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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2021

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.39565 of 2016
and W.M.P.No.33847 of 2016

1. Sundaramoni Venkatesan @ Rani Venkatesan
2. L.N.Venkatesan
3. Karthik Venkatesan
4. Beena Manivannan
5. Beela Rajesh

... Petitioners

-Vs-

1. The State of Tamil Nadu,
Represented by the Secretary,
Housing and Urban Development Department,
Fort St.George, Chennai - 600 009.
2. The Chairman,
Tamil Nadu Housing Board,
Anna Salai, Nandanam,
Chennai - 600 035.
3. The Special Tahsildar (L.A),
Division-5,
Tamil Nadu Housing Board,
Nandanam,
Chennai - 600 035.
4. The Tahsildar,
Revenue Department,
Sholinganallur,
Chennai.
(R4 is suo-moto impleaded as per
order dated 11.11.2016 in
W.P.No.39565 of 2016)

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondents to drop the Land Acquisition Proceedings in respect of 4.33 acres of land in Old Survey No.232/1C, New Survey No.232/1C2 to 232/1C7 at Kottivakkam Village, which got lapsed after Section 24 of the Right to Fair



Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013) came into force.

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For Petitioners: Mr.V.Ayyadurai, Senior Counsel
for Mr.M.Velmurugan

For R1, R3
and R4 : Mr.A.Selvendran
Special Government Pleader.

For R2 : Mr.M.Baskar, Standing Counsel.

ORDER

This Writ Petition has been filed for direction, directing the respondents to drop the acquisition proceedings for the property comprised in Old Survey No.232/1C, New Survey No.232/1C2 to 232/1C7 at Kottivakkam Village (herein after called as "subject land"), for the reason that the entire acquisition proceedings have lapsed under Section 24 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

2. Heard Mr.V.Ayyadurai, learned Senior Counsel appearing for the petitioners, Mr.A.Selvendran, learned Special Government Pleader appearing for the respondents 1, 3 and 4 and Mr.M.Baskar, learned standing counsel appearing for the second respondent.

3. The second respondent acquired the subject land for implementation of "South Madras Neighbourhood Scheme" for general public. The notification under Section 4(1) of the Land Acquisition Act, 1894 was issued on 19.02.1975 in the name of L.N.Venkatesan for the total extent of 10.33 acres comprised in Survey No.232/1C. The land covered in Survey No.232/1C for an extent of 10.33 acres out of which 6 acres of land already got approved for private lay-out vide DTCP No.LDPM/DT and CT No.20 of 1975, dated 12.02.1975. Therefore, the land ad-measuring 6 acres was excluded from the acquisition proceedings before passing the award. In respect of the remaining property, to an extent of 4.33 acres, has been covered in the acquisition proceedings. It was challenged in W.P.No.10351 of 1982, in respect of the land comprised in Survey No.232/1C to an extent of 6 acres situated at Kottivakkam Village, Saidapet Taluk and the same was allowed by an order dated 08.01.1988.

4. Another writ petition was also filed in W.P.No.7645 of 1986 in respect of the remaining extent i.e. 4.33 acres of land. Pending the writ petition, the award was passed and as such the said award was also under challenge in another writ petition in W.P.No.3450 of 1988. It was dismissed and confirmed by the Hon'ble Supreme Court of India. Thereafter, the earlier writ

