



W.P. No.7811/2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
12.10.2022	17.10.2022

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.7811 OF 2012

AND

M.P. NO.1 OF 2012

1. K.Gunasekaran
2. K.Paramasivam
3. K.Neelabai
4. D.Sumathi
5. P.Rajeshwari

.. Petitioners

- Vs -

1. State of Tamil Nadu
Rep. by its Secretary to Government
Highways Department
Fort. St. George, Chennai 600 009.

2. The District Collector
District Collectorate
Tiruvallur, Tiruvallur District.

3. The Divisional Engineer
Project Division – 1
Department of Highways, Chennai 600 016.



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4. The Special Tahsildar (Land Acquisition)
M.M.R.D. Schemes
Saidapet, Chennai 600 015.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records of the 1st respondent in Letter No.18381/HW2/2009-16 dated 07.02.2012 and quash the same and consequently direct the 1st respondent to reconvey or hold the land acquisition proceedings as lapsed of the lands in Survey Nos.57/2 and 40/3B Manjapakkam Village, Ambattur Taluk, Tiruvallur District (formerly Chengai MGR District) measuring an extent of 1.18 acres and 0.06 acres respectively to the petitioners as per the negotiation of land acquisition or in the alternative to pay compensation to the petitioners in accordance with the provisions of the New Act (30 of 2013).

For Petitioners : Mr. Syed Mustafa

For Respondents : Mr. B.Vijay, AGP

ORDER

Assailing the acquisition of lands for the formation of link road road and seeking reconveyance and also praying that the said land acquisition stands



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lapsed in view of the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'Act, 2013') and to further direct the respondents to pay compensation in terms of Act, 2013, the present petition has been filed.

2. It is the case of the petitioners that the lands originally belonged to their father and after his demise the said lands devolved on the petitioners, who are his legal heirs. It is the further case of the petitioners that vide the acquisition proceedings initiated in the year 1982, the lands were acquired by the Government for the purpose of laying the inner ring road (MMRD Scheme) and award was passed on 20.11.1987 vide Award No.6 of 1987. It is the further case of the petitioner that though the said lands were acquired for the purpose of formation of link road, the said project was dropped by the Department of Highways as the alignment was changed due to the formation of Inner Ring Road and separate acquisition proceedings was initiated in the year 1996 by entering into negotiation by private sale.



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3. It is the further case of the petitioners that by way of negotiation, certain lands, including the lands of the petitioners situated in Survey Nos.50 and 55, measuring an extent of 1.994 acres out of 3.00 acres was purchased vide registered sale deed in the year 1996. It is the further case of the petitioners that during the negotiation, it was assured that the lands, which were previously acquired vide Award No.6 of 1987, would be reconveyed to the petitioners as the scheme was dropped due to realignment of the road.

4. It is the further case of the petitioners that pursuant to negotiations held between the petitioners and the respondents, the lands which were not utilized, which were covered under acquisition vide Award No.6 of 1987, steps were taken to process reconveying the said unutilized lands back to the petitioner. It is the further case of the petitioners that a representation, dated 14.7.1995, was submitted by the mother of the petitioners to the Assistant Engineer (II) TNUDP, seeking to reconvey the lands and the said representation was forwarded to the 3rd respondent recommending reconveyance of the said lands.



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5. In spite of the parting of the lands by the petitioners by way of private negotiation towards the subsequent acquisition for the formation of Inner Ring Road, the respondents had not reconveyed the said land as per the negotiation, though the lands have been reconveyed to other persons, who are similarly situated. It is the further case of the petitioners that in spite of repeated representations, no orders have been passed on the same and insofar as the said lands are concerned, the petitioners are still in possession and enjoyment of the said lands.

6. It is the further case of the petitioners that aggrieved by the inaction of the respondents, W.P. No.27081/2008 was filed seeking reconveyance of the subject lands and this Court, by order dated 14.11.2008 directed the respondents to dispose of the petitioners representation within a particular time frame while protecting the interests of the petitioners by injuncting the respondents not to interfere with the peaceful possession and enjoyment of the property by the petitioners till the representation is disposed of.



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7. It is the further case of the petitioners that pursuant to the said order, enquiry was conducted by affording an opportunity of hearing to the petitioner and upon direction of the 1st respondent, inspection was conducted in the presence of the petitioner by the Chief Engineer. In spite of filing of the report, since no action was taken on the representation, the petitioner filed contempt Petition No.1175 of 2009, whereinafter, upon receipt of notice, vide the order impugned in this writ petition dated 7.2.2012, the representation of the petitioner was rejected, which necessitated the filing of the present petition.

