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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.10.2021

Coram:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos.10170 and 11508 of 2014

and

M.P.Nos.1 and 2 of 2014

and

W.P.No.17223 of 2015

and

M.P.Nos.1 and 2 of 2015

WP.No.10170 of 2014

1.Smt.Rajarajeshwari Danesh (died),

2.V.V.Venkata Narayanan

3.C.S.Dhanesh

4.Sangeetha

5.Mrinalini Dhanesh ...Petitioners in W.P.No.10170 of 2014

(P3 to P5 substituted as

Legal Representatives

of the deceased 1st petitioner

made in W.M.P.No.16045 of 2021

in W.P.No.10170/2014 by GKIJ).

Mrs.V.Sangeetha

...Petitioner in W.P.No.11508 of 2014

1.Smt.Rajarajeshwari Danesh (died),

2.V.V.Venkata Narayanan

3.C.S.Dhanesh

4.Sangeetha

5.Mrinalini Dhanesh ...Petitioners in W.P.No.17223 of 2015

(P3 to P5 substituted as

Legal Representatives

of the deceased 1st petitioner

made in W.M.P.No.16048 of 2021

in W.P.No.17223/2015 by GKIJ).

Vs.

1. The District Collector,
Kancheepuram.

2. The Land Acquisition Officer and Sub Collector,
Saidapet, Chennai-15.



3. The Land Acquisition Officer and
Revenue Divisional Officer,
Tambaram.

...Respondents in all W.Ps.

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PRAYER in W.P.No.10170 of 2014: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, calling for the records relating to the Award No.1/95, dated 16.8.95 passed by the 2nd respondent in respect of the land comprised in S.No.3/49A/1B, Uthandi Village and quash the same and consequently quash the notice of the 3rd respondent vide Roc.No.7893/2001 A dated 24.2.2014.

PRAYER in W.P.No.11508 of 2014: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorari, calling for the records relating to the Award No.1/95, dated 16.8.95 passed by the 2nd respondent in respect of the land comprised in S.No.3/49A/1B, Uthandi Village and notice of the 3rd respondent vide Roc.No.7893/2001 A dated 24.2.2014 and quash the same.

PRAYER in W.P.No.17223 of 2015: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorari to call for the records relating to the Award No.1/95, dated 16.8.95 passed by the 2nd respondent in respect of the land comprised in S.Nos.3/8B, 3/9B, 3/24B, 3/26A2, 3/32B, 3/32C in Uthandi Village, Saidapet Taluk, Kanchipuram district and quash the same and consequently quash the notice of the 3rd respondent vide Roc.No.7893/2001 A dated 26.5.2015.

For Petitioners
in all W.Ps.

: Mr.S.Vijayakumar

For Respondents
in all W.Ps.

: Mr.M.R.Gokul Krishnan,
Government Advocate

COMMON ORDER

All the writ petitions have been filed challenging the acquisition proceedings (notification under Section 4(1) of the Land Acquisition Act issued vide G.O.Ms.No.1547 dated 05.11.1992) on the ground that the subject land was acquired for the purpose of expansion of East Coast Road invoking emergency



clause under Section 17 of the Land Acquisition Act, 1894 (hereinafter called as 'the Act'). However, as per Section 17(3-A) of the Act, the respondents ought to have tendered payment of 80% of the compensation to the person interested or entitled thereon. Whereas the petitioners were not paid any compensation even till today. Another ground is that Section 4(1) notification was issued on 05.11.1992 and award was passed on 16.08.1995 in Award No.1 of 1995, however no notice was served on the petitioners under Section 4 (1) or under Section 11 of the Act. Compensation also has neither been paid to the land owners or interested persons or deposited in the court. The petitioners are in possession and enjoyment of their respective properties even till today. The petitioners have put up construction and constructed dwelling house and the houses were also assessed to the property tax and they are regularly paying property tax. As per Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the award pertaining to the subject property has been made more than five years prior to the commencement of the new Act i.e. Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Therefore, the entire acquisition proceedings have lapsed as per Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

2. The learned counsel for the respondents submitted that the Public Works Department in the Government of Tamil Nadu was bifurcated into Public Works Department and Highways Department with effect from 01.08.1996 vide GO.Ms.No.326, Personnel and Administrative Reforms (G) Department, dated 02.09.1996. As such, the subject matter in the impugned Government Order now comes under the administrative control of the Highways Department and the Additional Chief Secretary to Government, Highways and Minor Ports Department alone is competent to decide the claim of the petitioners and to give any relief to the petitioners based on the outcome of the above writ petitions.

3. In similar writ petitions relating to the subject land, learned Advocate Commissioner was appointed to conduct inspection with regards to the status of the properties to ascertain the distance between the East Coast Road and the properties. The learned Advocate Commissioner filed report and stated that all the petitioners have constructed their houses and obtained electricity service connection and living there. He also mentioned the distance between the subject property of the respective petitioners and the East Coast Road. In almost all the writ petitions, the distance between the subject property and the East Coast Road is not below 15 meters distance.



4. Therefore, the petitioners are in possession and enjoyment of the respective subject properties. It is also evident from the records produced by the respective petitioners such as family card, electricity consumption card, voter ID and other revenue records to show that the petitioners are in possession and enjoyment of their respective properties. Insofar as the possession is concerned, notices under Section 12(2) of the Land Acquisition Act, dated 24.02.2014 were issued only on 07.03.2014 by the third respondent.

5. On perusal of the said notice, revealed that on receipt of the said notice, within 15 days from the date of receipt of notice, the respective land owners shall appear before the third respondent and produce all the revenue documents such as encumbrance certificate, patta and other title deeds, etc and receive the compensation, failing which the compensation will be deposited in the Court. The award was passed on 16.08.1995. Whereas the notice under Section 12 (2) of the Land Acquisition Act was issued only on 24.02.2014. The respondents also failed to produce any evidence to show that the award amount was deposited immediately after the award in the revenue deposit or court deposit. Notice issued under Section 12(2) of the Land Acquisition Act on 24.02.2014 shows that only to escape from the clutches of provisions under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Therefore, the possession of the subject properties has not been taken from the respective petitioners even till today. There is no evidence to show that the compensation was also paid to the respective petitioners by court deposit or by revenue deposit. In this regard, the learned counsel for the petitioners relied upon the judgment rendered by the Constitution Bench of the Hon'ble Supreme Court of India in the case of Indore Development Authority Vs. Manoharlal and ors 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:

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



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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 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



Rehabilitation and Resettlement Act, 2013.

7. Accordingly, all the writ petitions are allowed and the entire impugned proceedings are quashed. Consequently, connected miscellaneous petitions are closed. No order as to costs.

Sd/-
Assistant Registrar (CS-VI)

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Sub Assistant Registrar

ssn

To

1. The District Collector,
Kancheepuram.
2. The Land Acquisition Officer and Sub Collector,
Saidapet,
Chennai-15.
3. The Land Acquisition Officer and
Revenue Divisional Officer,
Tambaram.

+3ccs to Mr.S.Vijayakumar, Advocate, S.R.No.53446, 53447, 53448

W.P.Nos.10170 and 11508 of 2014
and
W.P.No.17223 of 2015

KG(CO)
SU(12/11/2021)