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Dharmalingam, Vs. the Government of Tamil Nadu Rep. by the Secretary to Government, Housing and Urban Development Department,

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Court : Chennai

Decided On : Aug-05-2009

Reported in : (2009)6MLJ757

Judge : S. Nagamuthu, J.

Acts : [Land Acquisition Act, 1894](#) - Sections 3, 4(1), 6, 6(3), 9, 16, 16A, 16B, 17A, 23(1A), 23(2), 39 and 48B; Tamil Nadu Housing Board Act, 1961 - Sections 162; City Improvement Trust Act, 1950; [Societies Registration Act, 1860](#); Tamil Nadu Town and Country Planning Act, 1971 - Sections 9, 9B, 17(2), 18, 20, 36 and 40; MRTTP Act - Sections 126; Tamil Nadu Land Acquisition (Amendment) Act, 1996; [Constitution of India](#) - Articles 14, 31, 162 and 300A

Appeal No. : W.P. No. 45821 of 2006

Appellant : Dharmalingam, ;dhanikasalam and Loganathan

Respondent : The Government of Tamil Nadu Rep. by the Secretary to Government, Housing and Urban Development Depa

Advocate for Def. : N. Senthilkumar, AGP for RR1 and 2, ;P.S.Raman, Addl. Adv. General Assisted by ;I. Paranthaman, AGP for R3 and ;R. Muthukumaraswamy, SC for ;S. Selvanandam, Adv. for R4

Advocate for Pet/Ap. : A. Vijay Narayanan, SC for R. Syed Mustafa, Adv. in Writ Petition Nos. 45821 to 45824 of 2006 and ;K.M. Vijayan, SC for R. Syed Mustafa, Adv. in Writ Petition Nos. 45825 to 45828 of 2006

Judgement :

ORDER

S. Nagamuthu, J.

1. The lands belonging to the petitioners comprised in various survey numbers at Madhavaram village, Ambattur Taluk, Chengalput District were acquired by the Tamil Nadu Government for the purpose of organising a truck and bus terminal by the Chennai Metropolitan Development Authority, Chennai (formerly Madras Metropolitan Development Authority and hereinafter referred to as 'the CMDA'). Notification under Section 4(1) of the [Land Acquisition Act, 1894](#) (hereinafter referred to as 'the Act') was issued by the Government in G.O.Ms. No. 306, Housing and Urban Development Department, dated 27.03.1985 and Declaration under Section 6 of the Act was made in G.O.Ms. No. 196, Housing and Urban Development Department, dated 07.02.1986. The land acquisition proceedings were challenged in W.P. No. 547 of 1986 and the same was allowed by a learned Single Judge of this Court on 21.06.1996. The Writ Appeal Nos. 785 to 789 of 1996 preferred against the said order by the Government were allowed on 09.07.2002. According to the respondents, possession was taken and thus the lands have vested with the Government. Out of the total extent of 80.92 Acres of land acquired by the Government, 64.80 Acres of land was utilised for the purpose for which it was acquired. The remaining area of 16.12 Acres of land was not utilised. Out of the same, the very acquisition in respect of 5.06 Acres of land is under challenge before this Court in Writ Petition and therefore, the said area could not be utilised. The remaining area of 11.06 Acres of land is still kept unutilized for the purpose for which it was acquired. Seeking reconveyance of the said land, the petitioners who are the erstwhile owners of the same made representation on 02.07.2006 to the Government. The same was not considered by the Government. Therefore, they filed W.P. Nos. 22370 to 22377 of 2006 before this Court praying for appropriate direction. By a common order, dated

14.07.2006, this Court directed the Government to dispose of the said representation and pass orders on merits and in accordance with law within a period of eight weeks from the date of receipt of copy of the order. However, this Court did not express any opinion regarding the merits of the claim made by the petitioners. On 26.09.2006, the petitioners made yet another representation. Finally, the 1st respondent under Letter No. 22014/UD3(1)/2006-3, dated 23.10.2006 rejected the claim of the petitioners on the ground that the lands had already been taken possession by the CMDA and it had been proposed to allot the land to The Madras Gunny Bag Merchants' Association (hereinafter referred to as 'the 4th respondent Association'). Challenging the said order, the petitioners have come forward with these writ petitions.

2. Since common grounds have been raised, all these writ petitions were heard together and they are disposed of by means of this common order.

3. The main contentions of the petitioners are as follows:

(i) Since the land in question, though acquired in the year 1986, has not been utilised for the purpose for which it was acquired, under Section 16B of the Act, the 1st respondent is obliged to pass an order forfeiting the land as penalty and in turn to reconvey the same under Section 48B of the Act to the petitioners.

(ii) The CMDA has got no power to transfer the land either to an individual or to a Body, other than for a public purpose that too without the sanction of the Government as required under Section 16A of the Act.

(iii) The purpose for which the land in question has been allotted to the 4th respondent Association viz., for the purpose of doing their business, cannot be termed as a public purpose and therefore, even with the sanction of the Government under Section 16A of the Act, the land cannot be allotted to the 4th respondent Association.

(iv) Since there is no approved plan under The Tamil Nadu Town and Country Planning Act, 1971, for constructing either shops or factories for the members of the 4th respondent Association, the proposed allotment cannot be stated to be for

a public purpose and thus, the same is without jurisdiction.

4. In the counter affidavit filed by the Government and the CMDA it is contended as follows:

(i) If once the land has been acquired and vested with the Government, it is the property of the Government and the same can be utilised by the Government either for the public purpose for which it was acquired or for any other public purpose.

(ii) The members of the 4th respondent Association had made representation to allot suitable place for them to run their business since they are running their business in the city in a congested area causing health hazards to the general public in that area. Considering the said request and on the recommendation of the Corporation of Chennai, they were allotted the land in question for running their business.

