



W.P.No.35199 of 2003

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2022

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

W.P.No.35199 of 2003 & W.P.(MD).No.689 of 2004

and

WPMP.No.42789 of 2003 & 674 of 2004

W.P.No.35199 of 2003

1. R.Dhanapaul
2. S.Kannan
3. L.Sekar
4. M.Indumathi
5. K.Ramasamiah Pillai
6. M.K.Anantha Raj Samuvel Muthiah
7. K.Balasubramanian
8. K.Kaveri Ammal
9. P.Murugesan
10. R.Seethalakshmi
11. S.Immanuvel
12. P.Muthukumaraswamy
13. P.Annadurai
14. T.Selvakumar
15. D.Roselin Malaifarasi

...Petitioners

Vs.

1. The State of Tamil Nadu,
Through its Secretary,
Housing and Urban Development Department,
Fort St. George, Chennai-9.
2. The Special Tahsildar,



W.P.No.35199 of 2003

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Land Acquisition (Neighbourhood Scheme),
Tirunelveli.

3. The Executive Engineer -cum-
Administrative Officer,
Tirunelveli Housing Board,
Maharaja Nagar, Tirunelveli-11.

4. The Sub Registrar,
Palayamkottai Sub Registrar Office,
Kokirakulam, Tirunelveli-11.

5. S.Balasubramanian

(R5 impleaded, vide order dated 10.11.2017 made in
WMP.No.30860/2017 in W.P.No.35199/2003)

6. The District Revenue Officer,
Tirunelveli.

...Respondents

(R6 Suo motu impleaded, vide order dated 14.02.2018 in
W.P.No.35199 of 2003 & W.P.(MD).No.689 of 2004)

W.P.No.689 of 2004

F.S.Thanaseelan

...Petitioner

Vs.

1. The State of Tamil Nadu,
Through its Secretary,
Housing and Urban Development Department,
Fort St. George, Chennai-9.

2. The Special Tahsildar,
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Tirunelveli.



W.P.No.35199 of 2003

WEB COPY

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5. The District Revenue Officer,
Tirunelveli.

...Respondents

(R5 Suo motu impleaded, vide order dated 14.02.2018 in W.P.No.35199 of 2003 & W.P.(MD).No.689 of 2004)

PRAYER IN W.P.No.35199 of 2003: Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration by declaring the entire Land Acquisition Proceedings initiated under Act 1 of 1894 culminating in Award No.2/95-96 in Roc.No.A.655/91 dated 23.08.1995 passed by the 2nd respondent, insofar as Survey Nos.143/1,2, 144, 145/1,2, 146, 147, 148/1,2, 149/1,2, 150, 151, 152/1,2, 168/1,2, 169, 170, 171/1,2,3, 173, 174, 175/1,2, 176, 177/1,2 at Keelanatham Village, Palayamkottai Taluk, as deemed to have lapsed by virtue of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013.

(Prayer amended, vide order dated 09.01.2018 made in WMP.No.25470 of 2017 in W.P.No.35199 of 2003)

PRAYER IN W.P.No.689 of 2004: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Madamus calling for the records relating to the Award No.2/95-96 in Roc.No.A.655/91 dated 23.08.1995 passed by the 2nd respondent and quash the same insofar as Survey Nos.143/1,2, 144, 145/1,2, 146, 147, 148/1,2, 149/1,2, 150, 151/1,2, 152/2, 168/1,2, 169, 170, 171/1,2,3, 172/1,2,3, 173, 174, 175/1,2, 176, 177/1,2 at Keelanatham Village, Palayamkottai Taluk and thereby



W.P.No.35199 of 2003

forbearing the respondents from implementing the above said award.

