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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos.18772 of 2004,
6043 of 2005, 30676 of 2006
and W.V.M.P.No.18 of 2005
and M.P.No.1 of 2006
and W.P.M.P.Nos.6624, 6625 of 2005
and W.P.M.P.No.22478 of 2004

V.K.Maheswaran ... Petitioner in all WP's

Vs

1.The Secretary to Government,
Highways Department (H.W-2)
Fort St. George, Chennai - 600 009.

2.The District Collector,
Office of the District Collector,
Kancheepuram.

3.The Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
Chengalpattu.

4.The Tahsildar,
Taluk Office,
Tambaram.

5.The Chief Executive Officer,
Tamilnadu Road Development Company Limited,
No.346, Sindoor Pantheon Plaza,
Pantheon Road, Chennai - 600 008.

... Respondents in W.P.No.18772 of 2004

1.The Secretary to Government,
Public Works Department (Highways)
Fort St. George, Chennai - 600 009.

2.The Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
Chengalpattu.



3.The Chief Executive Officer,
Tamilnadu Road Development Company Limited,
No.346, Sindoor Pantheon Plaza,
Pantheon Road, Chennai - 600 008.

... Respondents in W.P.No.6043 of 2005

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1.The Secretary to Government,
Public Works Department (Highways)
Fort St. George, Chennai - 600 009.

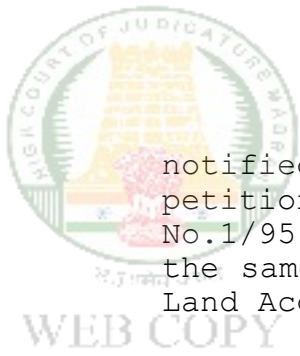
2.The Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
Chengalpattu.

... Respondents in W.P.No.30676 of 2006

Prayer in W.P.No.18772 of 2004 : Writ Petition has been filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to refrain from taking possession of the lands sought to be acquired in S.No.3/535 through G.O.Ms.No.37 High Ways (HW-2) Department dated 04.03.2002 without complying the provisions of Land Acquisition Act and without providing sufficient provisions for a road for ingress and egress to the remaining lands owned by the petitioner.

Prayer in W.P.No.6043 of 2005 : Writ Petition has been filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent pertaining to the notification issued first respondent in G.O.Ms.No.37 dated 04.03.2002 under Section 4(1) of the Land Acquisition Act, 1894 for acquisition of lands owned by the petitioner and others and included in the S.No.3/535B and the Section 6 declaration made by the first respondent in G.O.Ms.No.73 dated 04.04.2002 and the award passed by the second respondent in his proceedings No.2/2003/B dated 05.02.2003 and quash the same as far as it relates to the notified extent of 0.07.5 hectors of land owned by the petitioner in S.No.3/535B to an extent of 0.07.5 hectors in 141, Uthandi Village, Tambaram Taluk, Kancheepuram District and direct the respondents to handover the possession of the said lands to the petitioner and direct the respondents to provide ingress and egress to the petitioner's land from the east coast road.

Prayer in W.P.No.30676 of 2006 : Writ Petition has been filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondents to pay compensation to the petitioner for the lands acquired by them through G.O.Ms.No.1105 dated 04.08.1992 under Section 4(1) of the Land Acquisition Act, 1894 and the Section 6 declaration made by the first respondent in G.O.Ms.No.1167 dated 10.08.1993 as far as it relates to the



notified extent of 0.11.0 hectares of land owned by the petitioner in S.No.3/496A1A1A in accordance with the award No.1/95 along with interest for the belated payment and refer the same for enhancement of compensation under Section 18 of the Land Acquisition Act, 1894 to a competent Civil Court.

