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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2022

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.11312 of 2017

and

W.M.P.Nos.12254 & 12255 of 2017

- 1.E.Baby Ammal
- 2.E.Deivasigamani
- 3.E.Manjula

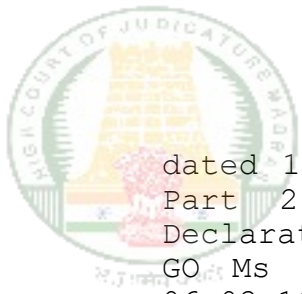
.. Petitioners

..Vs..

1. State of Tamil Nadu
Rep. by its Secretary to Government,
Housing and Urban Development Dept.,
Government of Tamil Nadu,
Fort St. George, Chennai - 600 009.
2. The Special Deputy Collector (L.A.)
Land Acquisition Officer,
Chennai Metropolitan Development Authority,
No.8, Gandhi Irvin Road,
Egmore, Chennai - 600 008.
3. The Member Secretary
Chennai Metropolitan Development Authority,
No.8, Gandhi Irvin Road,
Egmore, Chennai - 600 008.
4. The Chairman
Tamil Nadu Slum Clearance Board,
No.5, Kamarajar Salai, Triplicane,
Chennai - 600 005.

.. Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of declaration, declaring that the land acquisition proceedings initiated under Land Acquisition Act, 1894 in respect of the Petitioner's land measuring about 26 cents in premises bearing No.70/2, Periya Echangkuzhi, Manali Pudhu Nagar, Chennai - 600 103, comprised in Survey No.356/5 and 356/6 situated at Idayanchavadi Village, Ponneri Taluk, Thiruvallur District, which is covered Section 4(1) of the Land Acquisition Act in GO Ms No.185 Housing and Urban Development



dated 13/2/1991 and published in the Government Gazette No.8(C) Part 2 Section 2 (supplementary) dated 27.2.1991 and the Declaration under Section 6 of the Land Acquisition Act, 1894 in GO Ms No.91 Housing and Urban Development U.D.III (i) dated 06.03.1992 and published in the Tamil Nadu Government Gazette extraordinary Part 2 Section 2 dated 06.03.1992 have lapsed in view of Section 24(2) of the 'Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30/2013).

For Petitioner : Mr.K.V.Sundararajan
For R1 & R2 : Mr.G.Aneedius, Govt. Advocate
For R3 : Ms.P.Veena Suresh
For R4 : Mr.S.Prabhu

O R D E R

This writ petition is filed to issue a writ of declaration, to declare the land acquisition proceedings initiated under Land Acquisition Act, 1894 in respect of the Petitioner's land measuring about 26 cents in premises bearing No.70/2, Periya Echangkuzhi, Manali Pudhu Nagar, Chennai - 600 103, comprised in Survey No.356/5 and 356/6 situated at Idayanchavadi Village, Ponneri Taluk, Thiruvallur District, which is covered Section 4 (1) of the Land Acquisition Act in GO Ms No.185 Housing and Urban Development dated 13/2/1991 and published in the Government Gazette No.8(C) Part 2 Section 2 (supplementary) dated 27.2.1991 and the Declaration under Section 6 of the Land Acquisition Act, 1894 in GO Ms No.91 Housing and Urban Development U.D.III (i) dated 06.03.1992 and published in the Tamil Nadu Government Gazette extraordinary Part 2 Section 2 dated 06.03.1992 have lapsed in view of Section 24(2) of the 'Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30/2013).

2.The case of the petitioner is that the land comprised in S.No.356/5 in Idayanchavadi Village, Ponneri Taluk, Thiruvallur District, measuring about 15 cents of "Nanjai Land" was purchased by one Elumalai from Sengammal, vide sale deed dated 24.04.1979, registered by Doc. No. 606 of 1979. That apart, he also owned another 10 cents of land in S.No.356/6. Thus, he became the absolute owner of the properties comprised in Survey Nos.356/5 and 356/6, situated at Idayanchavadi Village, Ponneri Taluk, Thiruvallur District. After his demise, the petitioners



entered as legal heirs to succeed his estate. In the year 1991 the 1st respondent initiated acquisition proceedings under the Land Acquisition Act, 1894 for the purpose of Manali New Town Development Scheme and the 1st respondent issued Notification under Section 4(1) of the Act on 13.02.1991 to acquire the land ad-measuring 9.36.5 hectares situated at Idayanchavadi Village, Ponneri Taluk, Thiruvallur District, including the subject land.

