

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2016

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THE HON'BLE MR.JUSTICE M.S.RAMESH

W.P.No.10971 of 2013

and M.P.No.1 of 2013

1.K.V.Nagarajan
2.K.R.Subramani
. Petitioner

Vs

- 1.The State of Tamil Nadu,
Rep.by its Secretary to the Government.
Housing and Urban Development,
Fort St.George, Chennai 600 009.
- 2.The Managing Director,
Tamil Nadu Housing Board,
No.33, Anna Salai,
Nandanam, Chennai 600 035.
- 3.The Special Tahsildar (LA),
Hosur Housing Scheme,
Bagalur Road, Krishnagiri District. Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus calling for the records of the first respondent relating to the proceedings in Letter No.400/1/LA2-2/2012-3 dated 02.04.2013 quash the same and consequently direct the 1st respondent to re-convey the lands measuring an extent to 2.89 and 2.21 acres comprised in Survey Nos.372/1 and 379 respectively situate at Mornapalli Village, Hosur Taluk, Krishnagiri District.

For Petitioner	:	Mr.R.Bharath Kumar
For R1 & R3	:	Mr.R.Govindasamy Spl.Govt.Pleader
For R2	:	Mr.V.Anandamurthy Standing Counsel

O R D E R

The petitioner's land comprised an extent of 2.89 acres in S.No.372/1 and another extent of 2.21 acres comprised in S.No.379, totally measuring an extent of 5.10 acres situated at Moornapam Village, Hosur Taluk, Krishnagiri District, was acquired by the first respondent under the Land Acquisition Act of 1894. After following the procedure contemplated under the Act and the Award No.3/1994 was passed on 10.03.1994.

2.The petitioner has filed the present writ petition by raising the additional grounds on 28.03.2016 stating that the Award under Section 11, was made five years prior to the commencement of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 and since, he is still in peaceful possession of the acquired lands and also since the award amount has not been paid to them nor deposited in the court by the third respondent, the said Land Acquisition proceedings have lapsed.

3. The short question arises that for consideration in this writ petition is as to whether the Award under Section 11 was made five years prior to the commencement of the New Act; whether physical peaceful possession has been taken by the respondent; whether the third respondent has deposited the Award amount in the concerned Court.

4.The second respondent in his counter affidavit, though claims to have taken possession of the acquired lands from the petitioner on 18.03.2002, this fact is denied by the petitioners herein, who claims to be still in possession of the land. I do not wish to go into the factual aspect as to whether possession was taken over by the respondent or not, since the second ground of the Award not being disposed into Court, stands to his favour.

5.Pursuant to the acquisition, the Award No.3 of 1994 was passed on 10.03.1994. The second respondent in his counter affidavit has stated that the entire award amount has been deposited before the land Acquisition Officer by way of a cheque bearing No.640513 dated 20.01.1994 and the same was duly received by the Land Acquisition Officer on 24.01.1994. The deposit of the Award with the Land Acquisition Officer is not a proper deposit and cannot be held to be equivalent to compensation paid to the petitioner. This proposition has been laid down in various decisions of the Hon'ble Supreme Court as well as the other High Courts. In a decision reported in 2014 (1) CTC 755 (Pune Municipal Corporation and Anr. vs. Harakchand Misirimal Solanki and Ors., wherein it has been held as follows :

"17. While enacting Section 24(2), Parliament

definitely had in its view Section 31 of the 1894 Act. From that one thing is clear that it did not intend to equate the word "paid" to "offered" or "tendered". But at the same time, we do not think that by use of the word "paid", Parliament intended receipt of Compensation by the landowners/persons interested. In our view, it is not appropriate to give a literal construction to the expression "paid" used in this sub-section (Sub-section) (2) of Section 24. If a literal construction were to be given, then it would amount to ignoring procedure, mode and manner of deposit provided in Section 31(2) of the 1894 Act in the event of happening of any of the contingencies contemplated therein which may prevent the Collector from making actual payment of Compensation. We are of the view, therefore, that for the purposes of Section 24 (2), the Compensation shall be regarded as "paid" if the Compensation has been offered to the person interested and such Compensation has been deposited in the Court, where reference under Section 18 can be made on happening of any of the contingencies contemplated under Section 31(2) of the 1894 Act. In other words, the Compensation may be said to have been "paid" within the meaning of Section 24(2) when the Collector (or for that matter Land Acquisition Officer) has discharged his obligation and deposited the amount of Compensation in Court and made that amount available to the interested person to be dealt with as provided in Sections 32 & 33.

20. From the above, it is clear that the Award pertaining to the subject land has been made by the Special Land Acquisition Officer more than five years prior to the commencement of the 2013 Act. It is also admitted position that interested nor deposited in the Court. The deposit of Compensation amount in the Government Treasury is of no avail and cannot be held to be equivalent to Compensation paid to the landowners/persons interested. We have, therefore, no hesitation in holding that the subject Land Acquisition proceedings shall be deemed to have lapsed under Section 24(2) of the 2013 Act."

The above proposition squarely applies to the petitioner's case,

the proposition has also been subsequently followed in number of decision of this Court.

6. In view of the forgoing decision, I am of the view that the award amount deposited before the third respondent cannot be termed to be compensation paid to the petitioner. Therefore, I have no hesitation in holding that the subject Land Acquisition proceedings shall be deemed to have lapsed under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013.

Accordingly, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kkd
To

- 1.The Secretary to the Government.
State of Tamil Nadu,
Housing and Urban Development,
Fort St.George, Chennai 600 009.
- 2.The Managing Director,
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No.33, Anna Salai,
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- 3.The Special Tahsildar (LA),
Hosur Housing Scheme,
Bagalur Road, Krishnagiri District.

+1cc to Mr.V. Anandha Murthy, Advocate, S.R.No.65578
+1cc to Mr.R. Bharath Kumar, Advocate, S.R.No.65544
+1cc to the Government Pleader, S.R.No.65887

mv (CO)
md(20/12/2016)

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