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W.P.No.1731 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**W.P.No.1731 of 2017
And
W.M.P.No.1699 of 2017**

- 1.S.Hamsammal (Died)
- 2.S.Asha Devi
Rep. by her Power Agent
Mr.A.P.Subramanyam
- 3.Selvi Kumari
Rep. by her Power Agent
Mr.A.P.Subramanyam
- 4.V.C.Shivakumar
Rep. by his Power Agent
Mr.A.P.Subramanyam
- 5.V.C.Gopal @ Gopi
Rep. by his Power Agent
Mr.A.P.Subramanyam
- 6.Bhuvaneshwari
Rep. by her Power Agent
Mr.A.P.Subramanyam
- 7.Minor.Saravanan
Rep. by his mother/ next friend
Bhuvaneshwari, Rep. by Power Agent
Mr.A.P.Subramanyam
(P2 to P7 substituted as LRs of deceased
sole petitioner vide order dated 26.08.2022
made in WMP.21064/22 in
WP.1731 of 2017 by MDIJ)

... Petitioners



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Vs.

- 1.State rep. by its Secretary,
Housing and Urban Development Dept.,
Fort St.George,
Chennai – 600 009.
- 2.Tamil Nadu Housing Board,
Rep. by its Managing Director,
No.33, Anna Salai,
Nandanam,
Chennai – 600 035.
- 3.The Executive Engineer,
Tamil Nadu Housing Board,
Bhagalur Road,
Hosur – 635 109.
- 4.The Special Tahsildar (L.A.),
Hosur Housing Scheme,
Bhagalur Road,
Hosur,
Krishnagiri District.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration declaring that the land acquisition proceedings initiated under the Land Acquisition Act, 1894 in respect of land bearing Plot Nos.25 and 45 in the layout viz.Jeyalakshmi Nagar measuring an extent of 1200 sq.ft. each totally measuring to an extent of 2400 sq.ft. comprised in Survey No.899/1, Hosur Village and Taluk,



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Krishnagiri District covered by Notification issued under Section 4 (1) of Land Acquisition Act, 1894 vide G.O.Ms.No.1342 Housing and Urban Development Department, dated 09.10.1991 and Declaration under Section 6 of Land Acquisition Act, 1894 vide G.O.Ms.No.885, dated 21.12.1992 deemed to have lapsed in view of Section 24 (2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-Settlement Act, 2013.

For Petitioner : Mr.R.Bharath Kumar

For Respondents : Mr.U.Bharanidharan for R1 & R4
Additional Government Pleader
Mr.D.Murugan for R2 & R3
Standing Counsel for TNHB

O R D E R

The first petitioner has filed this writ petition seeking issuance of Writ of Declaration declaring that the land acquisition proceedings initiated under the Land Acquisition Act, 1894 in respect of land bearing Plot Nos.25 and 45 in the layout viz.Jeyalakshmi Nagar measuring an extent of 1200 sq.ft. each totally measuring to an extent of 2400 sq.ft. comprised in Survey No.899/1, Hosur Village and Taluk, Krishnagiri District covered by Notification issued under Section 4 (1)



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of Land Acquisition Act, 1894 vide G.O.Ms.No.1342 Housing and Urban Development Department, dated 09.10.1991 and Declaration under Section 6 of Land Acquisition Act, 1894 vide G.O.Ms.No.885, dated 21.12.1992 deemed to have lapsed in view of Section 24 (2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-Settlement Act, 2013.

2.The case of the petitioner who filed this writ petition is that the petitioner's husband purchased Plot Nos.25 and 45 in the Jeyalakshmi Nagar layout measuring an extent of 1200 sq.ft. each, comprised in Survey No.899/1, Hosur Village and Taluk, Krishnagiri District during the year 1986. Thereafter, the first respondent issued Notification under Section 4 (1) of Land Acquisition Act, 1894 vide G.O.Ms. No.1342, Housing and Urban Development Department, dated 09.10.1991, proposing to acquire lands for establishment of Neighbourhood Housing Scheme by the second respondent and issued Declaration under Section 6 of Land Acquisition Act, 1894 vide G.O.Ms.No.885, dated 21.12.1992. The petitioner's husband died intestate on 09.09.1997, leaving behind the petitioner, sons and daughters as his legal heirs to succeed his estate.



