

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.13756, 13563, 13581, 13593, 14501, 14528 and 15462 of
1994 and W.P.Nos.4894, 4898, 4901, 4905, 4907, 4910, and 4913 of
2022 and W.M.P.Nos.5035, 5042, 5043, 5046, 5050, 5052, 5054,
5058 and 5060 of 2022

BALASUBRAMANIAM ... PETITIONER in WP No.13756 of 1994

1.R.MUTHUSAMY

2.R.RAMASAMY GOUNDER

3.R.ARUMUGAM ... PETITIONER in WP No.13563 of 1994

PALANISAMY ... PETITIONER in WP No.13581 of 1994

PALANIAPPA GOUNDER ... PETITIONER in WP No.13593 of 1994

SENNIMALAI GOUNDER ... PETITIONER in WP No.14528 of 1994

1.KOLANDASAMY

2.VISWANANTHAN

3.KANDASAMY ... PETITIONER in WP No.14501 of 1994

NALLASAMY ... PETITIONER in WP No.15462 of 1994

R.ARUMUGAM ... PETITIONER in WP No.4894 of 2022

1.K.JAYARAJ

2.S.JAYAPRASANTH

3.K.PALANISAMY ... PETITIONER in WP No.4898 of 2022

P.BALASUBRAMANI ... PETITIONER in WP No.4901 of 2022

SUBRAMANI ... PETITIONER in WP No.4905 of 2022

1.NALLASAMY

2.DEIVASIGAMANI ... PETITIONER in WP No.4907 of 2022

PALANISAMY ... PETITIONER in WP No.4910 of 2022

P.RAMASAMY ... PETITIONER in WP No.4913 of 2022

Vs

1 THE STATE OF TAMIL NADU
REP. BY SECRETARY TAMIL NADU HOUSING BOARD
AND URBAN DEVELOPMENT DEPARTMENT FORT ST.
GEORGE CHENNAI 600 009.

2 THE SPECIAL TAHSILDAR
(LAND ACQUISITION) ERODE NEIGHBOURHOOD
SCHEME ERODE (PERIYAR DISTRICT)

3 THE EXECUTIVE ENGINEER AND A
ADMINISTRATIVE OFFICER TAMIL NADU HOUSING
BOARD ERODE HOUSING UNIT ERODE (PERIYAR
DISTRICT)

...RESPONDENTS IN WP.NO.13756, 13581,
13593, 14528, 14501, 15462 OF 1994

1. THE STATE OF TAMIL NADU
REP. BY SECRETARY TAMIL NADU HOUSING BOARD
AND URBAN DEVELOPMENT DEPARTMENT FORT ST.
GEORGE CHENNAI 600 009.

2 THE SPECIAL TAHSILDAR
(LAND ACQUISITION) ERODE NEIGHBOURHOOD
SCHEME ERODE (PERIYAR DISTRICT)

..RESPONDENTS IN WP.13563 OF 1994

1. THE STATE OF TAMIL NADU
REP. BY SECRETARY TAMIL NADU HOUSING BOARD
AND URBAN DEVELOPMENT DEPARTMENT FORT ST.
GEORGE CHENNAI-600 009.

2 THE SPECIAL TAHSILDAR
(LAND ACQUISITION) ERODE NEIGHBOURHOOD
SCHEME ERODE (PERIYAR DISTRICT)

3 THE EXECUTIVE ENGINEER AND A
ADMINISTRATIVE OFFICER TAMIL NADU HOUSING
BOARD ERODE HOUSING UNIT ERODE

...RESPONDENTS IN WP.13563,4898,
4901, 4905, 4907,4910 & 4913 OF 1994

Common Prayer in WP.No.13756, 13563, 13581, 13593, 14501, 14528 & 15462 of 1994:

The Writ Petition filed under Section 226 of Constitution of India, to issue a Writ of Certiorari, calling for the records of the 1st respondent in G.O.Ms.1222 (Tamil Nadu Housing and urban Development) dated 17.09.1991 and G.O.Ms.761 (Tamil nadu Housing and Urban Development) dated 12.11.1992 issued under the Land Acquisition Act in respect of the petitioners land and quash the same.