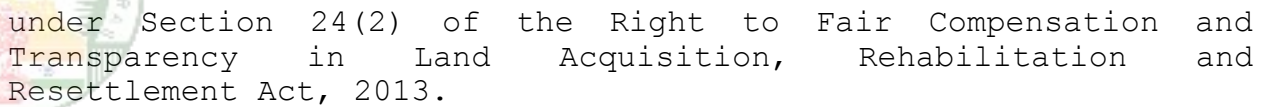


petition in W.P.No.7645 of 1986 was also dismissed and aggrieved by the same they filed a Special Leave Petition in SLP No.18103 of 1997 before the Hon'ble Supreme Court of India. In the meanwhile, the second respondent passed a resolution, dated 31.08.2000 cancelling the earlier resolution, dated 29.07.1994, recommending to the Government for dropping the land acquisition proceedings. It was challenged in W.P.No.1737 of 2001 and the same was dismissed. Aggrieved by the same, they preferred a writ appeal in W.A.No.3469 of 2002 and same was also dismissed and appeal filed before the Hon'ble Supreme Court of India in SLP No.830 of 2003. The Hon'ble Supreme Court of India by an order dated 31.03.2004, directed the Government to release the portion of the land ad-measuring 122*80 sq.ft for the house purpose and directed the petitioner to handover the remaining portion of the land within a period of one year.

5. However, the second petitioner had submitted a petition to drop the acquisition proceedings in respect of the land to an extent of 4.33 acres. Again it was rejected by an order dated 21.05.2009. Therefore, the possession of the said property is still with the petitioners and the respondents had taken only a symbolic possession by paper. Thereafter, the subject land was partitioned between the family members and they are entitled to have 1/5th share in the subject land. Accordingly, the subject land was sub divided into 232/1C2 to 232/1C7 and issued separate patta. The respective shares were assessed to the property tax and they are regularly paying the house tax and they are in possession and enjoyment of their respective shares.

6. The declaration was made under Section 6 in G.O.Ms.No.595, dated 21.03.1978 stands lapsed as the Award No. 4 of 1988 passed only on 10.02.1988 i.e after expiry of two years from the date of Amendment Act came into force. While being so, the new act came into force from 01.01.2014 as per Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, where an award has been made five years or more prior to the commencement of the act but the physical possession of the land has not been taken or the compensation has not been paid, the said acquisition proceedings shall stand lapsed.

7. Mr.V.Ayyadurai, the learned Senior Counsel, submitted that the physical possession of the subject land is still with the petitioners and at no point of time, the physical possession was taken by the respondents. Insofar as the compensation is concerned, no compensation amount has been paid so far or even tendered to the owner / interested person and the same has not been deposited before any Court as contemplated under Section 31 of the Land Acquisition Act, 1894. Therefore, the entire acquisition proceedings have been lapsed as per the provision



9. Therefore, now the petitioners cannot challenge the acquisition proceedings under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, since, already the possession has been taken over and the compensation has been deposited in the Civil Court. In support of his contentions, he relied upon the judgment reported in (2020) 8 SCC 129 in the case of Indore Development Authority Vs. Manoharlal and ors etc., held that,

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



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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 the Act



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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 1.1.2014. 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."

10. Though, the petitioners have already challenged the acquisition proceedings in more than one occasions, the present writ petition has been filed on the ground that they were not paid the compensation or no compensation amount has been deposited even till today. Insofar as the possession is concerned, all the petitioners are in possession and enjoyment of their respective shares as per their family arrangements. Therefore, the entire acquisition proceedings have been lapsed as contemplated under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

11. A perusal of the records revealed that the Government by G.O.Ms.No.282, dated 19.02.1972, directing to acquire an extent of 275 acres in Thiruvanniyur and Kottivakkam Village of Saidapet Taluk, Chengalpattu District for the "South Madras Neighbourhood Scheme". The 4(1) notification to an extent of 97.01 acres in Kottivakkam Village was approved in G.O.Rt.No.36, dated 19.02.1975. The subject land comprised in Survey No.232/1C also covered under Block-II. The notice under Section 5A of the Land Acquisition Act, 1894 was issued and the enquiry was held on 19.05.1975. Thereafter, the draft declaration under



Section 6 of the Land Acquisition Act, 1894 was approved by the Government, dated 28.08.1978.

