



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2021

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P. Nos.1944 & 9302 of 2011
and M.P Nos.1 & 1 of 2011

W.P.No.1944 of 2011

1. P.Balasubramanian
2. P.Sivasankaran
3. P.Udhayarani
4. P.Muthammal

... Petitioners

-Vs-

1. The State of Tamilnadu
Rep. by its Secretary,
Housing and Urban Development Department
Fort St. George,
Chennai - 9.
2. The District Collector,
Namakkal District.
3. The Sepcial Tahsildhar (LA)
Neighbourhood Scheme (Namakkal)
Iyanthirumaligai Road,
Salem - 636 008.
4. Chandrasekaran
5. Saravanan
6. The Tamil Nadu Housing Board,
Rep by its Executive Engineer and
Administrative Officer,
Salem Housing Unit,
Iyyanthirumaligai,
Salem -8.
(R6 impleaded as per Court
Order dated 03.02.2012 in
M.P.No.1 of 2012 in
W.P.No.1944 of 2011)

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Declaration, declaring the land acquisition proceeding commencing from 4(1) notification published in the Tamilnadu Government Gazette relating to the lands in S.No.64/8, No.73,



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Kondichettipatti Village, Namakkal Taluk and culminating the award No.1 of 1988-89 dated 05.05.1988 as nonest in the eye of law.

For Petitioners: Mr.A.K.Kumarasamy
Senior Counsel
For Ms.N.Kavitha

For Respondents
For R1 to R3: Mr.Richardson Wilson
Government Advocate.
For R4 & R5 : Mr.S.Kington Jerold
For R6 : Mr.I.Sathish
Standing Counsel

W.P.No.9302 of 2011

1. K.Periasamy (deceased)
2. Pavayi
3. Manoharan
4. Uthayakumar
5. Maruthai
(P2 to P5 substituted as LRs
of the deceased sole petitioner
vide Order dt. 22.10.2021
made in W.M.P.No.22610/2021
in W.P.No.9302 of 2011)

... Petitioners

-Vs-

1. The State of Tamilnadu
Rep. by its Secretary,
Fort Saint George,
Chennai - 9.
2. The Sepcial Tahsildhar (LA)
Land Acquisition,
Neighbourhood Scheme,
Namakkal,
Iyanthirumaligai Road,
Salem - 636 008.
3. The Tamil Nadu Housing Board,
Rep by its Chairman,
Anna Salai,
Nanadanam, Chennai-35.
4. The Director of Rehabilitation,
Commissionerate of Rehabilitation and
Welfare of Non-Resident Tamil,
Ezhilagam Annexe, Fourth Floor,
Chepauk, Chennai - 600 005.

... Respondents



Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, restraining the respondents 1 to 3 their men, agents and servants or any other persons claiming under them from in any manner interfering with possession and enjoyment of the property ad measuring to an extent of 4 acres and 17 cents comprised in survey Nos.58/1B, 65/3 and 64/6, Kondichettypatty Village, Namakkal Taluk and District and consequently direct the respondents to reconvey the above said lands as per the representations dated 28.06.2001, 05.06.2006, 04.12.2006, 17.09.2007, 17.05.2010, 31.01.2011 under Section 48B of the Land Acquisition (Tamil Nadu Amendment) Act 1996 (Act XVI of 1997).

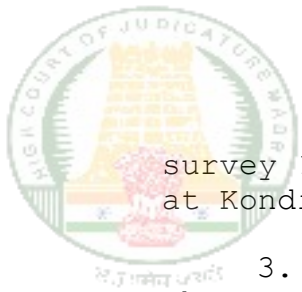
For Petitioners: Mr.A.K.Kumarasamy
Senior Counsel
For Ms.N.Kavitha

For Respondents
For R1 & R2 : Mr.Richardson Wilson
Government Advocate.
For R3 & R4 : Mr.I.Sathish
Standing Counsel

COMMON ORDER

These Writ Petitions have been filed to declare that the land acquisition proceeding commencing from 4(1) notification published in the Tamilnadu Government Gazette relating to the lands in S.No.64/8, No.73, Kondichettipatti Village, Namakkal Taluk and culminating the award No.1 of 1988-89 dated 05.05.1988 as nonest in the eye of law and to restrain the respondents 1 to 3 their men, agents and servants or any other persons claiming under them from in any manner interfering with possession and enjoyment of the property ad measuring to an extent of 4 acres and 17 cents comprised in survey Nos.58/1B, 65/3 and 64/6, Kondichettypatty Village, Namakkal Taluk and District and consequently direct the respondents to reconvey the above said lands as per the representations dated 28.06.2001, 05.06.2006, 04.12.2006, 17.09.2007, 17.05.2010, 31.01.2011 under Section 48B of the Land Acquisition (Tamil Nadu Amendment) Act 1996.

