



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.04.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.30897 of 2014

1. G.Pushpam
2. G.Mahendran
3. G.Ramamurthy
4. D.Lakshmipriya

...Petitioners

Vs.

1. The Government of Tamil Nadu,
Rep. by its Secretary to Government,
Housing and Urban Development Department,
Fort St.George, Chennai - 600 009.

2. The Special Tahsildar,
(Land Acquisition)
Housing Scheme Unit No.II,
Coimbatore, Coimbatore District.

3. The Executive Engineer and Administrative Officer,
Tamil Nadu Housing Board,
Coimbatore Housing Unit,
Tatabad, Coimbatore - 12.

...Respondents

(R3 impleaded, vide per order
dated 12.12.2014 in M.P.No.1 of 2014
in W.P.No.30897/2014)

Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration, declaring that the Land Acquisition proceedings initiated in respect of petitioners lands situated at Kalapatti Village covered by S.F.No.962 of an extent of 2.00.5 Hectares; S.F.No.955 of an extent of 1.81.5 Hectares vide G.O.Ms.No.758 dated 03.05.1991 and lands situated at Kalapatti Village and covered by S.F.No.964 of an extent of 2.71.0 Hectares vide G.O.Ms.No.616 dated 26.09.1994 as having 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).

For Petitioners : Mr.M.Venkadeshnan

For Respondents : Mr.Yogesh Kannadasan, Spl. GP, for R1 & R2
: M/s.Dr.R.Gowri, for R3



O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Declaration to declare the Land Acquisition proceedings initiated in respect of petitioners' lands situated at Kalapatti Village covered by S.F.No.962 of an extent of 2.00.5 Hectares; S.F.No.955 of an extent of 1.81.5 Hectares vide G.O.Ms.No.758 dated 03.05.1991 and lands situated at Kalapatti Village and covered by S.F.No.964 of an extent of 2.71.0 Hectares vide G.O.Ms.No.616 dated 26.09.1994 as having 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).

2. The case of the petitioner is that, the petitioners are the legal heirs of one Late.Gopalsamy and the said Gopalsamy obtained the properties comprised in S.Nos.962, 955 & 964, measuring an extent of 2.00.5 hectares, 1.81.5 hectares and 2.71.0 hectares respectively, vide partition deed dated 06.02.1969 registered as Document No.311 of 1969. Whiles, on 29.05.1991, the Housing and Urban Development Department vide G.O.Ms.No.758 dated 03.05.1991, issued notification under Section 4(1) of the Land Acquisition Act, 1894 (in short 'Act') notifying the acquisition of petitioners' lands in S.Nos.962 & 955, for construction of houses under Neighbourhood Scheme of the Tamil Nadu Housing Board and Declaration under Section 6 of the Act was made in G.O.Ms.No.288, dated 04.06.1992 and Award was passed in Award No.10 of 94 dated 02.06.1994. Further, the petitioner's land in S.No.964, measuring an extent of 2.71.0 Hectares was also acquired and Notification under Section 4(1) of the Act was issued, vide G.O.Ms.No.616 dated 26.09.1994 and Declaration under Section 6 of the Act was issued in G.O.Ms.No.954 dated 17.11.1995. However, till date, the petitioners were not paid with the compensation for the acquired lands nor possession of the lands have been taken by the respondents. Hence, challenging the same, the present Writ petition is filed, seeking quashment of the above acquisitions proceedings as having lapsed.