8. Learned counsel appearing for the petitioner submits that initially this petition was filed for the purpose of reconveyance of lands to the petitioner as per Section 48-B of Land Acquisition Act, 1894 (for short ' Act, 1894'). However, after coming into force of Act, 2013, no action having been taken by the respondents either to reconvey the lands and till date neither compensation has been paid nor possession of the lands have been taken, the prayer in the main writ petition was amended in and by which the acquisition proceedings were deemed to have lapsed in view of Section 24 (2) of the Act, 2013.



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9. It is the submission of the learned counsel for the petitioners that the subject lands were acquired in the year 1995 for the formation of link road, however, due to the formation of Inner Ring Road, the alignment of the link road was changed, it necessitated a different route for which other lands were sought to be acquired. Upon decision being taken to acquired lands through private negotiation, the Divisional Engineer had conducted private negotiations, in which the petitioners agreed to part with other lands, on the assurance of the Divisional Engineer that the lands already acquired would be reconveyed back to the petitioners. It is the submission of the learned counsel that only on the strength of the said submission, the petitioners had agreed for private negotiation and also agreed to part with different lands. However, the respondents having not kept up their promise in reconveying back the lands, which have been acquired and which are the subject matter of Award No.6 of 1987, the act of the respondents is nothing but a glaring instance of promissory estoppel and, therefore, the respondents should be directed to reconvey the lands to the petitioners.



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10. It is the further contention of the learned counsel that admittedly the lands, which were acquired, were not utilized for the purpose for which it was acquired. Only on the strength of the assurance, the petitioner had parted with the possession of other lands by way of private negotiation. It is the submission of the learned counsel that when the petitioners have accepted for private negotiation only on the basis of the assurance that the lands earlier acquired would be reconveyed, the act of the respondents in rejecting the case of the petitioners is wholly unsustainable.

11. It is the further submission of the learned counsel that the Highways Department have not utilized the lands acquired and have since surrendered the same with the Government and that being the case, the refusal of the respondents to reconvey the lands to the petitioners, inspite of the assurance given by them while entering into private negotiation is wholly unsustainable and contrary to the provisions of Sections 16-B and 48-B of Act, 1894.

12. It is the further submission of the learned counsel that the lands having been acquired under Act, 1894, till date neither compensation has been



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paid nor possession has been taken by the Government and in such a scenario, it is submitted by the learned counsel that the decision of the Hon'ble Apex Court in the case of **Indore Development Authority – Vs – Manoharlal & Ors. (2020 (8) SCC 129)** would stand squarely attracted and the land acquisition proceedings would stand lapsed. Accordingly, learned counsel prays for allowing the present petition.

13. To give more impetus to the aforesaid contentions, learned counsel for the petitioners placed reliance on the following decisions :-

- i) *Office of the Post Master General & Ors. – Vs – Living Media India Ltd. & Anr. (AIR 2012 SC 1506);*
- ii) *Darshal Lal Nagpal (Dead) by LRs – Vs – Govt. of NCT of Delhi (2012 (2) SCC 327);*
- iii) *TNHB – Vs – Mrs. Sivaroja & Ors. (W.A. No.1926 of 2010);*
- iv) *SLP No.4024 of 2011 (TNHB – Vs – Sivaroja & Ors. (R.F. (C) D. No.158786/2011);*
- v) *The Managing Director, TNHB – Vs – Rangarajan & Anr. (W.A. No.1152 of 2005);*
- vi) *MD, TNHB – Vs – Rangarajan & Anr. (SLP (C) No.20398/2006);*



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- vii) *The Managing Director, TNHB – Vs – S.Dilipan & Anr. (W.A. No.196 of 2005);*
- viii) *The Managing Director, TNHB – Vs – S.Dilipan & Anr. (SLP (C) No.13570/2007);*
- ix) *The Managing Director, TNHB – Vs – Balammal & Ors. (W.A. No.324/2007);*
- x) *The Managing Director, TNHB – Vs – Balammal & Ors. (SLP (C) No.12165/2007);*
- xi) *The Managing Director, TNHB – Vs – Uma Maheswari & Ors. (2011 (5) CTC 503);*
- xii) *The Managing Director, TNHB – Vs – Uma Maheswari & Ors. (SLP (C) No.606 to 6066/2012);*
- xiii) *R.Shanmugam – Vs – The State of TN (2006 (4) CTC 290);*
- xiv) *P.Arunodhayam & Anr. – Vs – The Secretary to Govt., TN (2008 (3) CTC 563); and*
- xv) *R.Ramesh & Anr. – Vs – State of TN (2012 (1) MLJ 577)*

14. Per contra, learned Addl. Government Pleader appearing for the respondents submitted that the petitioners, even in the representation filed for reconveyance, have admitted that compensation have been paid to them for the lands acquired under Award No.6 of 1987. That being the case, the stand of the petitioners that the acquisition proceedings would lapse in view of non-payment



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of compensation and possession also having not been taken is wholly unsustainable.

