

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 15.04.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.13613; 15597 to 15599 &
16542 to 16544 of 2013 &
connected M.Ps.

- 1.Sathyamoorthy
- 2.Manickam
- 3.Velusamy
- 4.Anandhan
- 5.Baktavatsalam
- 6.Jayanthi
- 7.Venkatesh
- 8.Priya
- 9.Jayaprakash

... Petitioners in WP.13613 of 2013

- 1.R.Lakshmanan
- 2.M.Murthy
- 3.A.R.Ravibose
- 4.Pallavi Magithia
- 5.S.Paramasivam
- 6.M.A.Krishnaji
- 7.S.Muthusamy
- 8.R.Sundareshwaran
- 9.N.Bala Subramaniam
- 10.V.Nagarajan
- 11.K.R.Vijayakumar
- 12.A.Malarkuzhali
- 13.G.Sangameshwaran
- 14.Padma Magudapathy
- 15.S.Ramasamy
- 16.Leela Narayanasamy

... Petitioners in WP.15597 of 2013

- 1.V.Boopathy
- 2.K.Mahadevan
- 3.C.Prabhavathi
- 4.S.Prema Leela
- 5.M.Prasanna Venkatesh @ Prasanna
- 6.M.Gopal
- 7.V.Manickam
- 8.M.Neelambal
- 9.G.Leelavathy
- 10.T.Thirumurthy
- 11.A.Mery Rajamani
- 12.K.S.Ramkumar

... Petitioners in WP.15598 of 2013

1.K.Nanu
2.J.V.Vaitheeswaran
3.R.Ramani

... Petitioners in WP.15599 of 2013

1.Dr.R.Sundaresan
2.G.Ramachandran
3.K.Shanthini
4.Dhanalakshmi Chakrapani
5.P.Vasanth
6.A.Rajamani
7.S.Manickam
8.C.P.Natarajan
9.N.Neelavathy
10.M.S.Kalyani

... Petitioners in WP.16542 of 2013

1.M.Sigamani
2.S.Krishnammal
3.R.Radha
4.S.N.Vanithamani
5.M.Sumathi
6.S.Meenakshi
7.Marimuthammal
8.R.Kanagarathinam
9.Saraswathy Manavalan
10.D.Vijayalakshmi

... Petitioners in WP.16543 of 2013

1.Leela Narayanaswamy
2.Yogambal
3.Manoj Kumar
4.Thirugnanam
5.Sylvia Amalraj
6.Doraivelu
7.Praveen

... Petitioners in WP.16544 of 2013

Vs

1. The State of Tamil Nadu
Rep. by Secretary
Housing and Urban Development Department
Fort St. George, Chennai- 600 009.
2. The Special Tahsildar (LA)
Housing Scheme Unit - III
Tatabad, Coimbatore
Coimbatore District.

3. The Executive Engineer &
Administrative Officer
Tamil Nadu Housing Board
Coimbatore Housing Unit,
Tatabad, Coimbatore 12.

... Respondents in all the WPS

(R3 impleaded as per Order of Court dated
04.09.2014 made in M.P.2/14 in all the WPs)

W.P.No.13613 of 2013 : This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of declaration to declare that the entire acquisition proceedings with respect to the petitioners' lands of an extent of 2.01 acres in S.F.Nos.340, 343 (part) and 344, situated at Telegupalayam Village, Coimbatore District, pursuant to the notification issued under section 4(1) of the Act in G.O.Ms.No.820, Housing and Urban Development Department dated 17.08.1982, and consequential declaration made under section 6 of the Act, in G.O.Ms.No.843, Housing and Urban Development Department dated 23.08.1985, issued by the first respondent and the proceedings of the second respondent in LA No.13/81, dated 04.12.1987 as null and void and non est law.

