

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2015

CORAM

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

W.P.No.30676 of 2015

and

M.P.No.1 of 2015

V.N.Mohamed Hussain

.. Petitioner

.Vs.

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

2.The Land Acquisition Officer and
Special Tahsildar (LA) Unit - III,
Tamil Nadu Housing Board Schemes,
Chennai - 600 035.

3.The Executive Engineer,
Tamil Nadu Housing Board,
No.493, Anna Salai, Nandanam,
Chennai- 600035

.... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issue a Writ of declaration, declaring that the Land Acquisition proceedings in respect of the petitioner's land comprised in Survey No.84/6 A1 A1 A2, Thiruvanmiyur Village, measuring to an extent of 29 cents, have become lapsed as per Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013.

For Petitioner :: Mr.R.Ganthi, Senior Counsel
for Mr.R.G.Narendhiran

For Respondent :: Mr.RM.Muthukumar for R1 and R2
Mr.Vivekavanan for R-3

O R D E R

The petitioner is the owner of the property measuring to an extent of 29 cents comprised in Survey No.84/6 A1 A1 A2, Thiruvannamiyur Village, having purchased the same from one G.Sethu Jesudason, vide sale deed dated 07.07.1980. The said land was acquired and it was challenged before this Court by the petitioner by filing Writ Petition No.9303 of 1986 and the said Writ Petition was dismissed on 26.09.1995. The second respondent, by its communication dated 02.01.1997, directed the petitioner to hand over the possession of the property and the same was challenged before this Court in Writ Petition No.307 of 1997. The said writ petition was also dismissed on 21.01.2000. Against which, the petitioner has preferred the Writ Appeal in W.A.No.185 of 2000 before this Court. The First Bench of this Court by its order dated 02.03.2000 directed the Government Pleader to serve notice to the petitioner under Section 12(2) of the Land Acquisition Act and the petitioner was given right to file application for reference within 15 days. On 30.03.2000, under Section 12(2) of the Land Acquisition Act, notice was served upon the petitioner and the same was challenged before this Court in Writ Petition No.6823 of 2000 and the same was dismissed on 20.11.2000. Against the said dismissal order, the petitioner has preferred Writ Appeal in W.A.No.88 of 2001. This Court, by order dated 23.02.2001, dismissed the said appeal and granted 15 days time for seeking reference under Section 18 of the Land Acquisition Act. On reference, LAOP.No.3 of 2001 was filed before the VI Assistant City Civil Court, Chennai. The learned VI Assistant Judge, City Civil Court, Chennai by its Judgment and decree dated 31.03.2010, enhanced the award amount from Rs.21,739.20 to Rs.40,000/-. Though, the award was passed as early as on 31.08.1987, till date, the award amount was not paid and therefore the petitioner has approached this Court seeking declaration that the land acquisition proceedings got lapsed under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013.

2. Heard Mr.R.Gandhi, learned Senior Counsel appearing for the petitioner and Mr.R.M.Muthukumar, learned Government Advocate, appearing for the respondents 1 and 2 and Mr.V.Vivekavanan, learned counsel appearing for the third respondent.

3. Mr.R.Gandhi, the learned Senior Counsel appearing for the petitioner would submit that the possession still lies with the petitioner and the award amount has not been deposited.

4. However, Mr.Vivekavanan, the learned counsel appearing for the third respondent would submit that as per the original award amount, the award amount was deposited with the revenue deposit in the year,1993 and as far as the enhanced amount is concerned, he would submit that the enhanced award amount was deposited before the City Civil Court, Chennai. Therefore, there is no question of any lapsing of earlier Land Acquisition proceedings. Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 reads as follows:-

"24. Land Acquisition process under Act No.I of 1894 shall be deemed to have lapsed in certain cases: (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894.

(a) where an award under Section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) Where an award under said Section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section(1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1984, where an award under the said section 11 has been made five years or more 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 said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act.

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under Section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.

5. As per Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013, if the award has been passed five years earlier to the commencement of this Act, physical possession of the land has not been taken or compensation has not been paid the proceedings shall be deemed to have lapsed.

6. Though, it is stated by the respondents that as per the Judgment of the Hon'ble Supreme Court in PUNE MUNICIPAL CORPORATION AND ANOTHER Vs. HARAKCHAND MISRIMAL SOLANKI AND OTHERS, reported in [2014(1) CTC 755(SC)], the amount has been deposited in the revenue deposit. Though, it has been stated that the amount has been deposited before the City Civil Court, no proof was produced before this Court to show that the enhanced compensation amount has been deposited with the City Civil Court as per Section 31(2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013. Therefore, it is clear that for non depositing of compensation amount, the proceedings get lapsed.

7. Accordingly, the Writ Petition is allowed as prayed for holding that the Land Acquisition proceedings initiated by the respondents in respect of the petitioner's land comprised in Survey No.84/6 A1 A1 A2, Thiruvanmiyur Village, measuring to an extent of 29 cents, shall be deemed to have been lapsed in view of Section 24(2) of the Right to Fair Compensation and

Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013. Even though the register is produced to show that the amount has been deposited, it would show that the original award amount was only made in revenue deposit.

Sd/-
Assistant Registrar(CS-II)

True Copy

Sub Assistant Registrar

To

- 1.The Secretary to Government,
The Government of Tamil Nadu,
Housing and Urban Development Department,
Fort St. George,
Chennai - 600 009.
- 2.The Land Acquisition Officer and
Special Tahsildar (LA) Unit - III,
Tamil Nadu Housing Board Schemes,
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- 3.The Executive Engineer,
Tamil Nadu Housing Board,
No.493, Anna Salai, Nandanam,
Chennai - 600 035.

+1cc to Mr.B.Vivekavanam, Advocate sr.59102

+1cc to Mr.R.G.Narendhiran, Advocate sr.58945 [18/11/2015]

+ 1 cc to The Govt.Pleader, Sr 59888. (5/1/16)

W.P.No.30676 of 2015

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srg 17/11/2015

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