(iii) The purpose for which the land is now allotted by the CMDA is not against the public purpose. The object of the acquisition is in no way defeated by the allotment made to the members of the 4th respondent Association. The Corporation of Chennai in letter No. Z.O.II. C. No. All O.II/A1/1041/2005, dated 17.09.2005 has informed that Gunny Bag Shops are located in a thickly populated residential area in the Chennai City which is causing inconvenience and health hazards to the residents of the locality and the residents also very often complained about the nuisance caused by the Gunny Bag Shops. Therefore, the Corporation of Chennai requested to provide a suitable alternative site for relocating the Gunny Bag Merchants. The Gunny Bag Merchants also had requested to provide them alternative site to run their business. In these circumstances, being for a public purpose, the CMDA has prepared a lay-out to accommodate the Gunny Bag Merchants.

(iv) The Government duly considered the request of the petitioners, for reconveyance and rejected the same since the possession of the land in question is neither with the Government nor the land is no more required for public purpose.

5. The Madras Gunny Merchants' Association, which is one of the respondents in these writ petitions has not filed any separate counter.
6. I have heard Mr. Vijay Narayanan, learned senior counsel for the petitioners in W.P. Nos. 45821 to 45824 of 2006; Mr. K.M.Vijayan, learned senior counsel for the petitioners in W.P. Nos. 45825 to 45828 of 2006; Mr. P.S.Raman, learned Additional Advocate General appearing for the Government as well as the CMDA and Mr. R.Muthukumaraswamy, learned senior counsel appearing for the 4th respondent Association and I have also perused the records carefully.
7. Admittedly, a total extent of 80.92 Acres of land was acquired under the provisions of the [Land Acquisition Act, 1894](#) for the purpose of organising a truck and bus terminal by the CMDA. It is also seen from the records that on such acquisition, the possession of the land had been taken and handed over to the CMDA and that the CMDA has utilised an extent of 64.80 Acres of land for the purpose for which it was acquired. Before the acquisition of the said land, a lay-out plan for truck and bus terminal complex at Madhavaram was prepared and the same was approved. The area, which now remains unutilised, which is the subject matter of these writ petitions, has been shown in the said plan as 'For Future Development'. But, in the said plan, the purpose for which the said land would be utilised in future has not been specifically indicated. Admittedly, the said land has not been utilised from 1986 onwards though the possession of the land continues to be with the CMDA.
8. The request of the petitioners under Section 48B of the Act was rejected by the Government on two grounds viz., (1) the possession of the land has already been handed over to the CMDA and (2) the land is to be used for a public purpose viz., for allotting to the members of the 4th respondent Association.
9. There can be no controversy that if the Government is satisfied that the land acquired 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 16B of the Act. But, in the case on hand, the Government has not so far passed any order under

Section 16-B of the Act thereby forfeiting the land as penalty. Under Section 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 under Section 16-B of the Act, it may not be possible for the Government to reconvey the lands under Section 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 under Section 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 Shanmugam. R v. The State of Tamil Nadu 2006 (4) CTC 290. That was a case where a request was made by the erstwhile owners of the lands to the Government to reconvey the same under Section 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 of the Act 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 under Section 16-B of the Act, is not curtailed. The said power is independent and exclusive. In the event, the lands are unutilised by the Board for quite 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 under Section 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 under Section 17-A as well as the Government under Section 16 of the Central Act simultaneously.

11. The Division Bench ultimately held that the first reason for rejection viz., the land was still in the possession of the Housing Board, cannot be countenanced. Applying the said ratio laid down to the facts of the present case, I am of the view that the first reason stated in the impugned order cannot be sustained. The Government ought to have examined the request of the petitioners in terms of Section 16-B of the Act as to whether an order is required to be passed to forfeit the lands in question. The refusal to examine the same would offend the constitutional right of the petitioners and also Article 14 of the [Constitution of India](#).

12. While examining the case for the purpose of Section 16-B of the Act, the basic requirement is satisfaction of the Government that the land has not been utilised by the authority for the purpose for which it was acquired and handed over. Such satisfaction is to be arrived at on the basis of the materials available. But, in the instant case, according to the counsel counsel, the Government has not considered, the request of the petitioners by having relevant consideration in terms of Section 16-B of the Act. Therefore, according to the petitioner, the impugned order is liable to be set aside with a direction to the Government to exercise its power under Section 16-B of the Act to forfeit the land and then to pass an order under Section 48-B of the Act.

13. The learned senior counsel for the petitioners would bring to the notice of this Court, the difference in language employed in Sections 16-B and 48-B of the Act . To appreciate the said argument, it is worthwhile to extract the provisions of Sections 16-B and 48-B of the Act hereunder:

Section 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 has had a reasonable opportunity of being heard.

(emphasis supplied)

Section 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.

(emphasis supplied)

14. A close reading of Section 16-B of the Act would show that the consideration of the Government under the said provision is whether the acquired land has been used for the very same public purpose for which it was acquired; whereas under Section 48-B of the Act, the consideration is whether the acquired land is required, not only for the purpose for which it was acquired, but for any other public purpose also. Thus the distinction between these two provisions is very obvious. In a given case, the Government may be satisfied that the land is required for any other public purpose other than the purpose for which it was acquired. In such a situation, the Government, may, decline to use its discretion under Section 48-B of

the Act to reconvey the land to the erstwhile owner. But, under Section 16-B of the Act, if the Government is satisfied that the land has not been used for the purpose for which it was acquired, de hors the fact as to whether the land is required for any other purpose or not, the Government is obliged to exercise its power under Section 16-B of the Act and to pass an appropriate order forfeiting the land.

