SUPREME COURT OF INDIA

Tamil Nadu Housing Board

Vs.

L. Chandrasekaran

C.A.Nos. 3148-3149 of 2002

(G.S. Singhvi and Asok Kumar Ganguly JJ.)

29.01.2010

JUDGEMENT

G.S. SINGHVI, J.

1. These appeals by the Tamil Nadu Housing Board (for short, `the Board') are directed against judgment dated 1.8.2001 passed by the Division Bench of Madras High Court in Writ Appeal Nos.796 and 1135 of 1999 whereby the appellant-Board has been directed to reconvey the acquired land on which no construction has been made to the respondents on their depositing the amount of compensation together with interest at the rate of 9%.

2. The land of the respondents falling in Survey Nos.340, 341 and 343, Mogappair Village, Sedapet Taluk formed part of 513.52 acres acquired by the Government of Tamil Nadu for Ambattur Neighborhood Scheme. Notification under Section 4(1) of the Land Acquisition Act, 1894 (for short, `the Act') was issued on 23.10.1975 and declaration under Section 6 was issued on 2.11.1978. After finalization of the acquisition proceedings, the respondents were paid compensation in lieu of their land.

3. Some of the land owners including A.S. Naidu challenged the acquisition proceedings by filing writ petitions under Article 226 of the Constitution of India. The High Court quashed the declaration issued under Section 6 leaving the preliminary notification intact. Dissatisfied with the High Court's order, A.S. Naidu and others filed S.L.P. (C) Nos.11353-11355 of 1988. During the pendency of the special leave petitions, the Act was amended by the Tamil Nadu Land Acquisition (Amendment) Act No.16 of 1997 in terms of which declaration under Section 6 was required to be published within 3 years from the date of preliminary notification. This Court took notice of the amendment made by the State legislature and held that in view of the High Court's order, such publication cannot now be made and proceeded to quash the 3 acquisition with liberty to the State Government to issue fresh preliminary notification.

4. L. Chandrasekaran (respondent in Civil Appeal No.3148/2002) who had not challenged the acquisition proceedings filed a writ petition sometime in the year 1997 for issue of a direction to the appellant-Board to certify that the acquired land was no longer needed for the purpose for which it was acquired. The learned Single Judge allowed the writ petition and held that the petitioner is entitled to get no objection certificate. Writ Appeal No.9/1998 preferred by the appellant-Board was disposed of by the Division Bench along with Writ Appeal Nos.676/1997 and 8/1998. The Division Bench observed that the order passed in A.S.

Naidu's case was in respect of the petitioner of that case only and held that the writ petitioners are entitled to make representation for reconveyance of the acquired land in accordance with Section 48-B of the Act. Paragraphs 3, 7 to 9 and 11 of judgment dated 22.9.1998 of the Division Bench, which have bearing on the decision of these appeals, read as under:- "3. Few land owners preferred writ petitions challenging the acquisition and a Division Bench of the court quashed the declaration u/s.6(1) of the Act on 8.1.1988 in respect of the those writ petitioners inter alia holding that Rule 3(b) of the Tamil Nadu Land Acquisition Rules having not been complied with and the second provision of Section 6(1) of the Act having not been complied with in issuing the declaration u/s.6 of the Act. One of the Writ Petitioners 4 alone moved the Supreme Court as the declaration under Section 6 of the Act alone had been quashed and the notification issued under Section 4(1) of the Act has been retained as per the judgment of the Division Bench. The Hon'ble Supreme Court finding that no declaration could be issued as on the date of the order as the period stipulated under Section 6 of the Act having elapsed allowed the special leave petition and quashed the acquisition in respect of that petitioner alone. Notification under Section 4(1) of the Act was also quashed.

7. At this stage, learned counsel for the appellant pointed but that the object of the acquisition was rehabilitation of the roofless persons by providing roof, but the land has been left vacant, even though, there was no stay order by this Court for almost 20 years and the Housing Board has taken no steps to construct a house on the plots. The erstwhile owners have also a right for having accommodation. The Government has powers under Section 48-B of the Act to re- convey the land to the original owners in certain cases. It has been done. Section 48-B of the Act (inserted by Act 16 of 1997) runs thus:

"Transfer of land to original owner in certain cases.- where the Government are satisfied that the land vested in the Government under this Act is not required for the purpose for which it was acquired, or for any other public purpose, the Government may transfer such land to the original owner who is willing to repay the amount paid to him under this Act for the acquisition of such land inclusive of the amount referred to in sub-section (1-A) and (2) of Section 23, if any, paid under this Act."