15. It is the further submission of the learned Addl. Government Pleader that the contention relating to similar persons being reconveyed the lands, which had been acquired cannot be sustained as the petitioners have not provided the details of the said persons, who lands have been reconveyed so as to ascertain the similarity of the issue between the petitioners and the aforesaid individuals.

16. It is the further submission of the learned Addl. Government Pleader that merely because the lands have been surrendered by the Highways Department to the Government would clearly show that possession of the lands have also been taken and, therefore, the claim of the petitioners that there is non-compliance of Section 24 (2) of Act, 2013, is wholly misconceived. It is also the further submission of the learned Addl. Government Pleader that possession of the lands have been taken with the knowledge of the petitioners and, therefore, the petitioners cannot claim that the lands are still in their possession.



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It is the further submission of the learned Addl. Government Pleader that it is for the respondents to decide on the question of reconveyance of the lands and if the lands are required for a public purpose, it is within the ambit of the respondents to hold the said lands. Accordingly, he prays for dismissal of the present writ petition.

17. In support of the aforesaid contentions, learned Addl. Government Pleader placed reliance upon the following decisions :-

- i) *T.N. Housing Board – Vs – Keeravani Ammal & Ors. (2007 (9) SCC 255);*
- ii) *Tamil Nadu Housing Board – Vs – L.Chandrasekaran (Dead) By LRs & Ors. (2010 (2) SCC 786); and*
- iii) *Mhadeo & Ors. – Vs – Smt. Sovan Devi & Ors. (2022 LiveLaw (SC) 730)*

18. This Court heard the extensive and exhaustive arguments addressed by the learned counsel for the petitioners and also the submissions of the learned Addl. Government Pleader appearing for the respondents and perused the materials available on record as also the various decisions relied on by the learned counsel for the petitioners.



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19. At the outset it is to be pointed out that though the petitioner had initially laid the writ petition merely on the ground of reconveyance of land, however, at a later point of time, had amended the prayer in which the lapsation of the acquisition proceedings in view of Section 24 (2) of Act, 2013, has been raised and further compensation has also been sought for under Act, 2013. In this regard, it is to be pointed out that once the petitioners raise the plea of lapsation of the acquisition u/s 24 (2) of Act, 2013 and in the alternative claim compensation under Act, 2013, the relief of reconveyance u/s 48-B of Act, 1894 would not enure to the petitioners. The petitioners cannot claim both the reliefs, as Act, 1894 has since been repealed and the acquisition proceedings is guided by Section 24 (2) of Act, 2013. Therefore, in view of the prayer itself having been amended, the submission with regard to reconveyance would be academic and would not survive. Yet this Court, to give a quietus to the issue, would deliberate on all the contentions raised in the present case.

20. A perusal of the records reveal that acquisition proceedings were taken up in the year 1995 and culminated in the passing of the award. However,



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due to certain technical glitches in the alignment, the acquired lands could not be used for the said purpose, which resulted in private negotiations being undertaken to acquire lands for the said project and, accordingly, in the private negotiations, lands of the petitioners have been acquired. Though the petitioners claim that in the private negotiations an assurance was given by the respondents that the lands acquired earlier would be reconveyed to the petitioners, however, there is no material to substantiate the same. Though the petitioners claim promissory estoppel as the said assurance has not been complied with, however, in the absence of any materials evidencing such an assurance, the said contention cannot be sustained. Further, this Court is at a loss to understand as to how a promissory estoppel could be maintained in matters relating to acquisition proceedings.

21. Insofar as the contention of the petitioners that persons similarly situated like the petitioners, whose lands were acquired initially, but their lands were reconveyed after private negotiations and, therefore, similar treatment should be meted out to the petitioners lest it would be nothing but violation of Article 14 of the Constitution. Though such a contention is advanced, however,



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it is to be pointed out that merely because lands of certain persons have been reconveyed alone would not suffice to claim similarity. The similarity between the petitioners and others, alleged to have been similarly placed, should be properly pleaded and established by the petitioners. However, in the case on hand, except for a passing reference that lands of similarly situated persons have been reconveyed would not be a ground to hold that there is violation of Article 14 of the Constitution.

