



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.08.2021

CORAM :

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.878 of 2017

and

W.M.P.Nos.881 & 19380 of 2017

P.S.Maheswari
Rep. by her Power of Attorney
P.Sevalai Perumal

... Petitioner

-Vs-

1. The Secretary to Government
Public Works Department (Highways)
Fort St.George, Chennai - 600 009.
2. The Revenue Divisional Officer,
Office of the Revenue Divisional Office,
Chengalpattu.
3. The Special Deputy Collector
(Land Acquisition)
Poonamallee, Chennai.
4. The Chief Executive Officer,
Tamil Nadu Road Development
Company Limited,
Chennai - 600 008.

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Declaration, declaring the land acquisition proceedings in pursuance of G.O.Ms.No.752, P.W. (Highways) (HS-2) dated 18.05.1993 issued under Section 4(1) of the Land Acquisition Act, 1894 and all further proceedings are lapsed in view of the Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, situated in old S.No.99/8C1A, new S.No.99/8C1A1 of Muttukadu Village, Sholinganallur Taluk, Kanchipuram District.



WEB COPY

For Petitioner : Mr.T.Thiageswaran
For M/s.Waraon and Sai Rams
For Respondents :
For R1 to R3 : Mr.M.R.Gokul Krishnan
Government Advocate.
For R4 : Mr.M.Sivavarthanan

ORDER

The Writ Petition has been filed to declare that the land acquisition proceedings in pursuance of G.O.Ms.No.752, P.W. (Highways) (HS-2) dated 18.05.1993 issued under Section 4(1) of the Land Acquisition Act, 1894 and all further proceedings are lapsed in view of the Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (herein after called as "the New Act") situated in old S.No.99/8C1A, new S.No.99/8C1A1 of Muttukadu Village, Sholinganallur Taluk, Kanchipuram District.

2. Heard Mr.T.Thiageswaran, learned counsel appearing for the petitioner, Mr.M.R.Gokul Krishnan, learned Government Advocate appearing for the respondents 1 to 3 and Mr.M.Sivavarthanan, learned Standing Counsel appearing for the fourth respondent.

3. It is seen from the records that the petitioner is the subsequent purchaser and he purchased the subject land in the year 2004 by the registered sale deed dated 20.12.2004 vide document No.5844 of 2004. The subject land was acquired for the purpose of East Coast Road development. That apart, the lands acquired was taken over and the possession was handed over to the Highways Authorities as earlier as in the year 1995. Now the East Coast Road has been formed and it is maintained by the Tamil Nadu Road Development Company Limited.

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



WEB COPY

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 cannot enforce and ripe fruits based on a void transaction to start claiming title and possession of the land by seeking a declaration Under Section 24 of the Act of 2013; it will amount to conferment of benefit never contemplated by the law. The question is, who can claim declaration/rights Under Section 24(2) for the restoration of land or lapse of acquisition. It cannot be by a person with no title in the land. The provision of the Act of 2013 cannot be said to be enabling or authorizing a purchaser after Section 4 to question proceeding taken under the Act of 1894 of taking possession as held in U.P. Jal Nigam (supra) which is followed in M. Venkatesh (supra) and other decisions and consequently claim declaration Under Section 24 of the Act of 2013. What cannot be done directly cannot be permitted in an indirect method.

23. The provisions of the Act of 2013 aimed at the acquisition of land with least disturbance to the landowners and other affected families and to provide just and fair compensation to affected families whose land has been acquired or proposed to be acquired or are affected and to make adequate provisions for such affected persons for their rehabilitation and resettlement. The provisions of Act of 2013 aim at ousting all inter-meddlers from the fray by ensuring payment in the bank account of landholders Under Section 77 of the Act.

24. The intendment of Act of 2013 is to benefit farmers etc. Subsequent purchasers cannot be said to be landowners entitled to restoration of land and cannot be termed to be affected persons within the provisions of Act of 2013. It is not open to them to



claim that the proceedings have lapsed Under Section 24(2)."

5. In the above judgment, the Hon'ble Supreme Court of India held that challenging the acquisition proceedings under the provisions of Section 24 of the New Act cannot be made, based on a void transaction nor declaration to get the property back. 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 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



WEB COPY

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 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



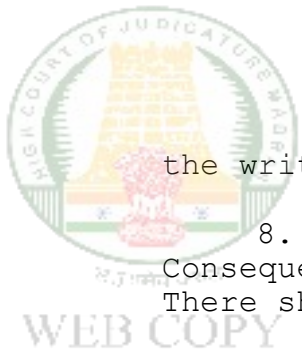
WEB COPY

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 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."

7. The Hon'ble Supreme Court of India settled all proposition of law in the above judgment including the grounds raised by the petitioner. That apart, the acquisition proceedings have been completed and the subject land was taken over possession by the government and the same was handed over to the Highways Authority. Further the requisition body also deposited the compensation as awarded by the Land Acquisition Officer. Now the project has been completed and the East Coast Road was formed and it is maintained by the Tamil Nadu Road Development Company Limited. Therefore, the petitioner failed to satisfy the twin requirements under Section 24 (2) of the New Act i.e., the physical possession of the land was not taken and the compensation has not been paid/tendered/deposited in accordance with law. In view of the dictum laid down by the Hon'ble Supreme Court of India, the issues raised by the petitioner were settled and therefore, the acquisition proceedings have not been lapsed by operation of law under Section 24 (2) of the New Act i.e., Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. In view of the settled position of law,



the writ petition is devoid of merits and liable to be dismissed.

8. In the result, the Writ Petition stands dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

rts

To

1. The Secretary to Government
Public Works Department (Highways)
Fort St.George, Chennai - 600 009.
2. The Revenue Divisional Officer,
Office of the Revenue Divisional Office,
Chengalpattu.
3. The Special Deputy Collector
(Land Acquisition)
Poonamallee, Chennai.
4. The Chief Executive Officer,
Tamil Nadu Road Development
Company Limited,
No.346, Sindu Panthenon Plaza,
Pantheon Road, Egmore,
Chennai - 600 008.

+1cc to the Government Pleader, S.R.Nos.43016,43058

W.P.No.878 of 2017
and
W.M.P.Nos.881 & 19380 of 2017

PMK (CO)
SU(21/09/2021)