W.P.No.15597 of 2013 : Pleased to issue a Writ of Declaration, declaring that the entire acquisition proceedings with respect to the land admeasuring 2,200 sq.feet, 2,960 sq.feet, 2,200 sq.feet, 2,200 sq.feet, 2,188 sq.feet, 2,200 sq.feet, 2,195 sq.feet, 2,480 sq.feet, 2,480 sq.feet, 2,480 sq.feet, 2,200 sq.feet, 2,320 sq.feet, 2,320 sq.feet, 2,320 sq.feet, 2,200 sq.feet, 2,220 sq.feet, comprised in S.F.Nos.340 and 343 (part) situated at Telegupalayam Village, Coimbatore District belonging to the petitioners 1 to 16 respectively pursuant to the notification issued under section 4 (1) of the Act in G.O.Ms.No.820, Housing and Urban Development Department dt 17.8.1982 and consequential declaration made under section 6 of the Act in G.O. Ms. No.843, Housing and Urban Development Department dated 23.08.1985, issued by the first respondent and the proceedings of the second respondent in LA No.13/81, dated 04.12.1987 as null and void and non est law.

W.P.No.15598 of 2013 : Pleased to issue a Writ of Declaration, declaring that the entire acquisition proceedings with respect to the land admeasuring 2,480 sq.feet, 1193 sq.feet, 1190 sq.feet, 2,200 sq.feet, 2,480 sq.feet, 2,640 sq.feet, 1943 sq.feet, 2,200 sq.feet, 2,200 sq.feet, 2,220 sq.feet, 2,200 sq.feet, 2,320 sq.feet, comprised in S.F.Nos.340 and 343 (part) situated at Telegupalayam Village, Coimbatore District belonging to the petitioners 1 to 12 respectively pursuant to the notification issued under section 4 (1) of the Act in G.O.Ms. No.820, Housing and Urban Development Department, dt 17.8.1982 and consequential declaration made under section 6 of the Act in G.O. Ms. No.843, Housing and Urban Development Department, dated 23.8.1985 issued by the first respondent and the proceedings of the second respondent in LA No.13/81, dated 04.12.1987 as null and void and non est law.

W.P.No.15599 of 2013 : Pleased to issue a Writ of Declaration, declaring that the entire acquisition proceedings with respect to the land admeasuring 2232 Sq.Feet, 3492 Sq.feet, and 2220 Sq.feet, comprised in S.F.Nos.340 and 343 (part) situated at Telegupalayam Village, Coimbatore District, belonging to the

petitioners 1 to 3 respectively, pursuant to the notification issued under section 4(1) of the Act in G.O.Ms.No.820, Housing and Urban Development Department, dated 17.8.1982, and consequential declaration made under section 6 of the Act in G.O.Ms No.843, Housing and Urban Development Department, dated 23.8.1985, issued by the first respondent and the proceedings of the second respondent in LA.No.13/81 dated 4.12.1987 as null and void and non est law.

W.P.No.16542 of 2013 : Pleased to issue a Writ of Declaration, declaring that the entire acquisition proceedings with respect to the land admeasuring 2,220 sq.feet, 2,200 sq.feet, 2,200 sq.feet, 2,195 sq.feet, 2,220 sq.feet, 2,232 sq.feet, 2,200 sq.feet, 2,200 sq.feet, 2,320 sq.feet, 2,320 sq.feet, comprised in S.F.Nos.340 and 343 (part) situated at Telegupalayam Village, Coimbatore District, belonging to the petitioners 1 to 10 respectively pursuant to the notification issued under section 4 (1) of the Act in G.O.Ms. No.820, Housing and Urban Development Department, dated 17.8.1982 and consequential declaration made under section 6 of the Act in G.O. Ms. No.843, Housing and Urban Development Department dt 23.8.1985, issued by the first respondent and the proceedings of the second respondent in LA.No.13/81, dated 4.12.1987 as null and void and non est law.

