



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2021

CORAM

THE HON'BLE Mr. JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos.3304, 3722 and 3723 of 2018
and

W.M.P.Nos.4049, 4534 and 4535 of 2018

P.Ranganathan ... Petitioner in W.P.No.3304 of 2018

1. Chinnammal
2. A.V.Damodaran
3. Devandran
4. V.Krishnaswamy ... Petitioners in W.P.No.3722 of 2018

1. Kanchana
2. Thulasi
3. M.Narendran
4. M.Sundari
5. M.Devendran ... Petitioners in W.P.No.3723 of 2018

Vs

1.State of Tamilnadu,
Represented by the Secretary to Government,
Housing and Urban Development Department,
Chennai - 600 009.

2.The District Collector,
Thiruvallur District,
Thiruvallur.

3.The Special Tahsildar and
Land Acquisition Officer,
Outer Ring Road Project Unit - IV,
Chennai Metropolitan Development Authority,
Egmore, Chennai - 600 008. ... Respondents in all W.Ps

Prayer in W.P.No.3304 of 2018:- Writ Petition is filed under Article 226 of Constitution of India, praying to issue a Writ of Declaration, declaring the land acquisition proceedings initiated by the respondents under the Land Acquisition Act, 1894 as amended as null and void by virtue of Section 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act 2013 (Act 30 of



2013) pertaining to the petitioner's land relating to Survey No.144/3B, measuring 0.05.0 hectares at 16, Karunakarachari Village, Poonamallee Taluk, Thiruvallur District.

Prayer in W.P.No.3722 of 2018:- Writ Petition is filed under Article 226 of Constitution of India, praying to issue a Writ of Declaration, declaring the land acquisition proceedings initiated by the respondents under the Land Acquisition Act, 1894 as amended as null and void by virtue of Section 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act 2013 (Act 30 of 2013) pertaining to the petitioners' land in S.No.43/1B measuring 0.10.5 hectares, S.No.43/2A part, measuring 0.36 hectares, S.No.53/2B2 measuring 0.12.0 hectares and S.No.55/1A part measuring 0.05.0 hectares measuring about 1.55 acres at No.15, Amudhuramedu Village, Poonamallee Taluk, Thiruvallur District.

Prayer in W.P.No.3723 of 2018:- Writ Petition is filed under Article 226 of Constitution of India, praying to issue a Writ of Declaration, declaring the land acquisition proceedings initiated by the respondents under the Land Acquisition Act, 1894 as amended as null and void by virtue of Section 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act 2013 (Act 30 of 2013) pertaining to the petitioners' land in Survey No.139/1, measuring 0.29.5 hectares at 16, Karunakarachari Village, Poonamallee Taluk, Thiruvallur District.

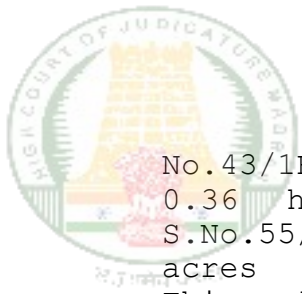
For Petitioners
in all W.Ps. : Mr.David Tyagaraj

For Respondents
in all W.Ps : Mr.Richardson Wilson
Government Advocate

C O M M O N O R D E R

These writ petitions have been filed to issue a Writ of Declaration, declaring the land acquisition proceedings initiated by the respondents under the Land Acquisition Act, 1894 as amended as null and void by virtue of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act 2013 (Act 30 of 2013) (hereinafter referred to as 'the New Act' for short) pertaining to the petitioners' respective lands.

2. The case of the petitioners is that the petitioner in W.P. No. 3304 of 2018 and fathers of the petitioners in W.P. Nos, 3722 and 3723 of 2018 owned properties comprised in Survey No.144/3B, measuring 0.05.0 hectares at 16, Karunakarachari Village, Poonamallee Taluk, Thiruvallur District, Survey



No.43/1B measuring 0.10.5 hectares, S.No.43/2A part, measuring 0.36 hectares, S.No.53/2B2 measuring 0.12.0 hectares and S.No.55/1A part measuring 0.05.0 hectares measuring about 1.55 acres at No.15, Amudhuramedu Village, Poonamallee Taluk, Thiruvallur District and Survey No.139/1, measuring 0.29.5 hectares at 16, Karunakarachari Village, Poonamallee Taluk, Thiruvallur District respectively. Thereafter, the father of the petitioners in W.P. No. 3722 of 2018 died in the month of May 1972 and the father of the petitioners in W.P. No. 3723 of 2018 died. However, the first respondent issued notification under Section 4(1) of the Tamil Nadu Land Acquisition Act, 1894 on 02.08.2000, 17.02.1999 and 17.02.1999 in the names of the petitioner in W.P. No. 3304 of 2018 and the fathers of the petitioners in W.P. Nos. 3722 and 3723 of 2018 respectively. However, Section 6 Declaration was issued in the name of the petitioner in W.P. No. 3304 of 2018 and fathers of the petitioners in W.P. No. 3722 and 3723 of 2018 and no regular inquiry was conducted as contemplated under the Act.

3. The notice under Section 12(2) of the Land Acquisition Act, 1894 was also not issued to the petitioners. Though the respondents have taken symbolic possession of the lands, physical possession still continues with the petitioners.

