



Writ Petition No.38319 and 38320 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2022

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

Writ Petition No.38319 and 38320 of 2015 and
M.P.No.1 of 2015 in W.P.No.38320 of 2015

1. K.Laksmiammal
2. R.Krishna Reddy ... Petitioners in both W.P.s

vs.

1. The State of Tamil Nadu,
Rep.by its Secretary to the Government,
Housing and Urban Development Department,
Fort St. George, Chennai – 600 009.
2. The Managing Director,
Tamil Nadu Housing Board,
No.33, Anna Salai,
Nandanam, Chennai – 600 035.
3. Executive Engineer,
Tamil Nadu Housing Board,
Bagalur Road, Hosur – 635 109.
4. The Special Tahsildar (LA),
Hosur Housing Scheme,
Bagalur Road, Krishnagiri District. ... Respondents in both W.P.s

Prayer in W.P.No.38319 of 2015: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Declaration declaring that the



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lands comprised in Survey No.19/7, 0.17.0 hectares comprised in Survey No.19/8, 0.38.0 hectares comprised in Survey No.19/9 totally measuring an extent of 0.73.0 hectares situate at Naligapetta Agraharam Village, Hosur Taluk (Dharmapuri) Krishnagiri District covered by Notification issued under Section 4(1) in G.O.Ms.No.788, Housing and Urban Development Department dated 09.05.1991 and Section 6 Declaration in G.O.Ms.No.487 Housing and Urban Development Department dated 31.07.1992 deemed to have lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-Settlement Act, 2013.

Prayer in W.P.No.38320 of 2015: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the proceedings of the first respondent in Letter No.26307/L.A2(2)/12-5 dated 16.05.2013 quash the same.

(In both W.P.s)

For Petitioners : Mr.R.Bharath Kumar

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

For R2 to R4 : Mr.D.Murugan
Standing counsel for TNHB

COMMON ORDER

Since the issue involved in both the petitions are common they are disposed of by way of this common order.



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2. It is the case of the petitioners that they are the joint owners of the above said properties, which were are sought to be acquired for the purpose of formation of a Housing Scheme for the benefit of the second respondent. Notification u/s 4(1) of the Land Acquisition Act, 1894 (for short 'the Act') was issued on 09.05.1991 and the same was published in Government Gazette on 05.06.1991. Subsequently, Declaration u/s 6 of the Act was also issued on 31.07.1992 and Award came to be passed on 03.08.1994. However, till date neither the compensation was disbursed in favour of the petitioners nor possession of the lands have been taken by the respondents. Hence the petitioners made a representation dated 26.11.2012 before the respondents seeking re-conveyance of the above said properties in their favour under Section 48-B of the Act. Since the same was not considered the petitioners filed a writ petition in W.P.No.4481 of 2013. This Court vide order dated 22.02.2013 directed the first respondent therein to consider the petitioners representation dated 26.11.2012, pursuant to which, the first respondent rejected the petitioners claim seeking re-conveyance vide order dated 16.05.2013. Hence, the petitioners have filed the present writ petitions



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seeking declaration of the entire acquisition proceedings as having lapsed as per Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'Act, 2013') and for quashment of the impugned order dated 16.05.2013 passed by the first respondent.

3. Learned counsel appearing for the petitioners submits that though initially the petitioners filed a writ petition in W.P.No.1410 of 1994 questioning the acquisition proceedings and this Court vide order dated 06.12.2000 dismissed the same on the ground of laches, since the subject properties were not utilised for the purpose for which it was acquired, the petitioners made a representation dated 26.11.2012 before the respondents to re-convey the subject properties in their favour under Section 48-B of the Act, and the same was rejected vide proceedings dated 16.05.2013 of the first respondent. Further, it is clear from the impugned order dated 16.05.2013 that compensation amount in respect of the subject property has been deposited in the account of the fourth respondent, however, neither the physical possession has been taken nor the compensation has been deposited



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in the competent Court. Hence the entire acquisition proceedings would be deemed to have lapsed as per Section 24(2) of the Act, 2013.

4. Learned Government Advocate appearing for the first respondent submitted that the subject property was acquired for the purpose of formation of a Housing Scheme and Award to that effect has been passed in the year 1994. Though, the petitioners filed a writ petition challenging the said acquisition proceedings in W.P.No.1410 of 1994, which was dismissed vide order dated 31.01.1994, the petitioners representation for re-conveyance of the aforesaid lands before the respondents under Section 48 B of the Act is not sustainable, more so, when Section 48 B of the Act mandates that where the land has not been utilised for the purpose for which it was acquired, the Government has power to transfer the acquired lands for any other public purpose when such lands vests with the Government. In the case on hand possession having been taken by the Government and the petitioners itself admitted that the land vests with the Government, there is no lapsation of the acquisition proceedings u/s 24 (2) of Act, 2013. Hence, he prayed for dismissal of the present writ petitions.



