



W.P.(MD).No.21151 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 29.07.2022

ORDER PRONOUNCED ON : 01 .09.2022

**CORAM:
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

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K.Natarajan

....Petitioner

Vs

1.State of Tamil Nadu
Represented by its Secretary
Adi Dravidar & Tribal Welfare Department
Fort St.George
Chennai 600 009

2.The District Collector
Virudhunagar District
Collectorate
Virudhunagar

3.The Special Tahsildar
Adi Dravidar Welfare
Land Acquisition
Srivilliputhur
Virudhunagar District

....Respondents

Prayer: This 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 the lands measuring an extent of 0.41.0 hectares in Punjai S.F.No.1543/3(part) and



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0.18.0 hectares in Punjai S.F.No.1544/2(part) situate at No.29, Solapuram Village, Rajapalayam Taluk, Virudhunagar District covered by the Notification issued under Section 4(1) of the Land Acquisition Act, 1894 in G.O(Ms).No.1862, Adi Dravidar and Tribal Welfare Department, dated 15.11.1990 and under Section 6 Declaration in G.O(3-D) No.952 Adi Dravidar and Tribal Welfare Department, dated 11.10.1991 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 or in the alternate the petitioner is entitled for compensation for his lands acquired as per Proviso of Section 24(2)

For Petitioner : Mr.K.S.Vamsidhar

For Respondents : Mr.N.Muthuvijayan
Special Government Pleader

ORDER

The present writ petition has been filed seeking a writ of declaration that the acquisition proceedings initiated under the Land Acquisition Act, 1894 are deemed to have lapsed in view of Section 24(2) of Right to Fair Compensation and Transparency Land Acquisition, Rehabilitation and Re-Settlement Act, 2013 or in the alternative the petitioner is entitled for enhanced compensation as per the Proviso to Section 24(2) of the New Act.

2.According to the petitioner, he is the owner of 0.41.0 hectares of land in S.F.No.1543/3 (part) and 0.18.0 hectares in S.F.No.1544/2 (part) situate at



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No.29, Solapuram Village, Rajapalayam Taluk, Virudhunagar District. The said lands were acquired under Land Acquisition Act 1894 for the purpose of providing house sites to Adi Dravidars of Solapuram and Kunnakudi Villages. A 4(1) Notification was issued on 15.11.1990 and Section 5A enquiry was conducted. Despite objection from the writ petitioner, the Land Acquisition Officer proceeded to issue a six declaration on 19.03.1991. An award was passed on 26.03.1992. Not being satisfied with the said award, the petitioner had requested for reference under Section 18 of the Act to the competent Civil Court .

3.The petitioner has further submitted that the reference under Section 18 of the Land Acquisition Act was taken on file as L.A.O.P.No.8 of 2002 by the Subordinate Court, Srivilliputhur. After careful consideration, the Land Acquisition Tribunal enhanced the compensation from Rs.9000/- per acre to Rs.1,05,000/- per acre. The said award was passed on 28.02.2006.

4.The learned counsel for the petitioner has further contended that despite the petitioner having initiated execution proceedings in E.P.No.7 of 2010, the respondents have not complied with the said award passed by the Reference Court and they have not deposited the compensation. Despite 25 years have lapsed from the date of Section 4(1) Notification, the petitioner is



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not able to get legitimate compensation. He had further stated that the petitioner is in physical possession and enjoyment of the land which are subject matter of the acquisition proceedings. The respondent authorities have not taken physical possession of the same and handed over to the beneficiaries so far. The learned counsel had further submitted that the petitioner had received the compensation amount fixed by the Land Acquisition Officer under protest. Except the said amount, no other amount has been deposited by the respondent authorities.

5.The learned counsel for the petitioner had further submitted that the Land Acquisition Officer has passed an award on 26.03.1992 which was enhanced by the Tribunal on 28.02.2006. According to the petitioner neither the possession was taken nor the enhanced compensation was paid till the date of filing of the writ petition namely 17th December 2014. Hence, he contended that the entire land acquisition proceedings initiated under Land Acquisition Act, 1894 has got lapsed, in view of Section 24(2) of Act 30 of 2013.

6.The learned counsel appearing for the petitioner had further contended that though the petitioner has prayed for declaration that the acquisition proceedings have got lapsed, his client would be satisfied, if an enhanced compensation is paid under new Act namely Act 30 of 2013.



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7.The learned counsel had further contended that the Central Act 30 of 2013 came into force with effect from 01.01.2014. As per Section 24(2) of the said Act, if any award has been passed five years or more prior to the commencement of this Act, but physical possession of the land has not been taken or the compensation has not been paid, the said proceedings shall be deemed to have lapsed.

