

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.11.2017
Delivered on : 14.12.2017

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A No.493 of 2014,
M.P.Nos.1 of 2014 and 1 of 2015

1.M.Santhaiyan
2.S.Pachaiyammal
3.S.Saravana MuruganAppellants/Petitioner

Vs

1.The State of Tamilnadu,
Rep. by its Secretary to Government,
Housing and Urban Department,
Fort St.George, Chennai - 600 009.
2. The District Collector,
Chennai District, Chennai - 600 001.
3. The Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai - 600 035.Respondents/Respondents

Prayer:- Writ Appeal filed under clause 15 of the Letter Patent
against the order dated 19.02.2014 made in W.P.No.32458 of 2012.

Prayer in W.P.No.32458 of 2012:

Petition filed under article 226 of the constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 1st respondent in letter NO. 30437/LA(1)/09-18 dated 18.10.2012 and quash the same declaring the entire land acquisition proceedings as non-est in the eye of law in respect of the petitioners lands in Survey No.298/2 and 298/3 in Kodambakkam Village on various grounds raised in the writ petition and pass appropriate consequential orders.

For Appellants : Mr.T.V.Ramanujam
Senior Counsel for
Mr.C.Jagadish

For Respondents: Mr.V.Anandhamurthy
Additional Government Pleader

J U D G M E N T

P.VELMURUGAN,J.

The land acquisition proceedings initiated to acquire the lands owned by the appellant was challenged by them by filing writ petitions in W.P.Nos.1575 and 2133 of 1964. The writ petitions were dismissed by order dated 23 March, 1967 and 6 February, 1965 and thereafter, Award was passed on 28 March, 1970. Since there was no response to the notice issued under Section 12(2) of the Land Acquisition Act (hereinafter referred to as the "Act"), the compensation amount was deposited in the Saidapet Branch of State Bank of India on 6 February, 1970. The appellant, long thereafter made a representation for re-conveyance of land under Section 48-B of the Act and even filed a writ petition in W.P.No.23372 of 2006 for issuance of a Writ of Mandamus. The Government of Tamil Nadu pursuant to the order dated 28 February, 2012 directed consideration of the representation for re-conveyance. The Government by order dated 18 October, 2012 rejected the request. The order was challenged in W.P.No.32458 of 2012 with an additional contention that possession was not taken and that the compensation amount was kept in the Revenue Deposit. The learned single Judge remitted the matter to the Government for fresh consideration. The order is under challenge in this appeal.

2. The learned Senior Counsel for the appellants contended that major portion of the acquired land has already been re-conveyed to the erstwhile land owners. The appellants are still in possession of the land and the said position is admitted in the counter affidavit. Similarly, compensation amount has not been paid. According to the learned Senior Counsel, the appellants have satisfied the ingredients of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Tamil Nadu) Amendment Act, 2013 (for short "Act 30 of 2013") . The learned single Judge was therefore not correct in remitting the matter to the Government for consideration.

3. The learned Standing Counsel for the Tamil Nadu Housing Board by placing reliance on the the statement made in the counter affidavit filed in the writ appeal contended that physical possession has already been taken by the Tamil Nadu Housing Board. According to the learned Standing Counsel, Land Acquisition Officer was compelled to deposit the compensation amount in bank deposit due to the failure of the appellants to collect it even after service of notice under Section 12(2) of the Act. Since the appellants refused to receive the

compensation amount tendered, they cannot take advantage of the so called Revenue Deposit.

4. The Government of Tamil Nadu acquired vast extent of land in Kodambakkam Village for construction of houses under the Neighbourhood Scheme. The land owned by the appellants in Survey Nos.298/2 and 298/3 of Kodambakkam Village was part of the larger extent acquired for the Tamil Nadu Housing Board. The notification under Section 4(1) of the Act was issued on 25 October, 1961. The writ petition filed by the appellants in W.P.Nos.1575 and 2133 of 1964 challenging the land acquisition were dismissed. Thereafter, statutory proceedings were continued. The Award was passed on 28 March, 1970.

5. The Land Acquisition Officer issued notice to the land owner under Section 12(2) of the Act intimating the Award. There was no response from the land owners to the notice to receive the Award amount. The Land Acquisition Officer was therefore justified in depositing the amount in a nationalised bank. There was no dispute with regard to apportionment and as such, the Land Acquisition Officer was not obliged to refer the matter to the Civil Court under Section 30 of the Act. The appellants having failed to receive the compensation, in spite of the readiness on the part of the Land Acquisition Officer to pay it to them, cannot take advantage of their own wrong. We therefore reject the claim made under Section 24(2) of Act 30 of 2013 on the ground that amount is in revenue deposit and it was not paid to the land owners.

