



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 22.08.2016

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CORAM:
THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
AND
THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.A(MD)No.1200 of 2016
and
C.M.P(MD)No.7905 of 2016

1.R.Ilangovan
2.Singammal

... Appellants/
Petitioners

Vs.

1.The District Collector,
Sivagangai District,
Sivagangai.

2.The Special Tahsildar,
Adi Dravidar Welfare,
Devakottai,
Sivagangai District.

3.The Tahsildar,
Taluk Office,
Karaikudi,
Sivagangai District.

... Respondents/
Respondents

PRAYER: Appeal filed under Clause 15 of the Letters Patent against the order of this Court dated 01.03.2016 passed in W.P(MD)No.9788 of 2014.

Prayer in WP(MD). 9788/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue an order or a direction in the nature of WRIT OF DECLARATION declaring that the 1st respondent 4(1) Notification dated 26.12.1995 in respect of the petitioners land deemed to have been lapsed in respect of land in S.No.145/1A in an extent of 0.09.0 out of 1.24 acres and 145/1B in an extent 0.09.0 out of 0.85.0 acres in Vettaikaranpatti village, Karaikudi Taluk, Sivagangai District.

For Appellants : Mr.J.John

For Respondents : Mr.M.Alagathevan
Special Government Pleader



JUDGMENT

(Judgment of the Court was delivered by
NOOTY.RAMAMOHANA RAO,J.)

This writ appeal is directed against the order and judgment rendered on 01.03.2016, dismissing the writ petition in W.P(MD) No.9788 of 2014 instituted by the very appellants.

2. The sheet anchor of the case set up by the appellants was that in view of the provisions contained under Section 24 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, [in short '2013 Act'], the proceedings which have been initiated under the provisions of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978, (Tamil Nadu Act 31 of 1978), are liable to be declared as lapsed.

3. The 2013 Act has been brought into force on 01.01.2014. Section 24 of the 2013 Act, reads as under:

"24. Land acquisition process under Act No.I of 1894 shall be deemed to have lapsed in certain cases:

(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, -

(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act."



4. For one to invoke the provisions contained under Section 24 of the 2013 Act, it is essential to establish that the land acquisition proceedings have been initiated under the Land Acquisition Act, 1894, [in short '1894 Act']. In case of any such proceedings initiated under the 1894 Act, where no award is passed under Section 11 thereof, determining the market value payable for the lands acquired, it is obligatory that the provisions of the 2013 Act, relating to the determination of compensation shall apply.

5. In case, an award has already been passed under the 1894 Act, such proceedings shall continue under the provisions of the 1894 Act, as if the said Act has not been repealed.

6. Sub-section (2) of Section 24 of the 2013 Act, sets out that where an award under Section 11 of the 1894 Act has been passed, prior to five years or more period prior to the commencement of the 2013 Act, but the physical possession of the land has not been taken or the compensation has not been paid, the land acquisition proceedings initiated under the 1894 Act shall be deemed to have lapsed.

7. Therefore, the pre-requisite for application of the provisions under Section 24 of the 2013 Act, is that the land in question ought to have been acquired under the 1894 Act. In the matter of repealing the 1894 Act, to a limited extent, the said Act is sought to be saved by the provisions contained under Section 24 of the 2013 Act. Whereas in the instant case, the State Legislature enacted the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978, (Tamil Nadu Act 31 of 1978). Section 4 of the Act 31 of 1978, empowers the District Collector to acquire any land for the purpose of any Harijan Welfare Scheme by following the procedure prescribed thereunder. The District Collector is also liable to determine the amount payable in respect of any such land acquired representing the market value of such land as on the date of publication of the notification under Section 4(1) of the Act 31 of 1978. In addition to the market value, 15% solatium was also ordered to be paid in view of the compulsory nature of acquisition.

8. Therefore, the Act 31 of 1978 is a special piece of legislation enacted by the Local Legislature of the State of Tamil Nadu and acquisition of any such land under the Act 31 of 1978, is not impacted in any manner by the provisions contained under Section 24 of the 2013 Act.



9. We, therefore, have no hesitation to dismiss this writ appeal. Accordingly, this writ appeal is dismissed. However, we preserve liberty to the appellants to work out their remedies in accordance with law. No costs. Consequently, the connected civil miscellaneous petition is dismissed.

Sd/-

Assistant Registrar(AE)

/True copy/

Sub Assistant Registrar

To

1.The District Collector,
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3.The Tahsildar,
Taluk Office,
Karaikudi,
Sivagangai District.

+1cc to MR.J.John, Advocate SR.No.46306

rsb

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and

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