4. Mr.David Tyagaraj, learned counsel for the petitioners submitted that the entire acquisition proceedings is bad in law under the Land Acquisition Act, 1894 since the repealed Act viz., the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 is applicable and the principles laid down under Section 24(2) is applicable to the case of hand. Therefore, the notification under Section 4(1) and Section 6(1) Declaration under the old Act are liable to be quashed. The 4(1) notification issued in the names of the petitioner in W.P.No. 3304 of 2018 and the fathers of the petitioners in W.P.Nos.3722 and 3723 of 2018 cannot be sustained.

5. However, no notice of inquiry was issued under Section 5A of the Land Acquisition Act. The possession of the proposed lands to be acquired is continuously in the possession and enjoyment of the petitioners. So far, no compensation has been deposited and no compensation is received by the petitioners. Therefore, the entire acquisition proceedings have been lapsed as per Section 24(2) of the New Act.

6. The third respondent filed counter in W.P. No. 3304 of 2018 stating that the acquisition proceedings were initiated for the Project of Outer Ring Road for the lands admeasuring 12.96.0 Hec. situated at Kararachari Village, Poonamallee Taluk, Tiruvallur District under the Land Acquisition Act. The subject



property in W.P.No.3304 of 2018 admeasuring 0.05.0 hectares comprised in Survey No.144/3B was also acquired. The notification under Section 4(1) of the Act was approved by the Government in G.O.Ms.No.280, dated 06.07.2000.

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7. Though the fathers of the petitioners in W.P. Nos. 3722 and 3723 of 2018 died, all the Revenue Records stood in their name namely Varadappa Naicker and P.Munusamy Naicker respectively and no Revenue Records were mutated in the name of the petitioners in W.P. Nos. 3722 and 3723 of 2018 after the demise of their fathers. Therefore, Section 4(1) notification was published and issued in the name of their fathers namely Varadappa Naicker and P.Munusamy Naicker respectively. It was also published in two Tamil Dailies i.e., in "Malai Malar" newspaper on 11.08.2000 and "Madurai Mani" newspaper on 12.08.2000 and it was also published in the locality on 14.08.2000. In fact, the petitioners had knowledge about the 4 (1) notification and the inquiry was conducted on 29.09.2000, 03.10.2000, 04.10.2000 and 05.10.2000 as contemplated under Section 5A of the Land Acquisition Act.

8. The physical possession of the subject properties had already been taken as early as 18.12.2003 and the compensation amount was also kept under the Revenue Deposit on 18.11.2003. Thereafter, the subject land was handed over to the requisitioning body on 18.12.2003. In fact, the final notice regarding taking over possession under Section 13 of the Survey and Boundaries Act, 1923 was also published in the Tiruvallur District Gazette No.21 dated 14.06.2004.

9. It is also revealed that the notice under Section 9(3) and 10 of the Land Acquisition Act were issued to the petitioners in W.P. No. 3722 of 2018 requesting them to appear for award inquiry and to produce the original documents to prove the ownership of the land comprised in Survey Nos.43/1B, 43/2A, 53/2B2 and 55/1A part. However, the petitioners in W.P. Nos. 3722 of 2018 have not appeared for inquiry.

10. Therefore, though the notification issued under Section 4(1) of the Land Acquisition Act in the name of dead person, the petitioners in W.P. Nos. 3722 and 3723 of 2018 being the legal heirs of the deceased Varadappa Naicker and P.Munusamy Naicker respectively had knowledge over the notification, but they had not attended the inquiry conducted under Section 5A of the Land Acquisition Act.

11. Therefore, the petitioners in W.P. Nos. 3722 and 3723 of 2018, being the legal heirs of the Varadappa Naicker and P.Munusamy Naicker had knowledge about the 4(1) notification, but they have not attended the inquiry conducted under Section



5A of the Land Acquisition Act. Therefore, there is no prejudice caused to the petitioners in W.P. Nos. 3722 and 3723 of 2018 by issuance of notification under Section 4(1) of the Land Acquisition Act in the name of dead persons namely their fathers Varadappa Naicker and P.Munusamy Naicker respectively.

12. In so far as the compensation is concerned, the entire award amount was kept under Revenue Deposit on 18.11.2003. In so far as the possession is concerned, the subject property had already been taken as early as 18.12.2003 and handed over to the requisitioning body. Therefore, the acquisition proceedings have not lapsed as contended by the petitioners.

13. That apart, these writ petitions have been filed after a period of 17 years from the date of notification issued under Section 4(1) of the Land Acquisition Act. In this regard, it is relevant to rely upon the decision of Constitution Bench 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 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



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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 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 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



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 319 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. Considering the said submission, the consequence of non-deposit is provided in the proviso to Section 24(2) in case it has not been deposited with respect to the land owners 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. Therefore, these writ petitions are devoid of merits and liable to be dismissed.

Sd/-
Assistant Registrar (CS-V)

Sub Assistant Registrar

<https://hcservices.ecourts.gov.in/hcservices/>



To

1. The Secretary to Government,
State of Tamilnadu,
Housing and Urban Development Department,
Chennai - 600 009.
2. The District Collector,
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Thiruvallur.
3. The Special Tahsildar and
Land Acquisition Officer,
Outer Ring Road Project Unit - IV,
Chennai Metropolitan Development Authority,
Egmore, Chennai - 600 008.

+4ccs to Mr.David Tyagaraj, Advocate SR.No.54434

+1cc to Government Pleader SR.No.55068

W.P.Nos.3304, 3722 and
3723 of 2018

SSV(CO)
GMY(10/12/2021)