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W.P.No.25889 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2022

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.No.25889 of 2014 and
MP.No.1 of 2014 and WMP.No.3153/2018

R.Palaniswamy

.. Petitioner

Vs.

1.The State of Tamil Nadu
rep.by Commissioner and Secretary
to Government, Social Welfare Department,
Fort St.George, Madras 9.

2.The Land Acquisition Officer and
Special Tahsildar,
Adi-Dravidar Welfare,
Dharmapuri, Dharmapuri District.

.. Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying of issuance of Writ of Declaration declaring that the land acquisition proceedings in respect of land comprised in S.No. 914/1A (85 Cents) and 914/2A (2 Acres and 42 Cents) of Manithahalli Village, Dharmapuri Taluk, Dharmapuri District, as having lapsed as per Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act 2013.

For Petitioner : Mr.V.Karthikeyan

For Respondents : Mr.M.Muthusamy, Government Advocate



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ORDER

The petitioner has filed this petition for issuance of writ of declaration declaring that the land acquisition proceedings in respect of land comprised in S.No. 914/1A (85 Cents) and 914/2A (2 Acres and 42 Cents) of Manithahalli Village, Dharmapuri Taluk, Dharmapuri District, as having lapsed as per Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013.

2. The case of the petitioner is that he is the owner of the small extent of lands in S.F.No.914/1A (85 cents) and 914/2A (2 acres and 42 cents) in Manithahalli Village, Dharmapuri Taluk, Dharmapuri District and out of the said lands, he had sold an extent of 20 cents of land in S.F.No.914/2A and 10 cents of land in S.F.No.95/2A to one Marimuthu and in the remaining land, the petitioner has constructed a small house and installed a electric motor for the irrigation purpose. While so, the 1st respondent being a State issued a notification under Section 4(1) of the Land Acquisition Act, 1984 for the acquisition of the lands of the petitioner for the purpose of providing house sites for the Boyers Community residing at



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Kombukuttai Hamlet and challenging the said acquisition, the petitioner has filed W.P.No.3766 of 1983, however the said Writ Petition was dismissed on 12.06.1991. Thereafter, by initiating acquisition proceedings, the respondents had forcibly taken away the lands of the persons including the petitioner. While such being the position, the respondents are expected to pay the fair compensation to the land owners for the lands so acquired, however the respondents has not paid any compensation to the petitioner for the acquisition of the said lands. Further though the award has been passed way back in 1983, no notice was issued to the petitioner either in respect of payment of compensation or referring the dispute for enhancement of compensation. Aggrieved by the non payment of compensation, claiming benefit under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act 2013, the petitioner is before this Court.

3. The learned counsel appearing for the petitioner submitted that admittedly the possession was not taken from the petitioner in the manner known to law and no panchanama were produced before this Court and



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further compensation amount also not deposited in the manner known to law and hence prays for allowing of this petition.

4. The learned Government Advocate appearing for the respondents submitted that the possession of the lands in question was already taken over much earlier on 12.04.1983 and plotted as house sites thereafter. Further as per award proceeding dated 28.03.1983, the then Land Acquisition Officer had recorded that since the land owner has refused to receive the compensation for the lands acquired, the matter was referred u/s.31(2) of the Land Acquisition Act, 1894 in LAOP.No.25/84 and it was ordered on 15.07.1985 to deposit the amount of Rs.18,238.10/- before the Sub Court, Krishnagiri, u/s.31(2) of the Land Acquisition Act, 1894, on the ground that the petitioner has not appeared before the Reference Court and he remained exparte and thereby the Reference Case was closed and thus, the entire land acquisition proceeding cannot be considered as lapsed as per Section 24(2) of the Right to Fair Compensation Act and prays for dismissal of this petition.



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5. Facts in the present case is not in dispute that admittedly the petitioner is the owner of the lands and he filed this writ petitions on the ground that without notice, the petitioner's land was acquired and further the compensation amount was not paid and till today, the petitioner is in physical possession of his lands. since the land owner has refused to receive the compensation for the lands acquired, the matter was referred u/s.31(2) of the Land Acquisition Act, 1894 in LAOP.No.25/84 and it was ordered on 15.07.1985 to deposit the amount of Rs.18,238.10/- before the Sub Court, Krishnagiri, u/s.31(2) of the Land Acquisition Act, 1894. Since the compensation amount is deposited before the Sub Court, Krishnagiri, the land acquisition proceedings is not lapsed, in view of the decision rendered by the Hon'ble Supreme Court of India reported in **2020 (8) SCC 129, Indore Development Authority Vs. Manoharlal and Other.**

6. Considering the facts and circumstances of the case on hand, the issue arises herein, is squarely covered by the decision of the Constitution Bench of the Hon'ble Supreme Court of India reported in **2020 (8) SCC 129, Indore Development Authority Vs. Manoharlal and Others,** wherein similar issue was came up for consideration and it was held that in



case possession has been taken, compensation has not been paid, then there

is no lapse in terms of Section 24(2) of the Right to Fair Compensation Act

and the relevant portion of the said decision are 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 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



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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 possession has been taken there is no lapse under Section 24(2).



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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)

7. Considering the ratio laid down by the Hon'ble Apex Court, this Court is of the view that on perusal of the counter affidavit, it reveals that the possession has been taken and as alleged by the petitioner that compensation amount has not been paid/deposited by the respondents. However, it is the submission of the learned Government Advocate that the award has been passed and since the land owner refused to receive the compensation for the lands acquired, the entire compensation amount have



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been deposited before the Sub Court, Krishnagiri under Section 31(2) of the Land Acquisition Act. Hence, the decision in *Indore Development case* (*supra*) is squarely attracted to the case on hand, wherein it was held that in case possession has been taken, compensation has not been paid then there is no lapse.

8. In view of the ratio laid down by the Hon'ble Apex Court in the above said decision, this Writ Petition deserves no merit consideration and it is liable to be dismissed.

9. For the reasons aforesaid, this Writ Petition is dismissed. No costs. Consequently connected miscellaneous petitions are closed.

03.11.2022

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To

1.The Commissioner and Secretary
to Government, Social Welfare Department,
Fort St.George, Madras 9.

2.The Land Acquisition Officer and
Special Tahsildar,



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M.DHANDAPANI,J.

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