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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2021

CORAM

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

W.P.NOS.1801 TO 1810 OF 2017

&

W.M.P.NOS.1790 TO 1799 OF 2017

AND

W.P.NO.4596 OF 2017 & W.M.P.NO.4821 OF 2017

AND

W.P.NO.16465 OF 2005 & M.P.NO.17917 OF 2005

AND

W.P.NOS.32602 & 32603 OF 2016

&

W.M.P.NOS.28255 & 28256 OF 2017

1	SELVA KUMARI	... PETITIONER in W.P.No.1801 of 2017
1	A.PITCHAI ARASU	... PETITIONER in W.P.No.1802 of 2017
1	N.MURUGAVEL	... PETITIONER in W.P.No.1803 of 2017
1	TMT.S.VIJAYALAKSHMI	... PETITIONER in W.P.No.1804 of 2017
1	SITHI FAREEDA	... PETITIONER in W.P.No.1805 of 2017
1	S.SARASWATHI	... PETITIONER in W.P.No.1806 of 2017
1	M.LIAGAT ALI	... PETITIONER in W.P.No.1807 of 2017
1	MRS.BOUSE	... PETITIONER in W.P.No.1808 of 2017
1	K.RAJASEKARAN	... PETITIONER in W.P.No.1809 of 2017
1	S.SOMASUNDARAM	... PETITIONER in W.P.No.1810 of 2017



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1 MRS.MALAR NILOPHER

... PETITIONER in
W.P.No.4596 of 2017

1 V.RAJA

... PETITIONER in
W.P.No.16465 of 2005

1 N.SAMPATH

... PETITIONER in
W.P.No.32602 of 2016

1 B.PRABHU

... PETITIONER in
W.P.No.32603 of 2016

.Vs.

1. THE GOVERNMENT OF TAMIL NADU,
REP. BY ITS SECRETARY,
HOUSING AND URBAN DEVELOPMENT DEPARTMENT,
FORT ST.GEORGE,
CHENNAI - 600 009.
2. THE CHAIRMAN AND MANAGING DIRECTOR,
TAMIL NADU HOUSING BOARD,
331, ANNA SALAI,
CHENNAI - 600 035.
3. THE EXECUTIVE ENGINEER,
SPECIAL DIVISION I,
TAMIL NADU HOUSING BOARD BUILDING,
THIRUMANGALAM,
CHENNAI - 600 040.
4. THE SPECIAL TAHSILDAR,
LAND ACQUISITION, SPECIAL DIVISION,
MMDA, CHENNAI - 600 006.

... RESPONDENTS 1 to 4 in W.P.Nos.1801
to 1810 of 2017 & 4596 of 2017
& W.P.No.32602 & 32603 of 2016

5. THE MEMBER SECRETARY,
CHENNAI METROPOLITAN DEVELOPMENT AUTHORITY,
GANDHI IRWIN SALAI,
EGMORE, CHENNAI - 600 008.

(R5 IS SUO MOTU IMPEADED AS PER ORDER DATED
02.02.2017 IN W.P.NOS.1801 TO 1810 OF 2017)

... 5th RESPONDENTS in W.P.No.1801
to 1810 of 2017



1 THE STATE OF TAMIL NADU,
REP. BY COMMISSIONER AND SECRETARY TO GOVERNMENT,
HOUSING AND URBAN DEVELOPMENT DEPEARTMENT,
CHENNAI - 9.

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2 THE MANAGING DIRECTOR,
TAMIL NADU HOUSING BOARD,
NANDANAM, CHENNAI - 35.

3 THE EXECUTIVE ENGINEER AND ADMN. OFFICER,
SPECIAL DIVISION - 1,
TAMIL NADU HOUSING BOARD,
CHENNAI - 101.

4 SOMASUNDARAM
S/O. T.SONAY MUTHU PILLAI
(R4 IMPEADED AS PER ORDER DATED 06.07.2006
IN W.P.M.P.NO.27634 OF 2005)

5 S.SARASWATHI

6 A.SHANMUGAM

7 N.MURUGAVEL

8 T.K.RAJASEKARAN
(RR 5 TO R8 IMPEADED AS PER ORDER
DATED 05.03.2007 IN W.P.NO.16465 OF 2005)

... RESPONDENTS in
W.P.No.16465 of 2005

PRAYER IN W.P.NO.1801 TO 1810 OF 2017:-

Writ Petitions is filed under Article 226 of Constitution of India, praying to issue a Writs of Declaration to declare that the acquisition proceedings initiated under Land Acquisition Act, 1894, insofar the petitioner plot No.1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12 covered under sale deed dated 30.11.1987 measuring an extent of 3822 sq.ft. comprising in survey No.271/2 and 271/5, from and out of total extent of 1 acre and 10 cents at No.81 of Mogappair Village, Ambattur Taluk, Thiruvallur District, is lapsed under Section 24 (2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and consequently restraining the respondents from taking possession of the above said land.



