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W.A.Nos.475 & 476 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2022

CORAM

THE HONOURABLE Mr. JUSTICE T.RAJA

AND

THE HONOURABLE Mr. JUSTICE K.KUMARESH BABU

W.A.Nos.475 & 476 of 2016
and CMP.Nos.6586 & 6587 of 2016

1.The Secretary to Government
Public Works Department (Highways)
Fort St.George, Secretariat
Chennai – 600 009.

2.The Land Acquisition Officer /
Revenue Divisional Officer
Chengalpet. ..Appellants 1 &2 / Respondents 1& 4
(in both appeals)

Vs.

Markand H.Desai (Died)

1.Sumark M.Desai

[R1 substituted as LR of deceased Markand H.Desai
vide order dated 04.04.2022 made in CMP.Nos.6011 &
6013 of 2022 in W.A.Nos.476 & 475 of 2016.]

... 1st Respondent / Writ Petitioner

2.The Director

Tamil Nadu Road Development Company Ltd. (TNRDC)
No.346, Pantheon Road
Chennai – 600 008.



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3. The Managing Director
Chennai Metropolitan Development Authority
Thalamuthu Natarajan Building
Gandhi Irwin Road
Egmore, Chennai – 600 008.

.. 2 & 3rd Respondents /
2nd & 3rd Respondents
(in both appeals)

Common Prayer : Writ Appeals filed under Clause 15 of Letters Patent
praying to allow the writ appeals and set aside the order passed in
W.P.Nos.30937 & 30938 of 2015 dated 26.10.2015.

For Appellants : Mr.K.V.Sajeev Kumar
Special Government Pleader

For Respondents : Mr.P.Chandrasekaran
for M/s.S.Sivakumar for R1
Mr.M.Sivavarthanam for R2
Mrs.P.Veena Suresh
for CMDA [R3]

COMMON JUDGMENT

(Judgment of the Court was made by T.RAJA, J)

These appeals have been directed against the impugned order
dated 26.10.2015 passed by the learned Single Judge in W.P.Nos..30937
& 30938 of 2015, in which the respondents/appellants herein were



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directed to calculate the compensation payable to the writ petitioner / first respondent herein, as per the provisions of the New Act, for the lands acquired in Survey No.3/495A1AB1 for widening and strengthening the East Coast Road and also the lands covered in Survey No.3/496A1A1A2 for the purpose of improvement (Administrative Office for Toll Plaza) of the East Coast Road.

2. Mr.K.V.Sajeevkumar, learned Special Government Pleader appearing for the appellants, assailing the impugned order would submit that the lands covered in the aforementioned survey nos. i.e., in S.No.3/495A1AB1, to an extent of 0.11.5 hectares and in S.No.3/496A1A1A2, to an extent of 0.07.5 hectares were acquired and that many land owners failed to take part in the award enquiry and they did not even come forward to receive the compensation award as well. Therefore, due to non-failure of pattadars and land owners in attending the award enquiry, the compensation amount of Rs.35,334/- and interest amount of Rs.1,03,099/- totalling to Rs.1,38,433/- was deposited in Civil Court, Tambaram on 24.11.2015, as per the procedures followed at that relevant point of time. Thereafter, after a lapse of 20 years, the writ



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petitioner / first respondent making a claim to pay compensation for the lands acquired as per Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013, by filing writ petitions is improper and unjustifiable. The second objection raised by the learned Special Government Pleader is with regard to the conclusion reached by the learned Single Judge in his order dated 24.11.2015. The learned Single Judge in the aforesaid order, has held that the compensation amount has not been paid to the writ petitioner, and therefore, directed the appellants to pay compensation to the writ petitioner as per the New Act.

3. The learned Special Government Pleader submitted that for expansion of East Coast Road, the lands of the petitioner including other land owners were acquired. Subsequent to it, Award No.1/1995 dated 16.08.1995 was passed in respect of the lands covered in S.No.3/495A1AB1 for an extent of 01.11.5 hectares and another award came to be passed in the year 2003 vide Award No.02/2003/B dated 05.02.2003 in respect of the lands for an extent of 0.07.5 hectares covered in S.No.3/496A1A1A2. In the said circumstances, the writ



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petitioner now claiming compensation for the awards which came to be passed as early as 2003, under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013), is not applicable and he is not entitled to get the benefit under the said New Act (Act 30 of 2013), which came into force only on 01.01.2014. Therefore, it is not open to the writ petitioner to claim compensation under the New Act, inasmuch as both the awards came to be passed prior to the New Act, the writ petitioner/first respondent is entitled to get compensation only as per the old Act (Land Acquisition Act, 1894).

