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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

WP.NOS.34431 & 34432 OF 2014

AND

MP.NOS.1 & 1 OF 2014

WP.No.34431 of 2014

1.T.K.Shanmugam

2.T.K.Palanisamy

...Petitioners

Vs.

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

2.The Land Acquisition Officer &
Special Tahsildar (L.A),
Housing Scheme Unit-I,
Coimbatore

3.The Chairman cum Managing Director,
Tamil Nadu Housing Board,
Nandanam, Anna Salai,
Chennai 600 035

4.The Executive Engineer/Admn. Officer,
Tamilnadu Housing Board,
Coimbatore Unit,
Tatabad, Coimbatore 641 012

...Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India to issue a writ of declaration declaring the entire land acquisition proceedings initiated under the Land Acquisition Act, 1894 in respect of petitioners lands measuring an extent of 1.42.0 hectares in S.F.Nos.31/2B, 32/1A, 32/2B of Vellakinar Village, Coimbatore North Taluk, Coimbatore District initiated by issuance of Section 4 (1) notification dated 16.11.1994, by the first respondent as lapsed in view of Section 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.



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For Petitioners : Mr.N.L.Rajah,
Senior Counsel
for Mr.R.Kumar

For Respondents
For R1 & 2 : Mr.Richardson Wilson,
Government Advocate

For R3 & 4 : M/s.R.Gowri,
Standing Counsel

WP.No.34432 of 2014

1.K.Balasubramanian

2.Amriitha Gowri

3.Thangamani

...Petitioners

Vs.

1.The State of Tamil Nadu rep. by its
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Chennai 600 035

4.The Executive Engineer/Admn. Officer,
Tamilnadu Housing Board,
Coimbatore Unit,
Tatabad, Coimbatore 641 012

...Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India to issue a writ of declaration declaring the entire land acquisition proceedings initiated under the Land Acquisition Act, 1894 in respect of petitioners lands measuring an extent of 1.07.0 hectares in S.F.No.31/1, 31/2A, 31/3A, 32/1B, 32/2A of Vellakinar Village, Coimbatore North Taluk, Coimbatore District initiated by issuance of Section 4 (1) notification dated 16.11.1994, by the first respondent as lapsed in view of Section 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.



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Senior Counsel
for Mr.R.Kumar

For Respondents
For R1 & 2 : Mr.Richardson Wilson,
Government Advocate

For R3 & 4 : M/s.R.Gowri,
Standing Counsel

COMMON ORDER

The writ petition in WP.No.34431 of 2014 has been filed to issue a writ of declaration declaring the entire land acquisition proceedings initiated under the Land Acquisition Act, 1894 in respect of petitioners lands measuring an extent of 1.42.0 hectares in S.F.Nos.31/2B, 32/1A, 32/2B of Vellakinar Village, Coimbatore North Taluk, Coimbatore District initiated by issuance of Section 4 (1) notification dated 16.11.1994, by the first respondent as lapsed in view of Section 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; the writ petition in WP.No.34432 of 2014 has been filed to issue a writ of declaration declaring the entire land acquisition proceedings initiated under the Land Acquisition Act, 1894 in respect of petitioners lands measuring an extent of 1.07.0 hectares in S.F.No.31/1, 31/2A, 31/3A, 32/1B, 32/2A of Vellakinar Village, Coimbatore North Taluk, Coimbatore District initiated by issuance of Section 4 (1) notification dated 16.11.1994, by the first respondent as lapsed in view of Section 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

2. The writ petitions have been filed challenging the acquisition proceedings initiated by issuance of Section 4 (1) notification dated 16.11.1994 on the ground that possession has not been taken on the introduction of the new Act i.e. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and the petitioners were also not paid any compensation.

3. In this regard, the third respondent filed counter and it revealed that enquiry under Section 5-A of the Land Acquisition Act was conducted by the Land Acquisition Officer on 25.01.1995. During the enquiry, all the land owners raised their objections and objections were duly communicated to the requisitioning body on 09.03.1995. By the letter dated 29.03.1995, they filed remarks and the remarks were duly communicated to the land owners / persons interested in respect of the subject land on 19.07.1995 and fixed enquiry to be held on 09.08.1995. On 09.08.1995, enquiry was conducted and draft



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declaration under Section 6 of the Land Acquisition Act was approved by the Government in G.O.Ms.No.979 Housing and Urban Development Department dated 27.11.1995. It was published in the Government Gazattee and also two ordinary tamil dailies on 28.11.1995 and 30.11.1995 respectively. Its substance was also published in the locality on 01.02.1995. Thereafter, the award enquiry notice was duly served on the petitioners as required under Sections 9(3) and 10 of the Land Acquisition Act. Thereafter, award enquiry was conducted and award has been passed on 31.10.1997 in award No.2 of 1997. Thereafter, possession of the lands were taken from the land owners and handed over to the requisitioning body i.e. fourth respondent herein on 23.12.1997. The award amount has been deposited before the civil court on 18.12.1997 itself. The fourth respondent also submitted that now the entire scheme has been over and allotted to the beneficiaries.

4. The grounds raised by the petitioners 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).

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



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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 requisitioning body. Further the requisitioning 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 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 petitions are devoid of merits and liable to be dismissed.

6. In the result, both the Writ Petitions stand dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

Sd/-
Assistant Registrar (CS-II)

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Sub Assistant Registrar

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To

1.The Secretary to Government,
State of Tamil Nadu,
Housing & Urban Development Department,
Fort St.George, Chennai 600 009

2.The Land Acquisition Officer &
Special Tahsildar (L.A),
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Coimbatore Unit,
Tatabad, Coimbatore 641 012

+1cc to the Government Pleader SR.No.43929

WP.Nos.34431 & 34432 of 2014

SSI(CO)
RVM(24/09/2021)