

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: **18.01.2018**

CORAM:

**THE HONOURABLE MR. JUSTICE S.MANIKUMAR**  
**AND**  
**THE HONOURABLE MR. JUSTICE N.AUTHINATHAN**

W.A.No.1102 of 2016  
and  
C.M.P.No.14271 of 2016

1.The Secretary to Government  
(Revenue Department),  
Government of Puducherry,  
Pondicherry - 605 001.

2.The Sub/Deputy Collector,  
(Revenue Department),  
Government of Puducherry,  
Pondicherry - 605 001.

.. Appellants

Vs

Alphonse Abichegaradjou

.. Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 16.02.2016 made in W.P. No.29125 of 2015.

For Appellants : Mr.A.Tamilvanan  
Government Advocate (Pondy)

For Respondent : Mr.S.Subbiah

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**J U D G M E N T**

(Judgment of the Court was made by **S.MANIKUMAR, J.**)

Challenge in this writ appeal is to the order dated 16.02.2016, made in W.P.No.29125 of 2015, by which, the Writ Court, quashed the impugned proceedings, in so far as, the respondent's property is concerned and held to have been lapsed. However, Writ Court, directed that the appellants herein need not restore possession to the respondent and instead directed them to initiate fresh acquisition proceedings so as to enable respondent to receive fair compensation under the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013). The above direction has been ordered to be complied with by the appellants within a period of three months from the date of receipt of a copy of the said order.

**2.** Facts leading to the filing of the writ petition are that the lands in Survey Nos.258/2A/1C and 258/2A/1D to an extent of 0.03.25 and 0.00.40 hectares in Thattanchavady village, Puducherry, originally belonged to the grandfather of the respondent and the respondent is one of the co-owners of the said lands. The said lands came to be acquired by the respondents, under the provisions of Land Acquisition Act, 1894, (Act 1 of 1894), under a Notification dated 28.07.1995, in G.O.Ms.No.65, issued by the first appellant

herein, invoking Section 4(1) of the said Act, dispensing with the enquiry under Section 5-A of the Act under Government Gazette No.34, dated 22.08.1995, under Section 17 of the said Act.

**3.** In view of the dispensation of enquiry, under Section 5-A of the said Act, the respondents issued a declaration under Section 6 of the Act, in G.O.Ms.No.74, dated 27.09.1995, and published the same in the Government Gazette No.42, dated 17.10.1995. Challenging the above said Notification and declaration, writ petitions came to be filed, not only by the respondent herein, but also by other owners of different lands, covered under the same notification and declaration. Paternal uncle of the respondent/writ petitioner, filed a writ petition in W.P. No.899 of 1990, pertaining to the land acquisition proceedings, initiated by the appellants, over his lands, and the above said writ petition in W.P.No.899 of 1990 also came to be taken up, along with the writ petition in W.P.No.13974 of 1995 and another W.P. No.8341 of 1994, filed by one A.Leela.

**4.** All the above three writ petitions were decided, and by a common order dated 18.08.2000, all the writ petitions came to be dismissed, and the orders of interim stay granted, pending disposal of the above writ petitions, came to be vacated. The respondent herein/writ petitioner, preferred

W.A.No.1597 of 2002, and similarly A.Leela preferred W.A. No.1598 of 2002, and there was another Writ Appeal in W.A. No.1599 of 2002 by the paternal uncle of the respondent and all the above writ appeals, came to be dismissed by a common judgment dated 16.03.2004.

**5.** Aggrieved by the common judgment dated 16.03.2004, respondent herein/writ petitioner alone preferred a Special Leave petition in S.L.P.(C) No.789 of 2015, and it was also dismissed by an order dated 20.04.2015. The Hon'ble Apex Court, while dismissing the above Special Leave Petition, pursuant to the order dated 20.04.2015, observed that the first appellant herein, namely the respondent in the above Special Leave petition, should refer the issue of enhancement of compensation to the appropriate authority, at the earliest.

**6.** Appellants herein, in the meanwhile, took possession of the properties covered under the said notification and declaration, and demolished the entire structure including the house property, immediately on 21.08.2000, i.e., within three days, from the date of the orders passed in the writ petitions, and they formed the road, in view of the fact that there was no stay after the disposal of the above writ appeals. The second appellant, in view of the limited orders of stay of dispossession alone, took

up the award proceedings in Award No.17/97 and during the award proceedings, the writ petitioner was present, and he raised an objection regarding the valuation by claiming enhanced compensation.

