



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

W.P.No.2421 of 2011 and
MP No.1 of 2014 and MP No.2 of 2011
W.M.P.No.19397 of 2021

1. Kannabiran
2. Subramaniam
3. Velumani
4. Kalikrishnan
5. Balasubramaniam
6. Palaniammal (Died)
7. Lakshmi
8. Saraswathi
9. Kannammal
10. Kanagaraj
11. Amsaveni

... Petitioners

(P10 and 11 substituted as legal heirs of deceased 6th petitioner Late Palaniammal by order dated 18.12.2023 in WMP No.22431/2021)

(5th, 7th and 8th petitioners are already on record and they are also accepted as legal heirs of the deceased 6th petitioner, vide order dated 18.12.2023 in W.M.P.No.22425 of 2021)

Vs.

- 1.The State of Tamil Nadu
represented by its Secretary to Government
Housing and Urban Development Department
Fort St. George, Chennai - 9



2. The Special Tahsildar
Land Acquisition
Housing Scheme Unit-III
Coimbatore

3. The Tamil Nadu Housing Board
Rep. by its Managing Director,
Anna Salai, Nandanam, Chennai - 35
4. The Executive Engineer & Administrative Officer
Tamil Nadu Housing Board,
Coimbatore Unit, Tatabad,
Coimbatore - 641 018

... Respondents

(R3 and R4 impleaded as per order dated
11.06.2015 in MPs.1,1 & 1 of 2015
in WPs.2421, 2422 and 2424/2011)

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of Certiorari to call for the records in relation to the notification issued under Section 4(1) of the Land Acquisition Act, 1894, in G.O.Ms.No.791 dated 17.05.1983, Housing & Urban Development Department and the declaration made under Section 6 of the Land Acquisition Act, in G.O.Ms.No.649 dated 02.07.1985 (Housing & Urban Development Department) by the 1st respondent under the Land Acquisition Act, 1894 and the Award proceedings in Award No.4/87 dated 22.07.1987 of the 2nd respondent and quash the same in respect of the lands belonging to the petitioners, comprised in S.F.No.436, situated at Telugupalayam Village, Coimbatore. **(Prayer amended as per order dated 18.12.2023 in WMP No.19393 of 2021 in WP No.2421 of 2011)**

For Petitioners : Mr.R.N.Amarnath
for Mr.S.Nedunchezhiyan

For R1 and R2 : Mr.P.Kumaresan
Additional Advocate General
assisted by Mr.P.Sathish,
Additional Government Pleader



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W.P.No.2421 of 20



For R3 and R4 : Mr.V.Gunasekar
Standing Counsel for TNHB

ORDER

This Writ Petition is filed seeking to issue a writ of Certiorari to call for the records in relation to the Notification issued under Section 4(1) of the Land Acquisition Act, 1894, in G.O.Ms.No.791 dated 17.05.83, (Housing & Urban Development Department) and the Declaration made under Section 6 of the Land Acquisition Act, in G.O.Ms.No.649 dated 02.07.85 (Housing & Urban Development Department) by the 1st respondent under the Land Acquisition Act, 1984 and quash the same in respect of the lands belonging to the petitioners, comprised in S.F.No.436, situated at Telugupalayam Village, Coimbatore.

2. The writ petition is filed by the petitioners challenging the Award passed under Section 11 of the old Act in consonance with the Rules and the Award was not passed within a period of 2 years and therefore, the Award itself is vitiated. Further, as per the new Act 30/2013, as on that date 01.01.2013 neither possession was taken, nor amount was paid/deposited. Therefore, the acquisition itself is lapsed.



3. The learned counsel for the petitioners submitted that the Award has not been passed in the manner known to law and the authorities have not obtained the statutory sanction within the stipulated period and that the respondents are not able to prove that after obtaining the statutory sanction, they made publication and passed the Award within the stipulated time. Even assuming that the Award was passed within the stipulated time, however, the possession has not been taken and that they have not produced any document in that regard. The document produced is nothing but the internal communication between the officials. When they state that the possession was taken under Section 47 of the Act, they have to prove that they called the land owners to hand over the possession and since it was refused by them, they had taken the possession forcefully from them. But there is no document to show that the petitioners were forcefully removed from the possession and the acquisition body have taken the property and handed over it to the requisitioning body. He further submitted that the amount has not been deposited and that the award amount does not tally with cheques produced. They are also not able to prove that the amount was properly tendered to the petitioners/land owners, however, since they refused to receive the amount, the acquisition body left with no other option, but was constrained to



deposit the amount before the civil Court. Unless the land owners refuse to receive the amount for one reason or other, they cannot automatically deposit the amount before the Civil Court or in the nationalized bank. In this case, there are no materials to show that they tendered the amount properly to the land owners, however, the land owners refused to receive the amount and therefore, the acquisitioning authority deposited the amount before the civil Court. They have not followed the Revenue Standing Orders. Therefore, the amount deposited is also not proper. Any how, the mandatory condition of new Act has not been followed. Therefore, the Award itself is lapsed. Hence, the petition has to be allowed.

