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W.P.No.33556 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.10.2022

Coram

The Honourable Mr.Justice M.DHANDAPANI

**W.P.No.33556 of 2014
and M.P.No.1 of 2014**

Tamil Nadu Central Excise and Customs
Employees' Cooperative House Building Society,
Rep. by its President
No.26/1, Uthamar Gandhi Road,
Nungamabakkam,
Chennai – 600 034.

...Petitioner

Versus

- 1.The Government of Tamil Nadu
Rep. by its Secretary to Govt.
Housing & Urban Development Department,
Fort St.George, Secretariat,
Chennai – 600 009.
- 2.The Special Tahsildar,
Land Acquisition II,
Tamil Nadu Housing Board,
Anna Salai, Nandanam,
Chennai – 600 035.
- 3.The Tamil Nadu Housing Board,
Rep. by its Managing Director,
Anna Salai, Nandanam,
Chennai – 600 035.

...Respondents



Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of declaration declaring the Land Acquisition proceedings initiated under Section 4(1) of the Notification No.G.O.R.138 Housing dated 14.05.1975 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.AR.L.Sundaresan, Senior Counsel for Mrs.AL.Gandhimathi
For Respondents – 1 & 2	:	Mr.T.K.Saravanan, Government Advocate
For Respondent – 3	:	Mr.A.M.Ravindranath Jeyapal

ORDER

The relief sought in this writ petition is to declare the land acquisition proceedings initiated under Section 4(1) of the Land Acquisition Act, 1894 (for brevity, 'LA Act') vide Notification No.G.O.R.138 Housing dated 14.05.1975 as lapsed under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act 2013 (hereinafter referred to as 'Act 2013').



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W.P.No.33556 of 20...

2. The brief facts of the case are as follows:

The petitioner is a registered society which was formed with the object of purchasing lands and developing the same into layout of Plots with the approval of concerned Government Authorities and allotting the same to the member of society as Housing Plots at affordable price. For the purpose of achieving the said object, petitioner society had identified the lands in Survey Nos.212, 213, 214, 215/1, 216/1, 217/1, 228, 231, 232, 233, 234/1, 234/2, 234/3 and 234/4 etc., measuring to a total extent of 16.44 Acres situated at Ramapuram Village, Chennai and entered into four Agreements dated 25.11.1987 with the respective owners viz., M/s.New Ratna Brick Industries, R.Rajendran and Grace Mary. The petitioner society came to know that out of the aforesaid extent of lands, 7.79 Acres of lands comprised in Survey Nos.212, 213, 214, 228 Part, 234/1, 234/2, 234/3 and 234/4 was part of Land Acquisition proceedings initiated by the Government of Tamil Nadu for public purpose of forming New Ramapuram Neighbourhood Scheme by Tamil Nadu Housing Board. A notification under Section 4(1) of the LA Act was issued by the first respondent vide G.O.R.No.138 Housing Department dated 14.05.1975, including the 7.79 Acres of lands in Survey Nos.212, 213, 214, 228 Part, 234/1, 234/2, 234/3



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and 234/4. A declaration under Section 6 of the LA Act was also passed by the Government vide G.O.Ms.Nos.950 to 996 Housing Department dated 07.06.1978 under various parcels, in and around Tamil Nadu for various Housing Schemes. The lands in Survey Nos.212, 213, 214, 228 Part, 234/1, 234/2, 234/3 and 234/4 were the subject matter of Declaration under G.O.Ms.No.971 and 972 Housing Department dated 07.06.1978.