15. The learned Additional Advocate General would contend that the language in Section 16B of the Act, more particularly, the word 'may' would indicate that it is not obligatory on the part of the Government to forfeit the land in all situations where the land has not been used for the purpose for which it was acquired. An element of discretion is involved. Therefore, according to him, the petitioners cannot compel the Government to use its discretion under Section 16-B of the Act to forfeit the land.

16. Though the expression used in Section 16-B of the Act is 'may', in the context in which it has been used and going by the purpose of the introduction of Section 16-B by Tamil Nadu Amendment Act, it has to be held that it conveys the meaning of the expression 'shall'. It has been well settled in a catena of judgements of the Hon'ble Supreme Court that the expression 'may' employed in a provision does not indicate discretion invariably in all situations. It all depends upon the context in which the said expression has been used. To know the real meaning of the term 'may' used in Section 16-B of the Act, we should not, first of all, forget that the right to own an immovable property, though not a fundamental right, nevertheless, is a constitutional right under Article 300-A of the [Constitution of India](#). Using its eminent domain, the Government acquires the said land against the will of the owner thereby depriving him of his constitutional right. The Courts have upheld the power of the Government to acquire the land only because it is done for a public purpose as it is permissible under the constitution itself. When it is a question of public purpose and individual's right, the Courts have uniformly held that the individual's right should yield place to the larger public purpose. When a land is acquired under the Land Acquisition Act, for a public purpose, since there is deprivation of property right of an individual, the property should be used only for public purpose. The question, whether the land should be utilised only for the very same public purpose for which it was acquired is no more res integra. The Hon'ble

Supreme Court has consistently taken the view that the Government is at liberty to utilise the land for a different purpose provided such purpose is also a public purpose.

17. Now, the next question is as to whether the authority, other than the Government, for whose purpose the land was acquired and handed over, can use the same for any other public purpose other than the public purpose for which it was acquired and handed over.

18. Answer to this question could be found in Section 16-A of the Act. A look into the said provision would make it very clear that such authority, in the case on hand, the CMDA, cannot either utilise or transfer such land for any other purpose except for the purpose for which it was acquired without the sanction of the Government. The absence of the expression 'any other public purpose' in Section 16-A of the Act, as has been used in Section 48-B of the Act would undoubtedly clear the said position.

Section 16-A of the Act runs thus:

16-A.- Restriction on transfer, etc. (1) No person or authority (other than the Government), for whom any land is acquired under this Act for any public purpose as referred to in Sub-section (1) of Section 4, shall transfer the said land or any part thereof by way of sale, mortgage, gift, lease or otherwise except with the previous sanction of the Government.

(2) Where it is noticed or any information has been received that any land has been transferred in contravention of Sub-section (1), the Government may, by an order, declare the transfer to be null and void, and on such declaration, the land shall, as penalty, be forfeited to, and vest in, the Government in Revenue Department free from all encumbrances: Provided that no order under this sub-section, shall be made unless such person or authority has had a reasonable opportunity of being heard.

19. It is the submission of the learned Additional Advocate General and the learned senior counsel appearing for the 4th respondent/Association that such

authority can also transfer the land for a different public purpose. But, to substantiate the said proposition, the learned Additional Advocate General and the learned Senior Counsel have not cited any precedent before me during their arguments.

20. As I have already stated, a simple comparison of the language used in Sections 16-A, 16B and 48-B of the Act would disclose that the authority in whose favour the land was acquired and handed over can transfer the same for a different public purpose only with the sanction of the Government.

21. The learned Additional Advocate General would further submit that in the case on hand, such sanction was given by the Government and therefore, there is no need to invoke Section 16-B of the Act. To substantiate the said contention, the learned Additional Advocate General has produced a copy of a resolution passed by the CMDA in the meeting held on 27.09.2006, wherein it was resolved thus:

(i) To send intimation letters to each trader indicating the price (to be worked out) with the same terms of allotment approved by the Authority earlier in Resolution A.R. No. 29/2006, dated 03.02.2006.

(ii) To approve the layout proposed in the land reserved for future development in the MBTT area.

(iii) To relax the DCR requirements to the extent required.

(iv) To reclassify the land into commercial use from Agricultural use zone.

22. The learned Additional Advocate General would submit that the Hon'ble Minister for Law and Information Technology called a meeting with the officials of the CMDA and Corporation of Chennai on 06.01.2006 and instructed to arrange for the allotment of plot of size 10 ft. X 15 ft. at affordable cost for about 110 Gunny Bag Traders located at Ward No. 20, in Royapuram identified by the Chennai Corporation. He would further submit that the then Hon'ble Minister for Law and IT discussed with the representatives of Gunny Bag Traders Association at Secretariat on 06.01.2006 and informed them the availability of site measuring about 31200 sq.ft., at Madhavaram earlier earmarked for Police and Fire Stations.

The cost of the plot and mode of payment was also indicated and the authority passed a resolution on 03.02.2006 to allot the plots in that area to the Gunny Bag Traders. Subsequently, the Commissioner, Corporation of Chennai has informed that a meeting was convened by the Hon'ble Minister for Local Administration on 29.06.2006 with regard to relocating Gunny Merchants. The officials of CMDA, Tamil Nadu Pollution Control Board and the Corporation of Chennai have attended the meeting. In the said meeting, it was informed by the traders that there are about 336 traders and all of them are to be allotted with the plots. It was only in that meeting, it was decided to allot the land in question to the Gunny Bag Merchants. From these facts, the learned Additional Advocate General would submit that the Government has approved the transfer of the land in question to Gunny Bag Merchants as required under Section 16A of the Act. In my considered opinion, the said argument cannot be countenanced. Though, the learned Additional Advocate General has produced the proceedings of the meeting of the CMDA, he is not able to produce any Government Order issued in exercise of its power conferred under Section 16-A of the Act. Therefore, it cannot be contended that the Government has issued sanction as required under Section 16-A of the Act thereby authorising the CMDA to transfer the land to the Gunny Bag Merchants.