**7.** According to the respondent herein / writ petitioner, the second appellant, by award dated 18.09.1997, fixed the compensation for survey No.258/2A/1C at Rs.4,88,770.75 for the land and Rs.2,96,194.00 for the structure, and added 30% solatium and other interest, and a sum of Rs.11,85,810.93 was fixed and determined. According to him, it is very much peculiar that though an award dated 18.09.1997, having been passed, by the appellants, through the second appellant, even that award amount was not deposited, by the appellants, in Court, as provided under Section 31 of Act 1 of 1894. When the respondent herein/writ petitioner was making enquiries regarding the deposit of the amounts by the appellants, to enable him to make proper application, for the withdrawal of the amounts from the Court deposits and also from the office of the Subordinate Judge's Court at Puducherry, the respondent therein/writ petitioner came to notice that no amount was deposited by the appellants towards the award into court.

**8.** Respondent herein/writ petitioner further submitted that he did not receive any notice of deposit from the Court of the Subordinate Judge at

Puducherry, within whose jurisdiction, the properties so acquired are situate, and with much pain, he caused for the search of the records in the Court of the Subordinate Judge at Puducherry, and the verification of the records revealed that, the appellants, more particularly, the second appellant, did not refer any dispute under Section 31 of Act 1 of 1894, and they have not deposited, even a single pie.

**9.** Respondent herein/writ petitioner further submitted that the second appellant purported to pass yet another award dated 26.12.2000, in Award No.12/2000, for which, he did not receive any notice, from the second appellant, at any point of time, not only for the enquiry, but also, notice regarding the passing of the award, as required under Section 12 of Act 1 of 1894. After coming to know such an illegal award dated 26.12.2000, said to have been passed by the second appellant, respondent herein/writ petitioner applied for the information under the Right to Information Act, and from the documents that were furnished to him, he was able to gather the required information.

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**10.** According to the information received by the respondent herein / writ petitioner, in respect of the said land in Survey No.258/2A/1D, the second appellant, under the very same award dated 18.09.1997, fixed the

compensation for the land at Rs.60,156.40 and for the structure at Rs.Nil, and determined the total compensation of Rs.90,875.29, totalling Rs.91,752.00. The second appellant, while passing the above award, directed that in view of pendency of W.P.No.13974 of 1995, on the file of this Court, and an interim order against dispossession alone, the compensation amount could be paid over to the writ petitioner, on the production of the original documents, after the disposal of the writ petition, failing which, the amount might be deposited in the Civil Court under Section 31(2) of the said Act, for deciding the rightful ownership of the land, and apportionment of the amount awarded.

**11.** According to the respondent herein / writ petitioner, the award enquiry was fixed on 29.05.1997, though the award came to be passed later, by the second appellant, and even before the award could be passed and when, he participated in the enquiry proceedings before the second appellant, he submitted his objections dated 29.05.1997. In the said objections, he specifically made a mention that by taking into account the value of the superstructures standing therein, and the situation of the property, on the main road, namely Madras - Tindivanam, the value of the land was Rs.2,000/- per square feet and Rs.25,00,000/- for the building and the said fact is not in dispute, and it is also admitted by the appellants themselves, during the proceedings before this Court in the writ petitions.

**12.** The above writ petitions came to be dismissed by a common order dated 18.08.2000, and the writ appeals, by a common judgment dated 16.03.2004, and the Special Leave Petition came to be dismissed by an order dated 20.04.2015. The appellants, ought to have, referred the matter under Section 18 of Act 1 of 1894, in view of the objections regarding the valuation of the superstructure as well as the lands, even during the award proceedings, whereas, the appellants did not refer the same, immediately after the award was passed by the second respondent. In view of the fact and especially when the objections of the writ petitioner were already there on record, the second appellant ought to have referred the matter, for enhanced compensation under Section 18 of Act 1 of 1894.

**13.** In addition, the peculiar fact is that the appellants have also not deposited even the initial compensation, as determined by the second appellant, pursuant to the award dated 26.12.2000, wherein, insofar as the property of the writ petitioner is concerned, the second appellant had determined the compensation at Rs.11,97,245.00, in respect of Survey No.258/2A/1C, and Rs.91,752.00 in respect of Survey No.258/2A/1D and even this initial compensation amounts were never deposited by the appellants, till the filing of the W.P.No.29125 of 2015.

**14.** In the meanwhile, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013), came into force with effect from 01.01.2014, and by virtue of the provisions contained therein, Act 1 of 1894, came to be repealed. In the said Act, in comparison with the old Act 1 of 1894, it is not necessary at this stage, to consider all the other provisions contained in the later Act, inasmuch as, the possession of the property, came to be taken over, by the appellants on 21.08.2000, for which, the Notification and Declaration, came to be made and sustained by this Court as well as by the Hon'ble Apex Court. Though possession of the property came to be taken on 21.08.2000, rather, in a high handed manner, and demolition of the residential property, even before, writ petitioner could make arrangements to prefer a writ appeal against the common order dated 18.08.2000, as already submitted by the writ petitioner, even the initial compensation, as per their own award had not been deposited by the appellants into Court, as per the provisions contained under Section 31 of Act 1 of 1894. There is a specific provision in the form of Section 24 of Act 30 of 2013 providing for reliefs to the land owners, in tune with the object of the said Act. Section 24(2) of Act 30 of 2013, states that 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.

