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W.A.No.1380 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2023

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

and

THE HON'BLE MR.JUSTICE P.B.BALAJI

W.A.No.1380 of 2018
and CMP.No.10884 of 2018

The Managing Director,
The Tamil Nadu Housing Board,
No.33, Anna Salai,
Nandanam, Chennai-35.

.. Appellant

vs.

1.M.Murugesan

2.The Government of Tamil Nadu,
Rep. by its Secretary to Government,
Housing and Urban Development Department,
Fort St.George, Chennai-600 009.

3.The Special Tahsildar,
(Land Acquisition), Housing Scheme,
Hosur, Dharmapuri District.

.. Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 03.09.2014 made in W.P.No.15807 of 2014.

For Appellant : Mr.A.M.Ravindranath Jeyapal

For Respondents : Mr.R.Bharathkumar for R1
Mr.R.Raja Rajeswari,
Government Advocate for R2 and R3



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JUDGMENT

WEB COPY (Judgment of the Court was made by ***Justice D.Krishnakumar, J.***)

The Appellant Board is the respondent in the writ petition and they aggrieved by the order of the Writ Court dated 03.09.2014 made in W.P.No.15807 of 2014, in and by which the Writ Court has declared the land acquisition proceedings as deemed to have been lapse in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 [In short "Fair Compensation Act"], has filed the instant writ appeal.

2. Facts of the case in brief is that the appellant Board had acquired lands totally to an extent of 212.94 acres in Hosur Village, which includes the land belonging to the first respondent / writ petitioner for the implementation of Hosur Neighbourhood Housing Scheme. Section 4(1) Notification and Section 6 Declaration under the Land Acquisition Act, 1894 [In short "Act 1894"] was issued on 30.01.1991 and 08.04.1992 respectively, followed by an award in Award No.2 of 1994 dated 10.04.1994. According to the appellant Board, the award amount was deposited to the Land Acquisition



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Officer as per Board's Sanction order No.LA.II (4)/27198/92 dated 16.03.1994, vide Cheque No.3153127/28.03.1994.

3. While that being so, the first respondent had filed W.P.No.15807 of 2014 before this Court challenging the Section 4(1) Notice dated 30.01.1991, Section 6 Declaration dated 08.04.1992 and the Award No.2 of 1994 dated 10.04.1994 passed under the Land Acquisition Act, 1894 as deemed to have been lapsed by virtue of Section 24(2) of the Fair Compensation Act in respect of his property in S.Nos.572/A and 575 to an extent of 1.38.5 Hectares in Hosur Village, Krishnagiri District. Accepting the contention of the respondent/writ petitioner that the Award was passed as early as in the year 1994 and neither the compensation amount was paid nor deposited in the Court and further that the physical possession of the land is also vested with the writ petitioner and therefore, by invoking Section 24(2) of the Fair Compensation Act and following the decision of the Hon'ble Supreme Court in ***Pune Municipal Corporation v. Harakchand Misirimal Solanki [2014 (1) CTC 755]***, the Writ Court has allowed the writ petition. Challenging the said order of the Writ Court, the present writ appeal is filed.



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4. The learned Standing Counsel for the appellant Board would contend that Section 24(2) of the Fair Compensation Act, 2013 would come into operation only in cases where the award under the Old Act had been passed five years or more prior to the commencement of the Act and twin conditions are satisfied by the appellant Board, namely possession was taken and compensation amount has also been deposited. It is further contended that Section 4(1) Notification was issued on 30.01.1991 and Section 6 Declaration was issued on 08.04.1992, followed by Award No.2 of 1994 and the compensation amount was deposited by the Land Acquisition Officer on 28.03.1994 and thus the acquisition proceedings had attained finality long since 1994. It is further contended by the appellant Board that notices were issued to the land owners and interested persons to appear for enquiry and the property in question originally belonged to (1) R.Chowdayya Chetty, (2) Basha Sahib, (3) Papanna and the award reflects that Thiru Chowdayya Chetty had 3 wives and he died 5 years prior to the date of award and the details of the legal heirs mentioned in the award are as follows:

- (1) Tmt.Kamamma, Chowdayya Chetty's third wife
- (2) C.Munivenkatappa, Chowdayya Chetty's first wife only son
- (3) C.Subramani, Chowdayya Chetty's third wife Kamamma's son



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(4) C.Manohar, Chowdayya Chetty's third wife Kamalamma's son,

(5) C.Ramamani, Chowdayya Chetty's third wife's daughter,

(6) C.Vanajakshi, Chowdayyaa Chetty's third wife's daughter.

and during the Award enquiry, Tmt.Kamalamma, C.Subramani, C.Manohar and C.Munivenkatappa had appeared and their statements were recorded and therefore, it is clear that the first respondent/writ petitioner does not appear to have any exclusive right to the lands in question and prayed for interference.

5. The learned counsel for the appellant Board also contended that challenging the Section 4(1) Notification dated 30.01.1991, Tmt.Kamalammal, Subramani and Manohar earlier had filed W.P.No.4076 of 2001 and the said writ petition came to be dismissed vide order dated 18.04.2001. It is to be noted that the said Kamalammal is one of the family members of the first respondent and she is having right over the property in question. The first respondent earlier also had filed W.P.No.26450 of 2012 praying for reconveyance of the land in S.Nos.572A and 575 to an extent of 1.38.5 Hectares in Hosur Village, Krishnagiri District. The said writ petition was dismissed, vide order dated 03.10.2012, by relying upon the decision of the Hon'ble Supreme Court in ***Leelawanti v. State of Haryana [AIR 2012 SC***



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515/ in a similar circumstance. Against which the first respondent had filed

W.A.No.977 of 2013, wherein the Division Bench of this Court held that proceedings were already challenged before this Court in W.P.No.4076 of 1994 and the said writ petition came to be dismissed and the land acquisition proceedings have become final. The Division Bench of this Court also observed that irrespective of the fact that the acquired property is utilised or not, the first respondent cannot rely upon Section 48(B) of the Old Act for reconveyance of the property and it is only the discretion of the Government and this Court cannot compel to exercise the discretion in a particular manner and accordingly dismissed the writ appeal, vide judgment dated 17.06.2019.