23. Assuming that the Government has issued such sanction, the next important question that arises for consideration is as to whether the allotment of the land in question to the Gunny Bag Merchants would be for a public purpose as required under Section 16-A of the Act. The term 'public purpose' has not been specifically defined exclusively with reference to Section 16-A, 16-B and 48-B of the Act. The general definition for this term, is found in Section 3(f) of the Act which reads as under:

24. 3. Definitions. - In this Act, unless there is some thing repugnant in the subject or context,;...

(f) the expression 'public purpose', includes

(i) the provision of village-sites, or the extension, planned development or improvement of existing village-sites;

(ii) the provision of land for town or rural planning;

(iii) the provision of land for planned development of land from public funds in pursuance of any scheme or policy of Government and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned;

(iv) the provision of land for a corporation owned or controlled by the State;

(v) the provision of land for residential purposes to the poor or landless or to person residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by the Government, any local authority or a corporation owned or controlled by the State;

(vi) the provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by Government or by any authority established by Government for carrying out any such scheme, or, with the prior approval of the appropriate Government, by a local authority, or a society registered under the [Societies Registration Act, 1860](#), or under any corresponding law for the time being in force in a State, or a Co-operative society within the meaning of any law relating to Co-operative societies for the time being in force in any State;

(vii) the provision of land for any other scheme of development sponsored by Government, or, with the prior approval of the appropriate Government, by a local authority;

(viii) the provision of any premises or building for locating a public office.

but does not include acquisition of land for Companies;

25. The learned Additional Advocate General would submit that the present case would fall within the ambit of Clauses (ii), (iii) and (iv) of Sub-section (f) of Section 3 of the Act. Mr. R. Muthukumarasamy, learned senior counsel appearing for the 4th respondent Association would submit that it would also fall within the ambit of Clause (vii) of Sub-section (f) of Section 3 of the Act. The learned Additional Advocate General would further submit that these Gunny Bag Merchants are

doing their business in Royapuram in a thickly populated area, which is causing health hazards to the general public in that locality and it is also causing great pollution. Only to avoid the same, it has been planned to shift them all to a different place and for that purpose only the land in question is proposed to be utilised. In that view of the matter, according to him, the purpose for which the land is going to be used, is a public purpose. But, Mr. K.M.Vijayan, learned senior counsel would submit that the said purpose cannot be termed as a public purpose.

26. A reading of Clauses (ii), (iii) and (vii) of Sub-section (f) of Section 3 of the Act would go to show that the purpose must have a close nexus with the plan and development. But, in the instant case, according to the learned senior counsel for the petitioners, there is no approved plan for using the land for the business establishments of these Gunny Bag Merchants either in the master plan or in any other approved plan. He would submit that the expression 'public purpose' cannot be read in isolation, but, it should be read in conjunction with plan and development as repeatedly mentioned in these provisions and so the said purpose would not fall within the definition of Section 3(f) of the Act. Regarding Clause (iv), it is the contention that since the land is not used by the CMDA, the said clause is also not applicable.

27. Mr. Vijay Narayanan, learned senior counsel would contend that since the land is sought to be allotted to the Gunny Bag Merchants' Association, prior approval from the Government is required under Section 39 of the Act. The learned senior counsel would rely on a number of judgements to substantiate the said argument. But, the learned Additional Advocate General as well as the learned senior counsel appearing for the 4th respondent Association would submit that though initially, request was made by the 4th respondent Association for allotment of these lands, the allotment, as a matter of fact, has not been made in favour of the Association, but, the same has been made only in the name of the individuals, who are Gunny Bag Merchants. Though as per the definition of the term 'Company' Gunny Bag Merchants' Association can be termed as a company, since the transfer has not been effected in favour of the 4th respondent Association, Section 39 of the Act has got no role to play. Therefore, I do not propose to further delve on this argument advanced by Mr. Vijay Narayanan.

28. Let me now have a survey of the judgements cited at the bar with reference to interpretation of the expression 'public purpose'. The earliest judgement on this definition could be found in *Hamabai Framjee Petit v. Secretary of State* AIR 1914 PC 20, where their Lordships of the Judicial Committee, following Bachelor J. took the view that the phrase 'public purpose' must include a purpose in which the general interest of the community as opposed to particular interest of individuals, is directly and vitally concerned. After advent of the Indian Constitution, the expression 'public purpose' came to be considered by the Hon'ble Supreme Court in *Somawanti v. State of Punjab* : AIR 1963 SC 151. In the said judgement by referring to the definition in Section 3(f) of the Land Acquisition Act, their Lordships pointed out that it is an inclusive definition and not a compendious one and therefore, it does not assist very much in ascertaining the ambit of the expression 'public purpose' and that broadly speaking the expression 'public purpose' would, however, include a purpose in which the general interest of the community as opposed to particular interest of individuals is directly and vitally concerned.

29. In *Arnold Rodricks v. State of Maharashtra* : AIR 1966 SC 1788, while considering the same, in the context of a land acquisition proceeding, the Hon'ble Supreme Court held thus:

The main idea in issuing the impugned notification was not to think as the private comfort or advantage of the members of the public but the general public good. At any rate where a very large section of the community is concerned its welfare is a matter of public concern, and when the notifications serve to enhance the welfare of this section of the community this is public purpose and the notifications are valid and cannot be impugned on the ground that they were not issued for any public purpose.