**15.** In view of the same, writ petitioner has prayed that the earlier Notification and Declaration are deemed to have been lapsed, and accordingly, the said Notification and Declaration have to be quashed as lapsed.

**16.** Before the Writ Court, the appellants have filed a counter affidavit and submitted that the acquisition pertains to the lands at R.S.Nos.258/2A/1C and 258/2A/1D in Thattanchavady revenue village along with lands at other survey numbers in the same village and also at various

survey numbers in Reddiarpalayam and Pudupalayam revenue villages for the improvement of junction of East Coast Road at Ellaipillaichavady - Vazhudavur Road in Pondicherry. The writ petitioner though claimed that the property at the above survey numbers belongs to his Grandfather Babu, he had never traced the rights of his Grandfather over the said properties whenever he had filed Writ Petition and Writ Appeal before this Court and Special Leave Petition before the Hon'ble Supreme Court. Apart from filing the petitions in this Court and Hon'ble Supreme Court for quashing the acquisition proceedings he had never claimed the compensation amount before the Land Acquisition Officer or had produced relevant documents when called for Award Enquiry.

**17.** According to the appellants, the lands required for acquisition for improving junction of East Coast Road and Vazhudavur road - RC 4 crossing near cycle chain factory, covers three Revenue Villages viz., Pudupalayam, Reddiarpalayam and Thattanchavady. The Executive Engineer, National Highways Division, Public Works Department is the requisitioning authority. This junction covers four directions. The Pudupalayam and Reddiarpalayam Revenue Villages covers two points and Thattanchavady revenue village covers two points. With respect to lands covered in Pudupalayam and Reddiarpalayam revenue villages, possession was taken and handed over to

the requisition department for carrying out the work of laying road and accordingly the said Requisition Department had taken over possession on 21.04.1997. As regards the lands covered in Thattanchavady village possession had been taken from the petitioner as well as from others on 21.08.2000 i.e., after the Writ Petitions filed in respect of the lands in Thattanchavady revenue village was disposed by the Hon'ble High Court and on the same day, the possession of the land was handed over to the requisition department.

**18.** The Government of Puducherry have given approval for acquiring the lands for the purpose of improvement of junction for East Coast Road under the Act, on 10.03.1995. Concerned authorities in the Government of Puducherry have applied their minds to this public purpose and have accorded approval to acquire the lands under the Act invoking urgency clause. The main purpose for which the lands were sought to be acquired under the proceeding is for public purpose of improving the junction for East Coast Road and Vazhudavur road. The Government of Puducherry have approved the notification under section 4(1) of the Land Acquisition Act in G.O.Ms.No.65, dated 28.07.1995. The 4(1) notification was published in four modes. As the acquisition proceedings were initiated under the urgency clause, as per Section 17 of Act 1 of 1894, the enquiry under Section 5A was dispensed with.

**19.** The Government of Puducherry have approved Declaration under section 6 of the Act vide G.O.Ms.No.74, dated 27.09.1995 for acquisition of lands for the said public purpose specified in 4(1) Notification. Declaration under Section 6 of the Act was published in four modes. Few Writ Petitions were filed challenging the above notification and declaration in the impugned acquisition proceedings including the petitioner in W.P.No.13974 of 1995. The earlier Writ Petition filed by the Petitioner's uncle Thiru.Savarimuthu in W.P.No.899 of 1990 pertaining to the acquisition proceedings of his land was also taken up along with the above petition filed by the petitioner in the present case. One more Writ Petition in W.P No.8341 of 1994 was filed by one Tmt.A.Leela. This Court, in a common order passed on 18.08.2000 dismissed all the Writ Petitions, and also the orders of interim stay granted thereby permitting the Land Acquisition Officer (LAO) to proceed further with the acquisition proceedings. Hence, only after the Writ petitions were dismissed thereby vacating the interim stay granted, the LAO has taken possession of the land and hence had adhered to the legal procedures.

**20.** Petitioners in the above writ petitions being aggrieved by the orders passed by the Hon'ble High Court filed Writ Appeal in W.A.No.1597 of 2002. W.A.No.1598 of 2002 and W.A.No.1599 of 2002. All these Writ Appeals came to be decided by a common judgment and all the three

appelas were dismissed on 16.03.2004 by this Court.

