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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2021

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.NO.11014 OF 2018

1. Sevanthiammal
2. Thangammal
3. Jayanthi

... Petitioners

-Vs-

1. The Government of Tamil Nadu
Rep by its Secretary to Government,
Housing and Urban Development Department,
Fort St. George, Chennai - 600 009.
2. The Chairman,
Tamil Nadu Housing Board,
Nandanam, Chennai - 600 018.
3. The District Collector,
Salem District, Salem.

... Respondents

Prayer :-

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ Declaration, declaring that the Land Acquisition Proceedings initiated by the respondents in respect of the petitioners' land measuring 27 cents comprised in Patta No.446, Survey No.114/2, Ayyamperumalpatti Village, Salem District under the Land Acquisition Act, 1894, vide Section 4(1) notification published by the first respondent in G.O.Ms.No.755 dated 04.09.1981 and Award No.3/86-87 dated 22.09.1986, as lapsed as per the Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

For Petitioners : Mr.A.Esakkiappan

For Respondents
For R1 & R3 : Mr.M.R.Gokul Krishnan
Government Advocate.

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



ORDER

This Writ Petition has been filed to declare that the Land Acquisition Proceedings initiated by the respondents in respect of the petitioners' land measuring 27 cents comprised in Patta No.446, Survey No.114/2, Ayyamperumalpatti Village, Salem District under the Land Acquisition Act, 1894, vide Section 4(1) notification published by the first respondent in G.O.Ms.No.755 dated 04.09.1981 and Award No.3/86-87 dated 22.09.1986, as lapsed as per the Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (herein after referred to as "new Act").

2. The case of the petitioners is that the land comprised in survey No.114/2, to an extent of 27 cents situated at Ayyamperumalpatti Village, Salem District owned by their father viz., Kolandaivel Gounder. Thereafter, he executed Will in favour of the petitioners vide registered document No.300 of 1991 dated 09.07.1991. After demise of the said Kolandaivel Gounder on 26.01.2008, the petitioners are in possession and enjoyment of the subject property. Thereafter, they came to understand that by the G.O.Ms.No.755 dated 04.09.1981, the notification under Section 4(1) was issued under the Land Acquisition Act, 1894 (herein after referred to as "old Act") and the subject land was acquired for neighbourhood scheme. The award has been passed on 22.09.1986 in Award No.3 of 1986-87. However, the petitioners were issued patta and they are in possession and enjoyment of the same. Therefore, they challenged the acquisition proceedings under the new Act.

3. Heard, Mr.A.Essakkiappan, learned counsel appearing for the petitioners, Mr.M.R.Gokul Krishnan, learned Government Advocate appearing for the respondents 1 & 3 and Mr.I.Sathish, learned Standing Counsel appearing for the second respondent.

4. On perusal of the counter affidavit filed by the second respondent revealed that the second respondent proposed for housing scheme in survey No.110/1 etc., to an extent of 32.44 acres, including the petitioners' land in survey No.114/2 an extent of 0.27 acres situated at Ayyamperumalpatti Village, Salem District. The notification under Section 4(1) of the Act was approved by the G.O.Ms.No.755, Housing and Urban Development Department, dated 04.09.1981. Thereafter, the notice was served to the said Kolandaivel Gounder as contemplated under Section 5 of the old Act.

5. After due enquiry, the draft declaration as contemplated under Section 6 of the old Act was approved in G.O.Ms.No.725 Housing and Urban Development Department, dated



21.04.1983 and the same was published on 04.05.1983. Thereafter, award enquiry was conducted on 07.08.1986, after service of notice under Sections 9(3) and 10 of the old Act to the petitioners' father. Thereafter on 22.09.1986 the award was passed in Award N.3 of 1986-87 and thereafter possession of the land was also taken over on 12.11.1986 and handed over to the second respondent on the same day.

6. Insofar as the award amount is concerned, it was duly received by the said Kolandaivel Gounder under Form-C by way of cheque from the Land Acquisition Officer viz., the Special Thasildar. In fact, on his objections, the case was referred under Section 18 of the Act and the same was numbered as L.A.O.P.No.235 of 1988 on the file of the Subordinate Court, Salem. The said Kolandaivel Gounder was examined as claimant witness No.7 and thereafter the compensation was enhanced at Rs.3/- per Sq.ft. Though the Land Acquisition Officer filed appeal before this Court in A.S.No.439 of 1997, the same was dismissed and the enhanced compensation was deposited in the Sub Court, Salem on 10.09.1997. Therefore, the petitioners failed to satisfy the twin conditions as contemplate under Section 24(2) of the new Act.

7. That apart, the grounds raised by the petitioners in this Writ Petition 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.

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



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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.

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



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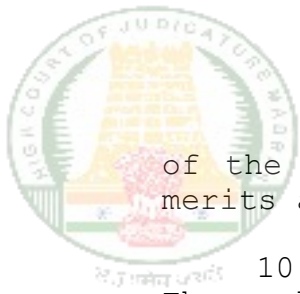
of 1894, the land vests in State there is no divesting provided under Section 24(2) of the Act of 2013, as once possession has been taken there is no lapse under Section 24(2).

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."

8. 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 subject land was acquired for the purpose of neighbourhood scheme. The acquisition proceedings have been completed and the subject land was taken over by the government and the possession was handed over to the Housing Board on 12.11.1986 itself. Further the compensation amount was received by the land owner under "C" Form, from the Acquisition Officer and the enhanced compensation amount has also been deposited before the Sub Court, Salem on 18.09.2012.

9. 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 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 petition is devoid of merits and is liable to be dismissed.

10. In the result, the Writ Petition stands dismissed. There shall be no order as to costs.

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Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Government of Tamil Nadu,
Housing and Urban Development Department,
Fort St. George, Chennai - 600 009.
2. The Chairman,
Tamil Nadu Housing Board,
Nandanam, Chennai - 600 018.
3. The District Collector,
Salem District, Salem.

+1cc to Mr.I.Sathish, Advocate, S.R.No.50767
+1cc to the Government Pleader, S.R.No.50478

W.P.No.11014 of 2018

BR(CO)
CS/20/10/2021