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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2021

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THE HON'BLE Mr. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.25263 of 2014

and

M.P.Nos.1 of 2014, 1 of 2015

P.Subramani

... Petitioner

Vs

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

2.The Special Tahsildar,
Land Acquisition,
Neighbourhood Scheme of Salem,
Iyyan Thirumaligai,
Salem - 8.

3.Tamil Nadu Housing Board rep. by its
Managing Director,
331, Anna Salai,
Nandanam, Chennai - 600 035.

... Respondents

PRAYER:- Writ Petition is filed under Article 226 of the Constitution of India praying to issue a writ of declaration declaring that the acquisition of petitioner's land comprised in S.Nos.88/4A, 88/4C, 89/1B, 89/1C, 90/1 and 91/2 of Kottagoundampatti Village, Omaluk Taluk, Salem District made under Section 4(1) of the Land Acquisition Act, 1894 in G.O.Ms.No.902 Housing and Urban Development Department dated 31.05.1991 and consequential order passed under Section 6 in G.O.Ms.No.445 dated 16.07.1992, Housing and Urban Development S.C.(2) Department as deemed to have been lapsed by applying Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

For Petitioner	:	Mr.S.Doraisamy
For Respondents	:	Mr.Richardson Wilson,
1 & 2		Government Advocate
For Respondent	:	Mr.I.Sathish,
3		Standing counsel



O R D E R

This Writ Petition is filed to issue a writ of declaration declaring that the acquisition of petitioner's land comprised in S.Nos.88/4A, 88/4C, 89/1B, 89/1C, 90/1 and 91/2 of Kottagoundampatti Village, Omaluk Taluk, Salem District made under Section 4(1) of the Land Acquisition Act, 1894 in G.O.Ms.No.902 Housing and Urban Development Department dated 31.05.1991 and consequential order passed under Section 6 in G.O.Ms.No.445 dated 16.07.1992, Housing and Urban Development S.C.(2) Department as deemed to have been lapsed by applying Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

2. The petitioner challenged the acquisition proceedings initiated under Section 4(1) and 6 of the Land Acquisition Act, 1894 on the ground that the subject land is very much in their possession by invoking Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

3. The case of the petitioner is that the petitioner owned agricultural land comprised in S.No.83/1E3, 88/4A, 88/4B, 88/4C, 88/7, 89/1B, 89/1C, 90/1B and 91/2 of Kottagoundampatti Village, Omaluk Taluk, Salem District. While being so, the first respondent issued notification Section 4(1) of Land Acquisition Act (hereinafter called Act) dated 31.05.1991. The second respondent issued notice under Section 5(A) of the Act, fixing the enquiry to be held on 10.10.1991.

4. In fact, one of the land owners and three others filed writ petition before this Court in W.P.No.14406 of 1991 challenging the 4(1) notification and the same was admitted and an interim stay was granted. In respect of the petitioner's land, the petitioner filed W.P.No.18909 of 1992 challenging the declaration made under Section 6 of the Act. It was dismissed on 27.01.1995 against which a Special Leave Petition was filed before the Hon'ble Supreme Court in S.L.P.No.21734 of 1995 and the same was also dismissed on 15.02.1996.

5. Another writ petition was filed in W.P.No.15353 of 2002 challenging the 4(1) Notification on the ground no award has been passed. It was also dismissed as withdrawn by this Court by an order dated 03.12.2010. Again, the petitioner filed another writ petition in W.P.No.1851 of 2012 challenging the declaration under Section 6 of the Act and this Court dismissed the writ petition by an order dated 11.12.2012.

