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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.25499 of 2014  
M.P.1 of 2014

Selvaraj

... Petitioner

Vs.

- 1.The State of Tamil Nadu,  
Represented by its Secretary to Government,  
Housing & Urban Department,  
Fort St.George, Chennai - 600 009.
- 2.The Special Thasildar (LA),  
Neighbourhood Scheme,  
Namakkal
- 3.The Tamilnadu Housing Board,  
Represented by its Managing Director,  
Anna Salai,  
Nandanam, Chennai.
- 4.The Executive Engineer and Administrative Officer,  
Tamilnadu Housing Board,  
Salem Housing Unit,  
Ayyanthirumaligai, Salem - 8.
- 5.T.N.Swaminathan

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration, to declare the Land Acquisition proceedings commencing from Section 4(1) Notification, dated 04.01.1983 published in the Gazette dated 26.01.1983 and Declaration under section 6 of the L.A. Act in the Gazette dated 31.07.1985 bearing G.O.M.S.No.704, Housing and Urban development, dated 18.07.1985, relating to 12 1/2 Cents of land situated in Old Survey No.32/3B3, present Survey No.32/3B1B(part), at No:73, Kondichetty Patti Village, Namakkal Taluk, and Namakkal District and culminating in the Award No.3/87-88, dated 13.08.1987, as non est in the eye of law.



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For petitioner : Mr.P.Mathivanan

For Respondents : Mr.R.P.Murugan Raja  
Government Advocate  
( for R.1 & R.2)  
Mr.I.Sathish (for R.3 & R.4)

#### ORDER

The petitioner has filed this petition seeking to issue a writ of Declaration, to declare the Land Acquisition proceedings commencing from Section 4(1) Notification, dated 04.01.1983 published in the Gazette dated 26.01.1983 and Declaration under section 6 of the L.A. Act in the Gazette dated 31.07.1985 bearing G.O.M.S.No.704, Housing and Urban development, dated 18.07.1985, relating to 12 1/2 Cents of land situated in Old Survey No.32/3B3, present Survey No.32/3B1B(part), at No:73, Kondichetty Patti Village, Namakkal Taluk, and Namakkal District and culminating in the Award No.3/87-88, dated 13.08.1987, as non est in the eye of law.

2. Mr.R.P.Murugan Raja, learned Government Advocate takes notice for the respondents 1 & 2. In view of the limited relief sought for in this petition and on the consent expressed by 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's father is the owner of the property comprised in Old Survey No.32/3B3, present Survey No.32/3B1B (part), measuring an extent of 12 1/2 Cents, situated at No.73, Kondichetty Patti Village, Namakkal Taluk and District. The said land was acquired by the respondents for the purpose of Namakkal neighborhood Scheme and the notification was issued in the year 1985 under G.O.M.S.No.704, of Housing and urban development. Thereafter, the petitioner's father challenged the said Land Acquisition Proceedings by filing a writ petition in W.P.No.8014 of 1987, and the said writ petition was dismissed by order passed by this Court on 17.08.1987. Aggrieved by the same, he preferred writ appeal in W.A.No.1484 of 1987 and the same was also dismissed by order dated 06.09.1990 passed by this Court. Even after, 20 years the said land was not utilized for the purpose for which it was acquired and the adjacent land which was acquired along with the above said land was deleted from the above said Land Acquisition Proceedings and reconveyed to the land owner. In order to avail such benefit the petitioner's father made a



representation on 07.10.2005 to the first respondent, requesting them to delete the above said land from land acquisition proceedings. However, the first respondent had not considered the said representation. Hence, he filed a writ petition in W.P.No.558 of 2006, for issuance of writ of mandamus, directing the first respondent to dispose of the representation. This Court by order dated 15.03.2003, directed the first respondent to dispose the representation within a period of six weeks. In compliance with the order, the first respondent passed the orders on 04.12.2006, rejecting the petitioner father's representation. Challenging, the said order, the petitioner filed the writ petition in W.P.No.765 of 2008, this Court by order dated 13.02.2013, dismissed the writ petition, against which he preferred appeal in W.A.No.1575 of 2013 and the same was also dismissed by this Court on 11.07.2017. Thereafter, on enquiry the petitioner came to know that during the pendency of the writ petition the fourth respondent sold the land to the fifth respondent by way of a Sale Deed dated 29.09.2012 vide Doc.No.4442, on the file of No.2, Joint Sub Registrar, Namakkal. However, the third and fourth respondents have not informed the same to the petitioner at the relevant point of time and thereafter, the petitioner came to know that though an award was passed on 13.08.1987, with regard to the above lands the compensation payable under the said awards was neither paid to the petitioner nor deposited in the Civil Court as required under Section 31(2) of the Land Acquisition Act. Hence, the present writ petition has been filed by the petitioner to declare the above said land acquisition proceedings have elapsed under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013('Act 2013').

4. Though very many grounds have been raised, learned counsel for the petitioner submits that the compensation amount was not paid to the petitioner nor deposited in the Civil Court. Hence, he prays to declare the said land acquisition proceedings have elapsed under Section 24(2) of the above said (Act 2013).

5. The learned Senior Standing Counsel appearing for the Tamil Nadu Housing Board submits that the land is taken over by the Government and as per the Scheme sold to the various third parties including the fifth respondent and once possession has been taken there is no lapse under Section 24(2). He further relied upon the decision of 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 relevant paragraph in the above said judgment is extracted hereunder:



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.

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.

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).

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. In view of the decision of the Hon'ble Apex Court in the case of Indore Development Authority Vs. Manoharlal and ors etc., reported in (2020) 8 SCC 129, makes it clear that, once possession has been taken there is no lapse under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013('Act 2013'). Hence, the prayer sought by the petitioner in the present writ petition can not be maintainable.



7. Accordingly, the present writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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SD/-  
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

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To

1.The Secretary to Government,  
State of Tamil Nadu,  
Housing & Urban Department,  
Fort St.George, Chennai - 600 009.

2.The Special Thasildar (LA),  
Neighbourhood Scheme,  
Namakkal

3.The Managing Director,  
Tamilnadu Housing Board,  
Anna Salai,  
Nandanam, Chennai.

4.The Executive Engineer and Administrative Officer,  
Tamilnadu Housing Board,  
Salem Housing Unit,  
Ayyanthirumaligai, Salem - 8.

+1cc to Mr.I.Sathish, Advocate Sr.23501

+1cc to the Government Pleader Sr.24143

W.P.No.25499 of 2014

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srg 06/04/2022