

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

W.P.No.17439 of 2015
and M.P.Nos.1 & 2 of 2015

V.Girinath

...Petitioner

/versus/

1. The Secretary
Government of Tamil Nadu
Local Administration Department
Fort St. George, Chennai.
2. The District Collector,
Thiruvallur District
Office of the District Collector
Thiruvallur.
3. The Land Acquisition Officer and
Special Thasildar (Land Acquisition)
Chennai City Waterways Division
Ambattur, Chennai - 53.

....Respondents

Prayer: Writ petition is filed under Article 226 of Constitution of India praying to issue an order, direction, writ or any other appropriate order or orders in the nature of a Writ of Certiorarified Mandamus calling for the award No.7 of 2004, dated 29.10.2004, on the file of the 3rd respondent, quash the same and consequentially direct the 3rd respondent to determine the compensation as per the Central Act 30 of 2013.

For Petitioner : Mr.M.L.Ramesh

For Respondents : Mr.P.V.Selvakumar

Additional Government Pleader

O R D E R

This writ petition has been filed for issuance of Writ of Certiorarified Mandamus calling for the award No.7 of 2004, dated 29.10.2004, on the file of the 3rd respondent, quash the same and consequentially direct the 3rd respondent to determine the compensation as per the Central Act 30 of 2013.

2.The petitioner's land was acquired through the notification Published under Section 4(1) of the Land

Acquisition Act in G.O.Ms.No.431 Public Works Department (R1) dated 16.09.2003, it was followed by a declaration under Section 6 of the Land Acquisition Act in G.O.Ms.No.481 Public Works Department (R1) dated 03.11.2003, an award was passed on 29.10.2004, possession was taken in the month of December 2004. Now, the petitioner has come forward with this Writ Petition challenging the award with a consequential prayer directing the 3rd respondent to determine a compensation as per the Central Act 30 of 2013, which admittedly gives higher compensation to the benefit of the erstwhile land owner.

3.The learned counsel appearing for the petitioner has made much reliance upon Section 24(2) of the Act 30 of 2013 and submits that a payment would complete only when the original land owner receives it or on refusal, it is deposited in the file of this Court. Admittedly, in the case on hand, certain exercise has not been done as the deposit has been made in the revenue account. Learned counsel made reliance upon the documents pertaining to the form of reference to the Court signed by the Land Acquisition Officer/Special Tahsildar (LA) which indicates that the amount has been kept in the revenue deposit. Reliance has also been made on the Judgment of the Apex Court reported in Pune Municipal Corporation and another -vs- Harakchand Misirimal Solanki and others (2014)3 SCC 183 and the decision of the Division Bench of this Court reported in (P.Jeyadevan -vs- State Government) (2014)4 MLJ 325 followed by the order of the Learned Single Judge in W.P.(MD).No.1295 of 2015 dated 07.12.2016, wherein the subsequent Judgment of the Apex Court in Delhi Development Authority -vs- Sukhbir Singh and others reported in 2016(6) CTC 624, was also taken into account.

4.Learned Additional Government Pleader would submit that the award having been passed nine years before the New Enactment, the same will not be applicable. The Acquisition process has been completed in the year 2004. Therefore the Writ Petition will have to be dismissed.

5.The Apex Court on a reading of the old Act vis-a-vis in the New Act gave a clear finding that a payment to the owner would mean the actual payment or deposit in the Court. Therefore Section 31 of the 1894 Act has been considered along with Section 24(2) of the New Act, namely, Act 30 of 2013. Accordingly, it was held that a deposit in the revenue account cannot be termed as payment or equal to the deposit in the Court. Thus such an act would amount to non compliance of the provisions which are mandatory.

6.Considering the above, this Court in W.P.(MD) No.1295 of 2015 dated 07.12.2016 (referred supra), after taking note of the decision of the Division Bench of this Court as well as the recent Judgment of the Apex Court, was pleased to held as follows:-

"8.The above decision was followed by the Division Bench of this Court reported in (2014)4 MLJ 325 (cited supra), wherein at paragraph Nos.20 and 21, it has been observed as follows:-

