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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2021

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

W.P.NOS.2683, 14772 AND 14773 OF 2017

AND

W.M.P.NOS.16015 AND 16016 OF 2017

V.N.Manohar

... Petitioner in
W.P.No.2683 of 2017

M.Kayalvizhi

... Petitioner in
W.P.No.14772 of 2017

K.Minraj

... Petitioner in
W.P.No.14773 of 2017

.Vs.

1. The Government of Tamil Nadu,
Rep. by its Secretary,
Housing and Urban Development Department,
Fort. St. George,
Chennai - 600 035.
2. The Tamil Nadu Housing Board,
Rep. by its Managing Director,
No.493, Anna Salai,
Nandanam, Chennai - 600 035.
3. The Special Deputy Collector,
(Land Acquisition),
The Tamil Nadu Housing Board Scheme,
No.493, Anna Salai,
Nandanam, Chennai - 35.

... Respondents in
W.P.No.2683 2017

1. The Government of Tamil Nadu,
Rep. by its Secretary,
Housing and Urban Development Department,
Fort. St. George,
Chennai - 600 035.



2. The Tamil Nadu Housing Board,
Rep.by its Managing Director,
No.493, Anna Salai,
Nandanam, Chennai - 600 035.

3. The Executive Engineer,
Administrative Officer & Competent Authority,
K.K.Nagar Division,
Tamil Nadu Housing Board,
Chennai - 600 083.

4. The Land Acquisition Officer and
Special Tahsildar (LA) IV,
Tamil Nadu Housing Board Schemes,
Nandanam, Chennai - 600 035.

... Respondents in W.P.Nos.14772
and 14773 of 2017

PRAYER IN W.P.NO.2683 OF 2017:-

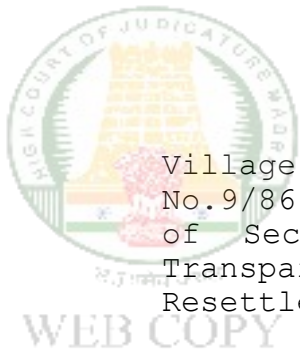
Writ Petition is filed under Article 226 of Constitution of India, praying to issue a Writ of Declaration, declaring that the land acquisition proceedings initiated under Land Acquisition Act, 1894, starting with Section 4(1) Notification in G.O.Ms.No.138, Housing Department, dated 14.05.1975 and published in the Tamil Nadu Government Gazette dated 11.06.1975, in so far as the petitioner's land is concerned measuring to an extent of 11 cents out of 50 cents, comprised in S.No.197/1A, situated at No.102, Ramapuram Village, Saidapet Taluk, covered in Block-VIII as lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act XXX of 2013).

PRAYER IN W.P.NO.14772 OF 2017:-

Writ Petition is filed under Article 226 of Constitution of India, praying to issue a Writ of Declaration, declaring that the acquisition in respect of Survey No.197/1A, Ramapuram Village, Ambattur Taluk, Thiruvallur District under Award No.9/86 dated 23.09.1986 is deemed to have been lapsed by virtue of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

PRAYER IN W.P.NO.14773 OF 2017:-

Writ Petition is filed under Article 226 of Constitution of India, praying to issue a Writ of Declaration, declaring that the acquisition in respect of Survey No.197/1A, Ramapuram



Village, Ambattur Taluk, Thiruvallur District under Award No.9/86 dated 23.09.1986 is deemed to have been lapsed by virtue of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

For Petitioner
in W.P.No.2683 of 2017 : No Appearance

For Petitioner
in W.P.Nos.14772 : Mr.J.Saravanan
and 14773 of 2017

For R-1 and R-3
in W.P.No.2683 of 2017
and for R1 & R-4 : Mr.Richardson Wilson
W.P.Nos.14772 Government Advocate
and 14773 of 2017

For R-2
in W.P.No.2683 of 2017
and for R2 & R-3 : Mr.M.Baskar
W.P.Nos.14772 Standing Counsel
and 14773 of 2017

C O M M O N O R D E R

W.P.No.2683 of 2017 has been filed to issue a Writ of Declaration, declaring that the land acquisition proceedings initiated under the Land Acquisition Act, 1894, starting with Section 4(1) Notification in G.O.Ms.No.138, Housing Department, dated 14.05.1975 and published in the Tamil Nadu Government Gazette dated 11.06.1975, in so far as the petitioner's land is concerned, measuring an extent of 11 cents out of 50 cents, comprised in S.No.197/1A, situated at No.102, Ramapuram Village, Saidapet Taluk, covered in Block-VIII as lapsed, in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act XXX of 2013) (hereinafter referred to as 'the New Act' for shot).

