



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.09.2021

Coram:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

WP.No.6462 of 2016 and
WMP.No.5744 of 2016

1.K.Mohan
2.M.Subramani

...Petitioners

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Housing and Urban Development Department,
Fort St.George,
Chennai - 600 009

2.The Revenue Divisional Officer (Land Acquisition),
Muthampalayam Housing Scheme,
Erode Housing Unit,
Brough Road,
Erode 638 001

3.The Executive Engineer,
Erode Housing Unit,
Tamil Nadu Housing Board,
Surampatti Naal Road,
Erode 638 001

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of declaration declaring that the land acquisition proceedings in respect of the property comprised in S.F.No.476/5 of Erode "C" Village (Kasipalayam), Erode Taluk, Erode District, measuring to an extent of 0.79.0 hectare as having lapsed by virtue of Section 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

For Petitioners : Mr.S.Saravanan

For Respondents

For R1 & 2 : Mr.M.R.Gokul Krishnan,
Government Advocate

For R3 : Mr.I.Sathish,
Standing Counsel



ORDER

This writ petition has been filed to issue a writ of declaration declaring that the land acquisition proceedings in respect of the property comprised in S.F.No.476/5 of Erode "C" Village (Kasipalayam), Erode Taluk, Erode District, measuring to an extent of 0.79.0 hectare as having lapsed by virtue of Section 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

2. Heard, Mr.S.Saravanan, the learned counsel for the petitioners, Mr.M.R.Gokul Krishnan, Government Advocate appearing for the respondents 1 & 2, and Mr.I.Sathish, Standing Counsel appearing for the third respondent.

3. The petitioners have challenged the acquisition proceedings on second round. The acquisition proceedings was initiated under the provisions of Land Acquisition Act, 1894 to acquire the land comprised in SF.No.476/5 of Erode "C" Village (Kasipalayam), Erode Taluk, Erode District measuring to an extent of 0.79.0 hectare, which belonged to the petitioners for the purpose of constructing houses and house sites by issuing notification dated 27.05.1991 under Section 4(1) of the Land Acquisition Act and declaration dated 31.03.1993 under Section 6 of the Land Acquisition Act. Thereafter, award was passed on 03.08.1984 in Award No.5 of 1994. The petitioner already filed writ petition in WP.No.12442 of 1994 and obtained order of stay and as such the compensation amount has been deposited before the civil court as contemplated under Section 30 of the Land Acquisition Act. After lapse of 25 years, the present writ petition has been filed after the new act i.e. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 came into force.

4. 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



WEB COPY

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.



WEB COPY

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."

5. 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 acquisition proceedings have been completed and the subject land was taken over by the government and the same was handed over to the requisition body. Further the requisition body also deposited the compensation as awarded by the Land Acquisition Officer. Therefore, the petitioners failed to satisfy the twin requirements under Section 24 (2) of the The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 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.

6. In the result, the Writ Petition stands dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

Sd/-
Assistant Registrar (CS-VII)

// True Copy //

Sub Assistant Registrar

lok

To

- 1.The Secretary to Government
State of Tamil Nadu,
Housing and Urban Development Department,
Fort St.George,
Chennai - 600 009
- 2.The Revenue Divisional Officer (Land Acquisition),
Muthampalayam Housing Scheme,
Erode Housing Unit,
Brough Road,
Erode 638 001
- 3.The Executive Engineer,
Erode Housing Unit,
Tamil Nadu Housing Board,
Surampatti Naal Road,
Erode 638 001

+1CC to Mr.I.Sathish, Advocate, SR.No. 45601
+1CC to M/s.S.Saravanan, Advocate, SR.No. 45693
+1CC to The Government Pleader, SR.No. 45540

WP.No.6462 of 2016

SSI(CO)
B.VC (28/09/2021)