



W.P.No.25663 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.09.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.25663 of 2011
and WMP.No.10198 of 2022

B.D.Garg and Sons
rep.by Kartha B.D.Garg,
35-A, Spur Tank Road,
Chennai 600 031.

..Petitioner

Vs.

1.State Government of Tamil Nadu
rep.by Secretary to Government,
Housing and Urban Development Department,
Secretariat, Chennai 600 009.

2.The Chairman,
Chennai Metropolitan Development Authority,
Gandhi-Irwin Road, Egmore,
Chennai 600 008.

...Respondents

Prayer: Writ petition has been filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus Calling for the records of the second respondent and quash the letter dated 03.08.2011 in Letter No.M1/ 2271/11 and thereby direct the respondents to delete the lands in Survey No.827/1 & 2 measuring an extent of 1.17 acres of excess land left after formation of 60 feet additional approach/ Exit road in Madhavaram Village, Saidapet Taluk, Chengalpattu District, from the acquisition.



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For Petitioner : Mr.S.R.Rajagopal
For RR1 : Mr.V.Manoharan
Additional Government Pleader
For RR2 : Mr.P.Kumaresan
Additional Advocate General
assisted by Mrs.P.Veena Suresh

ORDER

This petition has been filed for issuance of writ of Certiorarified Mandamus to call for the records of the second respondent and quash the letter dated 03.08.2011 and direct the respondents to delete the lands in Survey No.827/1 & 2, measuring an extent of 1.17 acres of excess land left after formation of 60 feet additional approach/ Exit road in Madhavaram Village, Saidapet Taluk, Chengalpattu District, from the acquisition.

2. The case of the petitioner is that the petitioner herein had purchased the lands in S.F.No.827/1 and 2 and other lands in S.F.NO.820/2, 883, 811/2, 884, 886/1 and 2 and 893 in all totalling 6.47 acres in Madhavaram Village, Saidapet Taluk, Chengalpattu District for a valuable consideration. While so, in the year 1982, in order to establish bus and truck terminal by the 2nd respondent, they had acquired



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82.86 acres of land in Madhavaram Village and an extent of 4.94 acres of land belonging to the petitioner was also acquired for the said purpose, for which compensation was received by the petitioner. It is alleged by the petitioner that during March 1985, the 1st respondent herein had issued a fresh notification for acquisition of further extent of 14.76 acres of land for laying of 60 feet additional approach / exit road and for that, the remaining extent of land was sought to be acquired under the said notification. In spite of the objection, Declaration u/s.6 of the Land Acquisition Act was made and during the month of July and August 1986, awards came to be passed for the earlier acquisition of the land measuring an extent of 4.94 acres and in the mean time, the petitioner filed W.P.No.5250/1986, challenging the validity of the acquisition made during March 1986 and during February 1994, the Writ Petition came to be dismissed and an appeal in W.A.No.523/1994 was preferred by the petitioner and the same was also dismissed. However, the petitioner continuously making representations for re-conveying of excess lands. Since the same were not considered, he once again constrained to prefer W.P.No.2636 of 2002, for a Mandamus directing



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the Government to consider his representation dated 19.12.2001, however this Court dismissed the said Writ Petition and directed the respondent therein to consider his representation. The petitioner against the dismissal of W.A.No.523/1994, had preferred SLP (Civil) No.8849 of 2002 and the Hon'ble Supreme Court vide order dated 07.12.2002 was pleased to dispose off the same without expressing any opinion on the merits and observed that the representation shall be made to the acquiring authority and thereafter, the 2nd respondent herein had informed the petitioner that the 60 feet road was to be formed and therefore, the same could not be considered and thereafter, the 1st respondent vide his letter dated 25.10.2002, stating that the request for re-conveyance was not possible and the land was very much required. Thereafter also, the petitioner had made several representations and since the same were not considered, he had again filed W.P.No.6840 of 2010, for a Mandamus directing the 1st respondent to invoke the powers under Section 16-B of the Land Acquisition Act and forfeit the land and re convey the same to the petitioner.



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3. It is further alleged by the petitioner that an extent of 36 cents alone has been utilized by the 2nd respondent for formation of Katcha road and that too only in the year 2009 and the balance of land is surplus. While so, on 06.04.2010, this Court had dismissed W.P.No.6840/2010 and direct the respondent therein to consider his representation and the 1st respondent alleging compliance of the writ petition order, has passed the order dated 03.08.2011 verbatim reproducing the same as the letter dated 25.02.2011. Challenging the order of the 1st respondent dated 03.08.2011, the petitioner is before this Court.

4. The learned counsel appearing for the petitioner submitted that though the petitioner initially filed Writ Petition challenging the rejection order passed by the 1st respondent under Section 48B of the Land Acquisition Act, during the pendency of the writ petition, the entire Land Acquisition Act is repealed and New Act, is enacted and if possession is not taken and amount is not deposited within a period of 5 years, the entire land acquisition proceedings deemed to be lapsed under



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Section 24(2) of the Right to Fair Compensation Act and in order to avail such benefit, the petitioner has filed Amendment Petition in WMP.No.10198 of 2022 and the amendment is not yet ordered. It is further submitted that in the present case, though the portion of the land utilised for the particular purpose, major portion of the land was not utilised and hence prays for reconveyance of the surplus land.

