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W.P.No.2433 of 2016



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.10.2022

Coram

The Honourable Mr.Justice M.DHANDAPANI

**W.P.No.2433 of 2016
and W.M.P.No.2111 of 2016**

Mr.Palanisamy @ Ponnusamy

...Petitioner

Versus

1.The Government of Tamil Nadu,
Rep. by its Commissioner and Secretary,
Housing and Urban Development Department,
Fort St.George, Madras – 9.

2.The Special Tahsildar,
Land Acquisition Neighborhood Scheme,
Namakkal.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of declaration declaring the award made in Award No.18/86-87 dated 12.12.1986 by the second respondent is vitiated as null and void in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013) and consequently, direct the second respondent



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to issue no objection certificate in respect of the petitioner's property in S.No.91/3A, Pudhupalayam Agraharam Village, Tiruchengode Taluk, Salem District now Namakkal District.

For Petitioner : Mr.S.Viswanathan
For Respondents : Mr.U.Bharanidharan,
Additional Government Pleader

ORDER

The relief sought in this writ petition is to declare the award made in Award No.18/86-87 dated 12.12.1986 by the second respondent is vitiated as null and void, in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013) (hereinafter referred to as 'Act 2013') and consequently, direct the second respondent to issue no objection certificate in respect of the petitioner's property in S.No.91/3A, Pudhupalayam Agraharam Village, Tiruchengode Taluk, Salem District now Namakkal District.

2. The case of the petitioner is that he is the owner of the property measuring to an extent of 3,449 Sq.ft of land in S.No.91/3A situated at Pudhupalayam Village, Kumarapalayam SRO, Namakkal District. He



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purchased the said property from one Palaniappa Gounder and Chinusamy Gounder by way of Sale Deed Document No.368 of 1979 dated 19.02.1979, after paying the full sale consideration. After the purchase of said property, the Revenue Records were mutated in his name and therefore, he has been in absolute possession and enjoyment of the same.

2.1. While so, when he attempted to construct a house in his aforesaid property, the second respondent issued Notification dated 17.11.1981 under Section 4(1) of Tamil Nadu Land Acquisition Act, 1894 (hereinafter referred to as 'LA Act') vide G.O.Ms.No.986 Housing and Urban Development Department, notifying that the aforesaid land is required for public purpose for Neighborhood Scheme, Salem. The said notification was published in Tamil Nadu Government Gazette dated 16.12.1981. The Draft Declaration under Section 6 of the LA Act was approved by the Government vide G.O.Ms.No.1042 Housing & Urban Development Department dated 11.12.1984 and published in Tamil Nadu Government Gazette extra ordinary supplement to part II Section 3 dated 14.12.1984 at Pages 2 – 4. The Draft declaration under Section 7 of the LA Act was approved by the government in Government letter No.4110 G1/84-



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8 dated 06.03.1985 at pages 2-3. The Draft Declaration under Section 6 of the LA Act was published in the locality on 14.12.1984 and dailies on 15.12.1984. Notification under Section 9(1) 10 and 9 (3) 10 of the LA Act was issued on 07.10.1986, calling upon the petitioner for award enquiry on 28.10.1986 as per schedule at Panchayat Union Office, Pallipalayam, Tiruchengode Taluk. The petitioner also appeared for award enquiry on 12.12.1986 and the second respondent passed the award in Award No.18/86-87.

2.2. Since the petitioner was not satisfied with the quantum of compensation, he made objection, however, right from the date of acquisition, the second respondent did not come forward to pay the compensation amount. Even after acquisition of petitioner's property, the respondent have not yet taken possession of the same. Hence, left with no other alternative, the petitioner has filed the present writ petition for the reliefs stated *supra*.

3. The learned counsel for the petitioner submitted that the respondents had acquired the petitioner's property for implementation of



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Neighborhood Scheme at Salem, however, till date, they have not established the said scheme. The petitioner is still in possession of his property which itself clearly shows that the respondents had abandoned the Neighborhood Project. Therefore, the learned counsel prayed that the award passed by the second respondent in Award No.18/86-87 dated 12.12.1986 is liable to be declared as null and void.

4. The learned Additional Government Pleader appearing for the respondents submitted that the petitioner has not proved his title to the property by submitting relevant documents and in the absence of establishing title to the property, the compensation amount was deposited in Sub Court, Sankari on 18.05.1987 u/s. 30 and 31(2) of the Land Acquisition Act. He further submitted that possession of land was taken over on 23.02.1987 and the same was handed over to the Tamil Nadu Housing Board and the layout was approved thereafter. He also submitted that the petitioner's land was acquired for public purpose and after completion of award enquiry and passing of award, the petitioner's land was taken possession and therefore, Section 24(2) of the Act 2013 would not stand attracted.