6. The learned counsel for the petitioner raised the ground that the possession of the subject property has not been



taken over till today. That apart, the petitioner is in possession and enjoyment of the subject property and he also paying Electricity Service Connection and cultivating the subject property. He further relied on the Constitution Bench of the Hon'ble Supreme Court of India reported in (2020)8 Supreme Court Cases 129 Indore Development Authority -vs- Manoharlal and Others, the relevant portions are extracted below:

"274. It was submitted on behalf of landowners that under Section 24 the expression used is not possession but physical possession. In our opinion, under the Act of 1894 when possession is taken after award is passed under section 16 or under section 17 before the passing of the award, land absolutely vests in the State on drawing of Panchnama of taking possession, which is the mode of taking possession. Thereafter, any re-entry in possession or retaining the possession is wholly illegal and trespasser's possession inures for the benefit of the owner and even in the case of open land, possession is deemed to be that of the owner. When the land is vacant and is lying open, it is presumed to be that of the owner by this Court as held in Kashi Bai v. Sudha Rani Ghosel⁸⁰. Mere re-entry on Government land once it is acquired and vests absolutely in the State (under the Act of 1894) does not confer, any right to it and Section 24 (2) does not have the effect of divesting the land once it vests in the State.

279. The court is alive to the fact that are a large number of cases where, after acquisition land has been handed over to various corporations, local authorities, acquiring bodies, etc. After depositing compensation (for the acquisition) those bodies and authorities have been handed possession of lands. They, in turn, after development of such acquired lands have handed over properties; third party interests have intervened and now declaration is sought under the cover of section 24(2) to invalidate all such actions. As held by us, section 24 does not intend to cover such cases at all and such gross misuse of the provisions of law must stop. Title once vested, cannot be



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obliterated, without an express legal provision; in any case, even if the landowners' argument that after possession too, in case of non-payment of compensation, the acquisition would lapse, were for arguments' sake, be accepted, these third party owners would be deprived of their lands, lawfully acquired by them, without compensation of any sort. Thus, we have no hesitation to overrule the decisions in Velaxan Kumar (supra) and Narmada Bachao Andolan (supra), with regard to mode of taking possession. We hold that drawing of Panchnama of taking possession is the mode of taking possession in land acquisition cases, thereupon land vests in the State and any re-entry or retaining the possession thereafter is unlawful and does not inure for conferring benefits under section 24(2) of the Act of 2013. In Re Question No.5: the effect of interim order of Court."

7. Per contra, the learned Government Advocate submitted that the writ petition itself is not maintainable. The petitioner already filed two writ petitions and went up to Hon'ble Supreme Court of India and failed. Dehors the same, he is challenging the acquisition proceedings. Now, after the New Act came into force, the petitioner has filed this writ petition in view of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. He also produced the copy of the award dated 07.09.1995 and the possession certificate dated 05.03.1999. On 05.03.1999, the second respondent handed over the possession of the subject property to the third respondent. He also relied upon the same Judgment and submitted that the petitioner had already exhausted all remedies by way of two writ petitions and now, he cannot again challenge the same proceedings under the New Act.

8. Admittedly, the petitioner as stated supra, filed writ petition and went up to the Supreme Court of India challenging the acquisition proceedings. The only ground raised by the learned counsel for the petitioner is that the petitioner is still in possession and enjoyment of the subject property and the possession certificate produced by the respondent is not in consonance with the Panchanama as described by the Hon'ble Supreme Court of India.



9. In this regard, the Hon'ble Supreme Court of India held that when the possession is taken after the award is passed under Section 16 or under Section 17 before the passing of the award, land absolutely vests in State on drawing out Panchanama of taking possession, which is the mode of taking possession. Thereafter, any re-entry in possession or retaining the possession is wholly illegal and trespasser's possession inures for the benefit of the owner and even in the case of open land, possession is deemed to be that of the owner.

