

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2021

CORAM

THE HON'BLE Mr. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.41611 of 2016
and W.M.P.Nos.35614, 35615 of 2016

M.Gnanasubramaniam

...Petitioner

Vs

1. The Secretary,
Housing and Urban Development Department,
Fort St. George,
Chennai - 600 009.

2. The Chairman,
Tamil Nadu Housing Board,
Nandanam,
Chennai - 600 035.

3. The Land Acquisition Officer
and Special Tahsildhar,
(Land Acquisition)
Housing Development Scheme No.1,
Coimbatore - 641 018.

4. The Executive Engineer,
Tamil Nadu Housing Board,
Tatabad, Coimbatore - 641 012.

...Respondents

PRAYER:- Writ Petition is filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorari to call for the records relating to the award dated 29.10.1999 passed by the 3rd respondent in Award No.1 of 1999 in respect of the properties comprised in Survey No.539/2A and 539/4 situate at Vella Kinar Village, Coimbatore Town and Taluk to an extent of 0.35.0 and 0.07.5 Hectares respectively alone and further proceedings thereon and to quash the same as lapsed.

For Petitioner : Mr.C.Prabakaran

For Respondents : Mr.M.R.Gokul Krishnan,
1 & 3 Government Advocate

For Respondent : Dr.R.Gouri,
2 & 4 Standing Counsel

O R D E R

This writ petition is filed to issue a Writ of Certiorari to call for the records relating to the award dated 29.10.1999 passed by the 3rd respondent in Award No.1 of 1999 in respect of the properties comprised in Survey No.539/2A and 539/4 situate at Vella Kinar Village, Coimbatore Town and Taluk to an extent of 0.35.0 and 0.07.5 Hectares respectively alone and further proceedings thereon and to quash the same as lapsed.

2. The case of the petitioner is that he owned land comprised in Survey Nos.539/2A and 539/4 situated at Vellai Kinar Village, Coimbatore admeasuring 0.35.0 and 0.07.5 Hectares. At that juncture, the first respondent initiated acquisition proceedings under the Land Acquisition Act, 1894 (hereinafter called "Act") and issued notification under Section 4(1) of the Act dated 06.09.1996 proposing the acquisition of the land for the purpose of Housing Board Neighbourhood Scheme to an extent of 330.71.5 Hectares. Thereafter, the third respondent issued notice under Section 5(A) of the Act.

3. The petitioner already participated in the inquiry and thereafter, the award was passed in Award No.1 of 1999 dated 29.10.1999. Accordingly, the award also deposited on 25.05.2000 on the file of the Principal Subordinate Judge, Coimbatore. In respect of possession, the subject property were taken over by the Government and handed over to the Tamil Nadu Housing Board namely the 4th respondent herein on 03.01.2008.

4. The above grounds raised by the petitioner has already been settled by the Hon'ble Supreme Court of India in the case of Indore Development Authority Vs. Manoharlal and others 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:

366.1. 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.

366.2. 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.

366.3. 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 317 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.

366.4. 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.

366.5. 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 318 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.

366.6. 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).

366.7. 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).

366.8. 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.

366.9. 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."

5. 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 award has been

passed in Award No.1 of 1999 on 29.10.1999 itself. The acquisition proceedings have been completed and the subject land was taken over by the government and the same was handed over to the Tamil Nadu Housing Board on 03.01.2008. The compensation amount is kept under Civil Court deposit under Section 30 and 31 (2) of the Land Acquisition Act as early as on 25.05.2000. Therefore, the petitioner failed to satisfy the twin requirements under Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, 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 petitioner was 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.

6. Accordingly, this writ petition is dismissed. No order as to costs. Consequently, the connected miscellaneous petitions are dismissed.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

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To

1. The Secretary,
Housing and Urban Development Department,
Fort St. George,
Chennai - 600 009.
2. The Chairman,
Tamil Nadu Housing Board,
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Chennai - 600 035.
3. The Land Acquisition Officer
and Special Tahsildhar,
(Land Acquisition)
Housing Development Scheme No.1,
Coimbatore - 641 018.

4. The Executive Engineer,
Tamil Nadu Housing Board,
Tatabad,
Coimbatore - 641 012.

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.46336
+1cc to the Government Pleader, S.R.No.46871

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