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3.The further case of the petitioner is that challenging the acquisition proceedings similarly situated persons filed W.P.Nos.16881 and 16882 of 1994 before this Court and this Court vide order dated 20.01.2001 allowed the said writ petitions and quashed the acquisition proceedings in respect of their lands. Challenging the same, the State preferred writ appeals and the same was rejected at the SR stage itself. Since no notice was issued to the petitioner's husband, he was not aware of the acquisition proceedings and did not challenge the same. Since, the award amount was not paid and possession was not taken by the respondents, the petitioner has filed this writ petition for the aforesaid relief.

4.The learned counsel appearing for the petitioners submitted that before passing the award no notice was issued to the petitioner's husband or the deceased petitioner. He further submitted that award was passed in the name of their vendor, however, the award amount was not paid in favour of the petitioner or her vendor and possession was not taken by the respondents. Since the new Act namely, Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-Settlement Act, 2013, has come into force, in



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view of Section 24(2) of the said Act, proceedings under the Land Acquisition Act, 1894 have lapsed.

5.The learned Standing Counsel appearing for TNHB submitted that after notification, enquiry under Section 5(A) of the Land Acquisition Act, was conducted and the land owners had participated in the enquiry and only after that declaration under Section 6 of the Act was issued. Thereafter, award was passed on 21.12.1994 and possession of the property was taken over on 22.02.1995. The award amount was also deposited in the Revenue Deposit on 24.03.1997. After taking the possession of the respective lands, the property was handed over to the second respondent and patta copy was also issued in their favour on 01.03.2000.

6.The learned Standing Counsel appearing for TNHB further submitted that thereafter, the second respondent applied for DTCP approval and the same was approved and the subject land was divided into house plots. In fact, some of the house plots were sold out as such, the acquisition proceedings got over. After a period of 20 years, this writ petition has been filed challenging the land acquisition



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proceedings in view of the Section 24(2) of the new Act. As stated supra, the respondents duly complied with the provisions as contemplated under the Act. Therefore, there is no lapsation of acquisition proceedings. He further submitted that similarly situated person filed W.P.No.10295 of 2014 before this Court for similar relief and this Court vide order dated 01.09.2021 dismissed the said writ petition.

7.Heard the arguments advanced on either side and perused the materials available on record.

8.It is evident from the materials available on record that the first petitioner's husband purchased Plot Nos.25 and 45 in the Jeyalakshmi Nagar layout measuring an extent of 1200 sq.ft. each, comprised in Survey No.899/1, Hosur Village and Taluk, Krishnagiri District during the year 1986. Thereafter, the first respondent issued Notification under Section 4 (1) of Land Acquisition Act, 1894 vide G.O.Ms. No.1342, Housing and Urban Development Department, dated 09.10.1991, proposing to acquire lands for establishment of Neighbourhood Housing Scheme by the second respondent and issued Declaration under Section 6 of Land Acquisition Act, 1894 vide



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G.O.Ms.No.885, dated 21.12.1992. Since no notice was issued to the petitioner's husband, he was not aware of the acquisition proceedings and did not challenge the same. The petitioner's husband died intestate on 09.09.1997, leaving behind the petitioner, sons and daughters as his legal heirs to succeed his estate.

9.The Tamil Nadu Housing Board claim after notification, enquiry under Section 5(A) of the Land Acquisition Act, was conducted and the land owners had participated in the enquiry and only after that declaration under Section 6 of the Act was issued. Thereafter, award was passed on 21.12.1994 and possession of the property was taken over on 22.02.1995. The award amount was deposited in the Revenue Deposit on 24.03.1997. After taking the possession of the respective lands, the property was handed over to the second respondent and patta copy was also issued in their favour on 01.03.2000.

10.Perusal of records reveal that challenging the acquisition proceedings similarly situated persons filed W.P.Nos.16881 and 16882 of 1994 before this Court and this Court vide order dated 20.01.2001 allowed the said writ petitions and quashed the acquisition proceedings in respect of their lands. Challenging the same, the State preferred



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writ appeals and the same was rejected at the SR stage itself.

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11.It is the contention of the learned Standing Counsel appearing for TNHB that similarly situated person filed W.P.No.10295 of 2014 before this Court for similar relief and this Court vide order dated 01.09.2021 dismissed the said writ petition on the ground that the award amount was deposited and possession was taken by the respondents.

