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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2021

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.NO.1089 OF 2015

AND

M.P.NO.1 OF 2015

1. P.Pazhamalai
2. N.Kandasamy Udayar
3. Thottiyar
4. T.Saroja
5. Jeyaraman
6. Sundaram
7. Ponnusamy
8. Chinnakannu
9. Selvaraj
10. Adhimoolam

... Petitioners

-Vs-

1. The State of Tamil Nadu,
Represented by its Secretary,
Adi Dravidar and Tribal Welfare Department,
Namakkal Kavignar Maaligai,
Fort St.George,
Chennai - 600 009.
2. The District Collector,
Collectorate,
Perambalur District.
3. The Special Tahsildar,
Adi Dravidar Welfare,
Sub - Collector Office Campus,
Adhur Main Road,
Perambalur.
4. P.Tamizhselvan
(R4 impleaded vide order dated 18.08.2021
made in W.M.P.No.400 of 2019 in
W.P.No.1089 of 2015)

... Respondents



PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Declaration, to declare that the land acquisition proceedings initiated under the Land Acquisition Act, 1894 in respect of the Land comprised in Survey Nos. 99/1A, 99/6A, 99/1B, 99/7, 99/1C, 99/6B, 99/3A2, 3A3, 3A4, 99/8A, 99/10D1 and 99/12B situated at Vayalapadi Village, Kunnam Taluk, Perambalur District, deemed to have been lapsed as per sub section (2) of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

For Petitioners : Mr.R.Murali

For R1 to R3 : Mr.M.R.Gokul Krishnan
Government Advocate

For R4 : Mr.N.A.Nissar Ahmed

ORDER

This Writ Petition has been filed to issue a Writ of Declaration, declaring that the land acquisition proceedings initiated under the Land Acquisition Act, 1894 in respect of the Land comprised in Survey Nos. 99/1A, 99/6A, 99/1B, 99/7, 99/1C, 99/6B, 99/3A2, 3A3, 3A4, 99/8A, 99/10D1 and 99/12B situated at Vayalapadi Village, Kunnam Taluk, Perambalur District, deemed to have been lapsed as per Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

2. Heard Mr.R.Murali, learned counsel appearing for the petitioners, Mr.M.R.Gokul Krishnan, learned Government Advocate appearing for the respondents 1 to 3 and Mr.N.A.Nissar Ahmed, learned counsel appearing for the fourth respondent.

3. The case of the petitioners is that the petitioners owned land comprised in survey Nos. 99/1A, 99/6A, 99/1B, 99/7, 99/1C, 99/6B, 99/3A2, 3A3, 3A4, 99/8A, 99/10D1 and 99/12B situated at Vayalapadi Village, Kunnam Taluk, Perambalur District, ad-measuring 4.00 acres of agricultural land. They are cultivating the same with the crops of paddy, sugarcane, corn, cotton, kambu etc. for several decades. While being so, the Government had decided to acquire the subject land to provide house sites to Adi Dravidars of Vayalapadi Village, Perambalur District. A notification was issued under Section 4 (1) of the Land Acquisition Act, 1894 in G.O.Ms.No.852, Adi



Dravidar and Tribal Welfare Department, dated 01.06.1989 to acquire total 6.40 acres. Thereafter, a declaration notification was issued under Section 6 of the Land Acquisition Act, 1894 in G.O.Ms.No.1138, Adi Dravidar and Tribal Welfare Department, dated 05.07.1990. In fact, some of the land owners were challenged the land acquisition proceedings in W.P.Nos.12222 of 1990 & 14810 of 1990 on various grounds. However, both the writ petitions were dismissed by an order dated 28.04.1992 and 26.06.1992 respectively. After dismissal of the writ petitions, the land owners were issued notice in Form 7 under Section 9(3) and 10 of the Land Acquisition Act, 1894. Aggrieved by the said notice, some of the land owners filed writ petitions in W.P.Nos.9332 of 1994, 8873 of 1994 and 7945 of 1994. This Court dismissed the writ petition in W.P.No.9332 of 1994. However, allowed the other writ petitions and quashed the land acquisition proceedings in respect of the said lands, on the ground that the award was not passed, within two years as contemplated under Section 11A of the Central Act.

4. However, there was no appeal filed by the respondents. At the same time, as against the dismissal of the writ petition in W.P.No.9332 of 1994, some of the petitioners preferred writ appeal in W.A.No.3796 of 2002 and the same was also dismissed by this Court, by an order dated 05.03.2007. As far as the petitioners land are concerned to an extent of 4.41 acres, an award was passed vide Award No. 1/94-95, dated 20.04.1994. After the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, came into force, now this writ petition is filed challenging the acquisition proceedings on the ground that the possession of the property has not been taken over and also they have not been paid any compensation.

5. The learned counsel for the petitioners submitted that the petitioners are still in possession and enjoyment of their respective lands. Even the respondents have not taken any symbolic possession of the respective lands in the manner know to law. Even assuming that they have taken symbolic possession of the land, not followed any procedure laid down by the Hon'ble Supreme Court of India. They have not prepared any Panchnama while taking possession of the property.

