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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.09.2021

Coram:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

WP.Nos.15215 to 15218 of 2016 and
WMP.Nos.13266 to 13269 of 2016

WP.No.15215 of 2016

B.Gandimathi

...Petitioner

Vs.

1.The Secretary to Government,
Housing and Urban Department,
Fort St.George, Chennai 600 009

2.The Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai 600 035

3.The Executive Engineer and
Administrative Officer,
Tamil Nadu Housing Board,
Salem Housing Unit, Salem-8

4.The Land Acquisition,
Special Tahsildar,
Neighbourhood Scheme,
Tamil Nadu Housing Board,
Salem Housing Unit,
Salem-8

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of declaration declaring that the entire land acquisition proceedings initiated under the Land Acquisition Act, 1894 in respect of the lands belonging to the petitioner measuring an extent of 4130 sq.ft. (0.4.00 hecs) in S.No.94/9 (Old.S.No.94/2) in No.17 Pudupalayam Agraharam Village, Tiruchengode Taluk, Namakkal District (Formerly Salem District) as lapsed in view of Section 24 (2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.



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For Petitioner : Mr.P.Jagadeesan

For Respondents

For R1 & 4 : Mr.Richardson Wilson,
Government Advocate

For R2 & 3 : Mr.I.Sathish,
Standing Counsel

WP.No.15216 of 2016

Chinnasamy

...Petitioner

Vs.

1.The Secretary to Government,
Housing and Urban Department,
Fort St.George, Chennai 600 009

2.The Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai 600 035

3.The Executive Engineer and
Administrative Officer,
Tamil Nadu Housing Board,
Salem Housing Unit, Salem-8

4.The Land Acquisition,
Special Tahsildar,
Neighborhood Scheme,
Tamil Nadu Housing Board,
Salem Housing Unit,
Salem-8

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of declaration declaring that the entire land acquisition proceedings initiated under the Land Acquisition Act, 1894 in respect of the lands belonging to the petitioner measuring an extent of 15900 in patta no.510 Plot Nos.15,16,17 and 23 in S.No.94/3C2 (0.12.50 hecs) and S.No.94/3C4 (0.2.00 hecs) (Old S.No.94/3C for both) in Pudupalayam Agraharam Village, Tiruchengode Taluk, Namakkal District (Formerly Salem District) as lapsed in view of Section 24 (2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.



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For Petitioner : Mr.P.Jagadeesan

For Respondents

For R1 & 4 : Mr.Richardson Wilson,
Government Advocate

For R2 & 3 : Mr.I.Sathish,
Standing Counsel

WP.No.15217 of 2016

P.Duraisamy

...Petitioner

Vs.

1.The Secretary to Government,
Housing and Urban Department,
Fort St.George, Chennai 600 009

2.The Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai 600 035

3.The Executive Engineer and
Administrative Officer,
Tamil Nadu Housing Board,
Salem Housing Unit, Salem-8

4.The Land Acquisition,
Special Tahsildar,
Neighbourhood Scheme,
Tamil Nadu Housing Board,
Salem Housing Unit,
Salem-8

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of declaration declaring that the entire land acquisition proceedings initiated under the Land Acquisition Act, 1894 in respect of the lands belonging to the petitioner measuring an extent of 6923 sq.ft. in S.No.94/3C1 and S.No.94/3C3A both in Old.S.No.94-3C covered in patta No.402 in Pudupalayam Agraharam Village, Tiruchengode Village & Taluk, Namakkal District (Formerly Salem District) as lapsed in view of Section 24 (2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

For Petitioner : Mr.P.Jagadeesan



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For Respondents

For R1 & 4: Mr.Richardson Wilson,
Government Advocate

For R2 & 3: Mr.I.Sathish,
Standing Counsel

WP.No.15218 of 2016

P.Padmavathy

...Petitioner

Vs.

