



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE

AND

THE HON'BLE MRS.JUSTICE N.MALA

W.A.No.1013 of 2022

and C.M.P.No.6460 of 2022

A.Rani

... Appellant

vs

1. State of Tamil Nadu,
Rep. by its Secretary to Government,
Social Welfare Department,
Fort St. George, Chennai 09.
2. The District Collector,
Dharmapuri District, Dharmapuri.
3. The Special Tahsildar,
(Land Acquisition), Adi Dravidar Welfare,
Harur, Dharmapuri District. ... Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 29.11.2021 passed in W.P.No.6261 of 2020 on the file of this Court.

Prayer in W.P.No.6261 of 2020:

Writ Petition is filed under Article 226 of Constitution of India, praying to issue a Writ of Declaration declaring that the entire land acquisition proceedings initiated and issued by notification under Section 4(1) of the Tamilnadu Land Acquisition Schemes Act vide Na.Ka.No.78568/99/K08 dated 24.01.2001 which was published in District Gazette No.13 dated 01.02.2001 in respect of petitioners land measuring an extent of 0.37.0 hectares in SF.No.199/1C1 (present survey no.199/1C1A) in S.Thathampatti Village, Harur Taluk, Dharmapuri District as lapsed in view of the 'Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30/2013).



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For the Petitioner : Mr.A.V.Raja

For the Respondents : Mr.J.Ravindran
Addl. Adv. General
assisted by Mr.A.Selvendran
Special Government Pleader
for R1 to R3

JUDGMENT

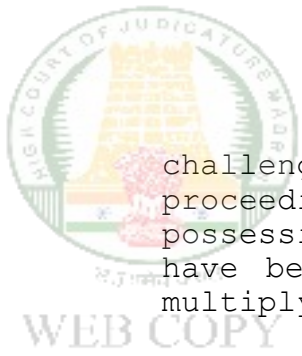
(Judgment of the Court was delivered by
the Hon'ble Chief Justice)

This writ appeal is to challenge the judgment dated 29.11.2021 whereby the writ petition preferred by the writ appellant to challenge the acquisition proceedings was dismissed holding no illegality in the award passed by the respondents after completion of the acquisition process.

2. Before referring to the arguments of the learned counsel for the writ appellant, it would be necessary to refer that the writ petition filed by the petitioner to challenge the acquisition was third in row as has been narrated by the learned Single Judge in para 2.1 of the judgment. The first writ petition filed by the appellant bearing W.P.No.7659 of 2001 was dismissed by the order dated 12.01.2010. The writ appeal preferred by the appellant bearing W.A.No.351 of 2010 was also dismissed by order dated 25.11.2011. The SLP thereupon preferred by the appellant was also dismissed by the Apex Court by order dated 04.07.2012 in SLP (Civil) CC No.9720 of 2012.

3. The appellant then instituted another writ petition bearing W.P.No.25222 of 2018 challenging the validity of Section 105A of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short 'the Act of 2013'). The writ petition was dismissed by order dated 08.01.2020. The third writ petition was thereafter instituted by the appellant bearing W.P.No.6261 of 2020 which was dismissed by the impugned order dated 29.11.2021.

4. The facts given above show the multiplicity of litigations by the appellant to challenge the acquisition proceedings, though the second writ petition was not to question the acquisition rather it was to the constitutional validity of Section 105A of the Act of 2013 and therefore, the learned Single Judge made an observation that the validity of the acquisition proceedings is not challenged. It is, however, not clarified as to why the second writ petition would not operate as constructive res judicata when the appellant ought to have



challenged the acquisition, because by the time all the proceedings were concluded which includes taking over of the possession and deposit of compensation. The facts aforesaid have been given because it shows the conduct of the appellant multiplying the litigations.

5. The writ petition of the year 2020 was to challenge the acquisition in reference to Section 24(2) of the Act of 2013. It was filed with lapse of 7 years after the Act of 2013 came into effect. Delay to challenge the acquisition remains fatal though it is stated that while dismissing the second writ petition, this Court in its order dated 08.01.2020 had given liberty to the appellant to approach the appropriate forum for redressal of the grievance. The fact aforesaid would also have to be considered while dealing with the issue of multiple litigations by the appellant.

6. The facts now relevant are challenge to the validity of the acquisition alleging that possession of the land still lies with the appellant and compensation was deposited even prior to the award, thus, was illegal. The learned counsel for the writ appellant submits that possession of the land was taken through police and thus, cannot be said to be a valid possession and otherwise, the draft for payment of compensation was issued on 23.03.2001 and deposited with the Court on 30.03.2001 while the award was passed on 26.03.2001. Therefore, the preparation of draft prior to the determination of the amount in the award dated 26.03.2001 was illegal, thus cannot be said to be a valid deposit and therefore, Section 24(2) of the Act of 2013 was attracted. Both the issues were considered by the learned Single Judge after referring to the judgment of the Apex Court in the case of Indore Development Authority vs. Manoharlal and Ors., etc., (2020) 8 SCC 129. The relevant paragraph 366 of which is quoted 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.



