

i.Ravichandran Vs. State

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Court : Chennai

Decided On : Jan-04-2013

Judge : V.Dhanapalan

Appellant : i.Ravichandran

Respondent : State

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

04. 01.2013 CORAM: THE HONOURABLE MR. JUSTICE V.DHANAPALAN
W.P.No.2592 o

1. I.Ravichandran @ Ravi Sam 2. Savithri Sam ... Petitioners vs.

1. State represented by The Principal Secretary to Government, Housing and Urban Development Department, Fort St. George, Chennai.

2. The Chairman and Managing Director, Tamil Nadu Housing Board, Nandhanam, Chenna

035.

3. The Special Tahsildar, (Land Acquisition), Housing Scheme Unit I, Coimbatore
18.

4. The Executive Engineer, Special Division (II), Tamil Nadu Housing Board, Kowli Brown Board, R.S.Puram, Coimbatore

002. ... Respondents Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified mandamus, calling for the records of the 1st respondent in Letter No.20438/LA3(2)/08 dated 15.10.2009 and quash the same and consequently direct the 1st respondent to exclude the lands in Survey Nos.46/2, 47/1, 48, 49, 50, 51, 52, 53, 73/1, 2, 3, 74/1, 2, 3, 76/1, 2, 3, 78, 79 and 89 totally measuring an extent of 19.04 acres situated in Sowripalayam Village, Coimbatore Taluk and District from acquisition and re-convey the same as has been done in respect of lands in Block II and III of the Uppilipalayam Neighbourhood Scheme. For Petitioners : Mr.R.Krishnamoorthy, Senior Counsel for Mr.S.Ganesh For Respondents : Mr.S.Gomathinayagam, Additional Advocate General for Ms.V.M.Velumani, for R1 & R3 Special Government Pleader Ms.S.Diwakar, for R2 & R4 O R D E R Challenging the proceedings of the 1st respondent vide Letter No.20438/LA3(2)/08 dated 15.10.2009, seeking to quash the same and for a consequential direction to the 1st respondent to exclude the lands in Survey Nos.46/2, 47/1, 48, 49, 50, 51, 52, 53, 73/1, 2, 3, 74/1, 2, 3, 76/1, 2, 3, 78, 79 and 89 totally measuring an extent of 19.04 acres situated in Sowripalayam Village, Coimbatore Taluk and District from acquisition and re-convey the same as has been done in respect of lands in Block II and III of the Uppilipalayam Neighbourhood Scheme, the petitioners have filed the present Writ Petition.

2. Facts of the case as put forth in the affidavit would run thus: (i) Petitioners are owners of lands in Survey Nos.46/2, 47/1, 48, 49, 50, 51, 52, 53, 73/1, 2, 3, 74/1, 2, 3, 76/1, 2, 3, 78, 79 and 89 totally measuring an extent of 19.04 acres situated in Sowripalayam Village, Coimbatore Taluk and District and the said lands are reserved for industrial expansion, as it is an industrial zone. The 2nd respondent proposed to form a neighbourhood scheme viz., Uppilipalayam Neighbourhood Scheme in 3 blocks. Block-I covering an extent of 43.19 acres comprised in Survey Nos.46/2, 47/1, 48, 49, 50, 51, 52, 53, 73/1, 2, 3, 74/1, 2, 3, 76/1, 2, 3, 78, 79 & 89, 45, 54, 55, 56, 57, 58, 63, 70, 71, 75, 80 in Block-II covering an extent of 46.99 acres in Survey Nos.59, 60, 61, 62, 64, 65, 66, 67, 68, 69, 208, 209, 210

and in Block-III covering an extent of 69.73 acres in Survey Nos.81, 82, 83, 84, 85, 86, 87, 92, 93, 94, 95, 96, 97, 98, 99, 100, 179, 180, 181, 182, 183, 195/2B, 196, 197, 202, 205 and 206. The petitioners' lands are covered under Block-I and all the said lands are within the vicinity of a maximum of one and a half kilometer from each other. The value of the lands is almost similar in all the three blocks and the lands are within the industrial zone and are not fit for housing purpose. (ii) During the year 1985, the respondents herein issued a notification under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter called as 'Act') to acquire the above said lands including that of the petitioners for the formation of Uppilipalayam Neighbourhood Scheme by issuing different notifications and a notification in G.O.Ms.No.1005 dated 27.09.1985 was issued in respect of Block-I covering the petitioners' land. The petitioners objected to the acquisition proceedings and filed their objections before the Special Tahsildar (Land Acquisition), Coimbatore. Subsequently, there was no further proceedings by the respondents in respect of their lands and as such, the petitioners were under the bonafide impression that their objections have been taken into consideration and that the acquisition proceedings have been dropped. Again, in the year 1988, the respondents issued another notification under Section 4(1) of the Act in G.O.Ms.No.196 dated 02.03.1988 proposing to acquire their lands for the very same purpose for which the earlier notification was published. For the second time, the petitioners filed objections before the 3rd respondent on 05.07.1988, stating that some of the lands covered under the notification have already been sold by the petitioners to various third parties between 29.01.1988 and 09.03.1988. The respondents herein without following proper procedures, mechanically proceeded to make a declaration under Section 6 of the Act, on 23.03.1989 followed by a notice, dated 13.02.1991 under Section 9(3) and 10 of the Act. Aggrieved by the said proceedings of the respondents herein, the petitioners preferred a Writ Petition before this Court in W.P.No.6453 of 1991. (iii) The said Writ Petition was allowed on 29.11.1991. Challenging the order passed in the Writ Petition, the 1st respondent preferred a Writ Appeal in W.A.No.393 of 1993 and the Division Bench of this Court allowed the Writ Appeal on 14.02.1996, however, with liberty to make a representation to the 1st respondent herein, in the light of the fact that the major portion of the area has been dropped from the acquisition in respect of the land in question. The

Division Bench further held that if any such representation is made, it is open to the State Government to consider the same, in accordance with law. (iv) Though the 2nd respondent proposed to form a Scheme called 'Upilipalayam Neighbourhood Scheme' covering 3 blocks as stated supra, it has however subsequently dropped the proposal in respect of entire Block-III covering an extent of 69.75 acres in Survey Nos.81, 82, 83, 84, 85, 86, 87, 92, 93, 94, 95, 96, 97, 98, 99, 100, 179, 180, 181, 182, 183, 195/2B, 196, 197, 202, 205 and 206 and major portion of the land in Block-II. The said decision of the 2nd respondent is evinced from the proceedings of the Commissioner of Land Administration, Chepauk, Chennai in his Letter not H4/56352/91-III, dated 01.11.1991, wherein, it has been categorically stated that the scheme would become unviable at the then existing exorbitant rate. Considering the 2nd respondent's inability to provide funds, the Commissioner of Land Administration, Chepauk, Chennai addressed the Government, viz., the 1st respondent, requesting to order for withdrawal of the proposed land acquisition proceedings. Though the said proceedings are in respect of Blocks-II and III, it makes no difference in respect of Block-I as well, since the comprehensive scheme cannot be completed when it has been decided to delete major portion of the land, viz. Blocks-II and III. (v) Again by a proceeding dated 19.03.1993 vide Letter in L.A.III-2/16836/92, the 2nd respondent informed that since the cost of the land was very high, the Board was unable to provide funds to pass the award within the crucial date and due to non-passing of the award within the crucial period, the entire land acquisition proposals got lapsed. Pursuant to the order made in W.A.No.393 of 1993, the petitioners made a representation before the 1st respondent on 18.11.1996 and on 03.12.1996, requesting them to consider their claim for dropping of acquisition proceedings taking note of the fact that the huge extent of lands were deleted or withdrawn from the acquisition proceedings. (vi) Despite the direction of the Division Bench of this Court to dispose of the petitioners' representation as early as in 1996, the 1st respondent has not disposed of the same. Aggrieved by the same, the petitioners preferred another Writ Petition in W.P.No.262 of 1998 seeking for a direction to the respondent to dispose of the representation. The said Writ Petition was ordered on 09.01.1998 directing the 1st respondent to dispose of the representation within a period of two months. Even thereafter, the 1st respondent failed to pass any