WP No.4894 of 2022

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration, Declaring the G.O. Ms. No.1222 dated 17.09.1991 issued under section 4(1) and G.O. Ms.No.761 dated 12.11.1992, Section 6 Declaration and the award No.7 dated 10.11.1994 passed under the Land Acquisition Act, 1894 as 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 effect from 01.01.2014 insofar as it relates to the petitioners familys lands to an extent of 3.59.6 hectares.

WP No.4898 of 2022

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaratin, Declaring the G.O. Ms. No.1222 dated 17.09.1991 issued under section 4(1) and G.O. Ms.No.761 dated 12.11.1992, Section 6 Declaration and the award No.7 dated 10.11.1994 passed under the Land Acquisition Act, 1894 as 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 effect from 01.01.2014 insofar as it relates to the petitioners familys lands to an extent of 1.98.5 hectares.

WP No.4901 of 2022

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration, Declaring the G.O. Ms. No.1222 dated 17.09.1991 issued under section 4(1) and G.O. Ms.No.761 dated 12.11.1992, Section 6 Declaration and the award No.7 dated 10.11.1994 passed under the Land Acquisition Act, 1894 as 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 effect from 01.01.2014 insofar as it relates to the petitioners familys lands to an extent of 3.24.0 hectares

WP No.4905 of 2022

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration, Declaring the G.O. Ms. No.1222 dated 17.09.1991 issued under section 4(1) and G.O.

Ms.No.761 dated 12.11.1992, Section 6 Declaration and the award No.7 dated 10.11.1994 passed under the Land Acquisition Act, 1894 as 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 effect from 01.01.2014 insofar as it relates to the petitioners familys lands to an extent of 3.46.0 hectares

WP No.4907 of 2022

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration, Declaring the G.O. Ms. No.1222 dated 17.09.1991 issued under section 4(1) and G.O. Ms.No.761 dated 12.11.1992, Section 6 Declaration and the award No.7 dated 10.11.1994 passed under the Land Acquisition Act, 1894 as 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 effect from 01.01.2014 insofar as it relates to the petitioners familys lands to an extent of 0.45.0 hectares

WP No.4910 of 2022

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration, Declaring the G.O. Ms. No.1222 dated 17.09.1991 issued under section 4(1) and G.O. Ms.No.761 dated 12.11.1992, Section 6 Declaration and the award No.7 dated 10.11.1994 passed under the Land Acquisition Act, 1894 as 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 effect from 01.01.2014 insofar as it relates to the petitioners familys lands to an extent of 0.92.5 hectares

WP No.4913 of 2022

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration, Declaring the G.O. Ms. No.1222 dated 17.09.1991 issued under section 4(1) and G.O. Ms.No.761 dated 12.11.1992, Section 6 Declaration and the award No.7 dated 10.11.1994 passed under the Land Acquisition Act, 1894 as 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 effect from 01.01.2014 insofar as it relates to the petitioners familys lands to an extent of 1.75.0 hectares.

For Petitioner in all W.Ps : Mr.C.V.Vijayakumar

For RR1 and 2 in all W.Ps : Mr.P.Sathish
Special Government Pleader

For RR3 in all W.Ps : Mr.I.Sathish
Standing counsel (TNHB)

Common Order

The petitioners have filed these petitions for issuance of writ of Certiorari to call for the records of the 1st respondent in G.O.Ms.1222 (Tamil Nadu Housing and Urban Development) dated 17.09.1991 and G.O.Ms.761 (Tamil Nadu Housing and Urban Development) dated 12.11.1992, issued under the Land Acquisition Act in respect of the petitioners land and quash the same.

