

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.17919 of 2020

and

WMP Nos.22204, 22206 and 22207 of 2020

1. D.Sathiyamoorthy

2. T.Murugavel

3. K.Dhanabal

4. D.Palanichamy

5 M/s.Sakthi Finance Ltd.,
Rep by its Senior Manager (Law)
S.Ragavan,
No. 62 Dr. Nanjappa Road
Coimbatore- 641 018 .

...Petitioners

. Vs.

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

2. The Spl Tashildar (L and A)
Housing Scheme No III,
Coimbatore.

3. The Tamil Nadu Housing Board
Rep by its Chairman Nandanam,
Chennai- 35.

4 The Superintending Engineer
Salem Division,
Tamil Nadu Housing Board
Cowli Brown Road, R. S. Puram,
Coimbatore- 640 002.

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of declaration, Declaring the land acquisition proceedings culminating in the award No.2/1994 dated 23.5.1994 of the 2nd Respondent herein as lapsed under Section 24(2) of the Right to fair compensation Rehabilitation and Resettlement Act 2013 in respect of Property of an extent of 1.42 acres of land in Survey No.411/1 of Vilangurichi Village, Coimbatore North Taluk, Coimbatore District.

For Petitioners : Mr.AL.Ganthimathi

For Respondents : D.Raja
Additional Government Pleader
for R 1
Mrs.R.Gowri
Standing Counsel
for R 2, 3 and 4

ORDER

This writ petition has been filed for a Writ of Declaration that the Land Acquisition proceedings has lapsed under Section 24(2) under Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, with respect to the subject property belonging to the petitioners.

2.The 1st petitioner was the owner of 73 cents of land and the 2nd petitioner was the owner of an extent of 69 cents of land in survey number 411 of Villanguruchi Village, Coimbatore District. The 1st respondent initiated the acquisition proceedings under the The Land Acquisition Act, 1894, acquiring a large extent of land including the subject property and Section 4(1) notification was issued on 05.03.1991. Section 6 declaration was passed on 28.03.1992 and award was also passed on 23.05.1994. The 1st and 2nd petitioners in fact challenged the acquisition proceedings in W.P.No.19925 of 1994, before this Court and the same was also allowed by an order dt. 22.09.2000. Subsequently this order was reversed by the Division Bench in W.A.No.1241 of 2005, by order dt. 23.11.2008.

3. The 1st petitioner sold his property in favor of the 4th petitioner by a registered Sale Deed dt. 11.03.2001. The 2nd petitioner sold his property in favour of the 3rd petitioner by a registered Sale Deed dt.11.03.2011. Ultimately, the 3rd and 4th petitioners conveyed the property in favour of the 5th petitioner in the year 2015. Admittedly all these sales had taken place after the issuance of Section 4(1) notification.

4. The erstwhile owners and the last owner have joined together and filed this writ petition to declare that the land acquisition proceedings has lapsed under Section 24(2) of the Act.

5. Heard Mrs.AL Gandhimathi, learned counsel for petitioners and Mr. D.Raja, Additional Government Pleader for 1st respondent and Mrs.R.Gowri, learned Standing Counsel appearing on behalf of respondents 2, 3 and 4.

6. The issue involved in the present writ petition is as to whether this writ petition can be maintained by a subsequent

owner even though he has filed the writ petition along with the erstwhile owners. This issue is no longer res integra and it is squarely covered by the judgment of this Court in *M. Palanisamy and Others Versus State of Tamil Nadu, Rep. by its Secretary to Government, Housing and Urban Development Department, Secretariat, Fort St George, Chennai and Others* reported in (2020) 7 MLJ 734. The relevant portions in the judgment are extracted hereunder:

14. There are two sets of writ petitions that have been filed seeking for declaration to declare that the acquisition proceedings relating to the subject properties stands lapsed, by virtue of the operation of the provisions contained in Section 24[2] of the Act. WP. No. 10912 of 2020 has been filed by the legal heirs of the original owner of the property. WP. Nos. 10920 of 2020 and 11535 of 2020 have been filed by the legal heirs of the original owners along with the subsequent purchasers. Insofar as the latter two writ petitions are concerned, a preliminary objection has been raised by the learned Advocate General regarding its maintainability by placing heavy reliance upon the judgment of the Hon'ble Supreme Court of India in *Shivkumar and Another v. Union of India and Others* (2019) 10 SCC 229. By citing this judgment, it was contended that the transaction of sale that was effected after the Section 4 Notification, is void and non est in the eye of law and the subsequent purchaser is not clothed with the title over the property and therefore, they cannot claim the benefit of Section 24[2] of the Act. In view of this preliminary objection taken by the respondents, this Court now proceeds to take up these two writ petitions first for consideration.

15. The relevant portions in the Judgment of the Hon'ble Apex Court in *Shivkumar and Another v. Union of India and Others* (supra) is extracted hereunder:

"8. It has been laid down that the purchasers on any ground whatsoever cannot question proceedings for taking possession. A purchaser after Section 4 notification does not acquire any right in the land as the sale is ab initio void and has no right to claim land under the policy.

9. When we ponder as to beneficial provisions of the 2013 Act, they also intend to benefit landowners mentioned in the notification under Section 4, not for the benefit of such purchasers who purchase the land after it has been vested in the State.

.....

15. A rehabilitation and resettlement scheme has to be prepared under Section 16. Section 17 deals with the review of such a scheme. An approved scheme to be made public under Section 18. Section 19 deals with the publication of declaration and summary of rehabilitation and resettlement scheme. After inquiry, award is passed by the Collector under Section 23. The Collector is required to consider, among other things, the interest of the person claiming the compensation, rehabilitation, and resettlement while making an award.

16. Section 24 of the 2013 Act, which deals with land acquisition made under the 1894 Act, is also relevant. The same is extracted hereunder:

"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 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."

17. Section 24(2) provides that in case the award has been passed five years or more prior to the commencement of the 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. It is not the case set up that compensation had not been paid to purchasers/owners. The only case set up is that physical possession has not been taken and proceedings of taking over possession have been questioned to take advantage of provisions under Section 24(2) of the 2013 Act. Whereas, averment in the writ petition itself indicates that possession had been taken over in the year 2000 and that unauthorized colonies have come up in the area. Thus, it is clear that possession, if any, is illegal, and in fact, the actual physical possession had been taken, and re-entering in possession in an unauthorised manner can confer no right. There is nothing to doubt that actual physical possession had been taken in the year 2000. Thus, Section 24 (2) is not attracted in the case.

18. Even otherwise, proviso to Section 24 (2) does not recognise a purchaser after Section 4 notification inasmuch as it provides that where an award has been made, and the 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 issued under the 1894 Act,

shall be entitled to compensation under the provisions of the 2013 Act. The proviso makes it clear that in case of compensation concerning the majority of landholdings has not been deposited, then recorded owner(s) at the time of issuance of notification under Section 4 of the 1894 Act shall have the right to receive the compensation. Purchasers after Section 4 notification have not been given the right to receive the higher compensation under the provisions contained in the 2013 Act.

19. The 2013 Act presupposes that a person is required to be rehabilitated and resettled. Such a person who has purchased after Section 4 notification as sale deed is void under the 1894 Act, cannot claim rehabilitation and resettlement as per policy envisaged under the 2013 Act, as his land has not been acquired, but he has purchased a property which has already been acquired by the State Government, he cannot claim even higher compensation, as per proviso to Section 24(2) under the 2013 Act. An original landowner cannot be deprived of higher value under the 2013 Act, which higher compensation was not so contemplated when the void transaction of sale had been entered, and right is conferred under the proviso to Section 24(2) on recorded owners under the 1894 Act. We have come across instances in which after notifications under Section 4 were issued and, the property was purchased at throwaway prices by the builders and unscrupulous persons, such purchases are void and confer no right even to claim higher compensation under Section 24(2) of the 2013 Act as it is to be given to the owner as mentioned in the notification.

