

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.04.2016

Coram

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

Writ Petition Nos.30188 and 30189 of 2015
and
M.P.Nos.1 and 2 of 2015

1. Chockalingam
2. Thirugnanasambandam
...Petitioners 1 and 2 in W.P.No.30188 of 2015
3. Balasubramanian ...Third petitioner in WP.No.30188
of 2015 and sole petitioner in W.P.No.30189 of 2015

Vs.

1. State Government of Tamil Nadu,
rep. by its Principal Secretary to Government,
Industries (NLC) Department,
Fort St.George,
Chennai - 600 009.
2. The District Collector,
Cuddalore District. ...Respondents in both WPs
3. The Special Tahsildar,
L.A.No.7,
Neyveli - 2. ...Respondents 3 in W.P.NO.30188/15
4. The Special Tahsildar,
L.A.No. 6,
Neyveli - 2.
...Respondents 3 in W.P.30189/15

Prayer in W.P.No.30188 of 2015 Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records, relating to the impugned notice in reference No.L.6/2539/2008, dated 31.12.2008, under Section 3 (2) of Tamil Nadu Acquisition of Lands for Industrial Purposes Act 10 of 1999 on the file of second respondent and notice issued under Sections 7(5) and 7 (2) of the Tamil Nadu Land Acquisition for industrial purposes Act, 10 of 1999 in ref. No.L6/2539/2008, dated 14.02.2012, on the file of the second respondent and G.O.M.No.9, Industries (NLC) 04.01.2012,

published in Tamil Nadu Government Gazette No.5, dated 04.01.2012 Part II, Section 2, Industries Department, Acquisition of Lands, Notification under Section 3 (1) of Tamil Nadu Acquisition of Land for industrial purposes Act, 1997 (Tamil Nadu Act 10 of 1999) on the file of the first respondent for the lands in Cuddalore District, Chidambaram Taluk, 2, Velayamadevi, Melpatty Village, Block - 46, in respect of the petitioners' land in

Sl.No	R.S.No.	Classification	Extent Required/acquired (in hec)
12	39/2A	Wet	0.20.0
14	39/3A	Wet	0.53.0

and the consequential impugned award No.9/2014, in Ref L6/2539/2006, dated 30.10.2014, on the file of the second respondent and to quash the same in respect of the above land and to direct the respondents to apply the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and to forbear the respondents from taking possession of the above lands.

Prayer in W.P.No.30189 of 2015

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records, relating to the impugned notice in reference No.L4/685/2010, dated 18.04.2010, under Section 3 (2) of Tamil Nadu Acquisition of Lands for Industrial Purposes Act 10 of 1999 on the file of second respondent and notice issued under Sections 7(5) and 7 (2) of the Tamil Nadu Land Acquisition for industrial purposes Act, 10 of 1999 in ref. No.L4/685/2010, dated 24.02.2012, on the file of the second respondent and G.O.M.No.135 Industries (NLC) 13.09.2011, published in Tamil Nadu Government Gazette No.329, dated 13.09.2011 Part II, Section 2, Industries Department, Acquisition of Lands, Notification under Section 3 (1) of Tamil Nadu Acquisition of Land for industrial purposes Act 1997 (Tamil Nadu Act 10 of 1999) on the file of the first respondent for the lands in Cuddalore District, Chidambaram Taluk, 2, Velayamadevi, Melpatty Village, Block - 13, in respect of the petitioners' land in

Sl.No	R.S.No.	Classification	Extent Required/acquired (in hec)
13	77/2A	R.Wet	0.09.5

and the consequential impugned award No.4/2014, in Ref L4/685/2009, dated 27.08.2014, on the file of the second respondent and to quash the same in respect of the above land and to direct the respondents to apply the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and to forbear the respondents from taking possession of the above lands.

For Petitioners : Mr.J.R.K.Bhavanantham
For Respondents : Mr.R.Rajeswaran
Special Government Pleader

COMMON O R D E R

The petitioners in these Writ Petitions have challenged the land acquisition proceedings initiated by the first respondent under the provisions of Tamil Nadu Acquisition of Lands for Industrial Purposes Act, 10 of 1999.

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.J.R.K.Bhavanantham, learned counsel appearing for petitioners and Mr.R.Rajeswaran, learned Special Government Pleader for respondents.

4. The purpose of acquisition was for establishment of a mining activities by the Neyveli Lignite Corporation Ltd.

5. Though elaborate submissions were made by the learned counsel appearing for petitioners on the factual aspects, which were sought to be controverted by the learned Special Government Pleader, the short issue which falls for consideration in these Writ Petitions is as to whether the impugned land acquisition proceedings have to be held to have 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).

6. The specific case of petitioners is that they have not been dispossessed from the lands in question, though notification came to be issued under the Tamil Nadu Acquisition of Lands for Industrial Purposes Act, during the year 2010. This Court having been satisfied that the petitioners are in possession of the lands in question, had granted interim stay on 25.9.2015. The petitioners came to know that the Government has passed orders in G.O.Ms.No.45 Industries (SIPCOT - LA) Department, dated 14.05.2014, passing entire award, and deposited the award amount with the State Bank of India. This is evident from the award proceedings, which are impugned in these Writ Petitions. As stated above, the compensation amount has not been paid to the landowners/petitioners, but deposited with the State Bank of India. The other issue raised by the petitioners is that, physical possession of the lands in question have not been taken over from the petitioners. Therefore, on both grounds, which are set out in Section 24 (2) of the Act 30 of 2013, the petitioners

claim that the entire land acquisition proceedings are deemed to have been lapsed.

7. 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 culled out the 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 quote the operative portions of the said decision, which reads as follows:-

" 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 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."

8. In terms of the above decision, it is sufficient that one of the twin conditions stipulated under Section 24 (2) of Act 30 of 2013, is satisfied to enable the petitioners to contend that the land acquisition proceedings are deemed to have been lapsed.

9. In the instant cases, it is an admitted fact that compensation amount has not been paid to the petitioners/landowners, and there can be no resistance on the said point. In para No.9 of the counter affidavits, except for stating that the possession of the lands have been taken over on the date of passing of the award, no material has been placed before this Court to prove the same, in terms of the law laid down by the Division Bench of this Court in the decision referred to above. Thus, based on such factual averment, the respondents cannot state that possession has been taken over, when there is interim order granted by this Court. It is pointed out by the Division Bench, in the above referred decision that for taking possession of the property, the revenue authorities must establish by producing some evidence, i.e., either by preparation of panchanama in the presence of the witnesses or some other documents, and the transfer certificates subsequently prepared by the revenue authorities for delivery of the land in question in absence of a witness or land owner, will not be sufficient to

establish that possession of the land was taken over from the land owners. Thus, in instant cases, both the twin conditions stipulated under Section 24 (2) have been fulfilled, and accordingly, the petitioners are entitled to the benefit of Section 24 (2) of Act, 30 of 2013.

10. In the light of above observation, it is need less to say that the provisions of Section 24(2) of Act 30 of 2013 will be attracted, and consequently, the entire land acquisition proceedings shall stand lapsed.

11. In the result, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

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To

1. The Principal Secretary to Government,
State Government of Tamil Nadu,
Industries (NLC) Department,
Fort St.George,
Chennai - 600 009.
2. The District Collector,
Cuddalore District.
3. The Special Tahsildar,
L.A.No.6
Neyveli - 2.
4. The Special Tahsildar,
L.A.No. 7,
Neyveli - 2.

2 ccs to M./s.J.R.K. Bhavanantham Advocate, Sr. 22536

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and 30189 of 2015

ALA (CO)
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