



W.P. No.24749/2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 27.06.2022

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.24749 OF 2018

1. N.Devarajan
2. D.G.Lakshmi
3. D.Kavitha
4. D.Aishwarya

.. Petitioners

- Vs -

1. The Secretary to Government
Municipal Administration & Water
Supply Department
Government of Tamil Nadu
(formerly called as Health & Local
Administration Department)
Fort St. George, Chennai 600 009.
2. The Secretary to Government
Revenue Department
Government of Tamil Nadu
Fort St. George, Chennai – 600 009.
3. The Deputy Secretary to Government
Health & Local Administration Department
Government of Tamil Nadu
Fort St. George, Chennai 600 009.



W.P. No.24749/2018

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4. The District Collector, Chennai
Office of the District Collector
Singaravelan Maligai, Rajaji Salai
Chennai 600 001.
5. The Competent Authority
Commissioner & Director of ULC & ULT
Tondiarpet, Chennai.
6. The Corporation of Chennai
Rep. by its Commissioner
Ripon Buildings, Chennai 600 001.
7. M/s.United Breweries Ltd.
Rep. by its Sr. Vice President
Vittal Mallaya Road
Bangalore 560 001.
8. The Tahsildar
Egmore-Nungambakkam Taluk
Chennai.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of declaration declaring that the entire acquisition of the lands of the petitioners comprised in Old Revenue Survey No.40/5, New T.S. No.5/15, present T.S. No.5-B, Block No.14, Periyakudal Village, erstwhile Egmore-Nungambakkam Taluk, now aminjikai Taluk, admeasuring 3881.306 sq. meters acquired under Award No.2/1953 dated 31.03.1953 and covered



W.P. No.24749/2018

WEB COPY

under possession certificate dated 09.04.1953 stand lapsed by operation of law as per Section 24 (2) of the Right to Fair Compensation & Transparency in Acquisition, Rehabilitation and Resettlement Act (for short 'Fair Compensation Act') and that respondents 1 to 6 and 8 cannot interfere with the petitioners' peaceful possession and enjoyment of the said property or its development.

For Petitioners : Mr.P.Wilson, SC, for
M/s.Richardson Wilson

For Respondents : Mr. P.Sathish, AGP for RR-1 to 5 & 8
Mr. Anand for
M/s.T.S.Gopalan & Co. for R-7
Mr. V.C.Selvasekar for R-6

ORDER

The present petition has been filed assailing the land acquisition proceedings as having been lapsed by virtue of Section 24 (2) of the Right to Fair Compensation & Transparency in Acquisition, Rehabilitation and Resettlement Act (for short 'Fair Compensation Act') and to restrain the respondents 1 to 6 and 8 from interfering with the petitioners peaceful possession and enjoyment of the property.



W.P. No.24749/2018

WEB COPY

2. It is the case of the petitioners that they are the joint owners of the subject property measuring a total extent of 3881.306 sq.mtrs., with buildings comprised in T.S. No.5B (Old Survey No.40/5), Block No.14, Periyakoodal Village, bearing Door No.89, Brewery Road, 'A' Block, Anna Nagar, Chennai 600 102 and that they purchased the said property from the 7th respondent under 16 different sale deeds in the years 1995 and 1996. Subsequent to the purchase, various proceedings had been initiated under the Urban Land Ceiling Act. However, the petitioners were issued with patta in their names.

3. It is the further case of the petitioners that they were issued with a show cause notice on 28.5.2001 by the 4th respondent calling for explanation as to why the patta granted in their favour should not be cancelled against which the petitioners filed C.S. No.418 of 2001 before this Court seeking declaration that the petitioners are the owners of the property and for a consequential order of injunction restraining respondents 4 to 6 and their agents in any manner interfering with the peaceful possession and enjoyment of the property and for further reliefs. The said suit was contested by the respondents by filing written statement submitting that a proposal has been formulated by the Corporation of



W.P. No.24749/2018

WEB COPY

Chennai to develop the '*Shenoy Nagar Town Planning Scheme*' and towards the same, approval was granted by the Government and a notification was issued for acquisition of the property in question, which as the subject matter of Award No.2 of 1953 dated 31.03.1953. It was the further stand of the respondents therein that symbolic possession was taken on 9.4.1953 and possession of the property was handed over to the 6th respondent.