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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 nondeposit 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



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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)

7. In the instant case, it is not in dispute that the possession of the land has been taken by the respondents, though according to the appellant, it was a forceful possession with the help of police otherwise the petitioner was cultivating in the land throughout and even after passing of the award. So far as the deposit of money is concerned, it is stated to be illegal as the draft was prepared prior to the date of the award. On both the grounds, the acquisition proceedings has been challenged.

8. We have considered the submissions raised herein and would otherwise in the light of the judgment of the Apex Court of which the relevant para has been quoted. In the instant case, the possession of the land has already been taken by the respondents though the appellant disputed the same as it was with the help of the police. The fact remains that the possession does not exist with the writ appellant. The further fact is that pursuant to the award dated 26.03.2001, the amount was deposited with the Court on 30.03.2001, which is said to be pursuant to the draft prepared prior to the award, but for that reason a valid deposit could be denied. The fact on record shows that both the twin tests have been satisfied in the present



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long time gap of 9 years between the issue of declaration under Section 6(1) and filing of the writ petition and declined relief to respondent No.1 on the ground that he was guilty of laches because the acquired land had been utilized for implementing the residential scheme and third party rights had been created. The unexplained delay of about six years between the passing of award and filing of writ petition was also sufficient for refusing to entertain the prayer made in the writ petition.

17. It is true that no limitation has been prescribed for filing a petition under Article 226 of the Constitution but one of the several rules of self imposed restraint evolved by the superior courts is that the High Court will not entertain petitions filed after long lapse of time because that may adversely affect the settled/crystallized rights of the parties. If the writ petition is filed beyond the period of limitation prescribed for filing a civil suit for similar cause, the High Court will treat the delay unreasonable and decline to entertain the grievance of the petitioner on merits.

18. In *State of Madhya Pradesh v. Bhailal Bhai* AIR 1964 SC 1006, the Constitution Bench considered the effect of delay in filing writ petition under Article 226 of the Constitution and held:

"17.... It has been made clear more than once that the power to give relief under Article 226 is a discretionary power. This is specially true in the case of power to issue writs in the nature of mandamus. Among the several matters which the High Courts rightly take into consideration in the exercise of that discretion is the delay made by the aggrieved party in seeking this special remedy and what excuse there is for it. ... It is not easy nor is it desirable to lay down any Rule for universal application. It may however be stated as a general Rule that if there has been unreasonable delay the court ought not ordinarily to lend its aid to a party by this extraordinary remedy of mandamus.

...

21. ... Learned counsel is right in his submission that the provisions of the Limitation Act do not as such apply to the granting of relief under Art 226. It appears to us however that the maximum period fixed by the legislature as the time within which the relief by a suit in



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a Civil Court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured. The court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the court to hold that it is unreasonable."

19. In matters involving challenge to the acquisition of land for public purpose, this Court has consistently held that delay in filing the writ petition should be viewed seriously and relief denied to the petitioner if he fails to offer plausible explanation for the delay. The Court has also held that the delay of even few years would be fatal to the cause of the petitioner, if the acquired land has been partly or wholly utilised for the public purpose.

20. In *Ajodhya Bhagat v. State of Bihar* (1974) 2 SCC 501, this Court approved dismissal by the High Court of the writ petition filed by the appellant for quashing the acquisition of his land and observed:

"23. The High Court held that the appellants were guilty of delay and laches. The High Court relied on two important facts. First, that there was delivery of possession. The appellants alleged that it was a paper transaction. The High Court rightly rejected that contention. Secondly, the High Court said that the Trust invested several lakhs of rupees for the construction of roads and material for development purposes. The appellants were in full knowledge of the same. The appellants did not take any steps. The High Court rightly said that to allow this type of challenge to an acquisition of large block of land piecemeal by the owners of some of the plots in succession would not be proper. If this type of challenge is encouraged the various owners of small plots will come up with writ petitions and hold up the acquisition proceedings for more than a generation. The High Court rightly exercised discretion against the appellants. We do not see any reason to take a contrary view to the discretion exercised by the High Court."

21. In *State of Rajasthan v. D.R. Laxmi* (1996) 6 SCC 445, this Court referred to *Administrative Law H.W.R. Wade* (7th Ed.) at pages 342-43 and observed:



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"10. The order or action, if ultra vires the power, becomes void and it does not confer any right. But the action need not necessarily be set at naught in all events. Though the order may be void, if the party does not approach the Court within reasonable time, which is always a question of fact and have the order invalidated or acquiesced or waived, the discretion of the Court has to be exercised in a reasonable manner. When the discretion has been conferred on the Court, the Court may in appropriate case decline to grant the relief, even if it holds that the order was void. The net result is that extraordinary jurisdiction of the Court may not be exercised in such circumstances."

