



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. NO.33195 OF 2014

AND

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

J.Jayakrishnan

...Petitioner

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 I)
Tamil Nadu Housing Board Schemes,
Nandanam, Chennai 600 035.

3.The Tamil Nadu Housing Board,
Rep.by its Chairman and Managing Director,
Nandanam, Chennai 600 035.

4.The Executive Officer and Administrative Officer,
Sasthiri Nagar Complex,
Bescent Nagar Division,
Muthusami Salai, Chennai.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Declaration, to declare that entire land proceedings in respect of petitioner's property of an extent of 15 cents in Survey No.421/3B2 at Sholinganallore Village, Tambaram Taluk, Kancheepuram District, culminating in the award No.1 of 1997 dated 02.05.1997 of the 2nd respondent herein as lapsed under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013.

For Petitioner : Mr.K.S.Arumugam

For R1 & R2 : Mr.Yogesh kannadasan,
Special Government Pleader

For R3 : Mr.M.Baskar



O R D E R

This Writ Petition has been filed seeking for issuance of a Writ of Declaration, to declare that entire land proceedings in respect of petitioner's property of an extent of 15 cents in Survey No.420/3B2 at Sholinganallore Village, Tambaram Taluk, Kancheepuram District, culminating in the award No.1 of 1997 dated 02.05.1997 of the 2nd respondent herein as lapsed under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013.

2. The learned Special Government Pleader takes notice for the official respondents. In view of the limited relief sought for in this petition and on the consent of the learned counsel appearing on either side, this petition is taken up for final disposal.

3. The case of the petitioner is that the petitioner is the absolute owner and in the possession of the property to an extent of 15 cents in Old Survey No.421/3, New Survey No.421/B, Patta No.741 (Survey No.421/3B2 as per Patta) in Sholinganallore Village, Tambaram Taluk, Kancheepuram District. The petitioner purchased the property from one Thiruvengadam Naicker, vide registered sale deed, dated 23.03.2004 registered as Doc.No.1585 of 2004, on the file of the Sub Registrar's Office, Neelangarai. Petitioner's vendor was in physical possession of the said property and Patta also stands in vendor's name. In the second week of December, 2014, the Housing and Urban Development Department officials came to the property under the guise of inspection and on enquiry it was stated that the land was subject matter of Land Acquisition proceedings of the year 1991 and acquired for the benefit of the Tamil Nadu Housing Board, Sholiganallore Neighborhood Housing Scheme. When petitioner enquired at 2nd respondent Office, it comes to light that larger extent of lands inclusive of the land in Survey No.421/3 which belong to his vendor Mr.Thiruvengadam was the subject matter of Land acquisition proceedings vide Notification under Section 4 (1) of the Land Acquisition Act, dated 14.05.1990 and a Declaration under Section 6 of the Land Acquisition Act was issued under G.O.Ms.No.948 Housing and Urban Development Department, dated 07.06.1981 and an award was passed in No.1 of 1997, dated 02.05.1997 and 13 cents of land in Survey No..421/3B2 was also included therein. The compensation amount was determined at Rs.33,366/- for the vendor, but the same was not paid as vendor had not appeared before the Authorities for award enquiry. The compensation was not paid and physical possession was not taken. Hence, this writ petition is filed in order to avail the benefit of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-Settlement Act, 2013.



4. Learned Counsel for the petitioner submitted that till date the possession was not taken by the respondents and the petitioner purchased the property in the year 2004 and is assessed to property tax and obtained electricity connection and other service connection from the Revenue authorities. Hence, the entire acquisition proceedings which was initiated by the respondent as against the petitioner's vendor stood lapsed in terms of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Accordingly, he prays for allowing this petition.

5. The learned Special Government Pleader appearing on behalf of the official respondents submitted that the land was acquired as against the petitioner's vendor and issued Notification under Section 4(1) and Declaration under Section 6 of the Land Acquisition Act. Thereafter, the award was passed in the year 1997, and after passing the award possession was handed over to the Tamil Nadu Housing Board by Land Acquisition Officer on 16.08.2004, prior to that the entire compensation amount was deposited to the tune of Rs.33,366/-. So, in view of the above, possession was taken and the amount was deposited, the land acquisition proceedings has not lapsed. Further, the petitioner is a subsequent purchaser and the subsequent purchaser is not entitled to challenge the acquisition proceedings. Accordingly, he prays for dismissal of this petition.

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

7. The facts in the present case is not in dispute, the petitioner is subsequent purchaser he purchased the land from one Thiruvangadam, the 2nd respondent initiated land acquisition proceedings against the said Thiruvangadam and the said land was acquired by issuing Notification under Section 4(1) and Declaration under Section 6 of the Land Acquisition Act on 07.06.1981. Thereafter, an award was passed on 02.05.1997 by fixing compensation as Rs.33,366/- and the entire compensation amount was deposited and according to the respondents, possession was also taken by the Government on 16.08.2004.

8. Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 has been pressed into service by the petitioner 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



जय श्रीगुरुदेव

Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894:

(b) When an award under said Section 11 has been made, then such proceedings shall continue under the provisions of the said Acquisition Act, as if the said Act has not been repealed.

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.

"366. In view of the aforesaid discussion, we answer the questions as under:

2. In case the award has been passed within the window period of five years excluding the period covered by an interim



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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" 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



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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."

(Emphasis Supplied)

10. In the case on hand, though it is the case of the petitioner that possession was not taken till date and compensation was also not paid, but it is the case of the respondents that the petitioner has not come forward to receive the compensation amount, which resulted in the respondents depositing the said amount in Revenue Deposit and possession was handed over to the Housing Board as early as on 16.08.2004.

11. From the above, it is evident that amount has been deposited and possession has also been taken. That being the case the decision in Indore Development Authority case (supra)



stands squarely attracted and possession having been taken and compensation having been deposited, there is no question of lapse of the proceedings. In such circumstances, the contention of the petitioner seeking to invoke Section 24 (2) of the Act is wholly misconceived and unsustainable and the contention deserves to be rejected. Accordingly, the prayer as sought for in the present petition cannot be granted and the petition deserves to be dismissed.

12. For the reasons aforesaid, this Writ Petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-VII)

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Sub Assistant Registrar

Psa

To

- 1.The Secretary to Government,
The Government of Tamil Nadu,
Housing and Urban Development Department,
Fort St.George, Chennai 600 009.
- 2.The Special Tahsildar (land acquisition I)
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- 3.The Chairman and Managing Director,
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- 4.The Executive Officer and Administrative Officer,
Sasthiri Nagar Complex,
Bescent Nagar Division,
Muthusami Salai, Chennai.

+1cc to M/s.AL.Gandhimathi, Advocate Sr.No.24887

+1cc to the Government Pleader Sr.No.25112

W.P.No.33195 of 2014

GPL(CO)
RVM(31/05/2022)