orders on their representation. The petitioners are also running a School in 4.83 acres of land covered under the above said acquisition proceedings for the benefit of the children of the workmen. As could be seen from the proceedings of the Executive Engineer of the Tamil Nadu Housing Board, dated 27.02.1997, the 2nd respondent had also dropped a portion of the land in Block-II measuring an extent of 26.40 acres, on the ground that a portion of the land is an approved layout and another portion is agricultural land. (vii) The 1st respondent without considering any of the above said facts and circumstances, passed an order in proceedings No.35416/LA3(2)/93-32 dated 18.04.2000 mechanically stating that the lands cannot be deleted as the same is required by the 2nd respondent for its comprehensive scheme. Except passing a single line order, the respondent has not given any valid reasons for rejecting their representation. The petitioners again challenged the said order of the 1st respondent before this Court in W.P.No.8512 of 2000 and by an order dated 19.07.2000, this Court passed the following order: "In view of the above said facts, and since the impugned proceedings have been passed without having in mind the judgment of the Division Bench, the same are set aside and the matter is remitted to the 1st respondent to pass orders afresh after taking into consideration the direction given by the Division Bench in W.A.No.393 of 1993 dated 14.02.1996, as the Government has to consider the issue only on the basis of the direction given by the Division Bench of this Court. In view of the fact that the petitioners are running a school in the lands in question, the respondents are directed not to dispossess or put up any construction pending disposal of the matter before the 1st respondent with the above observation, this Writ petition is allowed accordingly. " (viii) After the disposal of the above Writ Petition, the 4th respondent, through a letter dated 02.01.2003, addressed to the Hon'ble Minister for Housing and Urban Development, Government of Tamil Nadu, informed that due to high land cost and that the land is to be used for educational purpose by the petitioners, the request for exclusion of the said lands can be done by the Government under Section 48-B of the Act and that returning of the said lands to the petitioner may not affect the present policy of that scheme. Further, in the letter written by the 2nd respondent dated 05.08.2003 to the 1st respondent, it has been categorically admitted that the 2nd respondent was not taking new house constructions as per the policy taken by the Government in view of the

unsold stock on hand. It was also admitted therein that the cost of the land was very high. (ix) As the 1st respondent has not passed an order afresh as directed by this Court in W.P.No.8512 of 2000, the petitioners were again forced to prefer another Writ Petition in W.P.No.22200 of 2004 seeking for a mandamus directing the respondents to re-convey the lands belonging to them under Section 48-B of the Act or to drop the acquisition proceedings initiated by the respondents and this Court, by an order dated 11.09.2004 directed the petitioners to submit a detailed representation to the 1st respondent herein and consequently directed the 1st respondent to pass orders on such representation by taking into account the recommendation made by the authorities within a period of six weeks from the date of receipt of the representation. (x) Thereafter, the petitioners made a representation dated 01.10.2004 by enclosing all relevant orders and proceedings to exclude the land from acquisition and to re-convey the same to them. Based on the said representation, remarks were called for from the 2nd respondent by the 1st respondent herein. By the proceedings dated 28.10.2004, the 2nd respondent sent a detailed report, wherein, it has been categorically recommended for dropping of the acquisition proceedings and for re-conveyance of their lands. Even after such recommendations made by the 2nd respondent, the 1st respondent was reluctant to pass any order, whatsoever, till the petitioners moved a Contempt Application in Contempt Petition No.269 of 2005. (xi) This Court, after taking into consideration all the above facts, passed an interim direction in Contempt Petition No.269 of 2005 on 29.07.2005 directing the 1st respondent to pass final orders in the light of the recommendation of the 2nd respondent herein within a period of three weeks. Pursuant to the said direction, the 1st respondent passed orders on 17.08.2005 and 05.10.2005, which are impugned in this writ petition by rejecting their claim of exclusion and re-conveyance on the only ground that the 2nd respondent, at no point of time, has recommended for dropping of acquisition proceedings and thereby for re-conveyance. Aggrieved by the said orders of the 1st respondent, the petitioners preferred a Writ Petition in W.P.No.5316 of 2006 and for a consequential direction, directing the 1st respondent to exclude the lands in dispute. (xii) By an order dated 28.04.2008, this Court was pleased to allow W.P.No.5316 of 2006, quashing the orders of the 1st respondent and directed the 1st respondent to exclude the lands in question from land acquisition. Against the

same, the respondents 1 and 2 filed W.P.No.378 of 2009 and 796 of 2008, respectively. By a judgment dated 16.07.2009, the Division Bench was pleased to set aside the order passed in W.P.No.5316 of 2006 and disposed of the Writ Appeals with the following directions: "14. The Government is entitled to invoke Section 16-B of the Tamil Nadu Amendment Act and on satisfying itself, it can forfeit the lands in question as penalty from the Housing Board. In the event the Government exercises the above power and consequently the lands vests in the Government, the application filed by the respondents for reconveyance under Section 48B of the Act shall be considered. Such consideration shall be done in accordance with the judgment of this Court made in R.Shanmugam and others vs. The State of Tamil Nadu, rep. by its Secretary, Housing & Urban Development Department, Chennai and others (2006 (4) CTC

290) which was rendered by following the judgment of the Apex Court in State of Kerala vs. M.Bhaskaran Pillai (1997 (5) SCC 432). Such exercise shall be completed by the Government within a period of three months from today. Consequently, connected M.Ps. Are closed. No costs." (xiii) Pursuant to the direction passed in the Writ Appeal, the 1st respondent herein sent a communication dated 15.10.2009 rejecting the petitioners' request for re-conveyance of lands in question. The 1st respondent herein has rejected the petitioners' request for re-conveyance without considering the recommendations of the requisitioning body for dropping the acquisition proceedings.

3. The 1st respondent has filed counter affidavit, wherein, it is stated as follows:

3. 1. The Tamil Nadu Housing Board has proposed to acquire the lands for the implementation of Housing Scheme in S.F.No.47/2, 45, 46/1, 46/2, 47/1, 48, 49, 50 to 58, 63, 70, 71, 73, 80 and 89 of Sowripalayam Village, Coimbatore Taluk to an extent of 43.19 acres under Uppilipalayam Neighbourhood Scheme. 3.2. The proposal for Notification under Section 4(1) of the Act was approved by the Government in G.O.Ms.No.196, Housing and Urban Development Department, dated 02.03.1988 and published in the Tamil Nadu Government Gazette, not II-A Part II, Section 2, Supplement at Page Nos.4 and 5, dated 23.03.1988. The Notification was published in two Tamil Dailies, i.e. 'Dinathanthi' and 'Dinamani' on

26.03.1988 and the locality publication was made in the Village on 26.03.1988 by beat of tom-tom. 3.3. The enquiry under Section 5-A of the Act was conducted by the Land Acquisition Officer on 26.07.1988 and 28.07.1988 after publication and service of necessary notices to the land owner as per the Act. During the course of enquiry, almost all the land owners raised their objections for the acquisition of the lands. All the objections received during the enquiry under Section 5-A were communicated to the requisitioning body and the remarks obtained from the requisitioning body were communicated to the land owners with instruction to file further objection, if any. After considering the objections of land owners and the remarks of the requisitioning body, proceedings under Section 5-A(2) of the Act were issued on 01.11.1988 by overruling the objections. 3.4. The Draft Declaration under Section 6 of the Act was approved in G.O.Ms.No.287, Housing and Urban Development Department, dated 23.03.1989 and published in the Tamil Nadu Government Gazette, supplement to Part II Section on 23.03.1989. The Declaration was also published in two Tamil Dailies 'Murasoli' and 'Makkal Kural' on 25.03.1989 and the locality publication was also made on the same day. 3.5. The Draft Declaration under Section 7 of the Act was approved in Government Letter No.28388/S2/89, Housing and Urban Development Department, dated 02.06.1989. Notices under Section 9(3) and 10 of the Act have been published and served to the land owners and interested persons. An enquiry under Section 11 of the Act was conducted by the Land Acquisition Officer on 11.03.1991 and the Award has been pronounced vide Award No.1/91 dated 22.03.1991 for the entire extent of 43.19 acres including the petitioners' land, an extent of 15.42 acres were taken over on 20.11.1991 and the remaining land of 3.62 acres were not taken over due to the Court proceedings. 3.6. With regard to the averments made in paragraph 2 of the affidavit, it is stated that the acquired lands in S.F.No.45, etc. of Sowripalayam Village come under Industrial Zone. In order to utilize the lands for residential purpose, necessary changes of land use conversion has to be obtained from the Director of Town and Country Planning. 3.7. With regard to the averments made in paragraph 3 of the affidavit, it is submitted that an extent of 43.19 acres in S.F.No.45 etc. Covered in Block not I, an extent of 46.99 acres in S.F.No.59/1 etc., covered in Block not II and an extent of 69.75 acres in S.F.No.41/1 etc., covered in Block not III, are proposed for acquisition under

