



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 30.09.2020

CORAM:

THE HONOURABLE MR. JUSTICE **B. PUGALENDHI**

W.P. (MD) No. 8874 of 2017

D. Gomathy Ammal

... Petitioner

Vs.

1. The Secretary,
Housing and Urban Development Department,
Fort St. George,
Chennai.

2. The Managing Director,
Tamil Nadu Housing Board,
Nandanam,
Chennai - 35.

3. The Executive Engineer,
Housing Board,
North Neighborhood Scheme,
Madurai.

4. The District Collector,
Madurai District,
Collectorate,
Madurai.

5. The Special Tahsildar (L.A.),
Ellis Nagar Development Scheme,
Madurai.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Declaration to declare the lands in S.No.14/5 in Madakullam Village, Madurai South Taluk, Madurai District measuring to an extent of 45 cents out of 94 cents excluding the portion used for road and construction by the respondent Housing Board in Ellis Nagar Development Scheme to have been lapsed by applying Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

For Petitioner : Mr. M. Subash Babu
For Respondents : Mr. Sreecharan Rangarajan,
Additional Advocate General
Assisted by
Ms. V. P. M. Vaishnavi,
Government Advocate
for RR.1, 4 & 5
Mr. Mohammed Athiff
Standing Counsel for RR.2 & 3



ORDER

This Writ Petition is filed by the petitioner seeking issuance of a Writ of Declaration to declare the land acquisition proceedings as lapsed, in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'the Act').

2. According to the petitioner, the subject property belongs to her and the same was acquired by the respondents for the purpose of Ellis Nagar Development Scheme, in the year 1982. Though the acquisition has taken place as early as in the year 1982, compensation has not been paid to the petitioner, till date. That apart, out of 94 cents acquired by the respondents, developments, as per the Scheme, were made partially and an extent of 45 cents of land is lying vacant, without being used. Therefore, the petitioner has come before this Court to declare the acquisition proceedings as lapsed, in view of Section 24(2) of the Act.

3. The learned Additional Advocate General appearing for the Government, on the other hand, submitted that the property was acquired as early as in the year 1982; possession has been taken by drawing panchanama; an award has been passed on 21.05.1982; and the compensation amount has also been deposited before the competent Civil Court.

4. The learned Additional Advocate General would further submit that the petitioner herself has admitted the utilization of the land by the authorities, which would only be possible after taking possession of the property. As per the decision of the Hon'ble Supreme Court in **Indore Development Authority v. Manoharlal & others**, reported in **2020 (5) SCALE 34**, either if compensation has been paid or possession has been taken, there cannot be any lapse in the acquisition proceedings and therefore, the learned Additional Advocate General prays for dismissal.

5. Heard the learned Counsel appearing for the respective parties and perused the documents placed on record.

6. Admittedly, the petitioner was the owner of the subject property and the same was acquired by the respondents wayback in the year 1982, for the purpose of Ellis Nagar Development Scheme. It is the contention of the petitioner that though the acquisition took place in the year 1982, so far, compensation has not been paid. But, it is brought to the notice of this Court that an award has been passed as early as on 21.05.1982 and the compensation amount has been deposited before the concerned Civil Court.

7. In **Indore Development Authority's** case (supra), the Hon'ble Supreme Court has held that the acquiring authority cannot be penalized for non-payment of compensation, as the amount has remained unpaid due to refusal to accept by the landowner and the



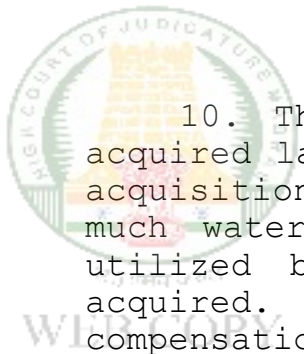
authority is prevented from making the payment. The relevant observations made by the Hon'ble Supreme Court in the said decision is extracted as under:

"224. Thus, in our opinion, the word "paid" used in Section 24(2) does not include within its meaning the word "deposited", which has been used in the proviso to Section 24(2). Section 31 of the Act of 1894, deals with the deposit as envisaged in Section 31(2) on being 'prevented' from making the payment even if the amount has been deposited in the treasury under the Rules framed under Section 55 or under the Standing Orders, that would carry the interest as envisaged under Section 34, but acquisition would not lapse on such deposit being made in the treasury. In case amount has been tendered and the landowner has refused to receive it, it cannot be said that the liability arising from non-payment of the amount is that of lapse of acquisition. Interest would follow in such a case also due to non-deposit of the amount. Equally, when the landowner does not accept the amount, but seeks a reference for higher compensation, there can be no question of such individual stating that he was not paid the amount (he was determined to be entitled to by the collector). In such case, the landowner would be entitled to the compensation determined by the Reference court."

8. That apart, the Hon'ble Supreme Court in **Indore Development Authority's** case (supra), has held that either if compensation has been paid or possession has been taken, then there cannot be any lapse in the acquisition proceedings. For better appreciation, the relevant portion is extracted thus:

"363.3. 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 2013 Act 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."

9. In the case on hand, it is admitted by the petitioner that the property has been utilized by the respondent Housing Board, which would only be possible after taking the possession. Therefore, irrespective of the payment of compensation amount, in view of the utilization of the land, which would only be possible after taking possession, in the light of the decision in **Indore Development Authority's** case (supra), the impugned acquisition proceedings cannot be lapsed.



10. The plea of the petitioner that nearly 45 cents of the acquired land is lying vacant without being used and therefore, the acquisition proceedings can be declared as lapsed would not hold much water, inasmuch as majority of the acquired land has been utilized by the authorities for the purpose for which it was acquired. Since the petitioner has denied the factum of compensation, the respondents are directed to furnish the particulars to the petitioner as to the deposit of compensation amount before the concerned Civil Court.

11. With the above observations and directions, this writ petition is dismissed. No costs. Pending miscellaneous petitions, if any, shall stand closed.

Sd/-

Assistant Registrar ()

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/ /2021

Sub Assistant Registrar(CS)

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To

- 1.The Secretary,
Housing and Urban Development Department,
Fort St.George, Chennai.
- 2.The District Collector,
Madurai District,
Collectorate,
Madurai.
- 3.The Special Tahsildar (L.A.),
Ellis Nagar Development Scheme,
Madurai.

+1CC to Mr.M.Subash Babu,Advocate,SR.No.18607 dated 30/09/2020

W.P. (MD) No.8874 of 2017
30.09.2020

PK(CO)

KB(02.02.2021) 4P 5C