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W.P.No.32306 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2022

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.32306 of 2014

1. R.Bindhu
2. Yamini
3. Hemanth Kumar ...Petitioners

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary,
Housing and Urban Development Department,
Fort St. George, Chennai - 9.
2. The Managing Director,
Tamilnadu Housing Board,
Nandanam, Chennai - 9.
3. The Executive Engineer and Administrative Officer,
Besant Nagar Division,
Tamilnadu Housing Board Unit,
No.48, Dr.Muthulakshmi Road,
Adyar - 600 020.
4. The Special Thasildar,
Land Acquisition, Unit-V,
Tamilnadu Housing Board Schemes,
Aringar Anna Shopping Complex,
7th Avenue, Thirumangalam,



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Chennai - 600 101.

...Respondents

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Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration, declaring that the land acquisition proceedings initiated under the Land Acquisition Act, 1894, with respect to the lands of an extent of 6170 sq.ft., comprised in S.Nos.440 /2B and 613/3 belonging to the petitioners situated at Sholinganallure Village, Kancheepuram District, as lapsed in view of the Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30/2013).

For Petitioners : Mr.A.Mahesnath
for Mr.R.N.Amarnath

For Respondents : Mr.G.Krishna Raja, AGP, for R1, 3 & 4
: Mr.Ravidranath Jeyapaul, SC, for R2

ORDER

The petitioners have filed this Writ petition seeking issuance of a Writ of Declaration to declare the acquisition proceedings initiated under the Land Acquisition Act, 1894 (in short 'old Act'), in respect of the petitioners' lands as lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30/2013) (in short 'new Act').

2. The case of the petitioners is that, originally the lands comprised in S.Nos.440/2B and 613/3 situated at Sholinganallur Village was owned by



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the in-laws of the 1st petitioner namely, Late.Kathirvelmurugan and Late.Sulochana and after the demise of the said Sulochana, the 1st petitioner's husband namely, Karthikeyan, his father and his brother entered into a partition in respect of the above said lands and the 1st petitioner's husband was allotted an extent of 6170 sq.ft., in the said lands, pursuant to which, the 1st petitioner's husband was in possession and enjoyment of the said property till his life time and the revenue records were also mutated in favour of the 1st petitioner's husband and his brother. After the demise of the 1st petitioner's husband, the petitioners herein, who are none other than the legal heirs of the said Karthikeyan are in possession and enjoyment of the subject property. While so, the petitioners came to know that the 2nd and 3rd respondents have entered the name of the Housing Board in the revenue records in respect of the subject property. On further enquiry, the petitioners came to know that, the 1st respondent has decided to acquire a large extent of lands including the petitioners' land for the purpose of formation of Sholinganallur Neighbourhood Housing Scheme and issued a notification under Section 4(1) of the old Act vide G.O.Ms.No.433 dated 14.05.1990 and declaration under Section 6, vide G.O.Ms.No.948 dated 07.06.1991 and subsequently, an Award in Award No.1/97 dated 3/16



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23.04.1997 was also passed. However, the new Act came into effect from 01.01.2014, which provides that if physical possession of the lands are not taken or the compensation is not paid in respect of the proceedings initiated under the old Act, the said proceedings shall deemed to have been lapsed, as per Section 24(2) of the new Act. Hence, in order to avail the said benefit, the petitioners made several requests before the official respondents, seeking for re-conveyance of the subject lands, however, the said requests made by the petitioners were rejected by the 1st respondent stating that, the 2nd respondent has already taken possession of the subject property. Hence, the petitioners have filed this Writ petition.

3. Though very many grounds have been raised by the learned counsel for the petitioners, the main bone of contention of the petitioners is that the counter affidavit filed by the respondents reveal that possession has already been taken over by the respondents, however, the fact remains that, till date, the petitioners are in absolute possession and enjoyment of the subject property and though the respondents claim that the Award has been passed as early as in the year 1997, however, till date the petitioners are not paid with the compensation amount. He further relied upon the decision of



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the Hon'ble Apex Court in the case of **Indore Development Authority Vs.**

Manoharlal and others etc., reported in **(2020) 8 SCC 129**, wherein the

Hon'ble Apex Court held as under :-

“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



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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/ 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



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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.”