Uppillipalayam Neighbourhood Scheme. The petitioner's lands are covered in Block not I. Even if the lands come under Industrial Zone, conversion can be obtained from the Director of Town and Country Planning to utilize the said land for residential purpose. Since these lands are situated in the prime location of the Coimbatore City and there is a good demand for Housing Scheme, these lands are essentially needed for Housing Scheme. Hence, the request of the petitioner was rejected by the Government vide letter dated 18.04.2000. 3.8. With regard to the averments made in paragraphs 4 and 5 of the affidavit, it is submitted that the allegations in paragraph 4 and 5 of the affidavit are denied. The Draft Notification under Section 4(1) of the Act, for the petitioners' lands was approved by the Government in G.O.Ms.No.196, Housing and Urban Development Department, dated 02.03.1988. The enquiry under Section 5-A of the Act was conducted by the Land Acquisition Officer on 26.07.1988, 27.07.1988 and 28.07.1988 after observing all the procedures under that Act. All the objections received during the enquiry were communicated to the requisitioning body and remarks obtained from the requisitioning body was communicated to the land owners. After considering the objections of the land owners and the remarks of the requisitioning body, the procedures under Section 5-A(2) of the Act were issued on 01.11.1988, by overruling the objections. The Draft Declaration under Section 6 of the Act was approved in G.O.Ms.No.287, Housing and Urban Development Department, dated 23.03.1989. Hence, all the rules and regulations are promptly followed as per the Act. The petitioner filed W.P.No.6453 of 1991 challenging the Land Acquisition proceedings and this Court, on 27.11.1991, quashed the Land Acquisition proceedings. Against the said judgment, Writ Appeal No.393 of 1993 was filed and the same was allowed on 14.02.1996 with a direction to the Government to consider the petitioners' representation for dropping the petitioners' lands. The petitioners' request was rejected by the Government, as the lands in question are still required for the purpose for which they are acquired and are proposed to be utilised for the purpose for which they were acquired. 3.9. With regard to the averments made in paragraph 6 of the affidavit, it is submitted that the lands in S.F.No.41/1 etc. Covered in Block III, having an extent of 69.75 acres and the land in S.F.No.59/1 etc. Covered in Block II having an extent of 46.99 acres are proposed for acquisition under Uppilipalayam Neighbourhood Scheme. In the

proposed acquisition of the land, a few lands in S.F.No.64 etc., measuring 12.03 acres in Block-II was excluded by the Government vide letter No.678237/S-2/87-2 dated 21.03.1988 and an extent of 69.75 acres of land in S.F.No.41/1 in Block not III, the Land Acquisition proposal has been withdrawn due to the exorbitant land cost fixed by the Additional Collector, Coimbatore on 01.11.1991. The above said order has been passed by the Government in accordance with law and the Act. Hence, the contention of the petitioner that the major portion of the land acquisition is dropped is not correct. Now, there is a good demand for Housing Scheme and the Tamil Nadu Housing Board has good financial condition to take up new schemes for the welfare of the public. 3.10. To the averments made in paragraph 7 of the affidavit, it is submitted that the contention of the petitioners is not correct. Now, the Tamil Nadu Housing Board has good financial condition to take up new Housing Scheme proposals. The land are already taken possession by the Tamil Nadu Housing Board and the lands are situated in the prime location of the Coimbatore city and there is a good demand for Housing Scheme. The said lands are essentially needed for implementing Housing scheme for the welfare of the public. 3.11. With regard to the averments made in paragraph 8 of the affidavit, it is submitted that Writ Appeal No.393 of 1993 was filed by the Land Acquisition Officer against the order of this Court, dated 27.11.1991 in Writ Petition No.6453 of 1991 and the same was allowed on 14.02.1996 with a direction to consider the representation of the petitioners for dropping of acquisition proceedings in respect of the petitioners' lands. The Government has rejected the request of the petitioners vide letter dated 18.04.2000 in accordance with law and natural justice. 3.12. With regard to the averments made in paragraph 9 of the affidavit, it is submitted that the petitioners have filed another Writ Petition in W.P.No.262 of 1998 by directing the respondents to dispose of the petitioners' representation. The contention of the petitioners that they are running a School in the lands proposed for acquisition is not correct. Since the School is running in S.F.No.72 of Sowripalayam Village, the same was not included in the Land acquisition proposal. Further a few lands to an extent of 12.03 acres in Block I and an extent of 69.75 acres in Block III are excluded and withdrawn from the Land Acquisition proceedings by the Government in accordance with law. 3.13. With regard to the averments made in paragraph 10 of the affidavit, it is submitted that the contention

of the petitioners in paragraph 10 is not correct. There was a good demand for Housing Scheme and Tamil Nadu Housing Board, having good financial condition to take up new housing schemes and the lands are essentially needed for the comprehensive Housing Scheme and hence, the request of the petitioners was rejected by the Government vide letter dated 18.04.2000. Again, the petitioners filed W.P.No.8512 of 2000 challenging the above order and this Court, by an order dated 19.07.2000 allowed the Writ Petition. 3.14. With regard to the averments made in paragraph 11 of the affidavit, it is submitted that the Tamil Nadu Housing Board was recommending for withdrawal as no scheme has been taken up at that time, as number of unsold units were available with Tamil Nadu Housing Board as per the policy taken by the Government. The same is not the case for the past few years due to good demand for housing. 3.15. With regard to the averments made in paragraph 12 to 14 of the affidavit, it is submitted that the petitioners again filed another Writ Petition in W.P.No.22200 of 2004 before this Court seeking a direction to reconvey their land under Section 48-B of the Act and this Court, by a judgment dated 11.09.2004, directed the petitioners to submit a fresh representation to the Government. At that time, no scheme was taken up by the Tamil Nadu Housing Board as per the Government policy. Hence, the Tamil Nadu Housing Board has recommended by stating the above reason only. Further, it is submitted that the petitioners moved Contempt Proceedings in Contempt Petition No.269/2005 and this Court passed an interim direction on 29.07.2005 directing the respondent to pass an order in the light of the recommendation of the second respondent. But, the Government has not considered the Tamil Nadu Housing Board's report and rejected the petitioners' request to reconvey the petitioners' land under Section 48-B of the Act. 3.16. With regard to the averments made in paragraphs 15 and 16 of the affidavit, it is submitted that the petitioners again filed another W.P.No.5316 of 2006 in this Court, to reconvey the petitioners' land. This Court, in its judgment dated 28.04.2008, ordered to exclude the petitioners' land from acquisition or reconvey the land to the petitioners. Aggrieved by the said order, the Tamil Nadu Housing Board, preferred a Writ Appeal against the above said order and the same was disposed by this Court on 16.07.2009 with a direction to consider the petitioners' application to reconvey the land under Section 48-B of the Act. After careful consideration of the petitioners' application, the