6. The next ground relates to possession. The counter affidavit filed in the writ petition proceeds as if possession could not be taken. However, in the counter affidavit filed in this appeal, the Tamil Nadu Housing Board has taken up a specific contention that physical possession has already been taken. We have therefore directed the Land Acquisition Officer to produce the Award file. The file is stated to be missing and the Land Acquisition Officer is in the process of tracing it out. In view of the rival contentions, it would not be possible for this Court to decide the factum of possession. The verification of Award file is absolutely necessary. It is to be mentioned here that the appellants have filed writ petition for re-conveyance of the land admitting the factual position that title and possession passed on to the Tamil Nadu Housing Board consequent to the acquisition and culmination of land acquisition Proceedings. In case, there is a clear admission by the Tamil Nadu Housing Board that possession has not been taken and records are produced to prove the said fact, we would have decided the issue relating to Section 24(2) of Act 30 of 2013 in this writ appeal. However that is not the case here. The Tamil Nadu Housing Board has taken up a specific contention that they

have taken physical possession and there are documents to prove the said fact. Such being the position, we are of the view that on the basis of the materials available on record, the appellants are not entitled for the relief under Section 24(2) of Act 30 of 2013.

7. Similar issue regarding the claim based on Section 24(2) of the Act 30 of 2013 after the disposal of the earlier writ proceedings came up for consideration before the Hon'ble Supreme Court in Mahavir and Others vs. Union of India and another (SLP No.24781 of 2017 dated 8 September 2017). The Supreme Court while negating the claim made by the land owners and upholding the judgment of the High Court made the following observation:-

"19. The court is duty bound to prevent the abuse of the process of law in the cases which have been concluded several decades before, in our considered opinion, the provisions of Section 24(2) of the 2013 Act cannot be invoked in such cases of dead claims or stale claims. There are several numbers of cases coming to this court in which matters had been contested up to this court questioning the acquisition and the petitions have been dismissed by this court, and acquisition has attained finality, possession was taken, the award passed. Notice had been issued under Section 12(2) of the Act tendering the awarded amount but it has not been collected by the claimants/land owners deliberately or they had refused to collect it and are not ready and willing to accept it and, thereafter, it has been deposited in the name and account of the owners in the treasury which is also deposited as per the State Governments instructions issued time to time relating to how Government money is to be dealt with. The act of failure to deposit money under section 31 after possession is taken only imposes liability to pay higher interest under section 34. The acquisition would not lapse under the Act.

20. In our opinion, the cases in which there is deliberate action of the owners for not collecting the compensation and they do not want to receive it, section 24(2) of the 2013 Act does not come to their rescue as provisions are to help those persons who are deprived of compensation but not for those who deliberately had not received it and litigated for decades for quashing of proceedings avoiding to receive compensation by willful act. The failure to deposit in court under section 31(1) in such

cases would attract only interest as envisaged under section 34 of the Act and the provisions of section 24 cannot be so invoked in such cases.

21. In the instant case, the claim has been made not only belatedly, but neither the petitioners nor their previous three generations had ever approached any of the authorities in writing for claiming compensation. No representation had ever been filed with any authority, none has been annexed and there is no averment made in the petition that any such representation had ever been filed. The claim appears not only stale and dead but extremely clouded. This we are mentioning as additional reasons, as such claims not only suffer from delay and laches but courts are not supposed to entertain such claims. Besides such claims become doubtful, cannot be received for consideration being barred due to delay and laches.

22. The High Court has rightly observed that such claims cannot be permitted to be raised in the court, and cannot be adjudicated as they are barred. The High Court has rightly observed that such claims cannot be a subject matter of inquiry after the lapse of a reasonable period of time and beneficial provisions of Section 24 of the 2013 Act are not available to such incumbents. In our opinion, Section 24 cannot revive those claims that are dead and stale.

