

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2015

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.11275 of 2014

1.G.Padmanabhan
2.G.Shanmugam

.. Petitioners

Vs

1.The State of Tamil Nadu,
Rep by its Secretary to Government,
Housing and Urban Development Department,
Fort St.George, Chennai - 600 009.

2.The Managing Director,
Tamil Nadu Housing Board,
No.33, Anna Salai,
Nandanam, Chennai - 600 035.

3.The Special Tahsildar (LA),
Hosur Housing Scheme,
Bagalur Road,
Krishnagiri District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Declaration declaring that the Land Acquisition Proceedings initiated under the Land Acquisition Act 1894 in respect of land measuring an extent of 1.35.0 hectare comprised in Survey No.19/2, 0.59.5 hectare in Survey No.19/3, 0.62.5 hectare in Survey No.19/4 and 0.26.5 hectare in Survey No.19/6, totally measuring an extent of 2.83.5 hectares situate at Nalighabetta Agraharam Village, Hosur Taluk, Krishnagiri District covered by Notification issued under Section 4(1) in G.O.Ms.No.788, Housing and Urban Development Department, dated 09.05.1991 and Section 6 Declaration in G.O.Ms.No.487 Housing and Urban Development Department, dated 31.07.1992 deemed to have lapsed in view of Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-Settlement Act, 2013.

For Petitioners : Mr.R.Bharath Kumar
For Respondents 1,3 : Mr.R.Rajeswaran
Special Government Pleader
For Respondent 2 : Mr.V.Anandamurthy

ORDER

Heard Mr.R.Bharath Kumar, learned counsel appearing for the petitioners, Mr.R.Rajeswaran, learned Special Government Pleader appearing for the respondents 1 and 3 and Mr.V.Anandamurthy, learned counsel for the second respondent and with their consent, the Writ Petition is taken up for final disposal.

2. In this Writ Petition, the petitioners seek for a declaration to declare that the land acquisition proceedings initiated under the Land Acquisition Act 1984, in respect of lands in question deemed to have lapsed in view of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act 2013 (hereinafter referred to as the Central Act 2013).

3.The facts which are necessary for the disposal of the Writ Petition are that the lands were acquired by the Government for the Scheme of the Tamil Nadu Housing Board, Krishnagiri. A notification under Section 4(1) of the Land Acquisition Act (hereinafter referred to as "Act") was issued on 09.05.1991 and declaration under Section 6 of the Act was issued on 31.07.1992.

4. The petitioners have filed a Writ Petition before this Court in W.P.No.9417 of 1994 and while entertaining the Writ Petition, by an order dated 18.05.1994, this Court granted an order of stay of dispossession. The petitioners are stated to be continued in possession till date. The award was passed on 03.08.1994 and it is a specific case of the petitioners that till date, the award amount has not been deposited before the Civil Court. Ultimately, the Writ Petition in W.P.No.9417 of 1994 was dismissed by this Court on 10.07.2001. Consequently, the interim order of stay of dispossession stood vacated. However, the petitioners state that though stay was vacated, till date the petitioners are not being dispossessed.

5. The learned counsel appearing for the petitioners, after elaborately referring to the factual scenario, submitted that in terms of Section 24(2) of the Central Act 2013, in case land acquisition proceedings are initiated under 1894 Act, where an award under Section 11 has been made five years or above prior to the commencement of the Act, but the physical possession of the land has not been taken or the compensation has not been paid, the land acquisition proceedings shall be deemed to have lapsed. It is submitted that in the instant cases though award was passed on 03.08.1994, possession has not

been taken from the petitioners till date and no compensation has been paid to them or deposited in the Court by the third respondent. Therefore, it is their contention that the land acquisition proceedings are lapsed. In support of their submissions, the learned counsel for the petitioners placed reliance on the decision of the Hon'ble Supreme Court in Sree Balaji Nagar Residential Association v. State of Tamil Nadu reported in 2014(5) STC 857. Further, it is also the submission of the learned counsel for the petitioners that the Housing Board in as many as four communications has addressed various authorities stating that the land is not required for implementation of the Scheme. In this regard, the attention of this Court was drawn to the proceedings of the Superintendent Engineer of the Housing Board dated 27.06.2013. On the above grounds, the learned counsel submits that the acquisition proceedings have lapsed.

