



W.P.No.13091 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2022

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.No.13091 of 2016

Sembayammal

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary,
Housing and Urban Development,
Fort St.George,
Chennai – 600 009.

2.The Special Tahsildar (Land Acquisition),
Neighbourhood Scheme of Salem,
Iyyan Thirumaligai,
Salem – 638 008.

3.The Chairman Cum Managing Director,
Tamil Nadu Housing Board,
331 Anna Salai,
Nandanam,
Chennai – 600 035.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for
issuance of a Writ of Certiorari, to call for the records relating to the Sec 4(1)



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notification made Land Acquisition Act, 1894 in G.O.Ms.No.879, Housing and Urban Development dated 28.5.1991 published in the Tamil Nadu Government Gazette part II, Sec 2 [Supplement] No.23A dated 19.6.1991 and consequential declaration made under Sec 6 [1] of the Land Acquisition Act, 1894 in G.O.Ms.No.447, Housing and Urban Development [SC-2] [2] dated 20.7.1992 published in the Tamil Nadu Government Gazette Extraordinary Part-II, Sec 2 No.443 dated 21.7.1992, quash the same in so far as the petitioner's land in S.No.64/2, Kottagoundampatti Village, Omalur Taluk, Salem District is concerned.

For Petitioner : Ms.Zeenath Begum

For Respondents : Mr.G.Krishna Raja for R1 & R2
Additional Government Pleader

Mr.D.Murugan for R3
Standing Counsel

ORDER

This petition has been filed to quash 4(1) notification under Land Acquisition Act, 1894 in G.O.Ms.No.879, Housing and Urban Development dated 28.5.1991 published in the Tamil Nadu Government Gazette part II, Sec 2 [Supplement] No.23A dated 19.6.1991 and also to quash the



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declaration made under Sec 6 [1] of the Land Acquisition Act, 1894 in G.O.Ms.No.447, Housing and Urban Development [SC-2] [2] dated 20.7.1992 published in the Tamil Nadu Government Gazette Extraordinary Part-II, Sec 2 No.443 dated 21.7.1992.

2.Heard learned counsel for the petitioner and the learned Government Advocate appearing for the respondents 1 and 2 and the learned standing counsel appearing for the third respondent.

3.The petitioner's father Mr.Ramadoss purchased a land situated in T.S.Nos.588, 589, 591, 592, 593 and 594 situated in No.2 Vijayapuram, Tiruvarur Taluk consisted of an extent of 26,974 sq.ft. and the superstructure thereon from one V.R.R.M.Ramanathan Chettiar by virtue of a registered deed of Sale dated 7.4.1980. The second respondent issued statutory notification under Section 4(1) was published on 19.5.1982. The petitioner's father filed Writ Petition in W.P.No.5922 of 1982 challenging the land acquisition proceedings and interim stay was granted on 4.8.1982. The above writ petition was dismissed by this Court on 13.2.1984. Consequently further



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declaration under Section 6 of the Land Acquisition Act was duly published on 26.11.1986. The petitioner's father Mr.Ramadoss has again filed Writ Petition in W.P.No.13589 of 1986 challenging the declaration notification. The above Writ Petition was also dismissed by this Court on 18.04.1998. Mr.Ramadoss, father of the petitioner filed a Writ Appeal in W.A.No.804 of 1998 and thereafter filed an S.L.P. No.18506 of 1998 which was also dismissed on 07.12.1998. In the meanwhile, the land acquisition proceedings was continued and land acquisition Award has been passed vide Award No.1/1989 dated 02.08.1989. As there was dispute in the apportionment of compensation the entire compensation amount was deposited in Sub Court, Nagapattinam under Section 30 and 31(1) and 18 of the Land Acquisition Act. As there was a case pending with respect of payment of rent for the Superstructure between the petitioner's father and the third respondent herein, the acquisition site was not handed over to the third respondent earlier. The civil appeal filed by the third respondent herein, was ordered in favour of the third respondent in Civil Appeal No.7524 – 7526 of 1997 dated 23.09.1998. In fact the acquisition site was handed over to the third respondent on 16.06.1998. Land acquisition was actually utilized for the purpose of



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acquisition and it is being used as bus parking within the compound and HSD bunk and rest room for the checking inspectors etc. Hence, the present Writ Petition has been filed.

