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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2021

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.NO.16887 OF 2014

AND

M.P.NO.1 OF 2014

S.Rajasekar

... Petitioner

-Vs-

1. The Government of Tamil Nadu,
Represented by its Secretary to Government,
Housing and Urban Development Department,
Fort St.George, Secretariat,
Chennai - 600 009.
2. The Tamil Nadu Housing Board,
Represented by its Chairman,
Nandanam,
Chennai - 600 038.
3. The Executive Engineer and Administrative Officer,
Besant Nagar Division,
Tamil Nadu Housing Board,
No.48, Dr.Muthulakshmi Salai,
1st Floor, Shopping Complex,
Sastri Nagar, Adyar,
Chennai - 600 020.

... Respondents

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Declaration, declaring that acquisition of lands in respect of the petitioner herein at Survey No.420/2C of an extent of 8904 sq.ft in No.155, Sholinganallur Village, Tambaram Taluk, Kancheepuram District, pursuant to Section 4(1) Notification of Land Acquisition Act under G.O.Ms.No.433 Housing and Urban Development Department dated 14.05.1990 and 6 Declaration issued in G.O.Ms.No.948 Housing and Urban Development Department dated 07.06.1991 stands lapsed in view of Section 24 Clause 2 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.



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For Petitioner : Ms.AL.Ganthimathi

For Respondents

For R1 : Mr.M.R.Gokul Krishnan
Government Advocate

For R2 & R3 : Mr.M.Baskar
Standing Counsel

ORDER

This Writ Petition has been filed to declare that acquisition of lands in respect of the petitioner herein at Survey No.420/2C to an extent of 8904 sq.ft in No.155, Sholinganallur Village, Tambaram Taluk, Kancheepuram District, pursuant to Section 4(1) Notification of Land Acquisition Act under G.O.Ms.No.433 Housing and Urban Development Department dated 14.05.1990 and 6 Declaration issued in G.O.Ms.No.948 Housing and Urban Development Department dated 07.06.1991 stands lapsed in view of Section 24 Clause 2 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (herein after called as "the New Act").

2. The case of the petitioner is that the property comprised in survey No. 420/2C to an extent of 1 acre 33 cents situated in No.155, Sholinganallur Village, originally belonged to one Thiruvengada Nair and he sold out the property to one Sarojiniammal viz., the mother of the petitioner herein, by way of registered sale deed dated 14.12.1960 vide document No.3054 of 1960. The said Sarojiniammal settled a portion of the land to an extent of 8904 sq.ft., in S.No.420/2C by way of a registered Settlement Deed dated 10.08.1994 in favour of the petitioner and he is in possession and enjoyment of the said property.

3. While being so, the Tamil Nadu Housing Board acquired the said land vide Award No.1 of 1997 and the third respondent called upon the petitioner to vacate and hand over the possession of the said land by a proceedings dated 30.09.2005. Hence, the petitioner filed a Writ Petition in W.P.No39141 of 2005 challenging the proceeding dated 30.09.2005 on the file of the third respondent and also prayed to forbear the respondents from in any manner interfering with the petitioner's possession and enjoyment of the said land. This Court by an order dated 04.11.2013 observed that the land originally stood in the name of Sarojiniammal viz., the mother of the petitioner herein and part of the land was subjected to land acquisition proceeding for the purpose of formation of neighbour housing scheme and a formal notification was issued on 14.05.1990 in G.O.Ms.No.433,



Housing and Urban Development Department. Thus, after issuance of the 4(1) notification, no transfer can be effected and such transfer will not bind the government. That apart declaration under Section 6 was made on 07.06.1991 under G.O.Ms.No.948. Therefore, after issuing such declaration, the settlement in favour of the petitioner which came to be effected by the said Sarojiniammal dated 10.08.1994 cannot confer any right or title on the petitioner, much less a legal right to retain the possession of land as an owner and dismissed the Writ Petition. After passing the award under the acquisition proceeding, the present Writ Petition has been filed by invoking the provisions under Section 24(2) of the New Act.

4. Heard Ms.AL.Ganthimathi, learned counsel appearing for the petitioner, Mr.M.R.Gokul Krishnan, learned Government Advocate appearing for the first respondent and Mr.M.Baskar, learned standing counsel appearing for the respondents 2 and 3.

5. On perusal of the counter revealed that after passing the award in Award No.1 of 1997 dated 23.04.1997, the land in survey No.420/2C was taken over and the same was handed over to the Tamil Nadu Housing Board by the Land Acquisition Officer as early as on 16.08.2004. As far as the compensation is concerned, the petitioner had made fresh, the respondents made revenue deposit as early as on 31.03.1997 and 02.05.1997. Therefore, the petitioner failed to satisfy the twin condition.

6. In this regard it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India 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



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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.

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).



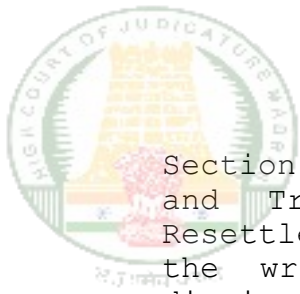
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7. The mode of taking possession under the Act of 1894 and as contemplated under Section 24 (2) is by drawing of inquest report/ memorandum. Once award has been passed on taking possession under Section 16 of the Act of 1894, the land vests in State 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."

7. The Hon'ble Supreme Court of India settled all proposition of law in the above judgment including the grounds raised by the petitioner. That apart, the subject land was acquired for the purpose of Tamil Nadu Housing Board Neighbourhood Scheme. The acquisition proceedings have been completed and the subject land was taken over by the government and the possession was handed over to the Housing Board. Further the requisition body also deposited the compensation as awarded by the Land Acquisition Officer. Therefore, the petitioner failed to satisfy the twin requirements under Section 24 (2) of the New Act 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 petitioner 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. However, being a settlee of the subject land, the petitioner is entitled to receive the compensation as per the Award No.1 of 1997 dated 23.04.1997 in accordance with law.

8. 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 VI)

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Sub Assistant Registrar

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To

1. The Secretary to Government,
The Government of Tamil Nadu,
Housing and Urban Development Department,
Fort St.George, Secretariat,
Chennai - 600 009.
2. The Chairman,
The Tamil Nadu Housing Board,
Nandanam,
Chennai - 600 038.
3. The Executive Engineer and Administrative Officer,
Besant Nagar Division,
Tamil Nadu Housing Board,
No.48, Dr.Muthulakshmi Salai,
1st Floor, Shopping Complex,
Sastri Nagar, Adyar,
Chennai - 600 020.

+1cc to Ms.AL.Ganthimathi, Advocate, S.R.No.56602

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SSV(CO)
PBS/24/11/2021