Government rejected the petitioners' request vide Government letter dated 15.10.2009. 3.17. With regard to the averments made in paragraph 17 of the affidavit, it is submitted that the Government has rejected the petitioners' request only after careful consideration of the petitioners' application. Moreover, the petitioners' contention is not correct that they are running a School in the part of the acquired land. Since the School was running in S.F.No.72 of Sowripalayam Village and the same was not included in the Land Acquisition proposal. 3.18. With regard to the averments made in grounds a & b of the affidavit, it is submitted that the Government has rejected the petitioners' request to reconvey the petitioners' land after careful consideration of the petitioners' application. Hence, these grounds deserve no consideration. With regard to the averments made in ground c of the affidavit, it is submitted that the contention of the petitioners is not correct. A few lands in Block not II were executed by the Government and the land acquisition proceedings were withdrawn for the lands in Block III as per the order passed by the Government in accordance with law. 3.19. With regard to the averments made in ground "d to i" of the affidavit, it is submitted that the Government has taken a decision and passed orders only in accordance with law and on the basis of court direction. Further, it is submitted that the contention that the major portion of the land is dropped from acquisition is not correct. An extent of 69.75 acres covered in Block III were withdrawn from the Land Acquisition proposal due to the abnormal land cost fixed by the Additional Collector, Coimbatore. Further, it is submitted that no lands have been reconveyed in the Uppilpalayam Neighbourhood Scheme. An award has been pronounced for the 19.04 acres of the petitioners' land vide Award No.1/91 dated 22.03.1991. Out of 19.04 acres of petitioners' land, 15.42 acres were taken over possession on 20.11.1991, only 3.62 acres were left out. It is submitted state that the school was running in S.F.No.72 and the same was not included in the Land Acquisition proposal. Hence, these grounds deserve no consideration. 3.20. With regard to the averments made in paragraphs 18 and 19 of the affidavit, it is submitted that the petitioners' land in S.F.No.47/2, 45, etc. Measuring 19.04 acres were acquired under the Act. Out of 19.04 acres, an extent of 15.42 acres were already taken possession by the Tamil Nadu Housing Board on 20.11.1981 and the layout plan got approved by the Director Town and Country Planning vide No.325/97 for

construction of 209 houses. The petitioners filed several Writ Petitions in this Court, against the Land Acquisition proceedings to stop the Housing activities in the above said land. This Hon'ble Court dismissed all those Writ Petitions on merit. The delay caused for not taking up the Housing Scheme is due to the reasons stated supra. Now, the Tamil Nadu Housing Board has good financial condition to take up new schemes. The said lands are situated in the prime location of the Coimbatore City. Hence, there is a good demand for Housing Scheme. Hence, the lands are essentially needed for implementing housing scheme for the welfare of the public.

4. The 3rd respondent has filed counter affidavit in the same line as that of the 1st respondent.

5. The petitioners have filed Rejoinder affidavit, wherein, they have stated as follows:

5. 1. In paragraph 6 of the counter affidavit filed by the 1st respondent, it is stated that an extent of 15.42 acres of land was taken over on 20.11.1991 and the remaining land of 3.62 acres was not taken over due to court proceedings. In paragraph 22 of the said counter affidavit, the 1st respondent has stated that an extent of 15.42 acres was already taken possession by the Tamil Nadu Housing Board on 20.11.1991. 5.2. The respondents admitted the factum of existence of order of stay of the acquisition proceedings in the counter affidavit filed in W.P.No.5316 of 2006 and also in the present counter affidavit filed by the 1st respondent, particularly in para 6 of the counter affidavit. The petitioners obtained certain information relating to taking of possession of the lands from the third respondent under Right to Information Act, 2005. 5.3. When the patta, chitta, adangal stand in the name of the petitioners, the alleged planning permission said to have been obtained by the Tamil Nadu Housing Board from the competent authorities is totally unsustainable, as the same is on the basis of the false information given by the authorities of the respondents 2 to 4 to the planning authorities. 5.4. As the first respondent neither made any statement with regard to the date of taking possession of lands from the petitioners by the Land Acquisition Officer nor produced any records to substantiate the same, the statement made by

the first respondent in its counter affidavit that the lands were already taken possession by the Tamil Nadu Housing Board on 20.11.1991, is solely untenable as the same is not a valid one in the eye of law.

6. Mr.R.Krishnamoorthy, learned Senior Counsel appearing for the petitioners, would strenuously contend that when the Writ Petition is for reconveyance of the lands by the Government as has been done in respect of Block Nos.II and III, the 1st respondent without application of mind and without exercising their jurisdiction guided by the legal principles and orders of this court, has passed the impugned order. He would further contend that the 1st respondent failed to take into account the judgment of the Division Bench of this court in W.A.No.393 of 1993 to consider the request of the petitioners for exclusion of the lands, after considering the fact that more than two-third of the lands covered under the acquisition were dropped. He would point out that at the time of passing the above judgment, Section 16-B and 48-B of the Act were not inserted in the Act. In the year 1997, by way of an amendment, the above said Sections were brought in. 6a. It is the contention of the learned Senior Counsel that the possession of the lands were not at all taken over by the Land Acquisition Officer at any point of time as envisaged under Section 16 of the Act. Till date, the vesting of the lands with the Government did not happen, since the Revenue Records, viz., Patta, Adangal and Chitta stand in the name of the petitioners. He also pointed out from the material documents that the Scheme for which the lands were acquired was not taken up till date. Therefore, the petitioners are entitled for reconveyance of the lands. 6b. To substantiate his case, learned Senior Counsel has relied on the following decisions: (i) 2006 (4) CTC 29.(R.Shanmugam and others vs. The State of Tamil Nadu and others) "35. 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-sections (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 under Section 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 under Section 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.

36. In view of the above discussions, we hold that the Government in exercise of the power under Section 16-B of the Act can forfeit the land from the Tamil Nadu Housing Board as penalty and on such forfeiture, the land shall vest in the Government in Revenue Department free from all encumbrances. Once such vesting takes place, the Government shall consider the request, if any, received from the land owners expressing their willingness for re-conveyance and may accept or reject. Such exercise of power is discretionary and the owners have no right to seek for automatic re-conveyance of land. The Tamil Nadu Housing Board has no power under Section 72 of the Act to dispose of unutilized land and such power shall only vest with the Government under Section 16-B of the Land Acquisition Act.

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 utilize 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." (ii) (2008) 4 SCC 14.(Bhikhubhai Vithlabhai Patel and others vs. State of Gujarat and another) "22. Any opinion of the Government to be formed is not subject to objective test. The language leaves no room for the relevance of a judicial examination as to the sufficiency of the grounds on which the Government acted in forming its opinion. But there must be material based on which alone the State Government could form its opinion that it has become necessary to make substantial modification in the draft development plan. (iii) (2010) 3 SCC 62.(Hari Ram and another vs. State of Haryana and others) "13. Section 48 of the Act empowers the Government to withdraw from the acquisition of the land provided possession has not been taken. The said power is given to the Government by a statutory provision and is not restricted by any condition except that such power must be exercised before possession is taken. The statutory provision contained in Section 48 does not provide for any particular procedure for withdrawal from acquisition.

39. As noticed above, prior to 26-10-2007 the State Government did not have uniform policy concerning withdrawal from acquisition. As regards the guidelines provided in the Letter dated 26-6-1991, this Court has already held that classification on the basis of nature of construction cannot be validly made and

such policy is not based on intelligible differentia and a rational basis. What appears from the available material is that for release of the lands under the subject acquisition, no policy has been adhered to. This leads to an irresistible conclusion that no firm policy with regard to release of land from acquisition existed.

40. It is true that any action or order contrary to law does not confer any right upon any person for similar treatment. It is equally true that a landowner whose land has been acquired for public purpose by following the prescribed procedure cannot claim as a matter of right for release of his/her land from acquisition but where the State Government exercises its power under Section 48 of the Act for withdrawal from acquisition in respect of a particular land, the landowners who are similarly situated have a right of similar treatment by the State Government. Equality of citizens' rights is one of the fundamental pillars on which the edifice of the rule of law rests. All actions of the State have to be fair and for legitimate reasons. (iv) (2010) 5 MLJ 54.(SC) (Bondu Ramaswamy and others vs. Bangalore Development Authority and others) "69. The BDA does not seriously dispute the fact that there were some amount of arbitrariness and discrimination in the matter of inclusions and exclusions. Apart from that, we find that even in this Court the BDA has not come up with true and correct position. As noticed above the break up of deletions and the reasons for such deletions have not been disclosed. The extent of deletion without explanation has jumped from 589.12 acres to 1089 acres 12 guntas. The BDA has not chosen to explain the exact extent of the government land involved.

72. The acquisition was for planned development of the city and to avoid haphazard growth. But when the layout plan is examined with reference to the preliminary notification and final declaration, several startling facts emerge. We may first refer to the pick and choose method adopted with reference to Kempapura and Srirampur Villages, to which the Division Bench made specific reference. (v) 2011 (5) CTC 50.(Tamil Nadu Housing Board vs. Uma Maheswari Ramasamy) "18. It is, therefore, evidently clear that in number of cases the Government on the basis of the recommendations of the Expert Committee accepted the requests of the land-owners and took a decision to re-convey their

lands. But, at the same time, in respect of some of the representations the Government took the decision otherwise and rejected the request of reconveyance of the land. Such action of the respondents prima facie appears to be arbitrary, capricious, discriminatory and violative of Article 14 of the Constitution of India.

