

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2021

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.NO.11139 OF 2014

S.Kamini

.. Petitioners

Vs.

1. The Secretary to Government
Industries Department
Secretariat, Fort St. George
Chennai - 600 009
2. The District Collector
Collectorate
Kanchipuram
3. The Special District Revenue Officer (L.A.)
Oragadam & Irunkattukottai Schemes
SIPCOT Irunkattukottai Complex
Irunkattukottai
Kanchipuram District
4. The Special Tahsildar
Land Acquisition
SIPCOT unit
Irungattukottai
Sriperumpudur Taluk
Kancheepuram District
5. State Industries Promotion Corporation
of Tamil Nadu (SIPCOT)
Rep. by its Chairman & Managing Director
19A, Rukmani Lakshmipathy Road
Egmore, Chennai - 600 008

.. Respondents

* * *

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration declaring that the acquisition proceedings initiated by the respondents vide G.O. Ms. No.233 Industries (MID-III) dated 08.09.1997 and the same was published in Tamil Nadu Government Gazette on 09.09.1997 and all consequential proceedings as far as the properties of the petitioner are concerned in Plot No.91

and 92 in Subashri Layout, comprising in S. No.27 and 28/1 and as per the patta No.308 S. No.28/14, Pondur Village, Sriperumpudur Taluk, Kancheepuram District, as lapsed, by operation of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 and consequently direct the respondents to effect necessary changes in the revenue and other records.

(Prayer amended as per order dt.12.02.2018 by NSSJ in WMP 2729/2018 in WP 11139/2014)

* * *

For Petitioner : Mr.C.Sivakumar

For R1 to R4 : Ms.A.Madhumathi,
Special Government Pleader

For R5 : Ms.Sudarshana Sundar
Special Government Pleader

O R D E R

The writ petition was originally filed for a writ of declaration, to declare that the acquisition proceedings initiated by the respondents vide G.O. Ms. No.233 Industries (MID-II) dated 08.09.1997 and the same was published in Tamil Nadu Government Gazette on 09.09.1997 and all consequential proceedings as far as the properties of the petitioner are concerned in Plot No.91 and 92 in Subhashri lay out, comprising in S. No.27/1A and 28/1A, Pondur Village, Sriperumpudur Taluk, Kancheepuram district, as lapsed, by operation of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as Act 30 of 2013) and consequently for a direction to the respondents to effect necessary changes in the revenue and other records. Now, the prayer has been amended by the petitioner, as per the order of this court dated 12.02.2018 made in W.M.P. No.2729 of 2018 in W.P. No.11139 of 2014, to read as follows:

"Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration declaring that the acquisition proceedings initiated by the respondents vide G.O. Ms. No.233 Industries (MID-III) dated 08.09.1997 and the same was published in Tamil Nadu Government Gazette on 09.09.1997 and all consequential proceedings as far as the properties of the petitioner are concerned in Plot No.91 and 92 in Subashri Layout, comprising in S. No.27 and 28/1 and as per the patta No.308 S. No.28/14, Pondur

Village, Sriperumpudur Taluk, Kancheepuram District, as lapsed, by operation of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 and consequently direct the respondents to effect necessary changes in the revenue and other records."

2. The case of the petitioner is that the property measuring an extent of 3960 sq.ft. in Plot Nos.91 and 92 in Subhashri Nagar lay out, comprised in S. Nos.27/1A and 28/1A, Pondur Village, Sriperumpudur Taluk, Kancheepuram District, was purchased by the petitioner on 14.03.1983 by a registered sale deed vide Document No.1166 on the file of Sub Registrar, Sriperumpudur, Kancheepuram District. It is admitted by the petitioner that the property purchased by him was later sought to be acquired for the benefit of the fifth respondent, namely SIPCOT. A notification under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as Act) was issued vide G.O. Ms. No.233 Industries (MID-II) dated 08.09.1997. Thereafter a declaration under Section 6(1) of the Act was published on 14.10.1997. It is now admitted that petitioner's land was acquired by the respondents by invoking the emergency clause, namely Section 17 and that therefore, the enquiry under Section 5A of the Act was dispensed with. It is the case of the petitioner that he was not aware of the acquisition proceedings even though an award was passed vide Award No.2/99 dated 30.06.1999. According to the petitioner, he came to know the acquisition proceedings only when he approached the survey department with a request to survey his land for identification.