22. The petitioners contend that the acquisition proceedings stand lapsed in view of Section 24 (2) of Act, 2013, as neither compensation has been paid nor possession has been taken. Reliance is placed on the decision of the Hon'ble Apex Court in *Indore Development Authority case (supra)*. For better appreciation, the relevant portion of the said decision 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.



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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 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



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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 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



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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)

23. 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 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.



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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.

24. From the above, it is implicitly evident that either one of the two, viz., payment of compensation or taking of possession would be sufficient to hold that the acquisition proceedings have not lapsed.

25. A perusal of the materials available on record, more especially, the representation submitted by the petitioners' mother, to which this Court's attention was drawn by the learned Addl. Government Pleader reveals that the petitioner's mother has categorically stated in the said representation that compensation towards the land acquired have been received by the petitioners. The further representation proceeds on the aspect of reconveyance of lands to the petitioners as it is alleged that the said lands have not been used. From the above material, it stands established that compensation has been paid to the



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petitioners by the acquisitioning body, which negates the contention with regard to lapsation of acquisition proceedings u/s 24 (2) of Act, 2013.

26. From the decision in *Indore Development Authority case (supra)*, for the acquisition to be held as not having lapsed, either payment or compensation or taking of possession of the lands would be sufficient. As discussed above, the receipt of compensation for the lands acquired has been admitted by the petitioners themselves and, therefore, the acquisition proceedings u/s 24 (2) of Act, 2013 does not stand lapsed.

27. However, the initial prayer of the petitioners related to reconveyance of land, which has been carried over by the petitioners even in the amended prayer. It is the claim of the respondents that the lands have been taken over from the petitioners and handed over to the Highways Department and since it could not be used due to realignment of the scheme, the lands were returned back to the Government. It is to be pointed out that reconveyance of land could be claimed only in respect of lands in which possession has been taken by the acquisitioning body. The petitioners, on their own accord, have prayed for



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reconveyance of land, which clearly establish the fact that possession of lands have been taken over by the acquisitioning body. Therefore, the second limb of Section 24 (2) of Act, 2013, with regard to possession also stands fulfilled.

28. The Hon'ble Supreme Court, in *Keeravani Ammal's case (supra)*, on the issue of acquisition of land and its further reconveyance, has held as under :-

"15. We may also notice that once a piece of land has been duly acquired under the Land Acquisition Act, the land becomes the property of the State. The State can dispose of the property thereafter or convey it to anyone, if the land is not needed for the purpose for which it was acquired, only for the market value that may be fetched for the property as on the date of conveyance. The doctrine of public trust would disable the State from giving back the property for anything less than the market value. In State of Kerala & Ors. Vs. M. Bhaskaran Pillai & Anr. [(1997) 5 S.C.C. 432] in a similar situation, this Court observed:

"The question emerges: whether the Government can assign the land to the erstwhile owners? It is settled law that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. In case there is no other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount



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fetches in the public auction can be better utilised for the public purpose envisaged in the Directive Principles of the Constitution. In the present case, what we find is that the executive order is not in consonance with the provision of the Act and is, therefore, invalid. Under these circumstances, the Division Bench is well justified in declaring the executive order as invalid. Whatever assignment is made, should be for a public purpose. Otherwise, the land of the Government should be sold only through the public auctions so that the public also gets benefited by getting higher value."

29. In the above backdrop of the facts and circumstances of the case, this Court is of the view that the writ petitioners have not made out a case for grant of any relief in view of the fact that there is strict compliance of Section 24 (2) of Act, 2013 and, thereby, the acquisition proceedings has not lapsed. Therefore, it is not necessary for this Court to go into the question of reconveyance u/s 48-B of Act, 1894, as the representation filed for reconveyance has been rejected by the respondents citing that the lands acquired are required for the purpose of forming a link road, which is evident from the order impugned herein and, therefore, the impugned order does not suffer the vice of arbitrariness,



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perversity or unreasonableness and, therefore, the prayer sought for by the petitioners does not merit consideration.

30. For the reasons aforesaid, the writ petition fails and the same is dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

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Index : Yes / No

Internet : Yes / No

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To

1. The Secretary to Government
Highways Department
Government of Tamil Nadu
Fort. St. George, Chennai 600 009.
2. The District Collector
District Collectorate
Tiruvallur, Tiruvallur District.
3. The Divisional Engineer
Project Division – 1
Department of Highways
Chennai 600 016.
4. The Special Tahsildar (Land Acquisition)
M.M.R.D. Schemes
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M.DHANDAPANI, J.

GLN

**PRE-DELIVERY ORDER IN
W.P. NO.7811 OF 2012**

**Pronounced on
17.10.2022**