

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2021

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.No.25985 of 2017 and

W.M.P. No.27686 of 2017

1.M.Thirunavukarasu
2.S.Devaki
3.S.Surender

.. Petitioners

Vs.

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

2.The Member Secretary
Chennai Metropolitan Development Authority
No.1, Gandhi Irwin Road, Egmore
Chennai - 600 008

3.The Chief Executive Officer
Tamil Nadu Housing Board
Chennai Metropolitan Development Authority
No.1, Gandhi Irwin Road, Egmore
Chennai - 600 008

4.The Special Tahsildar (Land Acquisition)
Maraimalai Nagar Schemes, Maraimalai Nagar
Kancheepuram District

5.N.Gopal

6.Tamil Nadu Housing Board
No.493 Anna Salai
Nandanam, Chennai - 600 035

.. Respondents

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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the 4th respondent to determine the compensation in respect of petitioner's land comprised in S. No.315/2, to an extent of 99 cents situated at Ninnakarai Village, Chengalpattu Taluk, Kancheepuram District acquired under the Land Acquisition proceedings vide Award No.2/1983 dated 02.03.1983, in accordance

with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

* * *

For Petitioner : Mr.P.S.Kothandaraman

For R1 & R4 : Mr.I.Sathish
Additional Government Pleader

For R2 & R3 : Mr.Raja Srinivas

For R5 : No Appearance

O R D E R

This writ petition is filed for issuing a Writ of Mandamus directing the 4th respondent to determine the compensation in respect of the petitioner's lands comprised in S. No.315/2, to an extent of 99 cents situated at Ninnakarai Village, Chengalpattu Taluk, Kancheepuram District acquired under the land acquisition proceedings vide Award No.2/1983 dated 02.03.1983, in accordance with the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

2. The brief facts that are germane for the disposal of the writ petition are as follows: The petitioner's land was acquired under the Central Act 1894 for the purpose of development of new satellite town near Chennai i.e. Maraimalai Nagar by the Chennai Metropolitan Development Authority. The acquisition proceedings was initiated long back and a declaration under Section 6 of the Land Acquisition Act, 1894 was issued on 22.10.1977. It is admitted that the award itself was made on 02.03.1983 in respect of petitioner's land. The petitioner admitted that the amount that was awarded in respect of petitioner's land was lying in revenue deposit. It is admitted by the petitioner that a reference under Section 18 and 30 of Land Acquisition Act, 1894, are also pending in LAOP Nos.47 and 48/2004 before the Reference Court, namely Sub Court, Chengalpattu.

3. The case of the petitioner is that the petitioner is entitled to compensation under the new legislation, namely Act 30 of 2013, i.e. Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The Hon'ble Supreme Court in Indore Development Authority vs. Manoharlal and others reported in (2020) 8 SCC 129 : 2020 SCCONLINE SC 316 has summarised the legal position on the interpretation of Section 24 of Act 30 of 2013 in the following lines:

" 365. Resultantly, the decision rendered in Pune Municipal Corpn. [Pune Municipal Corpn. v. Harakchand Misirimal Solanki, (2014) 3 SCC 183 : (2014) 2 SCC (Civ) 274] is hereby overruled and all other decisions in which Pune Municipal Corpn. [Pune Municipal Corpn. v. Harakchand Misirimal Solanki, (2014) 3 SCC 183 : (2014) 2 SCC (Civ) 274] has been followed, are also overruled. The decision in Sree Balaji Nagar Residential Assn. [Sree Balaji Nagar Residential Assn. v. State of T.N., (2015) 3 SCC 353 : (2015) 2 SCC (Civ) 298] cannot be said to be laying down good law, is overruled and other decisions following the same are also overruled. In Indore Development Authority v. Shailendra [Indore Development Authority v. Shailendra, (2018) 3 SCC 412 : (2018) 2 SCC (Civ) 426] , the aspect with respect to the proviso to Section 24(2) and whether "or" has to be read as "nor" or as "and" was not placed for consideration. Therefore, that decision too cannot prevail, in the light of the discussion in the present judgment.

366. In view of the aforesaid discussion, we answer the questions as under:

366.1. 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 the 2013 Act, there is no lapse of proceedings. Compensation has to be determined under the provisions of the 2013 Act.

366.2. 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 2013 Act under the 1894 Act as if it has not been repealed.

366.3. 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 2013 Act 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.

366.4. The expression "paid" in the main part of Section 24(2) of the 2013 Act does not include a deposit of compensation in court. The consequence of non-deposit is provided in the proviso to Section 24(2) in case it has not been deposited with respect to majority of landholdings then all beneficiaries (landowners) as on the date of notification for land acquisition under Section 4 of the 1894 Act shall be entitled to compensation in accordance with the provisions of the 2013 Act. In case the obligation under Section 31 of the Land Acquisition Act, 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 2013 Act has to be paid to the "landowners" as on the date of notification for land acquisition under Section 4 of the 1894 Act.

366.5. In case a person has been tendered the compensation as provided under Section 31(1) of the 1894 Act, 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). The landowners 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 2013 Act.

366.6. The proviso to Section 24(2) of the 2013 Act is to be treated as part of Section 24(2), not part of Section 24(1)(b).

366.7. The mode of taking possession under the 1894 Act 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 1894 Act, the land vests in State there is no divesting provided under Section 24(2) of the 2013 Act, as once possession has been taken there is no lapse under Section 24(2).

366.8. 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 2013

Act came into force, in a proceeding for land acquisition pending with the authority concerned 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.

366.9. Section 24(2) of the 2013 Act 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 2013 Act 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.

4. In the present case, it is not in dispute that possession was taken. It is also admitted that there was reference under Sections 18 and 30 of Central Act and that amount determined as compensation is deposited to the credit of reference court in 2004. In the said circumstances, the contention of the petitioner that he is entitled to compensation under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, cannot be considered. The contention of the petitioner taking support from the judgment of the Hon'ble Supreme Court in Pune Municipal Corporation vs. Harakchand Misrimal Solanki reported in 2014(1) CTC 755 and Delhi Development Authority vs. Sukhbir Singh and others reported in 2016 (6) CTC 624, cannot be countenanced in view of the recent judgment of the Constitutional Bench of the Hon'ble Supreme Court in Indore Development Authority case.

5. When it is admitted that the award in respect of the land belonging to the petitioner was passed in the year 1983, that the possession was taken long back, that the compensation amount was also deposited in reference court, in view of the dispute regarding the ownership and the apportionment under Section 30 of the Land Acquisition Act (Central Act), at the instance of petitioner, this court is unable to countenance any of the submissions of the learned counsel for the petitioner. In the counter affidavit, it is stated that the petitioner's father attended award enquiry and had given statement to the effect that he has no interest in the property. Hence there is no merit in this writ petition.

6. Accordingly, the writ petition is dismissed. However, there is no order as to cost. Consequently, the connected writ miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS VII)

/true copy/
Sub Asst. Registrar

asr
To

- 1.The Secretary to Government
of Tamil Nadu
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- 2.The Member Secretary
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- 5.Tamil Nadu Housing Board
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+1 cc to Mr.P.S.Kothandaram Advocate sr12833

+1 cc to the Government Pleader sr13221

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