

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 05.04.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.23492 of 2014 &
M.P.No.1 of 2013

G.Karthic Kannan

[PETITIONER]

Vs

- 1 State of Tamil Nadu
Rep. by its Secretary to Government
Housing and Urban Development Dept.
Fort St. George
Chennai-9.
- 2 The District Revenue Officer
Tiruppur District at Tiruppur-1.
- 3 Tamil Nadu Housing Board
Rep. by its Managing Director
No.331 Anna Salai,
Nandanam, Chennai-600 035.

[RESPONDENTS]

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Declaration, to declare the entire land acquisition proceedings vide Notification issued under Sec.4(1) of the said Act in G.O.(Ms) No.740 Housing and Urban Development Department dated 30.07.1982 and published in the Tamil Nadu Government Gazette Part.II Section.2 on 11.08.1982 followed by Sec.6 declaration published in the Tamil Nadu Government Gazette dated 10.07.1985 in G.O.Ms.No.625 dated 25.06.1985 and the consequential Order of the 1st respondent in Letter No. 26222/LA 3(1)/2011-9 dated 15.11.2012 as null and void and unlawful in so far as the petitioner's lands are concerned and consequently direct the 2nd respondent to transfer the patta in favour of the petitioner in respect of his lands comprised in S.No.359/2, 369 and 372/1, situated at Chithrauthanpalayam Village, Dharapuram Town and Taluk, Erode District, now Tirupur District, measuring to an extent of 2.64.0 hectares, 3.53.5 hectares and 2.12.0 hectares respectively.

For Petitioner : Mr.K.Premkumar

For Respondents : Mr.R.Rajeswaran,
Special Govt. Pleader - R1 & R2

Mr.R.V.Babu,- R3
Standing Counsel

O R D E R

Heard Mr.K.Premkumar, learned counsel appearing for the petitioner, Mr.R.Rajeswaran, learned Special Government Pleader appearing for the respondents 1 & 2 and Mr.R.V.Babu, learned Standing Counsel appearing for the third respondent, and with the consent of the learned counsel on either side, the Writ Petition is taken up for final disposal.

2.The petitioner has filed this Writ Petition praying for issuance of a writ of declaration to declare the entire land acquisition proceedings initiated by the first respondent, acquiring the petitioner's land for a project of the Tamil Nadu Housing Board as null and void and to consequently direct the second respondent/ District Revenue Officer, Tiruppur to transfer the patta in his favour in respect of the land in question.

3.The undisputed facts are that the first respondent issued a Notice under section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as '1894 Act'), by Notification dated 11.08.1982 in respect of the lands owned by the grand father of the petitioner. A declaration under section 6 of 1894 Act was published in the Gazettee on 10.07.1985. Upon demise of the petitioner's grand father, the petitioner's father became entitled to the property and after the demise of the petitioner's father, the legal heirs have filed a Writ Petition in W.P.No.8583 of 1985, challenging the declaration issued under section 6 of 1894 Act. The said Writ Petition was disposed of by this Court by directing the petitioners therein to approach the Government and seek exemption from the land acquisition proceedings on the ground that exemption has been granted to several similarly placed persons. On such Application being made, the first respondent by an order dated 08.05.2000 rejected the request, which was challenged by the petitioners' mother by filing a Writ Petition in W.P.No.11494 of 2010, which was allowed by an order dated 03.08.2010 and the mater was remitted to the Government for fresh consideration under section 48 of the 1894 Act. Since the said order was not complied, the petitioner filed a Contempt Petition and on receipt of notice of contempt, the first respondent passed an order dated 03.10.2011 rejecting the request made by the petitioner for

exclusion of the lands from acquisition proceedings. Aggrieved over the same, the petitioner herein filed a writ Petition in W.P.No.28905 of 2011, which was allowed by an order dated 17.07.2012, directing the first respondent to take a fresh decision on the representation dated 28.08.2010, taking note of the observations made in the order. The said order passed in the Writ Petition dated 17.07.2012, was challenged by the respondents by preferring a Writ Appeal in W.A.No.723 of 2013. The said Writ Appeal was dismissed by an order dated 18.07.2014, on the ground that an order has been passed by the first respondent dated 15.11.2012, which can be challenged by the petitioner. With these facts, the petitioner has now filed this Writ Petition, wherein the first ground raised by the petitioner is by placing reliance on the decision of the Hon'ble Supreme Court in the case of PUNE MUNICIPAL CORPORATION AND ANOTHER v. HARAKCHAND MISIRIMAL SOLANKI AND OTHERS [2014 (1) CTC 755], on the ground that the acquisition proceedings are lapsed in terms of section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013).