10. It is also relevant to refer the Constitution Bench of the Hon'ble Supreme Court of India reported in (2020)8 Supreme Court Cases 129 Indore Development Authority -vs- Manoharlal and Others, and the relevant portions are extracted below:

"289. In the opinion of this court it is not the intendment of the Act of 2013 that those who have litigated should get benefits of higher compensation as contemplated under Section 24 benefit is conferred on all beneficiaries. It is not intended by the provisions that in piecemeal the persons who have litigated and have obtained the interim order should get the benefits of the provisions of the Act of 2013. Those who have accepted the compensation within 5 years and handed over the possession too, are to be benefited, in case amount has not been deposited with respect to majority of holdings. There are cases in which projects have come up in part and as per plan rest of the area is required for planned development with respect to which interim stays have been obtained. It is not the intendment of the law to deliver advantage to relentless litigants. It cannot be said hence, that it was due to the inaction of the authorities that possession could not be taken within 5 years. Public policy is not to foment or foster litigation but put an end to it. In several instances, in various High Courts writ petitions were dismissed by single judge Benches and the writ appeals were pending for a long time and in which, with respect to part of land of the projects, efforts were made to obtain the benefit of Section 24(2). Parliament in our view did not intend to confer benefits to such litigants for the aforementioned reasons. Litigation may be frivolous or may



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be worthy. Such litigants have to stand on the strength of their own case and in such a case provisions of Section 114 of the Act of 2013 and Section 6 of the General Clauses Act, 1897, are clearly attracted and such proceedings have to be continued under the provisions of the old Act that would be in the spirit of Section 24(1)(b) itself of the Act of 2013. Section 6(b) of the General Clauses Act, 1897, provides that repeal will not affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder. Section 6(c) states that repeal would not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed. When there is a provision itself in Section 24(1)(b) of continuance of the proceedings where award has been passed under the Act of 1894, for the purposes of Section 24 as provided in Section 24(b), the provisions of Section 114 is clearly attracted so as the provisions of Section 6 of the General Clauses Act, 1897, to the extent of non obstante clause of Section 24, where possession has not been taken nor payment has been made, there is a lapse, that too by the inaction of the Authorities. Any court's interim order cannot be said to be inaction of the authorities or agencies; thus, time period is not to be included for counting the 5 years period as envisaged in Section 24(2). As per proviso to Section 24(2), where possession has been taken, but compensation has not been paid or deposited with respect to majority of land holdings, all the beneficiaries would be entitled for higher compensation only to that extent, the provisions of Section 114 of the Act of 2013, would be superseded but it would not obliterate the general application of Section 6 of the General Clauses Act, 1897, which deals with effect of repeal except as provided in section 24(2) and its proviso."

11. Accordingly, wherein possession has been taken, but the compensation has not been paid or deposited with respect to the majority of land holdings, all the beneficiaries would be



entitled for higher compensation. In the case on hand, already the award was passed in the year 1995 and the compensation was deposited in a Sub Court as contemplated under Sections 30 and 31(2) of the Land Acquisition Act, 1894 in the year 1996 itself.

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12. It is also relevant to refer the Constitution Bench of the Hon'ble Supreme Court of India reported in (2020)8 Supreme Court Cases 129 Indore Development Authority -vs- Manoharlal and Others, the relevant portions are extracted below:

"366.9. 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."

13. Accordingly, the provision under Section 24 of the New Act does not give rise to new cause of action of concluded the Land Acquisition Act and already the entire acquisition proceedings has been concluded and in fact the petitioner already, on two occasions, challenged the Land Acquisition Proceedings before this Court and who went upto the Hon'ble Supreme Court of India. Therefore, the writ petition itself is not maintainable and this writ petition is dismissed as devoid of merits.

14. Accordingly, this writ petition is dismissed. No order as to costs. Consequently, the connected miscellaneous petitions are dismissed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar

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To

1.The Secretary to Government Housing
and Urban Development Department,
Fort St. George, Chennai - 600 009.



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2.The Special Tahsildar,
Land Acquisition,
Neighbourhood Scheme of Salem,
Iyyan Thirumaligai,
Salem - 8.

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

+1cc to Mr.S.Doraisamy, Advocate, S.R.No. 42131

+1cc to Mr.I.Sathish, Advocate, S.R.No.42187

W.P.No.25263 of 2014
and M.P.Nos.1 of 2014, 1 of 2015

JPL (CO)
GN(20/09/2021)