22. In *Girdharan Prasad Missir v. State of Bihar* (1980) 2 SCC 83, the delay of 17 months was considered as a good ground for declining relief to the petitioner. In *Municipal Corporation of Greater Bombay v. Industrial Development Investment Co. Pvt. Ltd.* (1996) 11 SCC 501, this Court held:

"9. ... It is thus well-settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the notifications. The High Court has, no doubt, discretionary powers under Article 226 of the Constitution to quash the notification under Section 4(1) and declaration under Section 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third party rights were created in the case is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned Single Judge dismissing the writ petition on the ground of laches."

23. In *Urban Improvement Trust, Udaipur v. Bheru Lal* (2002) 7 SCC 712, this Court reversed the order of the Rajasthan High Court and held that the writ petition filed for quashing of acquisition of land for a residential scheme framed by the appellant-Urban



Improvement Trust was liable to be dismissed on the ground that the same was filed after two years.

24. In *Ganpatibai v. State of M.P* (2006) 7 SCC 508, the delay of 5 years was considered unreasonable and the order passed by the High Court refusing to entertain the writ petition was confirmed. In that case also the petitioner had initially filed suit challenging the acquisition of land. The suit was dismissed in 2001. Thereafter, the writ petition was filed. This Court referred to an earlier judgment in *State of Bihar v. Dharendra Kumar* (1995) 4 SCC 229 and observed:

"9. In *State of Bihar v. Dharendra Kumar* this Court had observed that civil suit was not maintainable and the remedy to question notification under Section 4 and the declaration under Section 6 of the Act was by filing a writ petition. Even thereafter the appellant, as noted above, pursued the suit in the civil court. The stand that five years after the filing of the suit, the decision was rendered does not in any way help the appellant. Even after the decision of this Court, the appellant continued to prosecute the suit till 2001, when the decision of this Court in 1995 had held that suit was not maintainable."

25. In *Sawaran Lata v. State of Haryana* (2010) 4 SCC 532, the dismissal of writ petition filed after seven years of the publication of declaration and five years of the award passed by the Collector was upheld by the Court and it was observed:

"11. In the instant case, it is not the case of the petitioners that they had not been aware of the acquisition proceedings as the only ground taken in the writ petition has been that substance of the notification under Section 4 and declaration under Section 6 of the 1894 Act had been published in the newspapers having no wide circulation. Even if the submission made by the petitioners is accepted, it cannot be presumed that they could not be aware of the acquisition proceedings for the reason that a very huge chunk of land belonging to a large number of tenure-holders had been notified for acquisition. Therefore, it should have been the talk of the town. Thus, it cannot be presumed that the petitioners could not have knowledge of the acquisition proceedings."



In yet another judgment in Syed Maqbool Ali vs. State of U.P., (2011) 15 SCC 383, the Apex Court held thus:

"10. But that does not mean that the delay should be ignored or appellant should be given relief. In such matters, the person aggrieved should approach the High Court diligently. If the writ petition is belated, unless there is good and satisfactory explanation for the delay, the petition will be rejected on the ground of delay and laches. Further the High Court should be satisfied that the case warrants the exercise of the extra-ordinary jurisdiction under Article 226 of the Constitution of the India, and that the matter is one where the alternative remedy of suit is not appropriate. For example, if the person aggrieved and the State are owners of adjoining lands and he claims that the State has encroached over a part of his land, or if there is a simple boundary dispute, the remedy will lie only in a civil suit, as the dispute does not relate to any highhanded, arbitrary or unreasonable action of the officers of the State and there is a need to examine disputed questions relating to title, extent and actual possession. But where the person aggrieved establishes that the State had highhandedly taken over his land without recourse to acquisition or deprived him of his property without authority of law, the landholder may seek his remedy in a writ petition.

...

12. High Courts should also be cautious in entertaining writ petitions filed decades after the dispossession, seeking directions for acquisition and payment of compensation. It is not uncommon for villagers to offer/donate some part of their lands voluntarily for a public purpose which would benefit them or the community - as for example, construction of an access road to the village or their property, or construction of a village tank or a bund to prevent flooding/erosion. When they offer their land for such public purpose, the land would be of little or negligible value. But decades later, when land values increase, either on account of passage of time or on account of developments or improvements carried out by the State, the land holders come up with belated claims alleging that their lands were taken without acquisition and without their consent. When such claims are made after several decades, the State would be at a disadvantage to contest the claim, as it may not have the records to show in what circumstances the



lands were given/donated and whether the land was given voluntarily. Therefore, belated writ petitions, without proper explanation for the delay, are liable to be dismissed. Be that as it may."

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For all the reasons given above, we are not inclined to interfere in the order of the learned Single Judge and accordingly, the writ appeal is dismissed. No costs. Consequently, C.M.P.No.6460 of 2022 is closed.

-s/d-

Assistant Registrar (CS-IV)

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Sub-Assistant Registrar

sra
o:

1. The Secretary to Government of Tamil Nadu,
Social Welfare Department,
Fort St. George, Chennai 09.
2. The District Collector,
Dharmapuri District, Dharmapuri.
3. The Special Tahsildar,
(Land Acquisition), Adi Dravidar Welfare,
Harur, Dharmapuri District.

+lcc to the Government Pleader Sr.34557

W.A.No.1013 of 2022

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