



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2021

CORAM :

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.NO.21798 OF 2017

AND

W.M.P.NO.22809 OF 2017

Techpark Foundations,
Represented by its Partner A.Nina Reddy
No.9, River view Road, Kotturpuram,
Chennai - 600 085

...Petitioner

Vs

1.The State of Tamil Nadu
Rep by its Secretary.
Department of Revenue,
Fort St. George, Chennai - 600 009.

2.The State of Tamil Nadu,
Represented by its Secretary,
Housing and Urban Development Department,
Fort St.George, Chennai 600 009

3.The Tamil Nadu Housing Board,
Represented by its Managing Director,
493, Anna Salai,
Nandanam, Chennai

4.Land Acquisition Officer and Special Tahsildar(LA),
Zone V, Tamil Nadu Housing Board,
Nandanam, Chennai 600 035

...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 S.Nos.415/2, 415/3 & 421/2A2 Sholinganallur Village, Saidapet Taluk, Kanchipuram District measuring in total about 2.15 acres have lapsed as per the provisions of Section 24 (2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013 (Act No.30 of 2013).



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For petitioner : Mr.A.Jenasenan
For Respondents
For R1,2&4 : Mr.M.R.Gokul Krishnan,
Government Advocate.
For R3 : Mr.M.Baskar,
Standing Counsel

ORDER

The Writ Petition has been filed to issue 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 S.Nos.415/2, 415/3 & 421/2A2 Sholinganallur Village, Saidapet Taluk, Kanchipuram District measuring in total about 2.15 acres have lapsed as per the provisions of Section 24 (2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013 (Act No.30 of 2013).

2. Heard Mr.A.Jenasenan, learned counsel appearing for the petitioner, Mr.M.R.Gokul Krishnan, Government Advocate appearing for the respondents 1, 2 & 4, and Mr.M.Baskar, Standing Counsel appearing for the third respondent.

3. The third respondent submitted that the draft notification under Section 4(1) of the Land Acquisition Act (hereinafter called as 'the Act') was approved by the Government in G.O.Ms.No.433, Housing and Urban Development Department and notification under Section 4(1) of the Act was published in Government Gazette on 23.05.1990. Thereafter enquiry under Section 5A of the Act was conducted. On 07.06.1991, draft declaration under Section 6 of the Act was approved by the Government in GO.Ms.No.948 dated 07.06.1991, and the declaration was published in Government Gazette on 11.06.1991. The substance of notification was also published in the locality on 22.07.1991.

3.1 He further submitted that the land in survey No.415/2A for the extent of 0.85 acres stands registered in the name of Thiru.K.Sivaraman Naicker. The land owner Thiru.K.Sivaraman Naicker expired on 22.02.1996. On the behalf of him, his sons appeared for award enquiry. The compensation amount for the above land was ordered to be kept under Civil Court deposit under Sections 30 and 31(2) of the Act. The WP.No.10091 of 1996 filed by the legal heirs was dismissed on 25.10.2002. For the land in S.No.415/3A, notice under Sections 9(3) and 10 of the Act were served to the legal heirs of the late J.Puja Balarama Naicker on 27.02.1996. It was informed that there is a dispute



over the partition and civil suit No.835 of 1995 is pending in Sub Court, Tambaram. Hence, the compensation amount for the above land is ordered to be kept under civil court deposit under Sections 30 and 31(2) of the Act. For the land in survey No.421/2A2, one, M.Sundaramurthy appeared for award enquiry. One, S.Chandran already filed WP.No.14607 of 1996 challenging the acquisition proceedings and the same was dismissed on 10.02.2004. The writ appeal in WA.No.1775 of 2004 was also dismissed on 31.07.2006. An extent of 0.01 acre was handed over to the High Ways Department for widening the Old Mahabalipuram Road and the possession of balance extent of 0.31 acres vest with the Government.

4. It is seen from the records that petitioner is the subsequent purchaser and purchased the subject land in the year 2006 by the registered sale deeds vide document Nos.25 of 2006 dated 02.01.2006 and 962 of 2006 dated 17.02.2006. But the award has been passed in Award No.1 of 1997 on 23.04.1997 itself.

5. 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 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.



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A purchaser after Section 11 cannot be said to be a landowner within the purview of Section 3(r).

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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 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



8. The Hon'ble Supreme Court of India settled all proposition of law in the above judgment including the grounds raised by the petitioner. Therefore, the petitioner failed to satisfy the twin requirements under Section 24 (2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 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., The 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.

9. 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-VI)

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Sub Assistant Registrar

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To

- 1.The Secretary
State of Tamil Nadu
Department of Revenue,
Fort St. George,
Chennai - 600 009.
- 2.The Secretary,
State of Tamil Nadu,
Housing and Urban Development Department,
Fort St.George,
Chennai 600 009
- 3.The Managing Director,
Tamil Nadu Housing Board,
493, Anna Salai,
Nandanam,
Chennai



4.Land Acquisition Officer and Special Tahsildar(LA),
Zone V, Tamil Nadu Housing Board,
Nandanam, Chennai 600 035

+2ccs to Mr.A.Jenasenan, Advocate, S.R.No.46262

+1cc to the Government Pleader, S.R.No.46873

W.P.No.21798 of 2017

PRS (CO)

RVM(07/10/2021)