8. The only prayer made at this stage by the learned senior counsel for the appellants in W.A. No.676 of 1997 is that the appellant may be permitted to make a representation to the state under Section 48-B of the Act and the State Government may consider the appellants case objectively without being prejudiced by the delay or any other consideration or observation made in the judgment, afresh in terms of section 48-B of the Act.

9. We have no doubt that if the appellants apply to the State for relief under Section 48-B of the Act, the State in due discharge of it's official duty will consider the case of each of the petitioners/appellants on merits in accordance with law within three months from today and pass appropriate speaking orders. Till the final order is passed on such representation, status quo is ordered to be maintained so that third parties interest may not intervene.

11. The petitioners in the respective writ petitions are directed to make the representation to the State within 15 days by registered post acknowledgement due under Section 48-B of the Act. If no such representation is made within 15 days, it shall be deemed that they had given up their right to seek for reconveyance of the property under Section 48-B of the Act."

5. In furtherance of direction given by the Division Bench of the High Court, L. Chandrasekaran submitted representation dated 17.2.1999 to the Secretary, Housing and Urban Development Department, Chennai with the request that the land may be reconveyed to him in terms of Section 48-B of the Act. The State Government forwarded the representation to the appellant-Board for its comments. The latter sent report mentioning therein that the land was proposed to be utilized for allotment of housing plots to economically weaker section of the people and for construction of multi-storey flats for higher income group. After considering the report, the State Government rejected the representation of Shri L. Chandrasekaran, who was informed about the same by the Secretary, Housing and Urban Development Department, Chennai vide his letter dated 18.3.1999.

6. Upon receipt of the afore-mentioned communication, L. Chandrasekaran filed Writ Petition No.5030/1999 and prayed that the State Government may be directed to release his land because the same had not been utilized for the purpose enumerated in the notification issued under Section 4 of the Act. Kamalammal (respondent in Civil Appeal No.3149/2002) also filed Writ Petition No.5343/1999 with similar prayer.

7. The learned Single Judge dismissed both the writ petitions by separate orders dated 26.3.1999 and 1.4.1999. He held that in terms of Section 48-B of the Act, the Government is empowered to decide whether the acquired land is no longer required for the purpose for which it was acquired or for any other public purpose and the decision taken in that regard cannot be nullified by the Court unless it is shown to be totally arbitrary or malafide. The learned Single Judge further held that the decision taken by the Government in the light of the report submitted by the appellant-Board cannot be termed as arbitrary so as to warrant interference under Article 226 of the Constitution.

8. Both, L. Chandrasekaran and Kamalammal challenged the orders of the learned Single Judge in Writ Appeal Nos.796 and 1135 of 1999.

The Division Bench did not find any illegality in the decision taken by the Government or error in the orders passed by the learned Single Judge, but allowed the writ appeals by simply relying upon order dated 18.2.2000 passed in Writ Appeal No.2430/1999 and directed the appellant-Board to reconvey the land to the respondents subject to their depositing the amount of compensation together with interest.

9. Shri A.K. Ganguly, learned senior counsel appearing for the appellant-Board assailed the impugned order and argued that the Division Bench of the High Court committed serious error by issuing a mandamus for release of the acquired land ignoring that the same had been transferred to the appellant-Board and the latter had utilized the same for housing purposes. Shri Ganguly referred to the contents of letter dated 18.3.1999 vide which the Government rejected the representation of L. Chandrasekaran to show that the acquired land is needed for housing purposes and argued that the Division Bench was not justified in directing the appellant-Board to reconvey the same to the respondents without realizing that in terms of Section 48-B the acquired land can be released by the Government only if it is satisfied that the same is not required for the purpose of acquisition or for any other public purpose. Learned senior counsel further argued that the respondents cannot take advantage of the quashing of acquisition proceedings in the case of A.S. Naidu and others because while disposing of Writ Appeal Nos.676/1997, 8/1998 and 9/1998, the Division Bench had made it clear that benefit of the order passed by this Court was available only to the petitioner of that case. Shri Ganguly then submitted that the theory of deemed quashing of the acquisition proceedings in its entirety cannot be applied in this case because substantial portion of the acquired land has already been utilized for construction of houses and flats.

