



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2021

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos.15711 and 15712 of 2017
and W.M.P.No.16995 of 2017

1. G.Punniyavathi
 2. G.Mani
 3. C.G.Raghupathy
- ... Petitioners in both W.P.s

-Vs-

1. The State of Tamil Nadu,
Represented by its Secretary to Government,
Housing and Urban Development Department,
Fort St.George,
Chennai 600 009.
2. The Special Tahsildar,
(Land Acquisition),
Housing Scheme Unit No.II,
Coimbatore - 641 012.
3. Tamil Nadu Housing Board,
493, Anna Salai, Nandanam,
Chennai 600 035.
Represented by its Director.
(R3 impleaded in
W.M.P.Nos.4670 of 2018
and 4671 of 2018
vide Court order dated 28.02.2018)
... Respondents in both W.P.s

Prayer in W.P.No. 15711 of 2017:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Declaration, declaring that the acquisition of the petitioner's agricultural land measuring an extent of 0.09.5 hectares comprising in S.F.No.805/1A situated in Kalapatty East Village, Coimbatore North Taluk Office, Sub Registrar Office, Gandhipuram pursuant to the notifications issued under Section 4(1) of the Land Acquisition Act, in G.O.Ms.No.519, dated 03.04.1991 (Housing and Urban Development



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Department) and G.O.Ms.No.246, dated 13.05.1992 (Housing and Urban Development Department) published in Gazette on 15.05.1992 has lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, (0/2013).

Prayer in W.P.No. 15712 of 2017:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records of the second respondent herein culminating with the order in Letter No.W.P.948 of 2016, dated 13.02.2017 and quash the same.

In Both W.P.s

For Petitioners : Mr.M.Vaidyanathan
For R1 and R2 : Mr.Richardson Wilson
Government Advocate.
For R3 : Dr.R.Gouri, Standing Counsel.

COMMON ORDER

These Writ Petitions have been filed to declare that the acquisition of the petitioners' agricultural land measuring an extent of 0.09.5 hectares comprising in S.F.No.805/1A situated in Kalapatty East Village, Coimbatore North Taluk Office, Sub Registrar Office, Gandhipuram pursuant to the notifications issued under Section 4(1) of the Land Acquisition Act, in G.O.Ms.No.519, dated 03.04.1991 (Housing and Urban Development Department) and G.O.Ms.No.246, dated 13.05.1992 (Housing and Urban Development Department) published in Gazette on 15.05.1992 has lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, (0/2013) and to call for the records of the second respondent herein culminating with the order in Letter No.W.P.948 of 2016, dated 13.02.2017 and quash the same.

2. The first respondent had initiated the land acquisition proceedings to acquire the agriculture land comprised in S.F.Nos.803/2, 803/3 and 804/1, including the land comprised in Survey No.805/1A belonging to the petitioners by the notification issued under Section 4(1) of the Land Acquisition Act, 1894 (herein after called as "the Act"), vide G.O.Ms.No.519, dated 03.04.1991 for the purpose of Neighbourhood scheme of the third respondent and the declaration under Section



6 of the Act vide G.O.Ms.No.246, dated 13.05.1992. According to the petitioners, neither them nor their predecessors were aware about the acquisition proceedings. However, the husband of the first petitioner and the father of the second and third petitioners herein, came to understand about the land acquisition from the adjacent owners who had received notices under the acquisition proceedings. They have also approached this Court by a writ petition in W.P.No. 5208 of 2008, challenging the acquisition proceedings initiated by the first respondent, vide notification under Section 4(1) and Section 6 declaration of the Act. This Court by an order, dated 12.06.2009, held that neither approval under Section 3 f(vi) of the Act was obtained nor notice under Section 9(3) of the Act was issued and the award was also not passed within the period of two years as stipulated under the Act. Therefore, the entire acquisition proceedings suffers from infirmities and illegalities and quashed the entire acquisition proceedings.

3. Thereafter, the first respondent dropped the acquisition proceedings of their neighbours and the revenue records and other land records were mutated back to their respective owners. They were also issued patta. In pursuant to the order passed by this Court in W.P.No. 5208 of 2008, dated 12.06.2009, the husband of the first petitioner submitted a representation to drop the acquisition proceedings insofar as their subject land. However, it was not considered and as such they filed a writ petition before this Court in W.P.No. 948 of 2016 and by an order dated 11.01.2016, this Court directed the second respondent to consider the same and pass orders. However, the request made by the petitioner was rejected and it is under challenge in writ petition in W.P.No.15712 of 2017.