6. The learned Special Government Pleader appearing for the respondents 1 to 3 by referring to the counter affidavit, submitted that the details with regard to the acquisition proceedings are set out in the preceding paragraphs. In Paragraph No.3, it is stated that the award amount of Rs.29,53,776/- which includes the compensation for the lands covered in this Writ Petition was deposited to the Land Acquisition Officer on 16.02.1995 by the Tamil Nadu Housing Board. Further, in Paragraph No.5 of the counter affidavit, the third respondent has admitted that the Housing Board could not implement the scheme, but they would say that the lands are essentially required. On the above grounds, the learned Special Government Pleader sought to sustain the acquisition proceedings.

7. The Housing Board, in its counter affidavit and in particular, in paragraph No.4, has admitted that the Land Acquisition Officer has not handed over the lands to them and the lands in Survey Nos.19/2, 19/3, 19/4 and 19/6 of Nalligaipetta Agraharam Village, Hosur Village, were not used by the Housing Board, due to the interim orders passed in the Writ Petition. Further, the Housing Board also takes a stand that they have already paid the award amount to the Land Acquisition Officer on 16.02.1995.

8. After hearing the learned counsel for the parties and perusing the materials placed on record, it is clear that the factual position is that the petitioners are still in possession of the land. This fact is not only explicitly admitted by the respondents in their counter affidavit, nor disputed during the course of argument. Therefore, the only

issue would be as to whether the land acquisition proceedings are deemed to have been lapsed in the light of Section 24(2) of the Central Act 2013.

9. To answer this question, it is necessary to take note of the decision of the Hon'ble Supreme Court on this aspect in Sree Balaji Nagar Residential Association case, where appeals were filed by the Association of the Residents of particular locality, challenging the order passed by the Government of Tamil Nadu, containing a scheme for development of a proposed Canal, for which proceedings under Land Acquisition Act 1984 was initiated.

10. In the light of the new legislation namely Central Act 2013, an interlocutory application was filed in the appeal pending before the Hon'ble Supreme Court stating that the appeal should be allowed in terms of Section 24(2) of the Central Act 2013. Considering the said facts and circumstances, the Hon'ble Supreme Court has pointed out as follows:

8. However, this issue need not be pursued any further because admittedly physical possession of the land involved in these Appeals has not been taken over by the State and on that account alone, the Land Acquisition proceeding under challenge will have to be treated or declared as lapsed unless we find merit in the contention raised on behalf of State that this plea cannot be used against the State because it was prevented from taking physical possession of the lands on account of Interim Orders passed by the High Court and this Court. There is no dispute that Writ Petitions were filed even before the making of Award and Interim Orders have operated against the State of Tamil Nadu and therefore, the State was not at fault in not taking physical possession of the concerned lands under acquisition. But the intention of the Legislature in enacting Section 24(2) of the 2013 Act, will have to be culled out from its wordings and on the basis of other relevant provisions of this Act and the relevant case law for deciding whether the period of stay/injunction is required to be excluded in computing the five years' period or not. From a plain reading of Section 24 of the 2013 Act it is clear that Section 24(2) of the 2013 Act does not exclude any period during which the Land Acquisition proceeding might have remained stayed on account of stay or injunction

granted by any Court. In the same Act, Proviso to Section 19(7), in the context of limitation for publication of declaration under Section 19 (1), and the Explanation to Section 69(2), for working out the market value of the land in the context of delay between preliminary Notification under Section 11, and the date of the Award, specifically provide that the period or periods during which the Acquisition Proceedings were held up on account of any stay or injunction by the order of any Court be excluded in computing the relevant period. In that view of the matter, it can be safely concluded that the Legislature has consciously omitted to extend the period of five years indicated in Section 24(2), even if the proceedings had been delayed on account of an Order of Stay or Injunction granted by a Court of law or for any reason. Such casus omissus cannot be supplied by the Court in view of law on the subject elaborately discussed by this Court in the case of Padma Sundara Rao (Dead) & ors. v. State of T.N. & ors., 2002 (2) CTC 55 (SC): 2002 (3) SCC 533.

