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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.9765 of 2015

Santha Sivakumar

....Petitioner

Vs

1. The Secretary to Government,
Government of Tamil Nadu,
Highways Department,
Fort St. George,
Chennai - 600 009.
2. The Land Acquisition Officer cum
Revenue Divisional Officer,
Tambaram,
Chennai - 600 045.

....Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of declaration declaring that the acquisition of the petitioner's land in S.No.4/1A1B2 measuring to an extent of 0.01.5 hectares in Uthandi Village, Sholinganallur Taluk, Kancheepuram District, which was sought to be acquired has become lapsed by virtue of Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013).

For Petitioner	: Mr.M.S.Subramanian
For Respondents	: Mr.M.R.Gokul Krishnan, Government Advocate

ORDER

This Writ Petition has been filed for issuance of Writ of Declaration declaring that the acquisition of the petitioner's land in S.No.4/1A1B2 measuring to an extent of 0.01.5 hectares in Uthandi Village, Sholinganallur Taluk, Kancheepuram District, which was sought to be acquired has become lapsed by virtue of Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013).

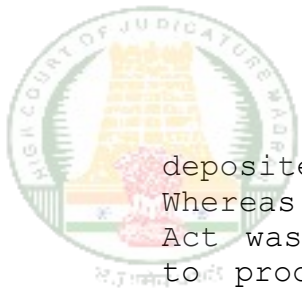


2. The learned Government Advocate appearing for the respondents submitted that the Public Works Department in the Government of Tamil Nadu was bifurcated into Public Works Department and Highways Department with effect from 01.08.1996 vide G.O.Ms.No.326, Personnel and Administrative Reforms (G) Department, dated 02.09.1996. As such, the subject matter in the impugned Government Order now comes under the administrative control of the Highways Department and the Additional Chief Secretary to Government, Highways and Minor Ports Department alone is competent to decide the claim of the petitioner and to give any relief to the petitioner based on the outcome of the above writ petition. Hence, the first respondent is not a necessary party in the above writ petition and the petitioner has unnecessarily impleaded the first respondent as a party to the above writ petition. He further submitted that even if the petitioner succeeds in the writ petition, the first respondent will not be in a position to give any relief sought for by the petitioner since the subject matter in the impugned Government Order is now under the administrative control of the Highways Department.

3. In similar writ petitions, in respect of the related acquisition lands, this Court appointed an Advocate Commissioner to conduct inspection with regards to the status of the petitioner's property to ascertain the distance between the East Coast Road and the petitioner's property. The Advocate Commissioner filed report and stated that the petitioner has constructed his house and obtained electricity service connection and living there. He also mentioned the distance between the subject property of the petitioner and the East Coast Road. In almost the writ petitions, the distance between the subject property and the East Coast Road is not below 15 meters distance.

4. Therefore, the petitioner is in possession and enjoyment of the subject property. It is also evident from the records produced by the petitioner such as electricity consumption card and Property Tax receipt and other revenue records to show that the petitioner is in possession and enjoyment of his property. Insofar as the possession is concerned, notices under Section 12 (2) of the Land Acquisition Act dated 17.02.1988 and 22.01.1992 were issued only on 24.02.2014 by the second respondent.

5. On perusal of the said notice, revealed that on receipt of the said notice, within a week from the date of receipt of notice, the land owner shall appear before the second respondent and produce all the revenue documents such as encumbrance certificate, patta and other title deeds, etc and receive the compensation, failing which the compensation will be



deposited in the Court. The award was passed on 16.08.1995. Whereas the notice under Section 12 (2) of the Land Acquisition Act was issued only on 24.02.2014. The respondents also failed to produce any evidence to show that the award amount was deposited immediately after the award in the revenue deposit or court deposit. Notice issued under Section 12(2) of the Land Acquisition Act on 24.02.2014 shows that only to escape from the clutches of provisions under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Therefore, the possession of the subject property has not been taken from the petitioner even till today. There is no evidence to show that the compensation was also paid to the petitioner by court deposit or by revenue deposit. In this regard, the learned counsel for the petitioner relied upon the judgment rendered by the Constitution Bench of the Hon'ble Supreme Court of India in the case of Indore Development Authority Vs. Manoharlal and ors 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:

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.



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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 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



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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."

6. Admittedly, the respondents have not taken possession of the subject property from the petitioner and also he was not paid compensation. Therefore, on these grounds, the entire land acquisition proceedings have lapsed as contemplated under Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

7. Accordingly, the Writ Petition stands allowed and the entire impugned proceedings are quashed. No order as to costs.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

Lpp/mn

To

1. The Secretary to Government,
Government of Tamil Nadu,
Highways Department,
Fort St. George,
Chennai - 600 009.



2. The Land Acquisition Officer cum
Revenue Divisional Officer,
Tambaram,
Chennai - 600 045.

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+1CC to Mr.M.S.Subramanian, Advocate, Sr.No.45356
+1CC to Mr.Government Pleader, Sr.No.45537

W.P.No.9765 of 2015

VG-II (CO)
K.RK. (25.10.2021)