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WP.Nos.38455 of 2015 etc batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2022

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

WP.Nos. 38455, 38456, 12092, 1605, 27351, 28173,
28174, 4801, 4818, 4819, 4820 & 4821 of 2015

and

M.P.Nos.1 of 2015 (12 petitions), 2 of 2015 (4 petitions) &
21144 of 2016

W.P.No.38455 of 2015

1.M.Etti

2.M.Arumugham

3.Kirubha

4.Kannammal

.. Petitioners

Versus

1.The Government of Tamil Nadu
Rep by its Secretary to Government
Housing and Urban Development Department
Fort St.George, Chennai – 600 009

2.The District Collector
Kancheepuram District
Kancheepuram

3.The Member Secretary
Chennai Metropolitan Development Authority
Egmore, Chennai – 600 008

4.The Sub Collector/Revenue Divisional Authority
Chengalpet Sub Collector's Office
Chengalpet



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5.The Special Tahsildar (Land Acquisition)

Maraimalai Nagar Scheme

Kattankolathur

Kanchipuram District.

.. Respondents

Prayer in W.P.No.38455 of 2015: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration, declaring the land acquisition proceedings in respect of lands of an extent of 0.55 acres in Survey No. 238/13B1B1; 0.44 acres in Survey No. 238/13B1B3; 0.31 acres in Survey No.238/14A and 0.43 acres in Survey No. 238/14C in all totaling to 1.73 acres of land in Sengundram Village, Chingleput Taluk, Kancheepuram District of the petitioners covered under Award No.5 of 1986 passed on 11.09.1986 by the 5th Respondent herein as lapsed under Sec.24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Re-Settlement Act 2013.

For Petitioners : Mr.AR.L.Sundareswarar, Senior Counsel (in all cases)
for M/s.A.L.Ganthimathi

For Respondents : Mr.T.K.Saravanan for R1, R2, R4 & R5
Government Advocate (in all cases)
Mr.R.Kumaresan for R3
Additional Advocate General
for Ms.P.Veenasuresh

COMMON ORDER

Since the issue involved in these writ petitions are one and the same, they are heard together and disposed of by way of this common order. It will be more convenient to deal these writ petitions cogently as listed in the cause-list.

W.P.No.38455 & 38456 of 2015

2. The case of the petitioners is that they are the owners of the subject properties in their respective petitions. The first respondent issued notification dated 07.07.1979 under Section 4(1) of the Land Acquisition Act



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1894 for acquiring lands for Industrial purpose and the same were also published in the gazette. Pursuant to the same, after publication of the Declaration under Section 6, an award passed in the year 1986 and even after passing award, possession were not taken and the compensation amount were not paid to the petitioners.

W.P.No.12092 of 2015

3. The petitioners claim that they are the owners of the lands comprising 8 cents each in Survey Nos.140/33A and 140/33B respectively in Keelkaranai Village, Kancheepuram District. Their lands were acquired by the Government of Tamil Nadu for forming a new town known as Maraimalai Nagar during the year 1974. For which, notification under Sec.4(1) was issued on 16.10.1974, a declaration under Section 6 was passed on 14.10.1977 and after following the due procedure, award was passed in Award No.1/81 dated 28.04.1981. The grievance of the petitioners is that in spite of the fact that the acquisition proceedings were initiated, the lands were not utilised for the purpose for which it was acquired. It is their further claim that they are in the possession of the subject lands and even the compensation amount was not paid to the petitioners.

W.P.No.1605 of 2015



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4. The petitioners claim that they are the owners of the lands comprising 86 and 1/2 cents in Survey No.151/3C1 of Keelkaranai Village, Kancheepuram District. Their lands were acquired by the Government of Tamil Nadu for forming a new town known as Maraimalai Nagar during the year 1974. For which, notification under Sec.4(1) was issued on 16.10.1974, a declaration under Section 6 was passed on 14.10.1977 and after following the due procedure, award was passed in Award No.1/81 dated 28.04.1981. The grievance of the petitioners is that in spite of the fact that the acquisition proceedings were initiated, the lands were not utilised for the purpose for which it was acquired. It is their further claim that they are in the possession of the subject lands and even the compensation amount was not paid to the petitioners.

W.P.No.27351, 28173 & 28174 of 2015

5. The petitioners claim that they are the owners of their respective lands in their Survey Numbers situated at Sengundram Village, Kancheepuram District. Their lands were acquired by the Government of Tamil Nadu for forming a new town known as Maraimalai Nagar during the year 1974. For which, notification under Sec.4(1) was issued on 07.07.1979, declaration under Section 6 was passed on 06.08.1982 and after following the due



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procedure, award was passed in Award No.5/1986 dated 11.09.1986. The grievance of the petitioners is that in spite of the fact that acquisition proceedings were initiated, the lands were not utilised for the purpose for which it was acquired. It is their further claim that they are in the possession of the subject lands and even the compensation amount not deposited in favour of the petitioners.