2.1. While so, the petitioner society made a detailed representation to the first respondent on 02.12.1987, requesting to exclude the lands measuring to an extent of 7.79 Acres comprised in Survey Nos.212, 213, 214, 228 Part, 234/1, 234/2, 234/3 and 234/4. The first respondent vide letter in Ms.No.7 dated 03.01.1989 stated that the Government after careful consideration, has decided to drop the lands in Survey Nos.212, 213, 214, 228 Part, 234/1, 234/2, 234/3 and 234/4 from the purview of acquisition proceedings in favour of the petitioner society subject to the following two conditions:

(i) The land owners should withdraw the writ petition which had been filed by them before this Court challenging the Land Acquisition proceedings;



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(ii) The land owners should sell the lands in question to the petitioner society and the petitioner society ought to give an undertaking to the Member Secretary, MMDA to the effect that they will leave the land required for ICC Rail within the said lands, as and when the alignment was finalized.

2.2. Since the owners of the lands in Survey Nos.212, 213, 214, 228 Part, 234/1, 234/2, 234/3 and 234/4 did not perform their part of the Sale Agreement and execute the Sale Deed in favour of the petitioner society, the petitioner could not fulfilled the above conditions imposed by the first respondent. Subsequently, the first respondent vide letter No.64773/LA1/2/91-8 dated 14.10.1993 stated that the Government have decided to accept the recommendations of DRO and Housing Board and cancelled the order dated 03.01.1989 and directed the Land Acquisition Officer to continue with the land acquisition proceedings in respect of 7.79 Acres of lands comprised in Survey Nos.212, 213, 214, 228 Part, 234/1, 234/2, 234/3 and 234/4. Hence, the petitioner society made a representation to the first respondent on 03.02.1997, seeking to cancel the order dated



14.10.1993 and restore the order dated 03.01.1989. Thereafter, the Deputy Secretary to government, Housing Department vide letter dated 16.03.2001, forwarded the request of petitioner society for restoring the exclusion of aforesaid 7.79 Acres of lands from the purview of Land Acquisition proceedings to the third respondent. While so, the second respondent vide notices dated 27.09.2002, calling upon the petitioner society to surrender possession of the lands which had been purchased by it as stated above. Challenging the said notices, the petitioner society filed writ petitions in W.P.Nos.41736, 41755, 42094 and 41758 of 2002, before this Court, however, the said writ petitions came to be dismissed on 29.10.2008.

2.3. Once again, the petitioner society gave a detailed representation dated 30.08.2013 to the first respondent, to re-consider its representation and exclude the lands comprised in Survey Nos.212, 213, 214, 228 Part, 234/1, 234/2, 234/3 and 234/4 as well as the lands for which it had entered into Sale Agreements.

2.4. Even after the issuance of Section 4(1) Notification and Section 6 Declaration, physical possession of the lands in Survey Nos.212, 213, 214,



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228 Part, 234/1, 234/2, 234/3 and 234/4 had not been taken by the Government or the Land Acquisition Authorities and the same continued to be with the petitioner society. That apart, compensation amount in respect of 7.79 Acres of lands comprised in Survey Nos.212, 213, 214, 228 Part, 234/1, 234/2, 234/3 and 234/4 was also neither paid to the land owners nor to the petitioner society.

2.5. The land acquisition proceedings in respect of 7.79 Acres of lands comprised in Survey Nos.212, 213, 214, 228 Part, 234/1, 234/2, 234/3 and 234/4 has lapsed by operation of law as per Section 24(2) of the Act 2013 and the benefit of the same has not been given to the petitioner society. Therefore, the aggrieved petitioner society made a representation dated 06.06.2014 and 25.08.2014 respectively to the first respondent stating that if the relief under Section 24(2) of the Act 2013 is not granted by the Government, their society will be constrained to seek remedy before the Courts of law, but, there was no response for the same. Hence, left with no other alternative, petitioner society has filed the present writ petition before this Court for the relief stated *supra*.



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3. The learned counsel for the petitioner submitted that the petitioner society purchased the subject lands from the original owners through sale deeds for valuable consideration. He further submitted that the subject lands were acquired by the respondents in the year 1975, however, till date, neither the Government nor the Land Acquisition Officer has taken possession of those lands under LA Act and the compensation amount was also not given to the petitioner society for the acquired lands. Therefore, the learned counsel prayed this Court to declare the land acquisition proceedings initiated under Section 4(1) Notification as lapsed under Section 24(2) of the Act 2013.