12.The above facts are not in dispute nor are they material to decide this case. However, for the purpose of invoking Section 24 (2) of Act, 2013, twin conditions ought to be fulfilled; in that either possession has to be taken or compensation amount has to be paid.

In this regard, the decision of the Hon'ble Supreme Court reported in **(2020) 8 SCC 129 [Indore Development Authority Vs. Manoharlal and Others]**, clinches the issue in favour of the petitioner. For better appreciation, the relevant portion of the decision is quoted hereunder :-

"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



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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



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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 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



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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



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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)

13.The Hon'ble Supreme Court in the aforesaid decision has categorically held that 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. From the above, it is evident that there should be satisfaction of either of the limbs of the acquisition proceedings, viz., either taking of possession or payment of



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compensation in which circumstances, the acquisition proceedings would not get lapsed.

14.It is the claim of the respondents that they have deposited the amount in revenue deposit and possession has been taken and handed over to the Housing Board. The manner in which compensation has to be paid is provided under Section 31 of the Land Acquisition Act, 1894 and whether the ingredients provided therein stood fulfilled requires to be ascertained to find out whether the compliance of payment of compensation has been made. Section 31 of Act, 1894, which is relevant for deciding the issue on hand, for better appreciation, is quoted hereunder :-

"31. Payment of compensation or deposit of same in Court : (1) On making an award under section 11, the collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next subsection.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title



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to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation of the Court to which a reference under section 18 would be submitted;

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount.

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18;

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

(3) Notwithstanding anything in this section, the Collector may, with the sanction of Provincial Government instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land revenue on other lands held under the same title, or in such other way as may be equitable having regard to the interest of the



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parties concerned.

(4) Nothing in the last foregoing sub-section shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof."

(Emphasis Supplied)

15. Section 31 clearly stipulates that on the passing of the award, the Collector shall tender the compensation to the persons interested in the said land and only if the Collector is prevented by any of the contingencies as shown in sub-section (1) or if the landowner fails to receive the compensation under sub-section (2), the Collector can resort to deposit of compensation before the Court where a reference would lie. Therefore, from the above provision it is amply clear that tendering of compensation to the land owner is *sine qua non* to fulfilling the stipulation of payment of compensation provided under Section 31 of the Act. Without following the same, mere deposit of compensation before the Court before with a reference would lie cannot be said to be compliance with Section 31 relating to payment of compensation.



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16.As held by the Hon'ble Supreme Court in *Indore Development Authority case (supra)* the obligation to pay is complete by tendering the amount under Section 31 (1). From the above, it is clear that tendering of compensation to the land owners is mandatory and only in the event of the land owners not ready to receive the compensation and seek enhancement, compensation can be deposited.

17.In the present case, it is even the stand of the respondents that compensation amount has been deposited in revenue deposit. It is not the case of the respondents that they attempted to pay the compensation to the land owner and that the land owner did not receive the said compensation which necessitated depositing the same in revenue deposit. In the absence of the above, the payment of compensation cannot be said to have been complied with in the manner known to law.

18.Coming to the aspect of taking possession of the lands, though it is claimed by the fourth respondent that possession has been taken and handed over to the third respondent, however, no material is placed before this Court in the form of panchanama or Land Delivery



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Receipt evidencing taking over possession from the petitioner.

However, it is the categorical case of the petitioners that they are still in possession and enjoyment of the property. In the absence of any material evidencing taking over possession, the contention of the respondents that possession has been taken and handed over cannot be construed to be completion of take over of possession, as mere symbolic possession without taking actual possession of the property in the manner known to law would be deemed to be a possession in the eye of law. Therefore, the second limb of Section 24 (2) with regard to taking possession of the property is also not fulfilled.

19. For the reasons aforesaid, this Court is inclined to hold that the land acquisition proceedings have lapsed for non – compliance of Section 24 (2) of Act, 2013 and therefore the relief sought for by the petitioners in this writ petition has to be granted. The writ petition is accordingly allowed. No costs. Consequently, the connected miscellaneous petition is closed.

17.10.2022

pri/gln

Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No

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To

- 1.The Secretary,
Housing and Urban Development Dept.,
Fort St.George,
Chennai – 600 009.
- 2.Tamil Nadu Housing Board,
Rep. by its Managing Director,
No.33, Anna Salai,
Nandanam,
Chennai – 600 035.
- 3.The Executive Engineer,
Tamil Nadu Housing Board,
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