1.The Secretary to Government,
Housing and Urban Department,
Fort St.George, Chennai 600 009

2.The Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai 600 035

3.The Executive Engineer and
Administrative Officer,
Tamil Nadu Housing Board,
Salem Housing Unit, Salem-8

4.The Land Acquisition,
Special Tahsildar,
Neighbourhood Scheme,
Tamil Nadu Housing Board,
Salem Housing Unit,
Salem-8

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of declaration declaring that the entire land acquisition proceedings initiated under the Land Acquisition Act, 1894 in respect of the lands belonging to the petitioner measuring an extent of 6100 sq.ft. in Plot No.7 and 20. In S.No.94-11 (0.1.00 hecs) and S.No.94/12 (0.4.50 hecs) (Old.S.No.94/3C) in Pudupalayam Agraharam Village, Tiruchengode Taluk, Namakkal District (Formerly Salem District) as lapsed in view of Section 24 (2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

For Petitioner : Mr.P.Jagadeesan

For Respondents

For R1 & 4: Mr.Richardson Wilson,
Government Advocate



For R2 & 3 : Mr.I.Sathish,
Standing Counsel

COMMON ORDER

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In all the writ petitions, the acquisition proceedings under Section 24 (2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 are challenged on the ground that the award amount has not been taken and also possession of the properties has not been taken over.

2. Heard, Mr.P.Jagadeesan, the learned counsel appearing for the petitioners, Mr.Richardson Wilson, Government Advocate appearing for the respondents 1 & 4 and Mr.I.Sathish, Standing Counsel appearing for the respondents 2 and 3.

3. On perusal of records, the subject land in all the writ petitions have been acquired for the housing scheme under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter called as 'the Act') published in Government Gazattee on 26.10.1994. Draft declaration under Section 6 of the Act was approved in GO.Ms.No.916 Housing and Urban Development Department dated 02.11.1995. Sections 9(1), 10 and 9(3)(10) of the Act was issued on 29.11.1996 and fixed the date for award enquiry on 10.01.1997. After completion of the proceedings, award was passed in Award No.1 of 1997 dated 24.01.1997. At the time of award enquiry, none of the petitioners or interested persons appeared and not perused any documents. Therefore, the award amount was deposited in the civil court i.e. Sub Court, Sankari as contemplated under Sections 30 and 31(2) of the Act. Insofar as the possession is concerned, the subject properties were taken possession on 11.08.2014 by the fourth respondent herein and on the same day, the said lands were handed over to the Head Surveyor, Salem Housing Unit, Tamil Nadu Housing Board. That apart, the petitioners already challenged the acquisition proceedings and the writ petitions were dismissed by this Court. Thereafter, they also filed writ appeals, which were also dismissed.

4. 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 :-

289. In the opinion of this court it is not the intendment of the Act of 2013 that those who have litigated should get benefits of higher compensation as contemplated under



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Section 24 benefit is conferred on all beneficiaries. It is not intended by the provisions that in piecemeal the persons who have litigated and have obtained the interim order should get the benefits of the provisions of the Act of 2013. Those who have accepted the compensation within 5 years and handed over the possession too, are to be benefited, in case amount has not been deposited with respect to majority of holdings. There are cases in which projects have come up in part and as per plan rest of the area is required for planned development with respect to which interim stays have been obtained. It is not the intendment of the law to deliver advantage to relentless litigants. It cannot be said hence, that it was due to the inaction of the authorities that possession could not be taken within 5 years. Public policy is not to foment or foster litigation but put an end to it. In several instances, in various High Courts writ petitions were dismissed by single judge Benches and the writ appeals were pending for a long time and in which, with respect to part of land of the projects, efforts were made to obtain the benefit of Section 24(2). Parliament in our view did not intend to confer benefits to such litigants for the aforementioned reasons. Litigation may be frivolous or may be worthy. Such litigants have to stand on the strength of their own case and in such a case provisions of Section 114 of the Act of 2013 and Section 6 of the General Clauses Act, 1897, are clearly attracted and such proceedings have to be continued under the provisions of the old Act that would be in the spirit of Section 24(1)(b) itself of the Act of 2013. Section 6(b) of the General Clauses Act, 1897, provides that repeal will not affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder. Section 6(c) states that repeal would not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed. When there is a provision itself in Section 24(1)(b) of continuance of the proceedings where award has been passed under the Act of 1894, for the purposes of Section 24 as provided in Section 24 (b), the provisions of Section 114 is clearly attracted so as the provisions of Section 6 of



