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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.25671 of 2015 and W.P.No.16397 of 2017
and

M.P.Nos.1 & 2 of 2015 and W.M.P.Nos.17724 & 17725 of 2017

W.P.No.25671 of 2015

S.Lakshmanan

...Petitioner

Vs.

1. The Principal Secretary to Government,
Tamil Nadu Housing & Urban Development Department,
Fort St.George, Secretariat,
Chennai - 600 009.

2. The Special Tahsildar, (Land acquisition),
Neighborhood Scheme,
Salem.

3. The Managing Director,
Tamil Nadu Housing Board,
Nandanam,
Chennai - 35.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, calling for the entire records relating to the impugned G.O.Ms.No.732 Housing and Urban Development, dated 23.05.1986 issued by the first respondent and quash the same, since as per Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013) the entire acquisition proceedings become lapsed.

For Petitioner : No Appearance

For Respondents : Mr.Richardson Wilson
Government Advocate (for R-1 & R-2)

: Mr.I.Sathish
Standing Counsel (for R-3)



W.P.No.16397 of 2017

1. N.Devarajan
2. N.Sivajiganesan
3. N.Murugesan

...Petitioners

Vs.

1. The Principal Secretary to Government,
Tamil Nadu Housing & Urban Development Department,
Fort St.George, Secretariat,
Chennai - 600 009.
2. The Special Tahsildar, (Land acquisition),
Neighborhood Scheme,
Salem.
3. The Managing Director,
Tamil Nadu Housing Board,
Nandanam,
Chennai - 35.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, calling for the entire records relating to the impugned G.O.Ms.No.732, dated 25.05.1986 issued by the first respondent and quash the same, since as per Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013) the entire acquisition proceedings become lapse.

For Petitioners : Mr.R.Marudhachalamurthy

For Respondents : Mr.Richardson Wilson
Government Advocate (for R-1 & R-2)

: Mr.I.Sathish
Standing Counsel (for R-3)

C O M M O N O R D E R

These petitions have been filed seeking to quash the impugned G.O.Ms.No.732, Housing and Urban Development, dated 23.05.1986 issued by the first respondent, since as per 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) the entire acquisition proceedings become lapsed.

2. Heard Mr.R.Marudhachalamurthy, learned counsel appearing for the petitioners, Mr.Richardson Wilson, learned Government



Advocate appearing for the first and second respondents and Mr.I.Sathish, learned Standing Counsel appearing for the third respondent.

3. The petitioners raised the grounds that the petitioners are still in possession of the entire subject properties and they were not paid any compensation. Therefore, the entire acquisition had lapsed as per Section 24(2) of the New Act.

4. On a perusal of the records, it reveals that the petitioners have already challenged the acquisition proceedings, that too, after passing the award in W.P.No.5083 of 1988 and the same was dismissed on 25.06.1991. That apart, after passing of the award, the possession was taken on 14.12.1989 from the petitioners in respect of the subject properties. The compensation was also deposited in the Sub Court, Sanakari in the year 1988 itself. After having been failed before this Court in the earlier litigation, the petitioners cannot file writ petitions again as per Section 24(2) of the New Act. The records produced by the third respondent also revealed that the possession had been taken from the petitioners and handed over to the third respondent on 14.12.1989 itself. Thereafter, the patta and Revenue Records were also mutated in the name of the third respondent and it is evident from the Adangal extract produced by the third respondent.

5. 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.



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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 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.



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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."

6. The Hon'ble Supreme Court of India, settled all proposition of law in the above judgment including the grounds raised by the petitioners herein. That apart, after passing the award, the possession was taken on 14.12.1989 from the petitioners in respect of the subject properties. The compensation was also deposited in the Sub Court, Sanakari in the year 1988 itself. 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 above dictum laid down by



the Hon'ble Supreme Court of India, the issues raised by the petitioners were settled and therefore, the acquisition proceedings had not 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.

7. In the result, these Writ Petitions stands dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary to Government,
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Chennai - 600 009.
2. The Special Tahsildar, (Land acquisition),
Neighborhood Scheme,
Salem.
3. The Managing Director,
Tamil Nadu Housing Board,
Nandanam,
Chennai - 35.

+1cc to M/s.R.Marudhachalamurthy, Advocate, S.R.No.43737
+1cc to the Government Pleader, Sr.43930

W.P.No.25671 of 2015 and
W.P.No.16397 of 2017

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NSK 28/09/2021