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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2021

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.NO.9249 OF 2014

AND

M.P.NO.1 OF 2014

S.Subramani

... Petitioner

vs.

1. The Government of Tamil Nadu,
Rep. by its Secretary to Government,
Housing and Urban Development Department,
Fort St. George, Secretariat,
Chennai - 600 009.
2. The Special Tahsildar (Land Acquisition)
Neighbourhood Scheme, Salem.
3. The District Collector,
Salem.
4. Tamil Nadu Housing Board,
Salem Housing Unit,
Salem - 1.

... Respondents

Prayer:

Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration, declaring that acquisition of lands of the petitioner of an extent of 0.54 acres and the buildings thereon in Survey No.42/3A1B in Kandampatti Village, Salem Taluk, pursuant to Sec. 4(1) of the Land Acquisition Act under G.O.Ms.No.963 Housing Urban and Development Department, dated 16.11.1984 and Sec. 6 of the Land Acquisition Act in G.O.Ms.729 Housing and Urban Development Department dated 23.05.1986 stands lapsed in view of Section 24 Clause 2 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-Settlement Act, 2013.



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For Petitioner : Ms.AL.Ganthimathi
For R1 to R3 : Mr.G.Krishna Raja
Additional Government Pleader
For R4 : Mr.I.Sathish
Standing Counsel

ORDER

This writ petition has been filed to issue a Writ of Declaration, declaring that acquisition of lands of the petitioner of an extent of 0.54 acres and the buildings thereon in Survey No.42/3A1B in Kandampatti Village, Salem Taluk, pursuant to Section 4(1) of the Land Acquisition Act, 1894 (hereinafter after referred to as 'the Act' for short) under G.O.Ms.No.963 Housing Urban and Development Department, dated 16.11.1984 and Section 6 of the Act in G.O.Ms.729 Housing and Urban Development Department dated 23.05.1986 stands lapsed in view of Section 24 Clause 2 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-Settlement Act, 2013.

2. The case of the petitioner is that the petitioner owned property comprised in S.No.42/3A1B admeasuring 0.54 acres situated at Kandampatti Village, Salem Taluk. While being so, the 1st respondent initiated acquisition proceedings for the purpose of construction of houses to the Government Employees under Housing Unit Scheme in respect of the subject property. Accordingly, a notification under Section 4(1) of the Act was issued under G.O.Ms.No.963, Housing Urban and Development Department, dated 16.11.1984. Thereafter, the enquiry was conducted under Section 5-A of the Act and a declaration to acquire the subject land under Section 6 of the Act was issued in G.O.Ms.No.729, Housing and Urban Development Department, dated 23.05.1986. The petitioner challenged the notification issued under Section 4(1) of the Act and declaration under Section 6 of the Act before this Court in W.P.No.4852 of 1994. The said writ petition was dismissed by an order dated 23.04.2011 by this Court. Aggrieved by the same, the petitioner also preferred writ appeal in W.A.No.545 of 2002 and the same was dismissed by this Court on 30.06.2006.

3. On perusal of the counter affidavit filed by the 4th respondent, revealed that the award enquiry was conducted on



17.05.1988 and the award was passed in Award No.1/88-89 dated 25.05.1988. However, the petitioner did not appear for the award enquiry even though the notice was served to him and he also received the same. The compensation amount of Rs.37,291.55/- for the subject land comprised in S.No.42/3A1B to an extent of 0.54 acres was deposited in the Sub Court, Salem under Sections 30 and 31 (2) of the Land Acquisition Act, 1894. It was also duly informed to the petitioner and Form-10 notice under the Land Acquisition Act, 1894 was issued to the petitioner on 16.02.1994 and the same was duly received by the petitioner. Thereafter, he was served notice and directed the petitioner to handover the vacant possession of the subject land on or before 07.03.1994. The petitioner did not come forward to surrender the possession and enjoyment of the subject land and as such, the 2nd respondent initiated proceedings under Section 47 of the Act against the petitioner to handover the possession and enjoyment of the acquired land.

4. However, the petitioner again challenge the same before the Civil Court in O.S.No.1301 of 2008 on the file of the learned Principal District Munsif court, Salem, prayed for bare injunction restraining the respondents from any manner not to evict the petitioner by force from the acquired lands. The suit was also dismissed by the Trial Court by the judgement and decree dated 10.01.2012 and the same was confirmed by the Appellate Court, viz., the learned Principal Sub Judge, Salem in A.S.No.72 of 2012 by the judgement and decree dated 22.01.2013. Immediately, after dismissal of the said suit and after commencement of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013, the present writ petition has been filed for not to dispossess the petitioner from the acquired land. Therefore, the respondents did not evict the petitioner from possession of the subject property. Now, this writ petition has been filed on the ground that the possession has not been taken over and compensation has not been paid to the petitioner as contemplated under Section 24(2) of the Act.

5. As stated supra, the compensation amount has already deposited as contemplated under Sections 30 and 31 (2) of the Act for the subject land before the Sub Court, Salem. It was also duly informed to the petitioner and Form-10 notice under the Land Acquisition Act, 1894 was issued to the petitioner on 16.02.1994. Insofar as the possession is concerned due to an interim order passed by this Court, the possession has not been taken over. These issues are already settled by the Constitution Bench of 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, 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 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."



In view of the above, the writ petition is devoid of merits and it is liable to be dismissed.

6. Accordingly, the writ petition is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Housing and Urban Development Department,
Fort St. George, Secretariat,
Chennai - 600 009.
2. The Special Tahsildar (Land Acquisition)
Neighbourhood Scheme, Salem.
3. The District Collector,
Salem.
4. The Tamil Nadu Housing Board,
Salem Housing Unit,
Salem - 1.

+1cc to Mr.I.Sathish, Advocate, S.R.No.65712
+1cc to Ms.A.L.Ganthimathi, Advocate, S.R.No.66310
+1cc to the Special Government Pleader, S.R.No.66626

W.P.No.9249 of 2014

RP(CO)
PM/21/12/2021