**21.** According to the appellants, the LAO had never passed an award vide Award No.17/97 for the purpose of improving junction of East Coast Road and Vazhudavur road-RC 4 crossing near cycle chain factory as averred in the petition and instead the Award for the same purpose was passed on 26.12.2000 vide Award 0.12/2000. Earlier an attempt was made to pass the Award in the year 1997 and the Draft Award was also signed by the then Land Acquisition Officer numbering as 17/97, but the same was not passed due to the pendency of Writ Petitions filed by the writ petitioner and others, before this Court and there were orders passed in favour of the writ petitioner for the dispossession of land and interim stay was granted in the acquisition proceedings. Later, the Award No.17/97 was assigned to the Award passed in respect of the "construction of Sub-Centre" in Panayadikuppam revenue village. Hence, it is the writ petitioner's misconception that the Award was passed in the year 1997 vide Award No.17/97 and thus his averment that the LAO has passed a second Award by passing the Award 12/2000 is out of ignorance and not correct. The Award, thus passed maintaining all the procedure contemplated in the Act and by the approval of Government of Puducherry is legal by all terms and sustainable in Law. Further, the above award passed is not a second Award

but first, which had to be deferred due to the prolonged legal procedures and interim stay. The Award was passed based on the Award enquiry conducted on 29.05.1997, hence no enquiry under section 17(3) was again conducted and hence no notices were also served. Further for the averment made by the writ petitioner regarding notice intimating the passing of Award, it is submitted that the notice under section 12(2) was served to the petitioner Thiru.E.Alphonse and the same was received by the petitioner on 25.01.2001 by stating on the copy of the notice that "received this notice without Prejudice to his Writ Appeal filed in the Madras High Court and the reliefs claimed in and the Award compensation is also very low".

**22.** The appellants have further submitted that the compensation amount to a tune of Rs.91,752/- in respect of the land at R.S.No.258/2A/1D measuring to an extent of 00-00-40 hectares was paid to one Tmt.Thangadurachi Ammal W/o Annamalai Nadar who was the rightful owner of the property on production of the documents supporting her entitlement over the property. Hence, the petitioner's claim over the said land is baseless.

**23.** Appellants have further submitted that, as per provisions constituted under Section 18 of Act 1 of 1894 the land owner/ beneficiary has to make a representation for referring his/her case for enhanced

compensation within the time frame as constituted under the Act. The Land Acquisition Act provides for the enhanced compensation where the application for the same has been made satisfying the following conditions of time limit:

*"(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;*

*(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire."*

As the petitioner has not made any representation requesting for referring his case to appropriate authority for enhanced compensation within the time limit of 6 weeks on receipt of 12(2) notice the LAO could not make any reference of his case to the appropriate Court of Law.

**24.** Appellants have further submitted that, on the dismissal of the Writ Appeal by the Hon'ble High Court on 16.03.2004, the writ petitioner had approached the Hon'ble Supreme Court and filed a Special Leave Petition vide S.L.P.(C)No.789 of 2015 and the Hon'ble . Supreme Court while dismissing his petition had stated that "we are not inclined to interfere with the impugned judgment and order passed by the High Court". According to

the appellants, the Hon'ble Apex Court has further held that "However, the respondent should refer the issue of enhancement of compensation to the appropriate authority at the earliest". Accordingly, in compliance with the orders of the Hon'ble Supreme Court a notice was sent to the petitioner vide Notice No.949/2014/DC(N)/LA/201, dated 15.07.2015, asking the writ petitioner to meet the Land Acquisition Officer along with the relevant documents proving his rights over the suit property with a view to refer under Section 18 of the Act. However, the writ petitioner till date has not submitted the original document as called for which paves way to suspect whether the land under acquisition belongs to the writ petitioner. After giving adequate opportunity to the writ petitioner, compensation as awarded by Land Acquisition Officer vide Award No.12/2000, dated 26.12.2000 has been deposited in Civil Court Deposits vide Challan No.II/DC(R)N/LA/2015-16, dated 24.11.2015.

**25.** Appellants have further submitted that the writ petitioner had referred Section 24(2) of Act 30 of 2013 and requested for payment of compensation as per the provisions of "*The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013*" (Act 30 of 2013), which came to effect from 01.01.2014 replacing Act 1 of 1894.

**26.** According to the appellants, possession of the land has been taken on 21.08.2000, which is 13 years before the commencement of the New Act. The Award was passed on 26.12.2000 and the same was numbered as 12/2000. The total compensation amount passed as per the Award was Rs.55,69,086/-, out of which, the majority of the compensation amount has been disbursed/deposited in Civil Court Deposits. An amount of Rs.26,63,546/- in respect of land at R.S.No.13/1A/2 of Reddiarpalayam Revenue Village, T.S.No.H/1/2/1B & H/1/2/1B of Pudupalayam Revenue Village and R.S.Nos.257/6B & 258/2A/1D of Thattanchavady Revenue were disbursed to the land owners and an amount of Rs.15,63,887/- was deposited in Civil Court in respect of lands at RS.Nos. 258/2A/2A & 257/4B & on 03.08.2001 & 25.11.2004 vide Challan Nos.25/DC(LA)/2000-2001 & 7/DC(R)N/LA/2004 respectively. The balance amount of Rs.13,41,653/- in respect of lands at R.5.Nos.258/7B & 258/2A/1C in Thattanchvady Revenue Village and at RS.No.13/1A/2 of Reddiarpalayam Revenue Village which was left to be disbursed are deposited into Civil Court vide Challan Nos.12/DC(R)N/LA/2015-16 dated 24.11.2015, 13/DC(R)N/LA/2015-16 dated 24.11.2015 & 14/ DC(R)N/LA/2015-16 dated 27.11.2015 Hence, according to the appellants, writ petitioner's averment that the compensation was not made is not true and not sustainable by facts.