4. It is the further case of the petitioners that the said suit was decreed on 24.7.09 in favour of the petitioners against which appeal was preferred by the 6th respondent Corporation in O.S.A. No.24 of 2017. The Division Bench of this Court allowed the appeal vide judgment and decree dated 3.8.18 setting aside the decree granted in the suit by the learned single Judge. Aggrieved by the said order, Special Leave Petitions in SLP Nos.22155 and 22156 of 2018 were preferred and the Hon'ble Supreme Court, vide judgment dated 27.8.2018, dismissed the petitions and considering the fact that the petitioners have been running educational institution in a portion of the property, one year time was granted to vacate the premises subject to filing of undertaking within four weeks from 27.8.2018. It is the further case of the petitioners that inspite of the said



W.P. No.24749/2018

WEB COPY

order, physical possession of the land has not been taken till date and that compensation has also not been paid so far and by virtue of Section 24 (2) of the Fair Compensation Act, the entire acquisition gets lapsed. Therefore, the present writ petition is filed for the relief supra.

5. Learned senior counsel appearing for the petitioners submit that though the Hon'ble Supreme Court had granted a year's time to the petitioner to vacate and hand over possession of the property, yet the respondents have not taken any action to take possession of the property till this day. In such a situation, Section 24 (2) of the Fair Compensation Act stand squarely attracted and in view of the decision of the Constitution Bench of the Hon'ble Supreme Court in **Indore Development Authority – Vs – Manoharlal & Ors. (2020 (8) SCC 129)**, the entire acquisition proceedings would stand lapsed. Particular reference was drawn to para-366 of the said order, which is quoted hereunder :-

“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 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



W.P. No.24749/2018

WEB COPY

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).



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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.”

6. It is therefore the submission of the learned senior counsel that the respondents having not taken possession of the property nor paid the compensation till date, which is beyond the prescribed period of five years from the date of the award, the acquisition would get lapsed counsel and the present case would squarely fall within the four corners of the aforesaid ratio.



W.P. No.24749/2018

WEB COPY

7. It is the further submission of the learned senior counsel for the petitioner that possession has been taken forcibly without following the due process of law and the present acquisition being the present petition deserves to be allowed.

8. Per contra, learned counsel appearing for the 6th respondent, placing reliance on the counter submitted that the Division Bench in O.S.A. No.24 of 2017 had rendered a categorical finding that the plaintiffs have no title to the suit property, which was acquired and handed over to Madras Corporation as their vendor did not have title to the property. Therefore, it is not open for the petitioners to contend that they hold the land on the basis of their title over the said lands. It is the further submission of the learned counsel that the petitioners have lost their case even up to the Hon'ble Supreme Court and they have been granted a year's time to vacate the property and an undertaking to the said effect was directed to be filed. This clearly shows that not only the petitioners have no right over the property, they cannot claim any relief once the issue with regard to the said property has attained finality and, therefore, the present petition on behalf of the petitioners is nothing but reagitating the issue, which



W.P. No.24749/2018

WEB COPY

has already been settled. In view of the above, learned counsel prays for dismissal of the present petition.

9. This Court gave its careful consideration to the submissions advanced by the learned counsel on either side and perused the materials available on record.

10. The facts relating to the acquisition of the lands, the filing of the suit and the dismissal of the special leave petition of the petitioners by the Hon'ble Supreme Court with a direction to vacate the premises within a particular frame and the undertaking to be given in this behalf are not disputed. The only ground on which the present petition is filed is that possession having not been taken by the respondents and compensation having not been paid till date, Section 24 (2) of the Fair Compensation Act stands squarely attracted and in view of the ratio laid down in *Indore Development Authority's case (supra)*, the entire acquisition proceedings stood lapsed.



