

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.09.2021

Coram:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

WP.No.6129 of 2017 and
WMP.No.6603 of 2017

V. Dhanalakshmi

...Petitioner

Vs.

1.The Secretary to the Government,
Revenue Department,
Government of Tamil Nadu,
Fort St. George,
Chennai – 600 009.

2. The District Collector,
NH – 205, Thiruvallur Collector Office,.
Thiruvallur District – 602 001.

3. District Revenue Officer,
Land Acquisition,
Outer Ring Road,
Koyambedu,
Chennai – 600 107.

4. Land Acquisition Officer and
The Special Thasildhar (LA), Unit-V,
Outer Ring Road Project, Phase II, C.M.D.A.,
Koyambedu, Wholesale Market Complex,
Chennai – 600 092.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of declaration, declaring the land acquisition proceedings initiated by the respondents under the Land acquisition Act, 1894 as amended as null and void 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) pertaining to petitioner's land measuring an extent of 0.02.5 hectares or 2152.78 sq.ft in Survey No.99 and as per U.T.R Patta Survey No.99/4 at Arch Anthoniar Nagar Extension-II, situated at plot No.106, Old No.42, New No.38, Vellanur Village and Panchayat, Saidapet Taluk, Chengalpaet District within Sub-Registration District of Poonamalle and Registration District, South Chennai.

For Petitioner : Mr.David Tyagaraj.

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

ORDER

This writ petition is filed to issue a Writ of declaration declaring the land acquisition proceedings initiated by the respondents under the Land acquisition Act, 1894 as amended as null and void 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)

pertaining to petitioner's land measuring an extent of 0.02.5 hectares or 2152.78 sq.ft in Survey No.99 and as per U.T.R Patta Survey No.99/4 at Arch Anthoniar Nagar Extension-II, situated at plot No.106, Old No.42, New No.38, Vellanur Village and Panchayat, Saidapet Taluk, Chengalpaet District within Sub-Registration District of Poonamalle and Registration District, South Chennai.

2. The case of the petitioner is that she had purchased the land to an extent of 2980 sq.ft. on 04.11.1992 vide document No.5932 of 1992 comprised in survey No.99 and as per UTR Patta survey No.99/4 situated at Arch Anthoniar Nagar Extension-II, situated at plot No.106, Old No.42, New No.38, Vellanur Village and Panchayat, Saidapet Taluk, Chengalpet District within Sub Registration District of Poonamallee and Registration District, South Chennai. The petitioner is in physical possession and enjoyment of the said property. The said property is under acquisition proceedings to implement the State Highways to an extent of 2152.78 sq.ft. comprised in survey No.99 and as UTR patta survey no.99/4, situated at plot No.106, Old.No.42 New No.38, Vellanur Village and Panchayat, Saidapet

Taluk, Chengalpet District. The second respondent sent notice for the proposed acquisition for implementing the Outer Ring Road. Till date, no compensation has been received from the respondents for the acquired lands and physical possession of the said lands have not been taken over by the respondents till date

3. The learned counsel for the petitioner submitted that no enquiry was conducted under Section 5A of the Land Acquisition Act. The physical possession of the land which is proposed to be acquired continues to be in the petitioner's physical possession till date and further no compensation is not received by the petitioner for the acquired lands. Hence, the principles of Section 24 (2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is applicable in the instance case and the entire acquisition fails.

4. The fourth respondent filed counter and submitted that to implement the outer ring road, the Government have accorded administrative sanction to the Chennai Metropolitan Development Authority

in the year 1995. Notifications for land acquisition were issued under the Land Acquisition Act, and award was passed in Award No.3 of 2008 on 31.12.2008 in Block No.5, Item No.26. Notice under Section 7 of the Land Acquisition Act was issued to the petitioner on 30.07.2008. The petitioner has not received the compensation amount within the due date. As such, the amount was kept under work deposit. However, the petitioner may receive the compensation amount if she produces the relevant documents in original in support of her claim.

5. Heard, Mr.David Tyagaraj, the learned counsel for the petitioner, and Mr.M.R.Gokul Krishnan, Government Advocate appearing for the respondents.

6. It is seen from the records that enquiry under Section 5(A) of the Land Acquisition Act was conducted on 09.08.2006 and 10.08.2006. Declaration notification under Section 6 of the Land Acquisition Act was published in the Tamilnadu Government Gazette on 09.03.2007 and it was also published in the newspapers on 15.03.2007 and the award was passed

in Award No.3 of 2008 on 31.12.2008. Entire acquisition proceedings were completed as early as on 31.12.2008. After the lapse of nine years, the petitioner has claimed relying under Section 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. It is also seen that an amount of Rs.10,090/- has been fixed by the Land Acquisition Officer as compensation amount for the acquisition of petitioner's patta land measuring 0.02.5 hectares of 'dry' land comprising in S.No.99/4B of Vellanur village and since the writ petitioner has not received the compensation amount within the due date, the amount was kept under 'work deposit' and the petitioner may receive compensation.

7. 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 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 318 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.

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."

8. The learned counsel for the petitioner would submit that if the respondent made Deposit, without production of any records, the petitioner is 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.

9. Considering the said submission, the consequence of non-deposit is provided in the proviso to Section 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 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 Land Acquisition Act, 1894 shall be entitled to compensation in accordance with the provisions of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Therefore, this writ petition is devoid of merits and liable to be dismissed.

10. Accordingly, this writ petition is dismissed with above observation. Consequently, connected miscellaneous petition is closed. No order as to costs.

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Speaking Order/Non Speaking Order
Index : Yes / No

08.09.2021
(½)

Internet : Yes
lok/drm

G.K.ILANTHIRAIYAN, J.
lok/drm

To

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