WEB COPY (Prayer amended, vide order dated 15.03.2005 made in WMP.No.143 of 2005 in W.P.No.689 of 2004)

In W.P.No.35199 of 2003:

For Petitioners : Mr.V.Vijay Shankar
for Mr.V.Rajinikanth, for P1-3 & P5-15
: Mr.S.Poovendhan
for Mr.Manickavel, for P4

For Respondents : Mr.Yogesh Kannadasan, Spl.GP, for R1, 2, 4 & 6
: Mr.D.Murugan, SC, for R3

In W.P.No.689 of 2004:

For Petitioner : Mr.Prahalad Ravi

For Respondents : Mr.Yogesh Kannadasan, Spl.GP, for R1, 2, 4 & 5
: Mr.D.Murugan, SC, for R3

ORDER

Since the issue involved in both the Writ petitions are similar in nature, they are disposed of by way of this common order.

2. The petitioners have made a challenge to the acquisition proceedings in and by which their lands were sought to be acquired for the purpose of Neighbourhood Scheme by the Tamil Nadu Housing Board and



W.P.No.35199 of 2003

the non-compliance of the provisions of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 has resulted in the lapsation of the acquisition proceedings.

3. The case of the petitioners is that they claim to be the owners of the respective subject properties and from the date of purchase they are in physical possession and enjoyment of the same and have also constructed house in their respective properties, after obtaining necessary approval from the Panchayat Board and the same have also been assessed to property tax. Whiles, when the 5th petitioner in W.P.No.35199 of 2003 approached the 4th respondent for registering the sale deed in respect of his land, the same was refused to be registered on the basis of the letter of the 3rd respondent dated 08.07.2003 & 20.08.2003, from which the petitioners came to know about the acquisition proceedings. Hence, the petitioners have come up with this petition.

4. Learned counsel for the respective petitioners submitted that though the acquisition proceedings were initiated as against the petitioners' lands, however, no notice was served either on the petitioners or their vendors and



W.P.No.35199 of 2003

the petitioners were not made aware of the acquisition proceedings, as the same was not informed by their vendor, and they were also not served with any notice regarding the acquisition proceedings and they have no knowledge about the said acquisition proceedings. He further submitted that, though the respondents filed a counter stating that the subject lands were acquired and the same were handed over to the Housing Board on 13.06.2003 & 30.06.2003, however, till date, the petitioners are in possession of their respective lands and some of them have also constructed houses after obtaining necessary approval from the Panchayat Board and even at that point of time, no objection was made by the revenue officials and the petitioners were not informed of the acquisition proceedings and even some of the petitioners have availed loan from various financial institutions and even at that time, there was no objection for the same.

5. It is the major grievance of the petitioners that, the respondents have filed a counter affidavit stating that, the petitioners herein being the subsequent purchasers (P5 in W.P.No.35199 & Petitioner in W.P.689 of 2004 are not subsequent purchasers) who have purchased the subject property after conclusion of the entire acquisition proceedings are not



W.P.No.35199 of 2003

eligible for filing petitions challenging the acquisition proceedings. In this regard, learned counsel for the petitioners submitted that very same issue fell for consideration before the Hon'ble Apex Court in ***Govt. of NCT of Delhi Vs. Manav Dharam Trust & Another*** reported in ***CDJ 2017 SC 543***, wherein it was held that subsequent purchasers are entitled to file a case for declaration of the acquisition proceedings as having lapsed by virtue of operation of Section 24(2) of the New Act. For better appreciation, the relevant provision is extracted hereunder :-

We are of the view that this decision, in principle, applies to the facts of these appeals as well.

29. Thus, the subsequent purchaser, the assignee, the successor in interest, the power of attorney, etc., are all persons who are interested in compensation/land owners/ affected persons in terms of the 2013 Act and such persons are entitled to file a case for a declaration that the land acquisition proceedings have lapsed by virtue of operation of Section 24(2) of the 2013 Act. It is a declaration qua the land wherein indisputably they have an interest and they are affected by such acquisition. For such a declaration, it cannot be said that the respondents/writ petitioners do not have any locus standi.

