



W.P.No.2171 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2022

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.2171 of 2016

S.N.Ramachandran

... Petitioner

VS.

1. The Government of Tamil Nadu
Represented by the Secretary to Government,
Housing and Urban Development Department,
Fort St.George, Chennai – 9.
2. The Special Thasildar,
Land Acquisition,
Housing Project,
Hosur – 635109.
3. The Executive Engineer,
Tamil Nadu Housing Board,
Bagalur Road, Hosur.
4. The Managing Director,
Tamil Nadu Housing Board,
Nandanam,
Chennai – 35.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of declaration to declare the Acquisition of land in survey No.572/B in Hosur Village, Krishnagiri District comprising of an extent of



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0.86.5 hectares, made pursuant to the Section 4(1) notification dated 20.09.1991 as having lapsed by virtue of 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act.

For Petitioner : Mr.V.Raghavachari

For R1 and R2 : Mr.T.K.Saravanan
Government Advocate

For R3 and R4 : Mr.D.Murugan
Standing counsel

ORDER

This Writ Petition has been filed seeking issuance of a Writ of declaration to declare the Acquisition of land comprised in survey No.572/B to an extent of 0.86.5 hectares situated in Hosur Village, Krishnagiri District made pursuant to the Section 4(1) notification dated 20.09.1991 as having lapsed by virtue of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'new Act').

2. It is the case of the petitioner that the petitioner's property situated in above said survey number along with a larger extent of lands were sought to



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be acquired as per the Land Acquisition Act, 1894 for the purpose of constructing dwelling units. Further, notification u/s 4(1) and Declaration u/s 6 of the old Act were issued. Subsequently, Award came to be passed in Award No.2 of 1994 dated 10.04.1994. However, till date neither the compensation was disbursed in favour of the petitioner nor a reference was made to the Subordinate Court as per Section 18 of the old Act. Hence, the present writ petition.

3. Learned counsel appearing for the petitioner submitted that as per Section 24(2) of the new Act, if any award under section 11 has been made five years or more prior to the commencement of the new Act, but the physical possession of the land has not been taken or the compensation has not been paid, the said proceedings stands lapsed. In the present case on hand, though the award was passed in the year 1994, however, till date neither the compensation was deposited in the competent civil Court nor the possession was taken over by the respondents authorities, hence the entire acquisition proceedings stands lapsed.



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4. Per contra learned Government Advocate appearing for the respondents 1 and 2 and learned standing counsel appearing for respondents 3 and 4 submitted that already the very same petitioner filed a writ petition in W.P.No.13686 of 1993, before this Court on behalf of partnership firm in the name and style of M/s.Vasavi Enterprises in respect of the above said property. Further, the petitioner purchased the above said property vide sale deed dated 12.03.1991 which is after the issuance of the notification u/s 4(1) of the old Act dated 30.01.1991. In view of the fact that the petitioner is a subsequent purchaser, he has no right to question the validity of the land acquisition proceedings, the said writ petition filed by the firm was dismissed vide order dated 10.07.2000, with liberty to the petitioner's firm to make an application seeking compensation after passing of the award, if not already passed. Hence, a purchaser, after the Notification u/s Section 4(1) of the old Act does not acquire any right to challenge the acquisition proceedings. Therefore, this Writ Petition is liable to be dismissed.

5. Heard learned counsel appearing on either side and perused the materials placed before this Court.



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6. In ***B.Nagaraj – Vs – State of Tamil Nadu & Ors. (W.A. Nos.1204 of 2022, etc. Batch – Dated 09.06.2022)*** a Division Bench of this Court has dealt with similar issue pertaining to a subsequent purchaser and has categorically held that a purchase made subsequent to a Notification u/s 4 (1), the said purchaser does not have any right to question the acquisition process. For better appreciation, the relevant portion of the said order is quoted hereunder :-

“4. Before addressing the issue in regard to the lapse, the question is about the locus of the writ petitioners to challenge the acquisition proceedings and to seek its lapse, because, the writ petitioners had purchased the land much subsequent to the issuance of the Notification under Section 4(1) of the Act of 1894.

5. The Apex Court, while dealing with the issue in the case of Shiv Kumar (supra), has held that the purchaser of the land, after issuance of Notification under Section 4 of the Act of 1894, has no right to challenge the acquisition proceedings and he can, at the best, claim compensation. It is for the aforesaid, even the issue in reference to Section 24 of the Act of 2013, was also dealt with, because, any purchase, after the



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Notification under Section 4(1) of the Act of 1894, is termed to be "void ab-initio" and therefore, no Declaration can be sought regarding the lapse of the acquisition under the Act of 1894 or the Act of 2013. The relevant paragraphs of the judgment are quoted hereunder for ready reference:

"7.7. In M.Venkatesh Vs. BDA (2015 (17) SCC 1 : 2017 (5) SCC (Civ) 387), a three-Judge Bench has opined: (SCC pp.8-9, para 16):