He furthermore submitted that, in the present case, neither the possession has been taken by the respondents nor the compensation amount was paid to the petitioners, hence, he prays to declare the above said land acquisition proceedings as having elapsed under Section 24(2) of the new Act.



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4. Learned Additional Government Pleader appearing for the respondents fairly submitted that, till date, the possession was not taken by the respondents, but revenue deposit was made on 31.03.1997 and, therefore, the petitioners cannot derive any benefit from the decision of the Hon'ble Apex Court in *Indore Development Authority case (supra)*. Hence, he prayed for dismissal of this Writ petition.

5. Heard learned counsel on either side and perused the materials available on record.

6. On a perusal of the materials available on record particularly the counter affidavit filed by the respondents, it is seen that the claim of the respondents is that the petitioners herein are the subsequent purchasers and the acquisition proceedings were initiated as early as in the year 1990 and the award was passed in the year 1997 itself, while so, the petitioners herein are claiming rights over the subject property on the strength of the partition deed dated 05.10.2006 said to have been entered into between the petitioner's Late husband, his father and his brother, which was after a lapse of 16 years from the date on initiation of the acquisition proceedings.



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7. However, even a bare perusal of the affidavit filed by the petitioners to substantiate their contentions makes it clear that, the petitioners herein are not the subsequent purchasers, the said Sulochana, against whom the above acquisition proceedings is said to have been initiated is none other than the mother in law of the 1st petitioner and the subject property was allotted in favour of the 1st petitioner's husband and after his demise, the petitioners herein being the legal heirs have derived the same and are in absolute possession and enjoyment of the subject property, while so, the respondents have not verified the relation in between the petitioners and the original owner properly and have mechanically filed the present counter affidavit.

8. Though it is the contention of the respondents that the compensation amount has been deposited and, therefore, Section 24 (2) would not stand attracted, however, a bare perusal of the said deposit slip reveals that, the compensation amount is said to have been deposited even prior to passing of Award. This Court is at a loss to understand as to how deposit of a particular amount could be made even before the said amount is



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quantified and an award is passed. The stand of the respondents that the amount has been deposited in revenue deposit even before passing of the award is unknown to land acquisition proceedings. Further, the respondents have not revealed the basis on which amount has been deposited in revenue deposit.

9. Further, Section 24 (2) of the new Act has been pressed into service by the petitioners to contend that where an award under 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. For better appreciation, the relevant provision is extracted hereunder :-

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,—

(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



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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:

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. The decision of the Hon'ble Apex Court in the case of ***Indore Development Authority Vs. Manoharlal and ors etc.***, stated supra, makes it clear that, if neither the physical possession has been taken nor the compensation amount being paid to the petitioners, the entire acquisition proceedings stands lapsed under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and



Resettlement Act, 2013.

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11. It is but necessary to have a look at Section 31 of Act, 1894, which pertains to deposit of compensation and for better appreciation, the same is quoted hereunder :-

“31. Payment of compensation or deposit of same in Court : (1) On making an award under section 11, the collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation of the Court to which a reference under section 18 would be submitted;

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount.

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18;

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

(3) Notwithstanding anything in this section, the



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Collector may, with the sanction of Provincial Government instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land revenue on other lands held under the same title, or in such other way as may be equitable having regard to the interest of the parties concerned.

(4) Nothing in the last foregoing sub-section shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof.”

(Emphasis Supplied)

12. Section 31 clearly stipulates that on the passing of the award, the Collector shall tender the compensation to the persons interested in the said land, and in the event of the land owner failing to receive the compensation, then the respondents, u/s 31 (2) could refer the matter to the civil court. However, in the case on hand, no material is placed before this Court to show compliance of Section 31 (2). Further, as pointed out above, Section 31 (2) could not have been complied for the simple reason that the deposit is shown to have been made even before the passing of the award.

13. For all the reasons aforesaid, the acquisition sought to be made by



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the respondents stand lapsed by virtue of Section 24 (2), as none of the limb contemplated u/s 24 (2) of the new Act has been complied with. In such circumstances, necessarily this Writ petition has to be allowed.

14. Accordingly, this Writ petition is allowed and the respondents/revenue officials are directed to mutate the revenue records in respect of the subject property in favour of the petitioners forthwith. No costs.

14.07.2022
(1/2)

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Speaking Order : Yes/ No
Index : Yes/ No

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M.DHANDAPANI, J.

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