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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2022

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THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.35205 of 2019

and

W.M.P.No.35993 of 2019

1.K.Gunasekaran

2.S.Chitra

3.S.Sujith Kumar (Minor)

Rep by his Natural Guardian and Mother S. Chitra

4.S.Premnath (Minor)

Rep by his Natural Guardian and Mother S. Chitra

5.K.Babu

6.N.Kavitha

... Petitioners

vs.

1. The Government of Tamil Nadu
Housing and Urban Development Department
Represented by its Secretary,
Fort St.George, Chennai.

2. The Special Tahsildar
Land Acquisition,
Housing Scheme No.III
Collector's Office Compound,
Coimbatore District.

Presently Office at
Tamil Nadu Housing Board,
Coimbatore Office, Tatabat,
Coimbatore District - 641012.

3.The Managing Director
Tamil Nadu Housing Board
493, Anna Salai, Nandanam,
Chennai - 600 035.



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4. The Executive Engineer-cum-Administrative Officer,
Tamil Nadu Housing Board,
Coimbatore Housing Unit,
Tatabad,
Coimbatore - 641 012.

... Respondents

(R4 impleaded vide order dated 20.12.2019 made
in W.M.P.No.36389 of 2019 in W.P.No.35205 of
2019)

Prayer: Writ Petition is filed under Article 226 of the
Constitution of India praying to issue a Writ of Mandamus, to
declare that the land acquisition proceedings initiated as per
G.O.Ms.No.108 dated 05.02.1982 and G.O.Ms.No.1302 dated
22.08.1983 in respect of the land comprised in Survey No.18/1,
Veerakeralam Village, Coimbatore measuring to an extent of 1.47
acres, became lapsed as per Section 24(2) of the Right to Fair
Compensation and Transparency in Land Acquisition,
Rehabilitation and Resettlement Act, 2013 [in short the Right to
Fair Compensation Act].

For Petitioners : Ms.Kanimozhi Mathi

For R1 and R2 : Mr.M.Muthusamy
Government Advocate

For R3 and R4 : Dr.R.Gouri

ORDER

This writ petition has been filed to issue a Writ of
Mandamus, to declare that the land acquisition proceedings
initiated as per G.O.Ms.No.108 dated 05.02.1982 and
G.O.Ms.No.1302 dated 22.08.1983 in respect of the land comprised
in Survey No.18/1, Veerakeralam Village, Coimbatore measuring to
an extent of 1.47 acres, became lapsed as per Section 24(2) of
the Right to Fair Compensation and Transparency in Land
Acquisition, Rehabilitation and Resettlement Act, 2013 [in short
the Right to Fair Compensation Act].

2. The case of the petitioners is that in the year 2019
few unknown persons claiming authorization under the respondents
attempted to interfere with the peaceful possession and
enjoyment of their property comprised in S.No.18/1 ad-measuring
to an extent of 1.47 acres situated at Veerakeralam Village,
Coimbatore. The said property belong to their ancestors and they
inherited the same through their father and who had got the same



under the family partition by the Partition Deed dated 01.09.1982 registered vide Document No.3695/1982. Thereafter, the petitioners came to understand about the acquisition proceedings initiated by the 1st respondent under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act' for short) by G.O.Ms.No.108 dated 05.02.1982 and the draft declaration was approved by G.O.Ms.No.1302 dated 22.08.1983. Thereafter, the 2nd respondent passed an award on 23.09.1986. After passing the award, the notice under Section 12(2) of the Act was directed to be issued. However, the petitioners had no knowledge about the land acquisition proceedings initiated against their property and no possession of the property had been taken over, even till today. That apart, no compensation has been paid for the subject land and as such, the entire acquisition proceedings have lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

3. On perusal of the counter affidavit filed by the 4th respondent, revealed that the draft notification under Section 4(1) of the Act was approved by G.O.Ms.No.108, Housing and Urban Development Department, dated 05.02.1982 and published in supplement to part II Section 2 of the Tamil Nadu Government Gazette dated 10.03.1982 at Page Nos.5 and 6 as Notification No.II (2)/HOU/979/82 and the amendment Notification has been published at Page No.19 of the supplement to part II Section 2 of T.N.G.G. dated 09.06.1982.