PRAYER IN W.P.NOS.1808 & 4596 OF 2017:-

Writ Petition is filed under Article 226 of Constitution of India, praying to issue a Writ of Declaration to declare that the acquisition proceedings initiated under Land Acquisition Act, 1894, in so far as, the petitioner Plot No.9A & 9B covered under the sale deed dated 25.01.1993 measuring from the total extent of 1 acre and 10 cents at No.81 of Magappair Village, Ambattur Taluk, Thiruvallur District, is lapsed, under Section 24(2) of "Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and consequently restraining the respondents from taking possession of the said land respectively.

PRAYER IN W.P.NO.16465 OF 2005:-

Writ Petition is filed under Article 226 of Constitution of India, praying to issue a Writ of Mandamus or any other appropriate writ, order of direction in the nature of Writ, directing the respondents to recovery the lands in Survey No.271/2 to an extent of 1.00 acres and Survey No.271/5 to an extent of 0.10 acres.

W.P.NOS.1801 TO 1810 OF 2017

For Petitioners : Mr.V.Srinivasa Babu

For Respondents

For R1 & 4 : Mr.Richardson Wilson
Government Advocate

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

For R5 : No Appearance

W.P.NO.16465 OF 2005

For Petitioner : Mr.M.Thamizhavel

For Respondents

For R1 : Mr.Richardson Wilson
Government Advocate



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For R2 & 3 : Mr.M.Baskar
Standing Counsel
For R4 : Mr.M.Liagat Ali
For R5 to 8 : M/s.A.L.Ganthimathi

W.P.NOS.32602 & 32603 OF 2016

For Petitioners : Mr.V.Srinivasa Babu
For Respondents
For R1 & 4 : Mr.Richardson Wilson
Government Advocate
For R2 & 3 : Mr.M.Baskar
Standing Counsel

W.P.NO.4596 OF 2017

For Petitioners : Mr.V.Srinivasa Babu
For Respondents
For R1 & 4 : Mr.M.R.Gokul Krishnan
Government Advocate
For R2 & 3 : Mr.M.Baskar
Standing Counsel

COMMON ORDER

All the petitioners have challenged the acquisition proceedings in view of the provision under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 as lapsed on the ground that the possession of the respective property has not been taken and the compensation amount has not been paid to them.

2. The case of the petitioners is that all the petitioners have purchased their respective properties after 4(1) notification dated 23.10.1975. The erstwhile owners were served notice under Section 5-A of the Land Acquisition Act



(hereinafter called as 'the Act') for the enquiry and the enquiry was conducted on 05.08.1975. Their predecessors in title owned extent of 1 acre and 10 cents comprised in survey No.271 situated at Mogappair Village. The entire extent of 4 acres 10 cents comprised in survey No.271 was laid out and obtained approved layout plan from the Director of Town Planning. Thereafter all the house plots were sold out to the petitioners by the registered sale deed. Thereafter, every petitioner applied for patta. The entire revenue records were also mutated in their respective names. Even then, the physical possession of their respective plots have not been taken over and the compensation has not been paid to the petitioners.

