

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.04.2016

Coram

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

Writ Petition No.958 of 2015  
and  
M.P.No.1 of 2015

1. Vummudi Ethiraj  
2. Vummudi Udaya Kumar

...Petitioners

Vs.

1. The District Collector,  
Kancheepuram District.  
Kancheepuram.
2. The Revenue Divisional Officer,  
Chengalpet.
3. The Special Tahsildar,  
Land Acquisition Unit -I,  
East Coast Road Project,  
Chengalpattu.
4. The Divisional Engineer,  
Highways Department,  
Construction and Administration,  
C & M Tambaram Sub Division,  
Saidapet, Chennai - 600 015.
5. The Assistant Divisional Engineer,  
Highways Department,  
Construction and Administration,  
C & M Tambaram Sub Division,  
Opp. Velachery Railway Station,  
Velachery, Chennai - 600 042.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Declaration, declaring that the land acquisition proceedings initiated and declared by respondents 1 to 3 under the declaration issued under Section -6 of the Land Acquisition Act, 1894, dated 24.02.1993, culminating in award No.6 of 1995, dated 30.03.1995, has lapsed, invalid and

unenforceable insofar as it pertains to the acquisition of the lands owned by the petitioners, measuring an extent of about 5,758 sq.ft in the total extent of about 0.606 acres of 26397 sq.ft. comprised in Original Survey No.98/1, R.S.No.98/70, present R.S.No.98/70B (Survey No.98/1B1A2 of Reddykuppam Village, Kanathur, Thirupporur Taluk, Kancheepuram District.

For Petitioners : Mr.V.G.Suresh Kumar

For Respondents : Mr.R.Rajeswaran  
Special Government Pleader

#### O R D E R

Heard Mr.V.G.Sureshkumar, the learned counsel appearing for petitioners, Mr.R.Rajeswaran, the learned Special Government Pleader for respondents, and perused the averments made in the affidavit, filed in support of the Writ Petition, the documents annexed in the typed set of papers, and the written instructions given by respondents 4 and 5, which is in the form of a draft counter affidavit.

2. The petitioners in this writ petition seek for issuance of a writ of declaration, to declare the land acquisition proceedings initiated by respondents 1 to 3 as having lapsed in terms of Section 24 (2) of the Right to Fair Compensation, Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 30 of 2013.

3. Before examining the factual issue, it would be necessary to take note of the legal position as to under what circumstances the land acquisition proceedings initiated under the Land Acquisition Act, 1894 would stand lapsed, and what are the parameters to be fulfilled to be entitled to the benefit of Section 24 (2) of Act, 30 of 2013.

4. The issue involved in this Writ Petition is no longer res integra, 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) reported in [2016 (2) MLJ 385], has taken into consideration the entire legal gamut of case laws on the issue and culled out 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 refer the operative portion 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 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, in the light of the above decision, one of the two parameters, which are required to be fulfilled, for being entitled to the benefit under Section 24 (2) of Act 30 of 2013 is that the possession of the land should continue to remain with the landowners/petitioners or the petitioners should not have been tendered/paid with the compensation, for the lands, which were acquired from them.

6. In the instant case, the second petitioner has approached this Court earlier, by filing a Writ Petition before the Hon'ble Division Bench, in W.P.No.7032 of 2014, to quash the notice issued by the Assistant Engineer, Highways Department (Building and Maintenance) Tambaram, dated 05.02.2015, under Section 28 (2) (ii) of the Tamil Nadu Highways Act, 2001. The said Writ Petition was disposed of by order, dated 11.03.2014, directing the petitioner to file reply to the notice within a time frame, and with liberty to the authority to pass orders in accordance with law on its own merits with the observation that no steps shall be taken before passing the ultimate order. The petitioners would accept that even before final orders were passed, action was initiated and the petitioners' property was taken over by the respondents and road in question has been formed. Thus, as on date, the petitioners have been dispossessed from the land in question and possession does not remain with the petitioners. Therefore, the petitioners is not entitled to seek the benefit under Section 24 (2) of Act 30 of 2013 on the said ground.

7. The other aspect that needs to be considered is as to whether the petitioners have been tendered with the compensation

amount or whether the same has been deposited before the Civil Court. If one of these conditions has not been fulfilled, then, the petitioners are entitled to the benefit of Section 24 (2) of Act 30 of 2013.

8. From the written instructions/draft counter affidavit given by respondents 4 and 5, it is clear that compensation has not been tendered to the petitioners, nor deposited before the Civil Court. In para No.7 of the written instructions/draft counter, the respondents 4 and 5 have stated that the petitioners/landowners did not appear for the award, and the Land Acquisition Officer has ordered the compensation to be kept in revenue deposit, and it will be refunded to the original landowner only on production of records. It is further stated that the Revenue Divisional Officer (RDO), Chengalpattu, is the custodian of the records, related to the land acquisition in East Coast Road, and the petitioners can approach RDO, Chengalpattu, and submit relevant documents to prove their ownership over the land acquired and claim compensation amount. This averment has been reiterated in para No.8 as well.

9. In the light of the above admission of the respondents 4 and 5 in their draft counter affidavit, it is clear that one of the twin conditions has been satisfied for the petitioners to be entitled to the benefit of Section 24 (2) of Act 30 of 2013.

10. In the light of above, the impugned land acquisitions shall be deemed to have been lapsed on the ground that the compensation has not been tendered/paid to the landowners/petitioners, nor has been deposited before the Civil Court. However, on account of the lands have been utilized by respondents for formation of East Coast Road, possession of the land shall not revert back to the petitioners and shall continue to remain with the respondents, and utilized as road. However, there will be a direction to the respondents to issue fresh notification under the provisions of Section 24 (2) of the Right to Fair Compensation, Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 30 of 2013 only for the purpose of arriving at the compensation amount payable to the petitioners for the land, which has been acquired from them. Fresh notification in this regard shall be issued within a period of three months from the date of receipt of a copy of this order.

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

Sd/-  
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

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+1 cc to M/s.V.G.Sureshkumar, Advocate, sr.24319

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krs 29.04.2016