



W.P.No.7299 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.09.2022

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P. No.7299 of 2015

and

M.P.No.1 of 2015

1. M. Maragatham

2. M. Kannan

... Petitioners

Vs.

1. The State of Tamil Nadu,
Represented by its Principal Secretary to the Government,
Housing and Urban Development Department,
Fort St. George, Chennai 600 009.

2. The Special Tahsildar (L&A)
Housing Scheme, Hosur

3. The Managing Director,
Tamil Nadu Housing Board,
Anna Salai, Nandanam,
Chennai 600 035.

...Respondents



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WEB Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Declaration, declaring the land acquisition proceedings initiated in the nature of writ, declaring the Land Acquisition proceedings initiated by the first respondent in Section 4 (1) Notification bearing G.O.Ms.No.137 Housing and urban and Development dated 30.01.1991 and consequent section 6(1) Declaration bearing G.O.Ms.No.178 Housing and Urban Development (L.A II Department) dated 08.04.1992 relating to the petitioners land of an extent of 0.40.0 Hectares or 1 acre in Hosur Village and Taluk, then Dharmapuri District now in krishnagiri District as lapsed and pass orders.

For Petitioners : Mr. V. Ravi

For Respondents 1 and 2 : Mr.U. Bharanidharan
Additional Government Pleader

For Respondent 3 : Mr.D. Murugan
Standing counsel



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ORDER

This Writ Petition has been filed praying for issuance of a Writ of Declaration, declaring the land acquisition proceedings initiated in the nature of writ, declaring the Land Acquisition proceedings initiated by the first respondent in Section 4 (1) Notification bearing G.O.Ms.No.137 Housing and urban and Development dated 30.01.1991 and consequent section 6(1) Declaration bearing G.O.Ms.No.178 Housing and Urban Development (L.A II Department) dated 08.04.1992 relating to the petitioners land of an extent of 0.40.0 Hectares or 1 acre in Hosur Village and Taluk, then Dharmapuri District now in krishnagiri District as lapsed.

2. The case of the petitioners are that acquisition proceedings were initiated over the subject property under the Land Acquisition Act 1984 in Section 4(1) Notification bearing G.O.Ms.No.137 Housing and Urban and Development issued on 30.01.1991 and section 6(1) Declaration was published bearing G.O.Ms.No.178 Housing and Urban Development (LA II Department) issued dated 08.04.1992. It is the further case of the petitioners that the said



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land was acquired and meager compensation was paid but it was not the fair compensation. Thereafter, the said land was not used for the purpose for which it was acquired. Hence, the petitioners have filed the present writ petition with the afore said prayer.

3. The learned counsel for the petitioners that though the compensation amount was given the respondent has not taken the possession of the subject land and the land is not used for the purpose for which it has been acquired. Hence he prays this Court to pass appropriate orders.

4. The learned Additional Government Pleader appearing for the first and second Respondents would submit that the land was acquired in the year 1994 and the compensation was also paid at the relevant point of time. While such being the case after a lapse of more than 2 decades the petitioners have filed the present petition which is not sustainable. He further submits that the petitioners have made a reference under under Section 18 to enhance the compensation before the Sub Court, Hosur in L.A.O.P.No.644 of 2019 dated



01.04.1998 and the learned trial Judge also enhanced the compensation.

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5. Heard both sides and perused the materials available on record.

6. Admittedly the facts of the case is not in dispute. The subject land has been acquired under the Land acquisition Act, 1894 and the said land has not been utilized for the purpose for which it has been acquired. The short question that arises for consideration is whether the unutilized land can be returned to the land owner under Section 101 of Act,2013. In this regard it would be relevant to refer to the decision rendered in the case of ***Indore Development Authority vs Manoharlal and others reported in 2020(8) Scc*** 129 and the relevant portion same is extracted hereunder:

Section 24 deals with lapse of acquisition. Section 101 deals with the return of unutilized land. Section 101 cannot be said to be applicable to an acquisition made under the Act of 1894. The provision of lapse has to be considered on its own strength and not by virtue of Section 101 though the spirit is to give back the land to the original owner or owners or the legal heirs or to the Land Bank. Return of lands is with respect to all lands acquired under the Act of 2013 as the expression used in the opening part is “ When any land, acquired under this Act remains



unutilized". Lapse, on the other hand, occurs when the State does not take steps in terms of Section 24(2). The provisions of Section 101 cannot be applied to the acquisitions made under the Act of 1894. Thus, no such sustenance can be drawn from the provisions contained in Section 101 of the Act of 2013. Five years' logic has been carried into effect for the purpose of lapse and not for the purpose of returning the land remaining unutilized under Section 24(2).

(Emphasis Supplied)

7. Admittedly, in the case on the hand, the lands of the petitioners were acquired under Act, 1894. However, the said Act, 1894 stood repealed and Act, 2013 has come into force on and from 01.01.2014. Now the petitioners wants re-conveyance of the utilized land under Act, 2013.

8. It is to be pointed out, as held by the hon'ble Supreme Court in *Indore Development Authority Case (Supra)* that Section 101 cannot be made applicable to an acquisition under Act, 1894 and no sustenance can be drawn from Section 101 of Act, 2013 for an acquisition that had been undertaken under Act, 1894. The provision of lapse has to be considered on its own strength under the relevant Act and provision of one Act cannot be superimposed on the other.



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9. In view of the above, it is made clear that there there is no merit in

this petition. Accordingly this writ petition is dismissed. No order as to costs.

Consequently the connected miscellaneous petition is closed.

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Index : Yes / No

Speaking order : Yes / No

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To

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