

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.03.2016

Coram

The Hon'ble Mr. Justice T.S. Sivagnanam

Writ Petition No.20272 of 2014

and

M.P.No.1 of 2014

Appanna @ Muniappa
rep. by his Power Agent,
Lakshamma

...Petitioner

Vs.

1. The Government of Tamil Nadu,
rep. by its Secretary to Government,
Housing and Urban Development,
Fort St. George, Chennai - 600 009.
2. The Managing Director,
The Tamil Nadu Housing Board,
No.33, Anna Salai, Nandanam,
Chennai - 600 035.
3. The Special Tahsildar,
(Land Acquisition)
Housing Scheme,
Bagalur Road, Hosur.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Declaration that the land acquisition proceedings initiated for implementation of comprehensive housing development scheme in the award No.6/94, dated 30.05.1994 passed under the Land Acquisition Act, 1894, shall be deemed to have been lapsed by virtue of section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (the central Act, 2013) in respect of the petitioner's property situated in S.No.95/1, measuring to an extent of 0.26.0 hectares and in S.No.96/1A measuring to an extent of 2.19.5 hectares in Hosur Taluk, Krishnagiri District.

For Petitioner : Mr.R.Bharath Kumar
For Respondents1&3 : Mr.R.Rajeswaran
Special Government Pleader
For Respondent-2 : Mr.V.Anandamoorthy

O R D E R

Heard the learned counsel appearing for the parties and perused the materials placed on record.

2. The petitioner has filed this Writ Petition, seeking for issuance of Writ of Declaration, to declare the land acquisition proceedings as having been lapsed in terms of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (the Central Act, 2013).

3. The facts, which are necessary for disposal of this Writ Petition are as follows:-

i) The petitioner's land, comprised in S.No.95/1 measuring an extent of 0.26.0 hectares, and in S.No.96/1A, measuring 2.19.5 hectares in Hosur Taluk, Krishnagiri District, were subject matter of the land acquisition proceedings for an housing scheme of Tamil Nadu Housing Board. The petitioner, though has stated that there was no proper compliance of the provisions of the Land Acquisition Act, earlier point of time, he did not question the acquisition proceedings, as being in violation of procedures contemplated under the Land Acquisition Act. The petitioner would admit that the award was passed in the year 1994, but he has filed this Writ Petition in the year 2014, challenging the acquisition proceedings on two grounds. Firstly, by contending that the compensation, though awarded in the year 1994, not a single pie has been paid to him. Secondly, it is contended that the acquisition proceedings have not proceeded further, and the possession of the property still continues with the petitioner.

4. The learned counsel appearing for the petitioner has placed reliance on the decision of the Hon'ble Supreme Court in the case of (Pune Municipal Corporation and another Vs. Harakchand Misirimal Solanki) reported in (2014) 3 S.C.C. 183, wherein, the Hon'ble Supreme Court held that, where the award passed under Section 11 of the Land Acquisition Act has been made 5 years, or more prior to the commencement of Act 30 of 2013, but physical possession of the land has not been taken, or compensation has not been paid, the proceedings shall be deemed to have lapsed.

5. From the written instructions given by third respondent, the fact that the petitioner is in possession of the lands, which were the subject of acquisition proceedings, has not been disputed. In fact, it is admitted that there is an order of interim injunction restraining the respondents from interfering with the possession of the petitioner's property. So far as the compensation is concerned, it is stated that the award in respect of the petitioner's lands was passed in Award No.6 of 1994, dated 30.05.1994, and the compensation was kept in "Works Deposit Account", in the Government Treasury.

6. Thus, it is settled legal position that deposit in the Government exchequer does not amount to payment of compensation to the landowner (petitioner in this case). Therefore, on the first ground, the petitioner is entitled to succeed. So far as second ground is concerned, i.e. the acquisition proceedings have not proceeded further, and the possession of the property still continues with the petitioner, the respondents would state that because of the order of interim injunction granted by this Court, they could not take possession. However, it is to be pointed out that the award was passed in the year 1994, whereas, this Writ Petition was filed by the petitioner only on 24.07.2014, in which, status quo was granted. Thus, it is infact, admitted by the respondents that possession all along continued with the petitioner, and nothing has happened to the project in question. The reasons assigned by the third respondent that on account that the petitioner has filed Writ Petition for re conveyance of the land, and the orders passed in the said Writ Petition relates to the said issue, did not have absolutely any bearing or effect on the present Writ Petition. That apart, the Honourable Division Bench of this Court in a recent decision in the case of (The Tamil Nadu Housing Board and another v. iGate Global Solutions Limited) [2016 (2) MLJ 385] has threadbare analyzed all the decisions on the point, and laid down the legal principle with regard to the manner in which the possession has to be taken out. In paragraph No.60 of such decision, it has been held thus:

"60 The ratio deducible from the aforestated judicial pronouncements is that for taking over of possession of the land under Section 16 of the Old Act, 1894, the revenue authorities must establish by producing some evidence, i.e., either preparation of panchanama in the presence of the witnesses or some other documents. The transfer certificates subsequently prepared by the revenue authorities for delivering possession of the land in question to the Housing Board in absence of a witness or land

owner, will not be sufficient to establish that possession of the lands was taken over from the land owners. In the case on hand, it is strongly pleaded by the learned counsel appearing for the private respondents that the land owners or their successors are continuing in possession till date. Thus, it is held that the possession of the lands in question were not taken over after passing of the Award."

