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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.04.2022

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.15797 of 2016
and
W.M.P.No.13714 of 2016

Annapoorani

...Petitioner

Vs

1. Secretary to Government of Tamil Nadu,
Housing and Urban Development,
Fort St. George, Chennai-600 009
2. Managing Director,
Tamil Nadu Housing Board, (TNHB)
Nandanam, Chennai-600035.
3. District Collector,
Thiruvallur District, Thiruvallur-602101.
4. Executive Engineer, TNHB
Ashok Nagar Division, Chennai-600083.
5. Special Thahsildar, (Land Acquisition)
TNHB, Nandanam, Chennai-600035.
6. Thasildar, Maduravoyal Taluk Office,
Maduravoyal, Chennai-600 095.

...Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Declaration or any other Writ of similar in nature of Writ to declare that the 4(1) notification issued dated on 11.06.1975 as lapsed and forbearing the respondents from in any manner interfering with the petitioner possession and peaceful enjoyment of the property comprised in Survey No.196 measuring 5511 sq.ft or land situated at Ramapuram village, Maduravoyal taluk, Thiruvallur district.



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For Petitioner ... M/s. B. Dharmaraj

For Respondents ... Mr. A. Anandan,
Government Advocate
for R1, R3, R5 & R6.

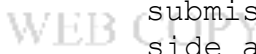
O R D E R

The present petition has been filed seeking to declare the 4(1) notification dated 11.06.1975 as lapsed and to forebear the respondents from interfering with the petitioner's possession and enjoyment of the subject property.

2. It is the case of the petitioner that she had purchased the subject property in the year 1997, with a total extent of about 5511 sq.ft from her vendors by way of registered sale deeds. Since then, she was in possession and enjoyment of the said property. The 1st Respondent by a notification published in Tamil Nadu Gazette in the year 1975, had acquired the lands for the total extent of land acres 338.28 cents including the petitioner's land, without issuing a prior notice and a compensation was also not paid to the owners of the property. Though the acquisition was made, however, the physical possession in respect of the lands acquired was not taken by the authorities concerned, even after a lapse of 38 years of the impugned notification of the 1st Respondent herein. The grievance of the petitioner being that neither the physical possession was taken nor any compensation being paid, she has come before this Court by way of a Writ Petition.

3. Learned counsel for the petitioner submits that even after a lapse of more than three decades, till date, the physical possession of the said lands was not taken, further, the compensation amount towards the acquisition as per Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition was also not paid to the petitioner. Therefore, the Land Acquisition proceedings is deemed to have lapsed. In view of the same, the impugned notification of the 1st Respondent is liable to be quashed and this Writ Petition may be allowed.

4. Learned Additional Government Pleader appearing for the Respondents submits that subsequent to the Acquisition, the compensation amount was deposited in the Revenue deposit and the physical possession was also taken. Further, the said lands were handed over to the Government and that being the case, the petitioner being a subsequent purchaser has no locus standi to



5. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

7. Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 has been pressed into service by the petitioner to contend that where an award under Section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid, the said proceedings shall be deemed to have lapsed. For better appreciation, the relevant provision is extracted hereunder :-

(2) Notwithstanding anything contained in Sub-Section (1) in case of Land Acquisition proceedings initiated under the Land Acquisition, Act 1894, where an



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award under the said Section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under Section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.

8. The very same issue fell for consideration before the Hon'ble Apex Court in Indore Development Authority Vs. Manoharlal and ors etc., reported in (2020) 8 SCC 129, and the Hon'ble Apex Court held as under :-

"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



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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



10. Further, it is the case of the respondents that award has been passed and the amount has been deposited in revenue deposit and possession has been taken. No material whatsoever has been placed by the petitioner to show that the petitioner is in possession of the lands. Even otherwise, there is no material to show that the vendor of the petitioner has not received the compensation, when it is the case of the respondents that the compensation has already been deposited.

11. On the above, in view of the authoritative pronouncement of the Hon'ble Supreme Court in Indore Development Authority case (supra), in view of the fact that possession has been taken by the respondents, the acquisition proceedings does not lapse and even on that ground invocation of Section 24 (2) is not available to the petitioner.

12. For the reasonings aforesaid, the petition is devoid of merits and the same is liable to be dismissed both on the ground of delay and laches and also on the ground of non-availability of Section 24 (2) of the Act. Accordingly this writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

NHS
To

1. Secretary to Government of Tamil Nadu,
Housing and Urban Development,
Fort St. George, Chennai-600 009
2. Managing Director,
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Ashok Nagar Division, Chennai-600083.



5. Special Tahsildar, (Land Acquisition)
TNHB, Nandanam, Chennai-600035.

6. Thasildar, Maduravoyal Taluk Office,
Maduravoyal, Chennai-600 095.

+1 CC to The Government Pleader sr 28373.

W.P.No.15797 of 2016

MT(CO)
SP(10/06/2022)