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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2021

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.31224 of 2013

1. Gandhi Prasad
2. S.N.Kirubanandam
3. S.N.Krishnamoorthy
4. S.N.Bakthavatchalam

...Petitioners

-Vs-

1. The State of Tamil Nadu,
Represented by Commissioner and
Secretary to Government,
Housing and Urban Development,
Fort St.George, Chennai - 9.
2. The Chairman and Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai - 35.
3. The District Collector,
Vellore District, Vellore.
4. The Special Tahsildar (Land Acquisition),
Tamil Nadu Housing Board,
Thirupathur, North Arcot District.

...Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records in G.O.Ms.No.258, dated 12.02.1986, on the file of the first respondent and quash the same as so far as petitioner concern as illegal, incompetent and unconstitutional and in the alternative direct the respondents to pay compensation to the petitioner on par with the present market value of the lands.

For Petitioners : Mr.V.Raghavachari
For R1, R3 and
R4 : Mr.A.Selvendran
Special Government Pleader.
For R2 : Mr.S.Vanchinathan



ORDER

This writ petition has been filed challenging the notification issued under Section 4(1) of the Land Acquisition Act, 1894 in G.O.Ms.No.258 dated 12.02.1986.

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2. Heard Mr.V.Raghavachari, learned counsel appearing for the petitioners, Mr.A.Selvendran, learned Special Government Pleader appearing for the respondents 1, 3 and 4 and Mr.S.Vanchinathan, learned counsel appearing for the second respondent.

3. The property comprised in Survey No.69/3B, ad-measuring 2.62 acres situated at Gudiyatham Taluk, North Arcot District, owned by the petitioners was sought to be acquired to form the Neighbourhood Scheme by the fourth respondent.

4. Originally, to an extent of 72.09 acres of Patta lands in Kondasamudram Village, Gudiyattam have been proposed for acquisition of Housing Board Scheme. After 4(1) notification of the Land Acquisition Act, 1894, the enquiry under Section 5 (A) of the Land Acquisition Act, 1894 was conducted on 12.05.1986, after service of notice as contemplated under Section 3 and Section 3(1) of the Land Acquisition Act, 1894. The draft declaration under Section 6 of the Land Acquisition Act, 1894 was approved in G.O.Ms.No.397, dated 06.03.1987. Subsequently, the draft declaration under Section 7 of the Land Acquisition Act, 1894 was approved by the Government in the letter dated 02.04.1987 and it was published in the Tamil Nadu Government Gazette on 22.04.1987. Insofar as the subject land comprised in Survey No.69/3B to an extent of 2.62 acres is concerned, the Patta stood in the name of Manokari Ammal wife of S.M.Narayanasami Naidu.

5. During the award enquiry, she has appeared and produced the partition deed executed with her family members during the year 1986, registered vide Document No.1830 of 1986, dated 15.04.1986. Accordingly, the subject land belong to her sons i.e. the petitioners herein. During the award enquiry, she had requested to pay the entire compensation to her sons i.e. the petitioners herein. They agreed to receive the compensation with protest. However, one P.N.Ramamoorthy has submitted objections by stating that a Civil Suit is pending in respect of the subject land in O.S.No.893 of 1986 on the file of the District Munsif Court, Thirupathur.

6. Therefore, the award amount payable to the subject land was deposited in Sub Court, Vellore, as contemplated under Section 31(2) of the Land Acquisition Act, 1894. The award was passed in Award No.6 of 1988 to 1989. The possession of the



subject property has been handed over to the Tamil Nadu Housing Board on 01.03.1999. Already the land acquisition proceedings was challenged by the petitioner in W.P.No.5627 of 1989 and the same was dismissed by this Court on 17.01.1990. Aggrieved by the same, a writ appeal was filed in W.A.No.96 of 1990 and the same was also dismissed by an order dated 13.10.1992. However, again the notification was issued under Section 4(1) of the Land Acquisition Act, 1894 in G.O.Ms.No.258, dated 12.02.1996, which has been challenged in this writ petition.

