

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 11.12.2017	Delivered on 06.02.2018
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CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.Nos.1668 to 1671 of 2017

S.Govindarajan ... Appellant in W.A.No.1668/17/petitioner
M.Revathi ... Appellant in W.A.No.1669/17/petitioner
E.Jhagganmohan ... Appellant in W.A.No.1670/17/petitioner
A.Ponjeyam ... Appellant in W.A.No.1671/17/petitioner

versus

1.The Tamil Nadu State Housing Board,
rep. By its Secretary,
493, Anna Salai,
Chennai 600 045

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

... Respondents in all W.A/Respondents

Appeals filed against the order passed by this Court dated 25.4.2013 passed in W.P.No.24436, 24437, 24438 and 24439 of 2010 respectively.

Prayer in W.P no.24436/10 to 24439/10 : Writ Petition no 24436/10 filed under Article 226 of the constitution of India praying this Honourable Court to issue a Writ of Certiorarified Mandamus calling for the proceedings of the 2nd respondent relating to its Letter No. L.A1(1)/32221/06 dt 31.5.2010 and quash the same and consequently direct the respondents to grant release/NOC of 2890 sq.ft. (approx 7 cents) and 3560 sq.ft. (approx 8 1/2 of cents) of lands belonging to this petitioner in Plot No.7 and 8 in old survey No. 87/2 and New survey No. 87/2 A part Division No. 155 T.S.No.23/23 Block No.34 Chennai District in Thiruvanmaiur village.

Writ Petition no 24437/10 filed under Article 226 of the constitution of India praying this Honourable Court to issue a Writ of Certiorarified Mandamus calling for the proceedings of the 2nd respondent relating to its Letter No. L.A1(1)/32221/06 dt 31.5.2010 and quash the same and consequently direct the

respondents to grant release/NOC of 2600 sq.ft. (approx 6 cents) of lands belonging to this petitioner in Plot No.4 in old survey No. 87/2 and New survey No. 87/2 A part Division No. 155 T.S.No.23/23 Block No.34 Chennai District in Thiruvanmaiur village.

Writ Petition no 24438/10 filed under Article 226 of the constitution of India praying this Honourable Court to issue a Writ of Certiorarified Mandamus calling for the proceedings of the 2nd respondent relating to its Letter No. L.A1(1)/32221/06 dt 31.5.2010 and quash the same and consequently direct the respondents to grant release/NOC of 5615 sq.ft. (approx 13 cents) of lands belonging to this petitioner in Plot No.2 and 3 in old survey No. 87/2 and New survey No. 87/2 A part Division No. 155 T.S.No.23/23 Block No. 34 Chennai District in Thiruvanmaiur village.

Writ Petition no 24439/10 filed under Article 226 of the constitution of India praying this Honourable Court to issue a Writ of Certiorarified Mandamus calling for the proceedings of the 2nd respondent relating to its Letter No. L.A1(1)/32221/06 dt 31.5.2010 and quash the same and consequently direct the respondents to grant release/NOC of 2990 sq.ft. (approx 7 cents) of lands belonging to this petitioner in Plot No.6 in old survey No. 87/2 and New survey No. 87/2 A part Division No. 155 T.S.No.23/23 Block No.34 Chennai District in Thiruvanmaiur village.

For appellants : Mr.R.Natarajan

For Respondents : Mr.V.Anandhamoorthy

C O M M O N J U D G M E N T

K.K.SASIDHARAN, J.

The Government of Tamil Nadu, after acquiring 76.5 cents of land owned by the predecessor-in-interest of the appellants along with 26.10 acres of adjacent land, excluded the entire 26.10 acres of land from acquisition after the issuance of declaration under Section 6 of the Land Acquisition Act and passed an award in respect of the 76.5 cents of land in Survey No.87/2A of Thiruvanmiyur Village, along with another land for a housing scheme floated by the Tamil Nadu Housing Board. The learned Single Judge while directing the respondents to consider the representation submitted by the appellants for release of the land from acquisition, restrained the State and the Tamil Nadu Housing Board from taking possession till a decision is taken in the matter. The appellants have come up with the intra court appeals on the ground that the entire land acquisition

lapsed in view of satisfying the twin conditions of Sub Section (2) of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The contention is fortified by the fact that there is nothing on record to show that possession was taken by the Land Acquisition Officer from the landowners either before or after the disposal of the Writ Petitions in W.P.Nos.24436 to 24439 of 2010 on 25 April 2013.

The background:-

2. The Government of Tamil Nadu pursuant to the request made by Tamil Nadu Housing Board, acquired 96.92 acres of land as per section 4(1) notification issued on 17 July 1978. The declaration under Section 6 of the Act was issued on 6 August 1981. The Government excluded 26.10 acres of land from acquisition. The land owned by the predecessor-in-interest of the appellants and others in S.No.87/2A, measuring 82 cents was part of the land acquired. The Government proceeded to complete the acquisition in respect of 76.5 cents, leaving 5.5 cents. The award was passed on 23 September 1986.

