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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2022

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THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.NO.21796 OF 2014

AND

M.P.NOS.1 OF 2014 AND 1 OF 2015

1. Periasamy

2. Kannammal

... Petitioners

Vs

1. The Government of Tamilnadu,
Rep.by the Secretary to Government,
Housing & Urban Development,
Fort St.George,
Chennai - 600 009.

2. The Managing Director,
The Tamil Nadu Housing Board,
No.33, Anna Salai,
Nandanam,
Chennai - 600 035.

3. The Special Tahsildar,
(Land Acquisition),
Adi Dravidar Welfare Scheme,
Namakkal.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration that the Land Acquisition proceedings initiated for implementation of housing development scheme for Adi Dravidars in the award No.20/95-96 dated 29.03.1996 passed under Tamilnadu Acquisition of Land for Harijan Welfare Scheme Act, 1978 (Act 31 of 1978), shall be deemed to have been lapsed by virtue of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (the Central Act, 2013), in respect of the petitioners' property situated in S.No.115/2A2 measuring to an extent of 1.20 acres in Agaram Village, Thiruchengode Taluk, Namakkal District.



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For Petitioners : Mr.I.Abrar Md Abdullah
For Respondents : Mr.M.Muthusamy
Government Advocate
(for R1 & R3)
: Mr.I.Sathish
Standing Counsel (for R2)

O R D E R

This Writ Petition is filed to issue a Writ of Declaration that the Land Acquisition proceedings initiated for implementation of housing development scheme for Adi-Dravidars in Award No.20/95-96, dated 29.03.1996 passed under the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1978 (Act 31 of 1978) (hereinafter referred to as 'the Act' for short), shall be deemed to have been lapsed by virtue of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (the Central Act, 2013) (hereinafter referred to as 'the New Act' for short) in respect of the petitioners' property situated in S.No.115/2A2 measuring an extent of 1.20 acres in Agaram Village, Thiruchengode Taluk, Namakkal District.

2. The petitioners owned the property comprised in S.No.115/2A2, situated at Agaram Village, Thiruchengode Taluk, Namakkal District. While that being so, the third respondent had initiated proceedings under Section 4(1) the Act and published in the Notification Salem District Gazette No.21, dated 22.11.1995. After completion of acquisition proceedings, an award was passed on 29.03.1996 in Award No.20/95-96. In the meanwhile, the petitioners challenged the notification issued under Section 4(1) of the Act in W.P.No.6752 of 1998. However, in the said Writ Petition, the petitioners had obtained an order of interim stay of dispossession alone, which was made absolute and the Writ Petition came to be dismissed by this Court on 19.01.2010. Now, the present Writ Petition has been filed on the ground that the possession has not been taken over and the compensation amount has not been paid so far as contemplated under Section 24(2) of the New Act.

3. Heard Mr.I.Abrar Md Abdullah, the learned counsel for the petitioners, Mr.M.Muthusamy, learned Government Advocate appearing for the first and third respondents and I.Sathish, learned Standing Counsel appearing for the second respondent.

4. On a perusal of the counter affidavit and also records produced by the third respondent, it reveals that the Notification under Section 4(1) of the Central Act, 1894 was



approved by the Government in G.O.Ms.472, Adi-Dravidar Welfare Department, dated 15.07.1994 and published in the Tamil Nadu Government Gazette, dated 29.08.1994. After observing all formalities, enquiry under Section 5-A of the Act was also conducted on 14.01.1994. The land owner appeared for enquiry and raised objections. The objections were considered and draft declaration under Section 6 of the Land Acquisition Act, 1894 was also issued. Thereafter, the land acquisition proceedings were initiated as per the Rules in vogue and award enquiry was also conducted and award was also passed. Insofar as the possession of the subject property is concerned, the same had been taken over on 05.08.1997.

5. On a perusal of the records produced by the third respondent, it reveals that on 05.08.1997, the land owner was not present and as such, as per procedure and after "tom tom", the possession of the subject land had been taken over by the third respondent on 05.08.1997. Insofar as the payment of compensation is concerned, the entire award amount has been deposited under the Revenue Deposit at Treasury Office, Sankari on 29.03.1996 itself. In fact, after completion of acquisition proceedings, the house-site pattas were also distributed to 30 beneficiaries and they were issued pattas.

6. That apart, the grounds raised by the petitioners in this Writ Petition, have already been settled by the Hon'ble Supreme Court of India in the judgment reported in (2020) 8 SCC 129 in the case of Indore Development Authority Vs. Manoharlal and ors etc., which held 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.

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



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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.

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/



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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. The Hon'ble Supreme Court of India settled all proposition of law in the above judgment including the grounds raised by the petitioners herein. That apart, the respondents have already taken over the possession and as far as the payment of compensation is concerned, the entire award amount has been deposited under the Revenue Deposit at Treasury Office, Sankari on 29.03.1996 itself. Therefore, the petitioners failed to satisfy the twin requirements under Section 24 (2) of the New 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 above dictum laid down by the Hon'ble Supreme Court of India, the issues raised by the petitioners herein are settled and therefore, the acquisition proceedings had 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 liable to be dismissed.



8. In the result, the Writ Petition stands dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

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Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
The Government of Tamilnadu,
Housing & Urban Development,
Fort St.George,
Chennai - 600 009.
2. The Managing Director,
The Tamil Nadu Housing Board,
No.33, Anna Salai,
Nandanam,
Chennai - 600 035.
3. The Special Tahsildar,
(Land Acquisition),
Adi Dravidar Welfare Scheme,
Namakkal.

+1cc to Mr.I.Sathish, Advocate, S.R.No.1771
+1cc to the Government Pleader, S.R.No.2276

W.P.No.21796 of 2014

PM(CO)
PM/28/01/2022