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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos.28890, 29092, 30551 & 30552 of 2016
and

W.M.P.Nos. 24961, 24962, 25139, 25140
26490 to 26493 of 2016

Mohana Seshamma

... Petitioner in W.P.No.28890/2016

T.Rose Pillai

... Petitioner in W.P.No.29092/2016

Sundaram

... Petitioner in W.P.No.30551/2016

Padma Singh Isac

... Petitioner in W.P.No.30552/2016

-Vs-

1. The State of Tamil Nadu
Rep by its
Commissioner & Secretary,
Housing and Urban Development,
St. George Fort,
Chennai - 600 009.
2. Tamil Nadu Housing Board,
By the Chairman and Managing Director,
Nandanam, Chennai - 600 035.
3. The Executive Engineer,
Tamil Nadu Housing Board,
Anna Nagar, Chennai.
4. The Thasildar,
Aminjikarai Taluk,
Chennai - 600 107.

... Respondents in all WPs



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Prayer in W.P.No.28890 of 2016:- 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 have lapsed in respect of the property comprised in Sy.No.130/2 part and Sy.No.131/1 part of Villivakkam Village, Chennai District Measuring 998 sq.ft., sought to acquired under "West Madras Neighbourhood Project" by virtue of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 Act 30 of 2013 as void.

Prayer in W.P.No.29092 of 2016:- 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 have lapsed in respect of the property comprised in Sy.No.130/2A5 of Villivakkam Village, Chennai District Measuring 1334 sq.ft., sought to acquire under "West Madras Neighbourhood Project" as null and void by virtue of Section 24(2) of the Act 30 of 2013.

Prayer in W.P.No.30551 of 2016:- 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 have lapsed in respect of the property comprised in Sy.No.132 part of Villivakkam Village, Chennai District Measuring 698 sq.ft., sought to acquired under "West Madras Neighborhood Project" by virtue of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 Act 30 of 2013 as void.

Prayer in W.P.No.30552 of 2016:- 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 have lapsed in respect of the property comprised in Sy.No.132 part & 133 part of Villivakkam Village, Chennai District Measuring 687 sq.ft., sought to acquired under "West Madras Neighborhood Project" by virtue of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 Act 30 of 2013 as void.



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For Petitioner
in all WPs : Mr.Zaffarullah Khan

For Respondents
For R1 & R4 : Mr.Richardson Wilson
Government Advocate.

For R2 & R3 : Mr.M.Baskar
Standing Counsel.

COMMON ORDER

These Writ Petitions have been filed to declare that the land acquisition proceedings have lapsed in respect of the petitioners' property situated at Villivakkam Village, Chennai District, sought to acquired under "West Madras Neighborhood Project" as null and void by virtue of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Act 30 of 2013 (herein after called as "the New Act")

2. Heard Mr.Zaffarullah Khan, learned counsel appearing for the petitioner, Mr.Richardson Wilson, learned Government Advocate appearing for the respondents 1 & 4 and Mr.M.Baskar, learned Standing Counsel appearing for the respondents 2 & 3.

3. It is seen from the records that all the writ petitioners are the subsequent purchases from the original owners. The acquisition proceedings were initiated in the year 1961 and against which, the original owners have filed civil suits and the same were also dismissed. In fact, the original owners challenged the acquisition proceedings and they went up to the Hon'ble Supreme Court of India. In the Writ Appeals filed by the Tamil Nadu Housing Board, the Hon'ble Division Bench of this Court passed the orders in the batch of Writ Appeals as follows:-

"(i) The report submitted by the Tamil Nadu Housing Board is accepted.

(ii) In view of the reasons stated in the Report, we hold that formation of a 60 feet width road in the stretch of Thangam



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Colony is indispensable and mandatory.

(iii) We also hold that two one way roads of 30 feet width is not permissible in view of the scheme framed by the competent authority and approved by the Government, keeping in view the traffic hazard as detailed in the report.

(iv) Alternative site is to be provided as per the order of the Government dated 02.02.1972. In Memo No.24015(a)Hg.1(3)/70-17. It is made clear that if there are authoritative records to show that alternate site/sites have been provided by the Housing Board and accepted by the persons concerned, there is no need to provide alternate site to ever successive purchaser. However, it is made clear that if any of the petitioners/their vendors are not provided with alternate site as directed by the Government, the Housing Board is bound to implement the said order by verifying their records and provide alternate sites at concessional rate to those who are yet to be provided.

(v) The direction in Paragraph No.6 of the common order of the learned Judge for payment of Compensation for the superstructure is set aside.

(vi) The Housing Board is directed to verify from their records and provided alternate sites at concessional rate to those who are yet to be provided as per the order of the Government within a period of two months from today.

(vii) The petitioners are granted three months time from today to vacate and handed over the actual area required for the formation of 60 feet width road."

4. Aggrieved by the same, the petitioners filed Special Leave Petitions before the Hon'ble Supreme Court of India and the same were also dismissed. In pursuant to the directions issued by the Hon'ble Division Bench of this Court, some of the subsequent purchasers have obtained alternative plots and some



of them filed the present Writ Petitions challenging the very acquisition proceedings on the ground that the acquisition proceedings itself lapsed under Section 24(2) of the New Act. In fact, they have been duly served notice and possession of lands have already been taken from the petitioners.

5. 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

(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).

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21. Thus, under the provisions of Section 24 of the Act of 2013, challenge to acquisition proceeding of the taking over



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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)."

6. 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.

7. That apart, the present Writ Petitions have been filed challenging the acquisition proceedings on the grounds



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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 take possession and pay



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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."

8. 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 acquisition proceedings have been completed and the subject land was taken over possession by the government and the same was handed over to the Tamil Nadu Housing Board. Further the requisition body also deposited the compensation as awarded by the Land Acquisition Officer and some of the land owners have obtained the alternative plots. 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 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.



9. In the result, all the Writ Petitions stand dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

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To

1. The Commissioner & Secretary,
State of Tamil Nadu
Housing and Urban Development,
St. George Fort,
Chennai - 600 009.
2. The Chairman and Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai - 600 035.
3. The Executive Engineer,
Tamil Nadu Housing Board,
Anna Nagar, Chennai.
4. The Thasildar,
Aminjikarai Taluk,
Chennai - 600 107.

+1cc to the Government Pleader, S.R.No.42996, 42997, 43041

W.P.Nos.28890, 29092, 30551 & 30552 of 2016
and W.M.P.Nos. 24961, 24962, 25139,
25140, 26490 to 26493 of 2016

PM(CO)
RLP(23/09/2021)