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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.14481 of 2014

R.Sekar

... Petitioner

Vs.

1. Government of Tamil Nadu
Rep.by its Secretary to Government,
Housing Department,
Fort St.George,
Chennai - 600 009.
2. The Managing Director/Convenor/
Committee for the disposal of Board's Properties,
Tamil Nadu Housing Board,
Nandanam, Chennai - 600 035.
3. The Public Information Officer,
Tamil Nadu Housing Board,
Chennai - 600 035.
4. The District Collector,
Kancheepuram,
Kancheepuram District.
5. The Land Acquisition Officer-cum-
Special Tahsildar,
Tamil Nadu Housing Board Planning,
Chennai - 600 035.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records relating to Award No.1/95



dated 28.04.1995, passed by the fifth respondent, in so far as the petitioner's land is concerned viz., Plot No.22, comprised in Survey Nos.1225/4D & 9D, in Konneri Kuppam (Sivakanchi), Kancheepuram Taluk and District to an extent of 2460 sq.ft. and to quash the same and consequently direct the respondents to put the petitioner into possession of the property within a time frame to be stipulated by this Court.

For Petitioner : Mr.S.Mohan

For Respondents : Mr.M.R.Gokul Krishnan
Government Advocate
(for R-1, R-4 & R-5)
: Mr.S.Vanchinathan
Standing Counsel (for R-2 & R-3)

O R D E R

This petition has been filed seeking to quash Award No.1 of 95 dated 28.04.1995, passed by the fifth respondent, insofar as the petitioner's land is concerned viz., Plot Nos.22 & 24, comprised in Survey Nos.1225/4E & 9E situated at Konneri Kuppam (Sivakanchi), Kancheepuram Taluk and District to an extent of 2460 sq.ft. and consequently, direct the respondents to put the petitioner into possession of the property within a time frame to be stipulated by this Court.

2. The case of the petitioner is that he purchased vacant house site in Plot Nos. 22 and 24, comprised in Survey Nos.1225/4E & 9E situated at Konneri Kuppam, Kancheepuram Taluk and District to an extent of 2460 sq.ft. by the registered sale deed dated 16.04.1987. The Government of Tamil Nadu proposed to acquire the subject lands for Tamil Nadu Housing Board. In this respect, the Special Tashildar (Land Acquisition), Unit-I Tamil Nadu Housing Board Scheme, Nandanam, Chennai-35 was appointed as Officer under Section 4(1) of the Land Acquisition Act (hereinafter referred to as 'the Act', for short) and G.O.Ms.No.49, Housing and Urban Development (HBS) Department, dated 05.02.1992 was issued in that regard. The declaration under Section 6 of the Act, was published in G.O.Ms.No.328, Housing and Urban Development Department, dated 26.04.1993.



Further, some of the land owners had challenged the land acquisition proceedings in W.P.No.16713 of 1993 and the same was dismissed by this Court. Insofar as the petitioner is concerned, he received notice on 15.03.1995 under Sections 9(3) and 10 of the Act, calling upon the petitioner to appear for award-enquiry for fixing compensation and passing of an award. The award was passed in Award No.1 of 1995 on 28.04.1995. Accordingly, the compensation was fixed at Rs.1,50,502/- for total extent of 38 cents.

3. The learned counsel for the petitioner submitted that he has not been paid any compensation till today. In fact, he has also sent his objections on 10.07.1995 for reference under Section 18 of the Act for enhancement of the compensation. However, the award amount has neither been deposited in the Competent Court nor paid to the petitioner. After passing the award, the petitioner was never tendered to receive the compensation as contemplated under Section 12(2) of the Act. The petitioner also filed a Writ Petition before this Court for re-conveyance of the said lands and this Court directed the first respondent to consider his application for re-conveyance. However, the same was rejected by an order dated 18.10.2005. The petitioner filed an application under Right to Information Act seeking information with regard to the details of compensation. On receipt of the same, the petitioner was informed that the compensation amount was deposited in the Treasury as early as on 24.01.1997 and the revenue deposit had also expired on 31.03.2001 and by the communication dated 11.10.2007, they renewed the lapsed compensation amount. Therefore, the entire land acquisition proceedings have been lapsed, in view of the proviso to Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'the New Act', for short). In support of his contentions, the learned counsel for the petitioner relied upon the judgment of this Court reported in 2021 (2) CTC 300 (K.Saraswathi -vs- State of Tamil Nadu).

"16. A close reading of all the above portions culled out from the judgment, clearly point out the fact that drawing of Panchnama of taking possession is the correct mode of taking possession in land acquisition cases, more particularly where the property acquired is a vacant land or a large tract of land. Taking possession by adopting to this



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mode, gives a lot of authenticity to prove that the land has been taken possession. Under the Transfer of Property Act, in cases of vacant land, possession always follow title. However, in the land acquisition proceedings, it works the other way round and here the title vests with the State only after taking possession. In other words, title follows possession. This position is very clear on a bare reading of Section 16 of the 1894 Act.

