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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.NO.7178 OF 2018

AND

W.M.P.NOS.8906 AND 20172 OF 2018

1. Samiyathal

2. Nallasamy

3. Kathirvel

... Petitioners

Vs.

1. The State of Tamil Nadu,
Represented by
The Commissioner & Secretary to Government,
Social Welfare Department,
Fort St.George,
Chennai - 600 009.

2. The District Collector,
Erode District.

3. The Special Tahsildar,
Adi Dravidar Welfare (L.A),
Erode.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Declaration, declaring that the land acquisition proceedings in respect of the petitioners' land in S.No.108/1B Nanjanapuram Village, Erode Taluk and District is statutorily lapsed under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.



For Petitioners : Mr.Kumaresh Babu
for Mr.V.Balamurugane

For Respondents : Mr.Richardson Wilson
Government Advocate

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O R D E R

This petition has been filed seeking to declare that the land acquisition proceedings in respect of the petitioners' land in S.No.108/1B Nanjanapuram Village, Erode Taluk and District is statutorily lapsed under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'the New Act', for short).

2. The case of the petitioners is that the property comprised in S.No.108/1B situated at Nanjanapuram Village, Erode Taluk was originally owned by the husband of the first petitioner and the father of the second and third petitioners herein to an extent of 1.26 acres. The said land was acquired under the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act', for short) for the purpose of providing house sites to Adi Dravidars. After issuance of declaration notice under Section 6 of the Act were issued 09.08.1989 and the notice under Sections 9(3) and 10 of the Act were issued on 08.06.1990. At that juncture, the husband of the first petitioner and the father of the second and third petitioners herein viz., Muthusamy Gounder challenged the acquisition proceedings in W.P.No.13735 of 1990. However, the said Writ Petition was dismissed and went up to the Hon'ble Supreme Court of India by his legal heirs after his demise in SLP.No.13425 of 2007 and the same was also dismissed by an order dated 13.08.2007. They also filed a Review Petition and the same was also dismissed in the year 2015. Again, the acquisition proceedings have been challenged in the present Writ Petition.

3. The learned counsel for the petitioners raised the following grounds. The possession of the property is still with the petitioners and it has not been taken even till today. Therefore, the acquisition proceedings have been lapsed as per the provisions under Section 24(2) of the New Act. Even according to the respondents, the compensation amount has been



deposited in the revenue deposit and the revenue deposit is non est in the eye of law. In support of his contentions, he relied upon the judgment of the Division Bench of this Court reported in 1991 L.W. 80 (Padmavathi -vs- State of Tamilnadu), in which it has been held as follows:-

"26. The same is the position in the present case under the Land Acquisition Act which is not only a special enactment but a complete Code in itself. We, therefore, hold that the Board Standing Order No.90 relied on by learned counsel for the petitioners has no statutory sanction.

27. Palaniswami, J. in Eswara Pillai v. State of Tamilnadu (1972-2MLJ 92) clearly observed that the instructions contained in Board's Standing Order No.90 were not issued under Section 55 and strictly speaking they are not statutory rules. The learned Judge, however, proceeded to observe: "But, nonetheless, the instructions have statutory force". It is difficult to understand how the instructions of the Board, which are neither statutory nor rules, could yet possess 'statutory force'. In our opinion, the only force that executive instructions can have, or hope to have, is executive force; they cannot have legislative or statutory force. Under Section 55(3) of the Act, rules framed by the appropriate Government after following the requirements of that section, can alone possess the 'force of law' and not any other instruments. We have earlier shown how the Board of Revenue has no place in the scheme of the Land Acquisition Act. Considered from that view point, the Board Standing Order No.90 cannot even claim the status of executive instructions."

4. The Hon'ble Division Bench of this Court held that the Board Standing Order No.90 cannot even claim the status of executive instructions. The instructions contained in Board's Standing Order No.90 were not issued under Section 55 and strictly speaking, they are not statutory rules. Therefore, it



has no statutory force. However, it does not say to follow the revenue standing order.

5. The counter filed by the respondents reveals that after completion of the acquisition proceedings, the possession of the property had been taken on 11.07.2011, after giving notice dated 23.05.2011 to the petitioners. Thereafter, the subject land has been allotted to 23 poor landless Adi Dravidar people and they were also issued patta. One of the beneficiary viz., Kalavathi on behalf of other Villagers gave requisition to the second respondent to measure and fix boundary stone in respect of the land allotted to them. Therefore, the third respondent had taken steps to measure the land on which he received objections. Therefore, the third respondent issued notice to the first petitioner. Insofar as the compensation is concerned, as per the award dated 24.07.1990 a sum of Rs.67,653/- has been kept under revenue deposit as early as on 01.10.1990. The respondents also produced records to that effect. That apart, the present Writ Petition has been filed after dismissal of the said SLP and also Review Petition before the Hon'ble Supreme Court of India.

6. The grounds raised by the petitioners in this Writ Petition have already been settled by the Constitution Bench of 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.



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



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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 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."



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7. 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 acquisition proceedings have been completed and the subject land was taken over by the third respondent on 11.07.2011. Insofar as the compensation is concerned, as per the award dated 24.07.1990 a sum of Rs.67,653/- has been kept under revenue deposit as early as on 01.10.1990. Therefore, the petitioners 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 is devoid of merits and liable to be dismissed.

8. In the result, the Writ Petition stands dismissed. However, if there is delay in disbursement of the compensation, the petitioners are entitled for interest as observed by the Constitution Bench of the Hon'ble Supreme Court of India. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

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To

1. The Commissioner & Secretary to Government,
The State of Tamil Nadu,
Social Welfare Department,
Fort St.George,
Chennai - 600 009.



2. The District Collector,
Erode District.

3. The Special Tahsildar,
Adi Dravidar Welfare (L.A),
Erode.

+1cc to the Government Pleader, S.R.No.47547

W.P.No.7178 of 2018

VBM(CO)
RLP(13/10/2021)