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. " (vi) (2012) 1 SCC 79.(Raghubir Singh Sehrawat vs. State of Haryana and others) "21. Since the appellant has been non-suited by the High Court only on the ground that possession of the acquired land had been taken by the officers concerned and the same will be deemed to have vested in the State Government free from all encumbrances, we think that it will be appropriate to first consider this facet of his challenge to the impugned orders. In the writ petition filed by him, the appellant categorically averred that physical possession of the acquired land was with him and he has been cultivating the same. This assertion finds support from the entries contained in girdawari/record of cultivation, Book No. 1, Village Jatheri, Tehsil and District Sonapat (years 2001 to 2010). A reading of these entries shows that during those years crops of wheat, paddy and chari were grown by the appellant and at the relevant time i.e. the date on which possession of the acquired land is said to have been taken and delivered to HSIIDC, paddy crop was standing on 5 kanals 2 marlas of land.

22. The respondents have not questioned the genuineness and correctness of the entries contained in the girdawaris. Therefore, there is no reason to disbelieve or discard the same. That apart, it is neither the pleaded case of the respondents nor any evidence has been produced before this Court to show that the appellant had unauthorisedly taken possession of the acquired land after 28-11-2008. It is also not the pleaded case of the respondents that the appellant had been given notice that possession of the acquired land would be taken on 28-11-2008 and he should remain present at the site. Therefore, rojnamcha vakyati prepared by Sadar

Kanungo and three patwaris showing delivery of possession to Shri Yogesh Mohan Mehra, Senior Manager (IA), HSIIDC, Rai, which is a self-serving document, cannot be made the basis for recording a finding that possession of the acquired land had been taken by the Revenue Authorities concerned.

23. The respondents have not produced any other evidence to show that actual possession of the land, on which crop was standing, had been taken after giving notice to the appellant or that he was present at the site when possession of the acquired land was delivered to the Senior Manager of HSIIDC. Indeed, it is not even the case of the respondents that any independent witness was present at the time of taking possession of the acquired land.

24. The Land Acquisition Collector and his subordinates may claim credit of having acted swiftly inasmuch as immediately after the pronouncement of the award, possession of the acquired land of Village Jatheri is said to have been taken from the landowners and handed over to the officer of HSIIDC but keeping in view the fact that crop was standing on the land, the exercise undertaken by the respondents showing delivery of possession cannot but be treated as farce and inconsequential. We have no doubt that if the High Court had summoned the relevant records and scrutinised the same, it would not have summarily dismissed the writ petition on the premise that possession of the acquired land had been taken and the same vested in the State Government.

29. In view of the above discussion, we hold that the record prepared by the Revenue Authorities showing delivery of possession of the acquired land to HSIIDC has no legal sanctity and the High Court committed serious error by dismissing the writ petition on the specious ground that possession of the acquired land had been taken and the same vested in the State Government in terms of Section 16." 7. Mr.S.Gomathinayagam, learned Additional Advocate General, would submit that the notification under Section 4(1) of the Act was made on 02.03.1988; objection was overruled under Section 5(A)(ii) of the Act and thereafter, a Declaration under Section 6 of the Act was made on 23.03.1989 and after following the entire procedures contemplated under the Act, the award has been passed in Award No.1/1991 on 22.03.1991 and the compensation amount

has been deposited to the competent court and possession was taken over in respect of 15.42 acres on 20.11.1991 and as regards 3.62 acres, possession was not taken over due to court proceedings. 7a. It is his contention that in order to utilise the land for residential purpose, necessary changes have to be obtained from the Town and Country Planning Department, since these lands are situated in the prime location of Coimbatore City and there is a good demand for housing scheme for construction of 209 houses and layout was also approved vide DTCP No.325 of 1997. In support of his case, learned Additional Advocate General has relied on the following decisions : (i) (1997) 11 SCC 25.(S.P.Subramanya Shetty and others vs. Karnataka State Road Transport Corporation) "4. ... The Court cannot compel the Government to withdraw the notification under Section 4(1) of the Act. It is for the Government to consider the same on merits keeping in mind subservience of public interest. In view of the fact that notification was upheld by this Court and has become final, the Government cannot retract from the steps down. " (ii) (1997) 5 SCC 43.(State of Kerala and others vs. M.Bhaskaran Pillai and another) "4. In view of the admitted position that the land in question was acquired under the Land Acquisition Act, 1894 by operation of Section 16 of the Land Acquisition Act, it stood vested in the State free from all encumbrances. 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." (iii) 2006 (4) CTC 29.(R.Shanmugam and others vs. The State of Tamil Nadu and others) "18. Insofar as the lands acquired for public purpose for being utilised by the State

Government, there is no difficulty in holding that in the event, such lands are not utilized for the purpose for which it was acquired, the Government may utilize the same for other public purpose. In the event the Government decides not to utilize the land for any other public purpose, it may, in exercise of powers under Section 48-B, re-convey the land to the erstwhile owners or may sell the land in public auction. Can it be said that the same principle would apply to TNHB as well for disposal of unutilised land by itself in exercise of power under Section 72 of the TNHB Act. In our opinion, TNHB has no such power. " (iv) (2007) 9 SCC 25.(T.N.Housing Board vs. Keeravani Ammal and others) "13. It is clearly pleaded by the State and the Tamil Nadu Housing Board that the scheme had not been suspended or abandoned and that the lands acquired are very much needed for the implementation of the scheme and the steps in that regard have already been taken. In the light of this position, it is not open to the Court to assume that the project has been abandoned merely because another piece of land in the adjacent village had been released from acquisition in the light of orders of the Court. It could not be assumed that the whole of the project had been abandoned or has become unworkable. It depends upon the purpose for which the land is acquired. As we see it, we find no impediment in the lands in question being utilised for the purpose of putting up a multi-storied building containing small flats, intended as the public purpose when the acquisition was notified. Therefore, the High Court clearly erred in proceeding as if the scheme stood abandoned. This was an unwarranted assumption on the part of the Court, which has no foundation in the pleadings and the materials produced in the case. The Court should have at least insisted on production of materials to substantiate a claim of abandonment.

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

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. ..." (v) (2010) 2 SCC 78.(Tamil Nadu Housing Board vs. L.Chandrasekaran (dead) by Lrs. and others) "29. Before concluding, we may notice the judgment of this Court in T.N.Housing Board vs. Keeravani Ammal. The question considered in that case was whether the Division Bench of the High Court could direct release of the acquired land which had been transferred to the appellant Board. While setting aside the impugned order, this Court observed: "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 vs. M.Bhaskaran Pillai, in a similar situation, this Court observed: "4. ... 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. ..." 8. Ms.S.Diwakar, learned counsel appearing for respondents 2 and 4/Tamil Nadu Housing Board contended on the similar line as that of the learned Additional Advocate General and pointed out the importance of the Housing project and that possession of the land was taken over and handed over to the Tamil Nadu Housing Board and construction has commenced.

9. I have heard the learned Senior Counsel appearing for the petitioners, the learned Additional Advocate General appearing for respondents 1 and 3 and the learned counsel appearing for respondents 2 and 4/Tamil Nadu Housing Board,

given thoughtful consideration to their submissions and perused the entire records.

10. A panoramic view of the entire case would reveal that after several rounds of litigation and on final disposal of Writ Appeals in W.A.Nos.796 of 2008 and 378 of 2009 by a Division Bench of this Court on 16.07.2009, the Government has rejected the request of the petitioners for reconveyance of the lands in the impugned proceedings and the impugned proceedings in Letter No.20438/L.A.3(2)/08, dated 15.10.2009 has been passed. The Division Bench held that the Government is entitled to invoke Section 16B of the Tamil Nadu Amendment Act and on satisfying itself it can forfeit the lands in question as penalty from the Housing Board and in the event the Government exercises the above power and consequently the lands vests in the Government, the application filed by the respondents for reconveyance under Section 48B of the Act shall be considered. The Division Bench further held that consideration shall be done in accordance with the judgment of this Court made in R.Shanmugam and others vs. The State of Tamil Nadu, rep. by its Secretary, Housing & Urban Development Department, Chennai and others (2006 (4) CTC

290) which was rendered by following the judgment of the Apex Court in State of Kerala vs. M.Bhaskaran Pillai (1997 (5) SCC

432) and such exercise shall be completed by the Government within a period of three months from then. Pursuant to the said direction of this court, the Government has passed the impugned order.