**27.** Further, according to the appellants, since disbursement of major portion of the amount has been made before the commencement of the new Act, the said case does not come under the purview of the clause mentioned in section 24(2) of the new Act.

**28.** It is further submitted by the appellants that when the writ petitioner was called for producing the original documents, he turned down the request of the Land Acquisition Officer and did not come forward to receive the compensation amount with relevant documents proving his ownership rights. Therefore, according to the appellants, the writ petitioner is free to avail the compensation amount passed as per award 12/2000, which has been deposited in the Civil Court and huge amount of public money could not be unnecessarily spent as compensation amount under the new Act due to the non-cooperating attitude of the writ petitioner.

**29.** Writ Court, after hearing the arguments of both sides in support of their averments, held as follows :

*"7. The factual details with regard to the acquisition proceedings as well as the date on which the writ petition was dismissed, the date on which possession has been taken and the date on which the award has been passed are not in*

dispute. The respondents would admit that on and after August 2000, i.e., after the writ petition was dismissed, there was no interim order restraining the respondents from proceeding with the acquisition proceedings. Further it is not in dispute that the award was passed on 26.12.2000 and the award amount has been deposited only on 24.11.2015. This Court has rendered such finding in the light of the candid admission made by the 2nd respondent in the counter affidavit at Paragraph No.12. Thus, there can be no further resistance made by the respondents to the case of the petitioner, as admittedly, the case is covered in terms of Section 24(2) of the Act 30 of 2013.

8. Somewhat identical circumstances arose before the Hon'ble Supreme Court in **Soorajmull Nagarmull Vs. State of Bihar and Others**, reported in **(2015) 10 SCC 270** and the Hon'ble Supreme Court pointed out that the State cannot take advantage of its own wrong. However, since the lands were already acquired and utilised, the Hon'ble Supreme Court did not direct restoration of possession to the landowner, but, directed that fresh acquisition proceedings shall be initiated so that the landowner can be entitled to compensation in accordance with Act 30 of 2013.

9. In the instant writ petition, the petitioner has clearly stated that he does not seek for restoration of possession of land as the land has been fully utilised for a public purpose. In fact, there is such a specific averments in 'Ground No.J' of the affidavit filed in support of the writ petition. Thus in the absence of any dispute, with regard to the factual

*position, the law laid down by the Hon'ble Supreme Court in the decision cited supra, can be squarely made applicable to the instant case.*

*10. At this stage, it would be beneficial to refer to the operative portion of the decision of the Hon'ble Supreme Court, which is as follows:*

*"10. In this situation the current acquisition law needs to be analysed. We have already concluded that the 1981 acquisition had lapsed because of the failure of the Respondent State to pass an Award and secondly because it had launched upon a fresh acquisition in 1996. Section 24 of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereafter 2013 Act) deserves to be placed here*

*24. Land acquisition process under Act No.1 of 1894 shall be deemed to have lapsed in certain cases. (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), -*

*(a) Where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or*

*(b) Where an award under said section 11 has been made, then such proceedings shall*

*continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.*

*(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 Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.*

*11. At first perusal, there seems to be an unexplained inconsistency between Section 24(1)(a), which allows an acquisition to stand despite a failure to pass an award while only*

requiring the compensation to be determined under the 2013 Act, and Section 24(2), which deems the acquisition to have lapsed for a failure to pay compensation or take physical possession of the land where an award has been passed over five years prior to the commencement of the 2013 Act. It appears that the State is in a better position in situations where it has been remiss in taking any action, towards publication of an award than in situations where it has taken partial steps towards the completion of the acquisition proceedings. However, it is possible that the reason behind this differentiation is that Section 24(2) gives the State the option to initiate fresh proceedings, as opposed to placing an obligation upon it to do so. To give the State the discretion to set aside an acquisition for its own error in not passing an award would be in the face of the decision in **Satendra Prasad Jain Vs. State of U.P., [(1993) 4 SCC 369]**. The Parliament has therefore sought to give the erstwhile landowner the benefit of enhanced compensation under the 2013 Act, while restraining the State from taking advantage of its own wrong. Section 24(2), on the other hand, seeks to allow the land to be returned to the landowner party in situations where there is genuinely no need for it, thus benefiting both the dispossessed landowner and the State. There still

