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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2021

CORAM

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

W.P.No.26861 of 2014

1.V.Chinnammal
2.A.V.Damodaran
3.A.V.Kesaan
4.A.V.Devandran
5.A.V.Krishnamorthy
6.A.V.Saraswathi
7.A.V.Manonmani

... Petitioners

Vs

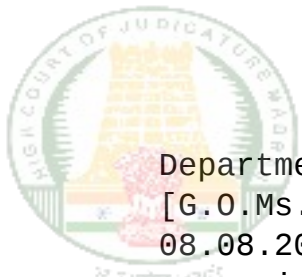
1.The Government of Tamil Nadu
Represented by its Secretary
Housing and Urban Development Department ,
Chennai - 600 009.

2.The Chairman,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Building,
Egmore, Chennai - 600 008.

3.The Special Tahsildar,
Land Acquisition,
Outer Ring Road Project Unit - IV,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Building,
Egmore, Chennai - 600 008.

... Respondents

PRAYER:- Writ Petition is filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorari to call for the records on the file of the first respondent relating to the Section 4(1) Notification of the Land Acquisition Act 1894, and Section 6(1) Declaration of the Land Acquisition Act 1894 Section 4(1) dated 02.08.2000 in [G.O.Ms. No.280, Housing and Urban



Department (UD3(2) 06.07.2000], Section 6(1) dated 08.08.2001 in [G.O.Ms. No.348, Housing and Urban Development [UD3(2) 08.08.2001] respectively pertaining to lands in Survey No. 188/1B measuring an extent of Acre 0.24 cents or 0.10.0 Hectors at No. 18, Kararachari Village, Poonamallee Taluk, Tiruvallur District, and quash the same by virtue of Section 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act 2013 (Act 30 of 2013).

For Petitioners : Mr.David Tyagaraj

For Respondents: Mr.M.R.Gokul Krishnan
1, 3 Government Advocate

O R D E R

This writ petition is filed to issue a Writ of Certiorari to call for the records on the file of the first Respondent relating to the Section 4(1) Notification of the Land Acquisition Act 1894, and Section 6(1) declaration of the Land Acquisition Act 1894 Section 4(1) dated 02.08.2000 in [G.O.Ms. No.280, Housing and Urban Department (UD3(2) 06.07.2000], Section 6(1) dated 08.08.2001 in [G.O.Ms. No.348, Housing and Urban Development [UD3(2) 08.08.2001] respectively pertaining to lands in Survey No. 188/1B measuring an extent of Acre 0.24 cents or 0.10.0 Hectors at No. 18, Kararachari Village, Poonamallee Taluk, Tiruvallur District, and quash the same by virtue of Section 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act 2013 (Act 30 of 2013).

2. The case of the petitioners is that their father owned property comprised in Survey No.188/1B measuring an extent of Acre 0.24 cents or 0.10.0 Hectors situated at Kararachari Village, Poonamallee Taluk, Tiruvallur District. Thereafter, the petitioners' father died on 09.12.1992. However, the first respondent issued notification under Section 4(1) of the Tamil Nadu Land Acquisition Act, 1894 on 06.07.2000 in the name of their deceased father. However, Section 6 Declaration was issued in the name of the few petitioners and no regular inquiry was conducted as contemplated under the Act.

3. The notice under Section 12(2) of the Land Acquisition



Act, 1894 was also not issued to the petitioners. Though the respondents have taken symbolic possession of the lands, physical possession still continues with the petitioners.

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4. Mr. David Tyagaraj, learned Senior counsel for the petitioners submitted that the entire acquisition proceedings is bad in law under the Land Acquisition Act, 1894 since the repealed Act viz., the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act 2013 is applicable and the principles laid down under Section 24(2) is applicable to the case of hand. Therefore, the notification under Section 4(1) and Section 6(1) Declaration under the old Act are liable to be quashed. The 4(1) notification has been issued in the name of a dead person which cannot be sustained.

5. However, names of some of the petitioners did not find the Section 6 Declaration also does not find some of the petitioners name. Further, no notice of inquiry was issued under Section 5A of the Land Acquisition Act. The possession of the proposed land to be acquired is continuously in the possession and enjoyment of the petitioners. So far, no compensation has been deposited and no compensation is received by the petitioners. Therefore, the entire acquisition proceedings have been lapsed as per Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act 2013.

6. The third respondent filed counter, stating that the acquisition proceedings were initiated for the Project of Outer Ring Road for the land admeasuring 12.96.0 Hec. situated at Kararachari Village, Poonamallee Taluk, Tiruvallur District under the Land Acquisition Act. The subject property in this writ petition admeasuring 0.10.0 Hec. (25 cents) comprised in Survey No.188/1B was also acquired. The notification under Section 4(1) of the Act was approved by the Government in G.O.Ms.No.280 dated 06.07.2000.

