

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2016

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI  
AND  
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A.No.1723 of 2013  
and  
M.P.No.1 of 2013

Tamil Nadu Housing Board,  
The Executive Engineer and  
Administration Officer,  
Salem Housing Unit,  
Ayyan Thirumalai Road,  
Salem-6. ... Appellant

Vs.

1. S.Veerappan
2. The State of Tamil Nadu,  
rep by its Secretary to Government,  
Housing and Urban Development Department,  
Secretariat,  
Chennai-9.
3. The District Collector,  
Namakkal District,  
Namakkal.
4. The Special Tahsildar,  
Land Acquisition Neighbourhood Scheme,  
Namakkal. ... Respondents

Writ Appeal preferred under Clause 15 of the Letters Patent  
challenging the order dated 30.11.2012 passed in W.P. No.5959 of  
2012.

This Writ Petition is filed under Article 226 of the  
Constitution of India praying for the issuance of a Writ of  
Declaration, delcaring that the Land Acquisition proceedings in  
respect of the petitioner land measuring an extent of 2.93 acres  
in Survey No.37/1 and 3.15 acres in SurveyNo.37/1 of  
Kondichettipatty village, Namakkal Taluk and District have  
lapsed in view of theprovisions under Section 11(A) of the Land  
Acquisition Act, 1896.

For appellant Mr.V.Anandhamoorthy

For respondents Mr.R.Krishnamoorthy, SC  
for M/s.R.Karthikeyan for R-1  
Mrs.A.Srijayanthi, Spl.G.P for RR2  
to 4

JUDGMENT

(delivered by SATISH K. AGNIHOTRI, J.)

The instant intra-court appeal arises from the order of the learned Single Judge dated 30<sup>th</sup> November, 2012 passed in W.P.No.5959 of 2012.

2 The writ petitioner / first respondent herein filed the writ petition seeking for declaration that the land acquisition proceedings in respect of the land of the first respondent herein to an extent of 2.93 acres in S.No.37/1 and 3.15 acres in S.No.37/1 of Kondichettipatty village have lapsed in view of the provision of Section 11A of the Land Acquisition Act, 1894 (for short "Act, 1894").

3 The writ petition was allowed on 30<sup>th</sup> November, 2012, holding as under:

" 25.It is further noted that after this Court had passed the order, on 10.2.1997, in W.P.No.7770 of 1987, no further proceedings had been initiated by the respondents, to proceed with the acquisition proceedings. In fact, in the counter affidavit, filed on behalf of the fourth respondent, dated 28.3.2012, it has been stated that, as per the directions issued by this Court, by its order, dated 10.2.1997, in W.P.No.7770 of 1987, the District Collector, Salem District, had inspected the land, in S.Nos.37/1 and 37/2 and had recommended to exclude the constructed portion of about 82 cents, from the total extent of 6.08 acres of the lands sought to be acquired. The said recommendation had also been sent to the Tamilnadu Housing Board to be forwarded with its recommendation. It had also been forwarded to the District Collector concerned, for the exclusion of 82 cents of land from the acquisition proceedings. The matter is still pending with the Secretary, Housing Department, Chennai.

26.Further, in the counter affidavit filed on behalf of the third respondent, it has been stated that the land under reference, was required for the Comprehensive Housing Scheme, for having a

clear approach from the existing road to the surrounding lands, which had already been developed by the Tamilnadu Housing Board. Therefore, the land under reference, excluding the built up portion of 82 cents is to be taken over, under Section 47 of the Act, and that the District Collector, Namakkal and the Tahsildar, Namakkal, had also been addressed in that regard. Further, from the information gathered, by the petitioner, under the Right to Information Act, 2005, by way of a communication, dated 15.9.2009, it could be seen that the remaining extent of 5.26 acres of lands, in S.Nos.37/1 and 37/2, excluding the extent of 82 cents of land would be taken over, by way of further proceedings. As such, it is clear that the land acquisition proceedings, relating to the 6.08 acres of lands, in S.Nos.37/1 and 37/2, Kondichettipatti Village, Namakkal Taluk, Salem District, had not been completed, till date. As such, the contentions raised on behalf of the petitioner are held to be valid and sustainable in the eye of law. Accordingly, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed. "

Thereagainst the Housing Board has come up with the instant appeal.

4 During the pendency of the appeal, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "the Act, 2013") was enacted and came into force with effect from 1<sup>st</sup> January, 2014. Section 24 of the Act, 2013 contemplates that all the land acquisition process under the Act, 1894 shall be deemed to have lapsed in a case, where an award under Section 11 of the Act, 1894 was made five years or more prior to the commencement of the Act, 2013, but physical possession of the land was not taken or compensation has not been paid. The provision is a deeming provision, contemplating automatic lapse, if the aforestated conditions are available.

5 The issue with regard to the ambit and scope of the aforestated provision, came into consideration in a batch of cases in the Tamil Nadu Housing Board, rep by its Managing Director, No.331, Anna Salai, Nandanam, Chennai-600 034 and another Vs. iGate Global Solutions Limited and another [W.A.No.1101 of 2014, etc. batch cases], wherein this Division Bench, by judgment dated 26<sup>th</sup> February, 2016, held as under :

"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."

6 In the case on hand, as submitted by the appellant in its counter affidavit filed before the Writ Court, it is clearly stated that possession was not taken over as the District Collector, Namakkal and the Tahsildar, Namakkal have been addressed for taking over of the land in question. It is not the

case of the appellant that possession of the land in question after passing of the Award was taken over by the authorities at any point of time. Indisputably, the award was passed on 3<sup>rd</sup> August, 1987, i.e., more than five years before the Act, 2013 came into force. In the given facts, wherein after passing of the Award, possession was not taken over by the acquisition authorities, the proceedings stands lapsed under the provisions of Section 24 of the Act, 2013. Resultantly, we hold that the proceedings stands lapsed.

7 On the other issue that under the provisions of the Act, 1894 also, it has been held that proceedings stood lapsed on account of the fact that the Award was not passed within two years from the date of issuance of the publication of declaration under Section 6 of the Act, 1894, we are not inclined to go into that question as the Old Act stands repealed and the new Act, 2013 came into force, as aforesated. Even if the Award was passed properly in accordance with law, the entire proceedings stands lapsed for the reasons stated above.

8 In view of the foregoing, the writ appeal stands dismissed. No costs. Consequently connected miscellaneous petition stands closed.  
vvk

s/d-  
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

1. The Secretary to Government,  
The State of Tamil Nadu,  
Housing and Urban Development Department,  
Secretariat,  
Chennai-9.
2. The District Collector,  
Namakkal District, Namakkal.
3. The Special Tahsildar,  
Land Acquisition Neighbourhood Scheme,  
Namakkal.

+ 1 cc to M/s.R.Karthikeyan, Advocate, SR 15081

+ 1 cc to M/s.V.Anandhamoorthy, Advocate, SR 15236

ad(co)  
prk22/3

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