*remains an incongruity, but which presently we are not burdened to unravel. Which provision in the 2013 Act governs a situation where the State has not progressed beyond making a Declaration under Section 6; where possession of the land has not assumed by the State; where neither part nor whole of the compensation has been paid or tendered! However, since in this Appeal we do not have to traverse this legal labyrinth, we shall refrain from indulging in a more detailed discussion of it.*

*12. In conclusion we declare that acquisition proceedings with regard to the subject lands have lapsed. The Respondent State is directed to initiate fresh acquisition proceedings or take any other action available to it in accordance with law within six weeks from today. The Appeals are allowed in these terms.*

*11. Thus, by applying the law laid down by the Hon'ble Supreme Court to the facts and circumstances of the present case, it is to be held that the acquisition proceedings have lapsed. However, this Court is not inclined to issue any direction to restore possession of the lands to the petitioner nor the petitioner has made such a request and he would concede that the land has been fully utilised for a public purpose. Thus, to enable the petitioner to get fair compensation under the provisions of Act 30 of 2013, the respondents have to issue a fresh declaration.*

*12. In the result, the writ petition is allowed and the impugned acquisition proceedings in so far as the petitioner's property is concerned is held to have lapsed. However, the respondents need not restore possession to the petitioner, but, they are directed to initiate fresh acquisition proceedings so as to enable the petitioner to receive fair compensation under the provisions of Act 30 of 2013. The above direction shall be complied with by the respondents within a period of three months from the date of receipt of a copy of this order. No costs.*

**30.** Being aggrieved by the above order, instant writ appeal has been filed by the Secretary to the Government, Revenue Department, Government of Puducherry, on the grounds that the Writ Court failed to note that 4(1) notification was of the year 1995 and the writ petitioner having failed before all the Courts has started fresh round of litigation without any legal ground; that the Hon'ble Division Bench of this Court has clearly found that the writ petitioner is not the land owner in W.P.No.1597 of 2002 and in that event the impugned order passed by the Writ Court is liable to be set aside; that the Writ Court omitted to note that award amount that has already been disbursed to the original owners and that finding of the Writ Court that the land acquisition proceedings have lapsed on account of non payment of compensation is erroneous and as such liable to be set aside; that the finding of the Writ Court that Section 24(2) of Act 30 of 2013 will

apply to a stranger, is erroneous, illegal and liable to be set aside; that it is well settled that the writ petitioner shall establish his title by authentic documents and not by picking up loop holes in the pleadings of the appellants.

**31.** Heard the learned counsel for the parties and perused the materials available on record.

**32.** Perusal of the material records would show that the ancestral land, belonging to the writ petitioner/respondent herein, comprised in Survey Nos.258/2A/1C and 258/2A/1D measuring an extent of 0.03.25 and 0.00.40 hectares respectively in Thattanchavady Village, Puducherry were acquired by the appellants under the provisions of Act 1 of 1894 under Notification dated 28.07.1995, in G.O.Ms.No.65, invoking Section 4(1) of the said Act 1 of 1894. While issuing the said Section 4(1) Notification dated 28.07.1995, the appellants have dispensed with the enquiry, under Section 5-A of the 1894 Act under Government Gazette No.34, dated 22.08.1995, invoking urgency provision under Section 17 of Act 1 of 1894. In view of dispensation of enquiry under Section 5-A, the appellants issued declaration under Section 6 of Act 1 of 1894 in G.O.Ms.No.74, dated 27.09.1995 and published the same in the Government Gazette No.42, dated 17.10.1995.

**33.** Aggrieved by invoking the urgency provision namely, Section 17 of Act 1 of 1894, writ petitioner/respondent herein filed writ petition No.13974 of 1995, challenging the same and further contended that no individual notice was issued under Section 4(1) of Act 1 of 1894 and that the names were not shown in the Notification. As similar petitions were filed, Writ Court, vide common order dated 18.08.2000, dismissed the batch of writ petitions including that of the writ petitioner / respondent herein. Aggrieved over the same, writ petitioner / respondent herein filed W.A.No.1597 of 2002 and a Hon'ble Division Bench of this Court vide judgement dated 16.03.2004 dismissed the writ appeal stating that when the writ petitioners failed to bring it to the notice of the concerned Acquisition Officer about their ownership of the lands in question, it is too much on the part of the writ petitioners to expect that the respondents should hold a roving enquiry and find out whether the writ petitioners are really interested in the lands in question. The Hon'ble Division Bench has further went on to hold that *"viewed in that respect also, we find the order of the learned Judge made in paragraph 37 as perfectly justified and we do not find any scope to interfere with the order of the learned Judge"*. Aggrieved over the same, writ petitioner / respondent herein filed Special Leave Petition No.789 of 2015, before the Hon'ble Supreme Court. The Hon'ble Supreme Court, vide order dated 20.04.2015, while dismissing the special leave petition also directed

the appellants herein to refer the issue of enhancement of compensation to the appropriate authority at the earliest.