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

6. For better appreciation, the relevant portion of the provisions u/s 48 B of the Act is quoted hereunder:

“48-B. Transfer of land to original owner in certain cases- Where the Government are satisfied that the land vested in the Government under this Act is not required for the purpose, the Government may transfer such land to the original owner who is willing to repay the amount paid to him under this Act for the acquisition of such land inclusive of the amount referred to in sub-section(1-A) and (2) of Section 23, if any, paid under this Act.”

7. Admittedly, the petitioners land was acquired for the benefit of Tamil Nadu Housing Board and award was passed in respect of the petitioners land. Since the lands were not put to use inspite of long lapse of time, the petitioners made a representation before the respondents seeking



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re-conveyance of lands u/s 48 B which was rejected vide order dated 16.05.2013.

8. However, the case of the petitioner before this Court is that neither compensation was paid nor possession of lands have been taken and, therefore, by virtue of Section 24 (2) of Act, 2013, the acquisition proceedings stood lapsed.

9. 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



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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 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.



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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 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.*



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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)

10. 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. 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



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not get lapsed.

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11. In the case on hand, it is the submission of the petitioner, as admitted by the respondents that the compensation amount has been deposited with the 4th respondent. It is the stand of the respondents that possession of the lands have been taken. In fact, it is even the admitted case of the petitioner in W.P.No.38319 of 2015 that possession of the land has been taken by the Government. The above stand of the respondents is fortified by the fact that the petitioner has claimed for reconveyance of land u/s 48-B of the Act and, therefore, necessarily, possession of the lands have been taken without which seeking reconveyance of land would not arise. Therefore, invocation of Section 24(2) of the Act, 2013 to hold the acquisition proceedings as having lapsed is wholly unsustainable and the decision in *Indore Development Authority case (supra)* would definitely stand attracted in favour of the respondents. In such circumstances, the contention of the petitioners seeking to invoke Section 24 (2) of the Act is wholly misconceived and unsustainable and the contention deserves to be rejected. Accordingly, the prayer as sought for in W.P.No.38319 of 2015



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cannot be granted and the writ petition is accordingly dismissed.

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12. Insofar as W.P.No.38320 of 2015 is concerned the petitioners representation dated 26.11.2012 seeking re-conveyance of aforesaid lands was rejected by the first respondent vide order impugned in W.P.No.38320 of 2015 stating that the compensation amount has been deposited in the account of fourth respondent and the petitioners can obtain the same from the fourth respondent. However, the petitioners have not taken any steps to receive the said compensation. It is to be pointed out, that, once the land has been acquired, it is within the domain of the acquisition body to utilise the lands for the purpose for which it was acquired and the Government has the right to utilise the lands for any other public purpose other than the purpose for which it was acquired and merely because the lands have not been utilised for a long time, the petitioners, as a matter of right, cannot claim re-conveyance for the mere reason that the lands have not be utilized for the purpose it was acquired. That apart, the acquisition proceedings have been completed and the subject land was taken over by the Government.



13. The aforesaid view of this Court stands fortified by the decision of

the Hon'ble Apex Court in the case of **Tamil Nadu Housing Board Vs.**

Keeravani ammal and others reported in AIR 2007 SC 1691, wherein it

has been held thus :-

*“11. We may also notice that once the 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 State from giving back the property for anything less than the market value. In **State of Kerala and Ors. v.M.Bhaskaran Pillai and Anr.**Manu/SC/0731/1997: AIR1997SC2703 in a similar situation, this Court observed :*

The question emerges : whether the Government can assign the land to the erstwhile owners? It is settle law that if the land is acquired for a public purpose, after the 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 fetched 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



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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 throughout the public auctions so that the public also gets benefited by getting higher value.

Section 488B Introduced into the Act in the State of Tamil Nadu is an exception to this rule. Such a Provision has to be strictly construed and strict compliance for its validity, we are not called upon to decide here.

12. We are thus of the view that the Writ Petitioners, the contesting respondents, have not made out any case for interference by the Court for interference by the Court or for grant of any relief to them. It is therefore not necessary for us to go into the further contention raised on the scope of Section 48B of the Act, whether the writ petitioners have established any claim to the lands, whether if possession has already been made over to the Housing Board, the State could exercise its power under that provision. We leave open those questions for the High Court of consider as and when the occasion arises on it being approached in the context of Section 48B of the Act. Suffice it to say that the decision of the High Court in Writ Petition in question is totally unsustainable and deserves to be set aside.”



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14. In view of the aforesaid decision, the relief of reconveyance sought for by the petitioner in W.P.No.38320 of 2015 by invoking Section 48-B of the Act cannot be conceded and, accordingly, the said prayer also deserves to be rejected.

15. In view of the above discussions and in view of the ratio laid down with regard to lapsation of land u/s 24 (2) of Act, 2013 as also the reconveyance of land u/s 48-B of the Act, which has since been settled, the prayer sought for in both the petitions cannot be considered and, accordingly, both the writ petitions are dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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RAP

Index : Yes/No
Speaking order : Yes/No



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To:

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1. The Secretary to the Government,
The State of Tamil Nadu,
Housing and Urban Development Department,
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M.DHANDAPANI, J.

RAP

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