5. It is further submitted that according to the counter affidavit filed by the respondents, the entire compensation amount was deposited in the year 1988, whereas the award was passed in Award No.4/1989 on 24.02.1989, however the fact remains that the compensation amount was deposited prior to the award, which is not sustainable one and that too the deposit was made only in the name of Special Deputy Collector and not in compliance with Section 31 of the Land Acquisition Act and further perusal of the counter affidavit reveals that it was ascertained that the land under reference covered in this writ petition was the land declared as excess vacant land under the Urban Land Ceiling act, 1978 and acquired the land under the said Act. Though such stand was taken



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in the counter affidavit, no notice was issued to the petitioner in that regard and new theory was introduced in the present writ petition. However if such being the position, liberty may be granted to the petitioner to challenge the urban land ceiling proceedings, if it is initiated against the petitioner.

6. The learned Additional Advocate General appearing for the 2nd respondent submitted that the notice under Section 5-A of the Land Acquisition Act was served to the petitioner on 01.05.1985, but he did not attend the enquiry, however he filed writ petition before this Court challenging the land acquisition proceedings and the same was dismissed upto the level of Hon'ble Apex Court and likewise earlier there was a three round of litigation before this Court for reconveying the property, however all the litigation were ended against the petitioner. Further the petitioner himself admitted in the affidavit that 36 cents of land were utilised for the acquired purpose and balance land was unutilised and therefore once the land is acquired and award is passed, the land acquisition proceedings is not lapsed as alleged by the



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petitioner, in view of the decision rendered by the Hon'ble Supreme Court in the decision reported in **2020 (8) SCC 129 [Indore Development Authority Vs. Manoharlal and Others]**.

7. Further though the Act is repealed on 01.01.2014, the petitioner filed amendment petition only in the year 2022, after a lapse of about 9 years and therefore the said amendment petition is also not sustainable. Further though the petitioner made representation to re convey the property under Section 48B, the said representation was rejected on the ground that the land is required for public purpose. Mere claim of possession by the petitioner does not give right of re-conveyance and in **Keeravani Ammals Case (2007 volume 2 CTC 447)**, the question of release of acquired land which had been transferred to the requisitioning body has been considered and in view of the settled position of law, the learned Additional Advocate General prays for dismissal of this petition.

8. This Court has carefully considered the rival submissions and also perused the materials available on record.



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9. Facts in the present case is not in dispute. Admittedly in the earlier round of litigations, the petitioner has filed writ petitions challenging the land acquisition proceedings and for reconveyance of the property, however all the litigations were ended against the petitioner. Further a perusal of the affidavit reveals that an extent of 36 cents was utilized by the 2nd respondent for formation of Katcha road and the petitioner's claim is that remaining extent of land can be reconveyed in favour of him. Though such being the grievance of the petitioner, once the Government acquired and handed over the lands to the requisite body, the acquisition body has no right to forfeit the land, since the land is utilised for the said purpose and with respect to the release of acquired land which had been transferred to the requisitioning body, the issue has been considered in ***Keeravani Ammals Case (2007 volume 2 CTC 447)***.

10. Further, with respect to the other aspect that once possession of land is taken and compensation amount deposited in the Government



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Treasury, there is no lapse of acquisition proceedings and the similar issue was came up for consideration in the decision of the Constitution Bench of the Hon'ble Supreme Court of India reported in **2020 (8) SCC 129, Indore Development Authority Vs. Manoharlal and Others**, wherein it was held that in case possession has been taken, compensation has not been paid then there is no lapse in terms of Section 24(2) of the Right to Fair Compensation Act and the relevant portion of the said decision are as follows:

"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.



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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).



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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."*

(Emphasis Supplied)

11. Admittedly the possession has been taken and it is alleged by the petitioner that only the fair compensation amount has not been



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paid/deposited by the respondents. However, it is the submission of the learned Additional Advocate General that the award has been passed and the entire compensation amount have been deposited in the name of Special Deputy Collector . Hence, the decision in *Indore Development case (supra)* is squarely attracted to the case on hand, wherein it was held that in case possession has been taken, fair compensation has not been paid then there is no lapse.

12. In view of the above said decisions of the Hon'ble Apex Court, this Writ Petition is dismissed. No costs. Consequently connected miscellaneous petition is closed.

13. After dismissal of the writ petition, the learned counsel appearing for the petitioner submitted that till date, the compensation amount was not paid in the manner known to law and hence this Court may issue direction to pay the compensation in terms of Section 34 of the Land Acquisition Act.



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14. Considering the limited request sought for by the learned counsel appearing for the petitioner, this Court is inclined to issue direction to the CMDA officials to pay compensation in terms of Section 34 of the Land Acquisition Act, within a period of twelve weeks from the date of receipt of a copy of this order.

13.09.2022

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To

- 1.The Secretary,
Department of Road Transport,
Ministry of Shipping, Highways,
Road Transport and Highways,
Secretariat, New Delhi.
- 2.The Competent Authority and
Special District Revenue Officer (L. A),
National Highways Schemes,
Kanchipuram.



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M.DHANDAPANI.,J.
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