



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.04.2022

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.12229 of 2015

S. Vasudevan

...Petitioner

Vs

1. The Government of Tamil Nadu rep by its
Secretary to Government
Housing & Urban Development Department
Fort St.George
Chennai-600009
2. The Tamil Nadu Housing Board
Rep by its Chairman
Thirumangalam
Chennai-600035.
3. The Special Officer (L A) IX
Tamilnadu Housing Board Schemes
Thirumangalam
Chennai-600 101.
4. The Executive Engineer & Administrative Office,
Besant Nagar division
Tamilnadu Housing Board
48, Dr.Muthulakshmi Salai
Adyar, Chennai-600 020.

...Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of declaration or any other writ or order or direction in the nature of writ declaring that the land acquisition proceedings in pursuance to G.O.Ms.No.454 Housing and Urban Development Department dated 23.05.1990, are lapsed and consequently direct the 2nd respondent to restore the lane to an extent of 1645 square feet in Plot No.73 comprised in Survey Number 294/2 Sholinganallur Village in favour of the petitioner.



WEB COPY

For Petitioner ... M/s.A.V.Arun

For Respondent ... Mr. P. Sathish,
Additional Government Pleader for R1

... Mr. M. Baskar for R2

O R D E R

The present petition has been filed seeking to declare the Land Acquisition Proceedings in pursuance to G.O.Ms.No.454 Housing and Urban Development Department dated 23.05.1990 and a direction to the 2nd respondent to restore the subject lane in favour of the petitioner.

2. The case of the petitioner is that he is the absolute owner of the subject land. The said land was acquired by the 2nd Respondent herein vide notification issued under Section 4(1) of the Land Acquisition Act, 1894 in G.O.Ms.No.454 dated 23.05.1990 followed by a Declaration issued under Section 6 of the Act in G.O.Ms.No.996 Housing & Urban Development Department dated 17.06.1991 and thereafter, the award was also passed in Award No.2/93 dated 18.06.1993. Though the said lands were acquired, however, till date, the physical possession of the said land was not taken. Though the other land owners including the petitioner made several representations before the 1st Respondent to reconvey the said lands to the land owners, however, the same was not considered which lead to filing of several Writ Petitions. Even after filing of series of Writ Petitions, the Respondents have not taken any steps with regard to reconveyance of the subject lands to the land owners. Aggrieved by the same, the petitioner has come up with this Writ Petition seeking quashment of the impugned notification.

3. Learned Counsel for the petitioner submits that though the subject lands were acquired in the year 1990 under the impugned notification, however, even after a lapse of two decades, as per provision under Section 16 of the Land Acquisition Act, till date, the physical possession of the lands have not been taken by the Government. Despite several representations made by the land owners for reconveyance of the lands, the same was not considered. The grievance of the petitioner is that petitioner was neither paid the compensation towards the acquisition nor the physical possession was taken. In view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, if the possession has not been taken within a period of five years, the Land Acquisition Proceedings



would be deemed to have been lapsed. Therefore, in view of the same, this Court may consider the grievance of the petitioner and grant relief as sought for in this Writ Petition.

4. Per contra, learned counsel appearing for the 2nd Respondent submits that after the Acquisition of the subject lands, the Award was passed in Award No.2/193 dated 18.06.1993. After taking physical possession of the lands, the construction work in the said lands have also commenced for construction of Multi Storied Building under one of the schemes of the Hon'ble chief Minister of Tamil Nadu. Since, all the necessary procedures under the Act have been carried out, there is no locus standi for the petitioner to question the Acquisition seeking to reconveyance of the subject lands that too after a lapse of two decades. Hence, the prayer sought for in this Writ Petition cannot be acceded to and this petition deserves to be dismissed.

5. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

6. The facts in the present case are not in dispute. The petitioner is the owner of the subject property of the Writ Petition which was acquired by the 1st Respondent herein at the instance of the 2nd Respondent for the purpose of a housing scheme called "Shollinganallur Neighbourhood Scheme". Thereafter, the award was passed and the entire compensation amount was deposited and according to the respondents, possession was also taken by the Government. Now the petitioner is invoking the provision of Section 24(2) of the Fair Compensation for quashment of the impugned notification.

7. Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 has been pressed into service by the petitioner to contend that where an award under Section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid, the said proceedings shall be deemed to have lapsed. For better appreciation, the relevant provision is extracted hereunder :-

"Land acquisition process under Act No.I of 1894 shall be deemed to have lapsed in certain cases: (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894:

(a) Where no award under Section 11 of the said Land Acquisition Act has been made, then, all the provisions of this Act relating to the determination of



compensation shall apply; or

(b) When an award under said Section 11 has been made, then such proceedings shall continue under the provisions of the said Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in Sub-Section (1) in case of Land Acquisition proceedings initiated under the Land Acquisition, Act 1894, where an award under the said Section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under Section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.

8. The very same issue fell for consideration before the Hon'ble Apex Court in Indore Development Authority Vs. Manoharlal and ors etc., reported in (2020) 8 SCC 129, and the Hon'ble Apex Court held as under :-

"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



WEB COPY

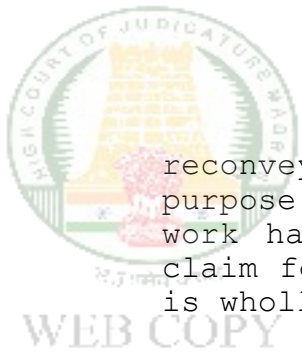
prior to commencement of the said Act, the possession of land has not been taken nor compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there 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



reconveyance. The land is used by the respondents for the purpose for which it has been acquired and towards that end, work has also been stated by TNHB. That being the case, the claim for reconveyance, in the absence of any decisive materials is wholly unsustainable.

11. For all the reasonings aforesaid, the petition is devoid of merits and the same is liable to be dismissed both on the ground of delay and laches and also on the ground of non-availability of the benefit u/s Section 24 (2) of the Act. Accordingly this writ petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS III)

/True Copy//

Sub Assistant Registrar

NHS

To

1. The Secretary to Government
The Government of Tamil Nadu
Housing & Urban Development Department
Fort St.George, Chennai-600009
2. The Chairman
The Tamil Nadu Housing Board
Thirumangalam, Chennai-600035.
3. The Special Officer (L A) IX
Tamilnadu Housing Board Schemes
Thirumangalam, Chennai-600 101.
4. The Executive Engineer & Administrative Office,
Besant Nagar division
Tamilnadu Housing Board
48, Dr.Muthulakshmi Salai
Adyar, Chennai-600 020.

+1cc to M/s.A.V.Arun, Advocate, S.R.No.27002
+1cc to the Government Pleader, S.R.No.28163

W.P.No.12229 of 2015

MT[co]
NSK/10/06/2022