2. The petitioners in W.P.No.1944 of 2011, owned land comprised in survey No.64/8 to an extent of 2.74 acres situated at No.73, Kondichettipatti Village, Namakkal District. In W.P.No.9302 of 2011, the deceased first petitioner owned agricultural land comprised in survey Nos.64/6, 65/3, 58/4, 58/1B, 61/6 to an extent of 7 acres 33 cents situated at Kondichettipatti Village, Namakkal District. While being so, the respondents initiated acquisition proceedings for the Salem Neighbourhood Scheme on the request made by the Tamilnadu Housing Board and accordingly proposed to acquire the land ad measuring 24.36 acres comprised in



survey No.58/1, etc including the petitioners' lands situated at Kondichettipatti Village, Namakkal.

3. Accordingly, the notification under Section 4(1) of the Land Acquisition Act was approved in GO.Ms.No.352, Housing and Urban Development Department dated 08.04.1985 and the same was published in Tamilnadu Government Gazatte on 17.04.1985. The substance of the notification was published in the locality on 06.05.1985. The draft declaration under Section 6 of the Land Acquisition Act, was approved in G.O.Ms.No.638, Housing and Urban Development Department dated 12.05.1986. The draft declaration under Section 7 of the Act was approved in Government letter dated 27.08.1986 and published in Tamilnadu Government Gazatte No.36c. Supplement notice under Sections 9 (1), 10 & 9(3) and 10 of the Land Acquisition Act were issued on 04.04.1988, fixing the date that the award enquiry to be held on 28.04.1988. In fact, the petitioners had attended the award enquiry on 28.04.1988. Since, the ownership was not established by them, the compensation award amount was deposited in the Sub Court under Section 31 of the Land Acquisition Act on 12.05.1988.

4. Both the land owners have already challenged the acquisition proceedings in WP.Nos.6432 of 1988 and 8477 of 1986 respectively. In WP.No.6432 of 1988 and this Court by an order dated 10.02.1997, directed the District Collector, Salem to have a personal inspection to find out whether the construction put up by the petitioners, in any way interferes with the alignment of the scheme for housing for which the proposed lands are acquired. Accordingly, the District Collector inspected the land and recommended exclusion of 2798 sq.ft., out of the lands sought to be acquired from the petitioners. Insofar as W.P.No.8477 of 1986 is concerned, it was dismissed and it went upto Hon'ble Supreme Court of India and remanded back to this Court. While remanding back, the Hon'ble Supreme Court of India observed that the case to be heard on the basis that the persons who repatriate, their lands should not be subject matter of the acquisitions and in several cases pertaining to neighbouring lands, the land has been released from acquisition and disposed of the SLP by an order dated 10.08.2000. The said matter was taken up in W.P.No.4096 of 2008 and while pending adjudication, the survey Nos.65/3, 58/4, 61/6 were alone dealt in and the survey Nos.58/1B, 65/3 & 64/6 were left out. Therefore, the petitioners filed the present Writ Petition in W.P.No.9302 of 2011, challenging the acquisition proceedings with regards to the survey Nos.58/1B, 65/3 and 64/6 alone.

5. The learned Senior Counsel appearing for the petitioners in both Writ Petition submitted that the respondents did not deposit any compensation amount for the past several years and as such the entire acquisition proceedings are lapsed. While the father of the petitioners in W.P.No.9302 of 2011 was alone challenged the acquisition



proceedings in W.P.No.6432 of 1998, this Court by an order dated 10.02.1997, directed the second respondent to inspect the property and to find out whether any construction put up by the petitioners, in any way interferes with the alignment of the housing scheme. Accordingly, the second respondent inspected the property and recommended the retention of an extent of 2798 sq.ft., out of the total extent of the property. However, after demise of the petitioners' father, they came to understand that the entire land was subjected to the award dated 05.05.1998, and no notice was served thereafter as contemplated under Section 12(2) of the Act. More over, the possession of the subject property is still with the petitioners and the entire scheme has been completed and the subject land is not at all required for the neighbourhood scheme.