W.P.No.16543 of 2013 : Pleased to issue a Writ of Declaration or any other Writ, Order or Direction in the nature of Writ, declaring that the entire acquisition proceedings with respect to the land admeasuring 2,585 sq.feet, 2,220 sq.feet, 2,220 sq.feet, 2,200 sq.feet, 2,200 sq.feet, 2,200 sq.feet, 2,200 sq.feet, 2,200 sq.feet, 2,480 sq.feet, 2,480 sq.feet comprised in S.F.Nos.340 and 343 (part) situated at Telegupalayam Village, Coimbatore District, belonging to the petitioners 1 to 10 respectively pursuant to the notification issued under section 4 (1) of the Act in G.O.Ms. No.820, Housing and Urban Development Department, dated 17.8.1982, and consequential declaration made under section 6 of the Act, in G.O.Ms. No.843, Housing and Urban Development Department, dated 23.8.1985 issued by the first respondent and the proceedings of the second respondent in LA.No.13/81, dated 4.12.1987 as null and void and non est law.

W.P.No.16544 of 2013 : Pleased to issue a Writ of Declaration or any other Writ, Order or Direction in the nature of Writ, declaring that the entire acquisition proceedings with respect to the land admeasuring 2,392 sq.feet, 2,200 sq.feet, 2,119 sq.feet, 2,880 sq.feet, 2,200 sq.feet, 2,200 sq.feet, 2,668 sq.feet, comprised in S.F.Nos.340 and 343 (part) situated at Telegupalayam Village, Coimbatore District, belonging to the petitioners 1 to 7 respectively pursuant to the notification issued under section 4 (1) of the Act in G.O.Ms. No.820, Housing and Urban Development Department, dated 17.8.1982 and consequential declaration made under section 6 of the Act, in

G.O. Ms. No.843, Housing and Urban Development Department, dated 23.8.1985 issued by the first respondent and the proceedings of the second respondent in LA.No.13/81, dated 4.12.1987 as null and void and non est law.

For Petitioners : Mr.R.N.Amarnath

For Respondents : Mr.R.Rajeswaran, R1 & R2
Special Government Pleader

Mr.B.Vivekavanan - R3

C O M M O N O R D E R

Heard Mr.R.N.Amarnath, learned counsel appearing for the petitioners, Mr.R.Rajeswaran, learned Special Government Pleader, appearing on behalf of respondents 1 & 2 and Mr.B.Vivekavanan, Counsel appearing for the third respondent and with the consent of the learned counsel on either side, the Writ Petitions are taken up for final disposal.

2.The petitioners have filed these Writ Petitions for declaring that the entire acquisition proceedings with respect to the petitioners' lands situated at Telegupalayam Village, Coimbatore District, pursuant to the notification issued under section 4(1) of the Act in G.O.Ms.No.820, Housing and Urban Development Department dated 17.08.1982, and consequential declaration made under section 6 of the Act, in G.O.Ms.No.843, Housing and Urban Development Department dated 23.08.1985, issued by the first respondent and the proceedings of the second respondent as null and void and non est law. Subsequently, the petitioners have filed Miscellaneous Petitions by raising additional grounds wherein they have sought for declaration to declare that the land acquisition proceedings are lapsed in view of Section 24(2) of the Right Fair Compensation and Transparency land Acquisition Rehabilitation and Resettlement Act 2013 (Act 30 of 2013).

3.The facts which are necessary for the disposal of the Writ Petitions are that the lands in question along with contiguous extent were acquired for the Scheme in Telegupalayam Village, Coimbatore District, called Anna Nagar Neighbourhood Scheme. A Notification issued under section 4 (1) of the Land Acquisition Act, 1894 (Central Act I of 1894) (hereinafter referred to as '1894, Act') was approved by the Government in G.O.Ms.No.820, Housing and Urban Development Department dated 17.08.1982, and the Amendment to the said Notification was published on 29.12.1982. It is admitted that the names of the petitioners did not find place in the Notification issued under section 4(1) of the Act. The respondent Board would submit that the petitioners are

subsequent purchasers, they have absolutely no semblance of right over the property and that they have not produced any Sale Deeds to substantiate their case.