3. It is also admitted by the petitioner that he filed a writ petition in W.P. No.44473 of 2006 for issuing a writ of mandamus, directing the fourth respondent to refer the dispute under Section 18 of the Land Acquisition Act, 1894 to get just compensation from the civil court. Though this court disposed of the writ petition directing the Land Acquisition Officer to dispose of the representation of the petitioner, the request of the petitioner was later rejected by the Land Acquisition Officer on 05.10.2007. It is admitted by the petitioner that the petitioner filed another writ petition in W.P. No.37000 of 2007 to quash the order of the Land Acquisition Officer rejecting his representation for reference under Section 18 of the Act.

4. The learned counsel appearing for the petitioner submitted that the said writ petition was dismissed as withdrawn. Again the petitioner filed another writ petition in W.P. No.23278 of 2011 for issuing a writ of mandamus directing the respondents to pay compensation on par with other land

owners. In short, the prayer in the writ petition was to redetermine the compensation in terms of Section 28A of the Land Acquisition Act. Unfortunately, the said writ petition was also dismissed by this court holding that the relief prayed by the petitioner in tune with Section 28A of the Act, is hopelessly barred by time. Now the petitioner has filed the present writ petition seeking benefit under Section 24(2) of the Act 30 of 2013, namely Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013.

5. In the affidavit filed in support of the writ petition, the petitioner has stated as follows:

"8. I submit in spite of all my efforts and reputedly approaching the Court of law, I was not paid any compensation whatsoever. It is pertinent to note that having acquired the vast lands of the land owner and that most of them were leased out to industries, SIPCOT had already earned several crores or rupees for more than 15 long years. But had no intention to pay the due compensation to the poor land owners even till date, inspite of several judicial interventions."

6. While referring to Section 24(2) of the Act, the petitioner in his affidavit further states that no amount was paid to the petitioner as compensation for the acquisition of petitioner's land and that therefore by operation of Section 24 (2) of Act 30 of 2013, the acquisition proceedings initiated under the Central Act should be treated as lapsed.

7. The petitioner further states in paragraph 11 of the affidavit that the respondents are bound to hand over vacant possession of the land so acquired to the petitioner. From the specific stand taken by the petitioner, this court has no difficulty to hold that the petitioner has not pleaded that possession of the land was not taken by the Land Acquisition Officer. It is well settled that under Section 16 of the Land Acquisition Act, 1894, the land vest with the government once possession is taken from the land owner. This court and the Hon'ble Supreme Court, repeatedly held that even symbolical possession of the land with a memorandum will hold good and that there must be some form of recording. This court has no reason to go into the question whether possession was taken or not, as the petitioner has candidly admitted before this court in unmistakable terms that possession was taken and that possession is now with M/s.SIPCOT.

8. The Hon'ble Supreme Court had occasion to deal with several issues in a recent judgment. Answering the points under reference, in Indore Development Authority vs. Manoharlal and

others reported in (2020) 8 SCC 129 : 2020 SCCONLINE SC 316 the Hon'ble Supreme Court summarised the position on the interpretation of Section 24 of Act 30 of 2013 in the following lines:

" 365. Resultantly, the decision rendered in Pune Municipal Corpn. [Pune Municipal Corpn. v. Harakchand Misirimal Solanki, (2014) 3 SCC 183 : (2014) 2 SCC (Civ) 274] is hereby overruled and all other decisions in which Pune Municipal Corpn. [Pune Municipal Corpn. v. Harakchand Misirimal Solanki, (2014) 3 SCC 183 : (2014) 2 SCC (Civ) 274] has been followed, are also overruled. The decision in Sree Balaji Nagar Residential Assn. [Sree Balaji Nagar Residential Assn. v. State of T.N., (2015) 3 SCC 353 : (2015) 2 SCC (Civ) 298] cannot be said to be laying down good law, is overruled and other decisions following the same are also overruled. In Indore Development Authority v. Shailendra [Indore Development Authority v. Shailendra, (2018) 3 SCC 412 : (2018) 2 SCC (Civ) 426] , the aspect with respect to the proviso to Section 24(2) and whether "or" has to be read as "nor" or as "and" was not placed for consideration. Therefore, that decision too cannot prevail, in the light of the discussion in the present judgment.