20. Given that, the transaction of sale, effected after Section 4 notification, is void, is ineffective to transfer the land, such incumbents cannot invoke the provisions of Section 24. As the sale transaction did not clothe them with the title when the purchase was made; they cannot claim "possession" and challenge the acquisition as having lapsed under Section 24 by questioning the legality or regularity of proceedings of taking over of possession under the 1894 Act. It would be unfair and profoundly unjust and against the

policy of the law to permit such a person to claim resettlement or claim the land back as envisaged under the 2013 Act. When he has not been deprived of his livelihood but is a purchaser under a void transaction, the outcome of exploitative tactics played upon poor farmers who were unable to defend themselves.

21. Thus, under the provisions of Section 24 of the 2013 Act, challenge to acquisition proceeding of the taking over of possession under the 1894 Act cannot be made, based on a void transaction nor declaration can be sought under Section 24(2) by such incumbents to obtain the land. The declaration that acquisition has lapsed under the 2013 Act is to get the property back whereas, the transaction once void, is always a void transaction, as no title can be acquired in the land as such no such declaration can be sought. It would not be legal, just and equitable to give the land back to purchaser as land was not capable of being sold which was in process of acquisition under the 1894 Act. The 2013 Act does not confer any right on purchaser whose sale is ab initio void. Such void transactions are not validated under the 2013 Act. No rights are conferred by the provisions contained in the 2013 Act on such a purchaser as against the State.

22. "Void is, ab initio," a nullity, is inoperative, and a person cannot claim the land or declaration once no title has been conferred upon him to claim that the land should be given back to him. A person cannot enforce and ripe fruits based on a void transaction to start claiming title and possession of the land by seeking a declaration under Section 24 of the 2013 Act; it will amount to conferment of benefit never contemplated by the law. The question is, who can claim declaration/rights under Section 24 (2) for the restoration of land or lapse of acquisition. It cannot be by a person with no title in the land. The provision of the 2013 Act cannot be said to be enabling or authorising a purchaser after Section 4 to question proceeding taken under the Act of 1894 of taking possession as held in U.P. Jal

Nigam [U.P. Jal Nigam v. Kalra Properties (P) Ltd., (1996) 3 SCC 124] which is followed in M. Venkatesh [M. Venkatesh v. BDA, (2015) 17 SCC 1 : (2017) 5 SCC (Civ) 387] and other decisions and consequently claim declaration under Section 24 of the 2013 Act. What cannot be done directly cannot be permitted in an indirect method.

23. The provisions of the 2013 Act aimed at the acquisition of land with least disturbance to the landowners and other affected families and to provide just and fair compensation to affected families whose land has been acquired or proposed to be acquired or are affected and to make adequate provisions for such affected persons for their rehabilitation and resettlement. The provisions of the 2013 Act aim at ousting all inter-meddlers from the fray by ensuring payment in the bank account of landholders under Section 77 of the Act."

16. A careful reading of the above judgment would show that Section 24[2] of the Act does not recognise a subsequent purchaser of the property after the issuance of Section 4 Notification. Such a Sale Deed is void and non est in the eye of law since the property has been purchased after it was acquired by the State Government. This provision was only intended for the original land owner for whom a benefit was given under Section 24[2] of the Act where the acquisition proceedings itself will be rendered has lapsed provided the requirements of Section 24[2] of the Act is satisfied or in the alternative, they are provided with an opportunity to get a higher compensation, if they fulfill the requirements under the proviso to Section 24[2] of the Act. The Hon'ble Supreme Court of India has held that it would be unfair and profoundly unjust and against the policy of law to permit a subsequent purchaser to claim the benefits of Section 24[2] of the Act or the proviso thereunder. The reason given by the Apex Court for coming to such a conclusion is that such a subsequent purchaser will not fall within the term "interested person" and he cannot be considered to be a person who can claim for resettlement or claim the land back as

envisaged under the 2013 Act. In short, void transactions that take place after the issuance of the Section 4 Notification, will not be validated under the 2013 Act and such a subsequent purchaser cannot claim any rights as against the State.