4.The learned counsel for the petitioner after elaborately referring to the factual scenario, relied upon the decision of the Hon'ble Supreme Court and submitted that in the instant case, neither the petitioner has been dispossessed from the land in question nor compensation has been paid, therefore, the land acquisition proceedings are deemed to have been lapsed. It is further submitted that after the notice was issued in the Writ Petition, the respondents have sent a communication to the petitioner, calling upon him to come and receive the compensation. Therefore, it is submitted that on both grounds, the acquisition proceedings are deemed to have been lapsed.

5.It is further submitted that the second respondent herein had filed a counter affidavit in W.P.No.28905 of 2011, which Writ Petition was filed by the petitioner challenging the rejection of the request to exclude the lands from acquisition proceedings dated 03.10.2011. In paragraph No.7 of the counter affidavit, the second respondent has clearly admitted that the petitioner's father refused to receive the compensation amount and he had not handed over his possession of the land. Therefore, it is admitted that the landowner has refused to receive the compensation and the L.A.O.P. filed by the Land Acquisition Officer was dismissed for default possession was not taken over.

6.This submission is sufficient to hold that the petitioner is entitled to the protection under section 24(2) of Act 30 of 2013. The law on the subject has been considered in a recent decision of the Hon'ble Division Bench of this

Court in the case of The Tamil Nadu Housing Board and another v. iGate Global Solutions Limited [2016 (2) MLJ 385], wherein the Hon'ble Division Bench after considering the entire law on the issue culled out the ratio decidendi in all those cases and it would be beneficial to refer to paragraph Nos. 60, 61 and 62:

"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.

62 In W.A.No.329 of 2015, as per the pleadings of the Housing Board, compensation amount of Rs.300.15 was kept under the work deposit on 9th April, 1983, which could not be made over to the land owner. Except the bald statement that the physical possession of the land in question was taken over by the land acquisition officer on 13th December, 1984, no material has been produced to establish the factum of taking over of possession. Likewise, in W.A.No.164 of 2015, no material has been produced to establish the factum of taking over possession of the land. Thus these appeals stand on the same footing. In the cases on hand, even transfer certificate delivering the land from the State Government to the Housing Board has not been produced."

7. The third respondent though has not filed a counter affidavit, written instructions given by the Executive Engineer of the Erode Housing Unit, has been placed before this Court for consideration, wherein in paragraph No.15, it has been stated that the compensation amount of Rs.1,92,042/-, was deposited in the Personal Deposit Account with the competent authority. This is sufficient to hold that the compensation has not been paid to the petitioner. That apart, the Revenue Divisional Officer even in the earlier Writ Petition, clearly stated that possession was not taken over. Thus, the petitioner has satisfied both the conditions which have been stipulated under section 24(2) of Act 30 of 2013. Though satisfaction of one of the conditions is sufficient to hold that the land acquisition proceedings are lapsed.

8.The learned counsel for the petitioner relied upon the recent decision of the Hon'ble Supreme Court in the case of RATTAN SINGH v. UNION OF INDIA AND ANR [2016-1-L.W.881], wherein the Hon'ble Supreme Court after taking into consideration of the earlier decisions held that the deposit of the amount of compensation in the State Revenue account is of no avail and the liability of the State to pay interest subsists till the amount has not been deposited in Court. Further, it was held that whether possession was taken by the respondent need not be dilated upon, since the acquisition is deemed to have lapsed on account of non payment. This decision also squarely supports the case of the petitioner.

9.One more interesting aspect which has to be taken note of is that the Government as early as in the year 1988, has excluded an extent of 43.39.5 Hectares of land comprised

in various survey numbers were acquired for the same Scheme. In fact the petitioner approached this Court earlier requesting for similar benefits and for the reasons best known, the same was denied to the petitioner. Thus, the action of the first respondent was prima facie discriminatory.

10.Be that as it may, in the present proceedings, the petitioner having satisfied the requirements under section 24 (2) of Act 30 of 2013, is entitled to succeed.

11.In the result, the Writ Petition is allowed and as the provisions of section 24(2) of Act 30 of 2013 would be attracted, the entire land acquisition proceedings shall stand lapsed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1 State of Tamil Nadu
Rep. by its Secretary to Government
Housing and Urban Development Dept.
Fort St. George
Chennai-9.

2 The District Revenue Officer
Tiruppur District at Tirupur-1.

3 Tamil Nadu Housing Board
Rep. by its Managing Director
No.331 Anna Salai,
Nandanam, Chennai-600 035.

+1 cc to Mr.K.Premkumar, Advocate, sr.21662
+1 cc to The Government Pleader, sr.21700

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