4. On the contrary, the petitioners case is that the names of all the petitioners except the petitioners 4 & 11 in W.P.No.15597 of 2013 and 4th petitioner in W.P.No.15598 of 2013, who are the subsequent purchasers, all other petitioners names were mentioned in the 4(1) Notification, since revenue records were not mutated. However, in the Award enquiry, notices were given and the names of all the petitioners find place in the Award. Therefore, it is submitted that it is not as if the petitioners are strangers to the lands in question and there is no illegality or irregularity committed by the petitioners nor they are fictitious persons, but, they are all claiming right over the property as lawful purchasers of the property, which is the subject matter of acquisition. The names of three petitioners mentioned above are the subsequent purchasers from the original owners, the names of those original owners found place in the Award. Therefore, it is submitted that the locus standi of the petitioners to claim the relief sought for cannot be questioned.

5. The legal issue in question has already been settled by a recent decision of the Hon'ble Division Bench decision 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 aforesaid 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 aforesaid, 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."

In view of the above decision, even a subsequent purchaser is entitled to plead that the acquisition proceedings are lapsed in view of section 24(2) of the Act 30 of 2013. Therefore, such objection raised by the respondent Board cannot be countenanced. The other two aspects would be whether possession has been taken from the land owners and whether the compensation amount has been deposited.

6. In view of the decision referred supra, if any one of the two conditions are satisfied, that would be sufficient to hold that the land acquisition proceedings are deemed to have lapsed under section 24(2) of the Act. The Hon'ble Division Bench pointed that for taking over 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 instant case, the specific averment of the petitioners is that the possession has not been taken over from them.

7. Counter affidavits have been filed by the Special Tahsildar, wherein it has been admitted that possession has not been taken over. From the counter affidavit, it is further clear that the petitioners along with other land owners filed W.P.No.5012 of 1987 and obtained an order of interim stay on 14.05.1987, which was subsequently modified on 17.08.1987, by permitting all other proceedings, except that the land owners should not be dispossessed. Therefore, the notices under sections 9(3) and 10 of the Act were served on the land owners and interested persons and the Award enquiry was conducted on 09.03.1987 and 10.03.1987 and the Award was passed on 04.12.1987.

8. Further, it is admitted in the counter affidavit that the Writ Petition in W.P.No.5012 of 1987, filed by the petitioners/ land owners were allowed on 30.10.1991 and the Writ Appeal against the said order by the Government in W.A.No.548 of 1995 was allowed by the Hon'ble Division Bench on 27.11.1996. Further, in page No.5 of the counter affidavit, it is admitted that the possession was not taken as Court proceedings were pending in other cases, mutation of the revenue records was not done and the petitioners were not willing to part with their lands.

9. Therefore, it is admitted by the second respondent that the possession has not been taken over. That apart, a separate tabulated statement showing the details of the lands taking over possession and compensation paid to the land owners, has been filed by the second respondent, from which it is seen that in all these cases, possession has not been taken. Therefore, this is a fit case to hold that the land acquisition proceedings are deemed to have lapsed under section 24(2) of the Act 30/13. In the light of the above, there would not be any necessity to examine as to whether the compensation has been paid or not.

10.The specific case of the petitioners is that they were neither dispossessed nor any compensation has been paid to the land owners. With regard to that aspect, in the counter affidavit, it has been stated that the compensation amount were sent to the Civil Court to be deposited as per section 30 of the old Act. The learned counsel for the Housing Board submitted that the attested true copy of the challan dated 08.07.1994, issued from the Office of the Special Tahsildar (L.A.), Housing Scheme No.3, Coimbatore, to show that the cheque was drawn on State Bank of India, Coimbatore, in favour of the Principal Subordinate Judge, Coimbatore, for Rs.6,78,984/- was issued.

