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W.P.No.8416 of 20--

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.11.2022

Coram

The Honourable Mr.Justice M.DHANDAPANI

**W.P.No.8416 of 2016
and W.M.P.Nos.7455 & 34320 of 2016**

- 1.Govindasamy
- 2.Palanisamy
- 3.Manickam
- 4.Pullatha
- 5.Myli

...Petitioners

Versus

- 1.The State of Tamilnadu
Rep. by its Secretary to Government
Housing and Urban Development Department,
Fort St.George, Chennai – 600 009.
- 2.The Special Tahsildar (Land Acquisition)
Salem Neighbourhood Scheme,
Salem – 8.
- 3.The Tamil Nadu Housing Board,
Rep. by the Executive Engineer,
Salem Housing Unit,
Iyam Thirumaligai, Salem – 8.
- 4.The Tahsildar,
Taluk Office,
Omalur Taluk, Salem District.



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5.The Village Administrative Officer,
Kottagoundampatti Village,
Omalur Taluk,
Salem District – 11.

...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 by the respondents in G.O.Ms.No.879 dated 28.05.1991 u/s. 4(1) of the Act and in G.O.Ms.No.447 dated 20.07.1992 u/s. 6(1) of the Act, in respect of petitioner's land in S.No.42/1B1 an extent of 0.27.5 Hec. Situated at Kottagoundampatti Village, Omalur Taluk, Salem District.

For Petitioners	:	Mr.M.Elango
For Respondents – 1, 2, 4 & 5	:	Mr.U.Bharanidharan, Additional Govt. Pleader
For Respondent – 3	:	Mr.D.Murugan, Senior Counsel

ORDER

The relief sought in this writ petition is to declare the land acquisition proceedings initiated by the respondents in G.O.Ms.No.879 dated 28.05.1991 u/s. 4(1) of the Act and in G.O.Ms.No.447 dated 20.07.1992 u/s. 6(1) of the Act, in respect of petitioners' land comprised in S.No.42/1B1 measuring to an extent of 0.27.5 Hec. situated at Kottagoundanpatti Village, Omalur Taluk, Salem District as lapsed.

2. The case of the petitioners is that they were the owners of the land



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comprised in S.No.42/1B1 measuring to an extent of 0.27.5 Hec. situated at Kotta Goundampatti Village, Omalur Taluk, Salem District. They were in joint possession and enjoyment of the said land. The first respondent issued them a Notification under Section 4(1) of the Land Acquisition Act (hereinafter referred to as 'LA Act') in G.O.Ms.No.879 dated 28.05.1991 for the purpose of construction of houses by Tamil Nadu Housing Board (TNHB). After publishing a declaration under Section 6(1) of the Act in G.O.Ms.No.447 dated 20.07.1992, the second respondent passed an award on 20.07.1994 in respect of petitioners' land. The award amount was deposited into the Sub Court, Sankari under Section 31(2) of the LA act, however, the petitioners have not yet withdrawn the same from the Court deposit. According to the petitioners, even after the publication of Section 6 Declaration, the respondents have not utilized their land for the purpose for which it was acquired. Hence, they made an application dated 21.07.2011 under Section 48B of the LA Act, for re-conveyance of their land. However, the first respondent has rejected the said application vide letter No.15720/LA4-2/2011-7 dated 06.05.2013, as against which, the petitioners filed a writ petition in W.P.No.21080 of 2014 before this Court and the same is pending. Though the petitioners' land was acquired in the year



1994, till date, the respondents have not taken the physical possession of the subject land from the petitioners. Hence, the aggrieved petitioners have filed the present writ petition before this Court for the relief stated *supra*.

3. The learned counsel for the petitioners submitted that the respondents have acquired the petitioners' land for the purpose of constructing houses by Tamil Nadu Housing Board and also, passed the award in respect of the acquired land, but, till date, the respondents have not taken the physical possession of the land which was acquired from the petitioners. It is also to be noted that the respondents have not yet used the acquired land for the purpose for which it was acquired. Therefore, the learned counsel prayed this Court to declare the entire land acquisition proceedings initiated under Section 4(1) Notification as lapsed under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 (hereinafter referred to as 'Act 2013').