11. From the facts, it is revealed that the Tamil Nadu Housing Board (in short 'Housing Board') proposed to acquire land for implementation of the Housing Scheme in Uppilipalayam Neighbourhood Scheme, Sowripalayam Village in Coimbatore to an extent of 43.19 acres. The proposal for notification was approved by the Government under Section 4(1) of the Act in G.O.Ms.196, Housing and Urban Development Department, dated 02.03.1988 and published in the Tamil Nadu Government Gazette. Thereafter, the land owners have been asked to submit their objections and on resisting the same, the competent authority directed enquiry under Section 5-A of the Act on 26.07.1988, 27.07.1988 and 28.07.1988, after publication of necessary notice to the land owner as per the

Act.

12. It is seen that during the course of enquiry, almost all the landowners raised their objections for acquisition of the land and all the objections received during the enquiry were communicated to the requisitioning body and the remarks obtained from the requisitioning body were communicated to the land owners with instruction to file further objection, if any. After considering the objections of the land owners and the remarks of the requisitioning body, proceedings under Section 5-A(2) of the Act were issued on 01.11.1988 by overruling the objections. Thereafter, Declaration under Section 6 of the Act was approved in G.O.Ms.No.287, Housing and Urban Development Department, dated 23.03.1989. Further, Declaration under Section 7 of the Act was approved in Government Letter No.28388/S2/89, Housing and Urban Development Department, dated 02.06.1989. Then notices under Section 9(3) and 10 of the Act have been published and served to the land owners and interested persons. Thereafter, an award enquiry under Section 11 of the Act was conducted on 11.03.1991 and the award was passed in Award No.1/91 dated 22.03.1991 for the entire extent of 43.19 acres including the petitioners' land. An extent of 15.42 acres were taken over on 20.01.1991 and the remaining land of 3.62 acres were not taken over due to the Court proceedings.

13. The Award amount of Rs.47,55,959/- was deposited in Sub-Court, Coimbatore in respect of the petitioners' land. Out of 43.19 acres, the possession of 27.62 acres of land including the petitioners' land of 15.42 acres were taken over from the Land Acquisition Officer by the Board on 20.11.1991 and the layout for implementing the Housing scheme was approved by the DTCP vide LP/DTCP No.325/97, dated 30.05.1997. The balance of 3.62 acres of petitioners' land have to be taken over under Section 47 of the Act. In the land for which possession was taken over, the Board has proposed to implement Housing Scheme in an extent of 15.42 acres and the proposal for the same at an estimated cost of Rs.747.05 lakhs was approved by the Board vide Board's Resolution No.4.10 dated 19.08.1997 with the financial assistance from HUDCO. It is also seen that tenders for construction of 209 houses were received on 30.09.1997 and 01.10.1997 and the same were approved by the tender committee. In view of the continued litigations,

the Housing Board was not in a position to take up the Scheme immediately for the land in question.

14. In the light of the above factual matrix, it is pertinent to look into various proceedings involved in this matter.

15. As early as in 1991, a Writ Petition was filed by the petitioners before this Court in W.P.No.6453 of 1991 and the following order was passed: "The petitioners are the owners of lands of about an extent of 18-90 acres comprised in various Survey Nos specified in paragraph 2 of the affidavit filed in support of the above writ petition and situate in Sowripalayam Village, Coimbatore Taluk. The Government of Tamil Nadu initiated acquisition proceedings under the provisions of the Land Acquisition Act, hereinafter referred to as the Act, to acquire the lands for formation of Upplipalayam Neighbourhood ..., Phase IV and also issued a Notification under Section 4(1) of the Act in G.O.Ms.No.196, Housing and Urban Development, dated 02.03.1988, wherein the public purpose is specified as "for the formation of Uppilipalayam-Neighbourhood Scheme Phase IV. The said Notification includes the lands belonging to the petitioners. The petitioners, though challenged the acquisition proceedings on number of grounds, have subsequently affidavit filed by the petitioner, which is as follows: "It is submitted that the entire acquisition proceedings are liable to be set aside even on the sole ground 4(1) by G.O.Ms.No.196, dated 02.03.1988 is not maintainable, sustainable since it suffers from the vice of vagueness, indefiniteness. ... mention in the Notification the formation of Upplipalayam-Neighbourhood Scheme is not sufficient compliance with the requirement of law since it conveys no idea as to the specific purpose or the class of persons for whom the acquisition is made. As such the 4(1) Notification is liable to be set aside as held in 1990 (II) MLJ page 149 (Division Bench).

2. Learned counsel for the petitioner represents that the public purpose specified herein is very vague and that the petitioners have no opportunity to take effective representation and also refers to the decisions of the Division Bench of this Court reported in 1989 ... MLJ 14. and 1990 I MLJ 150. Following the aforesaid decisions, a batch of writ petitions have been disposed of quashing the acquisition

proceedings in W.P.No.3793 of 1990 dated 18.10.1991. Following the aforesaid decision, the impugned acquisition proceedings are liable to be quashed and accordingly, they are quashed. The Writ Petition is allowed. No costs.

16. As against the said order, the Housing Board went on appeal before a Division Bench of this Court in W.A.No.393 of 1993 and by a judgment dated 14.02.1996, this Court held as follows: "6. For the reasons stated above, the writ appeal is allowed. The order dated 22nd November, 1991 passed in W.P.No.6453 of 1991 is set aside. The writ petition is dismissed. However, it is open to the writ petitions to make a representation, in the light of the fact that the major portion of the area has been dropped from acquisition and request the Government to consider the case for dropping of the acquisition in respect of the land in question. In such an event, it is open to the State Government to consider the same, in accordance with law. There shall be no order as to costs." 17. Thereafter, the petitioners approached this Court again in W.P.No.8512 of 2000, challenging the proceedings of the 1st respondent/State of Tamil Nadu, dated 18.04.2000 and for a consequential direction to the 1st respondent to drop the petitioners' lands in Survey Numbers mentioned in the petition. The said Writ Petition was disposed of as under: "4. In view of the abovesaid facts and since the impugned proceedings have been passed without having in mind the judgment of the Division Bench, the same are set aside and the matter is remitted to the 1st respondent to pass orders afresh after taking into consideration the direction given by the Division Bench in W.A.No.393 of 1993, dated 14.02.1996, as the Government has to consider the issue only on the basis of the direction given by the Division Bench of this Court. In view of the fact that the petitioners are running a school in the lands in question, the respondents are directed not to dispossess or put up any construction, pending disposal of the matter before the 1st respondent. With the above observations, this writ petition is allowed accordingly. No costs. Consequently, W.M.P.Nos.12548 and 12549 of 2000 are closed." 18. In the year 2004, the petitioners came up with yet another Writ Petition in W.P.No.22200 of 2004 seeking a direction to the respondents for re-conveyance of the lands belonging to them under Section 48-B of the Act. This Court, on 11.09.2004, after hearing the submissions of the learned counsel for the parties, passed the following order: "5. In the light of the submissions made as above, there will be a direction to the

petitioners to submit a detailed representation afresh enclosing copy of the order passed in the writ petition, to the first respondent. On receipt of such representation, the first respondent shall pass orders on the same, take into account the recommendations made by the authority, within a period of six weeks from the date of receipt of such representation.

6. The writ petition is disposed of accordingly. No costs. Connected W.P.M.P.No.26889 of 2004 is closed." 19. Pursuant to the above direction, the petitioners sent a representation dated 23.09.2005 to the Government, requesting reconveyance under Section 48-B of the Act, to which the Government, by proceedings in Lr.No.30488/LA-3-2/2000, dated 17.08.2005, rejected their request, as enumerated below: "4. During the hearing on contempt petition No.269/2005, it was reported that the Legal Adviser of the Tamil Nadu Housing Board informed as if the Tamil Nadu Housing Board has recommended to the Government for re-conveyance of the lands in question. I am afraid that no such recommendation for re-conveyance has been received by the Government from the Tamil Nadu Housing Board. The Legal Adviser of the Tamil Nadu Housing Board most probably mistakenly obtained his views from a note dated 02.01.2003 of the Executive Engineer and Administrative Officer, Tamil Nadu Housing Board, Coimbatore on the above issue and this note was not addressed to anybody. The contents of the note are not the views of the Tamil Nadu Housing Board. The Managing Director, Tamil Nadu Housing Board in his letter dated 12.08.2005 informed the Government that the views of the Executive Engineer and Administrative Officer, Coimbatore Housing Unit in the note addressed to anybody does not reflect the specific recommendation of the Board. In fact, in their letter dated 05.08.2003, the Tamil Nadu Housing Board, if the Board is to dispose of the lands, which do not contemplate such a re-conveyance.