6. He further submitted that even after passing the award, the petitioners were not served notice under Section 12(2) of the Old Act. Therefore, the entire acquisition proceedings have been lapsed. In fact, to reach the subject land, there is no access and therefore, the respondents again proposed to acquire the land to access the subject land. The said acquisition proceedings was challenged before this Court in W.P.No.29980 of 2013 and it is pending. In support of his contention, he relied



upon the judgment reported in 2021 (2) CTC 300 in the case of K.Saraswathi Vs. State of Tamil Nadu.

7. Per contra, the learned counsel for the respondents produced the original file and submitted that already the symbolic possession has been taken and all the revenue documents were mutated in the name of Adi Dravidar Natham. All the lands are lying vacant and the petitioners are not in possession and enjoyment of the same. After mutation of revenue records in the name of Adi Dravidar Natham, there is no activity in the subject land and also produced photographs. Insofar as the notice under Section 12(2) of the Act is concerned, he produced a file and revealed that all the petitioners had attended the award enquiry and refused to receive the award amount.

8. It is also noted that the question of issuance of Section 12(2) notice does not arise in this case, when all the petitioners duly attended the award enquiry and refused to receive the award amount. Subsequently, the award amount has been deposited in the Sub Court, Perambalur, as early as on 21.06.1994 itself. That apart, all the petitioners have already challenged the acquisition proceedings before this Court and failed.

9. The learned counsel for the fourth respondent, who is appearing for the beneficiary in this acquisition, submitted that when all the petitioners have appeared for award enquiry, they need not to be served notice under Section 12(2) of the Act. After attending the award enquiry, all the petitioners refused to receive the award amount and therefore, the acquisition proceedings cannot be said as lapsed.

10. That apart, as per the case in Indore Development Authority Vs Manohar Lal and others, the word 'or' used in Section 24(2) between possession and compensation has to be read as "nor" or as "and". Therefore, the possession of the land has not been taken nor compensation has been paid. In other words, in case possession has been taken and the compensation has not been paid, then there is no lapse. Similarly, if compensation has been paid and possession has not been taken, then there is no lapse.

11. The learned counsel for the petitioners relied upon the judgment reported in 2021 (2) CTC 300 in the case of K.Saraswathi Vs. State of Tamil Nadu, the relevant portion is extracted hereunder :

(28)The term ''tendering of amount'' involves an offer made for payment of money to the person who is entitled to receive the same. That would mean that



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the Collector must be armed with the amount of compensation payable to the persons interested and sufficient notice must be given to them to assemble in a place in order to receive the compensation amount. It is only for this purpose, Section 12[2] of the 1894 Act provides for issuance of notice to the land owner after the Award enquiry and determination of compensation and if this notice is issued and the land owner, either refuses to receive this amount or does not appear even after the receipt of the notice, the Court deposit made thereafter, will amount to a proper tendering/paying of the compensation amount. Even for the sake of arguments if the contention raised by the learned Advocate General that the deposit made without strictly following the letter of law will not vitiate the deposit, is taken as it is, that stage will be reached only if a notice is given to the land owner asking him to receive the compensation under Section 12[2] of the 1894 Act and admittedly, in the present case, no such notice has been issued to the land owners. Therefore, the land owners may not even be knowing that the compensation amount has been deposited in some account. When the State with its eminent domain powers, acquires the land of a person, it is the duty of the State to tender/pay the compensation by calling the owner of the property and the owner of the property is not expected to voluntarily go and stand before the authority with a begging bowl. This position of law has been made clear by the following judgments of the Hon'ble Supreme Court of India:-

(a) DDA V. Sukhbir Singh reported in 2016 [6] SCC 258 : 2017 [5] SCC [Civ] 779 : 2016 SCC Online SC 929 at page 270 and the relevant portion is extracted hereunder:-

'9. The scheme of the Land Acquisition Act, insofar as the making of award and the payment of compensation to persons interested, is as follows. On the day fixed, the Collector after the inquiry that is contemplated under Section 11, has to make an award which must contain the necessary ingredients mentioned in Section 11. As soon as the award is made, under Section 12(2) of the Act, the Collector is to give immediate notice of the award to such of the persons interested as are not present personally. This provision, when read with Section 31 of the Act, makes it clear that the statutory



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scheme is that the Collector is to tender payment of compensation awarded by him to the persons who are interested and entitled thereto, according to the award, on the date of making the award itself. It is, therefore, clear that under the statutory scheme, the Collector must be armed with the amount of compensation payable to persons interested as soon as the award is made. Such persons have to be paid the sum mentioned in the award, it being well settled that the award is only an offer which may be accepted or rejected by the claimants. If accepted, whether under protest or otherwise, it is the duty of the Collector to make payment as soon as possible after making the award. It is only in a situation where the persons interested refuse consent to receive monies payable, or there be no person competent to alienate the land, or if there be any dispute as to title to receive compensation or its apportionment, is the Collector to deposit the amount of compensation in the Reference Court. It is only after these steps have been taken that the Collector may take possession of the land, which shall thereupon vest absolutely in the Government free from all encumbrances. The Act further makes it clear, on a reading of Section 34, that where such compensation is neither paid or deposited on or before taking possession of the land, interest is payable @ 9% p.a. for one year and 15% p.a. thereafter. This is because a person becomes divested of both possession and title to his property without compensation having been paid or deposited, as the case may be. This statutory scheme has been adverted to in some of the decisions of this Court."