10. Shri Narendra Kumar, learned counsel appearing for the legal representative of L. Chandrasekaran submitted that this Court should not interfere with the impugned order because special leave petitions filed in similar cases have already been dismissed. In support of this argument, learned counsel produced xerox copies of the orders passed by the Division Bench of the High Court and this Court. He further submitted that some portions of the acquired land have already been released in favour of the land owners in furtherance of orders passed by the High Court

and argued that the decision of the Government not to reconvey the land of the respondents on the pretext that the same is required for housing purposes was wholly arbitrary and the Division Bench of the High Court did not commit any error by issuing a mandamus for release thereof in accordance with Section 48-B of the Act. Learned counsel also referred to orders dated 18.2.2000 passed by the Division Bench of the High Court in Writ Appeal No.2430 of 1999 - The Managing Director, Tamil Nadu Housing Board v. P. Hariraman and others and dated 1.3.2000 in Writ Appeal No.2160 of 1999 - The Managing Director, Tamil Nadu Housing Board v. C. Elumalai and others and argued that after having accepted and acted upon those orders, the appellant-Board cannot legitimately challenge the orders passed by the High Court in favour of the respondents. In the end, Shri Narendra Kumar argued that once the acquisition proceedings have been quashed by this Court, the appellant-Board has no right to retain the acquired land and the Government should have suo moto released the same without even requiring the land-owners to file applications under Section 48-B of the Act.

11. We have given serious thought to the respective arguments/submissions and perused the records. We have also gone through xerox copies of the prayer clause of the writ petition filed by A.S.

Naidu and orders passed by the High Court and this Court produced by the learned counsel for the parties during the course of hearing.

12. The first issue which requires consideration is whether the order passed by this Court in A.S. Naidu's case has the effect of nullifying the acquisition in its entirety. In this context, it is apposite to mention that 10 neither the appellant-Board nor the respondents have placed before the Court copies of the writ petitions in which the acquisition proceedings were challenged, order(s) passed by the High Court and the special leave petitions which were disposed of by this Court on 21.8.1990 and without going through those documents, it is not possible to record a finding that while disposing of the special leave petitions preferred by A.S. Naidu and others, this Court had quashed the entire acquisition proceedings. So far as A.S. Naidu is concerned, he did not even make a prayer before the High Court for quashing the preliminary notification issued under Section 4(1) of the Act. This is evident from the prayer made by him in Writ Petition No. 7499/1983, which reads as under:

"For the reasons stated in the accompanying affidavit, it is most respectfully prayed that this Hon'ble Court may be pleased to issue a writ of certiorari or any other proceeding or any other appropriate writ or direction or order in the nature of a writ to call for the records of the First Respondent relating to G.O.Ms. No.1502 Housing and Urban Development dated 7.11.1978 published in the Tamil Nadu Government Gazette Extraordinary dated 10.11.78 in Part II Sec.2 on pages 22 to 26 and quash the said notification issued under Sec.6 of the Land Acquisition Act, 1894 in so far as it relates to the land in the Petitioners lay out approved by the Director of Town Planning in LPDM/DTP/2/75 dated 7.3.75 in Survey Nos.254, 257, 258, 260, 268 and 271 in Mogapperi Village, No.81, Block V, Saidapet Taluk, Chingleput District and render Justice."

13. From the above reproduced prayer clause, it is crystal clear that the only relief sought by Shri

A.S. Naidu was for quashing the notification issued under Section 6 in so far it related to the land falling in Survey Nos.254, 257, 258, 260, 268 and 271 in Mogapperi Village, No.81, Block V, Saidapet Taluk and in the absence of a specific prayer having been made in that regard, neither the High Court nor this Court could have quashed the entire acquisition. This appears to be the reason why the Division Bench of the High Court, while disposing of Writ Appeal Nos.676 of 1997 and 8/9 of 1998 observed that quashing of acquisition by this Court was only in relation to the land of the petitioner of that case and, at this belated stage, we are not inclined to declare that order dated 21.8.1990 passed by this Court had the effect of nullifying the entire acquisition and that too by ignoring that the appellant-Board has already utilized portion of the acquired land for housing and other purposes. Any such inferential conclusion will have disastrous consequences inasmuch as it will result in uprooting those who may have settled in the flats or houses constructed by the appellant-Board or who may have built their houses on the allotted plots or undertaken other activities. We may also usefully refer to the judgments of this Court in Shyamnandan Prasad and others v. State of Bihar and others (1999) 4 SCC 255, Abhey Ram v. Union of India (1997) 5 SCC 421 (paragraph 11), Delhi Administration v. Gurdip Singh Uban and others (1999) 7 SCC 44 (paragraphs 8, 9 and 11) and Delhi Administration v. Gurdip Singh Uban and others (2000) 7 SCC 296, in which it has been consistently held that quashing of acquisition proceedings at the instance of one or two landowners does not have the effect of nullifying the entire acquisition. Moreover, in the absence of challenge by L. Chandrasekaran to the order passed by the Division Bench of the High Court in Writ Appeal No. 9/1998, his legal representatives do not have the locus to contend that order dated 21.8.1990 passed by this Court in SLP(C) Nos.