3. Learned counsel for the petitioner submitted that, though the Land acquisition proceedings were initiated in the year 1991 and Award, which was passed before 20 years ago, prior to the commencement of the New Act, however, till date, the petitioners were not paid with the compensation for their lands acquired for the purpose of construction of houses under Neighbourhood Scheme of the Tamil Nadu Housing Board and the lands were not put to any use. He further submitted that, as per Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 (in short New Act), once the land acquisition proceedings were initiated and Award was also passed 5 years or more prior to the



commencement of the New Act, but if the physical possessions of the lands are not taken or the compensation has not been paid, the said proceedings initiated under the Old Act shall be deemed to have lapsed. The relevant portion of the said Act is given as follows:

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

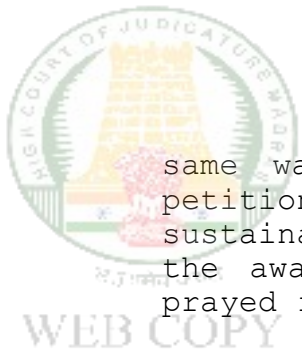
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(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement 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:

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.

4. He further submitted that, this Court had applied the provisions of Section 24(2) of the New Act and had declared several proceedings initiated for the purpose of construction of houses under Neighbourhood scheme of the Tamil Nadu Housing Board, under the Old Act in respect of the lands adjacent to the petitioners' lands as having lapsed. Hence, he prayed for appropriate orders.

5. Learned counsel for the 1st and 2nd respondents submitted that, the land acquisition proceedings as against the petitioners were initiated in the year 1991 and awards were passed in the year 1997 itself and the lands were handed over by the Tahsildar, Coimbatore North to Tamil Nadu Housing Board in the year 2007 itself and the scheme was implemented. He further submitted that, the petitioners herein filed a Writ petition in W.P.No.19769 of 2014 for re-conveyance of the above said lands acquired for the purpose of construction of houses under the Neighbourhood Scheme of the Tamil Nadu Housing Board and the



same was dismissed as withdrawn on 03.09.2014. While so, the petitioners have again filed this Writ petition, which is not sustainable. Further, after taking possession of the said lands, the award amount was deposited in Revenue deposit. Hence, he prayed for dismissal of the present Writ petition.

6. Learned counsel for the 3rd respondent fairly submitted that, though the 3rd respondent has taken over the possession on 09.08.2007 and 07.09.2007 by way of handing over and taking over, however, no Panchanama is available to substantiate the same and further, there is no proof with regard to Revenue deposit.

7. Heard the arguments advanced on either side and perused the materials available on records.

8. It is not in dispute that the petitioners lands were acquired for Kalapatti Neighbourhood Scheme. Though in the earlier round of litigation, this Court, vide order dated 03.03.2022 allowed the W.P.No.12212 of 1994 and etc., batch cases on the ground that, prior approval as mandated under section 3(f)(vi) of the Act was not obtained from the Government either by the requisition body or the acquisition body, however, in the present case, in addition to the above, the necessary ingredient of handing over and taking over possession of lands have not been established by the respondents by filing any documents, such as Panchanama and no proof of payment of compensation or even deposit of compensation in Revenue deposit has been established. In the absence of the same, the decision taken by the Apex Court in Indore Development Authority Vs. Manoharlal and others etc., reported in 2020 (8) SCC 129 is followed in the present case also and for better appreciation, the relevant portion is extracted as follows.

"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.



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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" 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.



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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)

9. In the case on hand, handing over and taking over of possession not having been established nor the payment of compensation has been proved, the above decision is squarely applicable to the facts of the present case thereby, the acquisition proceedings is deemed to have lapsed. For the reasons aforesaid, the entire acquisition proceedings initiated as against the petitioner is liable to set aside as lapsed in terms of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013).



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10. Accordingly, this Writ petition is allowed. No costs.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Government of Tamil Nadu,
Housing and Urban Development Department,
Fort St.George, Chennai - 600 009.
2. The Special Tahsildar,
(Land Acquisition)
Housing Scheme Unit No.II,
Coimbatore, Coimbatore District.
3. The Executive Engineer and Administrative Officer,
Tamil Nadu Housing Board,
Coimbatore Housing Unit,
Tatabad, Coimbatore - 12.

+2ccs to Mr.M.Venkadeshnan, Advocate SR. No. 24683

+1cc to Government Pleader SR. No. 24543

W.P.No.30897 of 2014

SR(CO)

PR (26/05/2022)