



W.A.No.1712 of 2015

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2023

CORAM:

**THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MR. JUSTICE P.B.BALAJI**

**W.A.No.1712 of 2015
and M.P.No.1 of 2015**

K.Sivakumar

... Appellant / Writ Petitioner

Vs.

- 1.The Government of Tamil Nadu rep. by
its Secretary to Government,
Housing & Urban Development Department,
Fort St.George, Chennai-600 009.
- 2.The Tamil Nadu Housing Board,
Rep. by its Chairman,
Anna Salai, Chennai-600 035.
- 3.The Special Officer (LA) IX,
Tamilnadu Housing Board Schemes,
Thirumangalam, Chennai-600 101.
- 4.The Executive Engineer & Administrative Officer,
Besant Nagar Division, Tamilnadu Housing Board,
48, Dr.Muthulakshmi Salai, Adyar,
Chennai-600 020.

.. Respondents



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PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 01.09.2015 in W.P.No.13107 of 2014.

For Appellant : M/s.A.V.Arun

For Respondents : Mr.U.M.Ravichandran,
Special Government Pleader for R1

Mrs.C.Shyamala, Standing Counsel
for R2 to R4

JUDGMENT

[Judgment of the Court was made by *D.KRISHNAKUMAR, J.*]

The appellant is the writ petitioner. He made a challenge to the impugned proceedings of the fourth respondent dated 28.02.2014, in and by which his claim for reconveyance of the land in S.No.296/2 of Sholinganallur Village came to be rejected, has filed W.P.No.13107 of 2014 and the writ petition came to be dismissed, vide order dated 01.09.2015, against which the present writ appeal has been filed.

2. The appellant / writ petitioner is the owner of the land comprised in S.No.296/2 to an extent of 2400 Sq.Ft. in Sholinganallur Village. The said land along with other lands comprised in the Lakshmi Nagar layout was subjected to



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Land Acquisition Proceedings in the year 1990. The first respondent issued a Notification under Section 4(1) of the Land Acquisition Act, 1894 [hereinafter referred to as "Old Act"] vide G.O.Ms.No.454 dated 23.05.1990, followed by a Declaration under Section 6 of the said Act in G.O.Ms.No.996, Housing & Urban Development Department dated 17.06.1991. Thereafter, an award came to be passed in Award No.2 / 1993 dated 18.06.1993 by the third respondent. The petitioner declined to receive any compensation pursuant to the award and the compensation amount is deposited in the Revenue Deposit.

3. The appellant / writ petitioner, aggrieved by the land acquisition proceedings, earlier had filed W.P.No.14353 of 1993, which was disposed of on 05.02.1996 with a direction to the second respondent to allot the plot, which was proposed to be constructed under the land acquisition proceedings, on a preferential basis. The land was acquired by the first respondent at the instance of the second respondent for the purpose of housing scheme called "Sholinganallur Neighbourhood Scheme Phase-II". According to the appellant/writ petitioner, though the land was acquired at the instance of the second respondent, as early as



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in the year 1990, the second respondent did not take any steps to use the land for any housing scheme or otherwise and the land is still kept vacant and no physical possession has been taken by the second respondent in the manner known to law. The appellant/writ petitioner made various representations to the second respondent, followed by reminders seeking allotment of plots as per the order dated 05.02.1996 in W.P.No.14354 of 1993. Since the second respondent failed to pass orders on his representation, he filed W.P.No.1667 of 2000 seeking a Writ of Mandamus directing the second respondent to pass orders on his representation and this Court, by order dated 02.02.2000, was pleased to direct the respondents to pass orders on his representation within a period of one month. However, the second respondent did not pass any orders on his representation. The second respondent has not taken any steps to develop the acquired land and has not at all taken physical possession of the acquired land to develop it as planned.