30. Before a Division Bench of this Court in *R. Umraomal and Ors. v. State of Tamil Nadu and Anr.* AIR 1986 Mad 63, challenge was to land acquisition proceeding on the ground that the purpose for which notification was issued to acquire the land was not public purpose. In that case, few merchants, who were originally the tenants of the land in question formed an association known as 'Rayapuram Cemetery Road Merchants' Sangam' consisting exclusively of the

tenants under the land owners. When the said Sangam made a request to the Government to acquire the lands and to allot the same for them, the Government issued a Notification under Section 4(1) of the Land Acquisition Act. In the Notification, it was stated that the purpose for which the acquisition was made was to provide 'shopping facilities to small traders and self-employed persons' Whether providing shopping facilities to small traders and self-employed persons would amount to public purpose was the question posed before the Division Bench. The Division Bench had the advantage of looking into the judgements in Hamabai Framjee Petit's case AIR 1914 PC 20; Somawanti's case : AIR 1963 SC 151; and Arnold Rodricks case : AIR 1966 SC 1788. The Division Bench after referring to the above judgements and having regard to the facts of the case made the following observation:

As we earlier pointed out, it is only to benefit the tenants who have defaulted to pay rents against some of whom the appellants have procured orders for eviction and decree for possession. This is not a case of the landless poor being provided with shelter, but accommodating who have defaulted.

The Division Bench ultimately held as follows:

In this case, it cannot be said that the welfare of a large section of the community is concerned. We have not been shown any precedent or incident where the Government have acquired buildings for accommodating the tenants of those buildings. The acquisition is meant for the particular interest of the individual tenants of the appellants, and, therefore, in our view, does not involve the general interest of the community as a whole.

31. In *Srinivasa Co-operative House Building Society Ltd. v. Madam Gurumurthy Sastry and Ors.* : (1994) 4 SCC 675, wherein the Hon'ble Supreme Court once again had an occasion to consider the scope of definition of the term 'public purpose'. The Hon'ble Supreme Court, while considering the provisions of Sub-section (f) of Section 3 of the Act, in the context of Article 31 of the Constitution has held as follows:

Public purpose is not capable of precise definition. Each case has to be considered in the light of the purpose for which acquisition is sought for. Public purpose broadly speaking would include the purpose in which the general interest of the society as opposed to the particular interest of the individual is directly and vitally concerned. Generally, the executive would be the best judge to determine whether or not the impugned purpose is a public purpose. Yet it is not beyond the purview of judicial scrutiny. The interest of section of the society may be public purpose when it is benefited by the acquisition. The acquisition in question must indicate that it was towards the welfare of the people and not to benefit a private individual or group of individuals joined collectively.

32. In yet another judgement in *Devinder Singh and Ors. v. State of Punjab and Ors.* (2008) 1 SCC 728, the Hon'ble Supreme Court has considered the scope of the term 'public purpose' and has held as follows:

20. The High Court proceeded on the basis that as the State formed an opinion that the purpose for which the provisions of the Act were taken recourse to is a public purpose, the provisions of Part II would apply in the instant case. We are not unmindful of the fact that the definition of 'public purpose' as contained in Section 3(f) of the Act is an inclusive one. Therefore, the said definition need not be kept confined to the matters referred to therein. But with a view to ascertain as to what should be a public purpose, we may notice its dictionary meaning as contained in *Black's Law Dictionary*, 5th Edn. which is as under:

Public purpose.- In the law of taxation, eminent domain, etc., this is a term of classification to distinguish the objects for which, according to settled usage, the Government is to provide, from those which, by the like usage, are left to private interest, inclination, or liberality. The constitutional requirement that the purpose of any tax, police regulation, or particular exertion of the power of eminent domain shall be the convenience, safety, or welfare of the entire community and not the welfare of a specific individual or class of persons.

The term is synonymous with governmental purpose. As employed to denote the objects for which taxes may be levied, it has no relation to the urgency of the public need or to the extent of the public benefit which is to follow; the essential

requisite being that a public service or use shall affect the inhabitants as a community, and not merely as individuals. A public purpose or public business has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within a given political division, as, for example, a State, the sovereign powers of which are exercised to promote such public purpose or public business.

In para 32 of the judgement, the Hon'ble Supreme Court has referred to *Somawanti v. State of Punjab* reported in : AIR 1963 SC 151 and has extracted para 40 of the aforesaid judgement which reads thus:

40. Though we are of the opinion that the courts are not entitled to go behind the declaration of the Government to the effect that a particular purpose for which the land is being acquired is a public purpose we must emphasise that the declaration of the Government must be relatable to a public purpose as distinct from a purely private purpose. If the purpose for which the acquisition is being made is not relatable to public purpose then a question may well arise whether in making the declaration there has been, on the part of the Government a fraud on the power conferred upon it by the Act. In other words the question would then arise whether that declaration was merely a colourable exercise of the power conferred by the Act, and, therefore, the declaration is open to challenge at the instance of the party aggrieved. To such a declaration the protection of Section 6(3) will not extend. For, the question whether a particular action was the result of a fraud or not is always justiciable, provisions such as Section 6(3) notwithstanding.

(emphasis supplied)

33. Keeping in mind the fact that the definition of the term 'public purpose' under Section 3 (f) of the Act is only inclusive in nature and also the interpretation made by the Hon'ble Supreme Court as well as the Division Bench of this Court in the judgements cited supra, now it is the time to analyse as to whether there is any public purpose involved in the matter of allotment of the land in question to the Gunny Bag Merchants, who are doing business of their own in Royapuram. It may be true, that the said business is causing air pollution and health hazards. For that, appropriate measures maybe taken to control the pollution under the Pollution