4. In support of his submissions, the learned Special Government Pleader referring to the judgment of the Hon'ble Supreme Court in ***Indore Development Authority Vs. Manoharlal and Others*** [(2020) 8 SCC 129], argued that as per the judgment, the obligation under Section 31 of the Land Acquisition Act, 1894 if not for any reason be fulfilled, the interest under Section 34 of the said Act alone can be granted. The non-deposit of compensation in Court does not result in lapse of land acquisition proceedings, and it clearly states that the writ petitioner is



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entitled to get compensation as per the Old Act 1894. Therefore, the compensation payable to the writ petitioner would be calculated as per the Old Act, 1894 and if the petitioner is entitled to get any amount in excess beyond the amount that was already deposited in the civil Court, the said differential amount would also be paid to them as per the Old Act.

5. Referring to the first proviso to Section 24(2) of the New Act, learned Special Government Pleader argued that even the first proviso to Section 24(2) makes it clear that where an award is made and compensation in respect of the majority of the land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under Section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act. Therefore, the benefit under New Act cannot be made applicable to the writ petitioner. The reason is that in the subject matter of acquisition, the notification was issued under Section 4(1) of Land Acquisition Act in G.O.Ms.No.1105, Public Works (HS.II) Dept., on 04.03.1992, and thereafter, a declaration under Section 6 of the



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Land Acquisition Act, 1894 was issued vide G.O.Ms.No.1167 Public Works (HS.II) Department dated 10.08.1993, followed by which an award enquiry was conducted and an award came to be passed on 16.8.1995 under Section 11 of the Act vide Award No.1/1995. The physical possession of lands in question was taken over by the Highways Department for the purpose of expansion of East Coast Road, and thereafter, the roads were widened and put to use for the public. Hence, there is no justification to seek compensation under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition (Rehabilitation and Resettlement Act), 2013, at this belated point of time. Concluding his arguments, the learned Special Government Pleader relying on the **Indore Development Authority case**, submitted that when deposit of compensation has been made to the majority of land holdings, the writ petitioner is not entitled to get compensation under the New Act, and his entitlement is only under the Old Act.

6. In reply, Mr.P.Chandrasekaran, learned counsel appearing for the writ petitioner / first respondent herein would submit that the lands belonging to the writ petitioner were acquired by Government, issuing



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notification under Section 4(1) of Land Acquisition Act in G.O.Ms.No.1105, Public Works (HS.II) Dept., dated 04.03.1992, followed by a declaration issued under Section 6 in G.O.Ms.No.1167 Public Works (HS.II) Department dated 10.08.1993, and paper awards alone were passed vide Award No.1/1995 dated 16.8.1995 and Award No.2/2003 dated 05.03.2003 in respect of the acquisitions for widening and strengthening of East Coast Road at Uthandi. When it is an admitted case of the appellant that they have not deposited the compensation for the lands in question acquired by them, it is not open to them to say that the land owners have not participated in the award enquiry, and even in case if the land owners failed to take part in the award enquiry conducted by them, on completion of exparte enquiry, the appellant could have deposited the award amount in the Civil Court (Reference Court) as per law, enabling the land owners to withdraw the amount. However, regrettably the appellant had deposited the amount in the Court only on 24.11.2015 i.e., after the impugned order was passed by the learned Single Judge on 26.10.2015. This has even been admitted by them in 'Ground-D' of the affidavit/memo filed by the appellant. The learned counsel appearing for the writ petitioner/1st respondent also made



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a statement that the poor writ petitioner had passed away without seeing the fruits of the acquisition and his legal representative is brought on record, therefore, at least now the compensation for the acquired lands can be given expeditiously to the legal heir.