11353-11355/1988 had the effect of nullifying the entire acquisition.

14. We shall now consider whether the decision taken by the State Government not to transfer the acquired land to the respondents is vitiated by arbitrariness or is discriminatory and violative of Article 14 of the Constitution. There is no dispute between the parties that after completion of the acquisition proceedings, the State Government had transferred the acquired land to the appellant-Board. However, there is a serious contest between them on the issue of utilization of the acquired land by the appellant-Board. The pleadings filed by the parties before the High Court are not very helpful for determining the question whether the appellant-Board had utilized the acquired land or substantial portion thereof. However, a clear picture emerges from the pleadings filed before this Court in the form of common additional affidavit dated 11.7.2009 of Shri Darmendar Pratap Yadav, Managing Director of the appellant- Board, counter affidavit filed by Smt. C. Unnamalai, widow of late 13 L. Chandrasekaran and rejoinder affidavit of Shri Darmendar Pratap Yadav. For the sake of reference, paragraphs 6 to 10 of the combined additional affidavit, paragraphs 7 to 12 of the counter affidavit and paragraphs 3, 5 and 7 of the rejoinder affidavit, are reproduced below:- Combined additional affidavit:

6. The appellant submits that out of 513.52 acres of land notified for acquisition, Award was passed for payment of compensation only for lands measuring an extent of 284.74-> acres and the lands were taken over which are more fully shown in Map`A' annexed along with this affidavit with RED Boundary Line. The appellant further submits that out of the lands measuring 284.74 acres, lands measuring 271.61 = acres were developed by Housing Board which have been more fully shown in GREEN SHADE. Out of the remaining lands for which Award was passed and litigation is pending

is measuring around 2.50= acres has been marked in BLUE SHADE, while lands measuring 2.33= acres have been reconveyed are shown in PINK SHADE. Out of the remaining extent of 8.29< acres of land for which award was passed, a small portion is under encroachment and the rest suffers from technical problem such as Proper Approach Road etc. and these lands shall be taken up for development after sorting out encroachment and accessibility issues. These lands have been shown in YELLOW SHADE and the subject matter of present SLP bearing Survey Numbers 340, 341 & 343 are shown in ORANGE SHADE in the annexed Sketch `A'.

7. This appellant submits that, since very large area was acquired, it could not be developed at one stretch and the same was divided in various blocks and it has been developed in phased manner by dividing the lands into various blocks. Block Nos. 5 and 6 consist of various Survey Numbers including S. No. 340, 341 and 343 which subject matter of this SLP. It is further submitted that the said Block 5 and 6 was proposed for Scheme layout and the Planning Permission was obtained from MMDA vide LPS&S No. 17/81 in the year 1981, which is enclosed as Sketch `B' annexed along with this affidavit.

8. This appellant submits that the lands in issue have been already developed by the Board as it could be seen in sketch `B' and perusal of Sketch `B' will also reflect on the present position and location of lands in S. Nos. 340, 341 and 343 with Green Color Boundary lines. As far as the lands in Survey Number 340 (with ORANGE SHADE) is concerned, already 48 flats have been constructed and allotted to the allottees and a part of the land in S. No. 340 has been used for formation of roads which is more fully shown in the Sketch with YELLOW SHADE. As regards the land in Survey Number 341 (with ORANGE SHADE) is concerned, a part of same has been utilized for formation of residential plots and a part has been allotted for running a High School and road and currently a "Girls High School" is being run by the Government of Tamil Nadu.

