

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2016

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A.No.685 of 2015

and

M.P.No.1 of 2015

Erode Housing Unit,
rep by Chief Engineer and
Administrative Officer,
T.N.H.B. Shopping Complex,
Surampatti, Erode.

.. Appellant

Vs.

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

3.The Special Tahsildar,
Land Acquisition Neighbourhood Scheme,
Erode.

.. Respondents

Writ Appeal preferred under Clause 15 of the Letters Patent
challenging the order dated 25.11.2014 passed in W.P. No.10712
of 2014.

Writ Petition filed Under Article 226 of the Constitution of
India for a Writ of Certiorari to call for entire records
relating to the impugned G.O.Ms. NO.469 Housing and Urban
Development Department dated 13.5.1985 issued by the 1st
respondent and quash the same since as per u/s. 24(2) of Right
to Fair Compensation and Transparency in Land Acquisition
Rehabilitation and Resettlement Act 2013 (30 of 2013) the
entire acquisition proceedings become lapsed.

For appellant : Mr.V.Anandhamurthy

For Respondents: Mr.AR.L.Sundaresan, SC
for Mr.C.Prakasam
Mrs.A.Srijayanthi, Spl.G.P for RR2
and 3

JUDGMENT

(delivered by SATISH K. AGNIHOTRI, J.)

The instant intra-court appeal is directed against the order dated 25th November, 2014 passed by the learned Single Judge in W.P.No.10712 of 2014.

2 The first respondent herein has filed the above writ petition, seeking to quash the G.O.Ms.No.469, Housing and Urban Development Department, dated 13th May, 1985, whereunder declaration under Section 6 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Old Act, 1894") was issued to acquire the land in question.

3 An Award, seeking to acquire the land in question under the provisions of Section 11 of the Old Act, 1894 was made on 4th March, 1988. Indisputably, the money was neither paid to the land owner / first respondent herein nor deposited with the Court, but was in revenue deposit. The possession was also not taken over as per the procedure laid down in a catena of decisions. In the mean time, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "the Act, 2013") came into force from 1st January, 2014. Section 24(2) of the Act, 2013 provides for lapsing of the acquisition proceedings initiated under the Old Act, 1894, in the event the Award has been made five years or more prior to the commencement of the Act, 2013, but the physical possession of the land has not been taken or the compensation has not been paid.

4 Heard the learned counsel for the parties and perused the pleadings and documents appended thereto.

5 An identical question came up for consideration before this Bench in Tamil Nadu Housing Board Vs. iGate Global

Solutions Limited¹. This Bench examined all facets of the case and held as under :

"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.

61.On plain reading of the provisions of Section 24(2) of the Act, 2013, which is non-obstante clause, it is evident that in all cases, where an Award under Section 11 of the Old Act, 1894 has been made five years or more prior to the commencement of the Act, 2013, there is no period prescribed for taking over physical possession of the land or payment of compensation. Indisputably, in all the cases, the Award under Section 11 of the Old Act, 1894 was passed much more than five years before the commencement of the Act, 2013. As aforestated, compensation was paid, excepting in W.A.Nos.164 and 329 of 2015. The appellants have failed to produce any material to establish that possession of land in question was taken over from the land owners or their successors in accordance with the provisions of law, as aforestated. Purported transfer of the land under transfer certificate from the State Government to the Housing Board in absence of a witness or the land owner is of no significance. Thus, it cannot be held that possession of the land has been taken over after passing of the Award."

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6 In the case on hand, there is no dispute in respect of non payment of compensation to the land owner or deposit with the Court and also taking over of possession in accordance with the procedure. The issue involved herein is squarely covered by the aforestated decision.

7 Resultantly, the writ appeal stands dismissed in the same terms as in iGate Global Solutions Limited (supra). No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary to Government,
The Government of TamilNadu,
Housing and Urban Development Department,
Fort St. George,
Chennai-9.
- 2.The Special Tahsildar,
Land Acquisition Neighbourhood Scheme,
Erode.

+1cc to M/S.V.Anandha Moorthy, Advocate Sr.18324
+2cc to Mr.C.Prakasam, Advocate sr.18446
+1cc to The Government Pleader Sr.18722

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