17. In the present case, it is seen that the 7th petitioner in WP. No. 10920 of 2020 has purchased the property by a registered Sale Deed dated 11.05.2009 and the 3rd petitioner in WP. No. 11535 of 2020 has purchased the property by a registered Sale Deed dated 12.10.2009. This sale has taken place much after the Award was passed and the alleged possession was taken in the year 2006. The learned Senior counsel appearing on behalf of the petitioners in both these writ petitions submitted that the writ petitions have not been filed only by the subsequent purchasers and it has been filed by the land owners along with the subsequent purchasers. Therefore, it was contended that even if the sale is rendered to be void and non est in the eye of law, it will restore back to the original position and the original owners can always maintain a writ petition and claim the benefit of Section 24[2] of the Act or in the alternative, the proviso thereunder.

18. The main object of the 2013 Act was to ensure a comprehensive package for the land owners, comprehensive rehabilitation and resettlement package for the land owners, to ensure their livelihood and to ensure that all projects leading to the displacement of the land owners must undergo a social impact assessment to satisfy that the particular land is needed for a public purpose and at the same time, the rights of the vulnerable sections, viz., the displaced persons, is protected. The very object of Section 24[2] of the Act is to ensure that a land which has not been put to use even after acquisition by not taking possession of the same and where even compensation has not been paid, must be restored back to the original owner and if in case it is required in future, proceedings can be initiated under the new Act. That is the reason why the Hon'ble Supreme Court of India categorically held in the above judgment that

a subsequent purchaser can never claim the benefit of Section 24[2] of the Act or the proviso thereunder.

19. Even though the contention raised by the learned Senior counsel seems to be impressive in the first blush, on a closer scrutiny, this Court finds that the same is not sustainable. As on today, the persons who are actually driving the process to claim the relief under Section 24[2] of the Act, are the subsequent purchasers only. They are using the names of the original owners in order to achieve their object. In other words, what cannot be directly achieved in view of the categorical pronouncement of the Hon'ble Apex Court in Shivkumar and Another v. Union of India and Others [referred supra], is sought to be achieved indirectly by using the names of the original owners. The original owners today, are merely the shadows of the subsequent purchasers and this is very evident from the fact that the subsequent purchasers have also safely made themselves as the petitioners in both the writ petitions.

20. This Court is reminded of the judgment of the Hon'ble Supreme Court, in State of Tamil Nadu v. V.K. Shyam Sunder LNIND 2011 SC 738 : (2011) 8 SCC 737 and the relevant portion is extracted hereunder:-

"43. "21. It is a settled proposition of law that what cannot be done directly, is not permissible to be done obliquely, meaning thereby, whatever is prohibited by law to be done, cannot legally be effected by an indirect and circuitous contrivance on the principle of *quando aliquid prohibetur, prohibetur et omne per quod devenitur ad illud*."

21. If this practice is allowed, the judgment rendered by the Apex Court in Shivkumar and Another v. Union of India and Others (supra) will be rendered otiose and in every case, a subsequent purchaser will start claiming the benefit of Section 24[2] of the Act or the proviso thereunder through the original owners of the property. This practice must be nipped in the bud, failing which, the judgment of the Apex Court will become totally

ineffective and a speculative builder or a Developer who was aware about the acquisition proceedings and in spite of the same, proceeds to purchase the property, can always turn around and use the original owners as a bogey in order to achieve his objective of making a claim under Section 24[2] of the Act. Therefore, such speculative builders or Developers should clearly understand that they cannot try to achieve the benefit by adding the original owners as a party in the writ petition since they are none other than the alter egos of the original owners. Permitting the subsequent purchasers to use this ploy in every case, will go totally against the very object of the 2013 Act. Therefore, just because the subsequent purchaser choose to add the original owners also as petitioners in the writ petitions, that will not, in any way pave way to maintain such a writ petition in the teeth of the judgment of the Hon'ble Apex Court in Shivkumar and Another v. Union of India and Others (supra).

