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W.P.No.5096 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.5096 of 2018
and W.M.P.No.6268 of 2018

1.Rajammal

2.Pushpa

3.Savithriammal

.. Petitioners

Versus

1.The State of Tamil Nadu,
Represented by its Secretary
Transport Department,
Fort St.George, Chennai - 600 009.

2.The Land Acquisitioning Officer and
Revenue Divisional Officer
Krishnagiri
Dharmapuri District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration, to declare that the Section 6 Declaration issued by the Respondents under the Land Acquisition Act, 1894 (Act 1 of 1894) on 06.03.1987 in G.O.Ms.No.502 and the same published in the Tamil Nadu Gazette for acquiring the Petitioners property situated at Survey No.919/1B1 A2, 919/1B1 A3 and 919/1B1 A4, Palacode Village and Taluk Dharmapuri District, totally measuring an extent of 0.09.0 Hectares, as nullity and nonest in law since the Acquisition has lapsed under Section



W.P.No.5096 of 2018

24(2) of the Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013) in view of the physical possession of the property still remaining with the petitioners.

For petitioner : Mr.A.Rajendra Kumar
for G.Vijay Anand Associates

For Respondents : Mr.P.Sathish
Additional Government Pleader

ORDER

The case of the petitioners is that the petitioners claim to be the owner of the property situated at Survey No.919/1B1 A2, 919/1B1 A3 and 919/1B1 A4, Palacode Village and Taluk Dharmapuri District, totally measuring an extent of 0.09.0 Hectares. The said land was acquired by the respondents for locating a post office and a notification under Section 4 (1) was issued on 08.01.1986; enquiry under 5A was held and Section 6 Declaration was issued by the respondents on 06.03.1987 and an Award was passed on 17.02.1989. Challenging the acquisition proceedings, the petitioners preferred a writ petition in W.P.No.2049 of 1989, wherein, interim stay was granted on 20.02.1989 and the said writ petition was dismissed by this Court on 13.03.1998. Further, the award amount was



W.P.No.5096 of 2018

deposited before the Sub-Court, Krishnagiri on 27.11.2001. However, the petitioner further filed a writ petition in W.P.No.14157 of 2003 seeking a Writ of Declaration on the ground that the acquisition proceedings has been lapsed under Section 11A of the Land Acquisition Act, 1894 and the said writ petition was also dismissed on 19.01.2017 holding that the award was passed well within the statutory period. The relevant portion of the order in W.P.No.14157 of 2003 dated 19.07.2017 is extracted below:

“..8.From the aforesaid dates, it is crystal clear that the award enquiry was completed and the award was passed on 17.02.1989, which is within two years from 06.03.1987, the date on which Section 6 Declaration was issued. Therefore, there is no violation of the provisions of Section 11(A) of the Land Acquisition Act. Thereafter, it was the petitioners, who filed W.P.No.2049 of 1989 and obtained stay of the acquisition of the proceedings. After the dismissal of the writ petition 10 years later i.e., 13.03.1998, the Government deposited the award amount on 27.11.2001.”

The petitioners preferred an appeal in W.A.No.751 of 2017 before this Court and the same was also dismissed on 10.07.2017. Hence, the present writ petition has been filed by the petitioners to declare the above said land acquisition proceedings have elapsed under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013('Act 2013').



W.P.No.5096 of 2018

WEB COPY

2. Though very many grounds have been raised, learned counsel for the petitioners submits that the petitioners are still in possession of the property that is sought to be acquired by the respondents under the Act, 1984 as such as per Act, 2013, the acquisition initiated under the earlier acquisition cannot be proceeded and shall be deemed to have lapsed. Hence, he prays to declare the said land acquisition proceedings have elapsed under Section 24(2) of the above said (Act 2013).

3. The learned Additional Government Pleader submits that the award amount was already deposited before the the Sub-Court, Krishnagiri on 27.11.2001 and possession could not be taken in view of continuous order of stay in force. Hence, once award amount has been deposited before the Civil Court, there is no lapse under Section 24(2). He further relied upon the decision of the Hon'ble Apex Court in the case of ***Indore Development Authority Vs. Manoharlal and others etc.***, reported in (2020) 8 SCC 129.



W.P.No.5096 of 2018

4. Heard the learned counsel appearing on either side and perused the materials placed on record. A perusal of the materials available on record reveal that the award amount has been deposited in Sub Court, Krishnagiri as the petitioner did not receive the same.

5. Now, the issue arises whether the compensation amount was paid to the petitioners and on their failure to receive the same, it was deposited in terms of Section 31 of The Land Acquisition Act, 1894. Section 31 of the Land Acquisition Act, 1894 which speaks of payment of compensation is extracted below for ready reference:

“31.Payment of compensation or deposit of same in Court:- (1) On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 18 would be submitted;

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:



W.P.No.5096 of 2018

WEB COPY

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

(3) Notwithstanding anything in this section the Collector may, with the sanction of the appropriate Government instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land-revenue on other lands under the same title, or in such other way as may be equitable having regard to the interests of the parties concerned.

(4) Nothing in the last foregoing sub-section shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and (As to persons who are competent to contract, see s.11 of the Indian Contract Act, 1872 (9 of 1872).)competent to contract in respect thereof.”

6. In this backdrop, the decision of the Hon'ble Apex Court in *Indore Development Authority case* assumes significance, wherein, the Hon'ble Supreme Court has held as under:-

“366. In view of the aforesaid discussion, we answer the questions as under:



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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*



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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



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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



W.P.No.5096 of 2018

mode of deposit of compensation in the treasury instead of court

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(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 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). From the above, it is clear that tendering of compensation to the land owners is



W.P.No.5096 of 2018

mandatory and only in the event of the land owners not ready to receive the compensation and seek enhancement, compensation cannot be deposited.

Further, proviso appended to Section 31(2) provides that land owners, who receive the compensation under protest alone can seek reference for enhancement. It is the case of the petitioner that they appeared for the enquiry and sought higher compensation, which has not been disputed by the respondents. It is to be noted that this Court in W.P.No.14157 of 2003 vide Order dated 19.01.2017 held that the award was passed well within the statutory period. Even in the Counter filed by the Sub-Collector, Dharmapuri dated 11.10.2018 has categorically stated the compensation amount was tendered before the Sub-Court, Krishnagiri on 27.11.2001, however, the possession could not be taken by the Land Acquisition Officer owing to continuous stay in W.P.No.2049 of 1989. Such being the position as evident from the materials available on record, the land owners who had refused to accept compensation cannot claim that the acquisition proceedings had lapsed under Section 24(2) of the Act of 2013. Therefore, the acquisition proceedings are not deemed to have lapsed.

9. Accordingly, the present writ petition is dismissed. No costs.



W.P.No.5096 of 2018

Consequently, connected miscellaneous petition is closed.

WEB COPY

08.09.2022

Index : Yes / No
Internet : Yes / No
Speaking Order/Non-Speaking Order
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M.DHANDAPANI,J.

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To

1.The Secretary
The State of Tamil Nadu,
Transport Department,
Fort St.George, Chennai - 600 009.

2.The Land Acquisitioning Officer and
Revenue Divisional Officer
Krishnagiri
Dharmapuri District.

W.P.No.5096 of 2018



WEB COPY



W.P.No.5096 of 2018

08.09.2022