

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2021

CORAM

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

W.P.No.29664 of 2017
and W.M.P.No.31975 of 2017

R.Velusamy

...Petitioner

Vs

1. The State of Tamil Nadu
Rep. By Deputy Secretary,
(Adi Dravidar & Tribal Welfare Department),
Fort St. George,
Chennai - 600 009.
2. The Special Tahsildar (Land Acquisition),
Adi Dhraavidar Welfare,
Trichirapalli.
3. A.Chinnathurai
4. The District Collector,
Trichy District,
Trichy.

...Respondents

PRAYER:- Writ Petition is filed under Article 226 of Constitution of India, praying to issue a Writ of Declaration declaring that the G.O.No.143 Adi Dravidar and Tribal Welfare dated 04.08.1995 and Na.Ka.No.W6/12300/2001 dated 01.04.2001 published in the Trichirapalli District Gazette dated 18.04.2001 in so far as it relates to Survey No.304-1F, East Survey No.304-2C & 304-2D, South Survey No.304-F and West Survey No.304-1F to an extent of 0.15.0 Hectare in F-Keelaiyoor Village, Manapparai Taluk, Trichy District belonging to the Petitioner herrein, has become lapsed by applying Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 which came into force from 01.01.2014.

For Petitioner : Mr.T.R.Rajagopalan, Senior counsel
for M/s.C.V.Vijayakumar

For Respondents : Mr.Richardson Wilson,
1, 2, 4 Government Advocate

For Respondent 3 : No Appearance

O R D E R

This writ petition is filed to issue a Writ of Declaration declaring that the G.O.No.143 Adi Dravidar and Tribal Welfare, dated 04.08.1995 and Na.Ka.No.W6/12300/2001, dated 01.04.2001 published in the Trichirapalli District Gazette dated 18.04.2001, in so far as it relates to Survey No.304-1F, East Survey No.304-2C & 304-2D, South Survey No.304-F and West Survey No.304-1F to an extent of 0.15.0 Hectare in F-Keelaiyoor Village, Manapparai Taluk, Trichy District belonging to the Petitioner herein, has become lapsed by applying Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 (hereinafter called "New Act") which came into force from 01.01.2014.

2. The case of the petitioner is that the land owned by the petitioner comprised in Survey No.304/1F to an extent of 0.15.0 Hectares is situated at F-Keelaiyur Village, Manapparai Taluk, Trichy District. The first respondent have decided to acquire the said land for the purpose of providing burial ground to the poor Adi Dravidar families who lived in the village for a long period.

3. Subsequently, the notification under Section 4(1) under the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 was published in the District Gazette, Trichirapalli on 18.04.2001. Aggrieved by the same, the petitioner challenged the acquisition proceedings in W.P.No.11526 of 2001. However, the said writ petition was dismissed on 19.12.2008 and aggrieved by the same the petitioner also filed writ appeal in W.A.No.281 of 2009 and the same was also dismissed by this Court on 20.03.2018. Now, the present writ petition has been filed challenging the very same acquisition proceedings on the ground as contemplated under Section 24(2) of the New Act.

4. Mr.T.R.Rajagopalan, the learned Senior counsel for the petitioner submitted that the writ appeal filed by the petitioner was dismissed, while the said writ appeal was pending, the petitioner filed petition to raise additional ground in C.M.P.No.10446 of 2017, however, this Court dismissed the said writ appeal with liberty to file a separate petition.

5. He further submitted that the Form-III as contemplated under Section 7(3) of the Act was not issued to the petitioner. Therefore, without issuing proper notice, the inquiry has been conducted and the award has been passed. Therefore, the entire land acquisition proceedings is vitiated and liable to be set aside. Insofar as the possession is concerned, the petitioner is very much in possession and the same has not been taken over

by the Government even till today. Therefore, the entire acquisition proceedings have deemed to be lapsed.

6. Per contra, the learned Government Advocate by filing counter submitted that the first respondent acquired the subject land to provide burial ground facilities to poor Adi Dravidar families under the notification issued under Section 4 (1) of the Act which has been published in the District Gazette of Trichirapalli on 18.04.2001. However, the said proceedings was challenged by the petitioner in W.P.No.11526 of 2001 and the same was dismissed, till the disposal of the writ petition, an order of interim stay was granted in respect of taking possession. There was no bar to continue the Land Acquisition proceedings. On receipt of the same, the petitioner failed to appear for inquiry. Thereafter, the inquiry was conducted and award has been passed on 01.08.2001.

7. In the meanwhile, the petitioner approached this Court and as such this possession of the subject land was not taken over. Insofar as the compensation amount is concerned, it is ordered to be kept in civil Court deposit as contemplated under the Act. The Bankers Cheque bearing No.BC/CS/005/170784 dated 19.03.2002 drawn on the State Bank of India, Trichirapalli for a sum of Rs.10,652/- (Rupees Ten Thousand Six Hundred and Fifty Two only) being the cost of the land acquired in the award proceedings was deposited in the civil Court.

