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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2021

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THE HON'BLE Mr. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.32603 of 2017 and

WMP.No.35931 of 2017

A.N.Muthusamy

... Petitioner

Vs

1.The State of Tamilnadu,
Rep. by its Secretary to Government,
Housing Department,
Fort St.George,
Chennai 600 009

2.The Chairman,
The Tamil Nadu Housing Board,
Nandanam, Chennai 600 035

3.The Managing Director,
Tamil Nadu Housing Board,
Nandanam,
Chennai 600 035

4.The Special Deputy Collector (LA),
Tamil Nadu Housing Board Scheme,
Thirumangalam, Anna Nagar(West),
Chennai-101

(R4 impleaded as per order dated 17.01.2018

in WMP.No.957 of 2018 in WP.No.32603 of 2017 ... Respondents

PRAYER:- Writ Petition is filed under Article 226 of Constitution of India, praying to issue a Writ of Declaration declaring the acquisition of lands notified in G.O.Ms.No.597 Housing dated 21.03.1978 and published in Part 112, Tamilnadu Government Gazattee, Extra-ordinary (Part II Section 2) dated 23.03.1978, admeasuring 17 cents (3 grounds 360 sq.ft.) comprised in R.S.No.223/6, Thiruvanmiyur Village, Saidapet Taluk, Chengalpet District as lapsed under Section 24(2) of Central Act, 30 of 2013.



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For Petitioner : No appearance

For Respondents

For R1 & 4 : Mr.M.R,Gokul Krishnan,
Government Advocate

For R2 & 3 : Mr.M.Baskar,
Standing Counsel

ORDER

The Writ Petition has been filed to issue a Writ of Declaration declaring the acquisition of lands notified in GO.Ms.No.597 Housing dated 21.03.1978 and published in Part 112, Tamilnadu Government Gazattee, Extra-ordinary (Part II Section 2) dated 23.03.1978, admeasuring 17 cents (3 grounds 360 sq.ft.) comprised in R.S.No.223/6, Thiruvanmiyur Village, Saidapet Taluk, Chengalpet District as lapsed under Section 24(2) of Central Act, 30 of 2013.

2. The case of the petitioner is that the plot No.16 comprised in RS.No.223/6 admeasuring 17 cents and 360 sq.ft. situated at Thiruvanmiyur Village was originally owned by one, Patammal. The said property was sold out in favour of one, P.V.Venkatesan by the registered sale deed dated 14.10.1968. Thereafter, the petitioner has purchased the said house plot by registered sale deed dated 21.12.1981. He received notice under Sections 9 and 10 of the Land Acquisition Act (hereinafter called as 'the Act') on 14.03.1983. On enquiry, the petitioner came to know about the acquisition proceedings for Tamilnadu Housing Board under the scheme of South Madras Neighbourhood Scheme. Further the case of the petitioner is that neither his vendor's name nor his name found in the 4(1) notification. No notice was served under Section 5-A of the Act to his vendor or to him. Therefore the petitioner challenged the acquisition proceedings in WP.No.3743 of 1983 and the same was dismissed by order dated 31.01.1991 and it was also confirmed by the Hon'ble Division Bench of this Court in WA.No.1478 of 1992. Now the writ petition has been filed on the ground that the possession has not been taken over and the compensation amount has not been paid to the petitioner as per Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.



3. Heard, Mr.M.R.Gokul Krishnan, Government Advocate appearing for the respondents 1 & 4, and Mr.M.Baskar, Standing Counsel appearing for the respondents 2 & 3.

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4. On perusal of the counter revealed that notification under Section 4(1) of the Act was approved by the Government in GO.Rt.No.36 Housing Department dated 19.02.1975. Thereafter, draft declaration was approved by the Government in GO.Ms.No.597 Housing dated 21.03.1978. The subject land in question was purchased by one, P.V.Venkatesan and subsequently sold out to the petitioner herein by the sale deed dated 21.12.1981. Therefore, notice under Section 9(3) and 10 of the Act was issued to the petitioner on 14.03.1983. The enquiry was posted on 30.03.1983. However, after receipt of the said notice, the petitioner did not appear for enquiry and did not produce any documents. Thereafter award has been passed in award No.11 of 1983 on 30.03.1983. At the time of 4(1) notification, revenue records stood in the name of the erstwhile owner, V.P.Ramapandiaraj and therefore notification was issued in the name of the erstwhile owner. Thereafter, notice was issued to the petitioner thereby called upon him to hand over the possession of the land before 29.04.1983. However, the petitioner sent representative stating that he approached this Court in WP.No.3743 of 1983. The writ petition was subsequently dismissed. Aggrieved by the same, writ appeal was filed and the same was also dismissed by order dated 27.10.1992. In fact, the petitioner's vendor i.e. P.V.Venkatesan also filed writ petition in WP.No.20358 of 1993 and the same was dismissed on 08.03.2001. Thereafter, the possession of the subject land was taken over and handed over to the Tamil Nadu Housing Board on 23.11.2001. Therefore, admittedly the petitioner is the subsequent purchaser after notification was issued under Section 4 (1) of the Act. Thereafter, the Tamilnadu Housing Board has proposed a part layout consisting of two residential plots in survey No.223/6 of Thiruvannamiyur which is the subject land and got approved from the Chennai Metropolitan Development Authority vide letter No.L2/6045/2008 dated 28.03.2008. Thereafter both the residential plots were allotted to the public and the sale deeds were also executed in favour of them.

5. 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.,



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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 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,



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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



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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."

6. 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 by the government and the same was handed over to the requisition body. Further the requisition body also deposited the compensation as awarded by the Land Acquisition Officer. 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.

7. Accordingly, this writ petition is dismissed. Consequently, connected miscellaneous petition is closed. No order as to costs.

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar



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To

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- 1.The Secretary to Government,
State of Tamilnadu,
Housing Department,
Fort St.George,
Chennai 600 009
- 2.The Chairman,
The Tamil Nadu Housing Board,
Nandanam, Chennai 600 035
- 3.The Managing Director,
Tamil Nadu Housing Board,
Nandanam,
Chennai 600 035
- 4.The Special Deputy Collector (LA),
Tamil Nadu Housing Board Scheme,
Thirumangalam, Anna Nagar(West),
Chennai-101

+1cc to M/s.M.Baskar, Advocate, S.R.No.50717

+1cc to the Special Government Pleader, S.R.No.50477

W.P.No.32603 of 2017

RP(CO)
SB(01/11/2021)