



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2021

CORAM :

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.3811 of 2015
and M.P.Nos.1 to 4 of 2015

Manonmani

... Petitioner

-Vs-

1. The State of Tamil Nadu
Rep by its Secretary.
Housing and Urban Development Department,
Fort St. George,
Secretariat, Chennai - 600 009.
2. The Tamil Nadu Housing Board,
Rep by its Chairman,
At No.493, Anna Salai,
Nandanam, Chennai - 600 035.
3. The Special Tahsildar (Land Acquisition Officer)
Tamil Nadu Housing Board Schemes,
Thirumangalam,
Madras - 600 101.
4. The Executive Engineer & Administrative Officer,
Besant Nagar Kottam,
Tamil Nadu Housing Board,
No.48, Dr.Muthulakshmi Salai,
Adayar, Chennai - 600 020.

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Declaration, declaring that the land acquisition proceedings in respect of survey No.313/8, Keelkattalai Village, (Madipakkam Part 2), Tambaram Taluk, Kancheepuram District measuring an extent of 58 cents stood lapsed in light of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013.

For petitioner	:	Mr.S.R.Rajagopal
For Respondents	:	
For R1 & R3	:	Mr.Richardson Wilson Government Advocate.
For R2 & R4	:	Mr.M.Baskar



ORDER

The Writ Petition has been filed to declare that the land acquisition proceedings in respect of survey No.313/8, Keelkattalai Village, (Madipakkam Part 2), Tambaram Taluk, Kancheepuram District measuring an extent of 58 cents stood lapsed in light of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013. (herein after called as "the New Act").

2. Heard Mr.S.R.Rajagopal, learned counsel appearing for the petitioner, Mr.Richardson Wilson, learned Government Advocate appearing for the respondents 1 & 3, and Mr.M.Baskar, learned counsel appearing for the respondents 2 & 4.

3. It is seen from the records that the petitioner is the subsequent purchaser and she purchased the subject land in the year 2001 by the registered sale deed vide document No.658 of 2001 dated 07.03.2001. But the award has been passed in Award No.2 of 1993 on 30.09.1993 itself and the possession of the property has already been taken by the Government and handed over to the Tamil Nadu Housing Board on 07.07.1994 itself. Subsequently, the patta was also changed in favour of the Tamil Nadu Housing Board on 30.09.2001 and now the Board is having the possession and enjoyment of the property.

4. Admittedly, the petitioner is the subsequent purchaser and it is settled position of law that the subsequent purchaser cannot have right to challenge the acquisition proceedings. In this regard, it is relevant to rely upon the judgment reported in (2019) 10 SCC 229 in the case of Shiv Kumar and anr Vs Union of India and ors, in which the Hon'ble Supreme Court of India held as follows :-

"13. The definition of 'landowner' is in Section 3(r), the same is extracted hereunder:

3. Definition.-In this Act, unless the context otherwise requires,--

(r) "landowner" includes any person,--
(i) whose name is recorded as the owner of the land or building or part thereof, in the records of the authority concerned; or

(ii) any person who is granted forest rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007) or under any other law for the time being in force; or



WEB COPY

(iii) who is entitled to be granted Patta rights on the land under any law of the State including assigned lands; or (iv) any person who has been declared as such by an order of the court or Authority;

Landowner is a person who is recorded as the owner of land or building. The record of date of issuance of preliminary notification Under Section 11 is relevant. A purchaser after Section 11 cannot be said to be a landowner within the purview of Section 3(r).

.....

21. Thus, under the provisions of Section 24 of the Act of 2013, challenge to acquisition proceeding of the taking over of possession under the Act of 1894 cannot be made, based on a void transaction nor declaration can be sought Under Section 24 (2) by such incumbents to obtain the land. The declaration that acquisition has lapsed under the Act of 2013 is to get the property back whereas, the transaction once void, is always a void transaction, as no title can be acquired in the land as such no such declaration can be sought. It would not be legal, just and equitable to give the land back to purchaser as land was not capable of being sold which was in process of acquisition under the Act of 1894. The Act of 2013 does not confer any right on purchaser whose sale is ab initio void. Such void transactions are not validated under the Act of 2013. No rights are conferred by the provisions contained in the 2013 Act on such a purchaser as against the State.