2. W.P.Nos.14772 and 14773 of 2017 have been filed to issue a Writ of Declaration, declaring that the acquisition in respect of Survey No.197/1A situated at Ramapuram Village, Ambattur Taluk, Thiruvallur District under Award No.9/86 dated 23.09.1986, is deemed to have been lapsed by virtue of Section 24(2) of the New Act.



3. The case of the petitioner in W.P.No.2683 of 2017 is that his mother, viz., N.Kamalammal (since deceased) purchased a vacant land measuring an extent of 11 cents out of 50 cents, comprised in S.No.197/1A, situated at No.102, Ramapuram Village, Saidapet Taluk from one P.Sukumar by registered a sale deed dated 20.01.1982, vide Document No.80 of 1982 in the Office of the Sub Registrar, Out of the petitioner's contribution and from the life time savings of his mother, the said property was purchased in her name for a sale contribution of Rs.17,000/-.

4. The case of the petitioners in W.P.Nos.14772 and 14773 of 2017 is that the larger extent of 0.50 acres of land comprised in Survey No.197/1A is the petitioners' property. The said property was earlier owned by one Kuppammal by registered sale deed dated 03.01.1975, vide Document No.4 of 1975 and the said land was sold to one Sugumaran. The said Sugumaran executed a General Power of Attorney dated 14.11.1980, registered as Document No.1403 of 1980 in respect of 0.24 acres of the land in favour one C.V.Sankar. In turn, the said C.V.Sankar executed a sale deed dated 10.03.1981 in favour of one Parvathiammal, registered vide Document No.470 of 1981 in respect of 0.24 acres of the land. The said Parvathiammal, in turn, later executed a General Power of Attorney in favour of the said C.V.Sankar dated 20.04.1983, registered as Document No.125/1983. The said C.V.Sankar executed a sale deed dated 03.05.1989 in favour of Inniah registered as document No.1700/1989. The said Inniah executed a General Power of Attorney dated 20.06.1996 in favour of Rajendran in respect of 3640 sq.ft of land registered as Document No.283 of 1996. The said Rajendran General Power of Attorney of Inniah sold the said property by way of two sale deeds, dated 17.10.1996 in favour of one Sarala and Baby respectively, registered as Document Nos.3177 and 3178 of 1996 in respect of 2565 sq.ft and 1075 sq.ft respectively. In turn, the said Sarala and Baby jointly executed a Sale deed dated 22.11.2002 in favour of the petitioners, which is registered as Document No.1718/2002 in respect of 3640 sq.ft. Thus the petitioner in W.P.No.14773 of 2017 become had owner of the above said property.

5. Even before they purchased their respective subject lands, the second respondent had proposed to acquire the lands to an extent of 421.26 acres in Ramapuram Village for the formation of New Neighbourhood Known as "Mid-West Madras Neighbourhood Land Development Scheme". Subsequently, it was revised to an extent of 338.28 acres of lands. Accordingly, a Notification under Section 4(1) of the Land Acquisition, 1894 (hereinafter referred to as 'the Act' for short) was issued which was approved by the first respondent in G.O.Ms.No.138, Housing Board, dated 14.05.1975 and published in the Government Gazette on 11.06.1975. The entire lands were splitted into nine



blocks. A draft declaration was effected under which the Act was approved by the Government of Tamil Nadu in G.O.Ms.No.970, dated 07.06.1978, by publishing in the Gazettee dated 09.06.1978. Subsequently, the award had been passed on 23.09.1986 in Award No.9 of 1986. All the formalities laid down under the Act had been duly followed and the possession was also taken over as early as on 30.10.1986. Thereafter, necessary mutations of the subject lands had been made in the name of the second respondent in all the Revenue Records. Subsequently, the second respondent also issued patta in Patta No.785. Thereafter, the Land Acquisition Officer handed over the entire possession of the subject properties to the Housing Board on 30.10.1986. Now, the Revenue Records stood in the name of the second respondent in patta No.785. Therefore, the entire subject lands now vested with the second respondent. The entire compensation amount payable to the petitioners in respect of their respective lands, was ordered to be deposited to the Civil Court under Sections 30 and 31(2) of the Act. Since the petitioners did not appear for the award enquiry and furnish the proof evidence before the Land Acquisition Officer having title over the subject land, the correct ownership and right over the land could not be determined which resulted in deposit of compensation amount into the Civil Court. After issuance of notice under Section 12(2) of the Act, the Land Acquisition Officer had taken possession of their respective subject lands and handed over to the requisition body, viz., the second respondent herein.

