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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.10.2021

Coram:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos.9349 and 9350 of 2018

V.Sivakumar

...Petitioner
in W.P.No.9349 of 2018

N.Suseendran

...Petitioner
in W.P.No.9350 of 2018

Vs.

1. The State of Tamil Nadu,
Represented by the Commissioner
and Secretary to Government,
Housing and Urban Development
Department, Fort St.George,
Chennai- 600 009.

2. The Tamil Nadu Housing Board,
Represented by its Managing Director,
Tamil Nadu Housing Board,
No.493, Anna Salai, Nandanam,
Chennai-600 035.

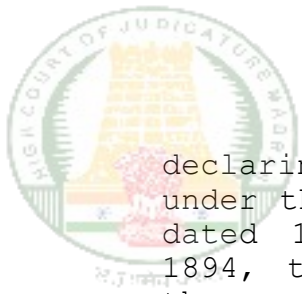
3. The Special Tahsildar(L.A.)
Housing Schemes No.1,
Tatabad, Coimbatore - 12.

4.The Executive Engineer cum
Administrative Officer,
Coimbatore Housing Unit,
Tamil Nadu Housing Board,
Tatabad, Coimbatore-600 012.

5.The Zonel Deputy Tahsildar,
O/o. The Tahsildar,
Anuppar Palayam,
Coimbatore North Taluk,
Coimbatore District.

...Respondents in both W.Ps.

COMMON PRAYER: Writ Petitions have been 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, (Old Act) in G.O.Ms.No.597 dated 14.03.83 issued u/s.4(1) of the Land Acquisition Act, 1894, the declaration made in G.O.Ms.No.387 dated 12.3.86 and the award passed in Award No.1/88 dated 16.12.1988 in respect of the land of an extent of Acre 0.57 ½ cents belonging to the petitioner comprised in S.F.No.84/2, Ganapathy Village, Coimbatore 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(Act 30/2013) and consequently direct the 4th respondent to mutate the revenue records and issue patta in the name of the petitioner without insisting for no objection certificate from the 2nd respondent.

For Petitioner
in both W.Ps. : Mr.R.N.Amarnath

For Respondents 1, 3 and 5
in both W.Ps. : Mr.M.R.Gokul Krishnan,
Government Advocate

For Respondents 2 and 4
in both W.Ps. : Dr.R.Gouri,
Standing Counsel

COMMON ORDER

Both the Writ Petitions have been filed to issue a Writ of Declaration, declaring that the entire land acquisition proceedings initiated under the Land Acquisition Act, 1894, (Old Act) in G.O.Ms.No.597 dated 14.03.83 issued u/s.4(1) of the Land Acquisition Act, 1894, the declaration made in G.O.Ms.No.387 dated 12.3.86 and the award passed in Award No.1/88 dated 16.12.1988 in respect of the land of an extent of Acre 0.57 ½ cents belonging to the petitioner comprised in S.F.No.84/2, Ganapathy Village, Coimbatore 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 (Act 30/2013) and consequently direct the 4th respondent to mutate the revenue records and issue patta in the name of the petitioner without insisting for no objection certificate from the 2nd respondent.

2. The case of the petitioners is that the first petitioner's father and the second petitioner's father are brothers and they had established an Industry in the year 1976 in the name and style of M/s.Siva Foundry, in which, they are partners. They had jointly purchased 1.5 acres of land comprised in S.F.No.84/2 situated at Ganapathy Village, Coimbatore Taluk, Coimbatore District by way of a Registered Sale Deed dated



6.6.1980, vide Document No.2053/80. Since the second petitioner's father viz., Mr.A.S.Narayanasamy retired from the partnership firm, the first petitioner's father alone had running the partnership firm and the property was divided amongst them and the extent of acre 0.57 ½ cents of land in southern portion was allotted to his father's brother Mr.A.S.Narayanasamy. After the demise of the first petitioner's father Venugopal, the petitioners along with the family members have executed a partition deed. Insofar as the first petitioner's father's brother's family is concerned, after the death of the first petitioner's father, their family members have divided the property and mutated the revenue records in their favour. After the family arrangements between the petitioners' family members, they executed settlement deed and other release deed and the sub-land was allotted to the petitioners and the petitioners alone are absolute owners of the property. Thereafter, the patta was issued for the property and they have been regularly paying property tax. Originally an extent of 2.30 acres of the said land comprised in S.F. No.84/2 situated at Ganapathy Village is sub-divided for the purpose of providing house for Ganapathy Neighbourhood Project. 4(1) notification of the Land Acquisition Act, 1894, was issued on 14.03.1987 vide G.O.Ms.No.597. Subsequently, declaration under Section 6 of the Act came to be made in G.O.Ms.No.387 and the declaration came to be issued on 12.03.1986. However, the said acquisition proceedings were challenged by the first petitioner's father and the other land owners in W.P.No.3387 of 1986 and the same was allowed on 23.10.1991 along with a batch of writ petitions. However, aggrieved by the same, the 1st respondent herein has filed an appeal in W.A.No.731 of 1995 and the same was allowed by the Hon'ble Division Bench of this Court on 03.06.2002.