9. The appellant submits that as far as the lands in S.No. 343 (with GREEN BOUNDARY LINES) is concerned, a part of the said land has been reserved as open space reservation area with GREEN SHADE as per the Planning Permission rules and has to be handed over to local body for future maintenance.

However, the same could not be handed over due to the present case. It is further submitted that a part of land in S. No. 343 has been earmarked for commercial site as per plan approval and already allotted to M/s. Southern Associates and shown in BLUE SHADE and the remaining piece of land in S. No. 343 has been used for formation of residential plots, roads and open space reservation area as could be witnessed in Sketch `B'.

10. The appellant further submits that Tamil Nadu Housing Board strictly adheres to CMDA rules and norms and also ensure free space for movement and comfortable living for the allottees inside all their scheme. It is further submitted that when layouts are prepared, generally few pieces of the

pieces of lands here and there may be left out, especially in the corners which cannot be effectively developed in individual plots or even as OSR. However, such lands are subsequently either brought to use for public utility purposes such as installation of street lights, construction of maintenance room etc. or allotted to the adjacent allottees as per Board Rules. This appellant submits that he respondents are presuming that the lands which are earmarked for formation of road, commercial site allotted to M/s. Southern Associates (which is lying vacant) and open 15 space reservation area are unutilized but in reality the lands of the respondents have been completely utilized and lie within the approved layout as shown in Sketch `B' annexed along with this affidavit.

Counter Affidavit:

7. Insofar as para 9 is concerned, the same is disputed and denied. The land in Survey No. 343, which is the subject matter of Civil Appeal No. 3148 of 2002 is still lying vacant and unutilized, as would be evident from the map filed by the respondent herein as Annexure I. For the sake of convenience, the lands comprised in Survey No. 343, Mogappair Village, which is subject matter of present appeal, is divided into three parts `A', `B' and `C' in the map filed as Annexure I.

8. Annexure I, produced herewith, discloses the location of Survey No. 343 and the status of the development made in the area covered in Survey No. 343. This map has been prepared based on the map filed by the respondent herein, for the sake of clarity. There is no alteration in the contours or other physical features as projected by the appellant herein. The boundary line of lands comprised in Survey No. 343 is coloured in green. It will be seen that the same is in odd shape and for sake of clarity respondent herein has divided into three places by leaving out the road portion, marked as yellow, as shown by the appellant.

9. Insofar as piece `A' is concerned, about 46 cents are lying vacant and there are two buildings which have been built by the allottees. Except for these two buildings in plot Nos. 58 and 59, the remaining extent is vacant and the available lands are about 32 cents. Insofar as piece `B' is concerned, an extent of about 24 cents are lying vacant. Insofar as piece `C' is concerned, about 11 cents are vacant, leaving out the road portion as shown in the map of the appellant herein.

10. The appellant herein has produced a plan of 1989 prepared by them and has not filed the revised approved plan obtained by them in 1992. It is admitted by the appellant that because of development of huge extent of lands, they have obtained approval from the Chennai Metropolitan Development Authority in phases. Insofar as the lands in question are concerned, a revised approval was obtained in 1992 and the map showing the approval of the Chennai Metropolitan 16 Development Authority is filed herewith as Annexure `II'. This map was obtained under Right to Information Act.

11. It will be seen that the lands which the appellant now claims in Map `B' as `Open Space Reservation' has been shown as housing plots in the plan as approved by Chennai Metropolitan Development Authority. The Chennai Metropolitan Development Authority is the authority to grant planning permission for formation of layout and construction of flats. The plan, which is filed herewith as Annexure II is the approved plan of Chennai Metropolitan Development Authority in respect of Block No.6, Madras Urban Development Project I, Sites and Services Programme, Mogappair in file No. SS2/3662/92. It will be seen that the sketch filed by appellant in Map `B' and the approved plan filed by the respondent as Annexure II are one and the same. The plan copy produced by the appellant herein pertains to Block Nos. 5 and 6 of Mogappair East under the Madras Urban Development Project- II, Sites and Services Programme, Mogappair, while the copy produced by the respondent herein also pertains to the very same Block No.6, Mogappair East under the Madras Urban Development Project-II, Sites and Services Programme, Mogappair East. It will be seen from the approved plan issued by the Chennai Metropolitan Development Authority in 1992, in respect of the property in question that not even a single portion of it has been shown as `Open Space Reservation' land.

