

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos.43256 and 43257 of 2016
and
W.M.P.Nos.37106 and 37107 of 2016

M.Palaniappan ... Petitioner in W.P.No.43256 of 2016
P.L.Muthukaruppan ... Petitioner in W.P.No.43257 of 2016

Vs.

1. The Secretary to Government,
Public Works Department (Highways),
Fort St.George, Chennai - 600 009.
2. The Revenue Divisional Officer,
Office of the Revenue Divisional Office,
Chengalpattu.
3. The Special Deputy Collector (Land Acquisition),
Poonamallee, Chennai.
4. The Chief Executive Officer,
Tamil Nadu Road Development Company Limited,
No.346, Sindu Pantheon Plaza,
Chennai - 600 008.

...Respondents in both W.Ps

Writ Petitions filed under Article 226 of the Constitution of India, to issue a writ of declaration, declaring the land acquisition proceedings in pursuance of G.O.Ms.No.1105 dated 04.08.1992 issued under Section 4(1) of the Land Acquisition Act, 1894 and all further proceedings are lapsed in view of Section 24(2) of the Right Fair Compensation and Transparency in Land Acquisition Rehabilitation Resettlement Act, 2013.

For Petitioners
in both W.Ps. : Mr.T.Thiageswaran
for M/s.Waraon and Sai Rams

For Respondents: Mr.M.R.Gokul Krishnan
in both W.Ps Government Advocate (for R-1 to R-3)

: Mr.M.Sivavarthanan (for R-4)

C O M M O N O R D E R

Both the writ petitions are filed to issue a writ of declaration, declaring the land acquisition proceedings in pursuance of G.O.Ms.No.1105 dated 04.08.1992 issued under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act' for short) and all further proceedings are lapsed in view of Section 24(2) of the Right Fair Compensation and Transparency in Land Acquisition Rehabilitation Resettlement Act, 2013 (hereinafter referred to as 'the New Act' for short).

2. The case of the petitioners is that they have purchased the land comprised in S.No.3/33B ad-measuring to an extent of 50 cents situated at Uthandi Village, Sholinganallur Taluk, Kanchipuram District by the registered sale deed dated 22.02.1988 from one C.P.Saravanan, vide document No.3165 of 1988. While that being so, the first respondent issued notification under Section 4(1) of the Act by G.O.Ms.No.1105, P.W. (Highways) (HS2), dated 04.01.1992 for the purpose of widening the East Coast Road from Thiruvannamiyur to Cuddalore by invoking urgency clause provisions under the Act.

3. The learned counsel for the petitioners submitted that the New Act clearly stipulates that in the case of land acquisition proceedings initiated under the Act, where an award has been made 5 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 entire proceedings shall be deemed to have lapsed. The said lands were acquired under the urgency clause. He further submitted that the Hon'ble Supreme Court of India categorically held in various cases that the right to file objections under Section 5-A is a substantial right when a person's property is being threatened with the acquisition. Therefore, such right cannot be taken away as if by a side wind. Even then the guideline for exercising such exceptional power as provided under Section 17 of the Act has not followed by the respondents and as such, the entire acquisition proceedings is vitiated and it is liable to be quashed. The respondents failed to take appropriate steps under the Act to acquire the property from the actual possession of the petitioners for the purposes of widening the East Coast Road. After the lapse of more than 18 years and in view of the

fact that the property was not used for the purpose for which it was acquired and as such, the land acquisition proceedings is deemed to have lapsed. The Special Tahsildar, Land Acquisition, East Coast Road Project, Chengalpattu passed an award dated 20.03.1995. However, the same was not intimated to the land owners and no amount was deposited in the Court so far. He further submitted that the New Act came into force with effect from 01.01.2014 with a view to protect the land owners and other affected families and to provide just and fair compensation for the families whose land has been acquired or proposed to be acquired, for their rehabilitation and resettlement and to ensure that the affected persons become partners in development leading to an improvement in their post acquisition social and economic status and for matters connected therewith.

