



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2021

CORAM

THE HON'BLE Mr. JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos.528 & 529 of 2015
and M.P.Nos.1, 2 of 2015

1.M.K.Palanisamy
2.M.K.Thangamuthu ...Petitioners in W.P.No.528 of 2015

1.C.Duraisamy
2.P.Shanthamani
3.P.Saroja
4.M.Vani Priya
...Petitioners in W.P.No.529 of 2015

Vs

1. The Secretary to Government,
Housing and Urban Development Department,
Fort St. George, Chennai - 600 009.
2. The Executive Engineer /
Administrative Officer,
Tamil Nadu Housing Board,
Surampatty Nall Road,
Erode - 9.
3. The Special Tahsildar,
(Land Acquisition), Neighbourhood Scheme,
Tamil Nadu Housing Board, Brough Road,
Erode - 1.

... Respondents in both WP's

COMMON PRAYER:- Writ Petitions are filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the entire records relating to the impugned G.O.Ms.No.761 Housing and Urban Development Department, dated 12.11.1992 issued by the 1st respondent and quash the same, since as per under Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013) the entire acquisition proceedings become lapsed.



WEB COPY

For Petitioner : Mr.C.Prakasam
in both WP's

For Respondents : Mr.Richardson Wilson,
1 & 3 Government Advocate
in both WP's

For Respondent 2 : Mr.I.Sathish
in both WP's

C O M M O N O R D E R

This Writ Petition is filed to issue a Writ of Certiorari, calling for the entire records relating to the impugned G.O.Ms.No.761 Housing and Urban Development Department, dated 12.11.1982 issued by the 1st respondent and quash the same, since as per under Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013) the entire acquisition proceedings become lapsed.

2. Heard Mr.C.Prakasam, learned counsel for the petitioner and Mr.Richardson Wilson, Government Advocate for the first and third respondents and Mr.I.Sathish, standing counsel for the second respondent.

3. The grounds raised by the petitioners in these writ petitions have already been settled by the Hon'ble Supreme Court of India in the case of Indore Development Authority Vs. Manoharlal and others 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:

366.1. 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.

366.2. 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.



WEB COPY

cannot claim that the acquisition proceedings had lapsed under Section 24(2) of the Act of 2013.

366.6. 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).

366.7. 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).

366.8. 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.

366.9. 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."

4. In view of the settled position of law, all the writ petitions are devoid of merits and liable to be dismissed. That apart, the petitioners failed to satisfy the twin requirements under Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 i.e. the physical possession of the land



was not taken and the compensation has not been paid / tendered / deposited in accordance with law. The respondents also filed counter and stated that the possession of the respective lands were already taken and compensation of the award amount also deposited by revenue deposit / court deposit. In view of the dictum laid down by the Hon'ble Supreme Court of India, the issues raised by the petitioners were settled by the Hon'ble Supreme Court of India. Therefore, all the acquisition proceedings have 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.

5. Accordingly, these writ petitions are dismissed. Consequently, connected miscellaneous petitions are dismissed. No order as to costs.

18.08.2021

rna

FOR BEING MENTIONED

This matter have been posted for "Being Mentioned" Monday Sixth day of December Two Thousand and Twenty One in pursuant the order of this Court dated 18.08.2021 and upon hearing the arguments of the said counsel and this Court made the following order.

Today, both the matters are listed under the caption for "being mentioned" at the instance of the learned counsel for the petitioners.

2. It is brought to the notice of this Court by the learned counsel for the petitioners that in the similar writ petitions, this Court allowed the writ petitions by an order dated 29.09.2021 in W.P.Nos.7358 of 2016 & 31931, 31932, 31511 of 2014. Hence, the order passed by this Court in W.P.Nos.528 and 529 of 2015 may be recalled.

3. Considering the submissions made by the learned counsel for the petitioners, this Court by an order dated 18.08.2021 made in W.P.Nos.528 and 529 of 2015 is recalled.

06.12.2021

kv



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2021

CORAM

THE HON'BLE Mr. JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos.528 & 529 of 2015

and

M.P.Nos.1, 2 of 2015

1.M.K.Palanisamy
2.M.K.Thangamuthu

...Petitioners in W.P.No.528 of 2015

1.C.Duraisamy
2.P.Shanthamani
3.P.Saroja
4.M.Vani Priya

...Petitioners in W.P.No.529 of 2015

Vs

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

2.The Executive Engineer /
Administrative Officer,
Tamil Nadu Housing Board,
Surampatty Nall Road,
Erode - 9.

3.The Special Tahsildar,
(Land Acquisition), Neighbourhood Scheme,
Tamil Nadu Housing Board, Brough Road,
Erode - 1.

...Respondents in both WP's

COMMON PRAYER:- Writ Petitions are filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the entire records relating to the impugned G.O.Ms.No.761 Housing and Urban Development Department, dated 12.11.1992 issued by the 1st respondent and quash the same, since as per under Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013) the entire acquisition proceedings become lapsed.



WEB COPY

For Petitioners in both WP's	:	Mr.C.Prakasam
For Respondents 1 & 3 in both WP's	:	Mr.Richardson Wilson, Government Advocate
For Respondent 2 in both WP's	:	Mr.I.Sathish Standing Counsel

C O M M O N O R D E R

Both the Writ Petitions are filed to issue a Writ of Certiorari, to call for the entire records relating to the impugned G.O.Ms.No.761 Housing and Urban Development Department, dated 12.11.1982 issued by the 1st respondent and quash the same, since as per under Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013) (hereinafter referred to as 'the New Act', for short) the entire acquisition proceedings become lapsed.

