

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.04.2016

Coram

The Hon'ble Mr. Justice T.S. Sivagnanam

Writ Petition No. 27352 of 2015

and

M.P.No.1 of 2015

1. Vasantha
2. M.Selvam

...Petitioners

Vs.

1. The Government of Tamil Nadu,
rep. by its Secretary to Government,
Housing and Urban Development Department,
Fort St. George, Chennai - 600 009.
2. The District Collector
Kancheepuram District,
Kancheepuram.
3. The Member Secretary,
Chennai Metropolitan Development Authority,
Egmore, Chennai - 600 008.
4. The Sub Collector/Revenue Divisional Authority,
Chengalpet Sub Collector's Office,
Chengalpet.
5. The Special Tahsildar,
(Land Acquisition)
Maraimalai Nagar Scheme,
Kattankolathur, Kancheepuram District.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Declaration to declare that acquisition of petitioner's lands, measuring an extent of 11 cents, comprised in Survey No.145/3B2 of Keelakarani Village, Kancheepuram District, pursuant to Section 4 (1) Notification of the Land Acquisition Act, dated 16.10.1974, and Section 6 Declaration, dated 14.10.1977, by the first respondent and the award No.23 of 1986, dated 17.09.1986, passed by the fifth respondent stands lapsed in view of section 24 clause 2 of the

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

For Petitioners : Mr.ARL.Sundaresan
Senior Counsel for
M/s.AL.Ganthimathi

For Respondents 1, 2,
4 & 5 : Mr.R.Rajeswaran
Special Government Pleader

For Respondent-3 : Mr.K.Rajasrinivas
Standing Counsel for CMDA

O R D E R

The petitioners have filed this Writ Petition, seeking for issuance of a writ of declaration to declare the acquisition of the lands owned by the petitioners, measuring an extent of 11 cents, comprised in Survey No.145/3B2 of Keelakarani Village, Kancheepuram District, which were acquired by the Government, by notification under Section 4 (1) of the Land Acquisition Act, 1894, dated 16.10.1974 followed by a declaration issued under Section 6 of the said Act, dated 14.10.1977, and the award passed by the fifth respondent, in Award No.23 of 1986, dated 17.09.1986, 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.

2. Heard the learned counsels appearing for the parties.

3. The first petitioner is the wife of Meyyappan and second petitioner is his son. The petitioners are co-owners of the aforesaid property, which was the subject matter of acquisition proceedings for formation of a new town under the name "Maraimalai Nagar". The petitioners have challenged the land acquisition proceedings on two grounds. Firstly by contending that though the compensation for acquisition of their land was awarded in the year 1986, not a single pie has been paid. Secondly, it is contended that the petitioners have not been dispossessed from the land in question.

4. Mr.K.Rajasrinivas, the learned Standing Counsel appearing for the third respondent/CMDA placed his submissions based on the factual averments, which are set out in the counter affidavit. In fact, the counter affidavit of the Special Tahsildar, Land Acquisition, the fifth respondent and that of the Member Secretary of CMDA, the Requisitioning Body, viz., the third respondent are on identical lines.

5. This Court need not labour much on the factual aspects, since the land acquisition proceedings have been challenged on two grounds, as stated above. With regard to the payment of compensation, in the counter affidavits, it was admitted that second petitioner's father did not receive any compensation amount and the said amount of Rs.4,497/- was deposited in Sub Treasury, Chengalpattu, and kept under 'Revenue Deposit'. As regards possession of the land, it is stated possession of land has been taken over by executing land delivery receipt. These averments are found in para No.4 of both counter affidavits. In fact, the same averments have been reiterated in other paras, while denying the averments made by petitioners in the affidavit filed in support of the Writ Petition.

6. Law on the subject is well settled, as the Honourable 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 taken into consideration the entire legal gamut of case laws on the issue, and culled out ratio decidendi succinctly, with regard to the manner in which the possession has to be taken and compensation to be paid, and it would be beneficial to refer the operative portion of the said decision, which reads as follows:-

" 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 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."

7. Thus, by applying the ratio decidendi laid down by the Hon'ble Division Bench, in the decision referred to above, the petitioners are entitled to the benefit of Section 24 (2) of Act 30 of 2013 on the grounds raised by them. Firstly, the petitioners have not been paid the compensation for the lands acquired, and the mere deposit of compensation amount in the revenue deposit will not amount to payment of compensation to the landowners/petitioners. Secondly, without resorting to

preparation of panchanama in the presence of the witnesses or producing some other evidences, land has been taken over by executing land delivery receipt, which will not amount to taking over actual or physical possession of the land owned by the petitioners.

8. The petitioners are, thus, entitled to succeed on the above said two grounds. Accordingly, the provisions of Section 24 (2) of Act 30 of 2013 will be attracted, and the entire land acquisition proceedings stand lapsed.

9. In the result, the Writ Petition is allowed. However, the respondents are at liberty to initiate fresh proceedings under the provisions of Central Act 30 of 2013. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar

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Sub-Assistant Registrar

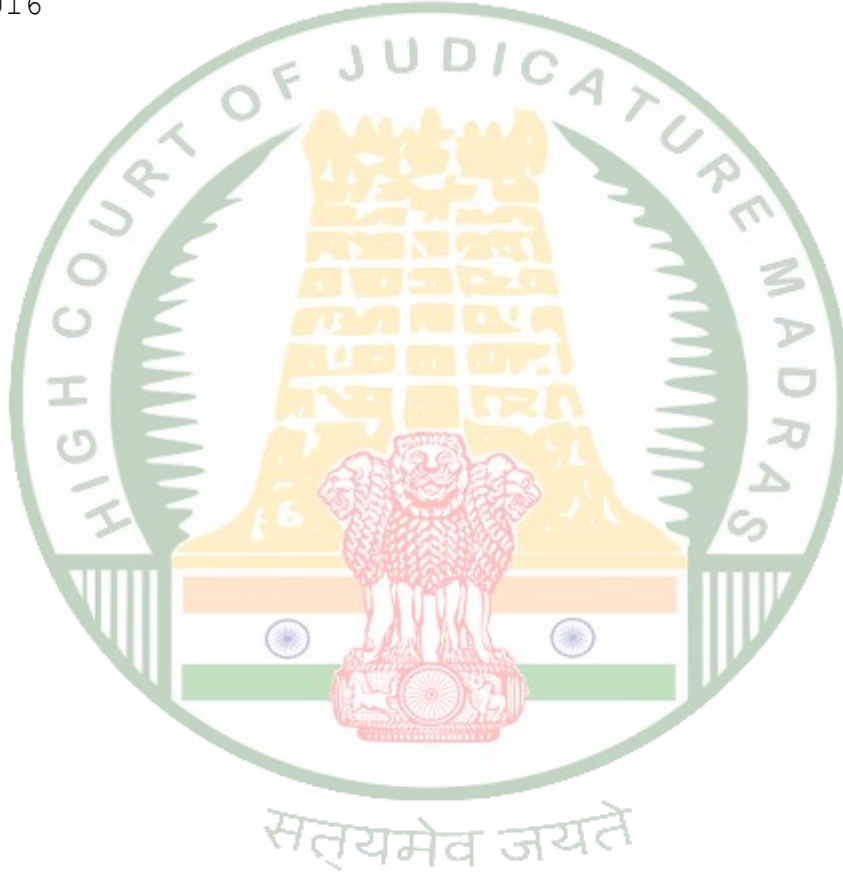
To

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+1 cc to Mr.K.Rajashrinivas Advocate sr.22006
+1 cc to M/s.AL.Ganthimathi Advocate sr.21479
+1 cc to Government pleader sr.21257

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