The entire area has been shown as housing plots. Therefore, even as per the revised approved plan of Chennai Metropolitan Development Authority procured by the appellant herein in 1992, the lands in question have been shown as residential plot and not reserved as `Open Space Reservation' land. Therefore, the averment of the appellant herein as contained in the affidavit is factually incorrect.

12. It will be seen from the Map `A' filed by the appellant that adjacent to the respondents' land, the lands comprised in Survey No.339/1, were reconveyed by Tamil Nadu Housing Board, based on the orders of the Court to the land owners. In the above mentioned lands, a portion of the land was allotted by Tamil Nadu Housing Board to third parties. Therefore, by virtue of the orders of the court, the lands which were allotted to third parties and buildings constructed thereon was excluded and the remaining portions were reconveyed. Therefore, it is 17 erroneous on the part of the appellant to state that the lands cannot be reconveyed to the respondents herein as admittedly in the present case, except for two plots in vacant lands marked as `A' in Annexure I and other lands are lying vacant and unutilized.

Rejoinder affidavit :

3. I submit that the contention of the respondent in paragraph 9 of the counter is not correct. With regard to "A" marked property, it is true that Plot No. 58 and 59 has been allotted and there is little bit of vacant land around the same but it is not correct to state that the same has not been developed.

The said vacant land has not been put to use due to the above case and after disposal of the same, it will be put to effective use. It is further submitted that due to court cases, the land was kept idle due to which some bushes and thorn threes have grown and the same is being projected in a wrong

manner through photographs by the respondent. With regard to "B" marked land is concerned, the same has been earmarked for OSR and handed over to local body. With regard to "C" marked land, it is most respectfully submitted that the same has been earmarked as commercial plot measuring around 2400 sq. ft. and was allotted to M/s. Southern Associates vide order MMDA Lr. No.SS2/3909/96 dated 20.3.97 and in the same portion the adjacent plot which is also commercial plot CS-6 measuring 1791 sq.ft. has been allotted to Mrs. Manjula vide order MEE2/57/90 dated 3.5.97 and she has also constructed shops and running the same.

5. I submit that regarding the averments in paragraphs 10 and 11 are concerned, it is submitted as follows: Initially, the lands of the respondent was not shown as open space (OSR) but thereafter there were alterations and additions based on the site conditions and hence the plans were changed and the Board built flats and put the lands into effective use. It is submitted that as Flats were constructed in part of the S. No. 342 which was also originally earmarked for residential plots, changes were made for making effective use of the land and accordingly OSR lands earmarked in appellants land which is now being misunderstood by the respondent. It is further submitted that necessary revised approval for these changes has been sent to 18 appropriate authority vie reference Plg/7665-A/95 dated 10.2.97.

7. The appellant submits that the scheme has been implemented batch by batch, based on the demand from public and need. The lands acquired from the respondents could not be utilized for the scheme as the cases were pending before the Courts. The purpose for which the land was acquired is still in force and that neither the Government nor the Housing Board had taken any decision to withdraw from the acquisition.

15. A careful reading of the above reproduced extracts of the affidavits filed by the parties shows that substantial portion of the acquired land has been utilized for implementation of the housing scheme, some portion has been transferred to M/s. Southern Associates and some portion is lying vacant. The respondents have not controverted the assertions contained in the affidavits of Shri Darmendar Pratap Yadav that the land covered by Survey Nos.340 and 341 has been utilized for construction of flats, formation of roads and residential plots; that some portion of Survey No.341 has been utilized for construction of a high school building; that a portion of Survey No.343 has been earmarked for commercial site and allotted to Messrs Southern Associates and the remaining portion has been kept vacant for formation of residential plots, roads and open space.

It is also revealed from the affidavits that some portion of the acquired land has been dealt with by Chennai Metropolitan Development Authority, which came into existence after initiation of the acquisition proceedings. The report of the appellant-Board which led to rejection of the representation made by L. Chandrasekaran shows that sanction has already been accorded by the Madras Metropolitan Development Authority for allotment of housing plots to economically weaker section of the society and some plots have already been allotted to eligible persons. The appellant-Board has also succeeded in getting sanction from HUDCO for construction of 174 multi-storied