5. In view of the above and in view of the fact that the Tamil Nadu Housing Board had not given its consent for re-conveyance of the lands in S.No.46/2 etc. Measuring an extent of 19.04 acres in Sowripalayam Village, Coimbatore District as applied for by you and as the Government cannot direct for re-conveyance of the lands without the consent of the owners of the lands in question, i.e. TNHB, I regret that the Government are not in a position to concede your request and

hence, your request is rejected." 20. Subsequently, the Government, vide proceedings in Lr.No.30488/LA3.2/2000-21, dated 05.10.2005, passed an order rejecting the petitioners' request for exclusion of lands in S.No.46/2 measuring an extent of 19.04 acres in Sowripalayam Village, Coimbatore District. Relevant portion of the said order is reiterated thus : "2. In view of the above position and in view of the fact that the TNHB had not given its consent at any time for re-conveyance of the lands acquired in S.No.46/2 etc. Measuring an extent of 19.04 acres in Sowripalayam Village, Coimbatore District, the Government cannot direct the TNHB for re-conveyance of the lands. As the Government are not in position to accede to your request, the request for exclusion of lands in S.No.46/2 etc. Measuring an extent of 19.04 acres in Sowripalayam Village, Coimbatore District is rejected.

21. Challenging the said proceedings in Lr.No.30488/LA3.2/2000-21, dated 05.10.2005 and for a consequential direction to the 1st respondent to exclude the lands to an extent of 19.04 acres situated in Sowripalayam Village, Coimbatore Taluk and District from acquisition and re-convey the same as has been done in respect of lands in Block Nos.II and III of Uppilipalayam Neighbourhood Scheme, the petitioners filed W.P.No.5316 of 2006, wherein, this Court, by an order dated 28.04.2008, allowed the Writ petition. Relevant portion of the said order is extracted below: "21. On a careful consideration of the reasons stated by the learned counsel appearing for the petitioners and also considering the earlier orders passed by the Division Bench of this Court, in W.A.No.393 of 2001 and also considering the decision of the Hon'ble Supreme Court reported in "2006 (4) CTC 290" (cited supra), this Court is inclined to pass the following:

22. The Writ Petition is allowed and the impugned orders, dated 17.08.2005 and 15.10.2005 of the first respondent are hereby set aside. The 1st respondent is directed to exclude the lands in Survey Nos.46/2, 47/1, 48, 49, 50, 51, 52, 53, 73/1, 2, 3, 74/1, 2, 3, 78, Sowripalayam Village, Coimbatore Taluk and District from acquisition and re-convey the same in favour of the petitioners, subject to the payment of compensation with 9% p.a. If already received by the petitioners, within four weeks from the date of receipt of copy of this order. No costs. Consequently, connected WPMPs are closed." 22. Challenging the order dated

28.04.2008 passed by this court in W.P.No.5316 of 2006, the Housing Board as well as the Government came up before this Court with separate Writ Appeals in W.A.No.796 of 2008 and W.A.No.378 of 2009, respectively. This Court, by a common judgment, dated 16.07.2009, set aside the order in the above Writ Petition and disposed of the Writ Appeals. Relevant portion of the said judgment would run thus: "4. The questions that arise for consideration are as follows: (i) Whether in the given facts and circumstances of the case, the respondents are entitled for reconveyance of the land especially when the Government had not so far forfeited the lands in exercise of the power conferred under Section 16B of the Tamil Nadu Amendment Act to the Land Acquisition Act and (ii) Whether the reasons adduced by the Government in the impugned orders are justifiable? 12. However, when the land so handed over to the Housing Board is not utilised for the purpose for which it was acquired two questions may arise, viz., whether the Housing Board may claim that in the event the scheme for which the land was acquired is not implemented it may resolve to deal with the land in terms of Section 72 of the Housing Board Act? In view of the judgment in R.Shanmugam and others vs. The State of Tamil Nadu, rep. By its Secretary, Housing & Urban Development Department, Chennai and others (2006 (4) CTC 290), in such contingency, the Housing Board cannot invoke Section 72. The other question would be as to how such a land to be dealt with. The answer is Section 16B of the Tamil Nadu Housing Board Act. When once the State Government is satisfied that the land so acquired and handed over to the Tamil Nadu Housing Board is not utilised for the purpose for which it was acquired it can forfeit the land as penalty and once such exercise is made, the land shall vest in the Government in Revenue Department free from all encumbrances. When the land vests in the Government then how it should be dealt with has also been considered in the said judgment following the judgment of the Apex Court in State of Kerala vs. M.Bhaskaran Pillai (1997 (5) SCC 432), wherein the Apex Court has observed as follows: "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.

13. Hence the land vests in the Government, in a case where possession is taken in terms of Section 16 or forfeiture of the land is made in exercise of the power under Section 16B in Government. Once such vesting takes place, it shall be dealt with only in accordance with the above guidelines of the Apex Court. Therefore, even assuming that the reasons given in the impugned orders in the writ petition are not sustainable, it is for the Government to first exercise the power in terms of Section 16B and forfeit the land and only in such event an application 48-B could be entertained for reconveyance. Even assuming that the land is forfeited and is available for consideration of an application for reconveyance under Section 48B, the owner has no automatic right for reconveyance. In that context, this Court could direct the Government to consider the above two aspects for the purpose of dealing with the application, if any, filed by for reconveyance under Section 48B. In the absence of application of any of the provisions by the Government in order to the vesting the land in Revenue Department, the land owner is not entitled for a direction for reconveyance as has been done in this case. On this score, the order in the writ petition directing the Government for reconveyance of the lands in question is set aside and the writ appeals are disposed of with the following directions.

14. The Government is entitled to invoke Section 16B of the Tamil Nadu Amendment Act and on satisfying itself it can forfeit the lands in question as penalty from the Housing Board. In the event the Government exercises the above power and consequently the lands vests in the Government, the application filed by the respondents for reconveyance under Section 48B of the Act shall be considered. Such consideration shall be done in accordance with the judgment of this Court made in R.Shanmugam and others vs. The State of Tamil Nadu, rep. By its Secretary, Housing & Urban Development Department, Chennai and others (2006 (4) CTC

290) which was rendered by following the judgment of the Apex Court in State of Kerala vs. M.Bhaskaran Pillai (1997 (5) SCC 432). Such exercise shall be completed by the Government within a period of three months from today. Consequently, the connected M.Ps. are closed. No costs." 23. While examining the above impugned orders, it is seen that the Housing Board has acquired lands to an extent of 43.19 acres included in S.F.No.46/2 etc., at Sowripalayam Village of Coimbatore District and after the approval of 4(1) notification by the Government in G.O.Ms.196, Housing and Urban Development Department, dated 02.03.1988, 5-A enquiry was conducted and Section 6 Declaration was made. After following the procedures contemplated under the Act, the Land Acquisition Officer passed the Award dated 22.03.1991 in Award No.1/91 for an extent of 43.19 acres including the petitioners' land of 19.04 acres in S.No.46/2 etc., of Sowripalayam Village. The Award amount of Rs.47,55,959/- was deposited in Sub-Court, Coimbatore. Out of 43.19 acres, the possession of 27.62 acres of land including the petitioners' land of 15.42 acres were taken over from the Land Acquisition Officer by the Board on 20.11.1991 and the layout for implementing the Housing scheme was approved by the DTCP vide LP/DTCP No.325/97, dated 30.05.1997. The balance of 3.62 acres of petitioners' land have to be taken over under Section 47 of the Act. In the land for which possession was taken over, the Board had proposed to implement Housing Scheme in an extent of 15.42 acres and the proposal for the same at an estimated cost of Rs.747.05 lakhs was approved by the Board vide Board's Resolution No.4.10 dated 19.08.1997 with the financial assistance from HUDCO. Tenders for construction of 209 houses were received on 30.09.1997 and 01.10.1997 and the same were approved by the tender committee. In view of the pendency of the court proceedings, the Housing Board was unable to take up Housing scheme immediately in the land in question.