3. The land acquisition proceedings were quashed by the writ court in W.P.No.12500/1986 and 10094/1986 by order dated 11 October 1999. However, the order was set aside in W.A.No.644 of 1995.

4. The subject land originally belonged to Thiru.T.S.Thirunavukkarasu. He sold 5.5 cents to P.Dhanasekaran.

5. The Government of Tamil Nadu re-conveyed 5.5 cents to Thiru.P.Dhanasekaran, pursuant to the direction issued by the writ court. The adjacent land acquired from Hotel Vaigai was excluded even before the award.

6. The appellants and few others purchased the land in Survey No.87/2 A from the legal heirs of Thiru.T.S.Thirunavukkarasu, which is presently part of Survey No.87/2A Part.

7. The appellants filed Writ Petitions contending that they are still in possession of the land and that taking into account the release of adjacent land, their land also should be released from acquisition by extending similar treatment to them. The appellants have cited the case of others, whose lands were either released or re-conveyed by the respondents.

8. The learned Single Judge disposed of the Writ Petitions in W.P.No.24436 to 24439 of 2010 by directing the respondents to consider the issue on merits. The learned Single Judge taking into account the interim orders granted earlier restraining the

respondents from taking possession, directed that the said order would be in operation till a decision is taken in the matter. The common order was passed on 25 April 2013.

9. While so, Act 30 of 2013 was notified. The appellants taking advantage of the new Act, filed the intra court appeals.

10. The appellants have taken up two contentions, one relating to non payment of compensation and the other being the failure to take possession from the landowner.

11. The respondents have produced the entire file relating to the acquisition.

12. We have heard the learned counsel for the appellants and the learned Additional Government Pleader for the respondents.

13. The land involved in the subject appeals were part of the land acquired as per Section 4(1) notification dated 17 July 1978. The Government has withdrawn 26.10 acres of land from acquisition as per order in G.O.Ms.No.190 dated 23 February 1980. The land measuring 76.5 cents acquired from T.S.Thirunavukkarasu was earmarked for construction of rental quarters.

14. The Tamil Nadu Housing Board in its counter affidavit filed before the writ court contended that after passing award on 23 September 1986, possession was handed over by the Land Acquisition Officer to the Tamil Nadu Housing Board on 30 October 1986.

15. Before the writ court, the appellants demonstrated that they continue to be in possession of the land even after acquisition. The learned Single Judge therefore granted an injunction restraining the respondents from taking possession. While directing the respondents to consider the representation for release of the land, the learned Judge observed that the interim order granted to safeguard the possession would continue till the disposal of the matter by the Government.

16. The order passed by the Writ Court dated 25 April 2013 is material to decide whether possession was taken thereafter by the Government or Tamil Nadu Housing Board.

17. The Tamil Nadu Housing Board has no case that possession was taken after the disposal of the Writ Petitions on 25 April 2013. It is the case of the Tamil Nadu Housing Board that possession was handed over to the Board by the Land Acquisition Officer on 30 October 1986.

18. In order to decide the issue regarding possession and

payment of compensation, we have perused the entire files produced by the Tamil Nadu Housing Board including the award file.

19. There is nothing on record to show that possession was taken by the Land Acquisition Officer from the landowner. The transfer of charge certificate indicate that the revenue authorities handed over possession to the Tamil Nadu Housing Board on 30 October 1986. In order to handover possession there must be documents to show that possession was taken by the Land Acquisition Officer from the landowner by preparing a mahazar. There are no materials on record to show the actual or symbolic possession taken by the Land Acquisition Officer from the landowner in the manner known to law.

20. The respondents have no case that possession was taken from the landowners on a particular date and thereafter, it was handed over to the Tamil Nadu Housing Board.

21. It is not disputed that the land is still lying vacant. The Position Note, dated 28 April 2016 found in the file indicates that scheme is still kept pending on account of various factors. The Tamil Nadu Housing Board is yet to receive approval for construction of rental quarters. The sketch of the land prepared by the Head Surveyor available at Page 568 of the file produced by the Housing Board shows that the land in S.No.87/2B is excluded from acquisition. The various plots in Survey No.87/2A Part are all kept vacant. Even the road is shown only as a "Proposed Road". Therefore, it is clear that the Tamil Nadu Housing Board has not undertaken any development work so far in respect of the land in Survey No.87/2A Part.

22. There is no statement in the counter affidavit filed by the Tamil Nadu Housing Board before the writ court that possession was taken from the landowners and thereafter it was handed over to the Housing Board. The transfer of charge dated 30 October 1986 is not a relevant material to decide that the 76.5 cents of land in S.No.87/2 A was taken possession by the Land Acquisition Officer from the landowners. We therefore hold that the respondents have miserably failed to prove that the possession of the acquired land having an extent of 76.5 cents in S.No.87/2 A corresponding to Survey No.87/2A part was taken either from Thiru.T.S.Thirunavukkarasu, the original owner or from the subsequent purchasers, including the appellants.