5.1. He further submitted that the subject land in W.P.No.9302 of 2011 is also not utilized for the neighbourhood scheme and it is in possession and enjoyment of the petitioners. The neighbours land, which is lying in the south to the subject land, has been given back to the land owners vide government letter dated 17.07.1987 itself. Likewise the land on the north side of the subject land, ad measuring 6 acres 81 cents was also given back to its owner by the government letter dated 20.04.1988. That apart, the land in survey No.38/2 ad measuring 1 acre 32 cents was also given back to its owner viz., Chellammal W/o.Karappa Gounder, by the government letter dated 14.06.1988. Further, the petitioners have also repeatedly made representation to reconvey the subject land, since the subject land has not been utilized for the purpose for which, it was acquired under the neighbourhood scheme. They also challenged the sale notice dated 19.12.2010 in W.P.No.1955 of 2011 and granted interim injunction restraining the respondents from interfering with the possession and enjoyment of the subject property.

5.2. The learned Senior Counsel appearing for the petitioners in both Writ Petitions also submitted the photographs showing that the subject land in both the Writ Petitions are lying vacant and adjacent to the land the Tamil Nadu Housing Board has developed the property and constructed houses. He also submitted that even the constructed possession are not yet sold out and no one is there to purchase the same. Therefore, the entire scheme has been completed and the subject land are not at all required for any development. Though, the petitioners submitted repeated representation to reconvey the subject land, even till today, their application has not been considered by the respondents. Therefore, he prayed to allow both the Writ Petitions.

6. Per contra, the sixth respondent in W.P.N.1944 of 2011 filed counter and stated that the Salem Housing Board has applied for acquisition of 24.36 acres of land in survey No.58/1 etc., in Kondichettipatty Village, Namakkal District,



for construction of houses under neighbourhood scheme including the petitioners' land. The notification under Section 4(1) of the Act was approved in G.O.Ms.No.352 and published in the government gazette on 17.04.1985. The draft declaration under Section 6 of the Act was approved by G.O.Ms.No.638 dated 12.05.1986. The notification under Section 7 of the Act was approved by the government letter dated 27.08.1986 and published in Tamil Nadu government gazette No.36c. Supplement notice under Sections 9(1), 10, 9(3) & 10 of the Land Acquisition Act was issued on 04.04.1988, thereby fixing award enquiry was conducted on 28.04.1988. Originally, the land owners including the petitioners of the subject property in the both Writ Petitions had attended the enquiry on 28.04.1988. Since they have not established their ownership, the compensation was deposited under the civil deposit in Sub Court, Namakkal on 12.05.1988, immediately after passing the award in Award No.1/88-89. The scheme was implemented and the entire project was completed and the scheme was developed even before 22 years. Therefore, after the period of 22 years from the date of award, the Writ Petition cannot be entertained.

6.1. The learned Government Advocate appearing for the respondents submitted that in the earlier Writ Petition in W.P.No.6432 of 1988, there was an interim order, as such they could not be able to take physical possession of the property. However already symbolic possession was handed over to the Tamil Nadu Housing Board. Therefore, the entire revenue records were mutated in the name of the Tamil Nadu Housing Board. Thereafter, as directed by this Court, the Collector recommended for exclusion of land ad measuring 0.06 cents, which was a built up portion and hence possession of remaining land to an extent of 2.74 acres comprised in survey No.64/8 was taken over on 09.06.1999 itself. Therefore, he prayed for dismissal of both the Writ Petitions.

7. Heard Mr.A.K.Kumarasamy, learned Senior Counsel appearing for the petitioners in both WPs., Mr.Richardson Wilson, learned Government Advocate appearing for the respondents 1 to 3 in W.P.No.1944 of 2011 & respondents 1 & 2 in W.P.No.9302 of 2011, Mr.S.Kingston Jerold, learned counsel appearing for the respondents 4 & 5 in W.P.No.1944 of 2011 and Mr.I.Sathish, learned Standing Counsel appearing for the sixth respondent in W.P.No.1944 of 2011 and respondents 3 & 4 in W.P.No.9302 of 2011.