8.The learned counsel for the petitioner had further contended that as per Proviso to Section 24(2) of Right to Fair Compensation and Transparency Land Acquisition, Rehabilitation and Re-Settlement Act, 2013 that where an award has been made and compensation in respect of a majority of the lands holding has not been deposited in the account of the beneficiaries, then, all the beneficiaries specified in the notification for acquisition under Section 4 of the Land Acquisition Act shall be entitled to a compensation in accordance with the provisions of Acquisition Act. The learned counsel had further contended that the Land Acquisition Officer has passed an award on 26.03.1992, the Tribunal had passed the award enhancing the compensation on 28.02.2006. Till date of filing of the writ petition namely 17.12.2014, neither the physical possession was taken nor the compensation amount was deposited before the concerned Tribunal. Hence, in view of Proviso to Section 24(2), the petitioner would be entitled to an enhanced compensation under Act 30 of 2013. Hence, he prayed for allowing the writ petition.



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9.Per contra, the learned Special Government Pleader appearing for the respondents had contended that the petitioner had accepted for the land acquisition proceedings by giving a letter dated 29.12.1989. He had further contended that an award was passed by the Acquisition Officer on 26.03.1992. The petitioner had also received the said award amount under protest on 26.06.1992. The learned counsel had further contended that the order of assignment has been issued for the acquired lands to various parties on 02.06.1992. The subdivisions have been effected in the assigned lands in order to accommodate various beneficiaries. He had further pointed out that the compensation amount was deposited to the credit of L.A.O.P.No.8 of 2002 on 14.09.2018 before the Subordinate Court, Srivilliputhur. An amount of Rs.8,53,478/- has been deposited to the credit of the said account of the writ petitioner.

10.The learned Special Government Pleader had further contended that the petitioner has given a representation to the Government for reconveyance of the land on the ground that the property has not been utilised for the purpose for which it was acquired. However, the said request was rejected by the authorities. He had further pointed out that on 02.06.2012, an order of assignment has been granted in favour 19 beneficiaries and they have also



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accepted the said assignment. Hence, he contended that the possession has been taken on 29.12.1989, in view of the letter given by the writ petitioner and the compensation amount as fixed by the Land Acquisition Tribunal has been deposited before the said Tribunal on 14.09.2018. None of the conditions as contemplated under Section 24(2) of the Central Act 30 of 1963 have been made out for claiming enhanced compensation under the new Act. Hence, he prayed for dismissal of the writ petition.

11.I have considered the submissions made on either side and perused the materials available on record.

12.There is no dispute that the writ petitioner is the owner of the subject matter of the lands which have been acquired by the Government by way of 4 (1) Notification under Land Acquisition Act 1894 on 15.11.1990. A declaration under Section 6 of the Act has been published on 11.10.1991. The Land Acquisition Officer has passed an award on 26.03.1992. The amount fixed by the Land Acquisition Officer has been received by the writ petitioner under protest and he sought for reference to the Acquisition Tribunal. Based upon the request of the petitioner, the dispute has been referred under Section 18 of the Land Acquisition Act 1894 to the Sub Court, Srivilliputhur. The learned Subordinate Judge has passed an order on 28.02.2006 enhancing the



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compensation from Rs.9,000/- per acre to Rs.1,05,000/- per acre. Admittedly, this award was neither challenged by the first respondent nor the award was complied with. In the meantime, the new Act namely Central Act 30 of 2013 came into force on 01.01.2014.

13. Section 24 of the Central Act 30 of 2013 is extracted for better appreciation:

24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.—*(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894,—*

(a) where no award under Section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said Section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

•(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said Section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the



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proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under Section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act”.

14.The petitioner has prayed for declaration that the acquisition proceedings have got lapsed in view of Section 24(2) of Act 30 of 2013. In the alternative, the petitioner has prayed for enhanced compensation under proviso to Section 24(2) of the above said Act.

15.A perused of the documents filed on the side of the respondents will clearly indicate that the possession of the property has been taken on 29.12.1989 even before 4(1) Notification, based upon the consent letter given by the writ petitioner. Thereafter, order of assignments have been issued in favour of various beneficiaries on 02.06.1992. The beneficiaries have also acknowledged the said order of assignment. Hence, it is clear that the possession of the land have been taken in the year 1992 itself. Hence, the contention of the writ petitioner that the acquisition proceedings will get lapsed as contemplated under Section 24(2) of the Act is not legally sustainable.



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16.The Hon'ble Supreme Court in a judgement reported **in (2020) 8**

SCC 129 (Indore Development Authority Vs. Manoharlal and others) had

interpreted Section 24(2) and its proviso in Paragraph Nos.187, 188 and 189 as follows:

“187. If we hold that even if the award has been passed within 5 years and the compensation amount has not been deposited with respect to such an award passed in the window period, higher compensation to follow if it is not deposited with respect to the majority of the holdings would amount to re-writing the statute. The provision of [section 24\(1\)\(a\)](#) is clear if an award has not been passed, higher compensation to follow. No lapse is provided. In case award has been passed within the window period of [section 24\(1\)\(b\)](#), inter alia, the provisions for compensation would be that of the Act of 1894. The only exception to [section 24\(1\)](#) is created by the non-obstante clause in [section 24\(2\)](#) by providing that in case the requisite steps have not been taken for 5 years or more, then there is lapse as a negative condition. The proviso contemplates higher compensation, in case compensation has not been paid, and the amount has not been deposited with respect to the majority of the holdings, to all the beneficiaries under the Act of 2013, who were holding land on the date of notification under [Section 4](#). If the proviso is added, [section 24\(1\)\(b\)](#) will destroy the very provision of [section 24\(1\)\(b\)](#) providing proceedings to continue under the Act of 1894, which is not the function of the proviso to substitute the main Section but to explain it. It is not to cause repugnancy with the main provision. The function of the proviso is to explain or widen the scope. It is a settled proposition



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of law that the proviso cannot travel beyond the provision to which it is attached. The proviso would travel beyond the Act of 1894 as it is the intention of [section 24\(1\)\(b\)](#) the proceedings to govern by the Act of 1894. Thus, the proviso has no space to exist with [section 24\(1\)\(b\)](#), and it has rightly not been attached by Parliament, with [Section 24\(2\)](#) and has been placed at the right place where it should have been.

188. It is in the cases where there is no lapse under [section 24\(2\)](#) if either step has been taken the proviso operates to provide higher compensation. In the cases where possession has been taken, but the amount has not been deposited as required under the proviso, higher compensation to all the beneficiaries has to follow as once possession has been taken, the land is vested in the State and payment is necessary for any acquisition. As such, Parliament has provided in such cases higher compensation to follow as envisaged in the proviso to [section 24\(2\)](#). Lapse of acquisition is provided only in the exigencies where possession has not been taken, nor compensation has been paid in the proceedings for acquisition pending as on the date on which the Act of 2013 came into force, then the State Government has to initiate fresh proceedings if it so desires. The proviso is part of the scheme of [section 24\(2\)](#), and the entire provision of [section 24\(2\)](#), including the proviso, operates when inaction is there for a period of 5 years or more, as contemplated therein.

189. The fundamental consideration is that the proviso cannot supersede the main provision of [section 24\(1\)\(b\)](#) and destroy it. The function of the proviso is to except out the pressing provisions to which it is attached. In case possession has been taken, but only a few



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beneficiaries have been paid, there is no lapse. Even if nobody has been paid, there is no lapse once possession has been taken. In case compensation has not been deposited with respect to the majority of the holdings, there is no lapse, but higher compensation to all the beneficiaries has to follow. The provision provides equal treatment to all, not only to a few- and, in effect, is similar to [Section 28A](#) of the Act of 1894- in case the obligation to pay or deposit has not been discharged and there is no arrangement of money to discharge the obligation either by paying or depositing in the Reference Court and, if permissible, in the treasury. [Section 24\(2\)](#) saves land which has been vested in the State, once award has been passed and possession of land. However, in case compensation has not been deposited with respect to majority of landowners, in any given award, all beneficiaries have to be paid higher compensation under the new Act”.

17.A careful perusal of the above said judgement of the Hon'ble Supreme Court will clearly indicate that Proviso to Section 24(2) cannot supersede the main section namely Section 24(2). Even if no one has received the compensation, but possession has already been taken, there is no lapse of acquisition proceedings. Only in case where compensation has not been deposited with respect to the majority of the holdings, the higher compensation to all the beneficiaries has to follow. In the present case, though the compensation has been fixed by the Land Acquisition Tribunal on 28.02.2006, the award amount was neither paid directly nor deposited before



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the Court or treasury till 01.01.2014, the day on which new Act came into force.

18.The respondent authorities have chosen to deposit the award amount only on 14.09.2018. The present writ petition has been filed seeking enhanced compensation on 17.12.2014. Only four years thereafter, the amount has been deposited before the Sub Court, Srivilliputhur. Hence, it is clear that in view of the proviso to Section 24(2) and interpretation of the Hon'ble Supreme Court of the above said provision in Paragraph Nos. 187 to 189 of the judgement reported *in (2020) 8 SCC Page 129, (Indore Development Authority Vs. Manoharlal and others)*, the writ petitioner is entitled to an enhanced compensation as contemplated under the proviso to Section 24(2) of the Central Act 30 of 2013.

19.In view of the above said discussions, as far as the prayer for declaration that the acquisition proceedings have got lapsed is concerned, the writ petition is dismissed. As far as the alternative prayer seeking enhanced compensation under Proviso to Section 24(2) of Central Act 30 of 2013 is concerned, the writ petition stands allowed. The respondent authorities are directed to pay enhanced compensation under Act 30 of 2013 for the lands acquired from the writ petitioner within a period of twelve (12) weeks from the date of receipt of a copy of this order.



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20. With the above said observations, the writ petition is allowed to the extent as stated above. No costs.

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Internet : Yes/No
Index : Yes/No
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To

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Adi Dravidar & Tribal Welfare Department
Fort St. George
Chennai 600 009

2. The District Collector
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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

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