4. Per contra, the learned counsel for the fourth respondent submitted that the fourth respondent has filed counter, which reveals that the acquisition proceedings were initiated for the purpose of widening the East Coast Road from Tiruvanmiyur to Cuddalore by invoking urgency clause provisions under the Act in respect of the subject lands and various other lands abutting the East Coast Road. The draft notification under Section 4(1) of the Act was approved by the Government in G.O.Ms.No.1105, P.W. (Highways) (HS2), dated 04.01.1992 and published in Tamil Nadu Government Gazette dated 07.08.1992. The notification under Section 4(1) of the Act was published in two tamil dailies on 09.08.1992 and in the locality on 21.08.1992. The enquiry under Section 5A is dispensed with since the draft notification was issued under urgency clause. The draft notification issued under Section 6 of the Act was approved in G.O.Ms.No.1167 (PW (HW) Hs2) dated 10.08.1993 and published in Tamil Nadu Government Gazette dated 11.08.1993. The declaration under Section 6 of the Act was published in two tamil dailies on 12.08.1993 and published in the locality on 17.08.1993. The award enquiry under Section 11 of the Act was conducted on 16.08.1995 after publication of notice under Sections 9(1) & 10 of the Act to the land owners and interested persons whose name are found in the revenue record. Thereafter, the award has been passed on 16.08.1995 in Award No.1 of 1995. Thereafter, notice under Section 12(2) of the Act was issued on 20.08.1995 itself, since the some of the land owners were failed to receive and collect the compensation. The final publication in the newspapers was made on 21.08.2015 in the tamil dailies. Thereafter, the said amount was deposited before the Sub Court, Tambaram.

5. That apart, the acquisition of lands for the expansion of the East Coast Road was completed in the year 1995. The Government of Tamil Nadu had issued G.O.Ms.No.26. Highways (HV2) dated 11.02.2000 for handing over the stretch of East Coast Road

from Km 22/300 to Km 135/500 measuring about 113.2 Km to the fourth respondent for providing world class amenities and to improve the facilities in the East Coast Road. The Government of Tamil Nadu was permitted by G.O.Ms.No.215, Highways (HV2) Department, dated 13.12.2000 approved the concession agreement to be entered with the fourth respondent to improve, operate and maintain the stretch of East Coast Road for 30 years. Accordingly, the fourth respondent was permitted to demand, collect retain appropriate tolls from users of the projects. In fact, by G.O.Ms.113, Highways & Minor Ports (HV2) Department dated 15.07.2013 and accorded administrative sanction for widening the East Coast Road for four lane road including improvements at 13 curved stretches and 7 junctions along with the stretch. Thereafter, a portion of the East Coast Road was further widened into four lane road.

6. The grounds raised by the petitioners 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.

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."

7. 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 subject land was acquired for the purpose of East Coast Road development. and the possession was handed over to the requisitioning body. Further the requisitioning body also deposited the compensation as awarded by the Land Acquisition Officer. Now the East Coast Road has been formed and it is maintained by the Tamil Nadu Road Development Company Limited. Therefore, the petitioners failed to satisfy the twin requirements under Section 24 (2) of the New Act 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 petitioners 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.

8. However, the learned counsel for the petitioners submitted that admittedly the amount has been deposited only on 26.10.2015, that too in the name of the erstwhile owner of the property and as such, the petitioners are entitled to get a compensation under the New Act. Though the petitioners have purchased the subject property on 22.09.1988, the revenue records were not mutated in their name and only in the year 2013, they obtained patta. Therefore, the petitioners being the purchasers of the said property are entitled to claim compensation.

9. In the result, both the Writ Petitions are dismissed with the aforesaid observations. However, the petitioners are at liberty to make a representation before the respondents 1 to 3 herein to claim compensation under the New Act. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Public Works Department (Highways),
Fort St. George,
Chennai - 600 009.
2. The Revenue Divisional Officer,
Office of the Revenue Divisional Office,
Chengalpattu.
3. The Special Deputy Collector (Land Acquisition),
Poonamallee,
Chennai.

4. The Chief Executive Officer,
Tamil Nadu Road Development Company Limited,
No.346, Sindu Pantheon Plaza,
Chennai - 600 008.

+1cc to M/s.Waraon & Sai Rams, Advocate, S.R.No.47762

+1cc to M/s.M.Sivavarthan, Advocate, S.R.No.47935

+1cc to the Government Pleader, S.R.No.48219

W.P.Nos.43256 and 43257 of 2016

KSM(CO)
SU(26/10/2021)