

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2016

CORAM

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.2556 to 2558 of 2015

1.S.Alamelu
2.G.Rajendran
3.R.Ponnammal @ Ponnamani
4.G.Arul ... Petitioners 1 to 4 in
(Petitioner 1 to 4 Rep.by their W.P.No.2556 of 2015
Power Agent D.Velusamy)

1.R.Kumari
2.R.Ramesh
3.R.Suresh
4.M.Rajalakshmi
5.N.Ekambaram
6.U.Kumar
7.D.Nagarani
8.N.Selvaraj
9.N.Loganathan
10.V.Damodharan
11.V.Devaraj
12.G.Narayani
13.R.Bakthavatchala Naicker ... Petitioners 1 to 13 in
(Petitioners are Rep.by their W.P.No.2557 of 2015
Power Agent D.Velusamy)

P.Purushothaman
rep. by his Power Agent Mr.D.Velusamy ... Petitioner in
W.P.No.2558 of 2015

Vs.

1.The Special Commissioner and
Secretary to Government of Tamil Nadu,
Adi Dravidar Welfare,
Fort St.George, Chennai - 600 009.

2.The Special Tahsildar,
Land Acquisition,
Adi Dravidar Welfare Department,
Chengalpattu District. ... Respondents 1 and 2 in all W.Ps.

Prayer in all W.Ps.

Writ Petitions filed under Article 226 of the Constitution of India, for issuance of Writ of Declaration, to declare the land acquisition proceedings initiated under Section 4 (1) followed by Section 6 Declaration and the award vide G.O.Ms.No.456 dated 04.04.1989, passed under the Land Acquisition Act, 1894 in respect of the land, measuring an extent of i) 2.26 acres, comprised in S.No.229/2C1, ii) 1.26 acres, comprised in S.Nos.229/2A, and 35 cents out of 1.05 acres, comprised in S.No.229/2B, belonging to the petitioners respectively, situate in Pattipulam Village, Chengalpattu Taluk, Kancheepuram District, is deemed to have lapsed in view of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (the central Act, 30 of 2013)

For Petitioners : Mr.M.Arvind Subramaniam

For Respondents : Mr.R.Rajeswaran
Special Government Pleader

C O M M O N O R D E R

The petitioners have filed these Writ Petitions, seeking for issuance of Writ of Declaration, to declare the land acquisition proceedings initiated pursuant to Section 4 (1) Notification of the Land Acquisition Act, 1894, and the declaration issued under Section 6 of the said Act, and the award passed in G.O.Ms.No.456 dated 04.04.1989, in respect of the petitioners land, 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, 30 of 2013).

2. Since the issue involved and the relief sought for in these Writ Petitions are one and the same, these Writ Petitions were heard together and disposed of by this common order.

3. Heard Mr.M.Arvind Subramaniam, learned counsel appearing for petitioners and Mr.R.Rajeswaran, learned Special Government Pleader for respondents.

4. The lands owned by the petitioners were subject matter of acquisition for a scheme promoted by the Adi Dravidar and Tribal Welfare Department, for providing house sites to Adi Dravars, Pattipalam Village, Thiruporur Taluk, (formerly Chenngalpattu Taluk). The petitioners would submit that entire

land acquisition proceedings are deemed to have been lapsed under Section 24 (2) of Act 30 of 2013, in the light of the fact that compensation payable for the land acquired, has not been tendered to the petitioners/landowners, nor deposited before the Civil Court, and that possession of the lands has not been taken over from the petitioners.

5. Law on the subject is well settled, as the Hon'ble 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 ratio decidendi with regard to the manner in which the possession has to be taken and compensation to be paid, and the relevant paras from the said decision is extracted hereunder:-

" 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 aforesaid, 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 aforesaid. 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."

6. Thus, to be entitled to the benefit of Section 24 (2) of Act 30 of 2013, either one of the twin conditions should be satisfied, viz. the conditions (i) whether the compensation amount has been tendered to the petitioners or deposited before the Civil Court, or (ii) whether possession has been taken over.

7. The individual counter affidavit filed by the Special Tahsildar, Chengalpattu, the second respondent clearly shows that the compensation amount has been deposited before the Sub Treasury, Chengalpattu, on 27.02.1990. Therefore, it is evidently clear that the compensation has not been tendered or paid to the landowners/petitioners in the manner known to law. Therefore, the petitioners have satisfied the first condition.

Insofar as second condition is concerned, i.e. whether possession has been taken over, the second respondent, himself, has admitted in para No.9 of the counter affidavits that they are pursuing action to take physical possession through Executive Magistrate, as the landowners have not come forward to handover the land and to receive compensation. Therefore, the second condition also stands equally in favour of the petitioners.

8. The petitioners are, thus, entitled to the benefit of Section 24 (2) of Act, 30 of 2013, and the dismissal of the earlier Writ Petition, in which, land acquisition proceedings were challenged, will not have absolutely any bearing or effect on the present Writ Petitions. Hence, the provisions of Section 24 (2) of Act, 2013 would stand attracted and consequently, the entire land acquisition proceedings stand lapsed.

9. In the result, all the Writ Petitions are allowed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Special Commissioner and
Secretary to Government of Tamil Nadu,
Adi Dravidar Welfare,
Fort St.George,
Chennai - 600 009.

2. The Special Tahsildar,
Land Acquisition,
Adi Dravidar Welfare,
Chengalpattu.

+3cc's to Mr.M.Arvind Subramaniam, Advocate,
S.R.Nos.23904 to 23606
+1cc to the Government Pleader, S.R.No.23851

Writ Petition Nos.2556 to 2558 of 2015

SV(CO)
CA(28/04/2016)