W.P. No.24749/2018

WEB COPY

11. This Court is in respectful agreement with the ratio laid down in *Indore Development Authority case (supra)* to the effect that “*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*”. However, the said ratio would not be applicable or available to the petitioners in the facts and circumstances of the present case, as discussed hereunder.

12. It is the case of the petitioners that they bought the lands from the 7th respondent through sale deeds during the years 1995 and 1996. Yet, it is the uncontroverted case of the respondents that the lands were the subject matter of acquisition even in the year 1953 and Award No.2 of 1953 was passed in regard to the lands of the petitioner. The landowners, at the relevant point of time, had not questioned the acquisition and had accepted and received the compensation paid and, therefore, the lands stood vested with the Government, which, thereafter, was passed on to the Corporation of Chennai by way of symbolic possession. Therefore, even on 9.4.1953, possession of the subject lands were taken and handed over to the Chennai Corporation. The petitioners,



W.P. No.24749/2018

WEB COPY

being alleged subsequent purchasers, from the 7th respondent, who had no title at the relevant point of time, cannot urge that they have been in possession of the lands and the lands having not been acquired in the manner known to law and further possession having not been taken and compensation having not been paid, Section 24 (2) of the Fair Compensation Act would stand squarely attracted.

13. In this regard, the observations of the Division Bench of this Court in O.S.A. No.24 of 2017 assumes significance and for better appreciation, the same is quoted hereunder :-

“9.18. In this case the vendor of the plaintiffs lost its title after the suit property was acquired and handed over to the Corporation of Madras. Therefore, the vendor could not have conveyed any title to the plaintiffs in the suit property. The plaintiffs cannot have a better title than their vendor.”

14. Further, the Special Leave Petitions against this order has not in any manner disturbed this order and, in fact, the Hon’ble Supreme Court had dismissed the special leave petitions by affirming the order of the Division



W.P. No.24749/2018

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Bench. In effect, the order passed by the Division Bench had attained finality and the petitioners herein have also accepted the same by submitting to the period granted for handing over possession of the premises.

15. It is further to be pointed out that while dismissing the Special Leave Petitions, the Hon'ble Supreme Court, considering the fact that an educational institution has been running in a part of the premises, granted a year's time to the petitioners to vacate the subject land and building and an undertaking to this effect was ordered to be filed. This would clearly show that an undertaking was ordered to be given by the petitioners herein that within a year's time, the petitioners would vacate the premises based on which the petitioners were allowed to continue. The continuance of the petitioners is only based on the said undertaking and once the period given in the undertaking comes to an end, i.e., on 26.08.2019, the petitioners were supposed to vacate the premises and hand over possession to the Corporation of Chennai. Any further continuance beyond the period prescribed by the Hon'ble Apex Court could only be termed to be an occupation unauthorised by law, in which case, the respondents, more especially the 6th respondent was justified in forcibly removing the petitioners from the



W.P. No.24749/2018

WEB COPY

premises. Further, without filing of an undertaking, the respondents would not have allowed the petitioners to continue in the said premises, as undertaking is mandatory for the continuance of the petitioners in the said subject property.

16. It is further to be noted that the Division Bench, in its order, has categorically held that the vendor of the petitioners having no title over the property, no title could pass on to the petitioner and in such circumstances, on the basis of the acquisition, the Corporation of Madras has become the owner of the property and the petitioners could at best be termed as trespasser and that they are not entitled for any injunction. The relevant portion of the order of the Division Bench is as under :-

"9.24. The above mentioned orders took note of the acquisition proceedings and the apparent mistakes in the records that was attempted to be taken advantage of by the vendor of the plaintiffs. These orders will also have a significant bearing on the right, title and interest of the plaintiffs and their vendor over the suit property. The orders virtually confirmed the title of Corporation of Madras. These orders have become final and binding on the plaintiffs."



W.P. No.24749/2018

WEB COPY

17. When once the order passed by the Division Bench has attained finality and the Special Leave Petitions against the said order having been dismissed with a direction to the petitioners to vacate the premises within a year's time, it is incumbent upon the petitioners to have vacated the premises and handed over possession to the Corporation of Madras, who has been adjudged to be the owner of the subject lands and had perfected title.

