



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 21.03.2017
DELIVERED ON : 27.03.2017

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THE HONOURABLE MR. JUSTICE V. PARTHIBAN

W.P (MD) No.15796 of 2014
and M.P. (MD) No.1 of 2014

M.R.Ponnu Renga Mannar

.. Petitioner

Vs

1.The State of Tamilnadu,
Through District Collector,
Thoothukudi District.

2.The Revenue Divisional Officer,
Thoothukudi.

3.The Principal Subordinate Judge,
Thoothukudi.

.. Respondents.

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari Mandamus, calling for the records of 2nd respondent in Award 1/2007-2008 dated 04.08.2007 and quash the same and to direct the respondents 1 and 2 to initiate fresh Land Acquisition of Petitioner's land as per the provisions of "The Right of Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 30 of 2013", within a time frame to be fixed by this Hon'ble Court and to pay Petitioner Fair Compensation as per New Act.

For Petitioner : Mr.T.S.R.Venkataramana
For Respondents 1 & 2 : Mr.T.S.Mohammed Mohideen
Additional Government Pleader

ORDER

The Petitioner has approached this Court seeking quashment of the Award of the second respondent in Award 1/2007-2008 dated 04.08.2007 and to direct the respondents 1 and 2 to initiate fresh Land Acquisition of Petitioner's land as per the provisions of "The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 30 of 2013, within a time frame



and to pay petitioner Fair Compensation as per New Act.

2. According to the petitioner, he is the absolute owner of the following properties in Padmabhagamangalam Village, Sri Vaikundam Taluk, Tuticorin District:

(a) S.No.230/1A3 Hc 0.10.0
(b) S.No.1147/1 Hc 0.01.0
(c) S.No.1147/2 Hc 0.27.00

Total Hc 0.38.0

According to him, the said property was subjected to land acquisition for a public project "Porur Bye Pass Channel". Initially Section 4(1) Notification was issued on 08.08.2004 and thereafter paper publication was published on 10.08.2004. Thereafter, the land was vested with the acquisition authority and as far as the petitioner is concerned there was no further communication to him nor any award was passed and communicated to him all these years. Since no information was made available in respect of the land acquired, the petitioner had to resort to Right to Information Act and thereafter some information was furnished to him. Only after the petitioner resorted to R.T.I. Act the copy of the Award dated 04.08.2007 was furnished to him. Though the award was passed on 04.08.2007, no compensation was paid to him all these years. Therefore, the petitioner has approached this Court seeking the relief cited supra.

3. Mr. T. S. R. Venkataramana, the learned counsel appearing for the petitioner would strongly contend that in view of the non-payment of compensation for over five years, the award lapsed in view of the provisions of the "The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 30 of 2013" (hereinafter referred to as the "New Act"). According to him, his contention is supported by the decision of the Hon'ble Supreme Court reported in **2014(1) CTC 755** in the matter of **Pune Municipal Corporation v. Harakchand Misirimal Solanki (SC)**. The Hon'ble Supreme Court in the said decision at paragraph 11 has held as follows:

"11. Section 24(2) also begins with non-obstante clause. This provision has overriding effect over Section 24(1). Section 24(2) enacts that in relation to the Land Acquisition proceedings initiated under 1894 Act, where an Award has been made five years or more prior to the commencement of the 2013 Act and either of the two contingencies is satisfied, viz; (i) physical possession of the land has not been taken or (ii) the Compensation has not been paid, such Acquisition proceedings shall be deemed to have lapsed. On the lapse of such Acquisition proceedings, if the appropriate Government still chooses to acquire the land which was the subject matter of acquisition under the 1894 Act then it has to initiate the



proceedings afresh under the 2013 Act. The Proviso appended to Section 24(2) deals with a situation where in respect of the acquisition initiated under the 1894 Act 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 the beneficiaries specified in Section 4-Notification become entitled to Compensation under 2013 Act."

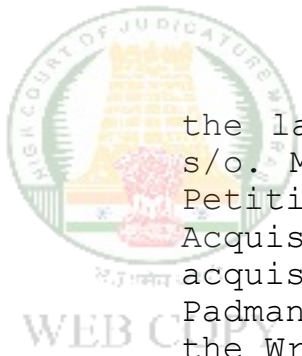
He would further submit that the Hon'ble Supreme Court has further held that the Compensation may be said to have been "paid" within the meaning of Section 24(2) when the Collector (or for that matter Land Acquisition Officer) has discharged his obligation and deposited the amount of Compensation in Court and made that amount available to the interested person to be dealt with as provided in Sections 32 and 33 of the Act.

4.Mr.T.S.R.Venkataramana, the learned counsel for the petitioner also relied on another decision of the Hon'ble Supreme Court reported in **(2014) 6 SCC 564** in the matter of **Union of India v. Shiv Raj and others**. According to the said decision of the Hon'ble Supreme Court, the Compensation which has been deposited with the Revenue Department cannot be termed as "deemed payment" and therefore, such cases are covered by the new enactment and come within the meaning of Section 24 of the new enactment.