Control Act. It may also be true that these allottees are doing their business in a congested area. For that purpose, at their request, the Government may think it appropriate, as a welfare measure, to shift them from that place and to allot them a different place and in that case, if the Government so allots any land belonging to the Government, it is understandable. But, here, the CMDA is allotting the land in question to these individuals. The purpose of allotting these lands may be laudable i.e. to help the beneficiaries viz., the allottees. The purpose of shifting these merchants from Royapuram area may be in the interest of public also. But, that is not the relevant consideration. In my considered view, the relevant consideration would be whether the allotment of these lands to these Gunny Bag Merchants would serve any public purpose. Admittedly, on such allotment, the lands are going to be exclusively used by the merchants for their business. They are not going to do any public service. The business interest of an individual trader can, at no stretch of imagination, be for the benefit of the public. They are not going to do any charity. They are only going to do a profitable business for their own interest. Thus, the allotment of the land in question to the Gunny Merchants would be only for the benefit of these merchants. Acquisition of land to provide house sites to the poor homeless is a public purpose as it is a constitutional duty of the Government to provide house sites to poor. But, allotting land for construction of individual shops by the beneficiaries to do their business is not out of any such constitutional obligation of the State and so, the said purpose cannot be termed as a public purpose. Therefore, I have no hesitation to hold that no public purpose as defined in Section 3(f) of the Act is involved in the proposed allotment of the land in question to the Gunny Bag Merchants.

34. The learned Senior Counsel Mr. K.M.Vijayan, would submit that the scope of the expression 'public purpose' as defined in Section 3(f) of the Act is controlled by Section 36 of the Tamil Nadu Town and Country Planning Act, 1971 under which the CMDA has got certain functions to discharge. According to him, the term 'public purpose' found in Section 36 of the Tamil Nadu Town and Country Planning Act, 1971 has got a narrower meaning than the definition found in Section 3(f) of the Act. He would submit that the definition in Section 3(f) of the Act is not exhaustive, but only inclusive; whereas under Section 36 of the Tamil Nadu Town and Country Planning Act, 1971, it is exhaustive. He would submit that unless

there is a regional plan, master plan, detailed development plan or new town development plan showing the purpose for which the land is required, the land cannot be used by the CMDA for any other purpose. According to him, the purpose for which the land is going to be used is a public purpose or not is traceable to the plan. In the absence of a plan showing specifically the public purpose for which the land is going to be used; it cannot be said that the purpose is a public purpose, he contends. He would further submit that the CMDA is not a welfare department like Adi Dravida Welfare Department, wherein the department can acquire the land for the welfare of a section of the poor people as it is the constitutional duty of the Department to provide house sites to the poor. According to him, the CMDA has got power to use the land only for the purpose which is covered under the plan. The learned senior counsel would point out that in the plan, the land in question has been shown only 'for future development' . In the absence of any detailed plan approved by the CMDA for shopping complex for the benefit of the Gunny Bag Merchants, the CMDA cannot use the land in question for the said purpose. Therefore, according to him, the purpose for which the land is now sought to be used is not a public purpose. The learned senior counsel relies on the judgement of the Hon'ble Supreme Court in *Municipal Corporation of Greater Bombay v. Industrial Development Investment Corporation Private Limited and Ors.* : (1996) 11 SCC 501, wherein the Hon'ble Supreme Court has held that the plan must contain the details and the development activities to be under taken.

35. Mr. R. Muthukumaraswamy, learned senior counsel appearing for the 4th respondent Association would repel the said contention by saying that it is not at all necessary that such a plan should be prepared and approved first. Instead, according to him, it would be suffice if such a plan is drawn and approved after the allotment is made in favour of the beneficiaries. He would place reliance on the judgement in *Ajay Krishna Shingal and Ors. v. Union of India and Ors.* : (1996) 10 SCC 721 wherein the Hon'ble Supreme Court, while dealing with the acquisition for a planned development of Delhi, held that the developmental activities are to be taken subsequent to the acquisition and, therefore, before preparation of Master Plan, Regional Plan, Zonal Plan, acquisition can be made first. The Hon'ble Supreme Court further held that preparation of these plans itself would amount to developmental activities.

36. A perusal of the judgement in Municipal Corporation of Greater Bombay's case would go to show that it was a case of acquisition under Section 126 of MRTP Act and not under the Land Acquisition Act. While considering the scope of Section 126 of MRTP Act, the Hon'ble Supreme Court held that such plan is a condition precedent for acquiring the land under the said Act for developmental activities, but in Ajay Krishnan's case, the Hon'ble Supreme Court has held that preparation of Master Plan, Regional Plan, Zonal Plan itself would be part developmental activities and for such preparation, the lands are to be acquired first and therefore, even in the absence of plan, acquisition can be made. In my considered opinion, no detailed debate on this question is required, since, in the case on hand, this Court has not been called upon to test the correctness of the acquisition. Here, the question is, whether the land already acquired can be allotted to the individual merchants. Even in the absence of any discussion about the Tamil Nadu Town and Country Planning Act 1971, one can come to the conclusion, as I have already stated, that the purpose for which the land is now sought to be allotted is not a public purpose.

37. The learned senior counsel on either side relied on the judgement of the Hon'ble Supreme Court in H.M.T. House Building Co-operative Society v. Syed Khader and Ors. : AIR 1995 SC 2244. In the said case, the Hon'ble Supreme Court has dealt with distinction between Part II and Part VII of the Act while interpreting the expression 'public purpose'. That is also a case where the acquisition was sought to be made under Part VII of the Act. In the case on hand, the acquisition was made under Part II of the Act and not under Part VII of the Act. Insofar as the Part II is concerned, in the matter of interpretation of public purpose, the Hon'ble Supreme Court has not deviated from the interpretation made in the earlier judgements cited supra. As I have already stated, this judgement also is not more relevant for the issues involved in the cases on hand.

38. It was contended by the learned Additional Advocate General and as well as Mr. R.Muthukumarasamy, learned senior counsel for the 4th respondent Association, if once the property is acquired it becomes the property of the Government and therefore, it can be used for any other public purpose. They relied on the judgement in Tamil Nadu Housing Board v. Keeravani Ammal and

Ors. : 2007 (2) CTC 447.

