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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2021

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.NO.30218 OF 2019

AND

W.M.P.NOS.30184 AND 30186 OF 2019

AND

W.M.P.NO.7516 OF 2021

1. T.Shanmugam

2. S.Gopal

... Petitioners

-Vs-

1. The District Collector,
Namakkal District,
Namakkal.

2. The Revenue Divisional Officer,
Thiruchengode,
Namakkal District.

3. The Tahsildar,
Thiruchengodu Taluk,
Namakkal District.

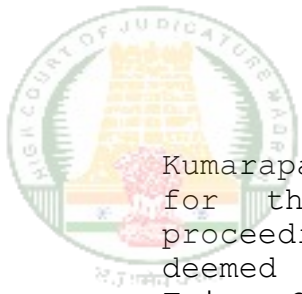
4. The Special Tahsildar,
Land Acquisition Project Officer,
Salem.

5. N.K.Palanisamy
(R5 impleaded as per order
dated 22.12.2021 made in
W.M.P.No.17229 of 2021 in
W.P.No.30218 of 2019)

... Respondents

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Declaration, declaring that the lands in respect of survey numbers S.F.No.77/1 measuring to an extent of 4.34 acres in



Kumarapalayam Village, Thiruchengode Taluk, Namakkal District, for the reason that the fourth respondent's acquisition proceedings in ROC.1029/1973 and Award in 7/74 dated 16.08.1974 deemed to have lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

For Petitioners : Mr.M.Guruprasad

For R1 to R4 : Mr.G.Ameedius
Government Advocate

For R5 : Mr.C.Prakasam

ORDER

This writ petition has been filed challenging the acquisition proceedings in ROC.1029/1973 and Award in 7/74 dated 16.08.1974 on the ground that the possession has not been taken over and the compensation has not been paid as contemplated under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

2. Heard Mr.M.Guruprasad, learned counsel appearing for the petitioners, Mr.G.Ameedius, learned Government Advocate appearing for the respondents 1 to 4 and Mr.C.Prakasam, learned counsel appearing for the fifth respondent.

3. One N.K.Palanisamy, made a representation to the officials alleging that the petitioners have encroached the land belong to the Government which is classified as lake stream comprised in Survey No.77/1, situated at Kumarapalayam Village, Molasi Firka, Tiruchengode Taluk, Namakkal District. Since, the respondents did not take any action on his representation, he approached this Court in W.P.No.30058 of 2018. The Hon'ble First Bench of this Court, recorded the submissions of the learned Government Pleader that the notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 was issued to the encroachers and followed by Section 6 notice of the Tamil Nadu Land Encroachment Act, 1905 was issued. Aggrieved by the same, the petitioners herein have filed statutory appeal before the first respondent on Section 10 of the Tamil Nadu Land Encroachment Act, 1905 and it was rejected by an order dated 12.10.2018 for the reason that they have encroached the land comprised in Survey No.77/1 to an extent of 1.76.0 hectares. Recorded the said submissions, the said writ petition was disposed of on 06.02.2019.



4. However, the said N.K.Palanisamy also filed a contempt petition before this Court and the same was closed by an order dated 18.03.2021 and had also taken note of the pendency of the present writ petition. The first respondent mechanically concluded by the proceedings dated 12.10.2018, that the subject land is classified as "lake" (water body) in the revenue records. These lands have been encroached by the petitioners. In fact, they were given an opportunity of hearing and passed a detailed order.

5. Further revealed that prior to UDR survey, the subject land was classified as "Ryotwari punja" lands along with Survey No.77/1, 2, ad-measuring 6.32 cents of lands. Before UDR survey, the patta in respect of the above land was issued in Patta No.11 in the name of V.Thanda Gounder i.e. the father of the first petitioner and 5 others as per the proceedings, dated 15.02.1975 in TK/8A/57/84. After UDR survey, the subject land was classified as 'Eri' (lake).

6. A perusal of the revenue records, the first respondent has specifically referred to the acquisition proceedings initiated in Na.Ka.No.1029 of 1973, dated 16.08.1974. The acquisition proceedings were initiated at the instance of the Public Works Department as the requisitioning body, who had sought for acquisition of the subject land to maintain the subject land as a water body for water storage. Therefore, the land comprised in Survey No.77/1, ad-measuring 4.34 cents was acquired and handed over to the Public Works Department. Originally, the land stood in the name of Sellappan Gounder and father of the petitioner i.e. Thanda Gounder. After acquisition of the said land, the entire compensation amount of Rs.8,150.80/- was deposited on 16.08.1974, before the Principal Subordinate Judge, Salem in L.A.O.P. No.289 of 1974 as per the proceedings of the Special Tahsildar and Land Acquisition Officer, Salem in Na.Ka.No.1029 of 1973. In fact, the possession of the said property was handed over by the father of the first petitioner and Lakshmana Gounder and it is evident from the certificate dated 16.08.1974.

7. Thereafter, the revenue records were mutated in the name of water body. In fact, after demise of the said Thanda Gounder, the petitioner seems to have encroached the subject property. When the said N.K.Palanisamy, filed a writ petition before this Court to remove the encroachment made by the petitioners in Survey No.77/1, the respondents had taken steps to remove the encroachments made by the petitioners under the Tamil Nadu Land Encroachment Act, 1905.

8. Therefore, the present writ petition is nothing but tactic of escape from the clutches of law under the Tamil Nadu



Land Encroachment Act, 1905. The petitioners failed to fulfill the twin conditions as contemplated under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

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9. In this regard it is relevant to extract the judgment reported in (2020) 8 SCC 129 in the case of Indore Development Authority Vs. Manoharlal and ors etc., held that,

"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.

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



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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 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



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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."

10. In view of the above, the writ petition is devoid of merits and is liable to be dismissed. Accordingly, this writ petition stands dismissed. Consequently, connected Miscellaneous petitions are closed. There shall be no order as to costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector,
Namakkal District,
Namakkal.
2. The Revenue Divisional Officer,
Thiruchengode,
Namakkal District.
3. The Tahsildar,
Thiruchengodu Taluk,
Namakkal District.
4. The Special Tahsildar,
Land Acquisition Project Officer,
Salem.

+1cc to Mr.C.Prakasam, Advocate, S.R.No.69386

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.69263

+1cc to the Government Pleader, S.R.No.69802

(07/03/2022)

W.P.NO.30218 OF 2019 AND
W.M.P.NOS.30184 AND 30186 OF 2019
AND W.M.P.NO.7516 OF 2021

VG-II(CO)

PBS/02/03/2022