2. The case of the petitioners is that the petitioners in the new writ petitions of the year 2022 are the legal heirs of the petitioners in the old writ petitions of the year 1994. On an earlier occasion, the petitioners filed the Writ Petitions before this Court in the year 1994, challenging the land acquisition proceedings for the purpose of construction of houses under the Tamil Nadu Housing Board for the Erode Neighbourhood Scheme and issuance of Section 4(1) Notification dated 17.09.1991 and Section 6 Declaration, dated 12.11.1992, on the ground that Section 6 Declaration was published after a lapse of one year from the date of Section 4 notification and there is no proper enquiry in terms of Section 5A of the Tamil Nadu Land Acquisition Act. Further it is alleged by the petitioners that 500 acres of lands were only taken possession by the Government and handed over to TNHB and to an extent of 250 acres of land was released from acquisition either by the Government or by the orders of this Court, and thereby the said scheme is not implemented in a proper perspective. In the meanwhile, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-Settlement Act, 2013 (hereafter referred as 'Right to Fair Compensation Act'), came into force from 01.01.2014 and in order to avail the benefit of Section 24(2) of the Fair Compensation Act, the subsequent writ petitions of the year 2022, were filed by the petitioners as well as the legal heirs of the original petitioners in the writ petitions of the year 1994. Since the issue arises in the present round of litigations are one and the same, these writ petitions are taken up together and disposed of by this common order.

3. The learned counsel appearing for the petitioners submitted that though the earlier writ petitions filed by the respective petitioners challenging the Section 4(1) Notification and 6 Declaration on various grounds, subsequently new enactment namely, Right to Fair Compensation Act, came into force, whereby if possession is not taken, and amount is not deposited, the entire acquisition proceedings would be lapsed in terms of Section 24(2) of the Right to Fair Compensation Act.

4. The learned counsel further submitted that in this regard, the other batch of writ petitions were already dealt with by this Court in W.P.Nos.528 and 529 of 2015, wherein Section 6 Declaration vide G.O.Ms.No.761 (Housing and Urban Development) dated 12.11.1992, was challenged before this Court and this Court vide order dated 06.12.2021, allowed the Writ Petitions in favour of the petitioners therein and therefore, he prays for extension of the said benefit to the present petitioners also.

5. The learned Special Government Pleader appearing for the respondents, on instructions, submitted that in view of the stay granted by this Court in the old writ petitions, possession is not yet taken and further though the award was passed in Award No.7 of 1994, the amount was not deposited either in the revenue deposit or before this Court and the twin condition as stated in Section 24(2) of the Rights to Fair Compensation Act, were not satisfied.

6. Considering the facts and circumstances of the case on hand, the issue arises herein, is squarely covered by the decision of the Constitution Bench of the Hon'ble Supreme Court of India reported in 2020 (8) SCC 129, Indore Development Authority Vs. Manoharlal and Others, wherein similar issue was came up for consideration and it was held that if possession is not taken and the amount is not deposited, the acquisition proceedings is deemed to be lapsed in terms of Section 24(2) of the Right to Fair Compensation Act and the relevant portion of the said decision are 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 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 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.

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).

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).

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.

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.'

(Emphasis Supplied)

7. Facts in the present case is not in dispute that admittedly neither possession has been taken nor compensation amount has been paid/deposited by the respondents and they have not taken any steps to vacate the interim order, which was granted by this Court in the year 1994 and till date no counter affidavit has been filed by the official respondents. Hence, the decision in Indore Development case (supra) is squarely attracted to the case on hand.

8. In view of the above said decision of the Hon'ble Apex Court, these Writ Petitions are allowed and thereby, the entire land acquisition proceedings is lapsed and the Tahsildar concerned is directed to restore the revenue records in the name of the respective petitioners for their respective lands. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretrary, Tamil Nadu Housing and
Urban Development Department,
Fort St.George, Madras 9.

2.The Special Tahsildar (L.A)
Erode Neighbourhood Scheme,
Erode, Periyar District.

3.The Executive Engineer and Admn Officer,
Tamil Nadu Housing Board,
Erode Housing Unit, Erode.

+1cc to M/s.I.Sathish, Advocate, S.R.No.20991

+1cc to the Special Government Pleader, S.R.No.21059

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1994 and W.P.Nos.4894, 4898, 4901, 4905, 4907, 4910, and 4913 of
2022

RP(CO)

SB(21/07/2022)