

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

WRIT PETITION NO.14968 of 2016

Rajeswari Venkatesan

...Petitioner

Vs.

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

2.The Chairman cum managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai - 600 035.

3.The Executive Engineer and
Administrative Officer,
Salem Housing Unit,
Tamil Nadu Housing Board,
Ayyanthirumaaligai, Salem - 8.

4.The Special Tahsildar,
(Land Acquisition)
Neighbourhood Scheme,
Salem, Salem District.

...Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Declaration, declaring that the land acquisition proceedings initiated under the Land Acquisition Act, 1894 in respect of land bearing SurveyNos.241/4, 241/7, 241/8 and 242/8A at Jakkir Ammapalayam Village, Salem Taluk, Salem District measuring 0.81.0 hectares covered by Notification under Section 4(1) of the Land Acquisition Act, 1894 vide G.O.Ms.No.525, Housing and Urban Development dated 25.05.1985 and declaration under Section 6 of the Land Acquisition Act, 1894 vide G.O.Ms.1408, Housing and Urban Development Department dated 03.09.1986 deemed to have lapsed in view of Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

For Petitioner : Mr.V.Manoharan

For Respondents : Mr.S.Diwakar
Special Government Pleader
(R1, R3 & R4)

O R D E R

Heard Mr.V.Manoharan, learned counsel appearing for the petitioner and Mr.S.Diwakar, learned Special Government Pleader appearing for the respondents 1, 3 and 4.

2.In the present writ petition, the proceedings under the Land Acquisition Act, 1894 are put into challenge in view of the subsequent enactment, namely, Right to Fair Compensation, Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 with specific reference to Section 24(2).

3.Considering the very same issue and with respect to the very same proceedings and that too, by the petitioner, unfortunately for different survey number, this Court has allowed the writ petition in W.P.No.33402 of 2015 dated 18.03.2016, wherein it has been held as follows:

"6.In the case on hand, a counter affidavit was filed in Contempt Petition No.2241 of 2015, stating that the Award was passed on 31.08.1988 and the Award amount has been deposited before the Sub Court, Salem on 28.11.2015. Further, in the counter affidavit filed in the said Contempt Petition, there was a categorical admission by the respondents that because of writ petitions filed by the land owners, the physical possession could not be taken over by the Land Acquisition Officer. The petitioner filed a reply affidavit to the counter affidavit, wherein the aforesaid fact has been mentioned. However, the respondents are not able to controvert the said submissions, since it is their own statement in the counter affidavit in the Contempt Petition.

7.Thus, by applying the law laid down by the Honourable Division Bench in the above referred decisions and in the light of the undisputed fact that after passing of the award, the possession of the land still remains with the petitioner/land owner, the provisions of Section 24(2) of 2013 Act would stand attracted and consequently, the entire land acquisition proceedings shall stand lapsed."

4.Even in the counter affidavit filed in the earlier writ

petition, these survey numbers have been included. It appears that by oversight, the petitioner has not included in the writ petition and that is the reason why the subsequent writ petition has been filed.

5. In the counter affidavit, in paragraph No.10, it has been stated that an appeal is preferred against the order passed by this Court in W.P.No.33402 of 2015 dated 18.03.2016. Thus the matter was adjourned by this Court on the last occasion-18.04.2017, directing the learned Special Government Pleader and the learned counsel for the Housing Board to verify about the factum of filing an appeal, if any.

6. Today (27.04.2017), when the matter is taken up, the learned counsels are unable to give any particulars about the filing of appeal. On the contrary, the learned counsel appearing for the petitioner would submit that his verification from the Registry would indicate that no such appeal is filed.

7. In such view of the matter, this Court is inclined to allow the writ petition by applying the ratio laid down in W.P.No.33402 of 2015 dated 18.03.2016. Accordingly, the writ petition stands allowed. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

cse

To

1. The Commissioner and Secretary,
Housing and Urban Development Department,
Fort St. George, Chennai - 600 009.

2. The Chairman cum managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai - 600 035.

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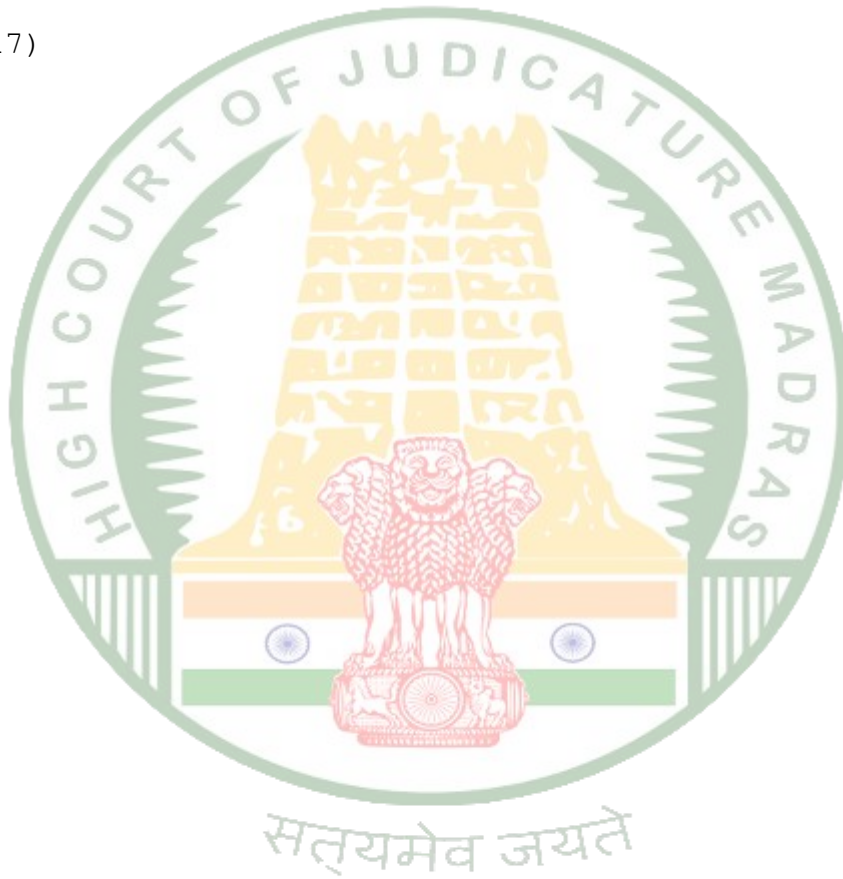
4.The Special Tahsildar,
(Land Acquisition)
Neighbourhood Scheme,
Salem, Salem District.

+1cc to M/s.V.Manoharan,Advocate sr.25689

+1cc to Government Pleader sr.26423

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mp(co)
ss(8/5/2017)



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