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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2021

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P. Nos.10294 & 10295 of 2014
and
M.P. No.1 of 2014

P.Jaganathan

... Petitioner
in both WPs.

-Vs-

1. State rep. by its Secretary,
Housing & Urban Development Dept.,
Fort St. George,
Chennai 600 009.
2. Tamil Nadu Housing Board,
Rep. by its Managing Director,
No.33, Anna Salai,
Nandanam, Chennai 600 035.
3. The Executive Engineer,
Tamil Nadu Housing Board,
Bhagalur Road,
Hosur 635 109.
4. The Special Tahsildar (L.A.),
Hosur Housing Scheme,
Bhagalur Road,
Hosur, Krishnagiri District.

... Respondents in
both WPs.

Prayer in W.P. No.10294 of 2014:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent issued in Letter No.24995/LA.2 (2)/12-5 dated 01.08.2013 quash the same, consequently direct the Respondents to exclude the Petitioners land bearing Plot No.2 in the layout viz., Jayalakshmi Nagar, to an extent of 1870 sq.ft. Comprised in Survey No. 899/1, Hosur Village and Taluk, Krishnagiri District from the Land Acquisition Proceedings.



Prayer in W.P. No.10295 of 2014:- 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 initiated under the Land Acquisition Act 1894 in respect of land bearing Plot No.2 in the layout viz., Jayalakshmi Nagar, to an extent of 1870 sq.ft. comprised in Survey No. 899/1, Hosur Village and Taluk, Krishnagiri District, covered by Notification issued under Section 4(1) of Land Acquisition Act, 1894 vide G.O.Ms.No.1342 Housing and Urban Development Department dated 09.10.1991 and Declaration under Section 6 of Land Acquisition Act 1894 vide G.O.Ms.No.885 dated 21.12.1992 deemed to have lapsed in view of Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-Settlement Act, 2013.

For Petitioner
in both WPs : Ms.Divyapreathika

For Respondents
in both WPs
For R1 & R4 : Mr.M.R.Gokul Krishnan,
Government Advocate.

For R2 & R3 : Dr.R.Gowri,
Standing Counsel.

COMMON ORDER

These Writ Petitions have been filed to call for the records of the first Respondent issued in Letter No.24995/LA.2 (2)/12-5 dated 01.08.2013 quash the same, consequently direct the Respondents to exclude the Petitioners land bearing Plot No.2 in the layout viz., Jayalakshmi Nagar, to an extent of 1870 sq.ft. Comprised in Survey No. 899/1, Hosur Village and Taluk, Krishnagiri District, and to declare that the Land Acquisition Proceedings initiated under the Land Acquisition Act 1894 in respect of land bearing Plot No.2 in the layout viz., Jayalakshmi Nagar, to an extent of 1870 sq.ft. comprised in Survey No. 899/1, Hosur Village and Taluk, Krishnagiri District, covered by Notification issued under Section 4(1) of Land Acquisition Act, 1894 vide G.O.Ms.No.1342 Housing and Urban Development Department dated 09.10.1991 and Declaration under Section 6 of Land Acquisition Act 1894 vide G.O.Ms.No.885 dated 21.12.1992 deemed to have lapsed in view of Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-Settlement Act, 2013 (herein after called as "the new Act")



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2. Heard Ms.Divyapreathika, learned counsel appearing for the petitioner, Mr.M.R. Gokul Krishnan, learned Government Advocate appearing for the respondents 1 and 4 and Dr.R.Gowri, learned counsel appearing for the respondents 2 and 3 in both the writ petitions.

3. The Writ Petitions have been filed challenging the acquisition proceedings on two grounds viz., the possession of the subject property has not been taken over and the compensation was not paid till today. Originally, the land comprised in survey Nos. 899/2 and 899/3 belonged to one Anjappa and his brother Sudappa. They have developed the property and layout into house plots in the name of ''Jayalakshmi Nagar''. The petitioner has purchased a house plot ad-measuring 1870 sq.ft comprised in Survey No.899/1 situated at Hosur Village and Taluk Krishnagiri District by the registered sale deed.

4. Thereafter, he came to understand about the acquisition proceedings initiated by the first respondent by the Notification under Section 4(1) of the Land Acquisition Act, 1894, (herein after called as "the Act") vide G.O.Ms.No.1342 Housing and Urban Development Department dated 09.10.1991, proposed to acquire the entire land to establish Neighborhood Housing Scheme by the second respondent. In continuation of the said notification, declaration has been issued under Section 6 of the Act.

5. According to the petitioner, no opportunity has been given to him to raise his objection and he was not called for any enquiry. Further some of the adjacent land owners filed Writ Petitions before this Court in W.P.Nos.16881 of 1994 and 16882 of 1994, challenging the acquisition proceedings and the same were allowed and the land acquisition proceedings in respect of some part of the land had quashed. That apart, the petitioner filed this writ petition for the reason that the entire acquisition proceedings have been lapsed on the grounds that he was not paid compensation and also the possession of the subject property has not been taken over.

6. On perusal of records produced by the second respondent revealed that after notification, the enquiry under Section 5(1) of the Act, was conducted and the land owners had participated in the enquiry and only after that Section 6 declaration of the Act was issued. Thereafter, the award was passed on 21.12.1994 and the possession of the property was taken over on 22.02.1995. The compensation of the award amount was also deposited in the Revenue Deposit on 24.03.1997. After taking the possession of the respective lands, the subject property was handed over to the second respondent and the patta copy was also issued in their favour on 01.03.2000.



7. Thereafter, the second respondent applied for DTCP approval and the same was approved and the subject land was divided into house plots. In fact, some of the house plots were sold out as such, the acquisition proceedings were got over. After a period of 20 years, these Writ Petitions have been filed challenging the land acquisition proceedings in view of the Section 24(2) of the new Act. As stated supra, the respondents duly complies the provisions as contemplated under the Act. Therefore, the entire Acquisition Proceedings have not been lapsed in view of the new Act.

8. That apart, the grounds raised by the petitioner in these Writ Petitions have already been settled by 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.



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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).



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10. In the result, both the Writ Petitions are dismissed. Consequently, the connected Miscellaneous Petition is closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

rts/mn

To

1. The Secretary,
State of Tamil Nadu,
Housing & Urban Development Dept.,
Fort St. George,
Chennai 600 009.
2. The Managing Director,
Tamil Nadu Housing Board,
No.33, Anna Salai,
Nandanam, Chennai 600 035.
3. The Executive Engineer,
Tamil Nadu Housing Board,
Bhagalur Road,
Hosur 635 109.
4. The Special Tahsildar (L.A.),
Hosur Housing Scheme,
Bhagalur Road,
Hosur, Krishnagiri District.

+1cc to Mr.V.Ayyappa raja, Advocate, S.R.No.44221
+1cc to the Government Pleader, S.R.No.44289

W.P. Nos.10294 & 10295 of 2014
and M.P. No.1 of 2014

AK(CO)
CT(28/09/2021)