4. The learned counsel for the petitioner would submit that the entire land acquisition proceedings initiated by the first respondent has become void ab initio, in view of the order passed by this Court in W.P.No. 5208 of 2008. Thereafter, the other adjacent land owners also have challenged the acquisition proceedings of the notification issued under Section 4(1) of the Act, in G.O.Ms.No.1216, dated 17.09.1991 and the consequential declaration made under Section 6(1) of the Act issued in G.O.Ms.No.934, dated 31.12.1992 in W.P.No.11778 of 2013. This Court by an order dated 02.12.2019, quashed the entire acquisition proceedings. He also relied upon the judgment passed in W.A.No.252 to 255 of 2011, dated 16.08.2011, wherein the Hon'ble Division Bench of this Court had dismissed the appeals as against the quashment of the land acquisition proceedings arising under the same scheme. He further submitted



that, therefore the respondents are bound to restore the lands belonged to the petitioners in their names and no purpose would be served to the respondents by retaining the subject land. Even as per the provisions under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the entire proceedings are liable to be quashed on the ground that no compensation has been paid to the petitioners till date and no physical possession of the subject land has been taken over.

5. Dr. S. Gouri, the learned counsel for the third respondent filed a counter and contented that the subject land relating to S.F.No.805/A to an extent of 0.09.5 hectares in Kalapatty Village, Coimbatore district was acquired with other lands to an extent of 6.54.0 hectares by the proceedings of the Land Acquisition Officer for implementation of housing scheme by the Tamil Nadu Housing Board vide Award No. 8/94, dated 20.05.1994. The possession of the above land is handed over to the Tamil Nadu Housing Board as early as on 09.12.1994. The layout was prepared inclusive of the subject land for implementation of Housing Scheme in Kalapatty Village, Coimbatore District and got approved vide LP/DTCP No.434/95 and the scheme was implemented to an extent of 23.35 acres as Kalapatty Neighbourhood Scheme (Phase-I) in Kalapatty Village. She also relied upon the judgment reported in 2015 (5) MLJ 248 (SC) LNIND 2015 SC 324 in the case of "Chairman and Managing Director, TNHB Vs. S.Sasraswathy and Others" and the Hon'ble Supreme Court of India held that the High Court annulled the entire acquisition proceedings. Whether the quashing of the acquisition proceedings in respect of the other matters would enure the benefit to the other owners. When the Division Bench expressly limited the controversy to the quashing of proceedings, it doesn't have the effect of quashing the entire acquisition. She further stated that, unless the declaration under Section 6 or notification under Section 4 of the Act is not explicitly quashed in toto or its wholeness also by the Court, the benefits of relief granted by the Court would be effective only qua the parties before it.

6. Therefore, though the adjacent owners' writ petitions were allowed by this Court, the same benefit cannot be extended to the petitioners insofar as the subject property, since already the scheme was implemented by obtaining the approval vide LP/DTCP/434/95 for the Kalapatty Neighbourhood Scheme. She further submitted that this writ petition is filed after 22 years, that too, after passing an award and after implementation of the scheme.



7. Insofar as the grounds raised under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is concerned, already the Constitutional Bench of the Hon'ble Supreme Court of India in Indore Development Authority Vs. Manoharlal and ors etc., reported in (2020) 8 SCC 129, the grounds raised by the petitioners have already settled. Therefore, it does not envisage or confer any such right to question the acquisition proceedings which have been concluded long back, the legality of the proceedings cannot be challenged belatedly and the right to challenge cannot be revived by virtue of the provisions under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

8. Heard Mr.M.Vaidyanathan, learned counsel appearing for the petitioners, Mr.Richardson Wilson, learned Government Advocate appearing for the respondents 1 and 2 and Dr.R.Gouri, learned Senior Counsel appearing for the third respondent.

9. The Tamil Nadu Housing Board, Coimbatore Housing Unit, has proposed to acquire the land ad-measuring 808.87.5 hectares in No.12, Kalapatty Village, Coimbatore district for the construction of houses under Kalapatty Neighbourhood Scheme. The lands to be acquired in Kalapatty village have been formed into 78 blocks for procedural convenience. The subject land comprised in S.F.No.805/1A falls in Block No. 60. It covers along with the other lands to an extent of 6.54.0 hectares in Kalapatty Village, Coimbatore district. The Draft Notification under Section 4(1) of the Act was approved in G.O.Ms.No.519, dated 03.04.1991 and it was published in the daily newspapers on 03.05.1991 and 05.05.1991. The substance of the notification was published in the locality on 08.05.1991. Therefore, the enquiry was conducted under Section 5(A) of the Act on 31.03.1992 and the draft declaration proposals under Section 6 were approved and the notification published in the Tamil Nadu Government Gazette Part II Section 2 No.287, dated 15.05.1992.