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the General Clauses Act, 1897, to the extent of non obstante clause of Section 24, where possession has not been taken nor payment has been made, there is a lapse, that too by the inaction of the Authorities. Any courts interim order cannot be said to be inaction of the authorities or agencies; thus, time period is not to be included for counting the 5 years period as envisaged in Section 24(2). As per proviso to Section 24(2), where possession has been taken, but compensation has not been paid or deposited with respect to majority of land holdings, all the beneficiaries would be entitled for higher compensation only to that extent, the provisions of Section 114 of the Act of 2013, would be superseded but it would not obliterate the general application of Section 6 of the General Clauses Act, 1897, which deals with effect of repeal except as provided in section 24(2) and its proviso.

290. It was submitted on behalf of acquiring authorities that principle of casus omissus is not necessarily applicable in all the cases. Reliance has been placed on Seaford Court Estates Ltd. v. Asher¹⁸⁵, in which following observations have been made:

The question for decision in this case is whether we are at liberty to extend the ordinary meaning of burden so as to include a contingent burden of the kind I have described. Now this court has already held that this sub-section is to be liberally construed so as to give effect to the governing principles embodied in the legislation (Winchester Court Ltd. v. Miller); and I think we should do the same. Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticized. A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would



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certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect 185 (1949) 2 K.B. 481 clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it, and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give force and life to the intention of the legislature. That was clearly laid down by the resolution of the judges in Heydons case, and it is the safest guide to-day. Good practical advice on the subject was given about the same time by Plowden in his second volume *Evston v. Studd*. Put into homely metaphor it is this: A judge should ask himself the question: If the makers of the Act had themselves come across this ruck in the texture of it, how would they have straightened it out? He must then do as they would have done. A judge must not alter the material of which it is woven, but he can and should iron out the creases. Approaching this case in that way, I cannot help feeling that the legislature had not specifically in mind a contingent burden such as we have here. If it had, would it not have put it on the same footing as an actual burden? I think it would. It would have permitted an increase of rent when the terms were so changed as to put a positive legal burden on the landlord. If the parties expressly agreed between themselves the amount of the increase on that account the court would give effect to their agreement. But if, as here, they did not direct their minds to the point, the court has itself to assess the amount of the increase. It has to say how much the tenant should pay "in respect of" the transfer of this burden to the landlord. It should do this by asking what a willing tenant would agree to pay and a willing landlord would agree to accept in respect of it. Just as in the earlier cases the courts were able to assess the value of the "fair wear and tear" clause, and of a "cooker." So they can assess the value of the hot water clause and translate it fairly in terms of rent; and what



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applies to hot water applies also to the removal of refuse and so forth. I agree that the appeal should be allowed, and with the order proposed by Asquith LJ. (emphasis supplied)

"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 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



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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 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."

5. 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 government and the same was handed over to the requisition body. Further the compensation amount was also deposited into Sub Court, Sankari. Therefore, the petitioners failed to satisfy the twin requirements under Section 24 (2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, 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 petitions are devoid of merits and liable to be dismissed.

6. In the result, the Writ Petitions stand 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 to Government,
Housing and Urban Department,
Fort St.George, Chennai 600 009
- 2.The Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai 600 035
- 3.The Executive Engineer and
Administrative Officer,
Tamil Nadu Housing Board,
Salem Housing Unit, Salem-8



4.The Land Acquisition
Special Tahsildar,
Neighbourhood Scheme,
Tamil Nadu Housing Board,
Salem Housing Unit,
Salem-8.

+4cc to Mr.P.Jagadeesan, Advocate, S.R.No.46206
+1cc to Mr.I.Sathish, Advocate, S.R.No.46450

WP.Nos.15215 to 15218 of 2016

PMK(CO)
CB(05/10/2021)