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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.08.2021

CORAM :

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.9268 of 2017
and W.M.P.No.10244 of 2017

Indo Span Poly-Yarn Private Limited,
(Formerly Known as Signal Data
Wirecoms Private Limited)
Rep. by its Director,
481, Dr. Nangappa Road,
Asoka Complex Building,
Coimbatore - 18

... Petitioner

-Vs-

1. The State of Tamil Nadu,
Rep. by its Secretary,
Housing and Urban Development Department
Fort St. George, Chennai - 600 009.
2. The Tamil Nadu Housing Board,
Rep. by its Managing Director,
Nandanam, Chennai.
3. Land Acquisition Officer and
Special Tahsildar (LA),
Housing Scheme No.II,
Coimbatore.

... 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 land acquisition proceedings initiated by the respondents under the Land Acquisition Act, 1894 with respect to the lands comprised in Survey No.967/5, Kalapatti Village, Gandhipuram Sub Registration District, Coimbatore Registration District Measuring an extent of about 1.25 acres have lapsed as per the provisions of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act No.30 of 2013)

For Petitioner : Mr.A.Jenasenan



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For Respondents

For R1 & R3 : Mr.M.R.Gokul Krishnan
Government Advocate.

For R2 : Dr.R.Gowri

ORDER

The Writ Petition has been filed to declare that the land acquisition proceedings initiated by the respondents under the Land Acquisition Act, 1894 with respect to the lands comprised in Survey No.967/5, Kalapatti Village, Gandhipuram Sub Registration District, Coimbatore Registration District Measuring an extent of about 1.25 acres have lapsed as per the provisions of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act No.30 of 2013) (herein after called as "the New Act")

2. Heard Mr.A.Jenasenan, learned counsel appearing for the petitioner, Mr.M.R.Gokul Krishnan, learned Government Advocate appearing for the respondents 1 & 3 and Dr.R.Gowri, learned Standing Counsel appearing for the second respondent.

3. It is seen from the records that the petitioner is the subsequent purchaser and he purchased the subject land in the year 2002 by the registered sale deed dated 21.03.2002 vide document No.880 of 2002. The subject land was acquired for the purpose of housing scheme and notification under Section 4(1) of the Land Acquisition Act was issued on 26.09.1994 and Section 6 declaration was also issued on 17.11.1995. Further the vendors of the petitioner had already been filed writ petition in W.P.Nos.12074 & 12075 of 1996 before this Court, challenging the acquisition proceedings and the same were disposed of by an order dated 20.03.2001.

4. Admittedly the petitioner is the subsequent purchaser and it is settled position of law that the subsequent purchaser cannot have right to challenge the acquisition proceedings. In this regard, it is relevant to rely upon the judgment reported in (2019) 10 SCC 229 in the case of Shiv Kumar and anr Vs Union of India and ors, in which the Hon'ble Supreme Court of India held as follows :-

"13. The definition of 'landowner' is in Section 3(r), the same is extracted hereunder:

3. Definition.-In this Act, unless the context otherwise requires,--

(r) "landowner" includes any person,--

(i) whose name is recorded as the owner of



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the land or building or part thereof, in the records of the authority concerned; or

(ii) any person who is granted forest rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007) or under any other law for the time being in force; or

(iii) who is entitled to be granted Patta rights on the land under any law of the State including assigned lands; or (iv) any person who has been declared as such by an order of the court or Authority;

Landowner is a person who is recorded as the owner of land or building. The record of date of issuance of preliminary notification Under Section 11 is relevant. A purchaser after Section 11 cannot be said to be a landowner within the purview of Section 3(r).

.....

21. Thus, under the provisions of Section 24 of the Act of 2013, challenge to acquisition proceeding of the taking over of possession under the Act of 1894 cannot be made, based on a void transaction nor declaration can be sought Under Section 24 (2) by such incumbents to obtain the land. The declaration that acquisition has lapsed under the Act of 2013 is to get the property back whereas, the transaction once void, is always a void transaction, as no title can be acquired in the land as such no such declaration can be sought. It would not be legal, just and equitable to give the land back to purchaser as land was not capable of being sold which was in process of acquisition under the Act of 1894. The Act of 2013 does not confer any right on purchaser whose sale is ab initio void. Such void transactions are not validated under the Act of 2013. No rights are conferred by the provisions contained in the 2013 Act on such a purchaser as against the State.

22. 'Void is, ab initio,' a nullity, is inoperative, and a person cannot claim the land or declaration once no title has been conferred upon him to claim that the land should be given back to him. A person



declaration can be sought. It would not be legal, just and equitable to give the land back to the purchaser as land was not capable of being sold which was in process of acquisition under the Act of 1894. Therefore, the New Act does not confer any right on purchaser whose sale is ab initio void. Therefore the petitioner cannot challenge the acquisition proceedings being the subsequent purchasers.

6. That apart, the grounds raised by the petitioner in this Writ Petition have already been settled by the Hon'ble Supreme Court of India in the judgment 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 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



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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).

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



2. The Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai.

3. Land Acquisition Officer and
Special Tahsildar (LA),
Housing Scheme No.II,
Coimbatore.

+2cc to the Government Pleader, S.R.No.43060,43018

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NMI (CO)
CT(22/09/2021)