



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 29.04.2021

CORAM:

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

W.P. (MD) Nos. 8875 of 2016 & 15168 of 2017

and

W.M.P. (MD) No. 11980 of 2017

1. S. Susheela

2. P. M. Veeraiah

3. G. Chitradevi

4. M. Amudha ... Petitioners in WP (MD) 8875/2016

J. Antony Xavier ... Petitioner in WP (MD) 15168/2017

Vs.

1. The Government of Tamil Nadu,
Rep. by its Secretary,
Adi Dravidar and Tribal Welfare Department,
Fort St. George, Chennai - 600 009.

2. The Special Tahsildar (ADW),
Unit I,
Dindigul. ... Respondents in both WPs

PRAYER in WP (MD) 8875/2016 : Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Declaration to declare that in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the land acquisition proceedings initiated under the Land Acquisition Act 1 of 1984, which has culminated into an Award in 2nd respondent's proceedings in ROC.No.771/92/A dated 29.03.1994 shall stand lapsed in respect of an extent of land in 0.67.5 Hect. (1 Acre 67 Cents) comprised in S.No.370/3G of Vembarpatti village.

PRAYER in WP (MD) 15168/2017 : Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Declaration to declare that the land acquisition proceedings initiated under the Land Acquisition Act, 1894, in respect of S.No.370/3G of Vembarpatti village, 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 Petitioners : Mr.J.Lawrance

For Respondents : Ms.V.P.M.Vaishnavi,
Government Advocate

(In both WPs)

C O M M O N O R D E R

These writ petitions are filed by the respective petitioners 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').

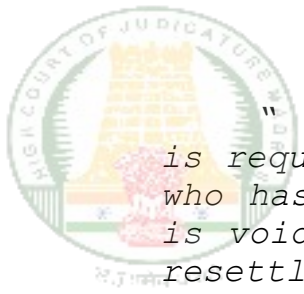
2. Heard the learned Counsel appearing for the respective parties and perused the documents placed on record.

3. The petitioners have come up with the present writ petitions to declare the impugned acquisition proceedings as lapsed on the grounds that they are still in possession of the subject property; the Award was not passed in their names; and they were neither offered nor paid with any compensation amount, till date, for the alleged acquisition.

4. The learned Government Advocate, on the other hand, submitted that the petitioners herein purchased the subject properties after the issuance of notifications under Sections 4 and 6 of the Act, with regard to the acquisition. The said transaction, which took place after the issuance of the notifications, is void, as such, the petitioners cannot maintain these writ petitions. In support of this plea, the learned Government Advocate has relied upon the affidavits filed by the respective petitioners, wherein, they have admitted that the property was acquired in the year 1994 and that the erstwhile landowner, namely, Subbaiah Naidu, challenged the same before this Court in W.P.No.6359 of 1994, which was later dismissed on 25.04.2001. However, pending the writ petition, the said Subbaiah Naidu formed a layout and sold the property to various persons, including the petitioners herein.

5. A Full Bench of the Hon'ble Supreme Court, in **Shiv Kumar and another v. Union of India and others**, reported in (2019) 10 SCC 229, has held that the sale after the issuance of notification under Section 4 of the Act is void, as such, the subsequent purchasers are not having any right to invoke the provisions under Section 24(2) of the Act. For better appreciation, the relevant portions are

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extracted as under:



" 19. The 2013 Act presupposes that a person is required to be rehabilitated and resettled. Such a person who has purchased after Section 4 notification as sale deed is void under the 1894 Act, cannot claim rehabilitation and resettlement as per policy envisaged under the 2013 Act, as his land has not been acquired, but he has purchased a property which has already been acquired by the State Government, he cannot claim even higher compensation, as per proviso to Section 24(2) under the 2013 Act. An original landowner cannot be deprived of higher value under the 2013 Act, which higher compensation was not so contemplated when the void transaction of sale had been entered, and right is conferred under the proviso to Section 24(2) on recorded owners under the 1894 Act. We have come across instances in which after notifications under Section 4 were issued and, the property was purchased at throwaway prices by the builders and unscrupulous persons, such purchases are void and confer no right even to claim higher compensation under Section 24(2) of the 2013 Act as it is to be given to the owner as mentioned in the notification.

20. Given that, the transaction of sale, effected after Section 4 notification, is void, is ineffective to transfer the land, such incumbents cannot invoke the provisions of Section 24. As the sale transaction did not clothe them with the title when the purchase was made; they cannot claim "possession" and challenge the acquisition as having lapsed under Section 24 by questioning the legality or regularity of proceedings of taking over of possession under the 1894 Act. It would be unfair and profoundly unjust and against the policy of the law to permit such a person to claim resettlement or claim the land back as envisaged under the 2013 Act. When he has not been deprived of his livelihood but is a purchaser under a void transaction, the outcome of exploitative tactics played upon poor farmers who were unable to defend themselves.

21. Thus, under the provisions of Section 24 of the 2013 Act, challenge to acquisition proceeding of the taking over of possession under the 1894 Act 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 2013 Act 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 1894 Act. The 2013 Act does not



confer any right on purchaser whose sale is ab initio void. Such void transactions are not validated under the 2013 Act. No rights are conferred by the provisions contained in the 2013 Act on such a purchaser as against the State.