24. In compliance of the judgment of this Court, dated 16.07.2009 in W.A.No.796 of 2008 and W.A.No.378 of 2009, the Government has examined the matter carefully in consultation with the Housing Board. Inasmuch as the lands measuring an extent of 19.04 acres in S.No.46/2 etc., in Sowripalayam Village, Coimbatore District are still required for the purpose for which they are acquired, the Government has decided not to invoke Section 16-B of the Act in respect of the lands in question. Hence, the question of considering the petitioners' request for

reconveyance of the said lands under Section 48-B of the said Act does not arise. Therefore, the petitioners' claim for reconveyance of the lands measuring an extent of 19.04 acres in S.No.46/2 etc., in Sowripalayam Village, Coimbatore District was rejected in the order impugned in this Writ Petition.

25. While examining the validity of the Award dated 22.03.1991, it is seen that insertion of Section 16-B and Section 48-B of the Act has been brought by amendment to the Land Acquisition (Tamil Nadu Amendment Act) of 1996 (Act XVI of 1997). Section 16-B of the Act would read thus : "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." 26. From a reading of Section 16-B of the Act, it is clear that if the land in question acquired for public purpose is not used for the purpose for which it was acquired, then by an order, they may forfeit the land as penalty and the land shall vest in the Government in Revenue Department free from all encumbrances, provided that no order shall be made unless the person aggrieved is given a reasonable opportunity of being heard.

27. In the instant case, the land in question was acquired for a public purpose for implementation of the Housing Scheme and on acquiring the petitioners' land to an extent of 19.04 acres, an extent of 15.42 acres of land were taken possession. Thereafter, the Housing Board proposed to implement Housing Scheme for constructing 209 houses at an estimated cost of Rs.747.05 lakhs and proposal for the same was approved by the Housing Board vide its Resolution No.4.10 on 19.08.1997 with the financial assistance from HUDCO and tenders were floated for that purpose. In view of continuous litigations from the year 1991 till 2006, the Housing Board could not take up the said Scheme immediately pertaining to the land in question. Thereafter, the Government, in consultation with the Housing Board, has come to a conclusion that inasmuch as the lands measuring an extent of 19.04 acres in S.No.46/2 etc in Sowripalayam Village is concerned, they are

required for public purpose for which they are acquired and are proposed to be utilized for the purpose for which they are acquired and the Government has decided not to invoke Section 16-B of the Act in respect of the lands in question and accordingly, rejected the petitioners' request for reconveyance of the lands.

28. A reading of Section 16-B of the Act would show that it can be invoked only when the land in question is not required for any public purpose. Here is the case, where the land is still required for public purpose for implementation of the Housing Scheme. Therefore, the decision taken by the 1st respondent is in no way contrary to the provisions of the Act. When the land acquired is for public purpose, that too, situated in the prime locality of Coimbatore District, the request of the petitioners that the land in question may be reconveyed by the Government as has been done in respect of Block Nos.II and III, cannot be considered. It is the domain of the Government and the Requisitioning body to decide with regard to the dropping of the acquisition proceedings in respect of the land in question.

29. Looking into all the relevant material facts and the proceedings, as the power to retain the land acquired for public purpose vests with the Government and as the Government has decided to retain the land for public purpose, this Court does not find any convincing reason to interfere with the decision taken by the Government in the impugned proceedings. Accordingly, this Writ Petition deserves no merit consideration with regard to the extent of 15.42 acres of petitioners' land already acquired for Housing Scheme, which is for public purpose.

30. As regards the extent of remaining 3.62 acres of land, the petitioners claim that they are still in occupation of the lands, which is an admitted position. As seen from the impugned order, out of 43.19 acres, possession of 27.62 acres of land including the petitioners' land of 15.42 acres were taken over from the Land Acquisition Officer by the Board on 20.11.1991 and the layout for implementing the Housing scheme was approved by the DTCP vide LP/DTCP No.325/97, dated 30.05.1997. The remaining extent of 3.62 acres of the petitioners' land have to be taken over under Section 47 of the Act. Therefore, it is clear that possession in respect of 3.62 acres are still with the landowners.

31. Earlier adjudications made by the petitioners, particularly in W.P.No.5316 of 2006, questioning the Government Orders, dated 17.08.2005 and 15.10.2005 and for exclusion of the lands to an extent of 19.04 acres from acquisition and reconveyance of the same, have ended in favour of the petitioners. Later on, the matter was taken on appeal by the Housing Board and the Government before the Division Bench of this Court in W.A.Nos.796 of 2008 and 378 of 2009, and this Court set aside the order of the learned Single Judge, holding that in the absence of application of any of the provisions by the Government in order to vest the land in Revenue Department, the land owner is not entitled for a direction for reconveyance as has been done in that case. On that score, the order in the writ petition directing the Government for reconveyance of the lands in question was set aside and the writ appeals were disposed of with a direction that the Government is entitled to invoke Section 16-B of the Tamil Nadu Amendment Act and on satisfying itself, it can forfeit the lands in question as penalty from the Housing Board and in the event the Government exercises the above power and consequently the lands vests in the Government, the application filed by the respondents for reconveyance under Section 48B of the Act shall be considered.

32. Since the entire extent of 19.04 acres of land have been acquired, now the Government has taken a decision not to forfeit the said land under Section 16-B of the Act. Therefore, there is no question to invoke Section 48-B of the Act, even for the remaining extent of 3.62 acres which has not been taken over by the competent authority.

33. From a reading of Section 48-B of the Act, which pertains to transfer of land to original owner in certain cases, it is seen that where the Government is satisfied that the land vest in the Government under the 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 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.

34. In Bhaskaran Pillai's case, referred to above, it was the admitted position that the land in question was acquired under the Land Acquisition Act, 1894 by

operation of Section 16 of the Land Acquisition Act, and it stood vested in the State free from all encumbrances. It was also observed that if the land was acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. Further, in the case of Keeravani Ammal, cited supra, the Supreme Court has held that mere claim of possession by the writ petitioners is not a foundation on which the relief granted could have been rested.

35. Even in the instant case, by virtue of Section 16 of the Act, the land in question was acquired and it stood vested with the State free from all encumbrances. Moreover, the land is acquired for a public purpose and after the public purpose is achieved, the rest of the land could be used for any other public purpose. Also, mere claim of possession by the writ petitioners is not a foundation on which the relief is sought for. In fact, the remaining extent of 3.62 acres of petitioners' land is required for a public purpose and when the Government has taken a decision not to invoke Section 16-B of the Act, there is no question to invoke Section 48-B of the Act. Therefore, taking into account the said aspect, the 1st respondent has passed the impugned order. When the Government has taken a consistent stand that the land in question is required for a public purpose, i.e., Housing Scheme and taking note that the land is situated in a prime locality in Coimbatore District and that huge amount is invested in the project, it is not for the petitioners to continue with litigations seeking for reconveyance of lands by invoking Sections 16-B and 48-B of the Act. Moreover, tenders for construction of 209 houses were received and approved by the tender committee. Therefore, the Government's decision rejecting the request of the petitioners for reconveyance of the lands in question, in the considered opinion of this Court, does not require any warranting circumstance for interference. As such, on consideration of the materials available on record, no right to relief has been established by the petitioners herein.

36. In the result, the Writ Petition fails and stands dismissed. However, this order shall not stand in the way of the petitioners, in case, in future, the remaining extent of 3.62 acres of land is not utilised for the public purpose, in making a representation, requesting for exemption, as this Court has given such an observation even on earlier occasions, in which event, it is for the respondents to

consider the same and pass appropriate orders thereon in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed. Index : Yes Internet : Yes 04.01.2013

1. The Principal Secretary to Government, State of Tamil Nadu, Housing and Urban Development Department, Fort St. George, Chennai.

2. The Chairman and Managing Director, Tamil Nadu Housing Board, Nandhanam, Chennai

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3. The Special Tahsildar, (Land Acquisition), Housing Scheme Unit I, Coimbatore 18.

4. The Executive Engineer, Special Division (II), Tamil Nadu Housing Board, Kowli Brown Board, R.S.Puram, Coimbatore

002. V.DHANAPALAN,J.

Abe Pre-delivery order in W.P.No.2592 of 2012 Dated:

04. 01.2013

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