22. 'Void is, ab initio,' a nullity, is inoperative, and a person cannot claim the land or declaration once no title has been conferred upon him to claim that the land should be given back to him. A person cannot enforce and ripe fruits based on a void transaction to start claiming title and possession of the land by seeking a declaration Under Section 24 of the Act of 2013; it will amount to conferment of benefit never contemplated by the law. The



WEB COPY

question is, who can claim declaration/rights Under Section 24(2) for the restoration of land or lapse of acquisition. It cannot be by a person with no title in the land. The provision of the Act of 2013 cannot be said to be enabling or authorizing a purchaser after Section 4 to question proceeding taken under the Act of 1894 of taking possession as held in U.P. Jal Nigam (supra) which is followed in M. Venkatesh (supra) and other decisions and consequently claim declaration Under Section 24 of the Act of 2013. What cannot be done directly cannot be permitted in an indirect method.

23. The provisions of the Act of 2013 aimed at the acquisition of land with least disturbance to the landowners and other affected families and to provide just and fair compensation to affected families whose land has been acquired or proposed to be acquired or are affected and to make adequate provisions for such affected persons for their rehabilitation and resettlement. The provisions of Act of 2013 aim at ousting all inter-meddlers from the fray by ensuring payment in the bank account of landholders Under Section 77 of the Act.

24. The intendment of Act of 2013 is to benefit farmers etc. Subsequent purchasers cannot be said to be landowners entitled to restoration of land and cannot be termed to be affected persons within the provisions of Act of 2013. It is not open to them to claim that the proceedings have lapsed Under Section 24(2)."

5. In the above judgment, the Hon'ble Supreme Court of India held that challenging the acquisition proceedings under the provision of Section 24 of the New Act cannot be made, based on a void transaction nor declaration to get the property back. The transaction once void, is always a void transaction, as no title can be acquired in the land as such, no such declaration can be sought. It would not be legal, just and equitable to give the land back to the purchaser as land was not capable of being sold which was in process of acquisition under the Act of 1894. Therefore, the New Act does not confer any right on purchaser



whose sale is ab initio void. Therefore the petitioner cannot challenge the acquisition proceedings being the subsequent purchaser.

6. That apart, the grounds raised by the petitioner 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 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



WEB COPY

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."

7. The Hon'ble Supreme Court of India settled all proposition of law in the above judgment including the grounds raised by the petitioner. That apart, the award has been passed in Award No.2 of 1993 on 30.09.1993 itself and the possession of the property has already been taken by the Government and handed over to the Tamil Nadu Housing Board on 07.07.1994 itself. The Tamil Nadu Housing Board also deposited the compensation as awarded by the Land Acquisition Officer. Therefore, the petitioner 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 petitioner 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 liable to be dismissed.

8. In the result, the Writ Petition stands dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

rts

To

1.The Secretary,
State of Tamil Nadu
Housing and Urban Development Department,
Fort St. George,
Secretariat, Chennai - 600 009.



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

3.The Special Tahsildar (Land Acquisition Officer)
Tamil Nadu Housing Board Schemes,
Thirumangalam,
Madras - 600 101.

4.The Executive Engineer & Administrative Officer,
Besent Nagar Kottam,
Tamil Nadu Housing Board,
No.48, Dr.Muthulakshmi Salai,
Adayar, Chennai - 600 020.

+1cc to Mr.S.R.Raghunathan, Advocate Sr No.41829
+1cc to the Government Pleader Sr No.41758

W.P.No.3811 of 2015
and M.P.Nos.1 to 4 of 2015

SPD (CO)
PR (20/09/2021)