

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2017

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.19582 of 2010

1.G.Neethirajan
2.K.Chitradevi
3.G.Tamilvel

... Petitioners

Vs

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

2.The Special Tahsildar (LA),
Tamil Nadu Housing Board,
Bagalur Road, Hosur.

3.The Executive Engineer and
Administrative Officer,
Tamil Nadu Housing Board,
Hosur Housing Unit, Hosur 635 109,
Krishnagiri District.

R3 impleaded as per order dated 14.12.2015
in M.P.No.1 of 2015 in W.P.No.19582 of 2010
Respondents

...

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records of the first respondent relating to the proceedings in letter No.20437/L.A.2(2)/08-5, dated 04.03.2009, quash the same and consequently direct the respondents herein re-convey the lands under Section 48B of the Land Acquisition Act, 1894, situated at Survey No.844/1A measuring 2.36 acres at Chennathur Village, Hosur Taluk, Krishnagiri District and lands measuring an extent of 1 acre in Survey No.974/1, situated at Hosur Village and Taluk, Krishnagiri District to the petitioners herein.

For Petitioners : Mr.R.Bharath Kumar

For Respondents : Mr.S.Gunasekaran
Additional Government Pleader for RR1 & 2
: Mr.V.Ananda Moorthy for R3

O R D E R

Heard Mr.R.Bharath Kumar, learned counsel for the petitioners. Mr.S.Gunasekaran, learned Additional Government Pleader, appearing for the first and second respondents and Mr.V.Ananda Moorthy, learned standing counsel appearing for the third respondent.

2. The petitioners have approached this Court for seeking the following relief,

"To issue a writ of Certiorarified Mandamus, to call for the records of the first respondent relating to the proceedings in letter No.20437/L.A.2(2)/08-5, dated 04.03.2009, quash the same and consequently direct the respondents herein re-convey the lands under Section 48B of the Land Acquisition Act, 1894, situated at Survey No.844/1A measuring 2.36 acres at Chennathur Village, Hosur Taluk, Krishnagiri District and lands measuring an extent of 1 acre in Survey No.974/1, situated at Hosur Village and Taluk, Krishnagiri District to the petitioners herein."

3. The case of the petitioners is as follows:-

The petitioners' mother had purchased the property measuring an extent of 0.50.0 Acres, comprised in Survey No.844/1A, situated at Chennathur Village, Hosur Taluk, Krishnagiri District, under the sale deed dated 26.10.1978, registered as Document No.3260/78, on the file of the Sub-Registrar, Hosur. Similarly, the lands measuring an extent of 0.40.5 Acre, comprised in Survey No.974/1, situated at Hosur Village and Taluk, was purchased in the name of the petitioners' mother and their aunt. Subsequently, their aunt had relinquished her half share in favour of the petitioners' mother. The petitioners' mother died on 24.10.2005, leaving behind the petitioners as surviving legal heirs. The petitioners have become the absolute owners of the properties in the aforesaid Survey Nos.

4. Both the properties purchased by the petitioners' mother were subjected to land acquisition proceedings by the second respondent for the purpose of Neighbourhood Scheme for Tamil Nadu Housing Board. After the acquisition proceedings, an award was passed in Award No.27/1994 dated 11.10.1994. According to the petitioners, no part of the award amount was paid to them. Moreover, the possession of the property has not been taken over by the respondents, in terms of the provisions of the Land Acquisition Act, 1894.

5. The case of the petitioners is that after the purchase of

the lands, the lands were used for agricultural purpose and they have also put up construction in the portion of the land and the petitioners were also living in the said property. According to the petitioners, they have also build a small temple in the land and a tomb was also constructed in memory of their father.

6. The learned counsel for the petitioners would submit that the Neighbourhood Scheme for which the lands were originally acquired, had been given up by the respondents and some of the neighbours whose lands were acquired, had got their lands back after obtaining No Objection Certificate, certifying that the lands acquired for the said scheme were not required any more and also the lands were not required for any other public purpose. According to the petitioners, for over 19 years, the possession had still be with them and no compensation amount has been paid to them.

7. In the said circumstances, the mother of the petitioners originally requested for re-conveying of the lands under the Provisions of the Land Acquisition Act, 1894. Since the request was not considered, a writ petition was filed in W.P.No.17240 of 2008, seeking to issue a Writ of Mandamus, directing the respondents 1 and 2 to re-convey the lands under Section 48B of the Land Acquisition Act, 1894. This Court vide order dated 21.07.2008, directed the first respondent to consider the application submitted by the petitioners under Section 48B of the Act. Thereafter, the first respondent passed an order dated 04.03.2009, rejected the request for re-conveyance. The said rejection order is put to challenge in the present writ petition.

8. During the pendency of the writ petition, on behalf of the petitioners, a permission was sought from this Court for raising additional grounds for obtaining the relief under Section 24(2), right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act 2013. (hereinafter referred to as the Act 2013).

9. The learned counsel for the petitioners, at the outset, would submit that although the properties in the writ petition were originally framed for re-conveyance of the land under Section 48B of the Land Acquisition Act, 1894, in view of the coming into force of the new Act of 2013, he would press for relief under Section 24(2) of the Act. The Section 24(2) of the Act is reproduced below:-

"24. Land Acquisition process under Act No.1 of 1894 shall be deemed to have lapsed in certain cases.