5.The learned counsel appearing for the petitioner also relied on the recent decision of this Court reported in **2015 (1) CWC 310** in the matter of **S.Perumal Gowder v. The Chief Secretary, Government of Tamil Nadu**, holding that if the Compensation is unpaid even after 5 years, then by operation of law, the said acquisition proceedings shall stand lapsed. This Court further held that when the acquisition is lapsed, the land owner is entitled to interest for inordinate delay in settlement of compensation. The said decision is purported to have made following the decision of the Hon'ble Supreme Court reported in **2014 (1) CTC 755** (cited supra). In these circumstances, the counsel for the petitioner prays for allowing the writ petition.

6.Per contra, the learned Additional Government Pleader appearing for respondents 1 and 2 would submit that the compensation amount has been deposited on 07.08.2008 in the Sub Court, Thoothukudi and therefore, Section 24(2) of the New Act is not applicable. The sum and substance of the response by the learned Additional Government Pleader appearing for the respondents 1 and 2 is reflected in paragraph 4 of the counter statement which is extracted below:

"4.It is respectfully submitted that the lands in S.No.1147/1B, 1147/2B of Padmanabamangalam Village of Srivaikuntam Taluk was registered in the name of the Writ Petitioner Ponnurengamannar (Minor) s/o Radha Krishnan in Patta No.540. The Petchi Thevar, Vasugi and Srivaikuntam, Cooperative Housing Society were interested persons over



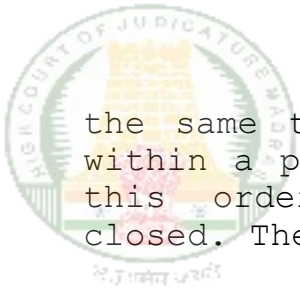
the lands. The Writ Petitioner's father M.Radha Krishnan, s/o. Muthu Irulappa Konar, appeared on behalf of the Writ Petitioner for enquiry under Section 5A of the Land Acquisition Act on 23.11.2004 and raised no objection for acquisition of the lands in S.No.1147/1B, 1147/2B of Padmanabamangalam village of Srivaikuntam Taluk. Further, the Writ Petitioner's father appeared on behalf of the Writ Petitioner for Award Enquiry under Section 11 of the Land Acquisition Act on 29.06.2007 and stated that the lands in S.Nos.1147/1B and 1147/2B of Padmanabamangalam Village are under the enjoyment of the Writ Petitioner and owned by the Writ Petitioner. But he has not produced any documents to prove the ownership and enjoyment. Hence, for apportioning the compensation amount, the reference under Section 30 of the Land Acquisition Act, 1894 was sent to Sub Court, Thoothukudi and the compensation amount of Rs.1,51,888/- was deposited in Sub Court, Thoothukudi on 07.08.2008."

7.I have given my anxious consideration to the rival submissions made by the learned counsel appearing for the parties.

8.Even assuming that the amount of compensation payable to the petitioner has been deposited in Court on 07.08.2008, the same cannot escape from the application of the new enactment since the date of deposit is after the five years period prescribed under Section 24 of the New Act. But it is an admitted fact that actually the deposit has not been done in the year 2008. Since lapsed Demand Drafts were submitted the same were returned for renewal by fresh drafts/cheques and ultimately it was credited to the Sub Court, Thoothukudi during January, 2017 only. In fact this fact was exemplified by the communication from the Sub Collector to the learned Additional Government Pleader appearing for the respondents 1 and 2. In fact this fact was also brought to notice of the Court by the learned counsel Mr.T.S.R.Venkataraman, appearing for the petitioner. According to him, the actual deposit had taken place only during 2017 and therefore, the entire acquisition proceedings is deemed to have been lapsed in view of coming into force of the new enactment.

9.In the circumstances, I am of the considered view that the petitioner has made out a prima-facie case for allowing the writ petition. The law laid down on the subject matter is very clear and the facts presented in the instant case support the case of the petitioner in all fours. Therefore, it is inevitably to be concluded that the petitioner has to succeed in the present writ petition.

10.In view of the above narrative, the writ petition is allowed as prayed for, quashing the Award of the second respondent in Award 1/2007-2008 dated 04.08.2007. It is open to the respondents 1 and 2 to initiate fresh land acquisition proceedings for the petitioner's land as per the proceedings of the Act, in case the authorities chooses so or workout the compensation as per New enactment and pay



the same to the petitioner. The said exercise shall be completed within a period of 12 weeks from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed. There is no order as to costs.

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Sd/-
Assistant Registrar (Writs)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Subordinate Judge,
Thoothukudi.
2. The District Collector,
Thoothukudi District.
3. The Revenue Divisional Officer,
Thoothukudi.

+ 1 CC TO Mr.T.S.R.VENKATARAMANA, ADVOCATE IN SR No. 18072
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 18369

SJ
TE/SV/SAR-II : 06/04/2017 : 5P/6C

Pre-delivery order made in
W.P(MD)No.15796 of 2014
and M.P.(MD) No.1 of 2014
Delivered on
27.03.2017