3. Thereafter, on 06.03.1992, a declaration under Section 6 of the Act came to be issued by the 1st respondent. In fact, the husband of the 1st petitioner and the other adjacent land owners, had challenged the acquisition Notification before this Court in W.P.No.8850 of 1992 and the same was dismissed on 07.12.1999. In the meanwhile, award was passed in Award No.2 of 2001 in respect of the subject land. Now, the present writ petition has been filed on the ground that the compensation amount has not been deposited and the physical possession has also not been taken over, even till today. Therefore, the entire land acquisition proceedings lapsed, as contemplated under Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2003. However, the physical possession of the subject property is still with the petitioner and the house situated in the subject property was also assessed the house tax.

4. On a perusal of the counter affidavit filed by the 2nd respondent, it reveals that at the request made by the Chief Executive Officer, Chennai Metropolitan Development Authority, the 1st respondent initiated acquisition proceedings in respect of the petitioner's land, which is covered under Section 4(1) of the Land Acquisition Act, in GO Ms. No.185, Housing and Urban Development, Department dated 13.02.1991 and published in the Government Gazette No.8(C), Part II, Section 2 (Supplementary), dated 27.02.1991. Subsequently, declaration Section 6 of the Land Acquisition Act, 1894 was made in GO.Ms.No.91, Housing and Urban Development U.D II (i) Department, dated 06.03.1992 and published in the Tamil Nadu Government Gazette Extraordinary, Part 2, Section 2, dated 06.03.1992. Already, the acquisition proceedings had been challenged in W.P.No.8850 of 1992 in respect of the land ad-measuring 4.85 acres and the same was dismissed by this Court on 07.12.1999. Thereafter, after compliance of all requirements, the award was passed in Award No.2/2001 dated 03.08.2001.

5. As the interested persons had not participated in the award enquiry and in the absence of the documentary evidence in proof of their claim over the title of the property, the entire compensation amount was ordered to be kept in civil Court deposit. Accordingly, for the land comprised in S.Nos.356/5 and 356/6, the compensation as per the Award No.2/2001 dated



03.08.2001 was transferred to the Sub Court, Ponneri vide Challan Nos.440177 and 440767 dated 14.02.2004. Thereafter, the entire Revenue Records were mutated in favour of the 4th respondent and they also issued Patta No.1131 in respect of the subject property along with other properties.

6. That apart, the issues raised in this writ petition, have already been settled by the Hon'ble Supreme Court in the judgment reported in (2020) 8 SCC 129 in the case of Indore Development Authority Vs. Manoharlal and ors etc., in which it was held 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



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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 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



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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."

7. The Hon'ble Supreme Court of India settled all proposition of law in the above judgment, including the grounds raised by the petitioner herein. That apart, the respondents have already taken over the possession and as far as the payment of compensation is concerned, the entire award amount has been deposited before the Sub-Court, Ponneri. Therefore, the petitioner failed to satisfy the twin requirements under Section 24 (2) of the New Act, i.e., the physical possession of the land was not taken and the compensation has not been paid/tendered/deposited in accordance with law. In view of the above dictum laid down by the Hon'ble Supreme Court of India, the issues raised by the petitioner herein, are settled and therefore, the acquisition proceedings had not lapsed by operation of law under Section 24 (2) of the new Act i.e., Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. In view of the settled position of law, the writ petition is devoid of merits and the same is liable to be dismissed.

8. In the result, the Writ Petition stands dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar (CS-IX)

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Sub Assistant Registrar

smv



To

1. The Secretary to Government,
Housing and Urban Development Dept.,
Government of Tamil Nadu,
Fort St. George, Chennai - 600 009.
2. The Special Deputy Collector (L.A.)
Land Acquisition Officer,
Chennai Metropolitan Development Authority,
No.8, Gandhi Irvin Road,
Egmore, Chennai - 600 008.
3. The Member Secretary
Chennai Metropolitan Development Authority,
No.8, Gandhi Irvin Road,
Egmore, Chennai - 600 008.
4. The Chairman
Tamil Nadu Slum Clearance Board,
No.5, Kamarajar Salai, Triplicane,
Chennai - 600 005.

+1cc to Mr.S.Prabhu, Advocate, S.R.No.5381

+1cc to M/s.P.Veena Suresh, Advocate, S.R.No.5755

+1cc to Mr.K.V.Sundararajan, Advocate, S.R.No.5952

+1cc to the Government Pleader, S.R.No.6016

W.P.No.11312 of 2017

GPL(CO)
SU(21/02/2022)