3. The learned counsel for the petitioners now raised the grounds in both the writ petitions that the subject property is well within the petitioners' property and it has not been taken by the respondents and the award was passed in Award No.1/1988 on 16.12.1988. Thereafter, no notice was served to the petitioners, their father or their family members under Section 12(2) of the Act, either to his father or to his family members. Insofar as the award amount is concerned, though the respondents stated that they have deposited the compensation amount in the Civil Court, there is no proof to show in which Court and on which date they have deposited the amount. Therefore, the entire acquisition proceedings have lapsed as per Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. He would further submit that as per Section 24(2) of the said Act, if possession of the land was not taken or compensation amount was not paid in respect of the acquisition proceedings initiated under the Land



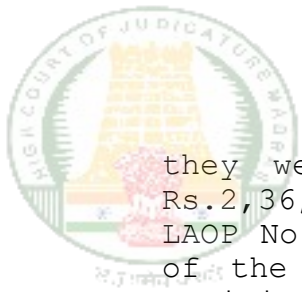
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Acquisition Act, 1894 (old Act), for which award was made 5 years or more prior to the commencement of the Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the entire acquisition proceedings initiated under the old Act will become lapsed.

4. In the case on hand, the award was made in the year 1988. So far neither the possession was taken nor the compensation was paid or deposited in the Court as required under the old Act. Therefore, the entire acquisition proceedings has become lapsed in respect of the petitioners land. In this regard, he relied upon the following judgments :

1. Hari Ram v. State of Haryana and others reported in (2010) 3 SCC 621.
2. Kulsum R. Nadiadwala v. State of Maharashtra reported in (2012) 6 SCC 348.
3. Union of India v. Gopal Das Bhagwan Das and others reported in (2020) SCC Online SC 217.
4. Pune Municipal Corporation v. Harakchand Misirimal Solanki and others reported in (2014) 3 SCC 183
5. Government (NCT of Delhi) v. Manau Dharam Trust and another reported in (2017) 6 SCC 751.
6. K. Saraswathi v. State of Tamil Nadu reported in (2020) SCC Online Mad 2475.
7. M. Palanisamy v. State of Tamil Nadu reported in (2020) SCC Online Mad 2476.
8. BEML Employees House Building Cooperative Society Ltd., v. State of Karnataka reported in (2005) 9 SCC 248.
9. Indore Development Authority v. Manoharlal and others reported in (2020) 8 SCC 129.

5. Per contra, the learned Standing Counsel appearing for the 2nd respondent submitted that the 2nd respondent filed counter affidavit, which reveals that both the writ petitions have been filed after three decades from the date of 4(1) notification in G.O. Ms. No. 597, dated 14.03.1983. Before passing the award, the father of the first petitioner herein has challenged the acquisition proceedings and though it was initially allowed by the learned Single Judge, thereafter, the acquisition proceedings was upheld by the Hon'ble Division Bench of this Court, by an order dated 03.06.2002. Further, it reveals that notification under Section 4(1) of the Land Acquisition Act, were served to all the persons. Siva Foundry has sent their representation through post to drop the Land Acquisition proceedings and they did not appear for award enquiry. After passing an award, the notice under Section 12(2) of the Land Acquisition Act was also served to notified persons. Even then,



they were not turned to receive the compensation amount of Rs.2,36,917.95 for the whole award deposited in Civil Court in LAOP No.162 of 1991, dated 22.04.1991. Insofar as the possession of the subject property is concerned, while pending the writ petition, the petitioners obtained stay of dispossession of the land and therefore, the physical possession of the property has not been taken over from the petitioners. She would further state that in a neighbourhood scheme except the subject land, entire land has been utilised for the formation of Ganapathy neighbourhood scheme and as such, the present land is very much required to complete the scheme. In view of the above, the petitioners have failed to fulfill the exact land demanded under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

6. Heard the learned counsel for the petitioners, learned Government Advocate appearing for the first, third and fifth respondents and the learned Standing Counsel appearing for the second and fourth respondents.

