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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.12.2017

Delivered on : 04.01.2018

CORAM:

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

AND

THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A No.10 of 2015

MP No.1 of 2015

1.The Tamil Nadu Housing Board,
Rep. by its Chairman and Managing Director
Nandanam, Anna Salai,
Chennai - 600 035.

2.The Executive Engineer and
Administrative Officer,
Tamil Nadu Housing Board, Coimbatore Unit,
Tatabad, Coimbatore -12. ...Appellants/2ND &
3RD Respondents

Vs

1.Karuppathal
2.C.Ravichandran
3.C.Rajan ... 1 to 3 Respondents/Writ
Petitioner

4.The Government of Tamil Nadu
Rep. by its Secretary to the Government,
Housing and Urban Development Department,
Fort St.George, Chennai - 600 009.
... 4th Respondent/1st Respondent

5.The Special Tahsildar (L.A.)
Housing Scheme Unit,
Tatabad, Coimbatore -12. ...5th Respondents/4th Respondent

Prayer:- Writ Appeal filed under clause 15 of the Letter Patent
against the order dated 07.05.2014 in W.P.No.7530 of 2014.

PRAYER IN WP.7530 OF 2014:-

Writ Petition filed Under Article 226 of the Constitution



of India for a Writ of Declaration to declare that the entire land acquisition proceedings initiated under the Land Acquisition Act, 1894, in respect of the lands of 1.68 acres comprised in S.F. No.135/1 situated at Veerakeralam Village, Coimbatore, belonging to the petitioners, as lapsed in view of the Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30/2013)

For Appellants : Mr.V.Anandhamurthy
Standing Counsel

For Respondents : Mr.R.N.Amarnath for R1 to R3
Mrs.A.Srijayanthi
Special Govt.Pleader
for R4 and R5

J U D G M E N T

K.K. SASIDHARAN, J.

Introductory

The writ petition filed by the erstwhile land owners, 33 years after the initiation of the land acquisition proceedings under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") and 28 years after passing the Award was allowed by the learned single Judge on the ground that the land owners have satisfied the ingredients of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Tamil Nadu) Amendment Act, 2013 (Act 30 of 2013). The order is under challenge at the instance of the Tamil Nadu Housing Board.

2. The case is covered by the decision of the Hon'ble Supreme Court in Mahavir and Others vs. Union of India and another (SLP No.24781 of 2017 dated 8 September 2017), wherein, the Supreme Court has made it clear that Section 24 of Act 30 of 2013 does not invalidate courts judgments/orders in which right have been finally lost or due to inaction is barred and that the law does not permit examination of barred or totally fraudulent claims and that Section 24(2) cannot be invoked in such cases.

Summary of Facts

3. The land owned by the respondents 1 to 3 (hereinafter referred to as "the land owners") was acquired by the Government of Tamil Nadu along with a larger extent for Tamil Nadu Housing Board, as per Notification under Section 4(1) of the Act dated 29 December, 1981. The Land Acquisition Officer after complying with the statutory procedure passed the Award on



23 September, 1986. The Award was in respect of 28.98 acres of land, which includes 1.68 acres of land owned by the present land owners at Veerakeralam Village, Coimbatore. There was no challenge to the land acquisition at any point of time at the instance of the land owners.

4. The Tamil Nadu Housing Board, after culmination of the land acquisition proceedings took physical possession of land on 27 October, 1989. The land was utilised for the area development scheme after obtaining planning permission from the Director of Town and Country Planning vide Letter No.1058/1994. The Housing Board provided basic amenities such as roads, street lights, drains etc., by utilising the land acquired from the land owners. The amenities were handed over to the jurisdictional local body for the welfare of the public. The remaining portion of the land has already been allotted and handed over to the public under various Schemes. The beneficiaries were given the plots and it was registered before the concerned Sub-Registrar.

5. The land owners filed a writ petition in W.P.No.2144 of 2013 for re-conveyance under Section 48-B of the Act. The writ petition was disposed of with a direction to the Government to consider the representation of the land owners on merits. The Government rejected the representation by order dated 1 April, 2013. The said order has become final.

