



W.P.No.29442 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2022

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.29442 of 2016

S.Subramanian

...Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Adi Dravidar and Tribal Welfare Department,
Fort St. George, Chennai.
2. The Secretary and Director,
Most Backward Classes Department,
Fort St. George, Chennai.
3. The Collector,
Sivagangai District.
4. The Special Tahsildar,
Adi Dravidar Welfare,
Sivagangai.

...Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration to declare that the land acquisition proceedings initiated by the respondents with respect to the lands situated at Survey No.116/12A and 116/12B in Illayangudi Taluk, Sivagangai District vide notification dated 25.11.1992 under Section 4(1) of the Land Acquisition Act, 1894 to have lapsed in view of Section 24(2) of the Right to Fair



W.P.No.29442 of 2016

Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 (Act 30 of 2013).

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For Petitioner : Mr.V.Raghavachari

For Respondents : Mr.G.Krishna Raja, AGP

ORDER

The petitioner has filed this Writ petition seeking issuance of a Writ of Declaration to declare the land acquisition proceedings initiated by the respondents in respect of the subject lands, vide notification dated 25.11.1992 under Section 4(1) of the Land Acquisition Act, 1894 (in short 'Old Act') to have lapsed 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) (in short 'New Act').

2. The case of the petitioner is that the lands comprised in S.Nos.116/12A & 116/12B situated at Kurichi Village was originally purchased by the petitioner's grandmother Poornammal and thereafter the same was inherited by the petitioner's father namely Sivasamy, who in turn settled the said lands in favour of the petitioner and his brother namely Jeevanandam. Pursuant to the said settlement, the petitioner and his brother



W.P.No.29442 of 2016

were in absolute possession and enjoyment of the said lands and their names were also shown in the UDR patta as persons in occupation. While so, the 4th respondent issued a notification dated 25.11.1992 under Section 4(1) of the Land Acquisition Act, 1894, proposing to acquire the subject lands for the purpose of Housing scheme in order to provide free house sites to the Most Backward Class family. Subsequently, though the final award was passed under Section 11 of the old Act, which shows the names of the petitioner and his late brother, who passed away in the year 1991, as the owners of the subject lands, till date, neither the possession of the subject lands was taken nor the compensation was paid to the petitioner, even after a lapse of about 20 years. While so, as the new Act came into force on 01.01.2014 and as per Section 24(2) of the new Act, if any award under section 11 has been made five years or more prior to the commencement of the new Act, but the physical possession of the land has not been taken or the compensation has not been paid, the said proceedings stands lapsed. Hence, in order to avail such benefit, the petitioner has come up with this Writ petition seeking to declare the above said acquisition proceedings as lapsed under Section 24(2) of the New Act.



W.P.No.29442 of 2016

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3. Though very many grounds have been raised by the learned counsel for the petitioner, the major grievance of the petitioner is that though the acquisition proceedings against the petitioner's lands were initiated as early as 1992 and the final compensation amount was fixed vide proceedings dated 21.10.1993, till date, neither the possession of the subject lands were taken nor the compensation was paid to the petitioner, hence, the entire acquisition proceedings stands lapsed in terms of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013, which came into force on 01.01.2014. Accordingly, he prayed for allowing this Writ petition.

4. Learned Additional Government Pleader appearing for the respondents submitted that the Adi Dravidar Welfare Department, for the purpose of constructing free houses to the Most Backward Class people, identified various lands situated at Kuruchi Village, Ilayangudi Taluk, Sivagangai District, to an extent of 0.61.0 Hectares, in which petitioner's lands were also included and forwarded the necessary proposal to the



W.P.No.29442 of 2016

Government to acquire the said lands. Thereafter, the notification under

Section 4(1) of the Land Acquisition Act was issued, vide G.O.Ms.No.(3D)

159, Backward and Most Backward Classes Department, dated 20.10.1992

and the Declaration under Section 6 of the old Act was issued, vide

G.O.Ms.No.64, Backward and Most Backward Classes Department, dated

09.06.1993. Thereafter, the proceedings under Section 11 of the old Act were

initiated and notices were served on the land owners and the interested

persons and the final award in Award No.1/93-94 came to be passed, vide

proceedings dated 21.10.1993. Since, some of the land owners, including the

petitioner, did not come forward to receive the compensation amount, the

same was made as Revenue deposit. Thereafter, a housing layout was formed

under the said Scheme in the year 1994 and subsequently, allotment orders as

well as the assignment orders were issued to 30 beneficiaries and revenue

records were also mutated in their favour. While such being the case, filing

the present Writ petition, suppressing all the above said facts and seeking to

avail the benefit under Section 24(2) of the new Act is not sustainable. In

support of his submission, he relied upon the decision of the Hon'ble Apex

Court in the case of *Indore Development Authority Vs. Manoharlal and*



others etc., reported in (2020) 8 SCC 129, in which the very same issue fell

for consideration 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 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



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W.P.No.29442 of 2016

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 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)

In view of the above, since possession had already been taken and compensation had also been deposited in revenue account as early as in 1993, there is no question of declaring the proceedings as lapsed under Section 24(2) of the new Act. Accordingly, he prayed for dismissal of this Writ



W.P.No.29442 of 2016

petition.

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5. Heard learned counsel on either side and perused the materials available on record.

6. A perusal of the materials placed on record reveals that, immediately after the initiation of acquisition proceedings, the subject lands were taken over by the Government and the free house sites were also issued by identifying 30 beneficiaries, vide proceedings dated 04.02.1994 and their names were also reflected in the revenue records. Further, it is pertinent to note that, objecting the above said assignment, the petitioner made an objection before the Land Acquisition Officer, from which it is clear that the petitioner is well aware of the allotment of the subject lands in favour of the beneficiaries. While such being the case, filing this Writ petition, as if the possession of the subject lands still vests with the petitioner is not sustainable.

7. Further, as rightly pointed out by the learned Additional Government Pleader, in the decision of the Hon'ble Apex Court stated supra, it is clearly held that either the possession has to be taken or the compensation has to be



W.P.No.29442 of 2016

paid to the land owner. In the present case, both the possession has been taken over and the compensation amount had been deposited as early as on 26.11.1993, as the petitioner did not come forward to receive the compensation amount. Once possession has been taken over, there is no question of declaring the above said acquisition proceedings as lapsed under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013('Act 2013'). Hence, the prayer sought by the petitioner in the present writ petition is not maintainable.

8. For the reasons aforesaid, the present Writ petition stands dismissed.

No costs.

16.08.2022

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Speaking Order : Yes/ No

Index : Yes/ No



W.P.No.29442 of 2016

WEB COPY To

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W.P.No.29442 of 2016

W.P.No.29442 of 2016

16.08.2022