

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2016

CORAM

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

W.A.No.382 of 2014
and
M.P.No.1 of 2014

The Executive Engineer-cum-
Administration Officer,
Tamil Nadu Housing Board,
Salem Division,
Salem-636 008. ... Appellant

Vs.

1. K.Palanisamy
2. State of Tamil Nadu,
rep by its Secretary,
Department of Housing & Urban Development,
Chennai-9.
3. The Special Tahsildar,
Land Acquisition Neighbourhood Scheme,
Namakkal. .. Respondents

Writ Appeal preferred under Clause 15 of the Letters Patent
challenging the order dated 28.03.2013 passed in W.P. No.27983
of 2007.

Writ Petition filed under Article 226 of the Constitution of
India to issue a Writ of Declaration or any other order or
direction in the nature of a Writ of Declaration, declaring that
the land acquisition proceedings in respect of the petitioner land
of an extent of 2 acres and 17 cents in s.No.34/3 of
Kondichettipatty Village have lapsed in view of the provision of
Section 11(A) of the Land Acquisition Act.

For appellant

Mr.V.Anandhamoorthy

For respondents

Mr.R.Subramaniam for R-1
Mrs.A.Srijayanthi, Spl.G.P for RR2
and 3

JUDGMENT

(delivered by SATISH K. AGNIHOTRI, J.)

The instant intra-court appeal arises from the order of the learned Single Judge dated 28th March, 2013 passed in W.P.No.27983 of 2007.

2 The writ petitioner / first respondent herein filed the writ petition seeking for declaration that the land acquisition proceedings in respect of the land of the first respondent herein to an extent of 2 acres and 17 cent in S.No.34/3 of Kondichettipatty village has lapsed in view of the provision of Section 11A of the Land Acquisition Act, 1894 (for short "Act, 1894").

3 The writ petition was allowed on 28th March, 2013, holding as under:

" 24.After the passing of the order in W.P.No.7764 of 1987, award has not been passed within two years as contemplated under Section 11-A. Therefore, on that ground also, the entire proceedings for the acquisition of the land having an extent of 2.17 acres comprised in S.No.34/3 in Kondichettipatty Village, Namakkal Taluk shall stand lapsed. However, it shall be open to the Government to start the acquisition proceedings afresh by issuing a fresh notification under Section 4(1) of the Land Acquisition Act, 1894 if they still want to proceed with the acquisition of the petitioner's land comprised in S.No.34/3."

Thereagainst the Housing Board has come up with the instant appeal.

4 During the pendency of the appeal, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "the Act, 2013") was enacted and came into force with effect from 1st January, 2014. Section 24 of the Act, 2013 contemplates that all the land acquisition process under the Act, 1894 shall be deemed to have lapsed in a case, where an award under Section 11 of the Act, 1894 was made five years or more prior to the commencement of the Act, 2013, but physical possession of the land was not taken or compensation has not been paid. The provision is a deeming provision, contemplating automatic lapse, if the aforestated conditions are available.

5 The issue with regard to the ambit and scope of the aforestated provision, came into consideration in a batch of cases in the Tamil Nadu Housing Board, rep by its Managing Director, No.331, Anna Salai, Nandanam, Chennai-600 034 and another Vs. iGate Global Solutions Limited and another [W.A.No.1101 of 2014, etc. batch cases], wherein this Division Bench, by judgment dated 26th February, 2016, 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."

6 In the case on hand, as submitted by the appellant in its counter affidavit filed before the Writ Court, it is clearly stated that possession was not taken over as the writ petitioner was doing construction work in the land in question. It is not the case of the appellant that possession of the land in question after passing of the Award was taken over by the authorities at any point of time. Indisputably, the award was passed on 3rd August, 1987, i.e., more than five years before the Act, 2013 came into force. In the given facts, wherein after passing of the Award, possession was not taken over by the acquisition authorities, the proceedings stands lapsed under the provisions of Section 24 of the Act, 2013. Resultantly, we hold that the proceedings stands lapsed.

7 On the other issue that under the provisions of the Act, 1894 also, it has been held that proceedings stood lapsed on account of the fact that the Award was not passed within two years from the date of issuance of the publication of declaration under Section 6 of the Act, 1894, we are not inclined to go into that question as the Old Act stands repealed and the new Act, 2013 came into force, as aforestated. Even if the Award was passed properly in accordance with law, the entire proceedings stands lapsed for the reasons stated above.

8 In view of the foregoing, the writ appeal stands dismissed. No costs. Consequently connected miscellaneous petition stands closed.
vvk

s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

1. The Secretary,
State of Tamil Nadu,
Department of Housing & Urban Development,
Chennai-9.
2. The Special Tahsildar,
Land Acquisition Neighbourhood Scheme,
Namakkal.

+ 1 cc to M/s.V.Anandhamoorthy, Advocate, SR 15237
+ 1 cc to Mr.R.Subramaniam, Advocate, SR 15105
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