23. Though there are no documents available on file to show the payment of compensation, we are not inclined to grant the benefit to the appellants for the reason that in the earlier proceedings the contention was only regarding their possession of land even after acquisition, and not on the ground that the

compensation was not paid. We therefore reject the contention based on non payment of compensation.

24. The Supreme Court in Delhi Development Authority vs. Sukbir Singh, 2016(6) SCC 258, followed the earlier judgment in Pune Municipal Corporation vs. Harakchand Misirmal Solanki and others, 2014(3) SCC 183, relating to the scope of Section 24(2) of the New Act 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.

25. In *Shashi Gupta and another vs. State of Haryana and others*, 2016(13) SCC 380, 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 said:-

"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."

26. 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.

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

28. The Hon'ble Supreme Court in Government (NCT of Delhi v. Manav Dharam Trust and another [2017 (6) SCC 751 observed that on account of the lapse of acquisition proceedings by virtue of Section 24(2) of the Act, the encumbrance created in favour of the State comes to an end, and resultantly, the impediment to encumber or transfer the land also comes to an end.

29. In view of the factual position that possession was not taken from the land owner or from the appellants and judicial precedents indicated above, the appellants are entitled to a declaration in terms of Section 24(2) of Central Act 30 of 2013.

30. For the reasons aforesaid, we declare that the entire land acquisition proceedings in respect of the land owned by the appellants in Survey No.87/2A, corresponding to present Survey No.87/2A Part, Thiruvanniyur Village, Mylapore-Triplicane aluk, covered by Award No.5/1986 dated 23 September 1986 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.

31. The intra court appeals are disposed of with the declaration as indicated above. No costs.

Sd/-
सत्यमेव जयते

Assistant Registrar(CS IX)

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Sub Assistant Registrar

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To

1.The Secretary,
Tamil Nadu State Housing Board,
493, Anna Salai,
Chennai 600 045.

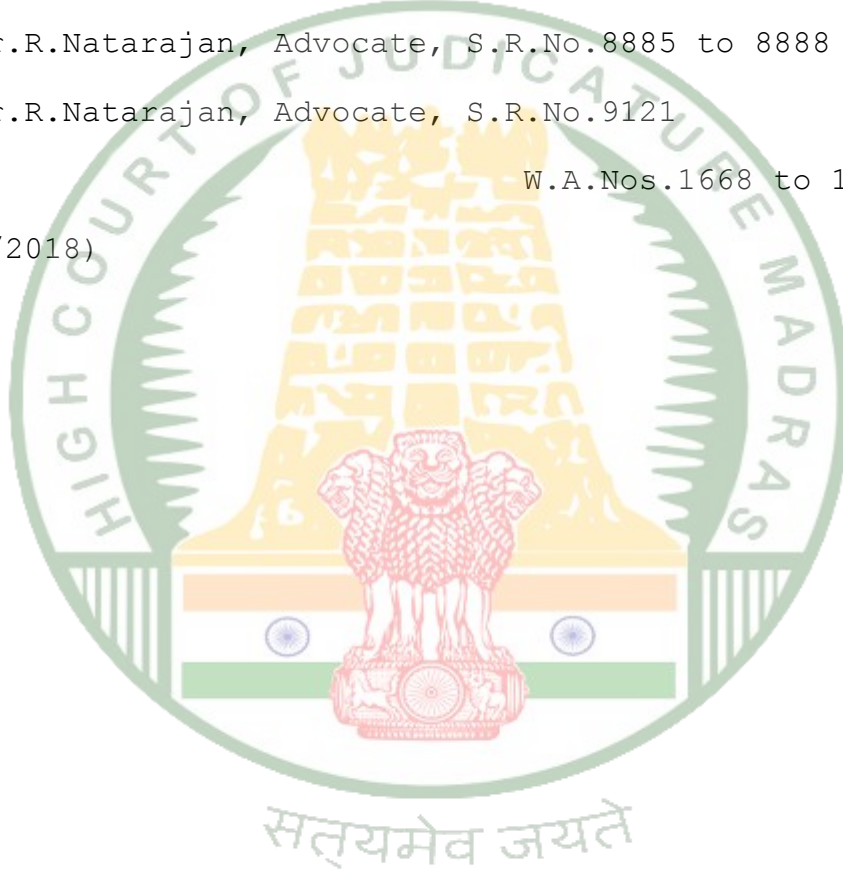
2.The Secretary to Government,
Housing and Urban Development Department,
Fort St.George,
Chennai 600 009.

+4cc to Mr.R.Natarajan, Advocate, S.R.No.8885 to 8888

+4cc to Mr.R.Natarajan, Advocate, S.R.No.9121

W.A.Nos.1668 to 1671 of 2017

SKV(CO)
RRK(14/02/2018)



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