

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.03.2016

Coram

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

Writ Petition No.28313 of 2015

1.S.Saranath

2.S.Manivannan

3.Jayanthi

4.S.Saranath

...Petitioner

Vs.

1. The State

Rep. by The Principal Secretary to
Government Housing and Urban Development
Department Fort St. George Secretariat
Chennai-600 009.

2 The Member Secretary

M/s.Chennai Metropolitan Development
Authority No.1 Gandhi Irwin Road Egmore
Chennai-600 008.

3 The District Collector

Chennai District Singaravelar Maligai No.
62 Rajaji Salai Chennai-600 001.

4 The Special Deputy Collector

Land Acquisition Cell Chennai Metropolitan
Development Authority No.1 Gandhi Irwin
Road Egmore Chennai-600 008.

5 The Managing Director

Chennai Metro Rail Limited Harini Towers
No.7 Conron Smith Road Gopalapuram
Chennai-600 086.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to Quash the order dated passed by the 3rd Respondent in Proceeding Rc.No. J9/24385/2014 dated 25.04.2015 and directing the respondents to pay compensation to the petitioners as per the proviso to Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act 2013 (Act 30 of 2013) with respect to the land situated at Plot No.11- to an extent of 2775 Sq.ft comprised in R.S.No.163/2 T.S.No.3 Block No.61 Koyambedu Village

Nungambakkam and Egmore Taluk Chennai District.

For Petitioner : Mr.M.Anandaraj
For Respondents : Mr.R.Rajeswaran,
Spl.G.P for R1,3 and 4

Mr.K.Raja Srinivas, for R2

Mr.Jayesh B. Dolia for R5

O R D E R

Petitioners have filed this writ petition praying for issuance of writ of Certiorarified Mandamus to quash the order passed by the 3rd respondent dated 25.04.2015, and to direct the respondents to pay compensation to the petitioners as per the proviso to Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act 2013 (Act 30 of 2013) (herein after referred to as the "Act") in respect of the land in Plot No.11 measuring an extent of 2775 Sq.ft comprised in R.S.No.163/2 T.S.No.3 Block No.61 Koyambedu Village Nungambakkam and Egmore Taluk Chennai District.

2. Petitioners case is that they are all legal heirs of one Mr.Santhappan, who was the absolute owner of the property in question, having purchased the same by registered document number 2925 of 1998 on the file of Sub-Registrar, Annanagar. The petitioners after the demise of their father on 13.01.2002, the petitioners and other legal heirs continued to be in possession of the premises and applied for permission to construct a building. At that stage, they were informed that the land has been acquired by the 1st respondent for the scheme of Koyambedu wholesale market complex and after obtaining the necessary documents, the petitioners came to know that notification under Section 4(1) of the Land Acquisition Act was issued on 20.09.2001, and declaration under Section 6 was issued on 25.09.2002, and an award was passed in Award No.1 of 2004 on 31.05.2004 awarding a sum of Rs.11,29,425/- as compensation after the demise of the petitioners father who died on 13.01.2002.

3. The case of the petitioners is that the 4th respondent-Land Acquisition Officer has not communicated the award till date and in the award it is stated that the property is free from encumbrance and hence the compensation is ordered to be paid to the petitioners father Mr.Santhappan. It is further stated that the compensation which was been ordered has not been paid to the petitioners nor it has been deposited in the concerned Court by the respondents and they have not received any notice to receive the compensation awarded. Further, it is

contended that the land has not been utilized by the respondents for the purpose of fulfilling the objects for which the acquisition was made. The petitioners would submit that earlier they made an request for reconveyance of the property by representation dated 28.03.2013, on the ground that the land remained unutilized for nearly 12 years. The 1st respondent sent reply on 08.08.2014, stating that the land has been transferred to the Chennai Metro Rail project, the 5th respondent herein. With these facts, the petitioners would contend that in terms of Section 24(2) of the Act, the entire land acquisition proceedings have to be held to be illegal since the compensation has not been paid to the petitioners till date.

4. The petitioners earlier filed writ petition in W.P.No.31324 of 2014 to direct the respondents to pay compensation in terms of Section 24 of the (Act 30 of 2013) and the said writ petition was disposed of by order dated 01.12.2014, to consider the petitioners representation. However, the 3rd respondent, the District Collector, Chennai, by the impugned proceedings dated 25.04.2015, rejected the request stating that the land is utilized by Chennai Metro Rail Limited (CMRL), and the compensation amount is already deposited in the year 2004 itself. Therefore, the petitioners has challenged the said order by filing this writ petition.

5. Learned counsel for the petitioners after reiterating the above facts submitted that the impugned order reveals that the land has not been utilized till the date of order and CMRL is going to establish the workshop and therefore the land acquisition proceeding is lapsed. Further, it is submitted that the impugned order does not reveal the date of the deposit before the Civil Court no LAOP number is given and this is one more reason to hold that the land acquisition proceeding has lapsed.

6. Learned counsel appearing for the respondents who have got written instruction from the respondent reiterated the contentions set out in the impugned proceedings and submitted that the land has already been utilized for CMRL project. Learned counsel for 5th respondent specifically contended that the land has been fully utilized for the workshop and administrative block etc., of the CMRL project and therefore the land acquisition proceedings would not be lapsed in terms of Section 24 of the (Act 30 of 2013). The Special Thasildar has given written instructions to the Deputy Planner (K), CMDA, with copies to the Law officers, wherein the same stand as taken in the impugned proceedings has been set out. The issue as to whether the land acquisition proceedings have lapsed in terms of Section 24 (2) (Act 30 of 2013) has been considered by the Hon'ble Supreme Court in a long line of decisions, the earliest being the case of Pune Municipal Corporation and another vs.

Harakchand Misirimal Solanki and others, 2014 3 SCC 183. The Hon'ble Supreme Court held that when compensation is not paid to the person interested and where award has not been made more than five years, the subject land acquisition proceedings are deemed to have been lapsed. In a recent decision of the Hon'ble Division Bench of this Court, the Hon'ble Division Bench has analysed the long end of decisions. The decisions are the point and 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 read 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 by 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."

From the impugned proceedings, as well as the written instructions it is clear that the compensation amount has not been deposited before the Civil Court and all that is stated is, it was ordered to be kept in Civil Court deposit and there is no proof to show that it has been deposited before the Civil Court.

7. In the light of the above, by applying the decision of the Hon'ble Supreme Court and the Hon'ble Division Bench referred supra, it has to be held that the impugned land acquisition proceedings are deemed to have been lapsed in terms of Section 24(2) of the (Act 30 of 2013). However, in the light of the stand taken by the 5th respondent that the land has already been utilized and the project developed by the 5th respondent is a very important project and the project in public interest, this Court is of the view that even though the land acquisition proceedings are held to be lapsed the land shall not be reverted back to the land owners and continue to be utilized by the 5th respondent and for such purpose the respondents are directed to issue fresh notification for acquisition and such notification shall be only for the purpose of fixing fair and reasonable compensation for the lands in terms of (Act 30 of 2013) and such fresh notification shall be issued by the respondents within a period of one month from the date of receipt of a copy of this order and endeavor to complete the entire proceedings and pay the compensation in terms of (Act 30 of 2013) within a period of three months from the date on which acquisition proceedings are initiated in terms of the above direction. It is made clear that the possession of the land shall not revert to the land owners viz., the petitioners and the 5th respondent is entitled to fully utilize the land for the project.

8. Writ petition is allowed on the above terms. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

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Department Fort St. George Secretariat
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+1 cc to Mr.K.RajaShrinivas Advocate sr.15556
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+1 cc to Government Pleader sr.15329

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