?20.The Award No.17/1994 came to be passed on 12.08.1994, and there is a clear indication in the said award, that the third respondent was very much conscious of the fact that the appellant and his brother have refused to receive the compensation and it was further stated that the compensation amount will be deposited by invoking Section 31(2) of the Central Act, 1894. The second respondent/Tamil Nadu Housing Board without any loss of time, has issued a cheque dated 02.02.1995, for a sum of Rs.1,79,53,793/-, which includes the compensation amount in respect of Award No.17/1994 dated 12.08.1994. The third respondent, after receipt of the said cheque, in turn, deposited the same to the credit of "Civil Deposit for works done for public bodies work deposit"on 16.02.1995; but he fails to deposit the compensation amount in respect of Award No.17/1994, on the file of the then jurisdictional Court viz. Sub Court at Krishnagiri, by invoking Section 31(2) of the Central Act, 1894, and only pursuant to the interim order dated 27.09.2012, made in this writ appeal, the third respondent has withdrawn a sum of Rs.4,06,199/- from the credit of the above said Account and deposited the same on the file of the present jurisdictional Court viz. Sub Court at Hosur, on 29.10.2012, that too after the expiry of the time granted by this Court. It is to be noted that if extension of time was obtained from this Court and the amount was deposited prior to 01.01.2014, the provisions of Section 24(2) of Act 30 of 2013 may not apply and the appellant could have been denied of the relief. In the light of Section 24(2) of Central Act 30 of 2013 coupled with the above cited decision of the Hon'ble Supreme Court of India, though the award came to be passed five years or more prior to the commencement of the present Central Act 30 of 2013, which came into effect from 01.01.2014, the third respondent has not chosen to withdraw the compensation amount deposited by him to the credit of the said Account, and deposit the same on the file of the jurisdictional Sub Court on time.

21.In view of the above said subsequent development from 01.01.2014, this Court is of the view that the land acquisition proceedings initiated in respect of lands admeasuring 0.62.0 hectares in Survey No.890/1B and 0.49.0 hectares in Survey No.889/1B, can be treated to be deemed to have lapsed. However, it is always open to the respondent to initiate proceedings afresh in terms

of Central Act 30 of 2013 if the circumstances warrant so.?

9. Further, the Hon'ble Supreme Court in a recent decision rendered and reported in 2016(6) CTC 624 (Delhi Development Authority -vs- Sukhbir Singh and others) has observed at paragraph 14 of its order as follows:.

?14. The picture that therefore emerges on a reading of Section 24(2) is that the State has no business to expropriate from a citizen his property if an award has been made and the necessary steps to complete acquisition have not been taken for a period of five years or more. These steps include the taking of physical possession of land and payment of compensation. What the legislature is in effect telling the executive is that they ought to have put their house in order and completed the acquisition proceedings within a reasonable time after pronouncement of award. Not having done so even after a leeway of five years is given, would cross the limits of legislative tolerance, after which the whole proceeding would be deemed to have lapsed. It is important to notice that the Section gets attracted if the acquisition proceeding is not completed within five years after pronouncement of the Award. This may happen either because physical possession of the land has not been taken or because Compensation has not been paid, within the said period of five years. A faint submission to the effect that? Or? Should be read as? And? must be turned down for two reasons. The plain natural meaning of the sub-section does not lead to any absurdity for us to replace language advisedly used by the Legislature. Secondly, the object of the Act, and Section 24 in particular, is that in case an Award has been made for five years or more, possession ought to have been taken within this period, or else it is statutorily presumed that the balance between the citizen's right to retain his own property and the right of the State to expropriate it for a public purpose gets so disturbed as to make the acquisition proceedings lapse. Alternatively, if compensation has not been paid within this period, it is also statutorily presumed that the aforesaid balance gets disturbed so as to free such property from acquisition.?

10. In view of the above-stated settled proposition of law and consideration of the facts and circumstances of the present case would only lead to an irretrievable conclusion that the proceedings initiated against the petitioners' land under Act 1 of 1894 has to be declared as deemed to have lapsed, as admittedly the award amount has neither been paid to the petitioners nor was

deposited into the Court.

11. Accordingly, this Writ Petition is allowed. However, the respondents are at liberty to proceed against the subject matter land by initiating appropriate acquisition proceedings under the appropriate law. No costs."

7. The ratio laid down will be squarely applicable to the case on hand. Accordingly, the impugned award is hereby set aside and consequently the respondents are directed to fix the compensation as per Act 30 of 2013 within a period of eight weeks from the date of receipt of a copy of this order.

8. In the result, the Writ Petition is allowed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary
Government of Tamil Nadu
Local Administration Department
Fort St. George, Chennai.
2. The District Collector,
Thiruvallur District
Office of the District Collector
Thiruvallur.
3. The Land Acquisition Officer and
Special Thasildar (Land Acquisition)
Chennai City Waterways Division
Ambattur, Chennai - 53.

+1cc to Mr.M.L.Ramesh, Advocate, S.R.No.41759

+1cc to the Government Pleader, S.R.No.42108

W.P.No.17439 of 2015
and M.P.Nos.1 & 2 of 2015

SV(CO)
RS(28/06/2017)