

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 06.04.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.28657,28658 and 30045 of 2014

K.Rajeshkumar	[Petitioner in W.P.No.28657/14]
S.Muthusamy	[Petitioner in W.P.No.28658/14]
R.Kanya Parameswari	[Petitioner in WP.No.30045/14]

Vs

- 1 State of Tamil Nadu
Rep. by its Secretary
Housing and Urban Development Dept.
Fort St. George Chennai- 9.
 - 2 Tamil Nadu Housing Board
Rep. by its Chairman-cum-Managing Director
No.493 Anna Salai Chennai-35.
 - 3 The Special Tahsildar
Land Acquisition Housing Scheme Unit-II
Coimbatore-641018.
- [Respondents]

Prayer: This Writ Petition No.28657/14 is filed under Article 226 of the Constitution of India, seeking for a Writ of declaration declaring that the Land Acquisition Proceedings initiated under the Land Acquisition Act 1894 in respect of house site bearing Plot No.17 measuring an extent of 3488 sq.ft. comprised in Survey No.725/1A1 situate at Kalapatti Village Coimbatore Taluk and District covered by the Notification issued under Section 4(1) of the Land Acquisition Act 1894 in G.O.Ms.No.694 Housing and Urban Development Department dated 21.10.1994 and Section 6 Declaration in G.O.Ms.No.981 Housing and Urban Development Department dated 27.11.1995 deemed to have lapsed in view of Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Re-Settlement Act 2013

This Writ Petition No.28658/14 is filed under Article 226 of the Constitution of India, seeking for a Writ of declaration declaring that the Land Acquisition Proceedings initiated under the Land Acquisition Act 1894 in respect of house site bearing Plot No.20 measuring an extent of 3838 sq.ft. comprised in

Survey No.725/1A1 and 725/1A2 situate at Kalapatti Village Coimbatore Taluk and District covered by the Notification issued under Section 4(1) of the Land Acquisition Act 1894 in G.O.Ms.No.694 Housing and Urban Development Department dated 21.10.1994 and Section 6 Declaration in G.O.Ms.No.981 Housing and Urban Development Department dated 27.11.1995 deemed to have lapsed in view of Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Re-Settlement Act 2013

This Writ Petition No.30045/14 is filed under Article 226 of the Constitution of India, seeking for a Writ of declaration declaring that the Land Acquisition proceedings initiated under the Land Acquisition Act 1894 in respect of house site bearing Plot No.25 measuring an extent of 3838 sq.ft. comprised in Survey No.725/1A1 725/1A2 and 725/1A2 and 725/1A3 situate at Kalapatti Village Coimbatore Taluk and District covered by the Notification issued under Section 4(1) of the Land Acquisition Act 1894 in G.O.Ms.No.694 Housing and Urban Development Department dated 21.10.1994 and Section 6 Declaration in G.O.Ms.No.981 Housing and Urban Development Department dated 27.11.1995 deemed to have lapsed in view of Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013.

For Petitioners : Mr.R.Bharathkumar

For Respondents : Mr.R.Rajeswaran, SGP (R1&3)
in all the WPs Mr.B.Vivekavanam (R2)

O R D E R

Heard Mr.R.Bharathkumar, learned counsel appearing for the petitioners, Mr.R.Rajeswaran, learned counsel appearing for the 1st and 3rd respondents and Mr.B.Vivekavanam, learned counsel appearing for the 2nd respondent.

2.The petitioners have filed the above writ petitions praying for issuance of a writ of declaration to declare the Land Acquisition Proceedings initiated under the Land Acquisition Act 1894 in respect of plots in question are deemed to have been lapsed in view of Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Re-Settlement Act 2013 (Act 30 of 2013).

3. The lands in question form part of the Kalapatti Village. The lands in question were acquired for the purpose of formation of a Housing Scheme by the Tamil Nadu Housing Board at Kalapatti Village, Coimbatore District. In fact, several of the land owners and the subsequent purchasers had filed writ petitions before this Court requesting for reconveyance on the

ground that the Government, at their discretion had reconveyed the properties in bits and pieces. The writ petitions were allowed, as against which, the Tamil Nadu Housing Board preferred writ appeals which were heard by the First Bench of this Court in the case of Tamil Nadu Housing Board vs. Uma Maheswari Ramasamy and others reported in 2011 (5) CTC 503. In the said batch of writ petitions, several of the cases were filed by subsequent purchasers and ultimately the appeals filed by the Housing Board were dismissed. In the instant cases also, the petitioners are subsequent purchasers. But the relief they seek is for a declaration that the land acquisition proceedings are deemed to have been lapsed in terms of Section 24(2) of Act 30 of 2013.

4. The law on the subject has been well 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."

5. Thus, if any one of the twin conditions is satisfied, then, the land owner is entitled to the benefit of Section 24 (2). Insofar as the aspect relating to possession is concerned, from paragraph No.12 of the counter affidavit, it is clear that the Housing Board has not taken possession of the land and this has been admitted.

6. With regard to payment of compensation is concerned, in paragraph No.14 of the counter affidavit, the Housing Board has admitted that the compensation has not yet been deposited.

7. In the light of the candid stand taken in the counter affidavit, nothing more is required to be considered in these cases as the petitioners are entitled for the benefit of Section 24(2) of Act 30 of 2013. Further, it is not in dispute that the petitioners have obtained building plan approval, constructed

houses and the properties have been assessed to property tax and they have been provided electricity and water and sewerage connection.

8. In view of the aforesaid position, the provisions of Section 24(2) of Act 30 of 2013 would be attracted. Consequently, the entire land acquisition proceedings shall stand lapsed.

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

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

To

- 1 The Secretary
Housing and Urban Development Dept.
Fort St. George Chennai- 9.
- 2 The Chairman-cum-Managing Director
Tamil Nadu Housing Board
No.493 Anna Salai Chennai-35.
- 3 The Special Tahsildar
Land Acquisition Housing Scheme Unit-II
Coimbatore-641018.

2cc to Mr.R.Bharath Kumar, Advocate Sr.22413, 22414
+3cc to M/S.B.Vivekavan, Advocate Sr.22272

W.P.Nos.28657,28658 and 30045 of 2014

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srg 26/04/2016