

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2018

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

W.P.No.17263 of 2014
and MP.No.1 of 2014

Onnukurikki

... Petitioner

-Vs-

- 1.The Government of Tamil Nadu
Rep by the Secretary to Government
Housing and Urban Development
Fort St.George
Chennai - 600 009.
 - 2.The Managing Director
The Tamil Nadu Housing Board
No.33, Anna Salai
Nandanam
Chennai - 600 035.
 - 3.The Special Tahsildar
(Land Acquisition)
Housing Scheme, Hosur
Dharmapuri District.
- ... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of declaration that the land acquisition proceedings initiated for implementation of common housing development scheme dated 29.05.1991 under Section 4(1) followed by Section 6 declaration dated 08.10.1992 and the award No.27/94 dated 11.10.1994 passed under Land Acquisition Act, 1894 shall be deemed to have been lapsed by virtue of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (the Central Act, 2013) in respect of the petitioner's property situated in S.No.853/1B to an extent of 2.17 acres in Hosur Taluk, Krishnagiri District.

For Petitioners : Mr.R.Bharath Kumar

For Respondent : Mr.Akhil Akbar Ali
Government Advocate [R1 & R3]
Mr.V.Anandamoorthy [R3]

ORDER

The petitioner has come forward with the present petition seeking a writ of declaration, to declare that the land acquisition proceedings pertaining to his property has lapsed under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30/2013).

2. The petitioner has averred in the affidavit filed in support of this petition that he owned 0.88 hectares which is approximately equivalent to 2.17 acres of land in S.F.No.853/1B in Chennathur Village, Hosur Taluk, Krishnagiri District. He has constructed three houses therein and has been enjoying the same. He has also obtained necessary permission from the authorities and developed the property into a layout Vide the approval of the DTCP NO:386/1990. The petitioner had sold a few plots to third parties too. While so, the land acquisition proceedings were initiated in the year 1991, and a notification was issued in G.O.Ms.No.890 on 29.05.1991 under Section 4(1) of the Land Acquisition Act, 1894. Thereafter, a declaration under Section 6 of the Act was notified in G.O.693 dated 08.10.1992. An award was subsequently passed on 11.10.1994. The petitioner challenged the notification issued under Section 4(1) of the Act and the declaration issued under Section 6 of the Act in W.P.No.19901 of 1992, and the same came to be dismissed on 18.04.1994. Thereafter an award came to be passed in Award No:27/94, dated 11-10-1994.

3. The petitioner now contends that his property was acquired for the development of a neighbourhood scheme, but neither compensation amount was paid, nor possession was taken from the petitioner.

4. In the counter affidavit filed by the third respondent, on the two facts necessary to meet the allegations raised on the basis of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 it is alleged:

a) That the possession of petitioner's property in S.F.No.853/1B in Chennathur Village, Hosur Taluk, Krishnagiri District has not been taken, or rather could not be taken as there were several buildings and trees in the property acquired;

b) That the compensation amount of Rs. 4,60,053/- is kept in the Sub Treasury, Hosur.

5. The second respondent has not filed any counter, however has made available the files pertaining to the acquisition wherein a communication dated 29.03.2004 from the Executive Engineer and Administration Officer, Tamil Nadu Housing Board, Hosur Housing Unit, addressed to the Special Tahsildar (Land Acquisition). It is referred that the amount has been deposited in the Court.

6. Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act.No.30/2013) reads as follows :

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:"

Sec. 24(2) provides two criteria for invoking it in all cases where awards were passed five years prior to the commencement of the Central Act No.30/2013. This is not in dispute, as the award in this case has been passed close to 20 years prior to coming into force of the said Act. So far as the deposit of compensation amount is concerned, there prima facie appears to be some discrepancies as to whether the same is in the Court or in the Treasury. However, the land acquisition authority who is the competent authority to defend this action has made a categorical statement that the possession of the property has not been taken. Since one of the circumstance necessary to invoke sec.24(2) of the Act is available, the petitioner is entitled to succeed even on this solitary ground.

7. Accordingly, this petition is allowed and the land acquisition proceedings in Award No.27/94 dated 11.10.1994 is hereby declared as lapsed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

To:

1.The Secretary to Government
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Chennai - 600 009.

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(Land Acquisition)
Housing Scheme, Hosur
Dharmapuri District.

+1 CC to Mr.V. Anandhamurthy, Advocate sr 2871.

+1 CC to Mr.R. Bharathkumar, Advocate sr 2747.

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सत्यमेव जयते

SP(05/09/2018)

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