10. The Draft Notification under Section 7 of the Act was approved and published in the Tamil Nadu Government Gazette. The enquiry under Section 11 of the Act was conducted on 04.04.1994, after services of notices under Section 9(1) and 10, 9(3) and 10 of the Act. The same notification issued under Section 4(1) of the Act in G.O.Ms.No.519, dated 03.04.1991 and G.O.Ms.No.246, dated 13.05.1992 in respect of the land comprised in S.F.No.804/1 situated at Kalapatty Village, Coimbatore, were challenged before this Court in W.P.No.5208 of 2008. This Court



by an order, dated 12.06.2009, quashed the proceedings on the ground that the publication of declaration under Section 6 of the Act was only made on 22.05.1992. It could be seen from the records, that there was nothing in the records to show that the publication was effected on 22.05.1992 in the locality except the bald statement by the Government Advocate. Hence, the submission of the Government Advocate could not be countenanced. A draft award made by the respondents in Award No. 8/94, on 20.05.1994, was not passed within the time limit of two years from the date of declaration and in view of that, the entire proceedings become lapsed. Further observed that there was no approval under Section 3 f(vi) of the Act. No notices for enquiry under Section 9(3) of the Act and there was no legally valid award made by the Land Acquisition Officer after getting prior approval from the competent authority within the stipulated period of two years. It became final and no appeal was filed by the respondents. The other adjacent land owners also challenged the acquisition proceedings in W.P.No.11778 of 2013 and this Court by an order, dated 02.12.2019 observed that already the adjacent owners challenged the same acquisition proceedings in W.P.No.13616 of 2013 and batch and W.P.No.16417 of 1998 etc and batch, were allowed by the common order dated 30.08.2010. The said order was challenged in W.A.No.422 of 2011 etc and batch, were dismissed by the common Judgment, dated 14.09.2011. In fact, it was also confirmed by the Hon'ble Supreme Court of India in Special Leave to Appeal (Civil) Nos. 6063 to 6066 of 2012 by an order, dated 13.04.2012. Another batch of Special Leave to Appeal (Civil) Nos. 14582 to 14634 of 2012 were dismissed by an order, dated 19.09.2012. Further held that the notification under Section 4(1) and Section 6(1) enquiry have been quashed and it does not survive, that would mean that it is quashed for the purpose of housing board cannot take of stand that it is quashed in respect of those petitioners alone. Further held that the Hon'ble Division Bench of this Court held more than one decisions and quashed the acquisition proceedings in respect of the same scheme.

11. Further observed that the entire Kalapatty Neighbourhood Scheme has not been implemented till date and several orders have been passed by this Court quashing the acquisition proceedings. Insofar as the latches is concerned, as it has been filed after several years from the date of the award, however, the petitioners are still in possession and enjoyment of the subject property and they have submitted application for transfer of patta and the same was rejected. It is also in challenge in the W.P.No.15712 of 2017. Insofar as the compensation is concerned, it is also not paid and as such



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they invoked the provisions under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and challenged the acquisition proceedings. That apart, already the adjacent owners filed writ petitions challenging the acquisition proceedings and the same were allowed.

12. The learned counsel for the third respondent vehemently contented that the learned Advocate General in the order passed in the writ petition cited by the petitioner, had produced maps to show that the project is still viable for consideration. An observation to the said effect has been made by the learned Single Bench while allowing the writ petitions stating that the lands ever after being fractured, if the housing board as per revised schemes wants to go ahead with building houses this execution will no way hamper it. Accordingly, insofar as the land ad-measuring 23.35 acres for the Kalapatty Neighbourhood Scheme including the subject land in the present writ petition got approved in LP/DTCP No. 434/95 and the said scheme was implemented. Whereas the possession of the subject land has not been taken over and the petitioners are still in possession and enjoyment of the subject land. Therefore, mere approval of the layout cannot be said that the Kalapatty Neighbourhood Scheme was implemented in Kalapatty Village. Hence, the entire acquisition proceedings in respect of the subject land cannot be sustained and have lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, since there is no records to show that the petitioners were paid compensation for the subject land, has been deposited and there is no records to show even for symbolic possession in respect of the subject property.

13. In view of the above, the acquisition of the petitioner's agricultural land measuring an extent of 0.09.5 hectares comprising in S.F.No.805/1A situated in Kalapatty East Village, Coimbatore North Taluk Office, Sub Registrar Office, Gandhipuram pursuant to the notifications issued under Section 4(1) of the Land Acquisition Act, in G.O.Ms.No.519, dated 03.04.1991 (Housing and Urban Development Department) and G.O.Ms.No.246, dated 13.05.1992 (Housing and Urban Development Department) published in Gazette on 15.05.1992 in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, (0/2013) is lapsed and the order passed by the second respondent in Letter No.W.P.948 of 2016, dated 13.02.2017 is quashed.



14. The second respondent is directed to restore the subject lands in the name of the petitioners and issue patta in their favour within a period of six weeks from the date of receipt of a copy of this order.

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15. In the result, these writ petitions are allowed. Consequently, connected Miscellaneous petition is closed. There shall be no order as to costs.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

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To

1. The Secretary to Government,
The State of Tamil Nadu,
Housing and Urban Development Department,
Fort St.George,
Chennai 600 009.
2. The Special Tahsildar,
(Land Acquisition),
Housing Scheme Unit No.II,
Coimbatore - 641 012.
3. The Director,
Tamil Nadu Housing Board,
493, Anna Salai, Nandanam,
Chennai 600 035.

+2cc to Mr.M.Vaidhiyanathan, Advocate Sr.56537

W.P.Nos.15711 and 15712 of 2017
and W.M.P.No.16995 of 2017

ajs[col]
srg 29/11/2021