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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2021

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.NO.7028 OF 2015

AND

M.P.NO.1 OF 2015

1.S.Mani
2.S.Rajendran
3.Chettiya Gounder
4.Nachiappa Gounder

...Petitioners

Vs

1.The District Collector,
Salem District,
Salem.

2.The Special Tahsildar,
(Adi-Dravidar Welfare)
Sankari,
Salem District.

...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 notification No.Rcc.65361/1997/DB dated 31.12.1997 issued by the first respondent published at page No.2 of Salem District Gazette Extraordinary No.II, dated 17.01.1998 in sofar as the petitioners lands comprised in S.Nos.68/4A1, 68/4A2A, 68/1A2B and 68/1A2C of Chinnamanli Village, Edappadi Taluk, Salem District and the consequential actions taken thereon are lapsed as per Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

For Petitioners : Mr.N.Manokaran

For Respondents : Mr.C.Kathiravan
Special Government Pleader

ORDER

This Writ Petition has been filed for issuance of Writ of Declaration declaring that the land acquisition notification



No.Rcc.65361/1997/DB dated 31.12.1997 issued by the first respondent published at page No.2 of Salem District Gazette Extraordinary No.II, dated 17.01.1998 insofar as the petitioners lands comprised in S.Nos.68/4A1, 68/4A2A, 68/1A2B and 68/1A2C of Chinnamanli Village, Edappadi Taluk, Salem District and the consequential actions taken thereon are lapsed as per Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

2. Heard, Mr.N.Manokaran, learned counsel appearing for the petitioners and Mr.C.Kathiravan, learned Special Government Pleader appearing for the respondents.

3. The case of the petitioner is that on the request made by the Arunthathiyars of Veerappampalayam Village, the second respondent acquired the lands comprised in survey No.68 sub divided as 68/4A1, 68/4A2A, 68/4A2B and 68/4A2C. The second respondent, by the notice dated 29.11.1995 in Form I of Rule 3 (1) of the Tamil Nadu Acquisition of Lands for Harijan Welfare Schemes Rules, 1979, informed that the properties are proposed to be acquired for the purpose of provision of houses to Arunthathiars of Veerappampalayam, a hamlet of Chinnamanali Village, thereby the petitioners were calling upon to raise their objections within a period of fifteen days. An enquiry was conducted by the second respondent on 22.12.1995. The petitioners had sent their objections stating that their families were staying in the lands proposed to be acquired and that already an extent of 2.00 acres has been acquired for the very same purpose. It is further stated that there are poramboke lands available in and around the said village and as such, they requested the second respondent to drop the acquisition proceedings in respect of their lands.

4. The second respondent issued another notice dated 10.07.1997 in Form I under Rule 3 of the Rules, 1979. Accordingly, the petitioners raised their objections on 26.07.1997 and also appeared for enquiry on 31.07.1997, but no enquiry has been conducted. Thereafter, the petitioner was duly served with notice dated 13.03.1998 in Form III as contemplated under Section 5(1) of the Tamil Nadu Acquisition of lands for Harijan Welfare Schemes Rules so as to appear for an enquiry for fixing of compensation. Thereafter, notice under Section 4(1) of the Tamil Nadu Act 31 of 1978 was published in the Salem District Gazette dated 17.01.1998.

5. The petitioner also challenged the acquisition proceedings in W.P.No.5463 of 1998 and it was allowed on 11.08.2004. The Hon'ble Division Bench of this Court in W.A.No.1623 of 2006 set aside the learned Single Judge order and



confirmed the acquisition proceedings. It is also confirmed by the Hon'ble Supreme Court in SLP No.29551 of 2009 on 23.11.2009. Thereafter, an award was passed on 23.03.1998 in Award No.12/97-98.

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6. The learned counsel for the petitioners would submit that however no compensation has been paid to the petitioners even today. They are also in physical possession and enjoyment of the subject property. Therefore, the entire acquisition proceeding is as contemplated under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 .

7. The second respondent filed a counter stating that the petitioners challenged the acquisition proceedings upheld by the Hon'ble Supreme Court of India. Subsequently the subject lands were taken possession by the second respondent as early as on 17.11.2009. In fact, after taking physical possession of the subject land, the petitioners preferred Special Leave Petition before the Hon'ble Supreme Court of India and it was also dismissed by an order dated 23.11.2009. That apart, house site pattas were issued to the Arunthathiyars as early as on 23.11.2009. The writ petition has been filed after a period of 17 years from the date of award under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Insofar as the compensation award amount is concerned, it was already deposited before the Sub Court, Sankari as early as on 31.03.1998. Therefore, the petitioner failed to fulfill the twin conditions as contemplated under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 .

8. In this regard, the learned counsel for the respondents relied upon a Judgment reported in 2020 8 SCC 129 in the case of Indore Development Authority Vs. Manoharlal and others etc, wherein it is 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 1.1.2016 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.

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



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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 1.1.2016. 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., 1.1.2016. 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.

9. In view of the settled position of law, this Court is of the considered view that the writ petition is liable to be dismissed as devoid of merits. However, the learned counsel for the petitioner would submit that the petitioners are in physical possession and enjoyment of the subject property. Therefore, the petitioners are at liberty to make a representation for re-conveyance of the land in the manner known to law.

10. In the result, the writ petition stands dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

Lpp

To

1. The District Collector,
Salem District,
Salem.



2.The Special Tahsildar,
(Adi-Dravidar Welfare)
Sankari,
Salem District.

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+1cc to M/s.N.Manoharan, Advocate Sr.No.66539

+1cc to the Government Pleader Sr.No.67081

W.P.No.7028 of 2015
and
M.P.No.1 of 2015

KSM(CO)
RVM(16/02/2022)