3. On perusal of counter revealed that the land comprised in survey No.271/2 and 271/5 to an extent of 1.10 acres originally stood registered in the name of one Perumal. The 4(1) notification was issued in GO.R.No.261 dated 23.10.1975. He was served notice for enquiry under Section 5-A of the Act. The enquiry was conducted on 05.08.1975 and the declaration notice under Section 6 was issued in GO.Ms.No.1520 dated 09.11.1978. Accordingly, award has been passed on 20.06.1983 in Award No.9 of 1983. Compensation of Rs.26,615/- has been duly received by the legal heirs of the said Perumal. Thereafter, the entire possession has been taken over by the Government and handed over to the Tamilnadu Housing Board on 01.07.1973. In fact, the legal heirs of the said Perumal filed writ petition in WP.No.7625 of 1982 challenging the acquisition proceedings and the same was dismissed on 22.07.1994. However, while pending the said writ petition, the petitioners and their vendors have purchased the house plots in the year 1988 i.e. 12.02.1988 and 15.02.1988. Therefore, all the petitioners are subsequent purchasers. The writ petition filed by the legal heirs of the original owner of the land in WP.No.7625 of 1982 was dismissed by this Court on 22.07.1994. Thereafter, they did not prefer any appeal. However, the subsequent purchasers have filed writ petitions challenging the acquisition proceedings in belated stage as follows:

S.No.	WP.Nos.	Name of the writ petitioner
1	13700 of 1996	N.Sampath
2	13701 of 1996	Siddhi Fareeda
3	13702 of 1996	S.Somasundaram
4	13703 of 1996	K.Rajasekhar
5	13704 of 1996	A.Shanmugam
6	13705 of 1996	A.Bitchai Arasu



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7	13706 of 1996	M.Selvakumari
8	13707 of 1996	M.Liagat Ali
9	13708 of 1996	Bouse
10	13764 of 1996	K.Babu
11	13765 of 1996	S.Saraswathi
12	13865 of 1996	M.Murugavel
13	13866 of 1996	Malar Nilophar

4. Though all the writ petitions were allowed on 19.02.1997, thereafter in the writ appeal by order dated 24.08.2004, disposed of with directions. However, the second respondent filed appeal before the Hon'ble Supreme Court of India and all the civil appeals have been allowed in Civil Appeal Nos.736 to 737 of 2008 by order dated 11.05.2015. The subsequent purchasers have also filed review applications in review application Nos.2376 to 2377 of 2016 and all the review applications were dismissed on 26.07.2016. Therefore, already the issues raised by the petitioners were dealt with in the earlier proceedings. That apart, the erstwhile owner of the lands had already challenged the acquisition proceedings and went up to the Hon'ble Supreme Court of India and failed. Therefore, the present writ petitions are nothing but re-litigation. Insofar as the compensation is concerned, already erstwhile owner received the entire compensation and in respect of possession is concerned, already possession has been taken over and handed over to the Tamilnadu Housing Board as early as on 01.07.1983. That apart, all the petitioners admittedly are subsequent purchasers. 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, in which 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



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Forest Dwellers (Recognition of Forest Rights) Act, 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



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restoration of land or lapse of acquisition. It cannot be by a 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)."

5. In the above judgment, the Hon'ble Supreme Court of India held that challenging 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 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 the purchaser as land was not capable of being sold which was in 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 cannot challenge the acquisition proceedings being the subsequent purchasers. As such, all the writ petitions are devoid of merits and liable to be dismissed.



6. Accordingly, all the writ petitions are dismissed. Consequently, connected miscellaneous petitions are closed. No order as to costs.

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Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner and Secretary,
Government of Tamil Nadu,
Housing and Urban Development Department,
Fort St. George,
Chennai - 600 009.
2. The Chairman and Managing Director,
Tamil Nadu Housing Board,
331, Anna Salai,
Chennai - 600 035.
3. The Executive Engineer,
Special Division I,
Tamil Nadu Housing Board Building,
Thirumangalam,
Chennai - 600 040.
4. The Special Tahsildhar,
Land Acquisition, Special Division,
MMDA, Chennai - 600 006.
5. The Member Secretary,
Chennai Metropolitan Development Authority,
Gandhi Irwin Salai,
Egmore, Chennai - 600 008.
6. The Executive Engineer & Administration Officer,
Special Division - I,
Tamil Nadu Housing Board,
Chennai - 101.



+2ccs to Mr.M.Thamizhavel, Advocate, S.R.Nos.50168 & 50169
+1cc to Mr.V.Srinivasa Babu, Advocate, S.R.No.50231
+1cc to M/s.A.L.Ganthimathi, Advocate, S.R.No.50917
+1cc to the Government Pleader, S.R.No.50475

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W.P.NOS.1801 TO 1810 OF 2017 AND
W.P.NO.4596 OF 2017 AND W.P.NO.16465 OF 2005
AND W.P.NOS.32602 & 32603 OF 2016

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