9. Even in the Land Acquisition Act of 1984, the Legislature had brought about amendment in Section 6 through an Amendment Act of 1984 to add Explanation 1 for the purpose of excluding the period when the proceedings suffered stay by an Order of the Court, in the context of limitation provided for publishing the declaration under Section 6(1) of the Act. To a similar effect was Explanation to Section 11-A, which was added by Amendment Act 68 of 1984. Clearly the Legislature has, in its wisdom, made the period of five years under Section 24(2) of the 2013 Act absolute and unaffected by any delay in the proceedings on account of any Order of Stay by a Court. The plain wordings used by the Legislature are clear and do not create any ambiguity or conflict. In such a situation, the Court is not required to depart from the literal rule of interpretation. It was faintly suggested by Mr. Subramonium Prasad, learned AAG for the State of Tamil Nadu that the Proviso may come to the rescue of the State and save the proceedings from suffering lapse if it is held that since there was an Award leading to payment of Compensation in respect of some of the land holdings only, therefore all the beneficiaries may now be entitled to Compensation in accordance

with the provisions of the 2013 Act. This contention could have been considered with some more seriousness if physical possession of the land had been taken but since that has not been done, the Proviso dealing only with Compensation cannot be of any help to the State.

10. Therefore, we are not required to go deeper into the effect and implications of the Proviso which prima facie appears to be for the benefit of all the land holders in a case where the Award is subsisting because the proceedings have not lapsed and Compensation in respect of majority of land holdings has not been deposited in the account of the beneficiaries. There is nothing in the language of the Proviso to restrict the meaning of the words used in Section 24(2), mandating that the proceedings shall be deemed to have lapsed if the Award is five years or more than five year'old but the physical possession of the land has not been taken over or the compensation has not been paid. The law is trite that when the main enactment is clear and unambiguous, the Proviso can have no effect so as to exclude from the main enactment by implication what clearly falls within its express terms, as held by Privy Council in the case of Madras and Southern Mahratta Railway Co. Ltd. V. Bezwada Municipality, AIR 1944 PC 71, and by this Court in the case of C.I.T. v. Indo Mercantile Bank Ltd., AIR 1959 SC 713. The judgment of Three-Judges' Bench in the case of Harakchand Misirimal (supra), has been followed by another Bench of Three-Judges in the case of Union of India & ors. etc. v. Shivraj & ors., 2014 (6) SCC 564. In Paragraphs 25 & 26 of that Judgment, this Court took Notice of a Clarification issued by the Government of India, Ministry of Urban Development, Delhi Division dated 14.3.2014. Part of the Circular extracted in that case clearly shows that the period of five years or more in Section 24(2) of the 2013 Act has been prescribed with a view to benefit the land-losers and the period spent in litigation due to challenge to the Award or the Land Acquisition proceedings cannot be excluded.

11. The above decision of the Hon'ble Supreme Court has been reiterated in several decisions, which cannot be disputed by the respondents. The petitioners have been in possession of the lands and they have not been dispossessed, has also been admitted by the respondents. Furthermore, it is clear that the compensation amount has not been deposited before the Civil Court. Under such circumstances, it has to be necessarily held that the acquisition proceedings are deemed to have been lapsed in the light of Section 24(2) of the Central Act 2013. Accordingly, the Writ Petition is allowed as prayed for. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To:

- 1, The Secretary to Government ,
Housing and Urban Development Department,
Fort St.George, Chennai - 600 009.
- 2.The Managing Director,
Tamil Nadu Housing Board,
No.33, Anna Salai,
Nandanam, Chennai - 600 035.
- 3.The Special Tahsildar (LA),
Hosur Housing Scheme,
Bagalur Road,
Krishnagiri District.

+lcc to Mr.V.AnandhaMurthy, Advocate, S.R.No.67479
+lcc to the Government Pleader, S.R.No.67951

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