29. It is clear from the above judgments that it is the duty of the Collector to make payment by issuing proper notice to the concerned land owner and calling him to receive the compensation amount. Unless this crucial step is followed, the land owner may not even know whether it was deposited and if so, when the amount was deposited. Even if a notified person or his representative participates in the Award proceedings, that will not amount to a presumption that he has the notice of the compensation amount being readily available for payment. That is why Section 12[2] of the 1894 Act specifically mandates issuance of such notice. If the notice is issued and thereafter, the land owner refuses to receive the compensation or does not come to the specified place to receive the compensation and the compensation amount gets deposited in a Treasury account or the Court, as the case may be, the land owner cannot be permitted to turn around at a later point of time and complain that the compensation amount was not tendered/paid to him.

30. In the facts of the present case, the deposit made in the Court on 04.06.2000 by the Special Tahsildar (LA), Housing Scheme Unit 1, Coimbatore, does not amount to a valid tender/payment of Compensation. This finding is given not by finding fault in the procedure adopted in the deposit of amount in the Court, but based on the most crucial fact that there was no notice issued to the Landowners after the Award Proceedings, under Section 12(2) of the 1897 Act and therefore, there was no valid tender/payment of the



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compensation to the Landowners. The Judgments cited supra and the Judgment of the Constitution Bench clearly supports this finding on the issue of valid tender/payment of Compensation.

37. Section 24(2) of the Act provides for a deemed lapse of the entire Acquisition proceedings where the conditions stipulated therein are fulfilled. Such a deemed lapse happens by operation of law. In other words, it does not require a specific declaration by the Court to declare that the Acquisition proceedings has become bad unless the situation warrants. The Statute has created such a provision contemplating deemed lapse on the coming into force of the 2013 Act where the conditions stipulated under Section 24(2) of the Act are fulfilled, viz., not taking possession and non payment of Compensation. In the present case, this Court has already held that the possession has not been taken and Compensation has not been paid in the manner known to law. At the risk of repetition, this Court again reiterates that this Court is not trying to pin point some mistakes committed by the authorities while taking possession or paying/tendering Compensation. This Court is holding that the possession, which has to be taken in a particular mode and the payment of Compensation, which has to be tendered/deposited in a particular mode, has not been done in the facts of the present case and therefore, there is no taking of possession and payment/tendering of Compensation in the eye of law. Therefore, the deeming provision under Section 24(2) of the Act automatically comes into play in favour of Petitioners by operation of law."

4. The learned Standing Counsel appearing for the second and third respondents submitted that the second and third respondents filed counter affidavit stating that after notice to the petitioner, the award has been passed on 28.04.1995 in Award No.1 of 1995. Thereafter, the petitioner was duly tendered to receive the compensation as contemplated under Section 12(2) of the Act on 10.05.1995 and the same was duly served on the petitioner herein. Even then, the petitioner failed to come and



collect the compensation and as such, the respondents made a revenue deposit on 24.01.1997 itself. Since the revenue deposit was expired on 31.03.2001, it was renewed by the communication dated 11.10.2007. Thereafter, the award amount was deposited in the Civil Court deposit as contemplated under Sections 30 and 31(2) of the Act. Accordingly, the award amount has been deposited before the Sub Court, Kanchipuram. Insofar as the possession has been taken over as early as on 26.07.1996 and thereafter, the possession has been handed over to the Housing Board on 28.02.2002. Thereafter, the entire revenue records have been mutated in the name of the Housing Board.

5. Heard Mr.S.Mohan, the learned counsel for the petitioner, Mr.M.R.Gokul Krishnan, learned Government Advocate appearing for the first, fourth and fifth respondents and Mr.S.Vanchinathan, learned Standing Counsel appearing for the second and third respondents.

6. As stated supra, initially the respondents made revenue deposit as early as on 24.01.1997 itself. That apart, the petitioner filed a Writ Petition in W.P.No.23780 of 2005 to consider his request for re-conveyance of the lands and this Court directed the first respondent to consider the request of the petitioner by an order dated 25.07.2005. The request of the petitioner was rejected by an order dated 18.10.2005 for the reason that after awarding the award amount, the same has been deposited in the revenue deposit and thereafter, deposited in the Court. The petitioner also failed to file any objections for reference under Section 18 of the Act. The subject lands are located in the middle of the lands already acquired and the possession has been taken by the Tamil Nadu Housing Board and the lands are essentially required for forming the comprehensive housing scheme. Therefore, they are not inclined to invoke the provisions under Section 48-B of the Act.

7. Admittedly, the said order was not challenged by the petitioner. After a period of 9 years, the present Writ Petition has been filed challenging the very acquisition proceedings under the provisions 24(2) of the New Act, as if the entire land acquisition proceedings have been lapsed for non payment of compensation and not taking of the possession of the property. Therefore, the judgment cited by the learned counsel for the petitioner is not helpful to the case on hand.



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8. In view of the above discussion, this Writ Petition is devoid of merits. Accordingly, this Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar (CS-LA)

// True Copy //

Sub Assistant Registrar

kv

To

1. The Secretary to Government,
Government of Tamil Nadu
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Special Tahsildar,
Tamil Nadu Housing Board Planning,
Chennai - 600 035.

+1CC to M/s.S.Mohan, Advocate, SR.No. 48846

+1CC to Mr.S.Vanchinathan, Advocate, SR.No. 48948

+1CC to The Government Pleader, SR.No. 48513

W.P.No.14481 of 2014

GPL(CO)

B.VC (02/11/2021)