flats for higher income group on a portion of Survey No.343 and construction of 62 such flats has already been completed. The affidavits of the parties further show that there has been lot of litigation in relation to the acquired land and some portions of the acquired land have been released to the original owners in compliance of the orders passed by the Courts. However, as the respondents have not placed before this Court pleadings of those cases, it is not possible to decide whether there is substantial similarity in the claim of the respondents and those whose lands have been released in furtherance of the orders passed by the Courts so as to enable us to draw an inference that rejection of respondents prayer is arbitrary and violative of the doctrine of equality. The xerox copies of the orders produced by learned counsel for the respondents do show that the Division Bench of the Madras High Court passed almost identical orders for release of land under Section 48-B of the Act. S.L.P. (C) Nos.9343-9344/2000 in which the appellant-Board had challenged order dated 1.3.2000 passed by the Division Bench of the High Court in Writ Appeal No.2160/1999 was 20 dismissed as withdrawn. SLP(C) Nos.10911-10912/2001, 9026- 9027/2001, 3289/2002, 9524/2002, 9673-9674/2002, 4174-4175/2002, 3606/2003, 3630/2003, 2670/2003, 3673/2003, 3691/2003, 3790/2003, 3960/2003 and 4176/2003 were summarily dismissed by passing one or two line orders apparently because this Court felt satisfied that those cases were not fit for exercise of jurisdiction under Article 136 of the Constitution. In our view, none of these orders can be treated as laying down law which the co-ordinate and smaller benches of the Court are required to follow.

16. A glance at the impugned order shows that the Division Bench did not at all advert to the factual matrix of the case and the reasons incorporated in the Government's decision not to reconvey the acquired land to the respondents. The Division Bench also did not examine the correctness or otherwise of the order passed by the learned Single Judge and allowed the appeals preferred by the respondents simply by relying upon order dated 18.2.2000 passed in Writ Appeal No.2430/1999 and that too without even making an endeavour to find out whether the two cases were similar. In our view, the direction given by the Division Bench to the appellant-Board to reconvey the acquired land to the respondents is per se against the plain language of Section 48-B of the Act in terms of which only the Government can transfer the acquired land if it is satisfied 21 that the same is not required for the purpose for which it was acquired or for any other public purpose. The appellant-Board is not an authority competent to transfer the acquired land to the original owner. Therefore, the Division Bench of the High Court could not have issued a mandamus to the appellant-Board to reconvey the acquired land to the respondents.

As a matter of fact, the High Court could not have issued such direction even to the Government because the acquired land had already been transferred to the appellant-Board and the latter had utilized substantial portion thereof for execution of the housing scheme and other public purposes.

17. There is one more reason why the impugned judgment deserves to be set aside. Undisputedly, the land of the respondents forms part of large chunk which was acquired for execution of housing scheme. The report sent by the appellant-Board to the State Government shows that the purpose for which the land was acquired is still subsisting. The respondents had neither pleaded before the High Court nor any material was produced by them to show that the report which formed basis of the

Government's decision not to entertain their prayer for reconveyance of the land was vitiated by malafides or that any extraneous or irrelevant factor had influenced the decision making process or that there was violation of the rules of natural justice. Therefore, the Division Bench of 22 the High Court could not have exercised the power of judicial review and indirectly annulled the decision contained in communication dated 18.3.1999.

18. It need no emphasis that in exercise of power under Section 48-B of the Act, the Government can release the acquired land only till the same continues to vest in it and that too if it is satisfied that the acquired land is not needed for the purpose for which it was acquired or for any other public purpose. To put it differently, if the acquired land has already been transferred to other agency, the Government cannot exercise power under Section 48-B of the Act and reconvey the same to the original owner. In any case, the Government cannot be compelled to reconvey the land to the original owner if the same can be utilized for any public purpose other than the one for which it was acquired.

19. Before concluding, we may notice the judgment of this Court in Tamil Nadu Housing Board v. Keeravani Ammal (supra). 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:

"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 23 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.

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.

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 v. M. Bhaskaran Pillai (1997) 5 SCC 432 in a similar situation, this Court observed: (SCC p.433, para 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 24 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."

Section 48-B introduced into the Act in the State of Tamil Nadu is an exception to this rule. Such a provision has to be strictly construed and strict compliance with its terms insisted upon. Whether such a provision can be challenged for its validity, we are not called upon to decide here."

20. In the result, the appeals are allowed. The impugned judgment is set aside and the orders passed by the learned Single Judge in the writ petitions filed by the respondents are restored. The parties are left to bear their own costs.