22. In view of the above discussion, this Court sustains the preliminary objection raised by the learned Advocate General with regard to the maintainability of the writ petitions in WP. Nos. 10920 and 11535 of 2020 and holds that both the writ petitions are not maintainable and the petitioners are not entitled to claim the benefit of Section 24[2] of the Act or the proviso thereunder and both the writ petitions, viz., WP. Nos. 10920 and 11535 of 2020, stand dismissed.

7. In view of the above, the present writ petition filed by the petitioners is not maintainable and the petitioners are not entitled to claim the benefit of Section 24(2) of the Act, and accordingly, this writ petition stands dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

KP

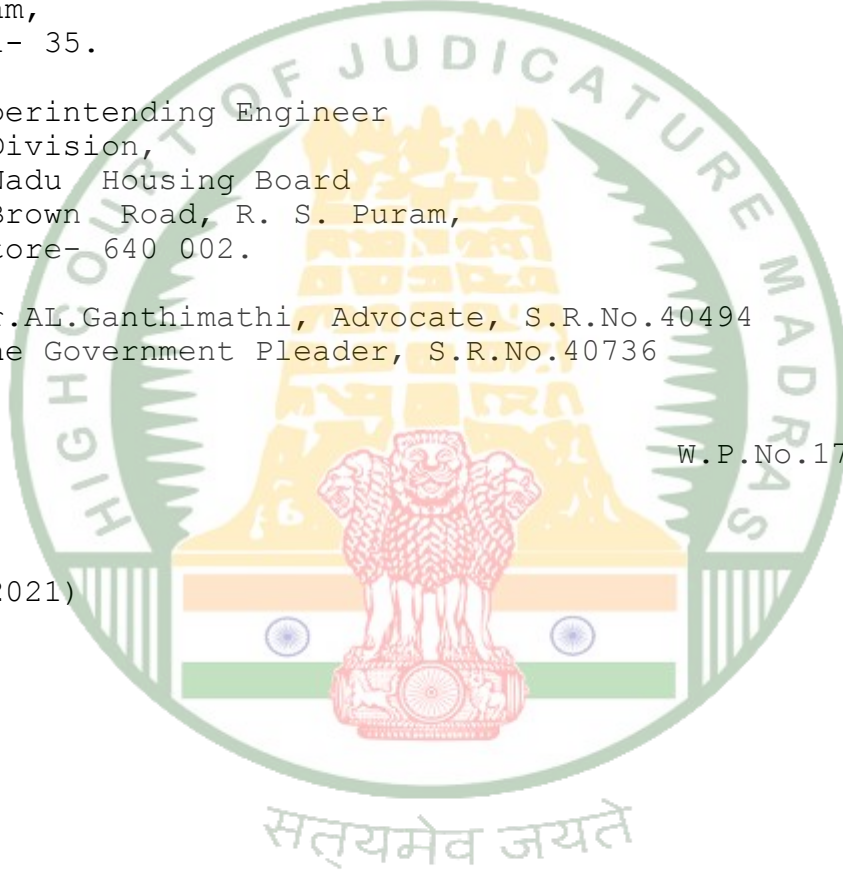
To

1. The Secretary to Government,
The Government of Tamil Nadu
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+1cc to Mr.AL.Ganthimathi, Advocate, S.R.No.40494
+1cc to the Government Pleader, S.R.No.40736

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