For Petitioner : M/s.J.Yogeswari
in all WP's

For Respondents : Mr.Richardson Wilson,
1 to 4 Government Advocate
in W.P.18772 of 2004

For Respondent 5 : Mr.M.Sivavarthan
in W.P.18772 of 2004

For Respondents : Mr.Richardson Wilson,
1 & 2 Government Advocate
in W.P.6043 of 2005

For Respondent 3 : Mr.Sivavarthan
in W.P.No.6043 of 2005

For Respondent 5 : Mr.M.Sivavarthan
in W.P.18772 of 2004

For Respondents : Mr.Richardson Wilson,
Government Advocate
in W.P.30676 of 2006

C O M M O N O R D E R

The W.P.No.18772 of 2004 has been filed to issue a Writ of Mandamus, directing the respondents to refrain from taking possession of the lands sought to be acquired in S.No.3/535 through G.O.Ms.No.37 High Ways (HW-2) Department dated 04.03.2002 without complying the provisions of Land Acquisition Act and without providing sufficient provisions for a road for ingress and egress to the remaining lands owned by the petitioner.

2. The W.P.No.6043 of 2005 has been filed to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent pertaining to the notification issued first respondent in G.O.Ms.No.37 dated 04.03.2002 under Section 4(1) of the Land Acquisition Act, 1894 for acquisition of lands owned by the petitioner and others and included in the S.No.3/535B and the Section 6 declaration made by the first respondent in



G.O.Ms.No.73 dated 04.04.2002 and the award passed by the second respondent in his proceedings No.2/2003/B dated 05.02.2003 and quash the same as far as it relates to the notified extent of 0.07.5 hectares of land owned by the petitioner in S.No.3/535B to an extent of 0.07.5 hectares in 141, Uthandi Village, Tambaram Taluk, Kancheepuram District and direct the respondents to handover the possession of the said lands to the petitioner and direct the respondents to provide ingress and egress to the petitioner's land from the east coast road.

3. The W.P.No.30676 of 2006 has been filed to issue a Writ of Mandamus directing the respondents to pay compensation to the petitioner for the lands acquired by them through G.O.Ms.No.1105 dated 04.08.1992 under Section 4(1) of the Land Acquisition Act, 1894 and the Section 6 declaration made by the first respondent in G.O.Ms.No.1167 dated 10.08.1993 as far as it relates to the notified extent of 0.11.0 hectares of land owned by the petitioner in S.No.3/496A1A1A in accordance with the award No.1/95 along with interest for the belated payment and refer the same for enhancement of compensation under Section 18 of the Land Acquisition Act, 1894 to a competent Civil Court.

4. In all these writ petitions, the petitioner have challenged the Notification issued under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter called as "Act") and Section 6 declaration of the Act. The petitioner owned the respective land in Uthandi Village, Tambaram Taluk comprised in S.Nos.2/461 and 3/535.

5. While being so, in order to widen the East coast road Highways and also to construct administrative building the fifth respondent acquired the land abutting the road. The first respondent issued G.O.Ms.No.1105 dated 04.08.1992 under Section 4(1) of the Act for the acquisition of land owned by the petitioner and others also including the land comprised in S.No.3/496 part and the Section 6 declaration made by the first respondent in G.O.Ms.No.1167 dated 10.08.1993 for the acquisition of 0.11.0 hectares of land owned by the petitioner in S.No.3/496A1A2 and the land in S.No.3/496A1A1B part for the purpose of extension of East coast road.

6. However, the petitioner was given liberty to file a separate writ petition for providing ingress and egress to his remaining land. In spite of the order passed by this Court dated 05.09.2003, the petitioner was not paid any compensation for the acquired land belonged to the petitioner.



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7. The petitioner also filed separate writ petition in W.P.No.18772 of 2004 refraining the respondents from taking possession of the acquired land without providing sufficient provisions for a road for ingress and egress to the remaining lands owned by the petitioner.

8. The petitioner also filed another writ petition in W.P.No.30676 of 2006 for a direction to the respondents to pay compensation for the land acquired from the petitioner in accordance with the award No.1/95 along with interest for the belated payment and refer the same for enhancement of compensation under Section 18 of the Act.

