

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2010

CORAM

THE HONOURABLE MR.JUSTICE K.CHANDRU

W.P.Nos.6785 and 11023 of 2006 and  
W.P.M.P.Nos.7355 and 12540 of 2006

Jeya @ M.Jeyalakshmi ...Petitioner in  
W.P.No.6785/2006

P.Valmurthy .... Petitioner in  
W.P.No.11023/2006

Vs.

1.The Secretary,  
Housing and Urban Development,  
Government of Tamilnadu,  
Fort St.George,  
Chennai - 600 009.

2.The Managing Director,  
Tamil Nadu Housing Board,  
No.331, Anna Salai, Nandanam,  
Chennai - 600 035.

3.A.Kandasmy

4.C.Vaikunta Raja

5.Sobha Raja

6.T.Balan

7.Ajita Balan

8.Sanjay A.Wadhwa

.. Respondents in  
both WPs

(R8 impleaded in both WPs as per order  
dated 26.09.2006 by AKJ in WPMP Nos.17951  
and 17952/06 in W.P.Nos.6785 and 11023/2006  
respectively)

Writ petitions filed under Article 226 of the Constitution of India praying for the issue of a writ of mandamus, directing the second respondent to consider the petitioners' representation dated 17.01.2006 and 30.01.2006 respectively to reconvey the lands situated in Survey No.103/2 measuring an extent of 0.26 acres at Nolambur Village, Ambattur Taluk, Thiruvallur District.

For Petitioners : Mr.T.R.Senthil Kumar

For Respondents : Mr.M.Dhandapani, Spl.G.P for R1

Mr.G.Thyagarajan for R6

Mr.R.Vijayan for R8

## C O M M O N    O R D E R

In W.P.No.6785 of 2006, the petitioner is the wife of one late P.Mannar. She filed the writ petition seeking for a direction to the second respondent i.e. The Managing Director, Tamil Nadu Housing Board to consider her representation dated 17.01.2006 to reconvey the lands situated in S.No.103/2 measuring to an extent of 0.26 acres at Nolambur Village, Ambattur Taluk, Thiruvallur District.

2. The petitioner claims that she is the co-owner of the piece of land along with her husband's brother P.Valmurthy in S.No.103/2 measuring to the extent of 0.70 acres at Nolambur Village having purchased the same by a sale deed dated 14.11.1963 registered with the Sub-Registrar, Sembium. The State Government (1<sup>st</sup> respondent) on a request being made by the second respondent acquired a larger extent of land including the petitioner's land by a notification under Section 4(1) dated 11.12.1975. This was for the purpose of executing Ambattur Neighbourhood Scheme. After due procedure, the lands were acquired. It is the case of the petitioner that the lands were not used by the second respondent for which it was acquired and the lands have been kept unutilised for the past 31 years.

3. Therefore, the petitioner sent a representation dated 09.07.2004 to reconvey the unutilised lands by exercising power under Section 48-B of the Land Acquisition Act by filing a writ petition. This Court in W.P.No.6197/2005 directed the first respondent to consider her representation. The State Government by an order dated 06.10.2005 refused to order reconveyance of the lands on the ground that the same was reconveyed to the ex-owner Valmurthy after duly collecting development charges including interest charges for the belated payment. Therefore, the reconveyance having been effected by order dated 13.04.1994, there is no land left with either the State Government or with the Board for reconveyance of an extent of 0.35 acres in S.No.103/02.

4. It is claimed that her husband died on 08.04.1994 leaving her as the only legal heir and that having been the real owner, it was not clear as to how they could reconveyed the lands to her husband's brother P.Valmurthy. Subsequently, on her efforts, she was furnished with the copy of the order dated 13.04.1994 reconveying the lands. It was found that one Veeraraghavan and three others of Mettucheri, Nolamur Village requested the Government to exclude their lands measuring 6.16 acres in S.No.96/3 and after referring the matter to the Housing Board, they were informed that the land measuring an extent of 6.16 acres in S.No.96/3 etc was found belonging to one Veeraraghavan and three others including Valmurthy S/o Ponnann, Poochiammal w/o Elumalai and Chellammal w/o Periyasamy could be reconveyed to them and necessary charges may be collected from them. She also found that the lands were reconveyed to various owners by reconveyance deed dated 03.07.1998 registered as document No.896/98 in the office of

the Sub-Registrar, Konnur in favour M/s.Durai, Veeraraghavan, Veerammal and Annapushanam. Further, by the very same order dated 13.04.1994, the second respondent had reconveyed the lands to another owner by executing Reconveyance Deed on 09.10.1999 registered as Document No.894/99 in favour of Tmt.Chellammal w/o Vaithi.

5. It is the claim of the petitioner that the second respondent by another Reconveyance deed dated 19.05.1999 registered as Document No.2244/99 reconveyed the land in S.No.103/2 in favour of M/s. Valmurthy s/o Ponnar, Munnar s/o Ponnar (who is the late husband of the petitioner), Elumalai s/o Irusan, Sridhar s/o Manmadan, Chittibabu s/o Manmadan and Poonga d/o Manmadan without any of their signatures but a totally unconnected third person viz., A.Kandasamy as Power of Attorney holder. The deed was silent about how A.Kandasamy (third respondent herein) became the Power of Attorney from the land owners and whether he was having any registered power.

