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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2022

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.NO.30015 OF 2014

M.Muniellammal

... Petitioner

.Vs.

1. The State Rep. By its Principal Secretary,
Housing and Urban Development Department,
Fort St. George,
Chennai - 9.
2. The Tamil Nadu Housing Board,
Rep. By its Managing Director,
No.33, Anna Salai,
Nanadanam, Chennai - 35.
3. The Executive Engineer,
Tamil Nadu Housing Board,
Bhagalur Road,
Hosur - 635 109.
4. The Special Tahsildar (LA),
Hosur Housing Scheme,
Bhagalur Road, Hosur,
Krishnagiri District.

... Respondents

PRAYER:-

Petitions filed under Article 226 of the Constitution of India, for issuance of Writs of Declaration declaring that the Land Acquisition proceedings initiated under the Land Acquisition Act 1894 in respect of and measuring an extent of 5.26 acres comprised in Survey No.682/1 situated at Chennathur Village (South), Hosur Taluk, Krishnagiri District deemed to have lapsed in view of Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition and Re-settlement Act 2013.



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For Petitioner : Mr.V.Ayyappa Raja
For Respondent : Mr.G.Krishnan Raja
Additional Government Pleader
For RR1 & 4

Dr.R.Gowri for RR2 & 3

O R D E R

This petition has been filed for declaring that the Land Acquisition proceedings initiated under the Land Acquisition Act 1894 in respect of and measuring an extent of 5.26 acres comprised in Survey No.682/1 situated at Chennathur Village (South), Hosur Taluk, Krishnagiri District deemed to have lapsed in view of Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition and Re-settlement Act 2013.

2. Heard, V.Ayyappa Raja, learned counsel for the petitioners, Mr.G.Krishnan Raja, learned Additional Government Pleader appearing for the respondents 1 & 2 and Mrs.R.Gowri, learned Standing Counsel appearing for the respondents 3 & 4.

3. The land admeasuring an extent of 5.25 acres comprised in survey No.682/1 situated at Chenathur (South) Hosur Taluk, Krishnagiri District originally belonged to the petitioner's husband. From the date of purchase, the petitioner is in possession and enjoyment of the property. The first respondent has issued notification under the Land Acquisition Act 1894 for acquiring lands for the purpose of construction of houses under the Neighbourhood Scheme at Hosur. The Government of Tamil Nadu initiated land acquisition proceedings on behalf of the Tamil Nadu Housing Board to acquire 212 acres of land including the subject land under Land Acquisition Act, 1894 for the purpose of Hosur Neighbourhood Housing Scheme.

4. Pursuant to the acquisition, award was passed in Award No.14/1994 dated 30.07.1994 by 4th respondent. Objecting the same, the petitioner has approached the Land acquisition Officer requesting for higher compensation. The Land Acquisition Officer referred the dispute to the Subordinate Court, Hosur for fixing the compensation under Section 18 of the Land Acquisition Act. The said case was taken on file in LAOP No.509/1996 and the learned Judge had enhanced the compensation. But the respondents have not settled the amount. Thereafter, the petitioner has filed appeal suit in A.S.No.182 of 2001 before this Court. This Court by its order dated 05.12.2003 disposed of the appeal directing the respondents therein to settle the amount to the petitioner. However, the amount has not been paid till date and



only the award amount has been deposited into the Sub Treasury, Hosur.

5. According to the petitioner, admittedly, an award was passed on 30.07.1994, possession of the subject land has not been taken so far and the same still remains with the petitioner and no compensation amount has been paid to the petitioner. 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 Right to Fair Compensation and Transparency in Land Acquisition and Re-settlement Act 2013. Therefore, the petitioner made a representation to the respondents to drop the acquisition proceedings. Till date, no action was taken, hence, the present writ petition has been filed before this Court seeking appropriate remedy.

6. When the matter is taken up for hearing, it is brought to the notice of this Court that issue raised in this writ petition is no longer res integra as the same stands settled by the Hon'ble Supreme Court in Indore Development Authority Vs. Manoharlal and ors etc., (2020 SCC Online SC 316), wherein, the Apex Court held as follows:-

''374. Before proceeding further, in our opinion, Section 24 contemplates pending proceedings and not the concluded ones in which possession has been taken, and compensation has been paid or deposited. Section 24 does not provide an arm or tool to question the legality of proceedings, which have been undertaken under the Act of 1894 and stood concluded before five years or more. It is only in cases where possession has not been taken, nor compensation is paid, that there is a lapse. In case possession has been taken, and compensation has not been deposited with respect to majority of landholdings, the beneficial provision of the statute provides that all beneficiaries shall be paid compensation as admissible under the Act of 2013. The beneficiaries, i.e., landowners contemplated under the proviso to Section 24(2), are the ones who were so recorded as beneficiaries as on the date of issuance of notification under Section 4 of the Act of 1894. 227 (2006) 3 SCC 286 The provision is not meant to be invoked on the basis of void transactions, and by the persons who have purchased on the basis of power of attorney or otherwise, they cannot claim the benefit under Section 24 as is apparent from proviso to Section 24 (2) and the decision in Shiv Kumar & Ors. v. Union of India and Ors.''



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402. 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"



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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."



7. From the above, it is evident that the Hon'ble Supreme Court has settled all the issues, including the grounds raised by the petitioner. That apart, the acquisition proceedings have been completed and the subject land was taken over by the government and the same was handed over to the requisitioning body. Further the requisitioning body also deposited the compensation as awarded by the Land Acquisition Officer. Therefore, the petitioner 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 the compensation has not been paid/tendered/deposited in accordance with law. In view of the dictum laid down by the Hon'ble Supreme Court, the issues raised by the petitioner having been settled, the acquisition proceedings have not lapsed by operation of law under Section 24 (2) of the new Act i.e., Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. In view of the settled position of law, the writ petition is devoid of merits and is liable to be dismissed.

8. Accordingly, the writ petition is dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar(CS II)

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Sub Assistant Registrar

Rli

To

1. The Secretary to Government,
Housing and Urban Development Department,
Secretariat,
Chennai - 9.
2. The Managing Director,
The Tamil Nadu Housing Board,
No.33, Anna Salai,
Nanadanam,
Chennai - 35.
3. The Executive Engineer,
Tamil Nadu Housing Board,
Bhagalur Road,
Hosur - 635 109.



4. The Special Tahsildar (LA)
Hosur Housing Scheme,
Bhagalur Road, Hosur,
Krishnagiri District.

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+1cc to Mr.R.Bharath Kumar, Advocate, S.R.No.10336
+1cc to the Government Pleader, S.R.No.10317

W.P.NO.30015 OF 2014

GPL (CO)
PBS/23/03/2022