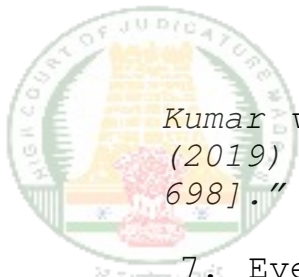
22. "Void is, ab initio," a nullity, is inoperative, and a person cannot claim the land or declaration once no title has been conferred upon him to claim that the land should be given back to him. A person cannot enforce and ripe fruits based on a void transaction to start claiming title and possession of the land by seeking a declaration under Section 24 of the 2013 Act; 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 person with no title in the land. The provision of the 2013 Act cannot be said to be enabling or authorising a purchaser after Section 4 to question proceeding taken under the Act of 1894 of taking possession as held in U.P. Jal Nigam [U.P. Jal Nigam v. Kalra Properties (P) Ltd., (1996) 3 SCC 124] which is followed in M. Venkatesh [M. Venkatesh v. BDA, (2015) 17 SCC 1 : (2017) 5 SCC (Civ) 387] and other decisions and consequently claim declaration under Section 24 of the 2013 Act. What cannot be done directly cannot be permitted in an indirect method.

... ..

24. The intendment of the 2013 Act 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 the 2013 Act. It is not open to them to claim that the proceedings have lapsed under Section 24(2)."

6. That apart, a Constitution Bench of the Hon'ble Supreme Court, in **Indore Development Authority v. Manoharlal and others, etc.**, reported in **2020 (5) SCALE 34**, has held that the beneficiaries contemplated under Section 24(2) of the Act are the ones who were so recorded as beneficiaries as on the date of the issuance of notification under Section 4 of the Act and not the subsequent purchasers. For better appreciation, the relevant portion is extracted as under:

"337. The beneficiaries i.e. landowners contemplated under the proviso to Section 24(2), are the ones who were so recorded as beneficiaries as on the date of issuance of notification under Section 4 of the 1894 Act. The provision is not meant to be invoked on the basis of void transactions, and by the persons who have purchased on the basis of power of attorney or otherwise, they cannot claim the benefit under Section 24 as is apparent from the proviso to Section 24(2) and the decision in Shiv



Kumar v. Union of India [Shiv Kumar v. Union of India, (2019) 10 SCC 229 : (2020) 1 SCC (Civ) 82 : (2019) 13 Scale 698]."

7. Even according to the petitioners, they have purchased the subject properties subsequent to the issuance of notifications by the Government under Sections 4 & 6 of the Act. In view of the aforesaid decisions of the Hon'ble Supreme Court, this Court is of the opinion that the transaction itself is void, as such, the petitioners, being the subsequent purchasers, cannot maintain these writ petitions to declare the impugned land acquisition proceedings as lapsed.

8. It is also represented by the learned Government Advocate that with regard to the subject properties, award has been passed as early as on 28.03.1994 and that the compensation has also been in the revenue account on 29.03.1994. She has also produced a copy of the deposit details.

9. In **Indore Development Authority's** case (supra), 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 respondents 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."

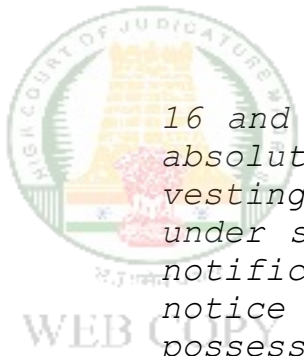
10. In fact, in the decision in **Indore Development Authority's** case (supra), the Hon'ble Supreme Court has held that if either compensation has been paid or possession has been taken, then there cannot be any lapse in the acquisition proceedings. For better appreciation, the relevant portion is extracted 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 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."

11. In the cases on hand, it is, in fact, admitted by the petitioners that compensation amount has been deposited in the revenue account, but, possession alone is disputed. Therefore, in view of the aforesaid decision in **Indore Development Authority's** case (supra), these writ petitions are liable to be dismissed.

12. Some of the petitioners have taken a stand that they were not put on notice; the award was not passed in their names; they are in peaceful possession and occupation of the property. This Court is not inclined to accede this contention, inasmuch as it is the stand of the respondents that they have issued notice to the landholder, as per the revenue records; passed awards on the name of the landholders, as per the revenue records. With regard to the plea of possession, this Court is of the opinion that once possession has been taken by the State, these subsequent purchasers cannot have any claim. In fact, they are to be considered as trespassers, who have trespassed upon the property. In this regard, in the **Indore Development Authority's** case (supra), the Hon'ble Supreme Court has held as follows:

.... .
256. Thus, it is apparent that vesting is
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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 intend to cover such cases at all and such gross misuse of the 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."

13. In view of the foregoing discussions and reasonings and taking note of the aforesaid decisions of the Hon'ble Supreme Court, this Court is not inclined to entertain these writ petitions.



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Accordingly, both the writ petitions are dismissed. Pending interim orders, if any, shall also stand terminated. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

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Sub Assistant Registrar(CS)

gk

To

1.The Secretary to Government,
State of Tamil Nadu,
Adi Dravidar and Tribal Welfare Department,
Fort St.George, Chennai - 600 009.

2.The Special Tahsildar (ADW),
Unit-I
Dindigul

+1 CC to M/s.V.VENKATASAMY, Advocate (SR-18008[F] dated 29/04/2021)

+1 CC to M/s.SPL GP (SR-18264[F] dated 30/04/2021)

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