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5. Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents.

6. Admittedly, the case of the petitioner is that his property was acquired by the respondents for implementation of Neighborhood Scheme at Salem as early as in the year 1986, however, till date, the respondents have neither taken possession of the petitioner's property nor awarded compensation to the petitioner.

7. Insofar as payment of compensation is concerned, it is provided under Section 31 of the LA Act. To hold that compensation has been tendered, there should be compliance of sub-section (1) of Section 31. Only if the land owner fails to prove his title, then compensation could be deposited before the Court, before which, a reference is maintainable. It is the case of the respondents that the petitioner could not prove his right over the subject property, however, there is no whisper from the respondents about the legality of the title claimed by the petitioner. The petitioner has purchased the land as early as in the year 1979 and has also mutated the



Revenue Records. However, no material to the contra is placed by the respondents to show that Revenue Records were not mutated. Further, if mutation had not been carried out, on what basis, notice for award enquiry was issued to the petitioner. Therefore, mere disputing the title to the property by the respondents, would not be sufficient and in the above backdrop, relying on the compliance of Section 31 of the LA Act would not be a ground to hold that Section 24(2) has been complied with, with regard to payment of compensation. In the above circumstances, payment of compensation, alleged to have been made could not be termed to be a compensation paid to the petitioner as per the provisions of the Act. Therefore, the factum of payment of compensation has not been made to the petitioner.

8. So far as taking possession of the subject property by the respondents is concerned, a perusal of the entire records reveal that no panchanama has been placed to show that possession of the subject property has been taken over by the respondents. That being the case, the mere assertion of the respondents with regard to taking possession of the property without there being any factual proof of having taken physical possession of



the property, the possession claimed to have been taken by the respondents is merely a paper possession, which cannot be termed to be possession in the eye of law.

9. At this juncture, it is very pertinent to refer the judgment passed by the Constitution Bench of Hon'ble Supreme Court in the case of ***Indore Development Authority vs. Manoharlal and Ors.*** reported in (2020) 8 SCC 129, wherein, it has held as follows:

“366. In view of the aforesaid discussion, we answer the questions as under:

366.1. 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 the 2013 Act, there is no lapse of proceedings. Compensation has to be determined under the provisions of the 2013 Act.

366.2. 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 2013 Act under the 1894 Act as if it has not been repealed.

366.3. 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



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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.

366.4. The expression 'paid' in the main part of Section 24(2) of the 2013 Act does not include a deposit of compensation in court. The consequence of non-deposit is provided in the 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 1894 Act shall be entitled to compensation in accordance with the provisions of the 2013 Act. In case the obligation Under Section 31 of the Land Acquisition Act, 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 2013 Act has to be paid to the "landowners" as on the date of notification for land acquisition under Section 4 of the 1894 Act.

366.5. In case a person has been tendered the compensation as provided under Section 31(1) of the 1894 Act, 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). The landowners who had refused to accept compensation or who sought reference for higher compensation, cannot claim that



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the acquisition proceedings had lapsed under Section 24(2) of the 2013 Act.

366.6. The proviso to Section 24(2) of the 2013 Act is to be treated as part of Section 24(2) not part of Section 24(1)(b).

366.7. The mode of taking possession under the 1894 Act 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).

366.8. 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 authority concerned 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.

366.9. Section 24(2) of the 2013 Act 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 2013 Act i.e. 1.1.2014. It does not revive stale and time-barred claims and does not reopen a 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.”



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10. From the above, it is evident that neither compensation has been paid as mandated under the Act nor possession of the property, which is alleged to have been taken is established and in the absence of the same, the rigours of Section 24 (2) of the Act 2013 would stand squarely attracted and in view of the pronouncement of the Hon'ble Apex Court in ***Indore Development Authority case (supra)***, the acquisition proceedings is deemed to have lapsed for not complying with the twin conditions provided under Section 24(2) of the Act 2013.

11. In the aforesaid circumstances, this Court is inclined to set aside the award passed by the second respondent and allow this writ petition. Accordingly, the Award No.18/86-87 dated 12.12.1986 passed by the second respondent is hereby set aside and this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

Speaking Order (or) Non-Speaking Order

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M.DHANDAPANI, J.

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Copy to

- 1.The Commissioner and Secretary,
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- 2.The Special Tahsildar,
Land Acquisition Neighborhood Scheme,
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