4. According to the appellant / writ petitioner, since the respondent dropped the scheme and kept the property idle from 1996, he made several representations in person as well as through an association viz., "Sholinganallur Plot Owners



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Association" dated 19.08.1995, 02.01.1996, 18.08.1998 and 20.12.1998 along with others to the first respondent seeking reconveyance of the land to him by exercising their powers under Section 48(B) of the old Act, however, the respondents have arbitrarily rejected the claim of the appellant/writ petitioner for reconveyance of the land. According to the appellant, as per the new Act viz., The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, (Act No.30 of 2013) [in short "Fair Compensation Act"], if the award amount has not been paid, the land acquisition proceedings initiated against the old Act shall be deemed to have been lapsed. As per Section 24(2) of the Fair Compensation Act, if the possession is not taken or the award amount has not been paid, the proceedings covered under any previous notification as per the old Act would lapse.

5. The second respondent has filed a counter affidavit stating that the land in Survey No.297/1, 297/2A and 297/2B are situated at Sholinganallur Phase II Scheme and the said lands are handed over to the Tamil Nadu Housing Board on various dates from 18.04.1994 till 26.03.1996 by the Land Acquisition Officer for



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the implementation of Neighbourhood Scheme and since then, the lands vest with the Tamil Nadu Housing Board [TNHB]. It is further stated in the counter affidavit that TNHB has obtained all clearances from the appropriate departments for the construction of 1500 multi storied flats and the construction is nearing completion and the appellant cannot challenge the acquisition proceedings at a belated stage, claiming any right under Section 24(2) of the Fair Compensation Act.

6. Heard the learned counsel for the parties and perused the materials on record.

7. The primordial contention of the appellant is that the possession of the land in question has not been taken over by the land Acquisition Officer and handed over to the respondents Board and therefore, the entire acquisition proceedings is vitiated under the old Act. It is the case of the appellant / writ petitioner that the compensation amount has not been paid and in pursuant to the direction of this Court, the compensation has been calculated and deposited in the



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Registry of this Court and till date, the possession has not been taken by the Land Acquisition Officer.

8. Admittedly, in the case on hand, the respondents had issued the Section 4(1) Notification on 23.05.1990 and Section 6 Declaration was published on 17.06.1991 and Award No.2/1993 was passed on 18.06.1993 and Section 12(2) Notice was issued on 20.07.1993. It has been stated in the counter affidavit that the compensation amount were already paid to the appellant on production of original documents and the land acquisition officer has acquired the land and handed over possession to the TNHB and the respondent Board has floated tender for construction of multi storied building and obtained permission/consent/approvals from various authorities and at this stage, the appellant has made a request for reconveyance of the land. According to the respondents, the entire lands were utilized for the Housing Scheme and as per the new Act, the claim of the appellant cannot be considered.



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9. In para 8 of the Writ Court order, it has been stated that after the new Act came into force on 01.01.2014, the appellant / writ petitioner has submitted his representation on 04.02.2014 to the respondents and to the Executive Engineer, Tamil Nadu Housing Board seeking reconveyance of the land, however, the Executive Engineer, TNHB alone sent a reply dated 28.02.2014 expressing inability to reconvey the land to him. Therefore, it is evident that possession was already taken by the Land Acquisition Officer and handed over to TNHB. The counter affidavit filed by the second respondent clearly states that possession has been taken by the respondents Board and in pursuant thereto, consent from various authorities were obtained for construction of multi storied housing scheme. The Writ Court has passed orders in the light of the decision of the Hon'ble Supreme Court in *Pune Municipal Corporation and Another v. Harakchand Misirmal Solanki and Others [(2014) 3 SCC 183]*. The aforesaid judgment has been clarified / overruled by the Hon'ble Supreme Court in *Indore Development Authority v. Manoharlal and Others [(2020) 8 SCC 129]*, wherein it has been held as under:

"365.Resultantly, the decision rendered in *Pune Municipal Corpn. [Pune Municipal Corpn.v. Harakchand Misirimal Solanki,*