"16. That brings us to the question of whether Prabhaudas Patel and other respondents in SLP (C) No.12016 of 2013 were entitled to any relief from the Court. These respondents claim to have purchased the suit property in terms of a sale deed dated 22.08.1990 i.e. long after the issuance of the preliminary notification published in July 1984. The legal position about the validity of any such sale, post-issuance of preliminary notification, is fairly well settled by a long line of the decisions of this Court. The sale in such cases is void and non est in the eye of the law giving to the vendee the limited right to claim compensation and no more. Reference may in this regard be made to the decision of this Court in U.P.Jal Nigam Vs. Kalra Properties (P) Ltd. (1996 (3) SCC 124), wherein this Court said: (SCC: pp.126-27, para 3):



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"3. It is settled law that after the notification under Section 4(1) is published in the gazette, any encumbrance created by the owner does not bind the Government, and the purchaser does not acquire any title to the property. In this case, Notification under Section 4(1) was published on 24.3.1973; possession of the land admittedly was taken on 5.7.1973, and the pumping station house was constructed. No doubt, declaration under Section 6 was published later on 8.7.1973. Admittedly power under Section 17(4) was exercised dispensing with the inquiry under Section 5-A and on service of the notice under Section 9 possession was taken, since urgency was acute viz. pumping station house was to be constructed to drain out the flood water. Consequently, the land stood vested in the State under Section 17(2) free from all encumbrances. It is further settled law that once possession is taken, by operation of Section 17(2), the land vests in the State free from all encumbrances unless a notification under Section 48(1) is published in the gazette withdrawing from the acquisition. Section 11-A, as amended by Act 68 of 1984, therefore, does not apply, and the acquisition does not lapse. The notification under Section 4(1) and the declaration under Section 6, therefore, remain valid. There is no other provision under the Act to have the acquired land



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divested, unless, as stated earlier, notification under Section 48(1) was published, and the possession is surrendered pursuant thereto. That apart, since M/s.Kalra properties, the respondent had purchased the land after the notification under Section 4(1) was published, its sale is void against the State, and it acquired no right, title, or interest in the land. Consequently, it is settled law that it cannot challenge the validity of the notification or the regularity in taking possession of the land before the publication of the declaration under Section 6 was published.

(emphasis supplied)

“8. It has been laid down that the purchasers on any ground whatsoever cannot question proceedings for taking possession. A purchaser after Section 4 notification does not acquire any right in the land as the sale is ab initio void and has no right to claim land under the policy.”

“19. The 2013 Act presupposes that a person is required to be rehabilitated and resettled. Such a person who has purchased after Section 4 notification as sale deed is void under the 1894 Act, cannot claim rehabilitation and resettlement as per policy envisaged under the 2013 Act, as his land has not been acquired, but he has purchased a property which has already been acquired by the State Government, he cannot claim even higher compensation, as per proviso



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to Section 24(2) under the 2013 Act. An original landowner cannot be deprived of higher value under the 2013 Act, which higher compensation was not so contemplated when the void transaction of sale had been entered, and right is conferred under the proviso to Section 24(2) on recorded owners under the 1894 Act. We have come across instances in which after notification under Section 4 were issued and, the property was purchased at throwaway prices by the builders and unscrupulous persons, such purchases are void and confer no right even to claim higher compensation under Section 24(2) of the 2013 Act as it is to be given to the owner as mentioned in the notification.

20. Given that, the transaction of sale, effected after Section 4 notification, is void, is ineffective to transfer the land, such incumbents cannot invoke the provisions of Section 24. As the sale transaction did not clothe them with the title when the purchase was made; they cannot claim "possession" and challenge the acquisition as having lapsed under Section 24 by questioning the legality or regularity of proceedings of taking over of possession under the 1894 Act. It would be unfair and profoundly unjust and against the policy of the law to permit such a person to claim resettlement or claim the land back as envisaged under the 2013 Act. When he has not been deprived of his livelihood but is a purchaser under a void transaction, the outcome of exploitative tactics played upon poor farmers who were unable to defend themselves."



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7. From the ratio laid down above, it is clear that a purchase subsequent to the notification u/s 4 (1) of the old Act, the purchaser has no locus to question the acquisition proceedings. In the present case on hand though the very same petitioner filed a writ petition in W.P.No.3686 of 1993 before this Court representing the partnership firm, seeking to quash the notification u/s 4(1) of the old Act, however the same was dismissed vide order dated 10.07.2000, holding that the petitioner happens to be a subsequent purchaser and has no right to question the acquisition proceedings that too after the passing of notification u/s 4(1). However, suppressing all the above said facts, the petitioner filed the present writ petition in respect of the very same land which is per se unsustainable.

8. For the reasons aforesaid this Writ Petition is dismissed. There shall be no order as to costs.

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RAP

Index : Yes/No

Speaking order : Yes/No



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M.DHANDAPANI, J.

RAP

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