4. It is further revealed that in exercise of the powers conferred on the Land Acquisition Officer, the enquiry under Section 5A of the Act was conducted by the then Land Acquisition Officer on 26.07.1982 and 27.07.1982 at the office of the Special Tahsildar (LA) Housing Unit, III, Coimbatore after observing the usual formalities and after publication and service of the required notice under Rule 55(1) of the Land Acquisition Act on the notified persons in accordance with rules allowing clear interval of 15 days from the last date of service to the date of 5A Enquiry. The draft declaration under Section 6 of the Act in G.O.Ms.No.1302, Housing and Urban Development Department, dated 22.08.1983, published in Page Nos.19 and 20 of the Tamil Nadu Government Gazette No.35 supplement to Part II Section (2) dated 07.09.1983 as Notification No.II(2) HOU/5222/83.

5. It is further revealed that the notices under Sections 9(3) and 10 of the Act were served to the land owners and interested persons and their acknowledgements were obtained.



Thereafter, an award enquiry under Section 11 of the Act was conducted by the then Land Acquisition Officer, on 17.03.1986 at the office of the Special Tahsildar (Land Acquisition), Housing Scheme, Unit-III. Thereafter, an award was passed in Award No.3/86 dated 23.09.1986 by the Land Acquisition Officer and Special Tahsildar (Land Acquisition), Housing Scheme-III, Coimbatore. As per award, the notified persons are, (i) Palani Naicker S/o.Rangasamy Naidu, (ii) Krishnan S/o.Palani Naicker, (iii) Parasuraman S/o.Palani Naicker, (iv) Thimmakkal W/o.Krishnamal Naicker, (v) Rajalakshmi W/o.Narayanan, (vi) Alamelu Ammal W/o.Maruthachalam and (vii) Pappammal W/o.Maruthachalam. The said notified persons appeared for award enquiry and produced the documents and established the apportionment of shares in the notified persons. Hence, the compensation paid to them as follows:-

S.No .	Notified Person / Land Owner	Compensation received by the Land owner - Rs.
1	Thiru.Palani Naicker, S/o.Rangasamy Naidu	49,661/-
2	Thiru.Krishnan, S/o.Palani Naicker	49,661/-
3	Thiru.Parasuraman, S/o.Palani Naicker	49,661/-
4	Tmt.Thimmakkal, W/o.Krishnamal Naicker	22,020/-
5	Tmt.Rajalakshmi, W/o.G.Narayanan	22,020/-
6	Tmt.Alamelu Ammal, W/o.Maruthachalam	22,020/-
7	Tm.Pappammal, W/o.Maruthachalam	22,020/-

6. It is further revealed that after payment of compensation to the land owners, the possession of the lands was handed over along with the other lands on 29.10.1986. After taken over the possession of the lands, the layout were prepared and got approved by Planning Authority vide LP/DTCP No.400/91. Thereafter, the then Tamil Nadu Housing Board developed the Anna Nagar Neighbourhood Scheme in the phased manner and issued 200 sale deeds of individual houses in S.F.Nos.18/1 and 18/2 etc. In the same approved layout, some of the plots are reserved for sale to the general public. The development works for these reserved plots also completed in the earlier stage. Some



additional development works also completed now to provide additional facility to the public.

7. The petitioners are the legal heirs of the aforesaid Krishnan S/o.Palani Naicker. The said Palani Naicker and his two sons viz., P.Krishnan and P.Parasuraman were applied online request for compensation in respect of acquisition of their land. Accordingly, the entire compensation amount paid to them by the Receipt dated 22.10.1986.

8. Insofar as the possession is concerned, the subject land had been taken over by the Possession Certificate No. L.A.15/81 (Award No.3/86) dated 29.10.1986 and handed over to the 4th respondent. In fact, after DTCP approval, the house plots were sold out in favour of 3rd parties in respect of the subject land comprised in S.No.18/1. Therefore, the petitioners have failed to fulfil the conditions as contemplated under Section 24(2) of the Act. Moreover, the issues raised by the petitioners are already settled by the Constitution Bench of the Hon'ble Supreme Court of India in the judgement reported in (2020) 8 SCC 129 in the case of Indore Development Authority Vs. Manoharlal and ors etc., which 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



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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 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 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."

9. In view of the above, the writ petition is devoid of merits and it is liable to be dismissed. Accordingly, the writ petition is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

1.The Secretary, Government of Tamil Nadu
Housing and Urban Development Department
Fort St.George, Chennai.