7. Heard both sides and perused the materials placed before this Court in support of their contentions.

8. The lands belonging to the writ petitioner were acquired for widening and strengthening the East Coast Road vide the Notification issued under Section 4(1) in G.O.Ms.No.1105 Public Works (HS.II) dated 04.03.1992 followed by the Section 6 declaration in G.O.Ms.No.1167 Public Works (HS.II) Department dated 10.08.1993 and the awards were also passed in Award No.1/1995 on 16.08.1995 and in Award No.2/2003 dated 05.03.2003. When the awards were passed as early as in the year 1995 and 2003 respectively, the possession of the lands were also taken. But the compensation amount payable to the writ petitioner was not deposited. Only on 24.11.2015, after the commencement of the new Act, the award amount has been deposited



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before the civil Court. The learned single Judge, appreciating the fault committed by the appellants in not making the proper deposit of the compensation amount, came to the conclusion that the proceedings under the old Act got lapsed. Therefore, the writ petitioner was entitled to receive the compensation in respect of both lands acquired as per the new Act. Hence, a direction was issued to the appellants to calculate the compensation payable to the writ petitioner as per the provisions of the new Act in respect of the lands acquired to an extent of 0.11.5 hectares comprised in S.No.3/495A1AB1 and an extent of 0.07.5 hectares comprised in S.No.3/496A1A1A2 respectively in Uthandi village and pay the compensation amount to the writ petitioner. While we partially agree with the direction to pay the compensation as per the new Act, partially disagree with the finding given by the learned single Judge that in view of non-deposit of compensation, the land acquisition proceedings stood lapsed.

9. Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, reads as under :



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'24.Land acquisition process under Act No.1 of 1894 shall be deemed to have lapsed in certain cases :

(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), -

- (a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or*
- (b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.*

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:



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Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.”

10.A perusal of Section 24(1) which is extracted herein above would show that even if a paper award has been passed and no compensation has been deposited in the civil Court, the land acquisition proceedings cannot be held to have lapsed. But the consequence of non-deposit of compensation for the lands acquired has been clearly covered by the proviso to sub-section (2) of Section 24. Therefore, it is an admitted case where after the issuance of 4(1) notification, followed by Section 6 declaration, award was passed in the years 1995 and 2003 respectively, but the compensation came to be deposited in the Civil Court for the lands acquired only on 24.11.2015. This is much after the order passed by the learned Single Judge directing the appellants to pay the compensation as per the New Act. Therefore, when it is an admitted



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fact that although the awards were passed vide Award No.1/1995 dated 16.8.1995 and Award No.2/2003 dated 05.03.2003 as early as 2003 for the acquired lands of the petitioner, the compensation for the said lands in question came to be deposited in the Civil Court, Tambaram only on 24.11.2015. This clearly shows the truth of the case that the compensation was not deposited before the New Act came into force i.e., on 01.01.2014, but it was deposited in the Court only on 24.01.2015, i.e., after a lapse of nearly one year from the New Act. Therefore, in our considered view, the findings given by the learned Single Judge do not warrant any interference and the direction of the learned Single Judge directing the appellants to calculate the compensation amount as per the provisions of the New Act is in order.

11. Accordingly, both the appeals fail and stand dismissed. Taking into account the statement of the learned counsel for the writ petitioner that the writ petitioner had passed away and his legal representative who is on record before this Court is fighting to get the compensation for his lands acquired by the appellants and also that the land acquisition proceedings were initiated in the year 1995, and twenty seven years have



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gone without seeing the light of the compensation, and that there was already a direction of the learned Single Judge of this Court in his order dated 26.10.2015 directing the Government to pay the amounts to the writ petitioner within a period of 12 weeks from the date of receipt of a copy of this order, failing which, the first appellant is directed to appear before this Court, and that the order of the learned Single Judge has not been complied with and an appeal has been filed, this Court hereby directs the appellants to pay the writ petitioner/first respondent the compensation amount calculated as per the New Act, within a period of four weeks from the date of receipt of a copy of this order, failing which the interest for the said amount will be payable at the rate of 10% p.a. No costs. Consequently, connected miscellaneous petitions are closed.

[T.R.,J.] [K.B., J.]
27.06.2022

Index : Yes/No
Speaking order / Non-speaking order
ds



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To:

- 1.The Secretary to Government
Public Works Department (Highways)
Fort St.George
Chennai – 600 009.
- 2.The Revenue Divisional Officer
Office of the Revenue Divisional Office
Chengalpattu.
- 3.The Special Deputy Collector (Land Acquisition)
Poonamallee, Chennai.
- 4.The Divisional Engineer
Highways Department
Chengalpattu, Tamil Nadu -603 001.
- 5.The Chief Executive Officer
Tamil Nadu Road Development Company Limited
No.346, Sindu Pantheon Plaza
Pantheon Road, Egmore
Chennai – 600 008.



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T.RAJA, J.
and
K.KUMARESH BABU, J.

ds

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