The Court then considered the provisions of the Standing Orders applicable to the NCT of Delhi and observed as under :

17. Far from the aforesaid Standing Order coming to the assistance of the appellants, it is clear that the said Standing Order fleshes out Section 31 of the Land Acquisition Act by insisting that compensation must be paid as soon as the award is announced, vide Para 71. Sufficient notice must be given to enable all payees to assemble at a place where they will receive their dues immediately. It is emphasised by the said paragraph that much trouble will be avoided if the principle that payment of compensation should be made at the time



(b) The expression "tender" occurring in Section 31 (2) was considered by a three judge Bench in Indore Development Authority v. Shailendra, (2018) 3 SCC 412. Arun Mishra, J has observed as under :

34. The question arises what is the meaning of the expression "paid" in Section 24 and "tender" in Section 31(2) of the 1894 Act. Whether the tender of compensation amount to discharge of obligations to make payment. The meaning of expression "tender": is when a person has tendered the amount and made it unconditionally available and the landowner has refused to receive it, the person who has tendered the amount cannot be saddled with the liability, which is to be visited for non-payment of the amount. "Tender" has been defined in Black's Law Dictionary thus:

(emphasis supplied)

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concept of deposited in court is different from tender and "paid".

In his supplementing opinion Shantanagoudar, J has also adverted to the essentials of a valid "tender" in the following passage

"238. The definition of "tender" has been outlined by this Court in *Tata Cellular v. Union of India* [*Tata Cellular v. Union of India*, (1994) 6 SCC 651] as follows: (SCC p. 675, para 69)

"69. A tender is an offer. It is something which invites and is communicated to notify acceptance. Broadly stated, the following are the requisites of a valid tender:

1. It must be unconditional.
2. Must be made at the proper place.
3. Must conform to the terms of obligation.
4. Must be made at the proper time.
5. Must be made in the proper form.
6. The person by whom the tender is made must be able and willing to perform his obligations.
7. There must be reasonable opportunity for inspection.
8. Tender must be made to the proper person.
9. It must be of full amount.

12. This Court held that after the award enquiry and determination of compensation and if the notice under Section 12 (2) is issued to the land owner, either, refuses to receive this amount or does not appear even after the receipt of the notice, the Court deposit made thereafter, will amount to a proper tendering/paying of the compensation amount. Whereas in the case on hand, admittedly, all the petitioners have attended the award enquiry and thereafter, they refused to receive the compensation. Therefore, the acquisition of issuance of notice under Section 12(2) of the Act does not arise in this case. Insofar as the compensation of award amount is concerned, as stated supra, all the compensation have been duly deposited before the Sub Court, Perambalur on 21.06.1994 itself. It is also evident from the records produced by the respondents.

13. Therefore, the acquisition of preparing panchnama for taking possession does not arise. Since, the Hon'ble Supreme Court of India held that 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. Even assuming that the



symbolic possession has not been taken over, the award amount has been duly deposited before the Sub Court, Perambalur, as early as on 21.06.1994 itself and as such the acquisition proceedings have not lapsed.

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14. The grounds raised by the petitioners in this Writ Petition have already been settled by the Hon'ble Supreme Court of India in the judgment reported in (2020) 8 SCC 129 in the case of Indore Development Authority Vs. Manoharlal and ors etc., which held as follows :-

"366. In view of the aforesaid discussion, we answer the questions as under:

1. Under the provisions of Section 24(1)(a) in case the award is not made as on 1.1.2014 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



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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 1.1.2014. 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



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acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the Act of 2013, i.e., 1.1.2014. 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."

15. All the petitioners have challenged the acquisition proceedings and having been failed, again they cannot invoke the provisions under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 Act. However, it is needless to say that the petitioners are at liberty to raise objections in respect of determination of compensation. Therefore, the writ petition is devoid of merits.

16. In the result, the writ petition stands dismissed. Consequently connected Miscellaneous Petition is closed. There shall be no order as to costs.

Sd/-

Assistant Registrar(CS VII)

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Sub Assistant Registrar

Lpp/mn

To

1. The Secretary,
State of Tamil Nadu,
Adi Dravidar and Tribal Welfare Department,
Namakkal Kavignar Maaligai,
Fort St.George,
Chennai - 600 009.
2. The District Collector,
Collectorate,
Perambalur District.



3. The Special Tahsildar,
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Sub - Collector Office Campus,
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+1cc to Mr.R.Murali, Advocate, S.R.No.51887
+5ccs to Mr.N.A.Nissar Ahmed, Advocate, S.R.No.51769
+1cc to the Government Pleader, S.R.No.52001

W.P.NO.1089 OF 2015 AND
M.P.NO.1 OF 2015

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