30. Thus, we do not find any merit in these appeals and they are accordingly dismissed. All Interlocutory Applications for Impleadment and Intervention, other than those by Legal Representatives, are also rejected. Applications for Impleadment of Legal Representatives are allowed. There shall be no order as to costs.



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W.P.No.35199 of 2003

31. In the peculiar facts and circumstances of these cases, the appellants are given a period of six months to exercise its liberty granted under [Section 24\(2\)](#) of the 2013 Act for initiation of the acquisition proceedings afresh.

32. We make it clear that we have not gone into the inter se disputes between the parties in some cases or other claims regarding the ownership.

6. Learned counsel for the respondents submitted that, as per the request of the Tamil Nadu Housing Board for the acquisition of 16.88.0 Hectares of lands situated at Keelanatham Village for the formation of Neighbourhood Scheme notification under Section 4(1) of the Land Acquisition Act, 1894 (in short 'Act') was passed, vide G.O.Ms.No.337, Housing and Urban Development Department dated 16.06.1992, and after conducting inspection, the 2nd respondent sent notices to the pattadars and interested persons and enquiry under section 5A of the said Act was conducted on 30.10.1992, in which, though all the pattadars and interested persons appeared for the enquiry and raised serious objections, however, as per the request of the 3rd respondent, as the acquisition of the above said lands was very essential for forming a compact housing scheme, the objections were overruled and declaration under Section 6 of the said Act was passed, vide G.O.Ms.No.641 Housing and Urban Development



W.P.No.35199 of 2003

Department dated 28.07.1993 and thereafter, notices under section 9(1), 9(3) & 10 of the said Act were served to the land owners. Subsequently, Award in Award No.2/95-96 dated 23.08.1995 was passed, after conducting enquiry and some of the land owners received the compensation amount and as some have not received the same, the compensation amount of Rs.22,62,555/- was deposited in the Sub Court, Tirunelveli.

7. It is further submitted that in the meantime, 174 individuals had filed three Writ petitions against the acquisition of the lands in question, however the same were dismissed, vide order of this Court dated 20.06.2001. Subsequently, the lands to an extent of 15.03.62 Hectares have been handed over to the Tamil Nadu Housing Board on 13.06.2003 & 30.06.2003 and currently, the Housing board is in possession of the above said lands. While so, suppressing the same, some of the land owners sold the lands in favour of the petitioners and the petitioners not having been vigilant cannot claim any relief as the lands are covered under the acquisition proceedings, and the petitioners have no locus to question the acquisition proceedings. Hence, he prayed for dismissal of this Writ petition.

9/24



W.P.No.35199 of 2003

WEB COPY 8. Heard learned counsel on either side and perused the materials available on record.

9. Admittedly, the petitioners herein are subsequent purchasers and they have purchased their respective lands from their respective vendors, after passing of the award in Award No.2/95-96 in Roc.No.A.655/ 91 dated 23.08.1995 and prior to their purchase, acquisition proceedings were initiated as against their vendors and other land owners and some of the land owners have also received the compensation amount and a compensation amount to the tune of Rs.22,62,555/- was deposited in the Sub Court, Tirunelveli, as some of the land owners have refused to receive the compensation, and possession of the lands were taken over and handed over to the Tamil Nadu Housing Board as early as on 13.06.2003 & 30.06.2003.

10. It is pertinent to note that the entire acquisition proceedings have been concluded as early as in the year 2003 and the petitioners have filed this Writ petition after the conclusion of the entire acquisition proceedings, and subsequently, after the new Act came into force on 01.01.2014, prayer

10/24



W.P.No.35199 of 2003

has been made that entire Land Acquisition Proceedings in respect of their lands is deemed to have lapsed by virtue of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013, on the ground that the possession was not taken over by the respondents.

11. Reliance has been placed on the decision of the Hon'ble Apex Court in ***Govt. of NCT of Delhi Vs. Manav Dharam Trust & Another*** reported in ***CDJ 2017 SC 543***, to contend that the subsequent purchasers are entitled to file to declare the acquisition proceedings as having lapsed by virtue of Section 24(2) of the New Act.