8. Aggrieved by the order passed in W.P.No.11526 of 2001 the petitioner filed writ appeal in W.A.No.281 of 2009 and the same was also dismissed by an order dated 20.03.2018. The only ground raised by the petitioner is that there are alternative land to provide burial ground for the Harijans. The said request was not considered and the acquisition proceedings were upheld by the Hon'ble Division Bench of this Court by an order dated 20.03.2018. Though the petitioner filed C.M.P.No.10446 of 2017 to permit the petitioner to raise the above additional grounds 1 to 4 as grounds 8 to 11 of the grounds raised in the Memorandum of Grounds in W.A.No.281 of 2009, the petitioner was never given liberty to file a fresh writ petition raising the ground as contemplated under Section 24(2) of the New Act.

9. Heard Mr.T.R.Rajagopalan, learned Senior counsel for Mr.C.V.Vijayakumar, learned counsel for the petitioner and Mr.Richardson Wilson, learned Government Advocate for respondents 1, 2, 4.

10. The petitioner's land was acquired to provide burial ground for the Harijans under the Tamil Nadu of Land for Harijan Welfare Schemes Act, 1978, subsequently, 4(1) Notification was issued and the same was challenged by the petitioner in

W.P.No.11526 of 2001, which was dismissed by this court by order dated 19.12.2008. Pending writ petition there was an order of stay of dispossession alone. Therefore, the respondent proceeded with the acquisition proceedings and issued notice for award inquiry under Section 7 of the Act.

11. Though the petitioner received the said notice, the petitioner failed to appear for award inquiry. He did not file any objections and not filed any petition explaining reason for his absence. Therefore, the award inquiry was conducted and award has been passed on 01.08.2001. Thereafter, the award amount has been deposited in the Civil Court Deposit as per the provision contemplated under the Act on 19.03.2002. Aggrieved by the order passed in W.P.No.11526 of 2001, the petitioner filed writ appeal in W.A.No.281 of 2009 and also obtained an order of interim stay of dispossession alone.

12. Pending writ petition, the petitioner filed C.M.P.No.10446 of 2017 to raise additional ground. However, the Hon'ble Division Bench of this Court dismissed the writ appeal by an order dated 20.03.2018. In fact, this Court had gone through the entire file and dismissed the writ petition on merits by following the Full Bench Judgment of this Court reported in 2006(4) CTC 609 in the case of R.Pari -vs- The Special Tahsildar, (ADW), Devakottai and another.

13. The main contention of the petitioner in the writ appeal is that the Harijan community is having a burial ground in the said village and apart from that, there is a poramboke land also available. The petitioner is the small farmer and he is having a small piece of land admeasuring to an extent of 0.15.0 Hectares for cultivation. The Hon'ble Division Bench of this Court observed that originally the subject land belong to the schedule community people and portion of the land was used as burial ground. However, in the year 1924, the forefathers of the petitioner purchased the said property and even after purchasing the said property they allowed the harijan people to bury the dead bodies.

14. Later on, the petitioner was allotted the said land by the partition. Thereafter, the petitioner objected the harijans to bury the dead bodies in the subject land. Therefore, the harijans made representation to the District Collector for providing burial ground to their community. The District Collector made an elaborate inquiry to satisfy the harijans of the said village who did not have a separate burial ground. Thereafter, he initiated the proceedings to acquire the said land for burial ground.

15. The Hon'ble Division Bench of this Court also perused the records and satisfy the manner in which the inquiry was conducted and passed an award. Therefore, the present writ petition is nothing, but in reality, the same issue on the ground that the acquisition proceedings have lapsed, since the petitioner was not served with notice under Section 7(3) and he was not issued Form.3 as contemplated under Section 7(3) of the Act.

16. As stated supra, all the procedures have been duly complied with and award was passed by the respondents. Insofar as the possession is concerned, due to pendency of the writ petition, the physical possession has not been taken over. Therefore, there is absolutely no ground of lapse of acquisition proceedings as per Section 24(2) of the New Act.

17. In fact, the grounds raised by the petitioner has already been settled by the Hon'ble Supreme Court of India in the case of Indore

Development Authority Vs. Manoharlal and others etc reported in 2020 (8) SCC 129, wherein it is held as follows:

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

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 Act of 2013 under the Act of 1894 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 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 317 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 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 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.

366.5. 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.

366.6. 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).

366.7. 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).

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 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.

366.9. 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."

18. The Hon'ble Supreme Court of India settled all proposition of law in the above judgment including the grounds raised by the petitioner. That apart, the award has been passed on 01.08.2001 itself. The acquisition proceedings have been completed. The compensation amount is kept under civil Court deposit of the Tamil Nadu Act 38/1978. Therefore, the petitioner 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 dictum laid down by the Hon'ble Supreme Court of India, the issues raised by the petitioner was settled 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, the writ petition is devoid of merits and liable to be dismissed.

19. Accordingly, this writ petition is dismissed. No order as to costs. Consequently, the connected miscellaneous petition is dismissed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Secretary,
(Adi Dravidar & Tribal Welfare Department),
Fort St. George,
Chennai - 600 009.
2. The Special Tahsildar (Land Acquisition),
Adi Dhraavidar Welfare,
Trichirapalli.
3. The District Collector,
Trichy District,
Trichy.

+1 cc to M/s.T.R.Rajaraman,Advocate Sr.No. 49167

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NSK 22/10/2021