



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.898 OF 2015

AND

M.P.NO.1 OF 2015

1. Indirani
2. M.A.Venkat

... Petitioners

-Vs-

1. The State of Tamil Nadu
Rep by its Secretary to Government.
Public Works Department,
Fort St. George,
Secretariat, Chennai - 600 009.
2. The Divisional Engineer (Highways)
East Coast Road Project,
Mamallapuram - 603 104.
3. The Land Acquisition Officer,
and Revenue Divisional Officer,
Tambaram, Chennai.

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Declaration, declaring that acquisition of lands in respect of the petitioners herein to an extent of 2,296 sq.ft., comprised in new survey No.3/485 and survey No.111/24, Uthandi Village, Tambaram Taluk, made by the Government vide G.O.Ms.No.1105 P.W(Highways) Department dated 04.08.1992 published in the Tamil Nadu Government Gazette dated 07.08.1992 and G.O.Ms.No.1166 P.W (Highways) Department dated 10.08.1993, published in the Tamil Nadu Government Gazette dated 11.08.1993 passed by the respondents stands lapsed in view of the Section 24 Clause 2 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013.



WEB COPY

For Petitioners : Mr.A.L.Ganthimathi

For Respondents

For R1 to R3 : Mr.Richardson Wilson
Government Advocate.

ORDER

The Writ Petition has been filed to declare that acquisition of lands in respect of the petitioners herein to an extent of 2,296 sq.ft., comprised in new survey No.3/485 and survey No.111/24, Uthandi Village, Tambaram Taluk, made by the Government vide G.O.Ms.No.1105 P.W(Highways) Department dated 04.08.1992 published in the Tamil Nadu Government Gazette dated 07.08.1992 and G.O.Ms.No.116 P.W (Highways) Department dated 10.08.1993, published in the Tamil Nadu Government Gazette dated 11.08.1993 passed by the respondents stands lapsed in view of the Section 24 Clause 2 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.AL.Ganthimathi, learned counsel appearing for the petitioners, Mr.Richardson Wilson, learned Government Advocate appearing for the respondents.

3. It is seen from the records that the petitioners are the subsequent purchasers and they purchased the subject lands in the year 2002 and 2003 by the registered sale deeds vide document Nos.2668 of 2002 and 3140 of 2003 dated 12.08.2002 and 26.08.2003 respectively. The subject lands were acquired for the purpose of East Coast Road development. That apart, the lands acquired were taken over and the possession was handed over to the Highways Authorities as earlier as in the year 1995. Now the East Coast Road has been formed and it is maintained by the Tamil Nadu Road Development Company Limited.

4. Admittedly the petitioners are the subsequent purchasers 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:



WEB COPY

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

(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.



WEB COPY

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 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 provisions 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 petitioners cannot challenge the acquisition proceedings being the subsequent purchasers.

6. 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 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,



WEB COPY

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 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



WEB COPY

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."

7. 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 acquisition proceedings have been completed and the subject lands were taken over possession by the government and the same was handed over to the Highways Authority on 17.08.1995 itself. Further the requisition body also deposited the compensation as awarded by the Land Acquisition Officer. Now the project has been completed and the East Coast Road was formed and it is maintained by the Tamil Nadu Road Development Company Limited. 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 herein 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 petition is closed. There shall be no order as to costs.

WEB COPY

Sd/-
Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar

rts

To

1. The Secretary to Government,
State of Tamil Nadu
Public Works Department,
Fort St. George,
Secretariat, Chennai - 600 009.
2. The Divisional Engineer (Highways)
East Coast Road Project,
Mamallapuram - 603 104.
3. The Land Acquisition Officer,
and Revenue Divisional Officer,
Tambaram, Chennai.

+1cc to Mr.A.L.Ganthimathi, Advocate, S.R.No.41653

+1cc to the Government Pleader, S.R.No.41753

W.P.No.898 of 2015
and M.P.No.1 of 2015

PL(CO)
RLP(22/09/2021)