4. *Per Contra*, the learned Additional Government Pleader appearing



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for the respondents 1, 2, 4 & 5 submitted that the award was passed on 20.07.1994 in Award No.1/94-95 and the compensation amount was also deposited into the Sub Court, Sankari where the petitioners' father viz., Kuppusamy filed a LAOP No.7 of 1995, for enhancement of compensation under Section 18(1) of the LA Act. The said LAOP was transferred to Sub Court, Mettur and renumbered as LAOP No.47 of 1999 and the same is pending for enquiry. He further submitted that the second respondent had taken the physical possession of the acquired land from the petitioners and handed over the same to the Tamil Nadu Housing Board, Salem Housing Unit on 15.11.1994. The Patta was also transferred in the name of Tamil Nadu Housing Board under Patta No.252. Therefore, the land acquisition proceedings initiated under the LA Act is valid and the same cannot be declared as lapsed under Section 24(2) of the Act 2013.

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

6. The case of the petitioners is that their land was acquired by the



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respondents for implementation of Neighborhood Scheme at Salem as early as in the year 1994, however, till date, the respondents have neither taken possession of their land nor paid compensation to them, but, the fact remains that the physical possession of the petitioners' land was taken and handed over to the Tamil Nadu Housing Board, Salem Housing Unit on 15.11.1994, which is clearly evident from the averments of the petitioners that their application for re-conveyance of their land was rejected by the first respondent vide order dated 06.05.2013 and therefore, challenging the said rejection order, they filed a writ petition in W.P.No.21080 of 2014 before this Court. Insofar as payment of compensation is concerned, the respondents had deposited the compensation amount into the Sub Court, Sankari in the year 1995. Since the petitioners' father was not satisfied with the award amount, he filed a LAOP No.7 of 1995 before the Sub Court, Sankari, for enhancement of compensation. The said LAOP was transferred to Sub Court, Mettur and renumbered as LAOP No.47 of 1999 and the same is pending for enquiry.

7. At this juncture, it is very pertinent to refer the judgment passed by the Constitution Bench of Hon'ble Supreme Court in the case of **Indore**



Development Authority vs. Manoharlal and Ors. reported in (2020) 8 SCC

129, wherein, it has held as follows:

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

366.1. 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 the 2013 Act, there is no lapse of proceedings. Compensation has to be determined under the provisions of the 2013 Act.

366.2. 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 2013 Act under the 1894 Act as if it has not been repealed.

366.3. 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.

366.4. The expression 'paid' in the main part of Section 24(2) of the 2013 Act does not include a deposit of compensation in court. The consequence of non-deposit is provided in the



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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 1894 Act shall be entitled to compensation in accordance with the provisions of the 2013 Act. In case the obligation Under Section 31 of the Land Acquisition Act, 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 2013 Act has to be paid to the "landowners" as on the date of notification for land acquisition under Section 4 of the 1894 Act.

366.5. In case a person has been tendered the compensation as provided under Section 31(1) of the 1894 Act, 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). The landowners 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 2013 Act.

366.6. The proviso to Section 24(2) of the 2013 Act is to be treated as part of Section 24(2) not part of Section 24(1)(b).

366.7. The mode of taking possession under the 1894 Act and as contemplated under Section 24(2) is by drawing of inquest report/memorandum. Once award has been passed on taking



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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).

366.8. 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 authority concerned 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.

366.9. Section 24(2) of the 2013 Act 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 2013 Act i.e. 1.1.2014. It does not revive stale and time-barred claims and does not reopen a 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.”

8. From the above, it is crystal clear that compensation amount in respect of the petitioners' acquired land was deposited into the Court and possession of the petitioners' land was also taken and handed over to TNHB



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by the second respondent as early as in the year 1994. So, the rigours of Section 24 (2) of the Act 2013 would not stand attracted and in view of the pronouncement of the Hon'ble Apex Court in *Indore Development Authority case (supra)*, the land acquisition proceedings is not lapsed since the twin conditions provided under Section 24(2) of the Act 2013 have been complied.

9. Since the petitioners' case deserves no merit of consideration, this writ petition is liable to be dismissed. Accordingly, this writ petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

14.11.2022

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Index : Yes/No

Speaking Order (or) Non-Speaking Order



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M.DHANDAPANI, J.

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