

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 22-03-2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.22706 OF 2014

- 1.C.Duraisamy
- 2.Tmt.Samboornam
- 3.P.Gobu
- 4.P.Logu

... Petitioners

-vs-

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

- 2.Revenue Divisional Officer/
Land Acquisiton Officer,
Erode.

- 3.Tamil Nadu Housing Board,
Represented by its Managing Director,
No.493, Anna Salai,
Nandanam,
Chennai-600 035.

... Respondents

Writ Petition under Article 226 of the Constitution of India, praying for issuance of a writ of declaration, to declare the land acquisition proceedings initiated by the 1st respondent herein under Sec.4 (1) Notification in G.O.Ms. No.1240 Housing and Urban Development Department, dated 09.10.1990, and all further proceedings initiated thereon under Central Act 1/1894 with respect to the petitioners' land comprised in S.F.No.739/2 Part measuring an extent of 1.65 Acres situated at Erode 'C' Village, Erode Taluk, Erode District, are lapsed by operation of law both under Central Act 1/1894 and Sec.24(2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act,2013.

For petitioner : Mr.V.P.Sengottuvel
For respondents 1 & 2 : Mr.R.Rajeswaran,
Spl.Govt.Pleader.
For respondent 3 : Mr.R.V.Babu

O R D E R

In this Writ Petition, the petitioners, who are land owners, affected by the land acquisition proceedings issued under Section 4 (1) Notification of the Land Acquisition Act, 1894, in G.O.Ms. No.1240, Housing and Urban Development Department, dated 09.10.1990, have approached this Court, to declare that the land acquisition proceedings have lapsed by operation of law in terms of Section 24 (2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, in short, "the Act".

2. Heard the learned counsel for the parties and perused the materials on record, including the counter affidavits of the Revenue Divisional Officer and the Tamil Nadu Housing Board, who are respondents 2 and 3 respectively.

3. Before going into the factual position, it would be beneficial to take note of the legal position first, as decided by the Hon'ble Supreme Court and also a Hon'ble Division Bench of this Court, which has considered the matter at great length and rendered a judgment in the case of Tamil Nadu Housing Board v. iGate Global Solutions Limited, 2016 (2) MLJ 385. It would be apt to refer to a portion of the said judgment in paragraphs 60 and 61, which read as under :

"60. The ratio deducible from the aforesaid 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."

In yet another case in R.Rajaram v. Secretary to Government, Housing and Urban Development Department, Fort St.George, Chennai, CDJ 2016 MHC 673, the aspect regarding whether the word "OR", which has occurred in Section 24 (2) of the Act, be read disjunctive or conjunctive, was considered by the Hon'ble Division Bench and it has been held as follows :

"23. The ratio deducible from the aforestated judicial pronouncements is that when a provision is clear and unambiguous, leaving no room or scope for vagueness, the word "or" cannot be understood and interpreted as "and". The intention of the Legislature must be given full effect to, unless it creates anomaly. In the case on hand, the word "or" used in two places in the passage in Rule 24(2) of the 2013 Act, viz., "where an award under the said Section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid" clearly

indicates that after the award is passed 5 years or more, prior to the commencement of the 2013 Act, the proceedings initiated under the Old Act, 1894, shall be deemed to have lapsed. Thus, in any eventuality, either if the compensation is not paid or possession of the land is not taken over, the provisions of Section 24(2) would be attracted. Thus, the word "or" employed in Section 24(2) of the 2013 Act in the aforesaid two places, has to be read disjunctively and not conjunctively, as pleaded by the learned Additional Advocate General.

24. The manifest intention of the Legislature can be derived from the Statement of Objects and Reasons, read with the plain language of Section 24(2) of the 2013 Act. Clause 18 of the Statement of Objects and Reasons clearly stipulates that the benefits under the new law would be available in all the cases of land acquisition under the Old Act, 1894, where, award has not been made or possession of land has not been taken. In line with the objective of the enactment, Section 24(2) of the 2013 Act plainly reads that where an award under Section 11 has been made 5 years or more prior to the commencement of the 2013 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. Thus, it is eloquent that the word "or" employed in two places in the passage "where an award under the said Section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid" is disjunctive and not conjunctive. On happening of one event, the land owner would be entitled to the benefit under the provisions of Section 24(2) of the 2013 Act."

Thus, if one of the twin tests is satisfied, then, acquisition proceedings are deemed to have lapsed.

4. In paragraph 7 of the counter affidavit of the second respondent, it is stated that the award was pronounced in Award No. 6 of 1994, dated 28.09.1994, in respect of

R.S.No.739/2, and the same was not taken over possession based on the judgment in W.P.No.1476 of 1993, dated 31.10.2001, and the land cost deposited was refunded to avoid the interest amount and also to avoid loss to the Government. The said decision, which has been referred to, pertains to the challenge to the land acquisition proceedings, wherein the Declaration made under Section 6 of the Land Acquisition Act,1894, was quashed. In the instant case, the fact remains that possession has not been taken over and compensation has not been deposited.

5. In so far as the counter affidavit of the Housing Board is concerned, it is admitted in paragraph 7 that possession of the land has not been taken over and the compensation amount has been refunded.

6. Since, in this case, both the tests stipulated under Section 24 (2) of the Act are satisfied, the acquisition proceedings are deemed to have lapsed, in so far as the lands of the petitioners are concerned.

7. Writ Petition is allowed. No costs. Consequently, the connected W.M.P.No.420 of 2016 is closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary,
State of Tamil Nadu. सतयमेव जयते
Housing and Urban Development Department,
Fort St.George Chennai-600 009.

2.Revenue Divisional Officer/
Land Acquisition Officer, Erode.

3.The Managing Director,
Tamil Nadu Housing Board,
No.493, Anna Salai,
Nandanam, Chennai-600 035.

+1 cc to Mr.V.P.Sengottuvel, Advocate, sr.18277

+1 cc to Government Pleader, sr.18378

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scd co
kra 06.04.2016