12. Insofar as the subject property is concerned, the award was passed on 10.02.1988 in Award No.04 of 1988. After the award, the amount of compensation of Rs.91,874/- (Rupees Ninety One Thousand Eight Hundred and Seventy Four only) due to the share of third petitioner herein alone is kept in Civil Court Deposit under Section 30 and 31(2) of the Land Acquisition Act, 1894. Insofar as the possession is concerned, it will be taken by invoking Section 47 of the Land Acquisition Act, 1894. By the proceedings dated 28.11.2005, as per the order passed by the Hon'ble Supreme Court of India in Civil Appeal No.1897 of 1998 dated 31.03.2004, the revised compensation amount, after deducting the compensation amount of Rs.19,671/- (Rupees Nineteen Thousand Six Hundred and Seventy One only) for an extent of 22 cents for total of Rs. 3,87,168/- (Rupees Three Lakhs Eighty Seven Thousand One Hundred and Sixty Eight only) and awarded the same of Rs.3,67,497/- (Rupees Three Lakhs Sixty Seven Thousand Four Hundred and Ninety Seven only). Out of the said amount, only a share of the third petitioner to the tune of 91,874/- (Rupees Ninety One Thousand Eight Hundred and Seventy Four only) ordered to be drawn in favour of the Sub-Judge, Chengalpattu, by way of Demand Draft.

13. Accordingly, the said amount has been deposited in LAOP No.17 of 2005 on 16.02.2005. In fact, the said LAOP was also closed by an order dated 13.02.2015 for the reason that the parties are not in the case for more than 10 years. Parties are not interested to proceed with. If the claimant is really interested, by this time, the claimant should have appeared. The non appearance of the claimant causes the prolonged delay. In the interest of justice this reference is closed. It is pertaining to note that the reference was made for the reason that there is a dispute with regard to ownership of the property.

14. Therefore, it is the duty of the respondents to take steps to issue notice to the claimants. A perusal of the extract of LAOP No.17 of 2005 revealed that the Sub-Court, Tambaram repeatedly adjourned the LAOP for issuance of Court notice to the claimants. Even then the respondents did not take any steps to issue notice to the claimants i.e petitioners herein.

15. Thus, it is clear that only the share of the third petitioner alone has been deposited in LAOP.No.17 of 2005 on the file of the Sub-Court, Tambaram. Insofar as the others' shares are concerned, the respondents failed to deposit before the Court or in the Revenue Deposit even till today. Insofar as the



possession is concerned, even as per the award, the possession may be taken by invoking the provisions under Section 47 of the Land Acquisition Act, 1894.

16. Pending the writ petitions, this Court appointed an Advocate Commissioner to verify the status of the subject land to ascertain the subject land for the following reasons:-

(i) What is the status of the above property?

(ii) Whether coconut grove and other trees are available in the above said property?

(iii) Whether the area has been developed as house sites or maintained as vacant site?

(iv) Whether any construction has come up or not?

17. Accordingly, the Advocate Commissioner, inspected the subject land and filed her report, dated 22.11.2016. It revealed that the subject land is enclosed with a compound wall. Major portion of the property consists of thick Vegetation, wild grown trees and bushes. There are more than 20 Mango trees, more than 20 Neem trees, Amla trees, Jack trees, Lemon Trees, Kichali trees and various other Wild trees, Flowering and Plants, Bamboo trees, Arasu trees and Badham trees. There are also Coconut trees and there is a well with electric motor to pump out water. Few men are found trimming the bushes. The said property is not developed as house sites. There are three houses on the northern side and they have newly constructed with distinct compound wall. Therefore, the petitioners are in possession and enjoyment of the same and even till today, the possession has not been taken over from the petitioners.

18. Whereas, the counter revealed that they invoked Section 47 of the Land Acquisition Act, 1894 and accordingly, the eviction proceedings has been conducted and possession has been taken over and handed over to the Tamil Nadu Housing Board on 05.02.2010. It is relevant to extract the provisions under Section 47 of the Land Acquisition Act, 1894

"Magistrate to enforce surrender: ?If the Collector is opposed or impeded in taking possession under this Act of any land, he shall, if a Magistrate, enforce the surrender of the land to himself, and, if not a Magistrate, he shall apply to a Magistrate or (within the towns of Calcutta, Madras and Bombay) to the Commissioner of Police and such Magistrate or the Commissioner (as the case may be) shall enforce the surrender of the land to the Collector.