6. Even though the factum of taking possession by the Housing Board was admitted while claiming re-conveyance under Section 48-B of the Act, still the land owners filed a writ petition taking shelter under Section 24(2) of Act 30 of 2013.

7. The learned single Judge was of the view that there was inordinate delay in implementing the Scheme and as such, the land owners are entitled to resume their land. According to the learned single Judge, the land owners are in physical possession and they are doing cultivation. The land owners are therefore entitled to invoke Section 24(2) of Act 30 of 2013.

Submissions

8. The learned Standing Counsel for the Housing Board contended that possession has already been taken and the land was used for the purpose for which it was acquired. Similarly, compensation amount was deposited before the Civil Court. In short, the Housing Board contended that the land owners have not satisfied the ingredients of Section 24(2) of Act 30 of 2013.



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9. We have also heard the learned counsel for the respondents 1 to 3 and the learned Special Government Pleader on behalf of respondents 4 and 5. We have also perused the original file produced by the Tamil Nadu Housing Board.

Discussion

10. The land having an extent of 1.68 acres in S.F.No.135/1 situated at Veerakeralam Village, Coimbatore was part of a larger extent acquired by the Government of Tamil Nadu for and on behalf of the Tamil Nadu Housing Board. The Land Acquisition Officer passed the Award and thereafter, took possession of the land. The physical possession of the land was handed over to the Housing Board on 27 October, 1989. The Housing Board submitted a comprehensive lay out plan for approval. The lay out plan was approved by the Statutory authority. The Housing Board thereafter developed the land and provided all the necessary infrastructure facilities. The amenities were handed over to the local body for maintenance.

11. The land owners were fully aware that possession has already been taken by the Housing Board. It was with the said knowledge the land owners filed the writ petition for re-conveyance. The writ petition was rejected. The order has become final.

12. The land owners taking advantage of Act 30 of 2013 initiated a fresh writ petition in W.P.No.7530 of 2014. The learned single Judge proceeded as if the request for re-conveyance was on the ground that the land was not used for the purpose for which it was acquired. The learned single Judge made an observation that possession is still with the land owners. The said observation is not supported by records.

13. The records produced before us by the Land Acquisition Officer clearly indicates that physical possession has already been taken on 27 October, 1989. The Land Acquisition Officer has deposited the compensation amount before the Civil Court. The Reference was taken on file in LAOP No.104 of 1992. The materials produced by the jurisdictional Subordinate Court indicates that the Land Acquisition Officer along with the reference deposited the entire compensation amount payable to the land owners.

14. The land owners have not produced any document to show that they are entitled to the benefit of Section 24(2) of Act 30 of 2013. Since possession has already been taken and the compensation amount was deposited before the Civil Court, none of the two ingredients of Section 24(2) of Act 30 of 2013 are attracted in the subject case.



15. The Hon'ble Supreme Court in Mahavir case (cited supra) considered a similar issue regarding the claim based on Section 24(2) of the Act 30 of 2013. The Supreme Court while negating the claim made by the land owners and upholding the judgment of the High Court made the following observation:-

"19. The court is duty bound to prevent the abuse of the process of law in the cases which have been concluded several decades before, in our considered opinion, the provisions of Section 24(2) of the 2013 Act cannot be invoked in such cases of dead claims or stale claims. There are several numbers of cases coming to this court in which matters had been contested up to this court questioning the acquisition and the petitions have been dismissed by this court, and acquisition has attained finality, possession was taken, the award passed. Notice had been issued under Section 12(2) of the Act tendering the awarded amount but it has not been collected by the claimants/land owners deliberately or they had refused to collect it and are not ready and willing to accept it and, thereafter, it has been deposited in the name and account of the owners in the treasury which is also deposited as per the State Governments instructions issued time to time relating to how Government money is to be dealt with. The act of failure to deposit money under section 31 after possession is taken only imposes liability to pay higher interest under section 34. The acquisition would not lapse under the Act.