**34.** In the meantime, on 26.12.2000, Award under Section 11 of the 1894 Act came to be passed. After the disposal of the writ petitions, vide common order dated 18.08.2000, the appellants took possession of the lands on 21.08.2000.

**35.** As things stood thus, a new Act viz. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013) came into force w.e.f 01.01.2014 and the Land Acquisition Act, 1894 (Act 1 of 1894) stood repealed.

**36.** After the passing of Act 30 of 2013, the writ petitioner / respondent herein filed writ petition No.29125 of 2015 to declare Section 4(1) Notification, dated 28.07.1995 and Section 6 Declaration, dated 27.09.1995, as null and void and consequently direct the first respondent therein, to commence the land acquisition proceedings and pay compensation in respect of the lands bearing Survey Nos.258/2A/1C and 258/2A/1D, to an extent of 0.03.25 and 0.00.40 hectares in Thattanchavady Village, Puducherry, under Act 30 of 2013. In the writ petition, the writ

petitioner / respondent herein mainly contended that the award amount has not been paid to him, till the filing of the writ petition, after passing of the award and therefore the acquisition proceedings has lapsed in terms of Section 24(2) of the Act 30 of 2013.

**37.** The appellants filed counter affidavit, inter alia, stating that the compensation amount to a tune of Rs.91,752/- in respect of the land at R.S.No.258/2A/1D measuring an extent of 0.00.30 hectares was paid to one Tmt.Thangadurachi Ammal w/o Annamalai Nadar, who was the rightful owner of the property, on production of the documents supporting her entitlement over the said property.

**38.** After filing of the said counter affidavit, the writ petitioner / respondent herein, filed a miscellaneous petition seeking to amend the prayer made in the writ petition restricting his claim over the land bearing Survey No.258/2A/1C measuring an extent of 0.03.25 hectares only in Thattanchavady Village and the same was allowed by the Writ Court.

**39.** Writ Court vide impugned order dated 16.02.2016, allowed the writ petition and held that the impugned acquisition proceedings has lapsed as against the writ petitioner's property is concerned and directed the

appellants not to restore possession to the writ petitioner, but to initiate fresh acquisition proceedings so as to enable the writ petitioner to receive fair compensation under the provisions of Act 30 of 2013.

**40.** Aggrieved over the said order dated 16.02.2016, the appellants have filed the instant writ appeal mainly challenging the applicability of Section 24(2) of Act 30 of 2013 to the instant case.

**41.** As applicability of Section 24(2) to the instant case has been challenged, for the purpose of disposal of the instant writ appeal, Section 24 of the Act 30 of 2013, is extracted hereunder:

"24. Land acquisition process under Act 1 of 1894 shall be deemed to have lapsed in certain cases.—

*(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894)—*

*(a) where no award under Section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or*

*(b) where an award under said Section 11 has been made, then such proceedings shall continue*

*under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.*

*(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 landholdings 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."*

**42.** A plain reading of the above provisions of Section 24 of Act 30 of 2013, would make it clear that, in case, the award has not been passed then as per Section 24(1)(a), compensation has to be determined under the 2013 Act. It is also clear that Section 24(1)(b) provides that where an award

under Section 11 of Act 1 of 1894 has been made, then, such proceedings, shall continue under the provisions of the said 1894 Act as if it has not been repealed. However, in case physical possession of the land has not been taken, or compensation has not been paid, the proceedings shall be deemed to have lapsed; and, in case of compensation with respect to a majority of landholdings has not been deposited in the account of the beneficiaries, then, all beneficiaries i.e. landowners shall be entitled to compensation in accordance with the provisions of the 2013 Act.

**43.** Closer reading of Section 24(2), it can be seen that the said section begins with a non-obstante clause "*as notwithstanding anything contained in sub-section (1)*", the provisions of sub-section (2) of Section 24 shall, under the exigencies provided therein, have the overriding effect i.e. in case of award, under 1894 Act, has been made five years or more prior to the commencement of the 2013 Act, but either the physical possession has not been taken, or compensation has not been paid, the said proceedings shall be deemed to have lapsed. Therefore, in a nutshell, it can be stated that Section 24(2) of Act 30 of 2013 will get attracted and the acquisition proceedings shall be deemed to have lapsed under the following situations viz.,

- (i) That the award must have been made 5 years or more prior to the commencement of the Act; and

(ii) That either compensation has not been paid or physical possession of the land has not been taken by the authorities.