(1).....

(2) Notwithstanding anything contained in sub-section(1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of

1894), where an award under the said Section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid. The said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act.

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under Section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act."

10. The learned counsel for the petitioners would submit that the petitioners' possession has been admittedly not taken over and no compensation amount has been paid. Therefore, the entire acquisition proceedings is deemed to have lapsed in terms of the above said provisions under the new Act, 2013. According to him, the award was passed as early as on 11.10.1994, but, the same has not been paid to the petitioners till the date of filing of the writ petition and moreover, admittedly the possession was also not been taken over for 19 years from the date of acquisition of the subject property. Therefore, he would submit that the petitioners case is fully covered under the new Act, particularly, with reference to Section 24(2) of the Act.

11. Upon notice, learned Additional Government Pleader appearing for the respondents 1 and 2 and the learned standing counsel appearing for the third respondent, have entered appearance and filed a counter affidavits. In the counter affidavit filed on behalf of the second respondent, the case of the petitioners clearly admitted as found in paragraph 5, which is reproduced below:-

"5. I state that, in a portion of lands comprised in Survey Nos.844/1A and 974/1, a small temple and a tomb over a grave exist on the acquired land. I further state that because of the above fact possession of the above lands could not be taken. Similarly, the land owners have not handed over possession of the said lands. I further state that action could not be taken to take possession and the compensation as per award has not been deposited in the Sub Court as possession could not be taken."

12. From the above, it is clear that neither the possession was taken over nor the compensation was paid in terms of the

Land Acquisition Act. Therefore, the claim of the petitioners is fully established in their favour, as the proceedings initiated is clearly admitted to have lapsed under the Act of 2013, under Section 24(2), which is reproduced above.

13. Further, the learned counsel for the petitioners would also rely on the decision of the Hon'ble Supreme Court of India, in the case of Pune Municipal Corporation and Anr Vs. Harakchand Misirimal Solanki and Ors, reported in 2014 (1) CTC 755. He would particularly, draw the attention of this Court to paragraph Nos.19 and 20, which are reproduced below:-

"19. Now, this is admitted position that Award was made on 31.01.2008. Notices were issued to the landowners to receive the compensation and since they did not receive the compensation, the amount (Rs.27 crores) was deposited in the Government Treasury. Can it be said that deposit of the amount of compensation in the Government Treasury is equivalent to the amount of compensation paid to the landowners/persons interested? We do not think so. In a comparatively recent decision, this Court in Ivo Ivo Agnelo Santimano Fernandes and Ors. Vs. State of Goa and Anr., 2011 (11) SCC 506, relying upon the earlier decision in Prem Nath Kapur Vs. National Fertilizers Corpn. of India Ltd., 1996 (2) SCC 71, had held that the deposit of the amount of the compensation in the State's revenue account is of no avail and the liability of the State to pay interest subsists till the amount has not been deposited in Court.

20. From the above, it is clear that the award pertaining to the subject land has been made by the Special Land Acquisition Officer more than five years prior to the commencement of the 2013 Act. It is also admitted position that compensation so awarded has neither been paid to the landowners/persons interested nor deposited in the Court. The deposit of compensation amount in the Government Treasury is of no avail and cannot be held to be equivalent to compensation paid to the landowners/persons interested. 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 2013 Act."

14. From the above, it is very clear that the award amount is not been paid to the petitioner which award was passed five years prior to the coming into force of the new Act. This position was also specifically admitted in the counter affidavit filed on behalf of the second respondent, in which, it is stated in paragraph 6, that, the award amount has been kept in the Sub

Treasury, Hosur. As stated supra, the second respondent had admitted that the possession could not be taken in view of the certain superstructure put up in the petitioners' land. In view of the unequivocal admission of statement of fact that the possession had not been taken over all these years and no amount of award has been paid to the petitioner, in all fours, the petitioner has made out of the case for grant of relief.

15. The learned counsel appearing for the third respondent have serious objection for the relief being granted to the petitioner. However his arguments cannot be entertained as valid, in view of the categoric admission by the second respondent in the counter affidavit filed in support of the writ petition. Therefore, the arguments advanced by the learned counsel appearing for the Housing Board is considered as devoid of merits and substance.

16. In the light of the above, the writ petition is allowed, by holding that the acquisition proceedings initiated against the petitioners' land comprised in Survey No. 844/1A and Survey No.974/1, is deemed to have lapsed under Section 24 (2) of the new Act. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

GSK

To

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

2.The Special Tahsildar (LA),
Tamil Nadu Housing Board,
Bagalur Road, Hosur.

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3.The Executive Engineer and
Administrative Officer,
Tamil Nadu Housing Board,
Hosur Housing Unit, Hosur 635 109,
Krishnagiri District.

+1cc to Mr.V.Anandamoorthy, Advocate, S.R.No.88573
+2cc to Mr.R.Bharathkumar, Advocate, S.R.No. 88590
+1cc to the Government Pleader, S.R.No.89060

W.P.No.19582 of 2010

RRK(19/12/2017)



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