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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.08.2021

Coram:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

WP.Nos.8383 of 2014 & 4523 of 2012
and
MP.Nos.1 of 2014 and 1 of 2012

WP.No.8383 of 2014

Standard Screen Films Mfg.Co.(P) Ltd.,
Rep. by its Managing Director,
S.A.Jhan Mohamed,
No.1, Kumaran Nagar,
Sholinganallur, Chennai-96

...Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Housing and Urban Development Department,
Fort St.George, Chennai-9
2. The Chairman & Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai-35
3. The Special Tahsildar(Land Acquisition),
Tamilnadu Housing Board Schemes,
Nandanam, Chennai-35

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of declaration declaring that the Section 4(1) notification dated 14.05.1990 and all subsequent land acquisition proceedings in respect of lands of the petitioner of an extent of 0.63 acres in survey Nos.410/2, 411/3, 411/4 situated at Sholinganallur Village, Kancheepuram District have lapsed as per Section 24(1) and (2) of The Right to Fair compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.



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For Petitioner	: M/s.K.Subhashini for M/s.Chennai Law Associates
For Respondents For R1 & 3	: Mr.Richardson Wilson, Government Advocate
For R2	: Mr.M.Baskar, Standing Counsel

WP.No.4523 of 2012

Standard Screen Films Mfg.Co.(P) Ltd.,
Rep. by its Managing Director,
S.A.Jhan Mohamed,
No.1, Kumaran Nagar,
Sholinganallur, Chennai-96

...Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
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2. The Chairman & Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai-35
3. The Special Tahsildar(Land Acquisition),
Tamilnadu Housing Board Schemes,
Nandanam, Chennai-35

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of mandamus directing the respondents 1 to 3 to withdraw the Section 4 (1) notification dated 14.05.1990 and all subsequent land acquisition proceedings in respect of lands of the petitioner of an extent of 0.63 acres in survey Nos.410/2, 411/3, 411/4 situated at Sholinganallur Village, Kancheepuram District under Section 48(1) of the Land Acquisition Act and denotify the same as possession has not been taken till date.

(Prayer amended as per order dated 05.03.2012 in MP.No.2 of 2012 in WP.No.4523 of 2012)



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For Petitioner : M/s.K.Subhashini
for M/s.Chennai Law Associates

For Respondents
For R1 & 3 : Mr.Richardson Wilson,
Government Advocate

For R2 : Mr.M.Baskar,
Standing Counsel

COMMON ORDER

The writ petition in WP.No.8383 of 2014 has been filed to issue a writ of declaration declaring that the Section 4(1) notification dated 14.05.1990 and all subsequent land acquisition proceedings in respect of lands of the petitioner of an extent of 0.63 acres in survey Nos.410/2, 411/3, 411/4 situated at Sholinganallur Village, Kancheepuram District have lapsed as per Section 24(1) and (2) of The Right to Fair compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

2. The case of the petitioner is that the petitioner purchased property to an extent of 1.13 acres comprised in survey Nos.410/1, 410/2, 411/2, 411/3, 411/3B and 411/4 situated at Sholinganallur Village, Kancheepuram District by the registered sale deed dated 24.09.1993 vide document No.4560 of 1993 at the Office of the Sub Registrar, Adyar. These lands are used for running a factory for production of its product. The first respondent issued notice under Section 4(1) of the Land Acquisition Act on 14.05.1990 and the same was published in GO.Ms.No.433. The petitioner was not served any notice as required under Section 4 (1) of the Land Acquisition Act. The petitioner raised objections and on the said objections, the third respondent recommended for exclusion of the petitioner's land dated 11.07.1994 and stated that the subject area notified in the survey Nos. formed a compact block for the company and as the area notified lay on the south west corner of the scheme boundary which would not affect the housing programme, and the lands in survey Nos.410/2, 411/3, 411/4 could be exempted.

2.1 In this regard, the third respondent asked for report from the second respondent. However, the same was not considered and award has been passed on 02.05.1997 in Award No.1 of 1997. In fact, the petitioner was called for award enquiry and award has been passed.

3. The learned counsel for the petitioner would submit that the petitioner was not paid compensation and also the possession



of the subject property is not taken even till today. Therefore, as contemplated under Section 24(2) of The Right to Fair compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the entire acquisition proceedings are vitiated and liable to be quashed.

4. Heard, M/s.K.Subhashini, the learned counsel for the petitioner, Mr.Richardson Wilson, Government Advocate appearing for the respondents 1 & 3, and Mr.M.Baskar, Standing Counsel appearing for the second respondent.