9. The second respondent filed counter and revealed that as per the land acquisition procedure notice have been issued to the petitioner. In the 4(1) notification itself objections have been invited. The toll plaza has been erected along the stretch of the road and now it is operational. The entire project is fully meant in the interest of welfare of general public those who are largely using the said road. The toll plaza is erected on the ECR and it has not blocked any land belonging to the petitioner. There is a common access to the Land Owner in the vicinity of toll plaza to enter his land.

10. The land acquisition process was carried out under Section 4(1) of the Act and powers conferred under Section 4(2) of the said Act and also under Section 17(4) of the Act, in view of the urgency of the case. Therefore, Section 5(a) of the Act shall not apply in the case on hand. There is no wilful act for the acquisition of the said land and the requisition body have planned to erect the toll plaza and to maintain the East Coast Road for public purpose.

11. The award enquiry under Sections 9(1) and 9(3) and 10 of the Act has been served on the petitioner, but he has not accepted the notice. Thereafter, proper enquiry has been conducted and properly intimated to the Land Owner. The entire compensation award pertaining to the land acquisition is kept under the proper account and the notice have been issued to the petitioner.

12. While pending the writ petition, the petitioner filed W.P.M.P.No.211 of 2014 in W.P.No.6043 of 2005 seeking permission to raise additional grounds as contemplated under Section 24(2) of the New Act. According to the petitioner, the possession of the land has not been taken over and no compensation amount has been paid to the petitioner.



13. As stated supra, already the land has been taken over and the entire project itself completed and it is operated by the general public. Insofar as the compensation amount is concerned, already the notice has been served on the petitioner and entire compensation amount has been deposited under the proper account.

14. In this regard it is relevant to refer the decision of the Hon'ble Supreme Court of India in the case of Indore Development Authority Vs. Manoharlal and others etc reported in 2020 (8) SCC 129, wherein it is held as follows:

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

366.1. 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.

366.2. 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.

366.3. 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 317 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.

366.4. 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



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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.

366.5. 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 318 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.

366.6. 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).

366.7. 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).

366.8. The provisions of Section 24(2) providing for a deemed lapse of proceedings



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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.

366.9. 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., 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. The Hon'ble Supreme Court of India settled all proposition of law in the above judgment including the grounds raised by the petitioner. That apart, the award has been passed in Award No.1 of 1995 on 16.08.1995 itself. The compensation amount is kept under civil Court deposit under Section 30 and 31 (2) of the Land Acquisition Act. Therefore, the petitioner failed to satisfy the twin requirements under Section 24 (2) of the New Act, i.e., the physical possession of the land was not taken and the compensation has not been paid/tendered/deposited in accordance with law. In view of the dictum laid down by the Hon'ble Supreme Court of India, the issues raised by the petitioner was settled and therefore, the acquisition proceedings have not been lapsed by operation of law under Section 24 (2) of the new Act i.e., Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. In view of the settled position of law, the writ petitions in W.P.Nos.18772 of 2004, 6043 of 2005 are devoid of merits and liable to be dismissed.

16. Insofar as the enhancement of compensation is concerned, the second respondent in W.P.No.30676 of 2006 is directed to refer the award for enhancement of compensation as contemplated under Section 18 of the Act to a Competent Civil Court, if not already referred.



17. With the above directions, W.P.Nos.18772 of 2004, 6043 of 2005 are dismissed and W.P.No.30676 of 2006 is disposed of. No order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government,
Highways Department (H.W-2)
Fort St. George, Chennai - 600 009.
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+1cc to Mr.D.Srnivasa Raghavan, Advocate SR.No.54680

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and M.P.No.1 of 2006
and W.P.M.P.Nos.6624, 6625 of 2005
and W.P.M.P.No.22478 of 2004

MG(CO)
GMY(26/11/2021)