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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

WP.NO.34281 OF 2014

Rabi Venkatesan

...Petitioner

Vs

- 1.The District Collector,
Kancheepuram District,
Kancheepuram.
- 2.The Land Acquisition Officer
cum Revenue Divisional Officer,
Kancheepuram District.
- 3.The Secretary to Government,
Highways Department,
Secretariat, Chennai-9.
- 4.The Divisional Engineer,
Highways, East Coast Road Project,
Mamallapuram.
- 5.The Special Tahsildar (LA)
Land Acquisition Unit II East Coast Road Project,
Big Melamaiyur, Chengalpattu.
- 6.Tamil Nadu Road Development Corporation (TNRDC)
Rep. By its Managing Director,
No.171, II Floor,
Tamil Nadu Maritime Board Building,
RA Puram, Chennai.

[R-3 to R-6 are impleaded as per Order
Dated:21/04/2016 by this Court in WMP.
12690/2016 in WP.34281/2014.]

...Respondents

Prayer :- Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the 2nd respondents leading to the passing of award No.1/1995 dt 16.8.1995 and quash the entire acquisition proceedings and consequently direct the



respondents to pass a fresh award under the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act 2013 (Central Act No.30 of 2013).

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For Petitioner : Mr.G.Krishnakumar

For Respondents : Mr.R.P.Murugan Raja, GA RR1 to 4 & 5
Mr.Sivavarthanam for R6

ORDER

This writ petition is filed seeking to quash the award No.1/1995 dt 16.8.1995 passed by the second respondent and consequently, direct the respondents to pass a fresh award under the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act 2013 (Central Act No.30 of 2013).

2. The case of the petitioner is that the petitioner is the owner of the land in S.No.3/45A to to an extent of 2 acres situated in Uthandi Village, Sholinganallur Taluk, Kancheepuram District. The petitioner purchased the subject property from one V.V.Venkatanarayanan by way of a registered sale deed dated 18.04.1986 in document No.2063 of 1986 on the file of the Sub Registrar, Adayar. Thereafter, the petitioner is in continuous possession and enjoyment of the subject property and his name was mutated in revenue records. In the meantime, the petitioner's land was acquired by the second respondent for widening the road, for which, an award was passed in Award No.1/1995 dated 16.08.1995 and a sum of Rs.96,561/- and the said award amount has been received by the petitioner. However, the petitioner filed the present writ petition seeking to quash the impugned award.

3. Heard, the learned counsel for the petitioner as well as the learned Government Advocate appearing for the respondents, and perused the materials available on record.

4. According to the petitioner, admittedly, the land was acquired and the possession was taken and road was laid. An award was passed on 16.08.1995 for a sum of Rs.96,561/- in respect of the petitioner's land. According to the petitioner, the said amount was not a fair compensation. At the relevant point of time, no compensation amount has been paid to the land owners. Therefore, the land acquisition proceedings initiated under the Central Act 1894 have been lapsed in view of the non compliance of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition and Re-settlement Act 2013. In order to avail fair compensation, the present writ petition has been filed before this Court seeking appropriate remedy.



5. The learned Government Advocate submitted that on the basis of the representation of the petitioner for enhancement of compensation, reference has been made in LAOP No.44/2017 before the Subordinate Court, Tambaram against the award dated 16.08.1995. In view of that, this Court may direct the petitioner to participate in the LAOP proceedings for enhancement of the compensation and therefore, this Writ Petition is not maintainable.

6. Considering the fact that the petitioner's land was acquired for expansion of road project and possession was taken from the petitioner and road was also laid. An award was passed in respect of the petitioner's land and he has also received the compensation amount. Based on the representation from the land owner for enhancement of compensation, reference has been made by the Land Acquisition Officer and the same was taken on file in LAOP No.44/2017 before the Sub Court, Tambaram and the same is pending. Subsequently, in the 2014, the petitioner has filed a writ petition before this Court for getting fair compensation.

7. Further, it is brought to the notice of this Court that issue raised in this writ petition is no longer res integra as the same stands settled by the Hon'ble Supreme Court in Indore Development Authority Vs. Manoharlal and ors etc., (2020 SCC Online SC 316), wherein, the Apex Court held as follows:-

'374. Before proceeding further, in our opinion, Section 24 contemplates pending proceedings and not the concluded ones in which possession has been taken, and compensation has been paid or deposited. Section 24 does not provide an arm or tool to question the legality of proceedings, which have been undertaken under the Act of 1894 and stood concluded before five years or more. It is only in cases where possession has not been taken, nor compensation is paid, that there is a lapse. In case possession has been taken, and compensation has not been deposited with respect to majority of landholdings, the beneficial provision of the statute provides that all beneficiaries shall be paid compensation as admissible under the Act of 2013. The beneficiaries, i.e., landowners contemplated under the proviso to Section 24 (2), are the ones who were so recorded as beneficiaries as on the date of issuance of notification under Section 4 of the Act of 1894. 227 (2006) 3 SCC 286 The provision is not meant to be invoked on the basis of void



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transactions, and by the persons who have purchased on the basis of power of attorney or otherwise, they cannot claim the benefit under Section 24 as is apparent from proviso to Section 24 (2) and the decision in Shiv Kumar & Ors. v. Union of India and Ors.''

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402. 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 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,



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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



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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. From the above, it is evident that the Hon'ble Supreme Court has settled all the issues, including the grounds raised by the petitioner. That apart, the acquisition proceedings have been completed and the subject land was taken over by the Government and the said project was also completed by the Government. Further the requisitioning body also deposited the compensation as awarded by the Land Acquisition Officer and the petitioner has also received the said compensation. Therefore, the petitioner failed to satisfy the twin requirements under Section 24 (2) of the 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 dictum laid down by the Hon'ble Supreme Court, the issues raised by the petitioner having been settled, the acquisition proceedings have 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.

8. In view of the settled position of law, the writ petition is devoid of merits and is liable to be dismissed. However, the petitioner is directed to participate in the LAOP proceedings which is pending before the court below and seek enhanced compensation, in accordance with law. There shall be no order as to costs.

Sd/-
Assistant Registrar(CCC)

// True Copy //

Sub Assistant Registrar

Rli

To

- 1.The Sub Court,
Tambaram, Chennai.
- 2.The District Collector,
Kancheepuram District,
Kancheepuram.



3.The Land Acquisition Officer
cum Revenue Divisional Officer,
Kancheepuram District.

4.The Secretary to Government,
Highways Department,
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5.The Divisional Engineer,
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7.Tamil Nadu Road Development Corporation (TNRDC)
Rep. By its Managing Director,
No.171, II Floor,
Tamil Nadu Maritime Board Building,
RA Puram, Chennai.

+1cc to Mr.G.Krishna Kumar, Advocate Sr.No.26683

+1cc to the Government Pleader Sr.No.27321

W.P.No.34281 of 2014

SKM(CO)
RVM(23/05/2022)