State Amendment- [Mysore(Karnataka)]-In its



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application to the state of Mysore, in Section 47,?

(i) for the word 'Collector', substitute the words 'Deputy Commissioner'. [Vide Mysore Act 17 of 1961, sec. 4 (w.e.f. 24-3-1961)].

(ii) for the words 'a Magistrate', substitute the words 'an Executive Magistrate'. [Vide Mysore Act 13 of 1965, sec. 66 and Sch. (w.e.f. 1-10-1965)].

Section 47A

State Amendment-[Gujarat]-In its application to the State of Gujarat 'After section 47, insert the following section, namely: ?

47A. Executive Magistrate or Commissioner of Police to enforce surrender of land or closure of easement .?(1) In the application of this Act, to the State of Gujarat, for section 47 the provisions of sub-sections (2) and (3) of this section shall be substituted.

(2) If the Collector is opposed or impeded in taking possession under this Act of any land or in preventing enjoyment of any easement extinguished under this Act, he shall, if a District Magistrate, enforce the surrender of the land to himself, or the closure of such easement and if not such Magistrate, he shall apply in any area for which a Commissioner of Police has been appointed to the Commissioner of Police and elsewhere to any Executive Magistrate and such Commissioner or Magistrate shall enforce the surrender of the land to the Collector, or, as the case may be, the closure of such easement.

(3) Any action taken by a Collector, Magistrate or Commissioner of Police under sub-section (2) shall not be questioned in any Civil Court and no injunction shall be issued by such Court for restraining such action, but the aggrieved party shall be entitled in such Court to reasonable compensation for any damage suffered by him by reason of the powers under this section being exercised by any such officer wrongfully or without authority.? [Vide Gujarat Act 20 of 1965, sec. 21 (w.e.f. 15-8-1965).

19. Accordingly, the authority concerned can approach the concerned Magistrate to enforce the surrender of the land. Though, the respondents stated that they invoked the provisions under Section 47 of the Land Acquisition Act, 1894, to take



possession of the subject land from the petitioners, as per the Advocate Commissioner's report, the petitioners are still in possession and enjoyment of the same and never had taken possession of the subject land by the respondents. There is also no record to show that the respondents invoked the provisions under Section 47 of the Land Acquisition Act, 1894. Therefore, the judgment cited by the learned counsel for the respondents is not helpful to the case on hand. Therefore, 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.

20. In view of the above, the land acquisition proceedings in respect of 4.33 acres of land in Old Survey No.232/1C, New Survey No.232/1C2 to 232/1C7 at Kottivakkam Village have lapsed. The fourth respondent is directed to mutate the Revenue records in favour of the petitioners and issue patta within a period of four weeks from the date of receipt of a copy of this order.

21. With the above direction, this writ petition stands allowed. Consequently, connected Miscellaneous petition is closed. There shall be no order as to costs.

Sd/-

Deputy Registrar (CS)

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Sub Assistant Registrar

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To

1. The Secretary,
The State of Tamil Nadu,
Housing and Urban Development Department,
Fort St.George, Chennai - 600 009.
2. The Chairman,
Tamil Nadu Housing Board,
Anna Salai, Nandanam,
Chennai - 600 035.
3. The Special Tahsildar (L.A),
Division-5,
Tamil Nadu Housing Board,
Nandanam,
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4. The Tahsildar,
Revenue Department,
Sholinganallur,
Chennai.

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+1cc to Mr.M.Velmurugan, Advocate, S.R.No.59073

+1cc to the Government Pleader, S.R.No.59486

W.P.No.39565 of 2016
and W.M.P.No.33847 of 2016

EV(CO)
KM(02/12/2021)