



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 23.04.2021

CORAM:

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

W.P. (MD) No.22608 of 2017

and

W.M.P. (MD) No.18894 of 2017

1.S.Basheer Ahmed

2.S.Mohamed Usman

3.S.Peer Mohammed Anwar

... Petitioners

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Housing and Urban Development Department,
Fort St.George, Chennai - 600 009.

2.The Chairman,
Tamil Nadu Housing Board,
Nandanam, Chennai - 35.

3.The Special Tahsildar,
Land Acquisition,
Ellis Nagar Scheme, Collectorate,
Madurai - 20.

4.The Executive Engineer & Administrative Officer,
Ellis Nagar 70 Feet Road,
Madurai - 20.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Declaration to declare the acquisition in R.S.No.53/8A, measuring an extent of 46 cents in Ponmeni Village, Madurai South Taluk (presently Madurai West Taluk), Madurai District, as lapsed, in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.



For Petitioners : No appearance
For Respondents : Mr.M.Rajarajan,
Additional Government Pleader
for R.1 to R.3
Mr.Mohammed Athiff
Standing Counsel for R.4

ORDER

The petitioners have filed this writ petition 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'), on the ground that the possession of the subject property was not taken away from them.

2. There is no representation for the petitioners.

3. Perusal of record shows that the petitioners, in their affidavit, have averred that their mother has challenged the award and has also received the enhanced compensation amount. For better appreciation, the relevant portion of the affidavit is extracted as under:-

"2. ... The compensation was fixed as Rs.22,514.25. An award was passed by the District Collector vide Award No.2/82-83 dated 14.04.1982. Our mother gave consent to receive the compensation amount under protest. But the 3rd respondent herein gave his opinion that the deceased late.S.A.Kabir had his wife, 3 children and his mother as the legal heirs and hence the compensation amount to be deposited into Court U/s.31(2) of the Land Acquisition Act. Since my mother made a protest our case was referred to the Land Acquisition Tribunal for enhanced compensation u/s 18 reference. The LAOP was numbered as L.A.O.P.No.184/1993 and the compensation was enhanced to Rs.4166/- per cent and adding other compensation and the total compensation amount was fixed to the tune of Rs.3,98,736/-. The compensation was received by our mother."

4. A Constitutional Bench of the Hon'ble Supreme Court in **Indore Development Authority v. Manoharlal & Others**, reported in **2020 (5) SCALE 34**, has 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 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."

5. In the case on hand, it is admitted by the petitioners themselves that compensation amount has been received by their mother, as such, the present petition cannot be maintained under Section 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, in view of the pronouncement in **Indore Development Authority's** case (supra).

6. In such view of the matter, this Court is not inclined to entertain this writ petition and accordingly, the same is dismissed. Pending interim orders, if any, shall also stand terminated. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1.The Secretary to Government,
State of Tamil Nadu,
Housing and Urban Development Department,
Fort St.George, Chennai - 600 009.

2.The Chairman,
Tamil Nadu Housing Board,
Nandanam, Chennai - 35.

3.The Special Tahsildar,
Land Acquisition,
Ellis Nagar Scheme, Collectorate,
Madurai - 20.

+1 CC to M/s.NIRANJAN S.KUMAR, Advocate (SR-17269[F] dated 23/04/2021)

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