7. The Land Acquisition proceedings were initiated for the formation of Ganapathy Neighbourhood Schemes at Ganapathy Village, Coimbatore, the Land Acquisition proceedings under Section 4(1) of the Act was issued on 14.03.1983. Subsequently, a declaration under Section 6 of the Act came to be passed on 12.03.1986. At this juncture, the father of the first petitioner and other land owners challenged the acquisition proceedings and obtained interim stay of dispossession of their lands. All the writ petitions were allowed by order dated 23.10.1991 and the batch of Writ Appeals in W.A.No.731 of 1995 are also allowed and upheld the acquisition proceedings by order dated 03.06.2002. Even then, the respondents did not take any steps to take possession of property even by symbolic possession. Pending these writ petitions, the respondents have passed an award in Award No.1/1988 dated 16.12.1988. Though they stated in the counter that they have deposited the award amount in the civil court in LAOP No.162/91, they failed to mention on the file of which Court and on which date they deposited the amount. A perusal of records reveals that the amount deposited vide receipt dated 22.04.1991 in Sub-Court, Coimbatore, but, no notice was served on the petitioners under Section 12(2) of the Act, after passing the award. Therefore, no one has appeared before the respondents to receive the compensation. However, even according to the respondents, the compensation amount has been deposited only on 22.04.1991. Admittedly, the petitioners are in possession and enjoyment of the subject property. It is also evident from the records produced by the petitioners that patta, kist receipts and property tax assessment, the extract from the Tamil Nadu Slum Clearance Board and Electricity service



connection payment details in respect of the subject property. It is also seen that under the same notification, some of the land owners have succeeded in challenging the acquisition proceedings and they are in possession and enjoyment of their respective lands, after constructing house and factory premises.

8. In this regard, the learned counsel for the petitioners relied upon the judgment rendered by the Constitution Bench of the Hon'ble Supreme Court of India in the case of Indore Development Authority Vs. Manoharlal and ors 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:

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



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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 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



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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."

9. After elaborate discussions, it is held that drawing of panchnama of taking possession is the mode of taking possession in land acquisition cases, thereupon land vests in the State and any re-entry or retaining the possession thereafter is unlawful and does not inure for conferring benefits under Section 24(2) of the 2013 Act.

10. Whereas, in the case on hand, after allowing the Writ Appeals filed by the respondents by an order dated 03.06.2002, they have not taken even symbolic possession from the petitioners in respect of the subject property. Even today, the petitioners are in possession and enjoyment of the subject property. Therefore, the respondents failed to take symbolic possession of the subject property and the entire acquisition proceedings have lapsed as contemplated under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. That apart, the petitioners were not served notice under Section 12 (2) of the Act, after passing an award, dated 16.02.1988.

11. In view of the above discussion, the entire land acquisition proceedings have been lapsed under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Respondents 3 and 5 are directed to mutate the revenue records and issue patta in the name of the petitioners for their respective subject lands without insisting for No Objection Certificate from the 2nd respondent.

12. In the result, both the writ petitions are allowed. Consequently, connected miscellaneous petitions are closed. There is no order as to costs.

Sd/-
Assistant Registrar (CS-VII)

//True copy//

Sub Assistant Registrar

ssn



To

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

2. The Managing Director,
The Tamil Nadu Housing Board,
Tamil Nadu Housing Board,
No.493, Anna Salai, Nandanam,
Chennai-600 035.

3. The Special Tahsildar(L.A.)
Housing Schemes No.1,
Tatabad, Coimbatore - 12.

4.The Executive Engineer cum
Administrative Officer,
Coimbatore Housing Unit,
Tamil Nadu Housing Board,
Tatabad, Coimbatore-600 012.

5.The Zonal Deputy Tahsildar,
O/o. The Tahsildar, Anuppar Palayam,
Coimbatore North Taluk,
Coimbatore District.

+2ccs to Mr.R.N.Amarnath, Advocate SR.No.52644, 52645

+1cc to Government Pleader SR.No.53130

W.P.Nos.9349 and 9350 of 2018

NRJK(CO)
GMY(15/11/2021)