7. The learned counsel for the petitioner submitted that the possession of the property comprised in Survey No.58/2A alone was taken and other three blocks were dropped from the acquisition proceedings. As far as the subject property is concerned, even till today, the petitioners are in possession and enjoyment of the same. Therefore, the petitioners have requested to drop the acquisition proceedings and re-convey the same or determine to pay compensation on par with the market value. The said representation was not considered and as such they approached this Court in W.P.No.18124 of 2000. This Court directed the respondents to consider and dispose of the representation. However, their request was rejected "as not feasible". Again the petitioners had challenged the rejection of re-conveyance of their property in W.P.No.20533 of 2003. This Court by an order dated 14.09.2011, upheld the acquisition proceedings and the petitioners have no right to claim the re-conveyance and further directed the respondents to take steps for the purpose of referring the dispute relating to payment of compensation under Section 18 of the Land Acquisition Act, 1894. He further submitted that the compensation amount had been deposited only in the month of June 2013, i.e. after 27 years from the date of notification. Therefore, the payment of compensation is not justifiable, since the value of the land increases multifold everyday.

8. He relied upon the judgment of the Hon'ble Division Bench of this Court in W.A.No.389 of 2011. The non payment of compensation amount within a reasonable time would render the acquisition proceedings lapsed. A citizen cannot be deprived of his property, except in accordance with the procedure established by law. The non payment / belated payment of the compensation, beyond the reasonable time, would nullify the acquisition proceedings. He also submitted that more than 50% of the land which was proposed to acquire has been deleted and re-conveyed the same in favour of their respective owners. Therefore, the petitioners are also entitled to get back their land by re-conveyance.

9. Per contra, the fourth respondent filed a counter and also produced the file in respect of the acquisition proceedings



of the subject property. After the enquiry, the award was passed on 15.03.1989. Since, the Civil Suit was pending, the amount of compensation to be paid to them was ordered to be deposited in the Sub Treasury, Thirupathur, as contemplated under Section 31(2) of the Land Acquisition Act, 1894. Accordingly, the award amount has been deposited in the Sub Treasury, Thirupathur on 04.01.1990 under "Work Deposit" by the Special Tahsildar (Land Acquisition), Tamil Nadu Housing Board, Vellore. Thereafter, the Revenue Divisional Officer, Thirupathur, had withdrawn the said amount from the Sub Treasury, Thirupathur by way of Demand Draft in favour of Sub Court, Vellore payable to the State Bank of India, Vellore and deposited the same as early as on 18.08.1999 itself. Therefore, the compensation amount as per the Award No.6/1988-1989, has been duly deposited by the respondents for the acquisition of the subject land.

10. Insofar as the possession of the subject land is concerned, after dismissal of the writ appeal in W.A.No.96 of 1990, the possession had been taken over and handed over to the Tamil Nadu Housing Board on 01.03.1999. The award had been referred under Section 18 of the Land Acquisition Act, 1894 before the Civil Court. Since, the writ appeal was pending, it was not taken on file and after dismissal of the writ appeal, it had been taken as LAOP Nos.12 of 2002 and 14 of 2002 on the file of Sub-Court, Vellore. Thereafter, all the Revenue records were mutated in favour of the Tamil Nadu Housing Board, such as Chitta and Adangal. In fact, the representation submitted by the petitioners seeking relief under Section 48(B) of the Land Acquisition Act, 1894, for re-conveyance of the subject property was rejected by an order dated 20.03.2001. Further representation of the petitioners, dated 18.08.2003 and 12.08.2004, for the very same request, also rejected by an order dated 10.01.2006.

11. The layout has been prepared for the subject land including the other land and the same was approved by CE/TNHB vide T.P.No.60/2001, dated 17.01.2001. Thereafter, it had been sent for approval. Therefore, the judgments cited by the learned counsel for the petitioner are not helpful to the case on hand.

12. That apart, the Constitution Bench of 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., held that,

"366. In view of the aforesaid discussion,
we answer the questions as under:



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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 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



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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13. Therefore, the writ petition is devoid merits and liable to be dismissed. Accordingly, this writ petition stands dismissed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

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To

1. The Commissioner and
Secretary to Government,
The State of Tamil Nadu,
Housing and Urban Development,
Fort St.George, Chennai - 9.
2. The Chairman and Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai - 35.
3. The District Collector,
Vellore District, Vellore.
4. The Special Tahsildar (Land Acquisition),
Tamil Nadu Housing Board,
Thirupathur, North Arcot District.

+1cc to the Government Pleader, S.R.No.59036

+1cc to Mr.S.Vanchinathan, Advocate Sr.No.58818(03/02/2022)

W.P.No.31224 of 2013

KSM[co]
NSK 03/12/2021