4. The learned Government Advocate appearing for the respondents 1 & 2 contended that so far as this case is concerned, the petitioner society purchased the subject lands only after the issuance of Section 4(1) Notification dated 14.05.1975. Hence, the petitioner society subsequent purchaser has no *locus standi* to claim that the land acquisition proceedings initiated under Section 4(1) Notification has lapsed under Section 24(2) of the Act 2013.



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5. Heard the learned counsel on either side and perused the materials placed before this Court.

6. Admittedly, the case of the petitioner society is that the lands purchased by them was already acquired by the respondents for formation of New Ramapuram Neighbourhood Scheme in the year 2002, however, till date, the respondents have neither taken possession of the acquired lands nor awarded compensation for the said acquisition.

7. The issue involved in the present case is no longer *res integra*, which has been decided by the Division Bench of this Court in ***W.A.Nos.1204 of 2022 & etc. batch (B.Nagaraj & Ors. Vs. The State of Tamil Nadu & Ors.) dated 09.06.2022.*** The relevant paragraphs of the judgment passed in that batch of writ appeals are extracted hereunder:

“4. Before addressing the issue in regard to the lapse, the question is about the locus of the writ petitioners to challenge the acquisition proceedings and to seek its lapse, because, the writ petitioners had purchased the land much subsequent to the issuance of the Notification under Section 4(1) of the Act of 1894.

5. The Apex Court, while dealing with the issue in the case of Shiv



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W.P.No.33556 of 20

Kumar (supra), has held that the purchaser of the land, after issuance of Notification under Section 4 of the Act of 1894, has no right to challenge the acquisition proceedings and he can, at the best, claim compensation. It is for the aforesaid, even the issue in reference to Section 24 of the Act of 2013, was also dealt with, because, any purchase, after the Notification under Section 4(1) of the Act of 1894, is termed to be "void ab-initio" and therefore, no Declaration can be sought regarding the lapse of the acquisition under the Act of 1894 or the Act of 2013. The relevant paragraphs of the judgment are quoted hereunder for ready reference:

"7.7. In M.Venkatesh Vs. BDA (2015 (17) SCC 1 : 2017 (5) SCC (Civ) 387), a three-Judge Bench has opined: (SCC pp.8-9, para 16):

"16. That brings us to the question of whether Prabhaudas Patel and other respondents in SLP (C) No.12016 of 2013 were entitled to any relief from the Court. These respondents claim to have purchased the suit property in terms of a sale deed dated 22.08.1990 i.e. long after the issuance of the preliminary notification published in July 1984. The legal position about the validity of any such sale, post-issuance of preliminary notification, is fairly well settled by a long line of the decisions of this Court. The sale in such cases is void and non est in the eye of the law giving to the vendee the limited right to claim compensation and no more. Reference may in this regard be made to the decision of this Court in U.P.Jal



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W.P.No.33556 of 20...

Nigam Vs. Kalra Properties (P) Ltd. (1996 (3) SCC 124), wherein this Court said: (SCC: pp.126-27, para 3):

"3. It is 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. In this case, Notification under Section 4(1) was published on 24.3.1973; possession of the land admittedly was taken on 5.7.1973, and the pumping station house was constructed. No doubt, declaration under Section 6 was published later on 8.7.1973. Admittedly power under Section 17(4) was exercised dispensing with the inquiry under Section 5-A and on service of the notice under Section 9 possession was taken, since urgency was acute viz. pumping station house was to be constructed to drain out the flood water. Consequently, the land stood vested in the State under Section 17(2) free from all encumbrances. It is further settled law that once possession is taken, by operation of Section 17(2), the land vests in the State free from all encumbrances unless a notification under Section 48(1) is published in the gazette withdrawing from the acquisition. Section 11-A, as amended