7. Though the petitioners' father died on 09.12.1992, all the Revenue Records stood in his name namely Varadappa Naicker and no Revenue Records were mutated in the name of the petitioners herein after the demise of their father. Therefore, Section 4(1) notification was published and issued in the name of



their father namely Varadappa Naicker. It was also published in two Tamil Dailies i.e., in "Malai Malar" newspaper on 11.08.2000 and "Madurai Mani" newspaper on 12.08.2000 and it was also published in the locality on 14.08.2000. In fact, the petitioners had knowledge about the 4(1) notification and the inquiry was conducted on 29.09.2000, 03.10.2000, 04.10.2000 and 05.10.2000 as contemplated under Section 5A of the Land Acquisition Act.

8. The physical possession of the subject property had already been taken as early as 18.12.2003 and the compensation amount was also kept under the Revenue Deposit on 18.11.2003. Thereafter, the subject land was handed over to the requisitioning body namely the second respondent herein on 18.12.2003. In fact, the final notice regarding taking over possession under Section 13 of the Survey and Boundaries Act, 1923 was also published in the Tiruvallur District Gazette No.21 dated 14.06.2004.

9. It is also revealed that the notice under Section 9(3) and 10 of the Land Acquisition Act were issued to the petitioners 2 to 5 herein requesting them to appear for award inquiry and to produce the original documents to prove the ownership of the land comprised in Survey No.188/1B. However, petitioners 2 to 5 have not appeared for inquiry.

10. The records also revealed that the second and third petitioners herein appeared for inquiry conducted under Section 5A of the Land Acquisition Act and stated that the subject land is their ancestral property and stands registered in the name of Varadappa Naicker. They have also produced patta passbook in support of their claim. It is true that the subject land comprised in Survey No.188/1B measuring 0.26 cents stood in the name of their father namely Varadappa Naicker and claimed compensation into four equal shares among the brothers. However, they failed to produce any legal heir certificate and documentary evidence.

11. Therefore, though the notification issued under Section 4(1) of the Land Acquisition Act in the name of dead person, the petitioners being the legal heirs of the deceased Varadappa Naicker had knowledge over the notification and they duly attended the inquiry conducted under Section 5A of the Land



Acquisition Act. They also raised their objections and sought for compensation to be paid to all the legal heirs equally.

12. Therefore, the petitioners, being the legal heirs of the Varadappa Naicker had knowledge about the 4(1) notification and they have attended the inquiry conducted under Section 5A of the Land Acquisition Act and raised their objections. Therefore, there is no prejudice caused to the petitioners by issuance of notification under Section 4(1) of the Land Acquisition Act in the name of dead person namely their father Varadappa Naicker.

13. In so far as the compensation is concerned, the entire award amount was kept under Revenue Deposit on 18.11.2003. In so far as the possession is concerned, the subject property had already been taken as early as 18.12.2003 and handed over to the requisitioning body namely the second respondent herein. Therefore, the acquisition proceedings have not lapsed as contended by the petitioners.

14. That apart, the writ petition has been filed after a period of 13 years from the date of notification issued under Section 4(1) of the Land Acquisition Act. In this regard, it is relevant to rely upon the decision of Constitution Bench of the Hon'ble Supreme Court of India in the case of Indore Development Authority Vs. Manoharlal and others etc reported in 2020 8 SCC 129, wherein it is held as follows:

"366. In view of the aforesaid discussion, we answer the questions as under:

366.1. 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.

366.2. 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.

366.3. The word 'or' used in Section 24(2) between possession and compensation has



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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.

366.4. 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.

366.5. 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



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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.

366.6. 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).

366.7. 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).

366.8. 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.

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."

15. The learned counsel for the petitioners would submit that if the respondents made Revenue Deposit, without production



of any records, the petitioners are entitled for compensation under the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act 2013 as per the dictum laid down by the Hon'ble Supreme Court of India.

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16. Considering the said submission, the consequence of non-deposit is provided in the proviso to Section 24(2) in case it has not been deposited with respect to the land owners 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. Therefore, this writ petition is devoid of merits and liable to be dismissed.

17. Accordingly, this writ petition is dismissed. No order as to costs.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

rna/ham

To

- 1.The Secretary,
Government of Tamil Nadu,
Housing and Urban Development Department ,
Chennai - 600 009.
- 2.The Chairman,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Building,
Egmore, Chennai - 600 008.
- 3.The Special Tahsildar,
Land Acquisition,
Outer Ring Road Project Unit - IV,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Building,
Egmore, Chennai - 600 008.

+1cc to Mr.David Tyagaraj, Advocate, S.R.No.43791

+1cc to the Government Pleader, S.R.No.44285

W.P.No.26861 of 2014

ADC0)

SB(24/09/2021)