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WP.Nos.30361 of 2006 etc batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.09.2022

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THE HONOURABLE MR. JUSTICE M. DHANDAPANI

WP.Nos.30361 to 30363 & 31000 to 31002 of 2006, 36813
of 2004

and

M.P.Nos.2 of 2006 (4 petitions), 1 of 2009 (4 petitions),
3 of 2006 (2 petitions), 1 of 2007 (1 petition),
1 of 2008 (1 petition) & 1 of 2012 (3 petitions)

W.P.No.30361 of 2006

S.Mani Mudaliyar

.. Petitioner

Versus

1.The State of Tamil Nadu
Rep. by its Secretary to Government
Housing & Urban Development Department
For St.George
Chennai – 600 009

2.The Special Commissioner &
Land Reforms Commissioner
Chennai – 600 005

3.The Special Tahsildar (Land Acquisition)
Unit IV
Tamil Nadu Housing Board
Nanthanam
Chennai – 600 035

.. Respondents

Prayer in W.P.No.30361 of 2006: Writ Petition is filed under Article 226 of the Constitution of India praying to Writ of Certiorarified Mandamus, calling for the records of the 1st & 2nd respondents culminated in and by his



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proceedings passed under section 4 (1) Notification passed in the proceedings of the 2nd respondent in Proc.No.Na.Ka. No.3/31655/2003 dated 17.10.2003 and that of the declaraton passed under section 6 of the Land Acquisition Act by the 1st respondent in G.O.Ms.374, Housing and Urban Development Department dated 09.11.2004 and quash the same and consequently directing the respondents to release the lands of the petitioner with an extent of 0.32.5 hectares, 0.21.0 hectares, 0.20.0 hectares, 0.42.0 hectares of land in Survey No.44/2, 44/3, 44/4, 45/1A, situated in Chembarambakkam (Neduncheri Village), Poonamallee Circle, Thiruvallur District.

For Petitioners : M/s.P.T.Ramadevi (in all cases)

For Respondents : Mr.D.Ravichander (in all cases)
Special Government Pleader

COMMON ORDER

These petitions are heard together, as they involve similar set of facts and are disposed of by this Common Order. The petitioners are the owners of their respective properties. Their properties were sought to be acquired by the respondents under the Land Acquisition Act, 1894 (hereinafter referred to as “Act”) for the purpose of formation of Thiruvamazhisai Satellite Town, for the benefit of the public for better living accommodation. Further, the land acquisition proceedings were initiated and notification under Section 4(1) of the Act was issued and Declaration under Section 6 of the Act was also issued.

Challenging the said acquisition proceedings, some of the land owners filed



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writ petitions before this Court and most of the writ petitions were allowed in favour of the the lands owners and thereafter, the Government decided not to implement the Satellite Town Scheme by issuing G.O.Ms.No.7, Housing and Urban Development Department, dated 03.01.2007.

2. In order to avail the benefit, the land owners filed writ petitions in W.P.Nos.8924 to 8941 & 17820 of 2010 and this Court catogried all these cases in 3 parts. The first one is, challenging the G.O.Ms.No.7, Housing and Urban Development Department dated 03.01.2007. The second one is, challenging the rejection of request for reconveyance. The Third one is, challenging the acquisition proceedings as lapsed under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. This Court by order dated 18.11.2021 allowed certain writ petitions, however, partly allowed writ petition in W.P.No.17820 of 2010 and dismissed the other writ petitions in W.P.Nos.29785, 29760 of 2012, 24159, 24158 of 2013, 33223, 33224, 33225 & 34405 of 2014 and 8870, 8871 & 8874 of 2015, since the subject lands come under Phase-I Scheme.

3. The learned counsel for the petitioners reiterating the facts of the



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present cases brought to the knowledge of this Court that the very same issue arising in the present cases is dealt with in the above writ petitions and this Court allowed some of the writ petitions and accordingly, prayed this Court for allowing the present writ petitions.

4. The learned Special Government Pleader submitted that earlier on the basis of policy of the Government and by issuance of G.O.Ms.No.7, Housing and Urban Development Department dated 03.01.2007, various lands were withdrawn from the acquisition proceedings, since the Satellite Town Project was discontinued. Further, he submitted that in the present cases, as on date, the possession is not taken, however, the compensation is kept in deposit. However, he fairly conceded that the procedure contemplated under Section 31 of the Act relating to payment and compensation have not been followed.

5. Heard both sides and perused the materials placed on record. Admittedly, the facts of the present cases are not in dispute. In fact, the petitioners' lands were sought to be acquired by the respondents under the Land Acquisition Act, 1894 for the purpose of Satellite Town Scheme. Challenging the same, some of the land owners filed writ petition and the same was allowed. Further, on the basis of a policy decision and by issuance of



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G.O.Ms.No.7, Housing and Urban Development Department dated 03.01.20007, the entire satellite town scheme was discontinued and lands of some of the land owners were retained, as the compensation amount was paid as the lands come under the phase-I Scheme. Challenging the same, several writ petitions were filed, wherein, some of them were allowed, some dismissed and partly allowed referred *supra*.

6. However, in the present cases, it is clear on the submissions of the learned Special Government Pleader that the possession of the land is with the petitioners till date and the paid compensation were not made as contemplated under Section 31 of the Act. Payment of compensation is governed by Section 31 of the Land Acquisition Act, 1894, which has been dealt with by the Hon'ble Apex Court in ***Indore Development Authority Vs. Manoharlal and others etc.***, reported in ***(2020) 8 SCC 129***, wherein the relevant paragraph in the above said judgment is extracted hereunder:

“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.*

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



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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



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court has to be excluded in the computation of five years.

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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) ”

7. The Hon'ble Supreme Court in the aforesaid decision has categorically held that 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 the 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. From the above, it is



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evident that there should be satisfaction of either of the limbs of the acquisition proceedings, viz., either taking of possession or payment of compensation in which circumstances, the acquisition proceedings would not get lapsed.

8. The Hon'ble Supreme Court has also further held that the obligation to pay is complete by tendering the amount under Section 31(1). It is therefore clear that tendering of compensation to the land owners is mandatory and only in the event of the land owners not ready to receive the compensation and seek enhancement, compensation cannot be deposited. It is fairly submitted by the learned Additional Government Pleader that the procedure under Section 31 has not been followed. Therefore it is evident that the compensation amount were not tendered to the petitioners, but was only deposited.

9. Hence, in view of the fact that compensations have not been paid as contemplated under Section 31 of the Act and possession is also not being taken till date, this Court is inclined to interfere with the impugned proceedings and the same are liable to be set aside and the respondents are directed to release the subject land in favour of the petitioners.

10. It is made clear that insofar as the compensation amount, which were already deposited by the respondents any having not been withdrawn by the



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petitioners, the respondents are permitted to withdraw the amount which are lying either as the revenue deposit or Court deposit.

11. Accordingly, these writ petitions stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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