing accommodation to the residents of Meerut City. Reliance has been placed upon paragraph Nos.9 and 10, which read thus:

> "9. It is, however, argued by the learned counsel for the respondents that many of the persons from whom lands have been acquired are also persons without houses or shop sites and if they are to be thrown out of their land they would be exposed to serious prejudice. Since the land is being acquired for providing residential accommodation to the people of Meerut those who are being expropriated on account of the acquisition proceedings would also be eligible for some relief at the hands of the Meerut Development Authority. We may at this stage refer to the provision contained in Section 21(2) of the Delhi Development Act, 1957 which reads as follows:
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> > "21. (2) The powers of the Authority or, as the case may be, the local authority concerned with respect to the disposal of land under sub-section 1 shall be so exercised as to secure, so far as practicable, that persons who are living or carrying on business or other activities on the land shall, if they desire to obtain accommodation on land belonging to the Authority or the local authority concerned

2 (1986) 4 SCC 251

> and are willing to comply with any requirements of the Authority or the local authority concerned as to its development and use, have an opportunity to obtain thereon accommodation suitable to their reasonable requirements on terms settled with due regard to the price at which any such land has been acquired from them:
>
> Provided that where the Authority or the local authority concerned proposes to dispose of by sale any land without any development having been undertaken or carried out thereon, it shall offer the land in the first instance to the persons from whom it was acquired, if they desire to purchase it subject to such requirements as to its development and use as the Authority or the local authority concerned may think fit to impose."

> 10. Although the said section is not in terms applicable to the present acquisition proceedings, we are of the view that the above provision in the Delhi Development Act contains a wholesome principle which should be followed by all Development Authorities throughout the country when they acquire large tracts of land for the purposes of land development in urban areas. We hope and trust that the Meerut Development Authority, for whose benefit the land in question has been acquired, will as far as practicable provide a house site or shop site of reasonable size on reasonable terms to each of the expropriated persons who have no houses or shop buildings in the urban area in question."

The dictum in this judgment concerns the acquisition of large tracts of land, for the purposes of land development, in urban areas. The acquisition in the present case is certainly not for the purpose of development of urban area or for providing a housing

scheme to the residents of the urban area in which the acquired lands are situated. The acquisition, as aforementioned, is for a project of MRTS (Railways) on behalf of the Ministry of Railway, Government of India and not for the State Government or State Authority. Furthermore, admittedly, no scheme has been formulated in relation to the stated railway project implemented by the Central Government for providing alternative housing sites to project affected persons. In the absence of such a scheme, it is unfathomable that the High Court could still issue a direction to the State Government and Tamil Nadu Housing Board, in exercise of writ jurisdiction, to provide alternative land to the private respondent(s) as a special category of displaced persons. Such a direction cannot be countenanced in law. This is reinforced from the principle underlying the dictum in the case of ***New Reviera Coop. Housing Society and Anr. Vs. Special Land Acquisition Officer and Ors.***[3] In paragraph 9 of the said decision, the Court noted that it would be a different matter if the State had come forward with a proposal to provide an alternative site but that principle cannot be extended as a condition in all

3 (1996) 1 SCC 731

cases of acquisition of the land that the owner must be given an alternative site or flat. The Court unambiguously rejected the contention of the affected persons that acquisition of their land without providing them an alternative site would impinge upon their right to life under Article 21 of the Constitution of India.

10. Again, in the case of ***State of Kerala and Ors. Vs. M. Bhaskaran Pillai and Anr.***[4], the Court negatived the claim of the land owners that the unused acquired land for construction of national highway should be returned to them. Instead, the Court held that since the acquisition had been completed and the land had vested in the State Government, the unutilised acquired land could be disposed of only through public auction so that the public would benefit by getting a higher value. In another case, ***Tamil Nadu Housing Board Vs. L. Chandrasekaran (dead) by Lrs. And Ors.***[5], the Court restated the doctrine of public trust disabling the State from giving back the property for a consideration less than the market value, if it could not be used for any other public purpose by the State in cases where the

4 (1997) 5 SCC 432
5 (2010) 2 SCC 786

acquisition process had been completed under the 1894 Act. A similar view has been expressed in ***V. Chandrasekaran and Anr. Vs. Administrative Officer and Ors.***[6]**.** In paragraph 31, the Court observed thus:

> "31. In view of the above, the law can be crystallised to mean, that once the land is acquired and it vests in the State, free from all encumbrances, it is not the concern of the landowner, whether the land is being used for the purpose for which it was acquired or for any other purpose. He becomes *persona non grata* once the land vests in the State. He has a right to only receive compensation for the same, unless the acquisition proceeding is itself challenged. The State neither has the requisite power to reconvey the land to the person interested nor can such person claim any right of restitution on any ground, whatsoever, unless there is some statutory amendment to this effect."

11. The private respondents, however, would urge that the State Government had initiated the acquisition proceedings and was intently concerned with the stated project within the State and, for which reason, it could not be extricated from its obligation flowing from the existing State policy at the relevant time enabling the State Government to exercise discretionary quota. The private respondent(s) have relied on instances where such

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6 (2012) 12 SCC 133

allotments have been made, as is evident from the communications annexed at R4, R5 and R6 to the additional affidavit filed on 15th April, 2019, as per the liberty granted by this Court.

12. We have perused the said communications. It is evident that, in these cases, the acquisition was made for construction of houses under LIG/MIG scheme in respect of which a policy existed for grant of alternative housing site to the affected persons. Those schemes were implemented by the State Housing Board. These instances will be of no avail to the private respondents whose lands have been acquired for implementation of MRTS Project implemented by the Government of India (Railways). The private respondent(s) have been duly compensated in conformity with the mandate of the Act of 1894. Therefore, they cannot expect any further relief much less from the State Government or, for that matter, the Tamil Nadu Housing Board.

13. In this view of the matter, it is not necessary for us to dilate on the plea taken by the appellant that the policy regarding grant

of alternative housing site as a discretionary power of the State Government has been discontinued from the year 2011. For the completion of record, however, we must note the argument of the private respondent(s) that their claim must be decided only on the basis of policy as it existed at the relevant time and at least at the time of direction issued by the High Court vide the impugned judgment in the year 2006. As aforementioned, it is not necessary for us to take this argument any further as we have held that the schemes applicable to the acquisition for development of houses have no application to the project for which the lands owned by the private respondent(s) came to be acquired for implementation of a project by the Government of India (Railways).

14. The other decision which commended to the High Court also has no application to the present case. For, in ***Bharat Singh and Ors. Vs. State of Haryana and Ors.***[7], the land was acquired for development and utilization for industrial purpose. The dictum in paragraph No.18 of the said decision, in no way,

7 (1988) 4 SCC 534

can be construed to mean that even if no policy for allotment of alternative housing site in connection with the stated project to be executed by the Railways is in force, yet the project affected land owners should be provided an alternative housing site that too by the State. On the other hand, the observation therein is merely to direct that the land owners who had become landless by the acquisition of their land should make an application for allotment of alternative land and that they may be given priority in the matter of allotment provided they fulfill the conditions for such allotment and if land is available. In the case of ***S.B. Kishore Vs. Union of India***[8], the acquisition was for the purpose of development of the urban area and the relief given to the land owner was in the peculiar facts of that case. More importantly, the relief was with reference to the existing policy of allotting alternative housing sites to the affected land owners. Even in the case of ***Hansraj H. Jain*** (supra), the acquisition was for setting up a new township and a policy decision of the Government to offer alternative housing site to the affected land owner was

8 AIR 1991 SC 90

applicable to such acquisition, as can be discerned from paragraph 33 of the said judgment.

15. In view of the above, we have no hesitation in setting aside the impugned judgment and, resultantly, dismissing the writ petitions filed by the private respondent(s).

16. Accordingly, these appeals are allowed. The impugned common judgment and order of the High Court dated 28th April, 2006 in writ petition Nos.39279 of 2005, 11907 of 2006, 11908 of 2006 and 19029 of 2006, respectively, is set aside. Resultantly, the aforementioned writ petitions are dismissed. All pending interim applications are disposed of. No order as to costs.

.....J
(A.M. Khanwilkar)

.....J
(Ajay Rastogi)

New Delhi;
July 01, 2019.