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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.03.2020

C O R A M

THE HONOURABLE MR.JUSTICE P.D.AUDIKESSAVALU

W.P. (MD) No.6988 of 2014

and

M.P.(MD)No.1 of 2014

P.Danam

... Petitioner

Vs.

1.The District Revenue Officer,
Madurai District, Madurai.

2.The Land Acquisition Officer and
the Special Tahsildar (Land Acquisition),
South Neighbourhood Scheme,
Unit-I, Madurai-20.

3.The Executive Engineer and Administrative Officer,
Madurai Special Division,
Tamil Nadu Housing Board,
Eilllis Nagar, Madurai.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the constitution of India, to issue a writ of Declaration, to declare that the acquisition proceedings initiated by the Second Respondent vide Award No.3/91, Roc.No.A.250/86, L.A.C.No.8/86 dated 31.10.1991 in respect of Petitioner's property situated in Survey Nos.54/10-A and 54/10-B at Thoppur Village, Madurai South Taluk, Madurai District shall be deemed to have lapsed as per Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 and consequently direct the Respondents not to disturb the Petitioner's peaceful possession and enjoyment of the said property.

For Petitioner : Mr.R.Anand

For Respondents 1 & 2 : Mr.M.Rajarajan
Government Advocate

For Respondent 3 : Mr.R.Janarthanan

ORDER



Nos.54/10-A and 54/10-B at Thoppur Village, Madurai South Taluk, Madurai District, which had been acquired for the purpose of Satellite City under the South Neighbourhood Scheme by notification in G.O.Ms.No.1028, Housing and Urban Development Department, dated 24.10.1989 issued under Section 6 of the Land Acquisition Act, 1894.

2. This Writ Petition has been filed claiming benefit of deemed lapse of the aforesaid land acquisition proceedings relying on Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (hereinafter referred to as 'the Act of 2013' for short), which has come into effect from 01.01.2014, and reads as follows:-

"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,

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



3. While interpreting Section 24(2) of the Act of 2013, the Constitution Bench of the Hon'ble Supreme Court in *Indore Development Authority Vs. Manoharlal and others* (Order dated 06.03.2020 in S.L.P. (C) No.9036-9038 of 2016) considered the following questions:-

- (1) What is the meaning of the expression paid'/tender' in Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act of 2013') and Section 31 of the Land Acquisition Act, LA (Act of 1894')? Whether non-deposit of compensation in court under section 31 (2) of the Act of 1894 results into lapse of acquisition under section 24(2) of the Act of 2013. What are the consequences of non- deposit in Court especially when compensation has been tendered and refused under section 31(1) of the Act of 1894 and section 24(2) of the Act of 2013? Whether such persons after refusal can take advantage of their wrong/conduct?
- (2) Whether the word or' should be read as conjunctive or disjunctive in Section 24(2) of the Act of 2013?
- (3) What is the true effect of the proviso, does it form part of sub-Section (2) or main Section 24 of the Act of 2013?
- (4) What is mode of taking possession under the Land Acquisition Act and true meaning of expression the physical possession of the land has not been taken occurring in Section 24(2) of the Act of 2013?
- (5) Whether the period covered by an interim order of a Court concerning land acquisition proceedings ought to be excluded for the purpose of applicability of Section 24(2) of the Act of 2013 ?
- (6) Whether Section 24 of the Act of 2013 revives barred and stale claims? In addition, question of per incuriam and other incidental questions also to be gone into."

The aforesaid questions have been answered as follows:-

- (1) Under the provisions of Section 24(1)(a) in case the award is not made as on 01.01.2014 the date of commencement of Act of 2013, there is no lapse of proceedings. Compensation has to be determined under the provisions of Act of 2013.
- (2) In case the award has been passed within the window period of five years excluding the period covered by an interim order of the court, then proceedings shall continue as provided under Section 24(1)(b) of the Act of 2013 under the Act of 1894 as if it has not been repealed.



- (3) The word 'or' used in Section 24(2) between possession and compensation has to be read as 'nor' or as 'and'. The deemed lapse of land acquisition proceedings under Section 24(2) of the Act of 2013 takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of land has not been taken nor compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.
- (4) The expression 'paid' in the main part of Section 24(2) of the Act of 2013 does not include a deposit of compensation in court. The consequence of non-deposit is provided in proviso to Section 24(2) in case it has not been deposited with respect to majority of land holdings then all beneficiaries (landowners) as on the date of notification for land acquisition under Section 4 of the Act of 1894 shall be entitled to compensation in accordance with the provisions of the Act of 2013. In case the obligation under Section 31 of the Land Acquisition Act of 1894 has not been fulfilled, interest under Section 34 of the said Act can be granted. Non-deposit of compensation (in court) does not result in the lapse of land acquisition proceedings. In case of non-deposit with respect to the majority of holdings for five years or more, compensation under the Act of 2013 has to be paid to the "landowners" as on the date of notification for land acquisition under Section 4 of the Act of 1894.
- (5) In case a person has been tendered the compensation as provided under Section 31(1) of the Act of 1894, it is not open to him to claim that acquisition has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in court. The obligation to pay is complete by tendering the amount under Section 31(1). Land owners who had refused to accept compensation or who sought reference for higher compensation, cannot claim that the acquisition proceedings had lapsed under Section 24(2) of the Act of 2013.
- (6) The proviso to Section 24(2) of the Act of 2013 is to be treated as part of Section 24(2) not part of Section 24(1) (b).
- (7) The mode of taking possession under the Act of 1894 and as contemplated under Section 24(2) is by drawing of inquest report/ memorandum. Once award has been passed on taking possession under Section 16 of the Act of 1894, the land vests in State there is no divesting



provided under Section 24(2) of the Act of 2013, as once possession has been taken there is no lapse under Section 24(2).

- (8) The provisions of Section 24(2) providing for a deemed lapse of proceedings are applicable in case authorities have failed due to their inaction to take possession and pay compensation for five years or more before the Act of 2013 came into force, in a proceeding for land acquisition pending with concerned authority as on 01.01.2014. The period of subsistence of interim orders passed by court has to be excluded in the computation of five years.
- (9) Section 24(2) of the Act of 2013 does not give rise to new cause of action to question the legality of concluded proceedings of land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the Act of 2013, i.e., 01.01.2014. It does not revive stale and time-barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition.

4. In the light of the aforesaid legal position viz-a-viz the claim made by the Petitioner, the Respondents have produced copies from the records relating to the land acquired from the Petitioner, and it is seen that after passing award on 31.10.1991, the possession of the property had been taken on 17.06.1992 as evidenced by Transfer Charge Certificate signed by the Revenue Authorities. That apart, it has been shown that the compensation amount for the acquired land had been remitted in the revenue deposit on 19.12.1991 and 07.04.1992 for which challans have been produced. As such, the Petitioner would not be entitled to the benefit of deemed lapse of the land acquisition proceedings in terms of Section 24(2) of the Act of 2013.

5. In the result, this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (A.D.II)

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To

1.The District Revenue Officer,
Madurai District, Madurai.

2.The Land Acquisition Officer and
the Special Tahsildar (Land Acquisition),
South Neighbourhood Scheme,
Unit-I, Madurai-20.

+1cc to Mr.R.Janarthanan, Advocate Sr.No.12800

AKM/21.05.2020 /6P-4C/

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19.03.2020