



W.P.No.11586 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2022

CORAM  
THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.11586 of 2016  
and  
W.M.P.No.9982 of 2016

1. P.Ammasi
  2. A.Kanimozhi
  3. A.Prabhakaran
- ...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 Special Tahsildar (Land Acquisition),  
Salem Neighbourhood Scheme,  
Salem-8.
3. The Tamil Nadu Housing Board,  
Rep. by its Executive Engineer,  
Salem Housing Unit,  
Iyyan Thirumaligai, Salem-8.
4. The Tahsildar,  
Taluk Office,  
Omalur Taluk, Salem District.
5. The Village Administrative Officer,



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Kottagoundampatti Village,  
Omalur Taluk, Salem District-636 011.

...Respondents

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Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration, declaring the Land Acquisition proceedings initiated by the respondents 1 & 2 in respect of land in Survey No.90/2A to an extent of 0.53.5 Hec. under Section 6 declaration in G.O.Ms.No.445 Housing and Urban Development dated 16.07.1992 of the LA Act as void and lapsed in view of section 24 (2) Act 2013.

For Petitioners : Mr.M.Elango

For Respondents : Mr.G.Krishna Raja, AGP, for R1, 2, 4 & 5  
: Mr.D.Murugan, SC, for R3

### **ORDER**

The petitioners have filed this Writ petition seeking issuance of a Writ of Declaration to declare the Land Acquisition proceedings initiated by the 1st and 2nd respondents in respect of the subject land as void and lapsed in view of the section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act 2013 (in short 'New Act').

2. The case of the petitioners is that they claim to be the owners of the land comprised in S.No.90/2A, admeasuring 0.53.5 Hec., situated at Kottagoundampatti Village, Salem District. While so, the respondents have



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decided to acquire a larger extent of lands for the purpose of implementing Housing Scheme, in which the petitioners' land was also included. Further, the notification under Section 4(1) of the Land Acquisition Act, 1894 (in short 'Old Act') was approved, vide G.O.Ms.No.902, Housing and Urban Development Department, dated 31.05.1991 and the Declaration under Section 6 of the said Act was approved, vide G.O.Ms.No.445, Housing and Urban Development Department, dated 16.07.1992 and subsequently, an award was passed on 11.07.1994, however, till date, the same was not disbursed in favour of the petitioners and still the petitioners are in physical possession of the subject land. Hence, the petitioners have filed this Writ petition in order to avail the benefit of Section 24(2) of the new Act.

3. Learned counsel for the petitioners submitted that though totally an extent of 157.95 acres of lands was proposed for acquisition, out of which the award was passed for only 91.44 acres and lands measuring an extent of 36.80 acres alone was handed over to the Tamil Nadu Housing Board and out of the same only about 32 to 36 acres of land was utilized for Kottagoundampatti Neighborhood scheme and till date, the possession of the subject land was not taken over by the respondents and the petitioners are in



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possession of the same and are raising various crops in the said land and the compensation amount was also not paid to the petitioners. Hence, the entire acquisition proceedings initiated by the respondents as against the petitioners stood lapsed in terms of Section 24(2) of the New Act. He further submitted that, the respondents have not conducted Panchanama proceedings and have issued declaration under Section 6 of the old Act, without conducting any enquiry as per section 5A of the old Act and they have not recorded the Memorandum for taking actual possession of the lands as contemplated under Section 16 of the old Act and mere keeping of records showing that the possession has been handed over to the requisitioning body will not constitute a possession contemplated under Section 16 of the said Act. While such being the case, the respondents are taking effective steps to evict the petitioners from their land without following due process of law. Hence, he prayed for allowing this Writ petition

4. Learned counsel appearing on behalf of the 3rd respondents submitted that the petitioners' land was acquired for the purpose of implementing Housing Scheme and subsequently, notification under Section

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4(1) and Declaration under Section 6 of the Old Act were issued and thereafter, the award was also passed in the year 1994. After depositing the award amount, the possession was handed over to the Tamil Nadu Housing Board by the Land Acquisition Officer on 07.02.1996 and the patta in respect of the subject property also stands in the name of the Executive Engineer & Administrative Officer, Salem Housing unit in Patta No.252 and the tax in respect of the same is also being paid by the Tamil Nadu Housing Board and prior to that the entire compensation amount in respect of the subject land was deposited in the Sub-Court, Sankari in the year 1995 itself. Pursuant to the same, the layout for implementing the housing scheme was approved by the Member Secretary of Salem Local Planning Authority, vide LP/SLPA No.99/12 dated 19.12.2012 in which the subject land is also included, which clearly shows that the subject land vests with the Housing Board and the petitioners are not in possession of the said property. He further submitted that, the petitioners have already filed two Writ petitions before this Court in W.P.Nos.14406/91 and 30687/2008 and the same were dismissed by this Court on 30.01.2002 and 02.12.2009 respectively, while so, suppressing the same, the petitioners have again filed this Writ petition seeking to declare the very same acquisition proceedings as lapsed in terms



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of Section 24(2) of the new Act, which is not sustainable and it is merely to delay the process of implementing the housing scheme. Hence, he prayed for dismissal of this Writ petition.

5. On the above said contentions, heard learned Additional Government Pleader appearing for the respondents and perused the materials available on record.

6. Though very many grounds have been raised by learned counsel on either side at the time of arguments, however, the learned counsel for the 3rd respondent has rightly drawn the attention of this Court to the affidavit of the petitioners, in which they themselves agreed that the compensation amount in respect of the subject land was deposited in the Sub-Court, Sankari under Section 31(2) of the said Act in the year 1995 itself, which clearly shows that the petitioners themselves agrees that the compensation amount has been deposited. Hence, on the sole ground the present Writ petition is liable to be dismissed. While so, the petitioners have pressed into



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service the Section 24 (2) of the New Act 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, is not sustainable.

7. Further, 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.*



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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*





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*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*



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*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)*

8. In the case on hand, though it is the case of the petitioners that, till date, the possession was not taken and the compensation was also not paid, but it is the case of the respondents that the compensation amount was deposited in the Sub-Court, Sankari under Section 31(2) of the said Act in the year 1995 itself and the possession was handed over to the Housing Board as early as on 07.02.1996.

9. From the above, it is evident that amount has been deposited and possession has also been taken. That being the case the decision in *Indore Development Authority case (supra)* would definitely enure to the benefit of the respondents, and therefore, there would be no question of lapse of the



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acquisition proceedings. In such circumstances, the contention of the petitioners seeking to invoke Section 24 (2) of the Act is wholly misconceived and unsustainable and the contention deserves to be rejected. Accordingly, the prayer sought for in the present petition cannot be granted and the petition deserves to be dismissed.

10. For the reasons aforesaid, this Writ Petition fails and the same is dismissed. No costs. Consequently, connected Miscellaneous petition is closed.

**22.06.2022**

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Speaking Order : Yes/ No

Index : Yes/ No

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**M.DHANDAPANI, J.**

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