W.P.Nos.4801, 4818, 4819, 4820 & 4821 of 2015

6. The petitioners claim that they are the owners of their respective lands in their respective Survey Numbers situated at Keelkaranai Village, Kancheepuram District. Their lands were acquired by the Government of Tamil Nadu for forming a new town known as Maraimalai Nagar during the year 1974. For which, notification under Sec.4(1) was issued on 16.10.1974, declaration under Section 6 was passed on 14.10.1977 and after following the due procedure, a common award was passed in Award No.2/1989 dated 10.02.1989. The grievance of the petitioners is that in spite of the fact that the acquisition proceedings were initiated, the lands were not utilised for the purpose for which it was acquired. It is their further claim that they are in the possession of the subject lands and even the compensation amount not deposited in favour of the petitioners.



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WEB COPY 7. According to the petitioners in the respective writ petitions, admittedly, the respondents have not taken any steps to implement the project in the lands which were acquired. Till date, the possession of the subject land has not been taken and the same still remains with the petitioners and no compensation amount has been paid to the petitioners. Therefore, the land acquisition proceedings initiated under the Central Act, 1894 have been lapsed in view of the non compliance of Section 24(2) of the Rights to Fair compensation and Transparency in Land Acquisition Rehabilitation and Re-Settlement Act 2013 (for short 'Act 2013') upon coming into force of Act, 2013. Therefore, the petitioners made a representation to the respondents to drop the acquisition proceedings. Till date, no action was taken, hence, these writ petitions have been filed seeking appropriate remedy.

8. Learned senior counsel appearing for the petitioners submitted that upon acquisition, neither possession of the lands have been taken nor compensation has been paid to the petitioners. Therefore, in view of Section 24 (2) of Act, 2013, the acquisition proceedings is deemed to have lapsed. It is the further submission of the learned senior counsel that the possession of the lands is still with the petitioners and the petitioners have not been paid the



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compensation.

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9. Per contra, learned Advocate Additional General appearing for the respondents submit that possession of the lands have been taken and handed over to the requisitioning body. It is further submitted that inspite of the efforts made by the respondents to pay the compensation to the land owners, as the land owners/petitioners failed to establish their right and title over the property, the same were deposited in Revenue/Court deposit in terms of Section 31 of Act, 1894. Therefore, the conditions provided u/s 24 (2) of Act, 2013 stood complied with and the land acquisition proceedings has not lapsed. Accordingly, he prays for dismissal of these petitions.

10. The issue raised in these writ petitions is no longer res integra and the same stands settled by the decision of the Hon'ble Supreme Court in *Indore Development Authority Vs. Manoharlal and ors etc., (2020 SCC Online SC 316)*, wherein, the Apex Court has held as follows:-

“362. We are of the considered opinion that Section 24 cannot be used to revive dead and stale claims and concluded cases. They cannot be inquired into within the purview of Section 24 of the 2013 Act. The provisions of Section 24 do not invalidate the judgments and orders of the Court, where rights and claims have been lost and negative. There is no revival of the barred claims by operation of law. Thus, stale and dead claims cannot be permitted to be canvassed on the pretext of enactment of Section 24. In exceptional cases, when in fact,



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the payment has not been made, but possession has been taken, the remedy lies elsewhere if the case is not covered by the proviso. It is the Court to consider it independently not under Section 24 (2) of the 2013 Act."

* * * * *

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 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



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*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.

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)

11. In the aforesaid decision, it has been 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



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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 not get lapsed.

12. Further, the Hon'ble Supreme Court has also held that the obligation to pay is complete by tendering the amount under Section 31 (1). From the above, it is clear that tendering of compensation to the land owners is mandatory and only in the event of the land owners not ready to receive the compensation and seek enhancement, compensation can be deposited.

13. It is the case of respondents that compensation was ordered to be kept in revenue/Court deposit, as the land owners did not turn up for the award enquiry and establish their right and title over the said property so as to receive the compensation. It is also not the case of the petitioners that they appeared for the award enquiry and submitted the requisite materials to establish their



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right and title over the said property. That being the position, the stand of the petitioners that compensation was not paid to them cannot be sustained and there has been due compliance of Section 31 (1) of Act, 1894. In such a backdrop, one of the limb of Section 24 (2) pertaining to payment of compensation stands fulfilled and, therefore, the deemed lapsation of the acquisition proceedings as projected by the petitioners cannot be sustained.

14. Further, the Hon'ble Apex Court has also held that stale and dead claims relating to concluded cases cannot be brought within the ambit of Section 24 (2) so as to revive the same and reap the benefit of Section 24. Orders which have negated the rights of the claimants cannot be revived as there is no revival of barred claims by operation of law.

15. The petitioners, therefore, have failed to satisfy the twin requirements under Section 24(2) of the Act, i.e., the physical possession of the land was not taken and compensation has not been paid/tendered/deposited in accordance with law. In view of the above, the acquisition proceedings have not been lapsed by the operation of Section 24(2) of the new Act, i.e., Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Re-Settlement Act 2013. In view of the settled position, these writ petitions are



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devoid of merits and are liable to be dismissed.

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16. Accordingly, these writ petitions are dismissed. No costs.

Consequently, connected miscellaneous petitions are closed.

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Index: Yes/No

Internet: Yes/No

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