

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.11.2017

CORAM:

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

THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A No.189 of 2016

V.Chandrakanth

...Appellant

Vs

1.State of Tamil Nadu

Department of Housing and Urban Development,
Rep. by its Secretary, Fort St.George,
Chennai - 600 009.

2.The Chairman

Tamil Nadu Housing Board,
Nandanam, Chennai - 600 035.

...Respondents

Prayer:- Writ Appeal filed under clause 15 of Letters Patent,
against the order made in W.P.No.32640 of 2014 dated 02.09.2015.

WP.No.32640 of 2014:declaring that the acquisition of the
petitioners land measuring an extent of 32 cents comprised in S.
No. 188/5 Tiruvanmiyur Village pursuant to the 4 (1)
notification dt 26.3.1975 published in the Tamilnadu Government
Gazette Supplement Part II Section 2 dt 26.3.1975 and 6
declaration bearing G.O.NO.596 Housing and Urban Development dt
21.3.1978 and published in Tamilnadu Government Gazette Part II
Section 2 dt 23.3.1978 and Award No.9 of 1983 dt 28.3.1983 has
lapsed in view of Section 24 (2) of the Right to Fair
Compensation and Transparency and Land Acquisition
Rehabilitation and Resettlement Act 2013 (30/2013)

For Appellant : Mr.M.Vaidyanathan

For Respondents: Mrs.A.SriJayanthi
Special Govt.Pleader for R1
Mr.V.Anandhamurthy
Addl.Govt.Pleader for R2

J U D G M E N T

K.K. SASIDHARAN, J.

The appellant filed a writ petition in W.P.No.32640 of 2014 claiming the benefits of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "Act 30 of 2013") on the ground that compensation amount was not paid and it was kept in the revenue deposit. The learned single Judge dismissed the writ petition on the ground that the Tamil Nadu Housing Board has already constructed residential houses notwithstanding the fact that the prayer was only to give the benefit of Section 24(2) of Act 30 of 2013 by re-fixing the compensation. Feeling aggrieved by the order dismissing the writ petition in W.P.No.32640 of 2014, the appellant is before this Court.

2. We have heard the learned counsel for the appellant at length. We have also heard the learned Special Government Pleader on behalf of the respondents.

3. The land owned by the appellant was acquired by the State of Tamil Nadu along with larger extent, owned by others. The acquisition was for the purpose of a housing scheme. The notification under Section 4(1) of the Land Acquisition Act was approved by the Government on 19 February, 1975 and it was published in the Government Gazette on 26 March, 1975. The Declaration under Section 6 of the Act was issued on 23 March 1978. The statutory Award was passed on 28 March, 1983.

4. The appellant challenged the land acquisition proceedings in W.P.No.9484 of 1983. The said writ petition was allowed by a Division Bench of this Court by order dated 24 April, 1991. As against the said order, the respondents filed a Special Leave Petition and the same was allowed by the Hon'ble Supreme Court.

5. The appellant initiated the present litigation after the introduction of Act 30 of 2013. The appellant was informed by the Special Tahsildar, Land Acquisition that the amount has been deposited only in the treasury and there was no action to deposit the compensation before the Civil Court. The deposit in the treasury was made on 12 January, 1990. Since the failure to pay the compensation would result in the lapse of land acquisition proceedings under Section 24(2) of Act 30 of 2013, the appellant filed the writ petition.

6. The learned single Judge without addressing the issue

canvassed by the appellant dismissed the writ petition primarily on the ground that the land was used for the purpose for which it was acquired.

7. The core question is whether the appellant is entitled to the benefit Section 24(2) of Act 30 of 2013.

8. There is no dispute that the earlier proceedings initiated by the appellant were all dismissed and the acquisition has become final. Even in such cases, Act 30 of 2013 gives right to the land owner to make a claim in case, possession is not taken or the Award amount is not paid to the land owner.

9. Since the appellant has taken up the issue regarding deposit of the compensation amount in treasury without paying the amount to the land owner, we have summoned the original records. The records produced by the Land Acquisition Officer clearly indicates that the compensation amount was not paid to the appellant. It was kept in the revenue deposit.