8. The learned Standing Counsel appearing for the Tamil Nadu Housing Board produced documents to show that the possession of the subject lands have already been taken over and the compensation award amount has also been deposited before the Sub Court, Namakkal. It revealed that insofar as the subject land in W.P.No.9302 of 2011 comprised in S.F.No.58/1B, 65/3 & 64/6 situated at Kodichettipatti Village, Namakkal District, was taken over as early as on



03.03.1999 & 18.08.1999, after passing the award dated 28.02.1989 in Award No.7/1988-89. Insofar as the subject land in W.P.No.1944/2011 is concerned, the respondents passed award in Award No.1 of 1988-89 dated 05.05.1988 and the award amount has been deposited under Section 13(1) of the Act before the Sub Court, Namakkal on 16.11.1988. Insofar as the possession is concerned, it was taken over on 09.06.1999.

9. Further both the petitioners have already challenged the acquisition proceedings and failed. Insofar as the possession of the subject property is concerned already they have taken possession and the compensation award amount also deposited before the Court viz., Sub Court, Namakkal. Therefore, the petitioners failed to satisfy the twin condition as contemplated under Section 24(2) of the New Act. That apart, the grounds raised by the petitioners in these Writ Petitions 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



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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



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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 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."

10. The Hon'ble Supreme Court of India settled all proposition of law in the above judgment including the grounds raised by the petitioners. That apart, the subject land was acquired for the purpose of Tamil Nadu Housing Board neighbourhood scheme. The acquisition proceedings have been completed and the subject land was taken over by the government and the possession was handed over to the Tamil Nadu Housing Board. Further the requisition body also deposited the compensation as awarded by the Land Acquisition Officer before the Sub Court, Namakkal.

11. Therefore, the petitioners in W.P.No.1944 of 2011 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 petitioners were 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 petition in W.P.No.1944 of 2011 is devoid of merits and liable to be dismissed.

12. The Writ Petition in W.P.No.9302 of 2011 is filed for Mandamus, to direct the respondents 1 to 3 to consider their request for reconveyance of the subject property. As stated supra already the deceased first petitioner filed Writ Petition challenging the acquisition proceedings in W.P.No.8477 of 1986 and the same was allowed and quashed the acquisition proceedings. Aggrieved by the same the Government filed a Writ Appeal in W.A.No.688/1999 and the same was allowed by an order dated 10.08.2000. Against which, the petitioners filed S.L.P.No.2246 of 2002 and the Hon'ble Supreme Court of India by an order dated 01.04.2005, remanded



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the matter to this Court in W.P.No.4096 of 2008 and the same was also dismissed on 09.06.2009. Therefore, they have failed in challenging the acquisition proceedings. Now the petitioners came forward with the present Writ Petition with the request to reconvey the subject property.

13. As stated supra, the entire land had been taken possession by the Tamil Nadu Housing Board and the revenue records mutated in their names. Subsequently, patta also issued in their name in Patta No.241 and subjected to all the revenue duty. Insofar as the subject land is concerned already layout has been approved by the Director of Town and Country Plan and the scheme is under progress. Therefore, the request of the petitioners cannot be considered to reconvey the subject land and the Writ Petition in W.P.No.9302 of 2011 is devoid of merits and is liable to be dismissed.

14. In view of the above discussion, both the Writ Petitions are dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

Sd/-

Assistant Registrar(CS-IX)

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Sub Assistant Registrar

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To

1. The Secretary,
State of Tamilnadu
Housing and Urban Development Department
Fort St. George,
Chennai - 9.
2. The District Collector,
Namakkal District.
3. The Sepcial Tahsildhar (LA)
Neighbourhood Scheme (Namakkal)
Iyanthirumaligai Road,
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5. The Chairman,
The Tamil Nadu Housing Board,
Anna Salai,
Nanadanam, Chennai-35.

6. The Director of Rehabilitation,
Commissionerate of Rehabilitation and
Welfare of Non-Resident Tamil,
Ezhilagam Annexe, Fourth Floor,
Chepauk, Chennai - 600 005.

+3ccs to Ms.N.Kavitha, Advocate SR.No.55943

+1cc to Mr.I.Sathish, Advocate SR.No.56079

+1cc to Government Pleader SR.No.56696

W.P. Nos.1944 & 9302 of 2011
and M.P Nos.1 & 1 of 2011

SS(CO)
GMY(06/12/2021)