



WEB COPY



W.P.No.1229 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.1229 of 2022

and

W.M.P.Nos.1314 & 1315 of 2022

1.S.Vasanthi
2.R.Chitra Ramasamy
3.Durga Sri
Rep. by their Power Agent

4.G.Jaishankar

... Petitioners

Versus

1.The State of Tamil Nadu
Rep. by its Secretary to Government,
Revenue Department,
Secretariat,
Chennai – 600 009.

2.The District Collector,
Thiruvallore District,
Thiruvallore.

3.The Special Tahsildhar (Land Acquisition),
Master Plan Complex (Unit – I),
Thiruvallore.

... Respondents



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Petition filed under Article 226 of the Constitution of India to issue

a Writ of Declaration, to declare that the land acquisition proceedings initiated by the third respondent in his proceedings in Na.Ka. No.3261/2000 A4 dated 26.10.2009 in respect of petitioners' properties of land situated at Parumbakkam Village, Thiruvallur, comprising in Survey No.240/2 measuring 0-37 Acres, Survey No.261/1 measuring 0-17 ½ Acres, Survey No.264/2 measuring 0-26 Acres, Survey No.264/4 measuring 0-58 Acres, Survey No.264/3 measuring 0-24 Acres and Survey No.266 measuring 0-56 Acres, Survey No.275 measuring 0-58 Acres, the total extent of the property is 3.42 1/2 Acres as having statutorily lapsed in terms of Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and non – est in law.

For Petitioners : M/s.P.Saravana Sowmiyan

For Respondents : Mr.G. Krishna Raja
Additional Government Pleader



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ORDER

The petitioners have filed this writ petition seeking for issuance of Writ of Declaration, to declare that the land acquisition proceedings initiated by the third respondent in his proceedings in Na.Ka.No.3261/2000/A4, dated 26.10.2009 in respect of petitioners' properties of land situated at Parumbakkam Village, Thiruvallur, comprised in Survey No.240/2, measuring an extent of 0-37 Acres, Survey No.261/1, measuring an extent of 0-17 ½ Acres, Survey No.264/2, measuring an extent of 0-26 Acres, Survey No.264/4, measuring an extent of 0-58 Acres, Survey No.264/3, measuring an extent of 0-24 Acres and Survey No.266, measuring an extent of 0-56 Acres, Survey No.275, measuring an extent of 0-58 Acres, the total extent of the property is 3.42 1/2 Acres as having statutorily lapsed, in terms of Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (for short, 'Act, 2013') and non—est in law.

2. The case of the petitioners is that the petitioners 1 and 2 are



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the sisters of the fourth petitioner and the third petitioner is the daughter of the fourth petitioner and petitioners 1 to 3 have authorized the fourth petitioner as Power Agent through Power of Attorney, dated 02.11.2021, registered at the Office of the Sub-Registrar, Thiruvallur to file the present petition. The petitioners acquired the subject properties through a WILL dated 15.02.2008 executed by one Ganesan Mudaliyar, who is the father of the petitioners 1, 2 and 4 and the grandfather of the third petitioner. It is the further case of the petitioners that during the lifetime of the said Ganesan Mudaliyar, the subject properties were sought to be acquired for the purpose of constructing Collector's Office and other buildings for Revenue Administration in Thiruvallur District and the Government issued a Notification under Section 4(1) of the Land Acquisition Act, [hereinafter referred to as 'Act. 1894'] in G.O.(Ms).No.495, Revenue, dated 12.06.1998, by dispensing with enquiry under Section 5(A) of the Old Land Acquisition Act. Challenging G.O.(Ms).No.495, Revenue Department, dated 12.06.1998, the said Ganesan Mudaliyar filed W.P.No.9861 of 1998 before this Court. This Court, vide order dated 30.06.2009, set aside the said Government order and observed that the District Collector has to issue notice to the petitioner therein, receive his



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objections and hold appropriate enquiry under Section 5-A of Act, 1894.

It is the further case of the petitioners that, pursuant to the said order dated 30.06.2009 made in W.P.No.9861 of 1998, the third respondent issued Notice under Section 5-A of Act, 1894 to the said Ganesan Mudaliyar but without considering his objections, the impugned proceedings were issued by the third respondent. Thereafter, the third respondent has not proceeded further and since no declaration u/s. 6 was made and by the said time Act, 1894, stood repealed, no action have been taken to pay compensation and take possession, the proceeding stood lapsed u/s 24(2) of Act, 2013. Hence, the petitioners have filed this writ petition for the aforesaid relief.

