



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 30.06.2021

CORAM:

THE HONOURABLE MR. JUSTICE **B. PUGALENDHI**

W.P. (MD) No.4903 of 2015

V.Kandasamy

... Petitioner

Vs

The Executive Engineer and Administrative Officer,
Tirunelveli Housing Board Division,
E.B.Colony,
Anbu Nagar,
Tirunelveli.

... Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Declaration to declare the entire acquisition proceedings, insofar as the petitioner's property to an extent of 20 cents situated in S.No.130/1A/1A/1A, Sankaraperi Village, Thoothukudi Taluk and District, as referred to in the partition deed vide Doc.No.161/1986 dated 19.05.1986, as 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 : Mr.R.Anand

For Respondent : Mr.Mahaboob Athiff
Standing Counsel

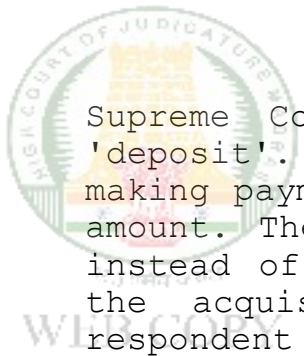
O R D E R

This writ petition is filed by the petitioner seeking issuance of a Writ of Declaration to declare the land acquisition proceedings as lapsed, in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'the Act').

2. The petitioner has come up with the present writ petition to declare the impugned acquisition proceedings as lapsed on the grounds that he is still in possession of the property and the possession was not taken away from him and; that he was neither offered nor paid with any compensation amount, till date, for the alleged acquisition.

3. The learned Standing Counsel appearing for the respondent submitted that possession of the land was taken over as early as on 26.11.1992, by drawing memorandum / panchanama. He further submitted that the compensation amount has been deposited before the Sub Court, Tuticorin, by virtue of proceedings in ROC.A.1334 of 1985, dated 21.12.1992. He has also produced a copy of such proceedings.

4. In **Indore Development Authority v. Manoharlal & Others**, reported in **2020 (5) SCALE 34**, a Constitution Bench of the Hon'ble



Supreme Court has held that the term 'paid' does not include 'deposit'. But, in the event of the authority being prevented from making payment, the available option is to deposit the compensation amount. The Court has further held that such deposit in treasury, instead of Court, causes no prejudice to the landowners, as such, the acquisition would not lapse. Therefore, the act of the respondent in depositing the award amount in treasury account cannot be found fault with. The relevant portion, in this regard, from the said decision is extracted thus:

"224. Thus, in our opinion, the word "paid" used in Section 24(2) does not include within its meaning the word "deposited", which has been used in the proviso to Section 24(2). Section 31 of the Act of 1894, deals with the deposit as envisaged in Section 31(2) on being 'prevented' from making the payment even if the amount has been deposited in the treasury under the Rules framed under Section 55 or under the Standing Orders, that would carry the interest as envisaged under Section 34, but acquisition would not lapse on such deposit being made in the treasury. In case amount has been tendered and the landowner has refused to receive it, it cannot be said that the liability arising from non-payment of the amount is that of lapse of acquisition. Interest would follow in such a case also due to non-deposit of the amount. Equally, when the landowner does not accept the amount, but seeks a reference for higher compensation, there can be no question of such individual stating that he was not paid the amount (he was determined to be entitled to by the collector). In such case, the landowner would be entitled to the compensation determined by the Reference court.

... ..

230. Deposit in treasury in place of deposit in court causes no prejudice to the landowner or any other stakeholder as their interest is adequately safeguarded by the provisions contained in Section 34 of the Act of 1894, as it ensures higher rate of interest than any other Government securities. Their money is safe and credited in the earmarked quantified amount and can be made available for disbursement to him/them. There is no prejudice caused and every infraction of law would not vitiate the act."

5. The Hon'ble Supreme Court in the said decision has also held that either if compensation has been paid or possession has been taken, then there cannot be any lapse in the acquisition proceedings. For better appreciation, the relevant portion is extracted thus:

"363.3. 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 the authority 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."

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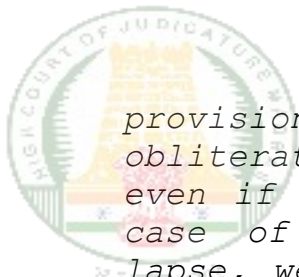
6. In the case on hand, though the petitioner has denied the factum of compensation, it is evident from the submission made by the learned Standing Counsel that the compensation amount has been deposited. Therefore, notwithstanding the taking over of possession, on this ground alone, the writ petition is liable to be dismissed. The respondent has also produced the panchanama showing that they have taken possession of the acquired property. If the petitioner is still in possession of the property, after the taking over of possession by the respondent, then, as per the dictum of the Hon'ble Supreme Court in **Indore Development Authority's** case (supra), they are to be considered as trespassers, who have trespassed upon the property. For better appreciation, the relevant portion is extracted thus:

"... ..

256. Thus, it is apparent that vesting is with possession and the statute has provided under Sections 16 and 17 of the Act of 1894 that once possession is taken, absolute vesting occurred. It is an indefeasible right and vesting is with possession thereafter. The vesting specified under section 16, takes place after various steps, such as, notification under section 4, declaration under section 6, notice under section 9, award under section 11 and then possession. The statutory provision of vesting of property absolutely free from all encumbrances has to be accorded full effect. Not only the possession vests in the State but all other encumbrances are also removed forthwith. The title of the landholder ceases and the state becomes the absolute owner and in possession of the property. Thereafter there is no control of the land-owner over the property. He cannot have any animus to take the property and to control it. Even if he has retained the possession or otherwise trespassed upon it after possession has been taken by the State, he is a trespasser and such possession of trespasser enures for his benefit and on behalf of the owner.

... ..

277. The court is alive to the fact that there are a large number of cases where, after acquisition land has been handed over to various corporations, local authorities, acquiring bodies, etc. After depositing compensation (for the acquisition) those bodies and authorities have been handed possession of lands. They, in turn, after development of such acquired lands have handed over properties; third party interests have intervened and now declaration is sought under the cover of section 24(2) to invalidate all such actions. As held by us, section 24 does not



provisions of law must stop. Title once vested, cannot be obliterated, without an express legal provision; in any case, even if the landowners' argument that after possession too, in case of non-payment of compensation, the acquisition would lapse, were for arguments' sake, be accepted, these third party owners would be deprived of their lands, lawfully acquired by them, without compensation of any sort. Thus, we have no hesitation to overrule the decisions in Velaxan Kumar (supra) and Narmada Bachao Andolan (supra), with regard to mode of taking possession. We hold that drawing of Panchnama of taking possession is the mode of taking possession in land acquisition cases, thereupon land vests in the State and any re-entry or retaining the possession thereafter is unlawful and does not inure for conferring benefits under section 24(2) of the Act of 2013."

7. In view of the submission made by the learned Standing Counsel for the respondent and taking note of the decision of the Hon'ble Supreme Court, this Court is not inclined to entertain this writ petition. However, the respondent is directed to furnish the details with regard to the deposit of compensation to the petitioner, enabling him to receive the same, after proving his rights.

8. In fine, this writ petition stands dismissed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

gk

TO

The Executive Engineer and Administrative Officer,
Tirunelveli Housing Board Division,
E.B.Colony,
Anbu Nagar,
Tirunelveli.

W.P. (MD) No.4903 of 2015

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