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(2014) 3 SCC 183 : (2014) 2 SCC (Civ) 274] is hereby overruled and all other decisions in which *Pune Municipal Corpn. [Pune Municipal Corpn. v. Harakchand Misirimal Solanki, (2014) 3 SCC 183 : (2014) 2 SCC (Civ) 274]* has been followed, are also overruled. The decision in *Sree Balaji Nagar Residential Assn. [Sree Balaji Nagar Residential Assn. v. State of T.N., (2015) 3 SCC 353 : (2015) 2 SCC (Civ) 298]* cannot be said to be laying down good law, is overruled and other decisions following the same are also overruled. In *Indore Development Authority v. Shailendra [Indore Development Authority v. Shailendra, (2018) 3 SCC 412 : (2018) 2 SCC (Civ) 426]*, the aspect with respect to the proviso to Section 24(2) and whether “or” has to be read as “nor” or as “and” was not placed for consideration. Therefore, that decision too cannot prevail, in the light of the discussion in the present judgment.

366.3. 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 2013 Act 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."

In the light of the aforesaid decision of the Hon'ble Supreme Court, if any of the conditions has been satisfied by the Respondents Board viz., taking over possession or compensation amount has been paid, then the petitioner cannot invoke Section 24(2) of the Fair Compensation Act, 2013.

10. Admittedly, in the case on hand, the respondents Board has taken



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possession of the lands in question even at the early stages during the years 1994 and 1996, the prayer sought for by the appellant/writ petitioner is legally unsustainable, In the light of the decision of the Hon'ble Supreme Court. The counter affidavit was filed by the second respondent during March 2017 and there is no denial or evidence placed by the appellant for the aforesaid counter affidavit of the second respondent as to the possession already taken. Even in the grounds of appeal, the appeallant has raised the ground that on account of non-payment of compensation, the entire proceedings would lapse as per Section 24(2) of the new Act, despite knowing the fact that possession was already taken over by the respondents Board. The Writ Court has considered all these aspects in proper perspective and this Court finds no merit in the writ appeal and accordingly, the same is liable to be dismissed.

11. At this juncture, the learned counsel for the appellant submitted that in pursuant to the directions of this Court, the respondent Board has calculated the compensation amount and the same has been deposited before the Registry of this Court and therefore, he seeks for withdrawal of the amount by the appellant.



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12. Considering the above said facts, we are inclined to pass the following order:

(i) The Writ Appeals Stands dismissed. No costs.

Consequently, connected miscellaneous petition is dismissed.

(ii) The respondents Board is directed to serve notice on the interested parties, if any, for withdrawal of the compensation amount by the appellant.

(iii) If any interested party makes any objection, it is open to the interested parties concerned to seek their remedy before the appropriate forum.

(iv) If there is no objection for withdrawal of compensation amount by the appellant, a report shall be filed by respondent Board to the Registry of this Court, with a copy served on the appellant, so as to enable him to withdraw the amount, which is lying to the credit of the writ appeal before the Registry of this Court. On such report being filed, the appellant shall make an application before the Registry for



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withdrawal of the compensation amount.

(v) The aforesaid exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order.

(D.K.K., J.) (P.B.B., J.)
10.07.2023

Intex : Yes/No
Internet : Yes/No
Jvm

To

- 1.The Secretary to Government,
The Government of Tamil Nadu,
Housing & Urban Development Department,
Fort St.George, Chennai-600 009.
- 2.The Chairman,
The Tamil Nadu Housing Board,
Anna Salai, Chennai-600 035.
- 3.The Special Officer (LA) IX,
Tamilnadu Housing Board Schemes,
Thirumangalam, Chennai-600 101.



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4.The Executive Engineer & Administrative Officer,
Besant Nagar Division, Tamilnadu Housing Board,
48, Dr.Muthulakshmi Salai, Adyar,
Chennai-600 020.

D.KRISHNAKUMAR, J.
and



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P.B.BALAJI, J.

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