20. In our opinion, the cases in which there is deliberate action of the owners for not collecting the compensation and they do not want to receive it, section 24(2) of the 2013 Act does not come to their rescue as provisions are to help those persons who are deprived of compensation but not for those who deliberately had not received it and litigated for decades for quashing of proceedings avoiding to receive compensation by willful act. The failure to deposit in court under section 31(1) in such cases would attract only interest as envisaged under section 34 of the Act and the provisions of section 24 cannot be so invoked in such cases.

21. In the instant case, the claim has been made not only belatedly, but neither the petitioners nor their previous three generations had ever approached any of the authorities in



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writing for claiming compensation. No representation had ever been filed with any authority, none has been annexed and there is no averment made in the petition that any such representation had ever been filed. The claim appears not only stale and dead but extremely clouded. This we are mentioning as additional reasons, as such claims not only suffer from delay and laches but courts are not supposed to entertain such claims. Besides such claims become doubtful, cannot be received for consideration being barred due to delay and laches.

22. The High Court has rightly observed that such claims cannot be permitted to be raised in the court, and cannot be adjudicated as they are barred. The High Court has rightly observed that such claims cannot be a subject matter of inquiry after the lapse of a reasonable period of time and beneficial provisions of Section 24 of the 2013 Act are not available to such incumbents. In our opinion, Section 24 cannot revive those claims that are dead and stale.

23. The High Court has observed that Raisina is a part of the Lutyens zone of Delhi. It is prime of New Delhi and Government offices etc. are located. The petitioners asked the High Court to infer and conclude that in the absence of some indication of the record being made available by them that their ancestors have not ever received any compensation. How the petitioners came to know that their ancestors had not received compensation has not been disclosed in the petition. The High Court has rightly declined to entertain such claims. The protective umbrella of section 24 is not available to barred claims. If such claims are entertained under section 24, it would be very-very difficult to distinguish with the frivolous claim that may be made even after tampering the records etc. or due to non-availability of such record after so much lapse of time. Once right had been lost due to delay and laches or otherwise, it cannot be revived under provisions of section 24 of the Act of 2013. The intendment of Act 2013 is not to revive stale and dead claims and in the concluded case when rights have been finally lost. If there is delay and laches or claim is otherwise barred, it is not revived under section 24(2) of the 2013 Act. The provision does not operate to revive legally barred claims. The provision of Section



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24 does not invalidate courts judgments/orders in which right have been finally lost or due to inaction is barred. Law does not permit examination of barred or totally fraudulent claims. The provisions of the law cannot be permitted to be defrauded or misused. Section 24 (2) of the 2013 Act cannot be invoked in such cases. The High Court has rightly declined to entertain the writ petitions filed by the petitioners. It is not conceivable how the petitioners could file such a petition in a laconic manner relating to the prime locality at New Delhi that too for hundreds of acres with the delay of more than 100 years."

16. The learned single Judge passed an order conferring the benefits of Section 24(2) of Act 30 of 2013 on the land owners without there being any material to prove that they are entitled to such a relief. We are therefore of the view that the appellants must succeed.

17. The order dated 7 May 2014 is set aside. The writ petition in W.P.No.7530 of 2014 is dismissed.

18. In the up shot, we allow the intra court appeal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

svki

To

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

2.The Special Tahsildar (L.A.)
Housing Scheme Unit,
Tatabad, Coimbatore -12.



3. The Chairman & managing Director,
TNBH, Nandanam,
Anna Salai, Chennai.

4. The Executive Engineer,
Administrative Officer,
TNHB, Coimbatore Unit,
Tatabad, Coimbatore-12.

+1cc to Mr.R.N.AMARNATH, Advocate, S.R.No. 980
+1cc to Mr.V.ANANDHAMURTHY, Advocate, S.R.No.738

Judgment in

W.A No.10 of 2015

CNR(CO)
TR(30/01/2018)