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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2021

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

WP.No.33753 of 2017

B.Krishnakumar

... Petitioner

Vs

1.The Secretary to Government of Tamilnadu,
Housing and Urban Development Department,
St.Fort George, Chennai - 600 009

2.The Chairman cum Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai - 600 035

3.The Land Acquisition Officer and Special Tahsildar(L.A),
Unit-II, TNHB Scheme,
Tamil Nadu Housing Board,
Nandanam, Chennai 600 035

... Respondents

Prayer :- Writ Petition is filed under Article 226 of the Constitution of India praying to issue a writ of declaration declaring the declaration made under Section 6(1) of Land Acquisition Act, 1894 as per GO.Ms.No.132 LA(1) Housing and Urban Development Department dated 24.07.2003 pursuant to notification made under Section 4(1) of Land Acquisition Act, 1894 and award passed therein in Award No.1 of 2005 on 25.07.2005 by the third respondent as lapsed in view of Section 24(2) of new Act namely Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

For Petitioner : Mr.K.M.Venugopal

For Respondents

For R1 & 3 : Mr.M.R.Gokul Krishnan,
Government Advocate

For R2 : Mr.M.Baskar,
Standing Counsel



ORDER

This Writ Petition is filed to issue a writ of declaration declaring the declaration made under Section 6(1) of Land Acquisition Act, 1894 as per GO.Ms.No.132 LA(1) Housing and Urban Development Department dated 24.07.2003 pursuant to notification made under Section 4(1) of Land Acquisition Act, 1894 and award passed therein in Award No.1 of 2005 on 25.07.2005 by the third respondent as lapsed in view of Section 24(2) of new Act namely Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

2. The petitioner's father derived title by partition deed for the land comprised in survey No.49/2B covered under patta No.287 to an extent of 1.14 acres and the land comprised in survey No.79/1A1B to an extent of 74 cents covered under patta No.278 and the land admeasuring 33 cents comprised in survey No.74/1A1B covered under patta No.33 situated at Perumalagaram village, Ambattur, Tiruvallur District. After his demise, his mother executed settlement deed on 23.09.2009 vide document No.1559/09. While being so, the respondents acquired the said land for the purpose of establishing Ambattur Neighbourhood Scheme and issued 4(1) notification under the Land Acquisition Act (hereinafter called as 'the Act') on 21.06.2002. Though it was issued in the name of his forefather, Mr.Subbiah Naidu, he participated in the enquiry conducted under Section 5A of the Act on 11.11.2002. Thereafter, declaration was made by the respondents under Section 6 (1) of the Act as per GO.Ms.No.132 LA (1) Housing and Urban Development Department dated 24.07.2003. Thereafter, objections were received from the land owners and were sent to the requisition body. Thereafter, reply to objections received by the requisition body on 07.02.2003 and the same was duly communicated to the land owners on the same day. Thereafter, enquiry was conducted as contemplated under Rule 3(b) of the Act on 17.02.2003 and on the same day, 5A enquiry was concluded. Draft declaration under Section 6 of the Act was approved in GO.Ms.No.132 Hg & UD Department dated 24.07.2003. Thereafter Gazatte notification of the draft declaration made under Section 6 was published in the Tamilnadu Government Gazette on 25.07.2003. Draft declaration was published in two tamil dailies on 25.07.2003 and award enquiry was conducted on 15.06.2005.

3. On perusal of the award revealed that the petitioner attended the enquiry and made his objections. After considering the objections, award has been passed in Award No.1 of 2005 on 25.07.2005. Now the writ petition has been filed challenging the acquisition proceedings on two grounds. The petitioner has not



been paid any compensation and possession of the subject property also has not been taken over and as such the entire land acquisition proceedings have lapsed under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

4. The learned counsel for the petitioner would submit that even according to the respondent, possession has been taken over on 15.03.2006 and the award amount has been deposited only on 20.09.2007. It is clear violation of Section 17(3A) of the Act. After settlement deed, the petitioner was issued patta on 10.11.2009 and he is in possession and enjoyment of the subject property. He further submitted that the first respondent had passed award in highly improper manner. The land in survey No.49/2 admeasuring 0.60.0 hectare is lower in each other than the adjoining lands using to the removal of earth from the land for the manufacturing of bricks. The reclamations charges for the filling up of the above lands worked out to Rs.5,91,038/- exceeded the value of Rs.1,764/- per acre. Therefore, nominal value of Rs.1/- per cent will be paid as compensation of the above land only. Award was passed on 25.07.2005 and during the date of award, acquisition officer fixed land value at Rs.1/- per cent is very low and it is violative as per the Constitution of India.

5. The second respondent filed counter and stated that the petitioner was duly served all the notices and he participated in the enquiry under Section 5(A) of the Act. After considering the objections and the remarks sent by the acquisition body, overruled the objections and approved declaration under Section 6 of the Act and published in the Tamilnadu Government Gazattee on 25.07.2003. Notification under Sections 9(1) and 10 of the Act was published and the notice under Sections 9(3) and 10 of the Act were duly served to all the land owners. In the award enquiry, the petitioner and other land owners have participated and the award has been passed in Award No.1 of 2005 on 25.07.2005. Subsequently, possession was also taken over by the acquisition officer and handed over the possession of the subject property to the requisition body on 15.03.2006. Award of compensation has been deposited in the revenue deposit on 20.09.2007. Therefore, both the grounds raised by the petitioners cannot be accepted and the land acquisition proceedings never lapsed due to non deposit of compensation amount and non taking of physical possession of the subject property. The petitioner was duly served notice and the petitioner raised objections for the acquisition proceedings and later his objections were overruled and award has been passed on 25.07.2005 in Award No.1 of 2005. Once the award is passed, the subject lands shall vest with the Government and the possession of the subject land had been taken over on 15.03.2006 and handed



over to the second respondent herein. Insofar as the award amount is concerned, they deposited as early as on 20.09.2007. Therefore, the petitioner failed to satisfy the twin conditions as contemplated under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

6. 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 acquisition under Section 4 of the Act of 1894



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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 not give rise to new cause of action to



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- 3.The Land Acquisition Officer and Special Tahsildar(L.A),
Unit-II, TNHB Scheme,
Tamil Nadu Housing Board,
Nandanam, Chennai 600 035.

+lcc to M/s.K.M.Venugopal, Advocate Sr.52378
+lcc to the Government Pleader Sr.52007

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