

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.11.2017

Delivered on : 8.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.No.535 OF 2016

Tamil Nadu Housing Board,
rep. By its Executive Engineer &
Administrative Officer,
Coimbatore Housing Unit,
Tatabad, Coimbatore ... Appellant

versus

1.Suguna Saraswathy

2.Venkatalakshmi

3.The State of Tamil Nadu,
rep. By Secretary to Government,
Housing & Urban Development Department,
Fort St.George, Chennai 9

4.The Special Tahsildar,
Land Acquisition,
Housing Scheme Unit III,
Coimbatore

... respondents

Appeal filed against the order passed by this Court dated 25.3.2009 passed in W.P.No.10543 of 2008.

Writ petition presented under Article 226 of the Constitution of India to issue a Writ of declaration declaring the entire Acquisition proceedings initiated by the first respondent commencing from the notification issued under section 4(1) of the Land Acquisition Act in G.O.ms.No. 534 dated 28.4.1985 (Housing & Urban Development Department) and the declaration made under section 6 of the Land Acquisition Act in G.O.Ms.No. 905 datd 23.6.1986 (Housing & Urban Development Department) lapsed in view of section 11-A of the Land Acquisition Act 1894 in respect of the lands in S.F. Nos. 213/1B 215 and 216

belonging to the petitioners situated at No. 55 Uppilipalayam Village Coimbatore South Taluk Coimbatore District.

For appellant : Mr.K.Venkataramani,
Additional Advocate General VII
Assisted by Mr.V.Anandhamurthy,
Standing Counsel

For Respondents : Mr.K.S.Viswanathan
for Mr.G.Senthilmurugan for R-1

Mr.P.S.Raman, Senior Counsel,
for Mr.S.Sankaran, for R-2

Ms.A.Srijayanthi, Spl.G.P. For R-3 and R-4

J U D G M E N T

K.K.SASIDHARAN, J.

Though challenge in this appeal is to the order quashing the land acquisition proceedings on the ground of prior approval not being taken and delay in passing the award, the crucial issue now on account of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, is as to whether the land owners are entitled for a declaration in view of the lapse of land acquisition, under Section 24(2) of Act 30 of 2013. The counter affidavit filed by the Land Acquisition Officer in the appeal admitting that possession has not been taken till date and that the compensation amount is still in revenue deposit is the ammunition in the hands of the land owners to put an end to the land acquisition proceedings.

Factual matrix:-

2. The land owned by the respondents was acquired along with large extent for the implementation of Uppilipalayam Neighbourhood Scheme at Coimbatore. The award was passed on 29 May 1989. The award amount is stated to be deposited in the personal account of the Special Tahsildar (Land Acquisition) Unit II, Coimbatore.

3. The Writ Petitions filed by the respondent in W.P.No.7944 of 1986 and 7945 of 1986 were allowed by the writ court by order dated 3 December 1991. The appeals preferred by the State in W.A.No.484 and 485 of 1994 were allowed by the Division Bench by judgment dated 14 February 1996. Thereafter, two other Writ Petitions in W.P.No.9385 of 1996 and 9364 of 1996 were filed with new grounds. The Writ Petitions were dismissed

by order dated 17 April 2004 and it was upheld by the Division Bench on 17 June 2006 in W.A.No.1802 of 2014 and 1803 of 2014. The related Special Leave petitions were dismissed by the Hon'ble Supreme Court.

4. The respondents initiated another Writ Petition in W.P.No.10543 of 2008 on the ground that prior approval was not obtained from the Government and that the award was passed beyond the period of limitation.

5. The Writ Petition was allowed by the learned Single Judge by order dated 25 March 2009. The present appeal is filed challenging the order passed by the writ court.

Submissions :-

6. The learned Additional Advocate General by taking us through the earlier proceedings contended that the Writ Petition in W.P.No.10543 of 2008 ought to have been dismissed on the ground of res judicata, besides delay and laches.

7. The learned Senior Counsel for the 2nd respondent confined his arguments to the lapse of the land acquisition proceedings under Section 24(2) of the Act. According to the learned Senior Counsel, in view of the categorical admission in the counter affidavit dated 20 March 2016, no further evidence is necessary to issue a declaration under Section 24(2) of the Act.

Analysis:-

8. The respondents earlier filed Writ Petitions challenging the land acquisition proceedings and lost the litigation on multiple occasions. The subject Writ Petition in W.P.No.10543 of 2008 was clearly an attempt to re-agitate the matter which has become final.

9. However, the core question now is whether the land acquisition proceeding would hold good on account of Section 24 (2) of the Land Acquisition Act, 2003.

10. There is a clear admission in the counter affidavit dated 20 March 2016 which supports the case of the respondents 1 and 2 under Section 24(2) of the New Act. The following statement in the counter affidavit would make the position clear.