6. The petitioner alleged that her husband and her brother's husband Valmurthy were joint owners of 0.70 acres as stated already and the first respondent had acquired only 0.52 acres of land. But when she applied for Encumbrance Certificate about her property, it revealed that 0.56 cents in S.No.103/2 were reconveyed to her husband's brother as well as her husband who was no more and to others. Thus, reconveyance has been ordered in the name of the dead person. It was also seen from the Encumbrance certificate as on 01.09.1999 those six persons including her dead husband had executed a common Power of Attorney to one A.Kandasamy (third respondent) for land measuring an extent of 0.56 cents. The third respondent had executed a sale deed in favour of respondents 4 to 7 by using the power granted allegedly by her husband suppressing the death of her husband and Citibabu, who is also no more. Therefore, execution of sale deed on behalf of dead person is illegal. The State Government without verifying the credentials ought not have ordered reconveyance of the land by the Housing Board. Under the circumstances, she wanted her representation to be considered.

7. The writ petition was admitted on 09.03.2006. In the application for interim injunction, only notice was ordered. Subsequently, a third party by name Sanjay A.Wadhwa filed an application to implead himself as 8<sup>th</sup> respondent in the writ petition in WPMP No.17951/2006. That was allowed by this Court on 26.09.2006.

8. The impleaded respondent viz., R8 contended that he was the absolute owner of the property in question and he is in enjoyment of the property by paying necessary land tax and other statutory charges to the competent authority. The subject matter of the land vest with him by virtue of sale deed dated 13.12.2004. He alleged that on representation being made by the petitioner's husband and his brother P.Valmurthy, the lands were reconveyed in favour of her husband, her husband's brother and others and through



their power agent, they had executed a sale deed. It was also alleged that the writ petitioner is not the wife of late P.Mannar and according to him, he died as a bachelor. Since the properties have been reconveyed by the Government lawfully and the persons who came into possession has sold the property, the petitioner has no case to putforth.

9. In W.P.No.11023 of 2006, the petitioner is P.Valmurthy. He has prayed for a direction to consider his representation dated 30.01.2006 to reconvey the lands. In that writ petition also, the said Sanjay A.Wadhwa had got himself impleaded as 8<sup>th</sup> respondent. The averment made by the petitioner was that his brother died in the year 1994 and Chittibabu also died during the relevant time. Therefore, there could not have been any reconveyance in favour of any persons that too on the basis of power of attorney without the executor being in existence. He adopted the arguments made by the petitioner in W.P.No.6785 of 2006. He also stated that the said Jaya @ M.Jeyalakshmi is the wife of his brother late Mannar.

10. The second writ petition was admitted on 20.04.2006. In the application for interim injunction in WPMP No.12540/2006 only notice was ordered.

11. In the light of the rival contentions, the short question to be determined is whether there can be any direction as prayed for by the petitioners to the State Government to consider their representations.

12. The allegation made by the two petitioners are that reconveyance was made in the name of either a dead person or in the name of a power of attorney holder who ceased to exist after the death of the Principal. Though the impleaded 8<sup>th</sup> respondent has come forward with an allegation that there was a valid reconveyance but the facts alleged by the two petitioners require deeper enquiry. Though this Court could have directed the two petitioners to move the Civil Court for an appropriate relief, the facts and circumstances pleaded in these two writ petitions obliges this Court to give a direction to the State Government (the first respondent) to consider their representations in accordance with law. As can be seen from Section 48-B of the Land Acquisition Act, if an acquired land is unutilised and the requisitioning authority do not want to utilise it and if the State Government is of the opinion that it is not required for any other public purpose, then reconveyance should be made only to the erstwhile owners and not to any one else.

13. In the present case, the erstwhile owner late P.Mannar was not alive any more and that the other owner P.Valmurthy the writ petitioner in W.P.No.11023 of 2006 denied the reconveyance. In the absence of respondents 3 to 7 and the State not filing any counter affidavit, the grievance projected by the petitioners will have to be enquired into by the State Government.

14. Hence, both the writ petitions are allowed and a direction is issued to the first respondent to consider the representations of the petitioner in W.P.No.6785 of 2006 dated 17.01.2006 (a copy of which is found enclosed in Pages 45 to 48 of the typed set filed along with the writ petition) as well as the representation of the petitioner in W.P.No.11023 of 2006 dated 30.01.2006 (copy of which is found enclosed in Pages 41 to 44 of the typed set) and pass appropriate orders in accordance with law within a period of three months from the date of receipt of a copy of this order. No costs. Connected miscellaneous petitions are closed.

15. If the petitioners seek for any personal hearing that may also be granted by the first respondent. Notices may also be issued to the other respondents so as to avoid further controversies. The result of the order shall be communicated to the petitioners without fail.

Sd/  
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1.The Secretary,  
Housing and Urban Development,  
Government of Tamilnadu,  
Fort St.George,  
Chennai - 600 009.

2.The Managing Director,  
Tamil Nadu Housing Board,  
No.331, Anna Salai, Nandanam,  
Chennai - 600 035.

2 cc To Mr.T.R.Senthil Kumar, Advocate, SR.64390, 64389  
1 cc To Mr.R.Subramanian, Advocate, SR.64864

W.P.Nos.6785 and  
11023 of 2006

akr(co)  
pmk.13.9.2010