12. However, the very same issue was considered in detail by a Division Bench of this Court in ***B.Nagaraj -Vs - State of Tamil Nadu & Ors. (W.A. Nos.1204 of 2022, etc. Batch – Dated 09.06.2022)***, wherein the Division Bench of this Court, after careful analysis of the various case laws on the subject, categorically held that a a purchase made subsequent to a Notification u/s 4 (1), the said purchaser dos not have any right to question



the acquisition process. For better appreciation, the relevant portion of the said order is quoted hereunder :-

“7. In that regard, the judgment of the Apex Court in the case of Meera Sahni Vs. Lt.Governor of Delhi (reported in 2008 (9) SCC 177), is also relevant, wherein it was held that a person entering to the sale or any injunction of the land under acquisition after issuance of the Notification under Section 4(1) of the Act of 1894, has no right to challenge the acquisition proceedings or seek lapse of the proceedings. The relevant paragraphs of the said judgment, are quoted hereunder for ready reference:

"17. When a piece of land is sought to be acquired, a notification under Section 4 of Land Acquisition Act is required to be issued by the State Government strictly in accordance with law. The said notification is also required to be followed by a declaration to be made under Section 6 of the Land Acquisition Act and with the issuance of such a notification any encumbrance created by the owner, or any transfer made after the issuance of such a notification would be deemed to be void and would not be binding on the government. A number of decisions of this Court have recognized the aforesaid proposition of law wherein it was held that subsequent purchaser cannot challenge acquisition proceedings and also the validity of the notification or the irregularity in taking possession of the land after the declaration under Section 6 of the Act.



WEB COPY



W.P.No.35199 of 2003

18. *In U.P.Jal Nigam Vs. Kalra Properties (P) Ltd. (1996 (3) SCC 124)*, it was stated by this Court that (SCC p.126, para 3):

"3. ...Having regard to the facts of this case, we were not inclined to further adjourn the case nor to remit the case for fresh consideration by the High Court. It is well settled law that after the notification under Section 4(1) is published in the Gazette any encumbrance created by the owner does not bind the Government and the purchaser does not acquire any title to the property."

19. *In Sneh Prabha Vs. State of U.P. (1996 (7) SCC 426)*, it is stated as under (SCC p.430, para 5):

"5. ...It is settled law that any person who purchases land after publication of the notification under Section 4(1), does so at his/her own peril. The object of publication of the notification under Section 4(1) is notice to everyone that the land is needed or is likely to be needed for public purpose and the acquisition proceedings point out and an implement to anyone to encumber the land acquired thereunder. It authorizes the designated officer enter upon the land to do preliminaries etc. Therefore, any alienation of the land after the publication of the notification under Section 4(1) does not bind the government or the beneficiary under the acquisition. On taking possession of the land, all rights, title and interests in land stand vested in the State, under Section 16 of the Act, free from all encumbrances and thereby absolute title in the land is acquired thereunder."



8. In the light of the ratio propounded by the Apex Court on the issue, so far as the writ petitioners are concerned, they have no right to challenge the Award issued in the year 1994, on the ground that it was after two years of the Declaration under Section 6 of the Act of 1894, having purchased the land much subsequent to the Notification issued under Section 4(1) of the Act of 1894."

(Emphasis Supplied)

From the ratio laid down above, it is clear that a purchase subsequent to the notification u/s 4 (1), the purchaser has no locus to question the acquisition. In the case on hand, it is further more bad, as the purchase has been made after the award. That being the case, the petitioners cannot question the acquisition process and also cannot claim that the acquisition process has lapsed as neither possession has been taken nor compensation has been paid.