39. In the said case, the argument advanced was as to whether the Government is obliged to reconvey the land to the erstwhile owners, if the land is not required for any other public purpose. The Hon'ble Supreme Court, referred to State of Kerala and Ors. v. M. Bhaskaran Pillai and Anr. : 1997 (2) CTC 177, wherein the Hon'ble Supreme Court has held that whatever assignment is made, it should be for a public purpose. Otherwise the land of the Government should be sold only through the public auction so that the public also gets benefited by getting higher value. From that it could be seen that the assignment of the land which was once acquired could be used for a different purpose, provided the said purpose is also a public purpose. Neither the Government, nor any other authority, in whose favour, the acquisition was made could use it for a purpose other than a public purpose. It would be worthwhile to extract the judgement of the Hon'ble Supreme Court in State of Kerala and Ors. v. M. Bhaskaran Pillai and Anr. : 1997 (2) CTC 177:

The question emerges: Whether the Government can assign the land to the erstwhile owners? It is settled law that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. In case there is no other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public auction can be better utilised for the public purpose envisaged in the Directive Principles of the Constitution. In the present case, what we find is that the executive order is not in consonance with the provision of the Act and is, therefore, invalid. Under these circumstances, the Division Bench is well justified in declaring the executive order as invalid. Whatever assignment is made, should be for a public purpose. Otherwise, the land of the Government should be sold only through the public auctions so that the public also gets benefited by getting higher value.

40. From the above view taken by the Hon'ble Supreme Court, it is crystal clear that the Government is well within its power to put the land for any other public purpose than the public purpose for which it was acquired. If the same is not required any more for any other public purpose, the Hon'ble Supreme Court has

held that the property should be sold only through public auction. The said judgement was with reference to a land acquisition in the State of Kerala, where there is no analogous provision, like 16-A, 16-B & 48-B of the Act. So, insofar as the State of Tamil Nadu is concerned, the said judgement can be taken as a precedent only to the extent that the acquired land could be used for any other public purpose. In Keeravani Ammal's case cited supra while referring to Section 48-B of the Land Acquisition Act, the Hon'ble Supreme Court has held as follows:

We are thus of the view that the writ petitioners, the contesting respondents, have not made out any case for interference by the Court or for grant of any relief to them. It is therefore not necessary for us to go into the further contention raised on the scope of Section 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.

41. From the above dictum laid down by the Hon'ble supreme Court, it is crystal clear that insofar as the State of Tamil Nadu is concerned, under Section 48-B of the Act, if the land is not required for any public purpose, the Government is obliged to reconvey the same to the erstwhile owners of the land.

42. In R. Shanmugam's case 2006 (4) CTC 290 cited supra, the Division Bench had an occasion to examine the question as to whether the Housing Board, for whose benefit, the land was acquired and handed over could utilise the same for a different purpose. The Division Bench held that the Housing Board can use the land only for the purpose for which it was acquired and not for a different purpose. Ultimately, the Division Bench held that if the land is not required for the purpose for which it was acquired in favour of the Tamil Nadu Housing Board, then it is for the Government to exercise its power under Section 16-B of the Act and then to examine whether it could be put to a different public purpose by the Government

or it should be reconveyed to the erstwhile land owners. The dictum laid down in the said judgement squarely applies to the facts of the present case.

43. Let me now turn to the Tamil Nadu Town and Country Planning Act, 1971. The functions and powers of the CMDA have been well defined in Section 9(c) of the Act which reads as follows:

9-C - Functions and powers of the Metropolitan Development Authority . - (1) Subject to the provisions of this Act and the rules made thereunder, the functions of the Metropolitan Development Authority shall be:

(i) to carry out a survey of the Chennai Metropolitan Planning Area and prepare reports on the surveys so carried out;

(ii) to prepare a master plan or a detailed development plan or a new town development plan referred to, under Sub-section (2) of Section 17 or under Section 20 or under Section 18, as the case may be, for the Chennai Metropolitan Planning Area;

(iii) to prepare an existing land use map and such other maps as may be necessary for the purpose of preparing any development plan;

(iv) to cause to be carried out such works as are contemplated in any development plan;

(v) to designate the whole of the Chennai Metropolitan Planning Area or any part thereof within its jurisdiction as a new town and to perform the following functions, namely:

(a) to prepare a new town development plan for the area concerned; and

(b) to secure the laying out and development of the new town in accordance with the new town development plan;

(vi) to perform such other functions as may be entrusted to it by the Government.

(2) The Metropolitan Development Authority may, by order, entrust to any local authority or other authority as may be specified in such order, the work of execution of any development plan prepared by it.

(3) The Metropolitan Development Authority may, by order, authorise any local authority or other authority as may be specified in such order, to exercise any of the powers vested in it by or under this Act and may, in like manner, withdraw such authority; and the exercise of any power delegated in this behalf shall be subject to such restrictions and conditions as may be specified in such order.

44. This provision is to be read along with Section 36 and Section 40 of the Tamil Nadu Town and Country Planning Act, 1971. Section 36 deals with the power to acquire the land for a public purpose. As I have already dealt with in the earlier paragraphs of this order, such public purpose could be presumed, if the purpose is detailed in the development plan. Section 40 deals with the disposal of the land by new town development authority . It provides that a new town development authority may dispose of any land acquired by it to such person, in such manner, and subject to such terms and conditions as it considers expedient for securing the development of the new town in accordance with the new town development plan approved by the Government under this Act. Even such sale shall not be made for more than 99 years.