4. Mr.P.Kumaresan, learned Additional Advocate General, assisted by Mr.P.Sathish, learned Additional Government Pleader, appearing for the respondents, submitted that already the land owners had challenged the Notification issued under Section 4(1) and also the Declaration and they lost his right and the authorities tendered the compensation amount to the land owners. However, since they refused to receive the compensation amount, they deposited the amount before the civil court. Even the possession was also taken and mutation had also taken place. Even publication was also



effected. Now the land stands in the name of the Housing Board. Once the amount is deposited and land is taken, either one of the condition if fulfilled, and the new Act will not get attracted and therefore, the petitioners are not entitled to the relief sought for. Therefore, the writ petition is liable to be dismissed. In support of his contentions, the learned counsel for the petitioners placed reliance on the original relevant records.

5. Heard and perused the materials available on record.

6. Admittedly, the writ petition is filed challenging the original Award. The petitioners fairly conceded that their father filed writ petition challenging the Notification issued under Section 4(1) and the Declaration and they lost. The contention of the petitioners is that the Award was not passed under Section 11 of the Act, in the manner known to law, within the stipulated period.

7. The learned Additional Advocate General clearly stated that declaration was also notified in the Official Gazette and within the stipulated time of two years, the award was passed. The land owners have not challenged the same and that the petitioners are not the owners.

8. It is seen that the land owners agitated the matter upto Supreme Court and lost in the matter during their life time. Thereafter, the amount was



tendered to the land owners and since they did not receive the amount, the same was deposited in the civil Court. Now, as the legal heirs of the land owner, the petitioners have no locus standi to challenge the same. His Father already filed a writ petition and they lost the battle in the appeal and also before the Supreme Court. Of course, the land owners challenged only the Notification issued under Section 4(1) and Declaration. Thereafter, one of the land owner, i.e. the father of the fifth petitioner died in the year 2002, ie on 11.8.2002 and until 2002, the land owner did not challenge the Award. The award came to be passed even in the year 1987 itself. Now, the petitioners cannot challenge the Award on the ground that the Award was not passed within the stipulated period and the notice was not served and amount was not tendered to them.

9. The fact remains from the records produced by the learned Additional Advocate General that the amount was already deposited before the civil Court in LAOP No.43 of 1994. Once the amount was deposited, the lapse under Section 24(2) would not get attracted. With regard to possession, already the Revenue Records were mutated in the name of the Housing Board. Though the learned counsel for the petitioners submitted that the possession is with the petitioners themselves and patta stands in their name,



they have not produced any document to show that on the date of filing this writ petition in the year 2011, the Revenue Records stood in their names.

Though it is stated that the property is agricultural property and the petitioners were cultivating the land even on the date of filing of the writ petition, they have not produced any Adangal or any other relevant records to show that they were in possession on the date of filing of the writ petition. It is for the petitioners to prove the foundational fact that either possession was taken or the amount has not been deposited. If either one of the conditions was not satisfied, then the Award would get lapsed. However, the petitioners have not produced any document to show or prove the same, whereas, the respondents/Land acquisitioning officers produced all the documents and all the procedures have been followed in the manner known to law. Every stage, it was challenged by the land owners and they have lost. Further, the record shows that the Award was passed within two years from the date of Declaration in the manner known to law, after adopting all the procedures as contemplated under the Land Acquisition Rules and the amount has also been deposited before the Civil Court and still the amount is lying in the Civil Court. Till the death of one of the land owner, the petitioners had not challenged the same. Now the present writ petition is filed challenging the



same. The petitioners are only entitled to the Award amount. Now the Award amount is before the Civil Court in LAOP No.43 of 1994. The petitioners are at liberty to work out their remedy in the manner known to law, to withdraw the amount from the Civil Court.

10. Accordingly, the Writ Petition is dismissed. Consequently, the miscellaneous petitions are closed.

18.12.2023

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No



To

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Housing and Urban Development Department
Fort St. George, Chennai - 9
2. The Special Tahsildar
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Housing Scheme Unit-III
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W.P.No.2421 of 2011



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