



W.A(MD)No.1632 of 2018

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.12.2022

CORAM:

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR JUSTICE SUNDER MOHAN**

**W.A(MD)No.1632 of 2018
and
C.M.P(MD)No.11920 of 2018**

1.The State of Tamil Nadu,
through District Collector,
Thoothukudi District.

2.The Revenue Divisional Officer,
Thoothukudi.

... Appellants/Respondents

.Vs.

M.R.Ponnu Renga Mannar

... Respondent/Writ Petitioner

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order passed in W.P(MD)No.15796 of 2014, dated 27.03.2017.

For Appellants : Mr.D.Sasikumar
Government Advocate

For Respondent : Mr.T.S.R.Venkataramana



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JUDGMENT

DR.G.JAYACHANDRAN,J.
AND
SUNDER MOHAN,J.

This appeal is filed by the State being aggrieved by the order passed by the learned Single Judge in W.P(MD)No.15796 of 2014.

2. The issue before us falls under a short compass, to ascertain whether the land owner, who has been deprived of his land by virtue of acquisition proceedings commenced on 08.08.2004 by issuing notification under Section 4(1) of the Land Acquisition Act, 1894 and compensation has not been paid till date, is entitled for a fair compensation as per the old Land Acquisition Act, 1894 or new Act of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

3. The facts of the case is succinctly extracted and discussed by the learned Single Judge, which would indicate that the land of the writ petitioner, who is arrayed as respondent in the appeal, was subjected to acquisition by notification



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under Section 4(1) of the Land Acquisition Act, 1894, dated 08.08.2004.

According to the writ petitioner, the land was taken possession from him much earlier more preciously, on 29.01.1993. The award was passed on 04.08.2007 with expressed undertaking that the money will be deposited in the Sub Court, Tuticorin, but the records reveals and also substantially admitted by the appellant that out of 38 land owners, 28 land owners were not able to produce the title documents and therefore, the compensation amount was attempted to be deposited in the Sub Court, Tuticorin, but the same reason it was returned as time barred instrument and after few communications over the years at last the money came to be deposited in the year 2017. Only after filing of the writ petition to quash the Award No.1/2007-2008, dated 04.08.2007 and to initiate fresh acquisition proceedings as per the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 30 of 2013.

4. The learned Single Judge after scanning the records has observed that compensation amount for around 28 land owners running to a tune of Rs.1,51,888/- was by way of pay order deposited in the Sub Court, Tuticorin on



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07.08.2008, but returned as stale instrument. Even assuming, the same was deposited, it is 5 years after taking possession. As far as the amount alleged to have deposited on 07.08.2008, the records disclose that it was a stale cheque presented before the Sub Court and the same was returned to the authorities to revalidate the instrument and deposit. It is taken nearly 9 years to revalidate and deposit the money, that too, after the enactment of the new legislation repealing old colonial Land Acquisition Act under which the land of the petitioner was acquired that too only after filing of the writ petition. Therefore, the learned Single Judge has held that the award dated No.1/2007-2008, dated 04.08.2007 is no more in force and therefore, the respondents 1 & 2 to initiate fresh land acquisition proceedings for the petitioner's land as per the proceedings of the New Act and pay the compensation as per the new act and the said exercise should be completed within 8 weeks on the receipt of the order copy.

5. The said order is challenged by the State in this writ appeal on the ground that the learned Single Judge ought to have noted that the writ petitioner has not produced any document to prove the ownership during award enquiry and therefore, there was a dispute in disbursing the compensation amount, which



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forced the authorities to deposit the amount in respect of survey Nos.230/3, 1147/1B and 1147/2B in the award account. The land owner has initiated proceedings under the Land Acquisition Act and the same is pending as L.A.O.P. No.20/2007. The learned Single Judge has only taken note of the fact that the award was not paid. But having taken possession of the land and the project been completed before the enactment of the new legislation, the provision of the new act will not apply and this fact not been taken note by the learned Single Judge. Even, under the new Act, Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, disentitles the land owners getting benefit of the new Act, if the acquisition proceedings already completed and the award deposited in respect of the majority of the land owners.

6. The above ground raised in the writ appeal is no more res-integra in view of 5 Judges Bench Judgment of the Hon'ble Supreme Court of India rendered in ***Indore Development Authority v. Shailendra (dead) through L.Rs. And others.*** The Hon'ble Supreme Court summing up their response to the order of reference, at paragraph 363, 364 has held as follows:-



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“363. 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.



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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



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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



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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 added)

7. According to the learned Government Advocate, the possession taken and compensation tendered much prior to the New Act came into force. Hence, the land owners cannot claim the acquisition proceedings lapsed. He rely upon clause (5) and (7) of para 363 in the above judgment.

8. The learned counsel for the respondent/land owners submitted tendering a stale cheque is not a valid tender. If money not tendered within 5 years of taking possession, the acquisition gets automatically lapsed in view of Section 24(1) of the New Act.

9. The learned Government Advocate appearing for the appellants though emphasis before this Court that in para 363 (5) and (7) has to be applied in this



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Case. This Court is of the view that since for majority of the land owners, compensation amount has not been deposited but only an attempt to produce the stale cheque made by the revenue authorities and that too belatedly after 5 years of the proceedings and that attempt also not completed immediately. To complete the attempt, the appellant has taken another 9 years to be precious, the award passed on 04.08.2007 the money deposited only in the year 2017. The earlier attempt to deposit cannot be construed as valid tender. Hence, clause (5) in para 363 at 4 is applicable to the facts of this case and not clause 5 or 7.

10. Since admittedly, for more than 5 years, majority of the land owners in this case, not been paid compensation, obviously the land owners are entitled for compensation in accordance with the provisions of the new Act of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. In the light of the above judgment of the Supreme Court it is needless to redo the exercise of acquisition but suffice if compensation component alone worked out as per the New enactment, namely, Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.



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11. With the above partial modification to the Single Judge order, the appeal is dismissed with cost of Rs.50,000/- payable to the respondent. Consequently, connected miscellaneous petition is closed.

[G.J.,J.] [S.M.,J.]
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