3. The learned counsel appearing for the petitioners submitted that, till date, Declaration under Section 6 of the Act, was not made and no award was passed. He further submitted that, in the meanwhile, the Act, 1894 got repealed and Act, 2013 had come into force. He further submitted that when no award is passed under Act, 1894, the proceedings will continue as per Act, 2013. However, in the present case, after issuance of Notice under Section 5-A of Act, 1894, no further action was



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taken either under Act, 1894 or under Act, 2013. Therefore, the notification u/s. 4 stood lapsed and the entire acquisition proceedings stood lapsed.

4. On the above contention, heard the learned Additional Government Pleader for respondents and perused the materials available on record.

5. The facts in the present case are not in dispute. Admittedly, the petitioners acquired the subject properties through the WILL dated 15.02.2008 executed by one Ganesan Mudaliyar, who is the father of the petitioners 1, 2 and 4 and grandfather of the third petitioner. During the lifetime of the said Ganesan Mudaliyar, the subject properties were sought to be acquired for the purpose of constructing Collector's Office and other buildings for Revenue Administration for Thiruvallur District and the Government issued Notification under Section 4(1) of the Old Land Acquisition Act in G.O.(Ms).No.495, Revenue, dated 12.06.1998 by dispensing with enquiry under Section 5-A of the Act.

6. Challenging G.O.(Ms).No.495, Revenue Department, dated



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12.06.1998, the said Ganesan Mudaliyar filed W.P.No.9861 of 1998 before this Court. This Court, vide order dated 30.06.2009, made in the said writ petition, set aside the said Government order and observed that the District Collector has to issue notice to the petitioner therein, receive his objections and hold appropriate enquiry under Section 5-A of the Old Land Acquisition Act. Pursuant to the order of this Court dated 30.06.2009 made in W.P.No.9861 of 1998, the third respondent issued Notice under Section 5-A of the Old Land Acquisition Act to the said Ganesan Mudaliyar and without considering his objections, the impugned proceedings were issued.

7. The claim of the petitioners is that when once Act, 1894 stood repealed and Act, 2013 has come into force, and when no Award is passed, the acquisition proceedings could continue only as per the Act, 2013. However, as per Section 24(1)(A) of the Act, 2013, in the proceedings initiated under the Act, 1894, where no Award is passed, then determination of compensation shall be made only in terms of Act, 2013.

8. On a perusal of the records, it is seen that in the year 1998,



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for the purpose of constructing Collector's Office and other buildings for Revenue Administration in Tiruvallur District, the subject lands in the writ petition along with other lands, were sought to be acquired by the third respondent/Special Tahsildar under the Act, 1894. In pursuant to Section 4(1) Notification, though after the direction of this Court, 5-A enquiry was conducted, however, no declaration u/s 6 was issued nor award enquiry was conducted and any award was passed. Pending the said time, Act, 2013 having come into effect from 01.01.2014, there is no valid acquisition proceedings pending in the eye of law and any acquisition proceedings initiated under Act, 1894, stood lapsed due to repeal of Act, 1894. Hence, this Court is of the considered view that the proceedings issued under Act, 1894 could no longer be continued due to repeal of Act, 1894 and, therefore, the acquisition proceedings cannot be continued any further. If at all the respondents intend to proceed with the acquisition it could be only by way of fresh notification under Act, 2013.

9. For the reasons aforesaid, this writ petition is allowed.



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However, if lands are still required for public purpose liberty is granted to the Government to proceed with acquisition under the provision of Act, 2013 in the manner known to law. No costs. Consequently, connected miscellaneous petitions are closed.

29.08.2022

Speaking Order/ Non Speaking Order

Index: Yes/ No

msm

To

- 1.The Secretary to Government,
Revenue Department,
Secretariat,
Chennai – 600 009.
- 2.The District Collector,
Thiruvallore District,
Thiruvallore.
- 3.The Special Tahsildhar (Land Acquisition),
Master Plan Complex (Unit – I),
Thiruvallore.



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M.DHANDAPANI, J.

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