4. According to the petitioner, admittedly, the respondents have not taken any steps to form the house sites in the lands subject matter of the acquisition. Till date, the possession of the subject land has not been taken and the same still remains with the petitioner and no compensation amount has been paid to the petitioner. Therefore, the land acquisition proceedings initiated under the Central Act 1894 have been lapsed in view of the non compliance of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Therefore, the petitioner made a representation to the respondents to drop the acquisition proceedings. Till date, no action was taken, hence, the present Writ Petition has been filed before this Court seeking appropriate remedy. However, it is the stand of the respondents that possession has been taken and handed over to the requisitioning body and in view of the decision of the Hon'ble Supreme Court in *Indore Development Authority Vs.*



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Manoharlal and ors etc., (2020 SCC Online SC 316), the acquisition proceedings have not lapsed and this petition deserves to be dismissed.

5.A careful perusal of the contention reveal that possession has been taken by the Government. Though it is reiterated by the petitioner, however, no material whatsoever has been placed to substantiate the same. In such circumstances, the decision of the Hon'ble Supreme Court in the case of ***Indore Development Authority Vs. Manoharlal and ors etc.,*** is squarely applicable to the case on hand.

6.For better appreciation, the relevant portion of the decision in the case of ***Indore Development Authority Vs. Manoharlal and ors etc., (2020 SCC Online SC 316)***, is quoted hereunder:-

"374.Before proceeding further, in our opinion, Section 24 contemplates pending proceedings and not the concluded ones in which possession has been taken, and compensation has been paid or deposited. Section 24 does not provide an arm or tool to question the legality of proceedings, which have been undertaken under the Act of 1894 and stood



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concluded before five years or more. It is only in cases where possession has not been taken, nor compensation is paid, that there is a lapse. In case possession has been taken, and compensation has not been deposited with respect to majority of landholdings, the beneficial provision of the statute provides that all beneficiaries shall be paid compensation as admissible under the Act of 2013. The beneficiaries, i.e., landowners contemplated under the proviso to Section 24(2), are the ones who were so recorded as beneficiaries as on the date of issuance of notification under Section 4 of the Act of 1894. 227 (2006) 3 SCC 286 The provision is not meant to be invoked on the basis of void transactions, and by the persons who have purchased on the basis of power of attorney or otherwise, they cannot claim the benefit under Section 24 as is apparent from proviso to Section 24 (2) and the decision in Shiv Kumar & Ors. v. Union of India and Ors."

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402. 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.”

7. With regard to stale claims, the Constitution Bench, in Indore Development Authority case (supra) has held as under:-

“362. We are of the considered opinion that Section 24 cannot be used to revive dead and stale claims and concluded cases. They cannot be



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inquired into within the purview of Section 24 of the 2013 Act. The provisions of Section 24 do not invalidate the judgments and orders of the Court, where rights and claims have been lost and negative. There is no revival of the barred claims by operation of law. Thus, stale and dead claims cannot be permitted to be canvassed on the pretext of enactment of Section 24. In exceptional cases, when in fact, the payment has not been made, but possession has been taken, the remedy lies elsewhere if the case is not covered by the proviso. It is the Court to consider it independently not under Section 24 (2) of the 2013 Act.”

8.From the above, it is evident that the Hon'ble Apex Court has held that stale and dead claims relating to concluded cases cannot be brought within the ambit of Section 24 (2) so as to revive the same and reap the benefit of Section 24. Orders which have negated the rights of the claimants cannot be revived as there is no revival of barred claims by operation of law. The Hon'ble Supreme Court has also further held that the obligation to pay is complete by tendering the amount under Section 31(1).



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9.From the above, it is evident that the Hon'ble Supreme Court has settled all the issues, including the grounds raised by the petitioner. That apart, the acquisition proceedings have been completed and the subject land was taken over by the Government and the same was handed over to the requisitioning body. Further, the requisitioning body also deposited the compensation as awarded by the Land Acquisition Officer. Therefore, the petitioner failed to satisfy the twin requirements under Section 24 (2) of the Act, i.e., the physical possession of the land was not taken and the compensation has not been paid/tendered/deposited in accordance with law. In view of the dictum laid down by the Hon'ble Supreme Court, the issues raised by the petitioner having been settled, the acquisition proceedings have not lapsed by operation of law under Section 24 (2) of the new Act i.e., the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. In view of the settled position of law, the Writ Petition is devoid of merits and is liable to be dismissed.

10.Accordingly, the Writ Petition is dismissed. However, there shall be no order as to costs.



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To
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- 1.The Commissioner,
and Secretary to Government,
Transport Department,
Fort St. George,
Chennai - 09
- 2.The Land Acquisition Officer,
and Revenue Divisional Officer,
Nagapattinam,
Thanjavur District.
- 3.The State Transport Corporation
Successor in Office to Cholan,
Roadways Corporation Ltd.,
Kumbakonam.



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M.DHANDAPANI, J.

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