6. Admittedly, all the petitioners are the subsequent purchasers and it is settled position of law that the subsequent purchasers cannot have right to challenge the acquisition proceedings. The entire sale had taken place between 1988 and 2002. 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, wherein, 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,



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

.....

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



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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 U.P. Jal Nigam (supra) which is followed in M. Venkatesh (supra) and other decisions and consequently claim declaration Under Section 24 of the Act of 2013. What cannot be done directly cannot be permitted in an indirect method.

23. The provisions of the Act of 2013 aimed at the acquisition of land with least disturbance to the landowners and other affected families and to provide just and fair compensation to affected families whose land has been acquired or proposed to be acquired or are affected and to make adequate provisions for such affected persons for their rehabilitation and resettlement. The provisions of Act of 2013 aim at ousting all inter-meddlers from the fray by ensuring payment in the bank account of landholders Under Section 77 of the Act.

24. The intendment of Act of 2013 is to benefit farmers etc. Subsequent purchasers cannot be said to be landowners entitled to restoration of land and cannot be termed to be affected persons within the provisions of Act of 2013. It is not open to them to claim that the proceedings have lapsed Under Section 24(2)."

7. In the above judgment, the Hon'ble Supreme Court of India held that challenge to the acquisition proceedings under the provision of Section 24 of the New Act cannot be made, based on a void transaction nor declaration to get the property back. The transaction once void, is always a void transaction, as no title could be acquired in the land and as such, no such declaration can be sought. It would not be legal, just and equitable to give the land back to the purchaser, as land was not capable of being sold, which was in the process of acquisition under the Act of 1894. Therefore, the New Act does not confer any right on purchaser whose sale is ab-initio- void. Therefore, the petitioners herein cannot challenge the acquisition proceedings being the subsequent purchasers.

8. The present Writ Petitions have been filed invoking the provision of Section 24(2) of the New Act for the reason that the award amount has not been paid and the possession of the subject lands, had not been taken over till today. As stated supra, the subject lands were already taken possession and handed over to the second respondent. Thereafter, the entire



Revenue Records were mutated in the name of the second respondent and patta was also issued in favour of the second respondent herein. Insofar as the compensation amount is concerned, after the award, all the petitioners were duly served with notice as contemplated under Section 12(2) of the Act and thereafter, the compensation was deposited in the Civil Court.

9. That apart, the grounds raised by the petitioners in these Writ Petitions have already been answered and 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



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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, 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



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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 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."

10. The Hon'ble Supreme Court of India settled all proposition of law in the above judgment including the grounds raised by the petitioners herein. That apart, the award has been passed in Award No.9 of 1986 on 23.09.1986 itself and the possession of the property has already been taken by the Government and handed over to the Tamil Nadu Housing Board on 30.1.1986 itself. The Tamil Nadu Housing Board also deposited the compensation amount as awarded by the Land Acquisition Officer. Therefore, the petitioners 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 above dictum laid down by the Hon'ble Supreme Court of India, the issues raised by the petitioners herein already answered and settled by the Hon'ble Supreme Court of India 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, these writ petitions are devoid of merits and liable to be dismissed.

11. In the result, these Writ Petitions stand dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

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To

1. The Secretary,
The Government of Tamil Nadu,
Housing and Urban Development Department,
Fort. St. George,
Chennai - 600 035.
2. The Managing Director,
The Tamil Nadu Housing Board,
No.493, Anna Salai,
Nandanam, Chennai - 600 035.
3. The Special Deputy Collector, (Land Acquisition),
The Tamil Nadu Housing Board Scheme,
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Tamil Nadu Housing Board,
Chennai - 600 083.
5. The Land Acquisition Officer and
Special Tahsildar (LA) IV,
Tamil Nadu Housing Board Schemes,
Nandanam, Chennai - 600 035.

+4ccs to Mr.J.Saravanan, Advocate, S.R.Nos.54549 & 54550
+1cc to the Government Pleader, S.R.No.55057

W.P.NOS.2683, 14772 AND
14773 OF 2017

SSV(CO)
PBS/22/11/2021