13. The fact remains that the petitioners have filed these Writ petitions under the old Act and though as per their contention, the petitioners, even being the subsequent purchasers, are entitled to challenge the acquisition proceedings, however, to press into service Section 24 (2) of the New Act to claim that the acquisition proceedings have lapsed, the twin test laid down in



the said section requires to be fulfilled, which alone would entail the acquisition proceedings as having lapsed. The said issue was considered by the Hon'ble Apex Court in ***Indore Development Authority Vs. Manoharlal and ors etc.***, reported in ***(2020) 8 SCC 129***, wherein, it was 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 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.”

* * * * *

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.



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W.P.No.35199 of 2003

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*



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W.P.No.35199 of 2003

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



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W.P.No.35199 of 2003

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.”

(Emphasis Supplied)

Further, the Hon’ble Apex Court has also 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).



W.P.No.35199 of 2003

14. In the case on hand, though it is the case of the petitioners that possession was not taken till date and compensation was also not paid, but it is the case of the respondents that the petitioners' vendors have not come forward to receive the compensation amount, which resulted in the respondents depositing the said amount in Court deposit and possession was handed over to the Tamil Nadu Housing Board as early as on 13.06.2003 and 30.06.2003. Though, the 5th petitioner in W.P.No.35199 of 2003 and the petitioner in W.P.(MD).No.689 of 2004 had purchased the property even before the issuance of 4(1) notification, however, as the possession being taken over and the compensation being deposited, pressing into service Section 24 (2) of the New Act to claim that the acquisition proceedings have lapsed is not sustainable.

15. 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)* stands squarely attracted and possession having been taken and compensation having been deposited, there is no question of lapse of the proceedings. In such circumstances, the contention of the petitioners regarding lapsation of acquisition by virtue of

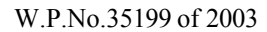


W.P.No.35199 of 2003

Section 24 (2) of the Act is wholly misconceived and unsustainable and the contention deserves to be rejected. Accordingly, the prayer as sought for in the present petition cannot be granted and the petition deserves to be dismissed.

16. Though this Court has dismissed the writ petitions, learned counsel for the petitioners submitted that, though the compensation amount was deposited, however, the petitioners are still in possession of their respective lands and have also constructed a house in small portion of their respective lands, hence, permission of this Court was sought to file representation before the appropriate authority, either under the category of innocent purchaser, or under Section 101 of the new Act for return of the portion of the said lands, which are under the possession of the petitioner as the said lands have not been utilised till date. It is the further submission of the learned counsel that the acquisition itself is for providing house sites and divesting the petitioners, who have constructed small residential houses and dwelling there would be against the very intent of the acquisition and, therefore, the respondents may be directed to consider the representation of the petitioners sympathetically.

20/24



21/24



W.P.No.35199 of 2003

18. In the facts and circumstances aforesaid, while the writ petitions are dismissed, however, in the interest of justice and with a view to render substantial justice, this Court, acceding to the request of the learned counsel for the petitioners with regard to retention of the land in which residential units have been put up by the respective petitioners, this Court grants permission to the petitioners to file appropriate representation before the authority within a period of four weeks from the date of receipt of a copy of this order for retention of the land in which they have put up construction either under Section 101 of the new Act or under innocent purchaser scheme and on such representation being filed, the authority is directed to consider the said representation as expeditiously as possible in the light of the Government Order relating to innocent purchaser scheme or under Section 101 of the new Act keeping in mind that the petitioners have put up residential units on their respective lands, as the intent of the acquisition by the Housing Board is only for providing house sites to persons, who do not have any residential houses and not to do away with the houses constructed by individuals for their dwelling purpose. With the aforesaid observation and direction, these writ petitions are dismissed. No costs.



W.P.No.35199 of 2003

20.06.2022

WEB COPY

Speaking Order : Yes/ No
Index : Yes/ No

To

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Through its Secretary,
Housing and Urban Development Department,
Fort St. George, Chennai-9.
2. The Special Tahsildar,
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W.P.No.35199 of 2003

M.DHANDAPANI, J.

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