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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2021

CORAM :

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P. No.9309 of 2017
and
W.M.P.No.10291 of 2017

Sabitha

... Petitioner

-Vs-

1. The Secretary to Government
Highways Department, Tamil Nadu,
Fort St. George, Chennai.
2. The District Collector,
Thiruvallur District.
3. The Land Acquisition Officer and
Special Thasildar (LA)
Unit-IV, Outer Ring Road Project,
Phase-II, CMDA, Koyambedu
Wholesale Market Complex,
Chennai - 92.
4. The Managing Director,
Tamil Nadu Road Development Company,
171, 2nd Floor, South Keseva Perumal Puram,
Pasumpon Muthuramalingam Road,
Raja Annamalai Puram, Chennai-28

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records in Award No.5 of 2010 dated 07.04.2010 on the file of the third respondent and quash the same and consequently direct the third respondent to compensate the petitioner as per the Central Act 30 of 2013, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

For Petitioner : Mr.B.Manoharan



For Respondents

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

For R4 : Mr.M.Sivavarthanan

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ORDER

The Writ Petition has been filed to call for the records in Award No.5 of 2010 dated 07.04.2010 on the file of the third respondent and quash the same and consequently direct the third respondent to compensate the petitioner as per the Central Act 30 of 2013, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (herein after referred to as "the new Act").

2. The case of the petitioner is that she owned land in survey No.16/57 to an extent of 0.02.0 Hectacre situated at Madura Gengu Reddy Kuppam, Thiruninravur, Poonamallee Taluk, Thiruvallur District. The said land was under the acquisition proceedings for the project of outer ring road between the New Mahabalipuram Road and TVTR - Panjetti - Ponneri. The gazette notification under Section 4(1) of the Land Acquisition Act, 1894 (herein after called as "the old Act") was issued on 24.02.2007 and subsequently it was also published in two dailies on 24.03.2007 and substitution of notice in the local daily on 11.04.2007. Thereafter award enquiry notice was issued as contemplated under Section 5 of the Act and enquiry was conducted and under Section 6 declaration issued in Tamil Nadu Gazette on 02.04.2008. It was published in the newspapers on 05.04.2008 and in the locality on 08.04.2008. Thereafter the award has been passed on 07.04.2010.

3. According to the petitioner under the New Act, the possession has not been taken from the petitioner and the compensation amount also has not been paid to her. Therefore, the petitioner challenged the award No.5 of 2008 dated 07.04.2010 and also for subsequent direction to direct the third respondent to decide the petitioner's request under the New Act.

4. Heard Mr.B.Manoharan, learned counsel appearing for the petitioner and Mr.M.R.Gokul Krishnan, learned Government Advocate appearing for the respondents 1 to 3 and Mr.M.Sivavarthanan, learned counsel appearing for the fourth respondent.

5. On perusal of records revealed that, the award was passed on 07.04.2010 in award No.5 of 2010. The said award



amount was also deposited vide cheque dated 04.05.2014 in Subordinate Court, Poonamallee. If the award has been made as contemplated under Section 11 of the old Act, then the proceedings shall continue under the provisions of the old Act, as if the said Act has not been repealed by the new Act. It is relevant to extract the provisions under Section 24 (1)(b) of the new Act as follows :

"24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.-(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894,-

.....

(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed."

6. In the case on hand, the award has been passed on 07.04.2010 viz., before the enactment of the new Act. Therefore, the entire proceedings shall continue under the old Act. Though the award amount has been deposited on 04.05.2015, the entire proceedings can continue only under the old Act. The Constitutional Bench of the Hon'ble Supreme Court of India settled all these issues in the judgement reported in (2020) 8 SCC 129 in the case of Indore Development Authority Vs. Manoharlal and ors etc., and it is relevant to extract the following paragraph:-

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

.....

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."



That apart, the award amount has already been withdrawn by the petitioner and on his objection, the matter has been referred before the Referral Court and it is pending for consideration. In view of the above discussions, the Writ Petition is devoid of merits and is liable to be dismissed.

7. 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-II)

//True Copy//

Sub Assistant Registrar

rts

To

1. The Secretary to Government,
Highways Department, Tamil Nadu,
Fort St. George, Chennai.
2. The District Collector,
Thiruvallur District.
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+1cc to the Government Pleader, S.R.No.45182

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PMK(CO)
SU(06/10/2021)