10. The issue raised by the appellant is no more res integra in view of the string of decisions rendered by the Hon'ble Supreme Court right from *Pune Municipal Corporation v. Harakchand Misirimal Solanki* [2014 (3) SCC 183]. The Supreme Court in the said decision made the legal position very clear that under Section 24(2), the land acquisition proceedings initiated under the 1894 Act, by legal fiction are deemed to have lapsed where Award has been made five years or more prior to the commencement of the 2013 Act and possession of the land is not taken or compensation has not been paid. It was further observed that the legal fiction under Section 24(2) would come into operation as soon as conditions stated therein are satisfied.

11. The Hon'ble Supreme Court in *Bimla Devi and Others vs. State of Haryana and others* [2014 (7) Scale 215] considered the word "paid" used in Section 24(2) of Act 30 of 2013. The Supreme Court held that for the purposes of Section 24(2), the Compensation shall be regarded as "paid" if it has been offered to the person interested and such Compensation has been deposited in the Court where Reference under Section 18 can be made on happening of any of the contingencies contemplated under Section 31(2) of the 1894 Act.

12. The Hon'ble Supreme Court in *Rajiv Choudhrie HUF v. Union of India* [(2015) 3 SCC 541] taking note of the fact that the physical possession of the land had not been taken by the Government nor compensation paid to the land owners held that the acquisition proceedings has been declared as having been lapsed.

13. The question as to whether deposit made in the State Treasury could be treated as payment of Compensation under the Act came up for consideration before the Supreme Court in Delhi Development Authority v. Sukhbir Singh and Others [2016 (6) CTC 624]. The Supreme Court referred to the earlier decisions on the point and made it clear that revenue deposit is not a valid deposit and production of proof regarding non-payment of amount by the land owners, statutory fiction under Section 24(2) of Act 30 of 2013 would come into play.

14. Even though the Award was passed way back on 28 March, 1983, the respondents have not taken any action to pay the Award amount to the appellant. It is not as if the respondents were not aware of the identity of the land owner. The appellant initiated writ petition challenging the land acquisition and her litigious journey ended only in the Supreme Court. Even thereafter, efforts were not taken by the Land Acquisition Officer to pay the compensation amount to the appellant. The amount is still lying in revenue deposit. The appellant is therefore perfectly correct in her contention that she is entitled to the benefit of Section 24(2) of Act 30 of 2013.

15. The further question that arises for consideration is as to whether the entire acquisition should be quashed or as to whether it would give a right to the land owner only to claim compensation under Act 30 of 2013.

16. The answer to the above question is found in the judgment of the Hon'ble Supreme Court in Aligarh Development Authority v. Megh Singh and others [(2016) 12 SCC 504]. The Supreme Court indicated the scope of Section 24(2) of the 2013 Act in the following words:

"5. Section 24 of the 2013 Act envisages mainly two situations:

(i) where the land acquisition proceedings had already been initiated under the 1894 Act but no award was passed till the date the new Act came into force.

ii) where the award has been passed but neither the owner has been dispossessed nor has he been paid the compensation.

Under the first, where the award had not been passed, the acquisition proceedings could continue; but the compensation will have to be determined under the scheme of the 2013 Act. Under the second category, there is a statutory lapse of the proceedings. There is also an incidental third situation, where award under the 1894 Act had already been passed prior to coming into force of the 2013 Act, but payment is yet to

be made and possession is yet to be taken. In that case, the further proceedings after the award could continue under the old Act of 1894; but if either payment or possession has not taken effect in five years prior to the 2013 Act, then proceedings will lapse."

17. In the subject case, payment has not been made to the appellant under the Award dated 28 March, 1983. The appellant therefore satisfied the ingredients of Section 24(2) of Act 30 of 2013.

18. We are informed that the land was utilised by the Tamil Nadu Housing Board for construction of residential units. The right of the appellant is therefore only to receive compensation under the New Act. While holding that the entire acquisition lapsed and the appellant is entitled to the benefit of Section 24(2) of Act 30 of 2013, we give liberty to the respondents to pass a fresh Award determining the compensation payable to the appellant under the New Act. Such exercise shall be completed within a period of three months from the date of receipt of a copy of this judgment.

19. In the up shot, we allow the intra court appeal. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government,
Government of Tamil Nadu
Housing and Urban Development Department,
Chennai - 600 009.

2.The Chairman and Managing Director,
The Tamil Nadu Housing Board,
Nandanam, Chennai - 600 035.

+1 cc to M/s.M.Vaidhiyanathan Advocate sr 87450

+1 cc to Government pleader sr 87450

+1 cc to Mr.V.Anandamurthy Advocate sr 87214

W.A No.189 of 2016

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