**44.** Keeping the above provisions in mind, let us now analyze as to whether Section 24(2) of Act 30 of 2013 is attracted to the facts and circumstances of the instant case. The crucial dates which are required for the said purpose are as follows:

|                                   |   |            |
|-----------------------------------|---|------------|
| (i) Section 4(1) Notification     | : | 28.07.1995 |
| (ii) Section 6 Declaration        | : | 27.09.1995 |
| (iii) Possession was taken on     | : | 21.08.2000 |
| (iv) Date of passing of the Award | : | 26.12.2000 |
| (v) Award amount was deposited on | : | 24.11.2015 |

**45.** From the above, it is clear that the Award has been passed on 26.12.2000, i.e. nearly 13 years prior to the date of passing of Act 30 of 2013. The Award amount was deposited on 24.11.2015, i.e. only after filing of the writ petition in the year 2015, which is nearly 15 years prior to the date of passing of Act 30 of 2013. Therefore, applying the provisions of Section 24(2), it can be concluded that the land acquisition proceedings, as against the writ petitioner / respondent, stand lapsed.

**46.** Our conclusion, is fortified by a recent judgement of the Hon'ble Supreme Court in **Government (NCT of Delhi) Vs. Anup Singh** reported in **(2018) 11 SCC 552**, wherein the Hon'ble Supreme Court has held as under:

*"Leave granted. These are the cases of the original owners where neither possession has been taken nor compensation has been paid to the respondents.*

*2. It is also brought to the notice of the Court that there was no stay operating, which prevented the appellant(s) from taking possession or paying compensation to the respondents.*

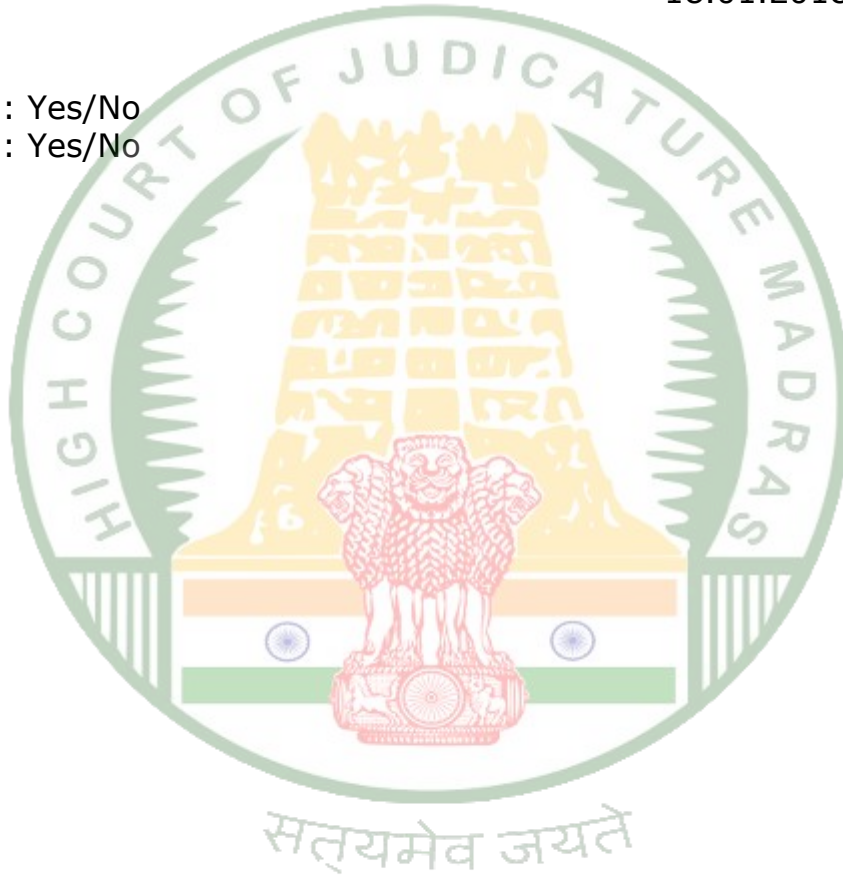
*3. Neither having been done within five years, as contemplated under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, we find no merit in these appeals, which are, accordingly, dismissed. No costs."*

**47.** In view of our foregoing discussion, we do not find any illegality or infirmity in the order passed by the Writ Court, warranting interference. Accordingly, the impugned order dated 16.02.2016, of the Writ Court made in W.P.No.29125 of 2015, is sustained.

In the result, writ appeal is dismissed. However, there shall be no order as to cost. Consequently, the connected civil miscellaneous petition is closed.

(S.M.K., J.) (N.A.N., J.)  
18.01.2018

Index : Yes/No  
Internet : Yes/No  
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S.MANIKUMAR, J.  
AND  
N.AUTHINATHAN, J.

asr



W.A. No.1102 of 2016  
and  
C.M.P. No.14271 of 2016

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Date: 18.01.2018