18. However, inspite of the undertaking given by the petitioners, based on the orders of the Hon'ble Supreme Court, the petitioners have the temerity to approach this Court to set at naught the orders of the Hon'ble Supreme Court by taking umbrage under Section 24 (2) of the Fair Compensation Act by claiming that in the absence of taking possession and paying compensation, the acquisition proceedings stood lapsed.

19. To enforce the aforesaid decision, firstly the petitioners should be the title holders of the subject property from whom the lands have been acquired and secondly, upon such acquisition, possession has to be taken in the manner known to law only from the title holders. In the case on hand, the petitioners



W.P. No.24749/2018

WEB COPY

having no title over the subject land, as their vendors had no title to the subject lands, upon acquisition, the petitioners could only be held to be mere trespassers on the land. Further, when their title had been rejected, which had attained finality and the petitioners have submitted to the undertaking given before the Hon'ble Supreme Court that they would vacate the subject property within a year's time from the date of order of the Hon'ble Supreme Court, and also filed the said undertaking, the petitioners were duty bound to obey the said order in letter and spirit and cannot seek shelter under any law, more so when the petitioners are not the lawful owners of the property. Once the title to the subject property has been negated, which has attained finality, the present petition filed by the petitioners for a declaration claiming the very same relief by reciting that they are the owners of the subject property, in a different tune, does not merit acceptance.

20. Further, if at all the petitioners have any grievance with regard to the title to the subject property or for that matter removal from the subject property, the course open to the petitioners was only to approach the Hon'ble Supreme Court, as the Supreme Court, as the final arbiter, had, by a benevolent



W.P. No.24749/2018

WEB COPY

gesture, granted a year's time to the petitioners to vacate the premises, despite the fact that the petitioners did not have any title to the property. The benevolent gesture granted by the Hon'ble Supreme Court is sought to be misused by the petitioners by taking protection under Section 24 (2) of the Fair Compensation Act and reopening the matter, which had already stood decided. Though the decision in *Indore Development Authority (supra)* was later in point of time, once the title of the petitioners to the subject property was held to be bad as early as in 1953, the title stood transferred to the Corporation of Madras upon acquisition of the subject lands and the vendor of the petitioners had no title to the subject property, the claim of the petitioners for invocation of Section 24 (2) of the Fair Compensation Act does not arise. Further, as stated above, the petitioners having no title, even the decision in *Indore Development Authority (supra)*, later in point of time, would not confer any benefit on the petitioners and, therefore, the claim of the petitioners for giving the benefit u/s 24 (2) of the Fair Compensation Act is wholly misconceived.

21. Further, the decision of the Division Bench of this Court in the case of

B.Nagaraj – Vs – State of Tamil Nadu & Ors. (W.A. Nos.1204 of 2022, etc. Batch



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– **Dated 09.06.2022**) also stares writ large on face of record, as in the said case, the Division Bench has categorically held that a purchase made subsequent to a Notification u/s 4 (1), the said purchaser does not have any right to question the acquisition process. For better appreciation, the relevant portion of the said order is quoted hereunder :-

“7. In that regard, the judgment of the Apex Court in the case of Meera Sahni Vs. Lt. Governor of Delhi (reported in 2008 (9) SCC 177), is also relevant, wherein it was held that a person entering to the sale or any injunction of the land under acquisition after issuance of the Notification under Section 4(1) of the Act of 1894, has no right to challenge the acquisition proceedings or seek lapse of the proceedings. The relevant paragraphs of the said judgment, are quoted hereunder for ready reference:

"17. When a piece of land is sought to be acquired, a notification under Section 4 of Land Acquisition Act is required to be issued by the State Government strictly in accordance with law. The said notification is also required to be followed by a declaration to be made under Section 6 of the Land Acquisition Act and with the issuance of such a notification any encumbrance created by the owner, or any transfer made after the issuance of such a notification would be deemed to be void and would not be binding on the government. A number of decisions of this Court have recognized the aforesaid proposition of law wherein it was held that subsequent purchaser cannot



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W.P. No.24749/2018

challenge acquisition proceedings and also the validity of the notification or the irregularity in taking possession of the land after the declaration under Section 6 of the Act.