11.Though it may be true that such a cheque was issued, there is no proof to show that the cheque dated 08.07.1994, had been deposited before the Civil Court, there is no receipt or proof to show before this Court to establish that the amount has been deposited. Further, from the tabulated statement given by the second respondent, it is seen that the deposit details are not available in the Sub-Court, Coimbatore. If that be the case, then it has to be held that the respondents have not been able to establish that the amount of compensation as stated, has been tendered or deposited before the Court. Hence, this point also has to be decided in favour of the petitioners.

12.In view of the above discussions, the provisions of section 24(2) of Act 30/13, would be attracted and consequently, the entire land acquisition proceedings stand lapsed. However, it is always open to the respondents to issue fresh Notification under the provisions of Act 30/13, if they so desire.

The Writ Petitions are allowed on the above terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

rpa

To

1. The Secretary
State of Tamil Nadu
Housing and Urban Department
Fort St. George,
Chennai - 600 009.

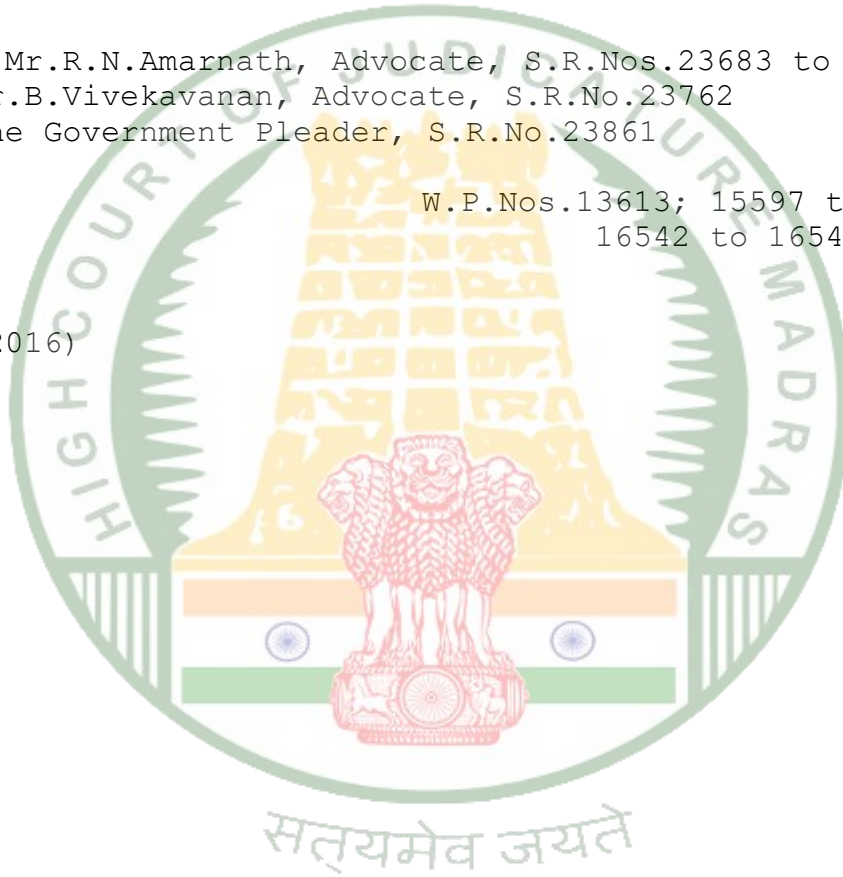
2. The Special Tahsildar (LA)
Housing Scheme Unit - III
Tatabad, Coimbatore
Coimbatore District.

3. The Executive Engineer &
Administrative Officer
Tamil Nadu Housing Board
Coimbatore Housing Unit,
Tatabad, Coimbatore 12.

+7cc's to Mr.R.N.Amarnath, Advocate, S.R.Nos.23683 to 23689
+1cc to Mr.B.Vivekavanan, Advocate, S.R.No.23762
+1cc to the Government Pleader, S.R.No.23861

W.P.Nos.13613; 15597 to 15599 &
16542 to 16544 of 2013

AD(CO)
CA(28/04/2016)



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