7. In the instant case, the above procedures have not been followed, and it has been admitted by the third respondent owing to interim injunction, which is operating against the respondents, possession could not be taken over. The Honourable Division Bench has also considered the other issues in yet another decision in (R.Rajaram and five others vs. The Secretary to Government and two others) [W.A.No.1100 of 2014 dated 26.02.2016]. In the said decision, it has been held thus:

"25. Coming to the second contention of the respondents that the possession of the land could not be taken over on account of the order of interim stay granted by the Courts, indisputably, the award was passed on 20 July 1994. Thereafter, stay of dispossession was granted, which continued till 17 August 2001. Again, stay was granted on 10 December 2004 and on account of the stay of dispossession granted by the Courts, possession, according to the respondents, could not be taken over.

26. In this context, it is pertinent to point out that the period of 5 years stipulated in the 2013 Act is relevant only for the purpose of passing of the award under Section 16 of the Old Act, 1894, i.e., any award which has been passed 5 years or more, prior to the commencement of the 2013 Act, that shall stand lapsed, if, either possession of the land is not taken over or compensation has not been paid.

27. The contention of the learned Additional Advocate General that the period of interim stay of dispossession be excluded from the period of 5 years, is misplaced. There is no prescription of 5 years for taking over of the possession or making payment of compensation. The Supreme Court,

in Sree Balaji Nagar Residential Association (supra), has observed as under:

"9. 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 proceedings under challenge will have to be treated or declared as lapsed unless we find merit in the contention raised on behalf of the 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.

10. There is no dispute that the 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 lands concerned 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.

11. 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, the 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 Padma Sundara Rao v. State of T.N.”

28. In yet another decision in Rajiv Chowdhrie HUF (supra), wherein, the question of exclusion of any period during which land acquisition proceedings was stayed, came into consideration, the Supreme Court observed as under:

“16. Further, with regard to the legal contention that physical possession of the land could not have been taken by the respondents in view of the interim order of “status quo” passed by this Court. This Court in Sree Balaji Nagar Residential Assn. v. State of T.N., held that Section 24(2) of the 2013 Act does not exclude any period during which the land acquisition proceedings might have remained stayed on account of stay or injunction granted by any court. It was conclusively held that the

legislature has consciously omitted to extend the period of five years indicated in Section 24(2) of the 2013 Act for grant of relief in favour of landowners 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. Thus, the said period has to be excluded as provided under the amended proviso to Section 6 of the LA Act by way of an amendment by the legislature to the above Section 6 through Amendment Act 68 of 1984, to add Explanation 1 to the Act, 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 notification under Section 6(1) of the Act. The Explanation to Section 11-A, which was added by Amendment Act 68 of 1984 was to a similar effect. This Court in the above case has examined this legal contention and held that the legislature in its wisdom made the period of five years under Section 24(2) of the Resettlement Act, 2013, absolute and unaffected by any delay in the proceedings on account of any order of stay by a court of law. The plain wordings used by the legislature under the provisions of Section 24(2) are made very 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, as held by this Court in CIT v. Indo-Mercantile Bank Ltd. as under: (AIR p. 718, para 10)

"10. Lord Macmillan in Madras & Southern Mahratta Railway Co. Ltd. v. Bezwada Municipality laid down the sphere of a proviso as follows: (IA p. 122)

'... The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case. Where, as in the present case, the language of the main enactment is clear and unambiguous, a proviso can have no repercussion on the interpretation of the main enactment, so as to exclude from it, by implication what clearly falls within its express terms.'

The territory of a proviso therefore is to carve out an exception to the main enactment and exclude something which otherwise would have been within the section. It has to operate in the same field and if the language of the main enactment is clear it cannot be used for the purpose of interpreting the main enactment or to exclude by implication what the enactment clearly says unless the words of the proviso are such that that is its necessary effect."

29 As observed hereinabove, applying the well settled principle of law to the facts of this case, the respondents are not entitled to claim any exclusion of the period of stay of dispossession, inasmuch as the time for taking over possession of the land or making payment of compensation is not prescribed in the provisions of Section 24(2) of the 2013 Act.""

8. Thus, by applying the law laid down by the Honourable Division Bench in the above referred decisions, and in the light of undisputed fact that after passing of the award, the possession of the land still remains with the petitioner/land owner, the provisions of Section 24(2) of 2013 Act would stand attracted, and consequently, the entire land acquisition proceedings shall stand lapsed.

9. In the result, the Writ Petition is allowed. However, the respondents are at liberty to initiate fresh proceedings under the provisions of Central Act 30 of 2013. No costs. Consequently, connected Miscellaneous Petition is closed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Secretary to Government of Tamil Nadu,
Housing and Urban Development,
Fort St.George, Chennai - 600 009.
 2. The Managing Director,
The Tamil Nadu Housing Board,
No.33, Anna Salai, Nandanam,
Chennai - 600 035.
 3. The Special Tahsildar,
(Land Acquisition)
Housing Scheme,
Bagalur Road, Hosur.
- +1 cc to M/s.R.Bharathkumar Advocate sr.18068/16
+1 cc to Government Pleader sr.18025/16
+1 cc to M/s.V.Anandhamoorthy Advocate sr.17949/16

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