18. In *U.P.Jal Nigam Vs. Kalra Properties (P) Ltd.* (1996 (3) SCC 124), it was stated by this Court that (SCC p.126, para 3):

"3. ...Having regard to the facts of this case, we were not inclined to further adjourn the case nor to remit the case for fresh consideration by the High Court. It is well settled law that after the notification under Section 4(1) is published in the Gazette any encumbrance created by the owner does not bind the Government and the purchaser does not acquire any title to the property."

19. In *Sneh Prabha Vs. State of U.P.* (1996 (7) SCC 426), it is stated as under (SCC p.430, para 5):

"5. ...It is settled law that any person who purchases land after publication of the notification under Section 4(1), does so at his/her own peril. The object of publication of the notification under Section 4(1) is notice to everyone that the land is needed or is likely to be needed for public purpose and the acquisition proceedings point out and an implement to anyone to encumber the land acquired thereunder. It authorizes the designated officer enter upon the land to do preliminaries etc. Therefore, any alienation of the land after the publication of the notification under Section 4(1) does not bind the government or the beneficiary under the acquisition. On taking possession of the land, all rights, title and interests in land stand vested in the



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W.P. No.24749/2018

State, under Section 16 of the Act, free from all encumbrances and thereby absolute title in the land is acquired thereunder."

8. In the light of the ratio propounded by the Apex Court on the issue, so far as the writ petitioners are concerned, they have no right to challenge the Award issued in the year 1994, on the ground that it was after two years of the Declaration under Section 6 of the Act of 1894, having purchased the land much subsequent to the Notification issued under Section 4(1) of the Act of 1894."

(Emphasis Supplied)

22. From the ratio laid down above, it is clear that a purchase subsequent to the notification u/s 4 (1), the purchaser has no locus to question the acquisition. In the case on hand, the acquisition was in the year 1953 and the purchase made by the petitioner is only in the year 1995, almost four decades after the acquisition. That being the case, the petitioner cannot question the acquisition process and also cannot claim that the acquisition process has lapsed as neither possession has been taken nor compensation has been paid.

23. In the above backdrop of the facts as also the provision of law and the ratio laid in the decisions supra, the act of the petitioners in filing the present petition is nothing but an attempt to stall the efforts of the 6th respondent in



W.P. No.24749/2018

WEB COPY

holding possession of the subject property. When the vendors of the petitioners themselves have no title to the property, the claim made by the petitioners that the respondents have not followed the provisions of law while dispossessing them from their property and that possession was taken forcibly cannot be accepted for the simple reason that the petitioners are trespassers over the property and inspite of the undertaking given by them as per the orders of the Hon'ble Supreme Court, the petitioners have not stood by the said undertaking and have flouted the orders of the Hon'ble Supreme Court, which is *per se* contemptuous. In the above circumstances, the plea of petitioners that they were forcibly dispossessed without following the due process of law cannot be entertained, as giving any leverage to the petitioners would be nothing but diluting the orders passed by the Hon'ble Supreme Court.

24. For the reasons aforesaid, the prayer in the present petition is wholly misconceived and, therefore, it cannot be granted. Accordingly, this writ petition is dismissed. In the circumstances of the case, there shall be no order as to costs.



WEB COPY



W.P. No.24749/2018

27.06.2022

Index : Yes / No

Internet : Yes / No

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W.P. No.24749/2018

WEB COPY

To

1. The Secretary to Government
Municipal Administration & Water
Supply Department
Government of Tamil Nadu
(formerly called as Health & Local
Administration Department)
Fort St. George, Chennai 600 009.
2. The Secretary to Government
Revenue Department
Government of Tamil Nadu
Fort St. George, Chennai – 600 009.
3. The Deputy Secretary to Government
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WEB COPY

Chennai.



W.P. No.24749/2018



WEB COPY



W.P. No.24749/2018

M.DHANDAPANI, J.

GLN

W.P. NO. 24749 OF 2018

27.06.2022