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 the 2013 Act, there is no lapse of proceedings. Compensation has to be determined under the provisions of the 2013 Act.

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 2013 Act under the 1894 Act 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 2013 Act 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.

366.4. The expression "paid" in the main part of Section 24(2) of the 2013 Act does not include a deposit of compensation in court. The consequence of non-deposit is provided in the proviso to Section 24(2) in case it has not been deposited with respect to majority of landholdings then all beneficiaries (landowners) as on the date of notification for land acquisition under Section 4 of the 1894 Act shall be entitled to compensation in accordance with the provisions of the 2013 Act. In case the obligation under Section 31 of the Land Acquisition Act, 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 2013 Act has to be paid to the "landowners" as on the date of notification for land acquisition under Section 4 of the 1894 Act.

366.5. In case a person has been tendered the compensation as provided under Section 31(1) of the 1894 Act, 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). The landowners 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 2013 Act.

366.6. The proviso to Section 24(2) of the 2013 Act 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 1894 Act 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 1894 Act, the land vests in State there is no divesting provided under Section 24(2) of the 2013 Act, 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 2013 Act came into force, in a proceeding for land acquisition pending with the authority concerned 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 2013 Act 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 2013 Act 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.

9. By virtue of the judgment of the Hon'ble Supreme Court, merely by saying that compensation was not paid, the petitioner cannot seek a declaration as prayed for in this writ petition. It is not the case of the petitioner that compensation was not paid in most of the cases and that therefore he cannot also insist the alternative prayer which may strike one to seek compensation in terms of the provisions of Act 30 of 2013.

10. It is unfortunate to notice that the petitioner is unable to get adequate compensation for his land. Though this court feels sorry for the situation, the petitioner himself has to be blamed, as he failed to approach the respondents at the appropriate time. Sections 18 and 28A of the Land Acquisition Act prescribe specific time limit. The acquisition proceedings was commenced in 1997 and end by passing an award in June 1999. The petitioner though admitted that he came to know about the acquisition proceedings in the year 2006, he filed the first writ petition seeking reference under Section 18 of the Act, only in 2011 for issuing a direction to the Land Acquisition Officer, to refer petitioner's case for getting just compensation under Section 18 of the Land Acquisition Act. The petitioner admitted that he withdrew the said writ petition. If he is not interested in prosecuting the second writ petition seeking benefit under Section 28A of the Act, there is no reason why he he had withdrawn the earlier writ petition seeking reference under Section 18 of the Act. Though it is an intriguing feature, this court is of the view that the petitioner withdrew the writ petition as he could not succeed in establishing that he came to know about the proceedings only in 2006. It is to be noted that a reference under Section 18 has to be made within a period of six weeks from the date of Collector's award if the person interested is present or represent before the Collector when the award was made or within a period of six weeks from the date of receipt of notice of

award under Section 12(ii) of the Act. If the petitioner is not aware of the land acquisition proceedings and he did not participate in the award, he may be right in contending that even notice of award was not issued to the petitioner. It is a misery for the writ petitioner to withdraw the earlier writ petition if the withdrawal is to prosecute this writ petition. It is not necessary to deal with these issues which are not directly relevant to the conclusion. This court is making these observations in an attempt to justify its finding that the petitioner has not come to the court with clean hands.

11. Having regard to the facts admitted and found by this court in the previous paragraphs, this court is of the view that the petitioner is not entitled to the relief as prayed for in this writ petition. Accordingly, this writ petition is dismissed. However, there is no order as to cost.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Asr

To

1. The Secretary to Government
Industries Department
Secretariat, Fort St. George
Chennai - 600 009
2. The District Collector
Collectorate, Kanchipuram
3. The Special District Revenue Officer (L.A.)
Oragadam & Irunkattukottai Schemes
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Irungattukottai
Sriperumpudur Taluk
Kancheepuram District

5. The Chairman & Managing Director
State Industries Promotion Corporation
of Tamil Nadu (SIPCOT)
19A, Rukmani Lakshmipathy Road
Egmore, Chennai - 600 008

+1cc to Mr.C.Sivakumar, Advocate, S.R.No.17296
+1cc to Ms.Sudarshana Sundar, Advocate, S.R.No.17185
+1cc to the Government Pleader, S.R.No.16932

W.P.No.11139 of 2014

GPL(CO)
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