5. On perusal of the counter filed by the second respondent revealed that Section 4(1) notification was issued on 23.05.1990 in respect of the subject property. After 4(1) notification, by the sale deed dated 21.04.1993, the petitioner purchased the subject property by the registered document No.1472 of 1993. Therefore, the petitioner admittedly is subsequent purchaser to the 4(1) notification of the old Act i.e. Land Acquisition Act, 1894. However, the petitioner being subsequent purchaser, he was served notice and he participated in the award enquiry and he was served notice dated 02.05.1997 requesting the petitioner to come and receive the compensation, failing which the said amount will be deposited in revenue deposit and the same will have no interest. However, the petitioner failed to receive the compensation and as such deposited in the revenue deposit. The petitioner also filed several writ petitions before this Court challenging the acquisition proceedings and the same were dismissed by this Court. In fact, the petitioner also filed writ petition for direction directing the first respondent to consider his request for re-conveyance of the land under Section 48-B of the Act. However, the first respondent by the reply dated 17.06.2003, justified the action of acquiring the subject property and the acquisition proceedings are not yet over and only after taking over possession and development, the question of re-conveyance of the land will be considered and hence his request was rejected. It was challenged in the writ appeal in WA.No.659 of 2009 and the Hon'ble Division Bench of this Court also dismissed the same by order dated 21.07.2010.

6. Therefore, on several occasions, the petitioner approached this Court by way of so many writ petitions challenging the acquisition proceedings, one way or other. That apart, the petitioner is being subsequent purchaser, cannot challenge the acquisition proceedings initiated before his purchase. 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



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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).

.....

21. Thus, under the provisions of Section 24 of the Act of 2013, challenge to acquisition proceeding of the taking over of possession under the Act of 1894 cannot be made, based on a void transaction nor declaration can be sought Under Section 24 (2) by such incumbents to obtain the land. The declaration that acquisition has lapsed under the Act of 2013 is to get the property back whereas, 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 purchaser as land was not capable of being sold which was in process of acquisition under the Act of 1894. The Act of 2013 does not confer any right on purchaser whose sale is ab initio void. Such void transactions are not validated under the Act of 2013. No rights are conferred by the provisions contained in the 2013 Act on such a purchaser as against



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the State.

22. 'Void is, ab initio,' a nullity, is inoperative, and a person cannot claim the land or declaration once no title has been conferred upon him to claim that the land should be given back to him. A person cannot enforce and ripe fruits based on a void transaction to start claiming title and possession of the land by seeking a declaration Under Section 24 of the Act of 2013; it will amount to conferment of benefit never contemplated by the law. The question is, who can claim declaration/rights Under Section 24(2) for the restoration of land or lapse of acquisition. It cannot be by a person with no title in the land. The provision of the Act of 2013 cannot be said to be enabling or authorizing a purchaser after Section 4 to question proceeding taken under the Act of 1894 of taking possession as held in U.P. Jal Nigam (supra) which is followed in M. Venkatesh (supra) and other decisions 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)."



7. In the above judgment, the Hon'ble Supreme Court of India held that challenging the acquisition proceedings under the provision 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 petitioner cannot challenge the acquisition proceedings being the subsequent purchaser.

8. Insofar as possession and compensation are concerned, as stated supra, the petitioner was requested to receive the compensation by the letter dated 02.05.1997 and thereafter challenged the acquisition proceedings in various writ petitions. Finally, writ petition was filed for re-conveyance of the subject property and the same was also rejected by this Court and the same was confirmed by the Hon'ble Division Bench of this Court. Therefore, the issue in this writ petition already went against the petitioner. The present writ petition is nothing but re-agitating the same issue under the provisions of Section 24(2) of the new Act i.e. The Right to Fair compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. However, the grounds raised by the petitioner in this Writ Petition 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.



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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.



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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).

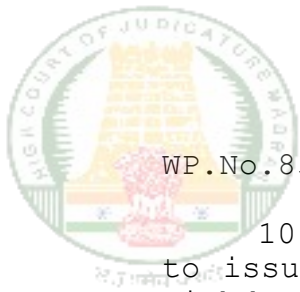
7. The mode of taking possession under the Act of 1894 and as contemplated under Section 24(2) is by drawing of inquest report/memorandum. Once award has been passed on taking possession under Section 16 of the Act of 1894, the land vests in State there is no divesting provided under Section 24(2) of 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."

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 award has been passed on 02.05.1997 in Award No.1 of 1997 itself.

9. In view of the dictum laid down by the Hon'ble Supreme Court of India, the issues raised by the petitioner 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. Accordingly, the writ petition in



WP.No.8383 of 2014 is dismissed.

10. The writ petition in WP.No.4523 of 2012 has been filed to issue a writ of mandamus directing the respondents 1 to 3 to withdraw the Section 4 (1) notification dated 14.05.1990 and all subsequent land acquisition proceedings in respect of lands of the petitioner of an extent of 0.63 acres in survey Nos.410/2, 411/3, 411/4 situated at Sholinganallur Village, Kancheepuram District under Section 48(1) of the Land Acquisition Act and denotify the same as possession has not been taken till date.

11. In view of the order passed in WP.No.8383 of 2014, the writ petition in WP.No.4523 of 2012 is also dismissed. Consequently, connected miscellaneous petitions are closed. No order as to costs.

Sd/-
Assistant Registrar (CS-VII)

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Sub Assistant Registrar

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To

1. The Secretary to Government,
State of Tamil Nadu,
Housing and Urban Development Department,
Fort St.George, Chennai-9
2. The Chairman & Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai-35
3. The Special Tahsildar (Land Acquisition),
Tamilnadu Housing Board Schemes,
Nandanam, Chennai-35

+1cc to the Government Pleader, S.R.No.43924

WP.Nos.8383 of 2014 & 4523 of 2012

(CO)
SU(24/09/2021)