45. A close reading of the said provision would indicate that such sale can be made only in accordance with new town development plan that too only by a New Town Development Authority, and not by any other authority like the CMDA. The learned senior counsel Mr. R.Muthukumaraswamy would submit that under Section 9-B of the Tamil Nadu Town and Country Planning Act, 1971 the CMDA has got power to sell the property. In my considered opinion, it is only a general power and in any event, such sale should be for the purposes of its constitution. When a new town development authority has been empowered to sell the property in accordance with new development plan, there is no such analogous provision in the Act empowering the CMDA to sell the same, other than for it's constitution. In the opinion of the CMDA, if the land could not be used for the purpose for which it was acquired and handed over, very well, it can surrender the land to the

Government to avoid penalty under Section 16-B of the Act. Thus, the CMDA can not sell the land in question to the Gunny Bag Merchants.

46. In view of the foregoing discussions, both the grounds stated in the impugned order viz., (1) the lands have already been handed over to the CMDA and (2) that they are going to allot the same to the Gunny Bag Merchants, are not at all sustainable in law. Therefore, the impugned order is liable to be set aside.

47. Now, the next question is, as to whether the Government is bound to exercise its power under Section 16-B of the Act and to recover the same to the erstwhile land owners-the petitioners herein. As I have already concluded hereinbefore, since the lands have been held unutilised for about more than two decades, as held by the Division Bench of this Court in R. Shanmugam and Ors. v. The State of Tamil Nadu and Ors. 2006 (4) CTC 290, the Government is obliged to examine the request of the erstwhile land owners to issue an appropriate order forfeiting the land in favour of the Government.

48. After such an order of forfeiture is passed, it is for the Government to examine whether the land is required for any other public purpose. If it is not required so, then only it is for the Government to pass an order under Section 48-B of the Act to reconvey the said land to the erstwhile owners.

49. Recently, a Division Bench of this Court in Malarkodi and Ors. v. The Secretary to Government of Tamil Nadu, Adi Dravida and Tribal Welfare Department, Fort St. George, Chennai and Ors. 2008 (4) CTC 193, held thus:

21. A perusal of the aforesaid Section would show that the Government can act under the said Section even in a case where Government has taken possession of the land and the land is vested in the Government. But, the said Section prescribes some conditions precedent before the Government can transfer the land to the original owner and there are some conditions subsequent to that exercise also.

22. The conditions precedent are that the Government must be satisfied that the land vested in the Government under this Act is (a) not required for the purpose for

which it was acquired; or (b) not required for any other public purpose. The conditions subsequent is that the Government can transfer such land to the original owner who is (a) willing to repay the amount paid to him under the Act for such acquisition; and (b) this amount would include also the amount referred to in Sub-section (1-A) and (2) of Section 23 of the said Act, if any paid.....

33. The argument of the learned Government Pleader that State has inherent power to return the land to the original owners in spite of the provision of Section 48-B cannot be sustained for various reasons. Factually, such assertion is not correct inasmuch as in the common counter filed by the second respondent, the District Collector, Namakkal it has been averred that the acquired land can be reconveyed under Section 48-B of Land Acquisition Act (Tamil Nadu Amendment) Act, 1996. Assuming but not admitting that there is no such factual assertion even then there are various difficulties in accepting the aforesaid contentions. One of such difficulties, is a time honoured legal principle which found its most glorious enunciation in the words of Lord Jessel, Master of the Rolls in Taylor v. Taylor 1875 (1) Chancery Division 426. At page 431 of the report it is clearly stated 'when a statutory power is conferred.... and the mode of exercising it is pointed out, it means that no other mode is to be adopted'. The aforesaid principle was first applied in India by Lord Roche in Nazir Ahmad v. King Emperor AIR 1963 PC 253 at p.257. Since then this principle had been accepted in our jurisprudence and the Hon'ble Supreme Court had applied the same in innumerable cases, some of which are mentioned below:

(a) State of Uttar Pradesh v. Singhara Singh : AIR 1964 SC 358, p.361;

(b) Dhananjay Reddy v. State of Karnataka AIR 2001 SC 1512, pp. 1518 & 1519;

(c) A.K. Roy v. State of Punjab : AIR 1986 SC 2160;

(d) Mayurdhwaj Co-op. Group Housing Society Ltd. v. P.O. Delhi Co. : AIR 1998 SC 2401, p.2415; and

(e) Chandra Kishore Jha v. Mahabir Prasad : AIR 1999 SC 3558, p.3562.

34. Therefore, the State Government cannot circumvent the provision of Section 48-B by relying its inherent executive power. In fact, Mr. R.Krishnamurthy, learned Senior Counsel for the land owner, who supported the Government's stand has also advanced the argument as the Government Pleader by referring to Article 162 of the Constitution.

50. Applying the principles stated in the above two Division Bench Judgements in R. Shanmugam & Malarkodi Cases, I have to hold that in these writ petitions it is not possible to issue a positive direction to the Government to pass an order Under Section 16-B of the Act and then to reconvey the lands in question to the petitioners. As held in Malarkodi's case, it is for the Government to exercise its statutory power under Sections 16-B and 48-B of the Act and such powers should be exercised in the manner indicated therein.

51. In the result, the writ petitions are partly allowed in the following terms:

(i) The impugned order dated 23.10.2006 in Letter No. 22014/UD/3(1)2006-3 passed by the 1st respondent is set aside;

(ii) The Government is directed to examine the request of the petitioners as required under Section 16-B of the Act and to issue an order forfeiting the lands in question in favour of it as provided in Section 16-B of the Act.

(iii) If any such order is issued under Section 16-B of the Act forfeiting the lands in favour of the Government as a penalty, then the Government is further directed 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 under Section 48-B of the Act to the petitioners, provided they are prepared to fulfil the conditions stipulated in the said provision.

(iv) In any event, the Government shall pass appropriate final orders on the representations of the petitioners already made within a period of six months from the date of receipt of a copy of this Order.

Considering the peculiar circumstances of the cases, there will be no order as to costs.

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