2. The case of the petitioners is that they owned their respective lands situated in Muthampalayam Village, Erode Taluk, Erode District. All the lands are 'punja' lands and they are doing cultivation by raising crops. The entire properties to an extent of 153 acres were acquired under the Land Acquisition Act, 1894 (hereinafter called as 'the Act') for the purpose of neighbourhood scheme by the Tamil Nadu Housing Board. Notification under Section 4(1) of the Act was issued in G.O.Ms.No.1222 Housing and Urban Development Department dated 04.04.1990. Subsequently, draft declaration notice was issued under Section 6 of the Act in G.O.Ms.No.761, Housing and Urban Development Department dated 12.11.1992. Thereafter, award was also passed in Award No.7 of 1994 dated 10.11.1994.

3. The learned counsel for the petitioners would submit that after passing award, the compensation amount has not been even deposited in the civil court or in revenue deposit. Insofar as possession of the entire land is concerned, it has not been taken over even till today. All the petitioners are in possession and enjoyment of their respective lands and they are continuously doing cultivation. Though the Association called Farmers Association have filed writ petition in the year 1993 and obtained interim orders, subsequently on 16.11.2001, all the writ petitions came to be dismissed by this Court. However, the petitioners have not been informed as to whether the respondents had deposited the compensation amount in Court deposit. Moreover, the possession of the entire land has not taken over.0



WEB COPY

4. The second respondent filed counter and revealed that on the request of the Tamilnadu Housing Board, Erode proposed to acquire the lands admeasuring 436.54.0 hectares in Muthampalayam and Surampatti villages in Erode. The land acquisition proposals were approved by the Board dated 30.07.1987. Subsequently, the extent of the above land acquisition proposals have been reduced to the total extent of 319.51.5 hectares at Muthampalayam due to ayacut areas as per the Board resolution No.24 dated 04.04.1990. All the petitioners' lands covered to a total extent of 5.39.0 hectares in R.S.No.37/2 etc., in Muthampalayam Village in Erode Taluk has been proposed to acquire for the construction of HIG/MIG/LIG houses to the horseless public in Muthampalayam Neighbourhood Housing Schemes at Erode.

5. The notification under Section 4(1) of the Act was approved by the Government in G.O.Ms.No.1222 Housing and Urban Development Department dated 04.04.1990. Thereafter, notices were issued to the land owners and also to the interested persons as contemplated under Section 5-A of the Act and the enquiry was conducted on 16.03.1992. Thereafter, after conducting enquiry on 26.10.1994, award has been passed on 10.11.1994 in Award No.7 of 1994. Since the pattadars have not produced any document evidence to prove the ownership of the land, the award amount has been deposited under Section 31(2) of the Land Acquisition Act under Civil Court Deposit.

6. The learned counsel for the petitioners would submit that insofar as possession of the respective properties of the petitioners are concerned, they are still in possession and enjoyment of their respective lands and doing cultivation. There is no record to show that the physical possession of the property has been taken over by the respondents. That apart, insofar as the total extent of the land ad-measuring 153 acres are concerned, the respondents did not take any steps to execute the neighbourhood scheme at Muthampalayam. In fact, some of the land owners have already laid out the entire land and converted into house plots. Further Erode Taluk Small Farmers Association, Muthampalayam of Erode filed writ petitions in WP.No.17514 of 1993, 14230 of 2000 and obtained interim order as against the acquisition proceedings. All the writ petitions were dismissed by this Court on 16.11.2001. However, after dismissal of the writ petitions, the respondents did not take any steps to deposit the award amount before the Sub Court or in the revenue deposit. Insofar as the possession of the land also is concerned, no land has been taken over to implement the neighbourhood scheme. Thereafter, after period of many years, the present writ petitions have been filed by the individual land owners and obtained interim order. These writ petitions have been filed challenging the land acquisition proceedings under Section 24(2) of the Right to Fair Compensation and



Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 as lapsed for the reason that the award amount has not been deposited and no land has been taken over. Therefore, all the petitioners have made out their case and the respondent had not proved that the award amount has been deposited before the civil court or in revenue deposit. All the petitioners are in possession and enjoyment of their respective lands which were acquired by the respondents and even till today they are doing cultivation. Therefore, the entire land acquisition proceedings have been lapsed.

7. Accordingly, both the writ petitions are allowed. The Tahsildar concerned is directed to restore the revenue records in the name of the respective petitioners for their respective lands within a period of six weeks from the date of receipt of copy of this order. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

kv

To

1. The Secretary to Government,
Housing and Urban Development Department,
Fort St. George, Chennai - 600 009.
2. The Executive Engineer / Administrative Officer,
Tamil Nadu Housing Board,
Surampatty Nall Road, Erode - 9.
3. The Special Tahsildar,
(Land Acquisition), Neighbourhood Scheme,
Tamil Nadu Housing Board, Brough Road,
Erode - 1.

+2ccs to Mr.C.Prakasam, Advocate SR. No.64703, 64704
+1cc to Government Pleader SR. No.64828
+1cc to Mr.I.Sathish, Advocate SR. No.64220

W.P.Nos.528 and 529 of 2015

SJ (CO)
PR (08/03/2022)