



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, Chief Justice
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A.No.301 of 2022
and
C.M.P.No.2167 of 2022

S.Rajasekar

.. Appellant

Versus

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

2. The Tamil Nadu Housing Board,
Rep. by its Chairman,
Nandanam, Chennai-600 038.

3. The Executive Engineer and Administrative Officer,
Besant Nagar Division,
Tamil Nadu Housing Board,
No.48, Dr.Muthulakshmi Salai,
1st Floor, Shopping Complex, Shastri Nagar,
Adyar, Chennai-600 020.

.. Respondents

Prayer : Writ Appeal is filed under Clause 15 of the Letters Patent to set aside the order, dated 29.10.2021 in W.P.No.16887 of 2014 and allow the Writ Appeal as prayed for.

Prayer in WP.No.16887 of 2014:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Declaration, declaring that acquisition of lands in respect of the petitioner herein at Survey No.420/2C of an extent of 8904 sq.ft in No.155, Sholinganallur Village, Tambaram Taluk, Kancheepuram District, pursuant to Section 4(1) Notification of Land Acquisition Act under G.O.Ms.No.433 Housing and Urban Development Department dated 14.05.1990 and 6 Declaration issued in G.O.Ms.No.948 Housing and Urban Development Department dated 07.06.1991 stands lapsed in view of Section 24 Clause 2 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.



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For Appellant : Ms.AL.Ganthimathi
For R1 : Mr.C.Kathiravan
Spl. Government Pleader (L.A)
For R2 and R3 : Dr.R.Gowri, Standing Counsel

JUDGMENT

D.BHARATHA CHAKRAVARTHY, J.

An extent of land admeasuring 8904 Sq.ft in Survey No.420/2C in No.155, Sholinganallur Village, Tambaram Taluk, Kancheepuram District, originally belonged to the mother of the appellant, namely, Sarojiniammal. By a notification, under Section 4(1) of the Land Acquisition Act, 1894 in G.O.Ms.No.433, dated 14.05.1990, land acquisition proceedings were initiated to acquire the land for the purpose of formation of 'Neighbourhood Housing Scheme'. A declaration under Section 6 was made on 07.06.1991 vide G.O.Ms.No.948. Thereafter, Award No.1 of 1997 was also passed. The possession in respect of the land was taken over and was also duly handed over to the Tamil Nadu Housing Board, by the Assistant Grade Revenue Inspector, Office of the Tahsildar, Land Acquisition to the Surveyor, Besant Nagar Division, Tamil Nadu Housing Scheme on 16.08.2004. Thereupon, finding the appellant to be an encroacher in respect of the said land, a notice, dated 30.09.2005, bearing reference HS/6180/2005, was issued calling upon the appellant to remove the encroachment within 7 days, failing which, necessary action will be initiated to remove the encroachment on the costs of the appellant.

2. The appellant claimed that by a deed of settlement, dated 10.08.1994, his mother had settled the property on him and therefore, challenged the said notice, dated 30.09.2005 by filing W.P.No.39141 of 2005. By a judgment, dated 04.11.2013, the said Writ Petition was dismissed for the reason that the alleged settlement deed, executed in the year 1994, after the acquisition proceedings were initiated in the year 1990, is not valid and binding on the respondents and therefore, the appellant had no right whatsoever to challenge the said eviction notice.

3. After the said order had become final, once again by the present Writ Petition in W.P.No.16887 of 2014, the appellant herein came up with the prayer to challenge Section 4(1)



Notification and Section 6 declaration as having lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. By a Judgment dated 29.10.2021, the learned Judge dismissed the said Writ Petition relying upon the principles laid down by the Supreme Court of India in Indore Development Authority Vs. Manoharlal and Ors etc., reported in (2020) 8 SCC 129 finding that possession has been taken in the instant case and also the amount of compensation having been deposited in revenue deposit, each of the twin conditions are satisfied and therefore, there is no lapse of proceedings by virtue of Section 24(2) of 2013 Act. Aggrieved by the same, the present appeal is laid before this Court.

4. Heard Ms.AL.Ganthimathi, learned Counsel appearing on behalf of the appellant, Mr.C.Kathiravan, learned Special Government Pleader (Land Acquisition) for the first respondent and Dr.R.Gowri, learned Standing Counsel for the second and third respondents.

5. Ms.AL.Ganthimathi, the learned Counsel for the appellant would contend that the learned Judge has given a finding regarding the possession without even the appropriate records being produced before him on the mere submission made on behalf of the respondents, while the appellant continues to be in peaceful possession of the property. In that view of the matter, we directed the learned Counsel appearing for the respondents to produce the records and the original file containing the Transfer of Charge certificate, dated 16.08.2004 is produced before us whereunder the possession, which is already taken over by the Land Acquisition Officer, has been handed over to the Housing Board. Further, when the petitioner has been treated as an encroacher and a notice, dated 30.09.2005 was also already issued to him and the petitioner, having challenged the said notice, by way of a Writ Petition No.39141 of 2005 and the same having been dismissed by upholding the notice treating the petitioner as an encroacher, it is too late in the day for the appellant to still claim that the possession has not been taken over in respect of the land. Therefore, the possession of the land having been taken over, there is no ground to interfere with the findings of the learned Judge. Further, the learned Counsel for the appellant has no answer whatsoever regarding the deposit of the compensation in revenue account, as the same having been held to be valid by the aforementioned judgment in Indore Development Authority cited supra.



6. Therefore, we find no merits whatsoever in the Writ Appeal and accordingly, the Writ Appeal is dismissed. However, there shall be no orders as to costs. Consequently, C.M.P. is closed.

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Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

grs

To

1. The Secretary to Government,
Government of Tamil Nadu,
Housing and Urban Development Department,
Fort St. George, Secretariat,
Chennai-600 009.
2. The Chairman,
The Tamil Nadu Housing Board,
Nandanam, Chennai-600 038.
3. The Executive Engineer and Administrative Officer,
Besant Nagar Division,
Tamil Nadu Housing Board,
No.48, Dr.Muthulakshmi Salai,
1st Floor, Shopping Complex, Shastri Nagar,
Adyar, Chennai-600 020.

+1cc to M/s.AL.Ganthimathi, Advocate, S.R.No.15148

+1cc to the Government Pleader, S.R.No.15017

W.A.No.301 of 2022

SPD(CO)
SU(09/03/2022)