The compensation amount has been deposited in the personal deposit account of the Special Tahsildar (Land Acquisition) Unit II, Coimbatore. Due to various Court cases the possession of land could not be taken from the land owners by the Revenue Department. Hence, the lands could not be handed over to the Housing Board which is the requisition body.

11. The Hon'ble Supreme Court in Pune Municipal Corporation vs. Harakchand Misirmal Solanki and others, 2014(3) SCC 183, held that the deposit of compensation amount in the Government Treasury is not a valid deposit and it can not be held to be equivalent to compensation paid to the land owner/person interested.

12. The Supreme Court in Delhi Development Authority vs. Sukbir Singh, 2016(6) SCC 258, followed the earlier judgment in Pune Municipal Corporation and observed thus :

13. 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.

13. The learned Additional Advocate General submitted that the respondents 1 and 2 should be relegated to the writ court to adjudicate the claim made on the strength of Section 24(2) of the new Land Acquisition Act. There is no merit in the said contention in view of the decision of the Supreme Court in Shashi Gupta and another vs. State of Haryana and others, 2016 (13) SCC 380 and two other judgments rendered by two Division Benches of this Court.

14. In Shashi Gupta case, the State contended before the Hon'ble Supreme Court that the High Court proceedings were not in relation to the 2013 Act and it was confined to the provisions of the Land Acquisition Act, 1894 and as such, the matter should be remanded to the High Court to consider the effect of Section 24(2) of the Act. The Supreme Court while rejecting the said contention observed thus :-

4. We are afraid, we cannot appreciate the above submission of the learned counsel for the State. On the admitted facts, the land acquisition proceedings have lapsed since there is no stay on any court operating in the matter of possession or acquisition of the lands of the appellants after 12-8-2008. The 2013 Act came into force on 1-1-2014. Therefore, five years prior to the coming into force of the 2013 Act, the appellants have not been dispossessed. It is also a fact that there is no payment of compensation in accordance with law as declared by this Court in Pune Municipal Corpn. v. Harakchand Misirimal Solanki [Pune Municipal Corpn. v. Harakchand Misirimal Solanki, (2014) 3 SCC 183 : (2014) 2 SCC (Civ) 274] .

5. In view of the above admitted position, it is not necessary to remit the matters to the High Court. The land acquisition proceedings have lapsed in the facts of the present cases in view of the operation of Section 24(2) of the 2013 Act. It is declared so and the appeals are allowed. No costs.

15. In P.Jayadevan vs. State, 2014(5) LW 187, the appellant challenged the order, rejecting his request for reconveyance under Section 48B of the Land Acquisition Act in the Writ Petition. When the appeal was pending, new Land Acquisition Act, 2013 came into force. The appellant therefore claimed the benefit of Section 24(2) of the new Act. The Division Bench framed an issue whether land acquisition proceedings are deemed to have lapsed taking into account the subsequent events. The Division Bench having found that the award amount was in revenue deposit issued a declaration that the land acquisition proceeding lapsed, without remitting the matter to the writ court for fresh consideration.

16. Similarly, in Tamil Nadu Housing Board vs. K.Meenakshi Achi, 2017(1) MLJ 129, notwithstanding the fact that the subject proceedings was only in relation to section 48B of the Land Acquisition Act for reconveyance, the Division Bench issued a declaration that the land acquisition proceedings lapsed under Section 24(2) of the Act on satisfying that possession has not been taken.

17. The factual position that possession is still with the respondents 1 and 2 is clearly admitted by the appellants. Similar is the case with payment of compensation, which is the other limb of Section 24(2) of new Act. The amount is still in Revenue Account maintained by the Land Acquisition Officer. In view of the above admitted facts, and judicial precedents, the respondents are entitled to a declaration in terms of Section 24 (2) of Central Act 30 of 2013.

18. We have therefore no hesitation in holding that the subject land acquisition proceedings shall be deemed to have lapsed under section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

19. The intra court appeal is disposed of with the declaration as indicated above. No costs. Consequently, C.M.P.Nos.7241, 7432 and 11630 of 2016 are closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

1.The Executive Engineer &
Administrative Officer,
Tamil Nadu Housing Board,
Coimbatore Housing Unit,
Tatabad, Coimbatore

2.The Secretary to Government,
Housing & Urban Development Department,
Fort St.George, Chennai 9

3.The Special Tahsildar,
Land Acquisition,
Housing Scheme Unit III,
Coimbatore.

+lcc to Mr.G.Sankaran, Advocate SR.No.87464

+lcc to Mr.S.Senthil Murugan, Advocate SR.No.87208

+lcc to Mr.V.Anandhamurthy, Advocate SR.No.87549

RSY (CO)
GN (20/12/2017)

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