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W.P.No.33556 of 20

by Act 68 of 1984, therefore, does not apply, and the acquisition does not lapse. The notification under Section 4(1) and the declaration under Section 6, therefore, remain valid. There is no other provision under the Act to have the acquired land divested, unless, as stated earlier, notification under Section 48(1) was published, and the possession is surrendered pursuant thereto. That apart, since M/s.Kalra properties, the respondent had purchased the land after the notification under Section 4(1) was published, its sale is void against the State, and it acquired no right, title, or interest in the land. Consequently, it is settled law that it cannot challenge the validity of the notification or the regularity in taking possession of the land before the publication of the declaration under Section 6 was published.'

" (emphasis supplied)

"8. It has been laid down that the purchasers on any ground whatsoever cannot question proceedings for taking possession. A purchaser after Section 4 notification does not acquire any right in the land as the sale is ab initio void and has no right to claim land under the policy."

"19. The 2013 Act presupposes that a person is required to be rehabilitated and resettled. Such a person



who has purchased after Section 4 notification as sale deed is void under the 1894 Act, cannot claim rehabilitation and resettlement as per policy envisaged under the 2013 Act, as his land has not been acquired, but he has purchased a property which has already been acquired by the State Government, he cannot claim even higher compensation, as per proviso to Section 24(2) under the 2013 Act. An original landowner cannot be deprived of higher value under the 2013 Act, which higher compensation was not so contemplated when the void transaction of sale had been entered, and right is conferred under the proviso to Section 24(2) on recorded owners under the 1894 Act. We have come across instances in which after notification under Section 4 were issued and, the property was purchased at throwaway prices by the builders and unscrupulous persons, such purchases are void and confer no right even to claim higher compensation under Section 24(2) of the 2013 Act as it is to be given to the owner as mentioned in the notification.

20. Given that, the transaction of sale, effected after Section 4 notification, is void, is ineffective to transfer the land, such incumbents cannot invoke the provisions of Section 24. As the sale transaction did not clothe them with the title when the purchase was made; they cannot claim "possession" and challenge the acquisition as having lapsed under Section 24 by questioning the legality or regularity of proceedings of taking over of possession under the 1894 Act. It would be unfair and profoundly unjust and against the policy of the law to permit such a



person to claim resettlement or claim the land back as envisaged under the 2013 Act. When he has not been deprived of his livelihood but is a purchaser under a void transaction, the outcome of exploitative tactics played upon poor farmers who were unable to defend themselves."

8. From a perusal of the above judgment, it is clear that a person who has purchased the land after the issuance of Notification under Section 4(1) of the LA Act, has no right to challenge the acquisition proceedings or seek lapse of the proceedings. Such a person cannot claim rehabilitation and resettlement as per policy envisaged under the Act 2013 because the said sale itself is void.

9. So far as this case is concerned, the petitioner society purchased the subject lands from the original owners in the year 1987, whereas, the Notification under Section 4(1) of the LA Act was issued in the year 1975. Thereafter, the Award was passed on 27.09.2002. So, it is crystal clear that the petitioner society purchased the subject lands much subsequent to the issuance of Notification dated 14.05.1975 under Section 4(1) of the LA Act. Moreover, it is to be noted that the petitioner society challenged the acquisition proceedings only after a lapse of 12 years of the Award. Hence,



W.P.No.33556 of 20

the petitioner society has no right to seek declaration regarding the lapse of the acquisition proceedings under LA Act as well as Act 2013.

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10. Following the ratio laid down by the Division Bench of this Court in the decision cited *supra*, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

12.10.2022

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Index : Yes/No

Speaking Order (or) Non-Speaking Order

Copy to

1.The Secretary,
Housing & Urban Development Department,
Fort St.George, Secretariat,
Chennai – 600 009.

2.The Special Tahsildar,
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W.P.No.33556 of 2014

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W.P.No.33556 of 2014

12.10.2022