23. The High Court has observed that Raisina is a part of the Lutyens zone of Delhi. It is prime of New Delhi and Government offices etc. are located. The petitioners asked the High Court to infer and conclude that in the absence of some indication of the record being made available by them that their ancestors have not ever received any compensation. How the petitioners came to know that their ancestors had not received compensation has not been disclosed in the petition. The High Court has rightly declined to entertain such claims. The protective umbrella of section 24 is not available to barred claims. If such claims are entertained under section 24, it would be very-very difficult to distinguish with the frivolous claim that may be made even after tampering the records etc. or due to non-availability of such record after so much lapse of time. Once right had been lost due to delay and laches or otherwise, it cannot be revived under provisions of section 24 of the Act of

2013. The intendment of Act 2013 is not to revive stale and dead claims and in the concluded case when rights have been finally lost. If there is delay and laches or claim is otherwise barred, it is not revived under section 24(2) of the 2013 Act. The provision does not operate to revive legally barred claims. The provision of Section 24 does not invalidate courts judgments/orders in which right have been finally lost or due to inaction is barred. Law does not permit examination of barred or totally fraudulent claims. The provisions of the law cannot be permitted to be defrauded or misused. Section 24 (2) of the 2013 Act cannot be invoked in such cases. The High Court has rightly declined to entertain the writ petitions filed by the petitioners. It is not conceivable how the petitioners could file such a petition in a laconic manner relating to the prime locality at New Delhi that too for hundreds of acres with the delay of more than 100 years."

8. The learned single Judge directed the Government to consider the entire matter afresh. We do not find any ground made out by the appellants to issue a positive declaration in terms of Section 24(2) of Act 30 of 2013.

9. For the reasons aforesaid, we dismiss the appeal. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

1.The Secretary to Government,
The State of Tamilnadu,
Housing and Urban Department,
Fort St.George, Chennai - 600 009.

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2. The District Collector,
Chennai District, Chennai - 600 001.

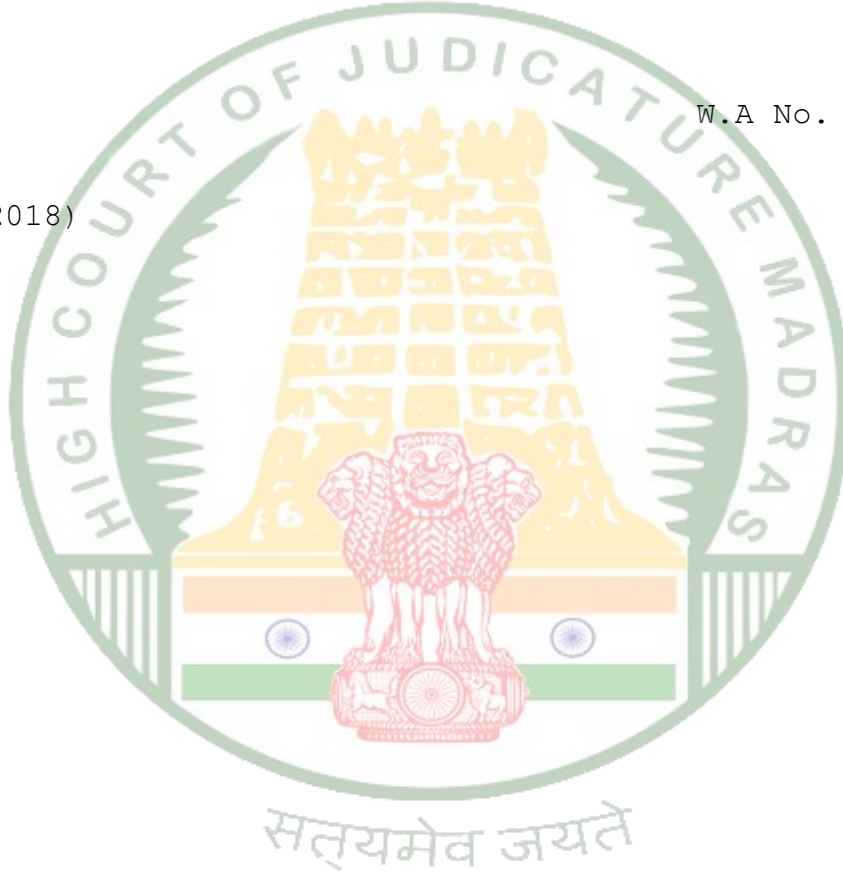
3. The Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai - 600 035.

+1 CC to M/s.C. Jagadish, Advocate sr 89469.

+1 CC to M/s.V. Anandhamurthy, Advocate sr 89263.

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