6. This is the third round of litigation in respect of the very same land acquisition proceedings wherein W.P.No.15807 of 2014 has been filed seeking for declaration of the land acquisition proceedings as lapsed by virtue of Section 24(2) of the Fair Compensation Act, 2013 and the Writ Court has allowed the writ petition and challenging the same, the present writ appeal is filed.



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7. The learned counsel for the respondent/writ petitioner vehemently opposed that the appellant board has not taken physical possession of the property in question and the compensation amount has not been paid to the respondent and therefore, prayer that the entire land acquisition proceedings is deemed to have been lapsed in the light of Section 24(2) of the Fair Compensation Act, 2013.

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

9. The point for consideration in this writ appeal is whether the first respondent / writ petitioner is entitled for relief under Section 24(2) of the Fair Compensation Act, 2013 on the ground that the appellant Board has not satisfied the twin conditions viz., taking over possession and payment of compensation.

10. According to the learned counsel for the appellant Board, the possession of the property in question was taken over and handover to the Tamil Nadu Housing Board, vide proceedings in Na.Ka.27/93 dated



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25.04.1997 by the Special Tahsildar, Hosur. The Head Surveyor, Housing Board has signed in the said Charge Transfer Certificate. The revenue records namely Town Survey Register has been produced before this Court wherein the lands in question stands in the name of Tamil Nadu Housing Board and therefore, according to them, possession has already been taken over by the appellant Board.

11. We have also gone through the original records submitted before this Court by the appellant Board.

12. The first respondent earlier had filed W.P.No.26450 of 2012 praying for reconveyance of the land in question and in the said writ petition, the first respondent has stated that the land acquisition proceedings were initially challenged by Kamalammal and two others in W.P.No.4076 of 1994 and subsequently, the said writ petition came to be dismissed on 18.04.2001. In the said writ petition, Section 4(1) Notice and Section 6 Declaration were challenged, but the Award passed by the appellant Board was not challenged. In the said writ petition, he prayed for reconveyance of the land under Section 48(B) of the Old Act and the said writ petition was dismissed holding



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that the first respondent is not entitled for reconveyance of the lands in question by following the decision of the Hon'ble Supreme Court in ***Leelawanti v. State of Haryana [AIR 2012 SC 515]***.

13. Challenging the said order, the first respondent had filed W.A.No.977 of 2013, wherein the Division Bench had dismissed the writ appeal vide judgment dated 17.06.2019 holding that irrespective of the fact that the acquired property is utilised or not, the appellant cannot rely upon Section 48(B) of the Act for reconveying the property and the said order has become final.

14. Be that as it may, the first respondent has filed the instant writ petition in W.P.No.15807 of 2014 by contending that the appellant Board has not paid compensation amount to the owners nor deposited the compensation amount and further possession also vests with the writ petitioner and the writ Court by relying upon the decisions in ***Pune Municipal Corporation v. Harakchand Misirimal Solanki [2014 (1) CTC 755]*** and ***Sudha & Others v. The Government of Tamil Nadu [CDJ 2014 MHC 1895]*** has allowed the writ petition.



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WEB COPY 15. We have also perused the counter affidavit filed by the appellant Board in the instant writ petition, wherein it has been stated that award notice has been served to the landowners and interested persons and they appeared for enquiry and their objections were recorded. The details of the legal heirs are also mentioned in the award and therefore, they had entire knowledge of the award proceedings and the appellant Board has also tendered the compensation amount to the first respondent. Again the present writ petition has been filed before this Court claiming that the first respondent is entitled to relief under Section 24(2) of the Fair Compensation Act, since the appellant Board has not satisfied the twin conditions.

16. The appellant Board has produced the Charge Transfer Certificate in Na.ka.27/93 dated 25.04.1997 wherein the Special Tahsildar, Hosur had handed over possession of the land acquired to the Senior Revenue Inspector and the same has been signed by the Head Surveyor Officer, Tamil Nadu Housing Board. Therefore, we cannot brush aside the contention of the appellant Board that the property in question has been handed over to the appellant Board. Even assuming that according to the first respondent, they



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are in possession of the property in question, it is a vacant land with no superstructure and the revenue records stands in the name of the appellant Board. That apart, the writ petitioner/first respondent was unsuccessful in the first round of litigation and in the second round of litigation in W.P.No.26450 of 2012, he sought for reconveyance of the land in question under Section 48(B) of the Act and the revenue records produced before this Court revealed that the property stands in the name of the appellant Board as per the Town Survey Register and therefore, it is evident that the first respondent is not in possession of the property in question.

17. The Writ Court, while allowing the writ petition has relied upon the judgment in ***Pune Municipal Corporation case*** (cited supra), however the said judgment was subsequently overruled by the Hon'ble Supreme Court in ***Indore Development Authority v. Manoharal and Others***, wherein the Apex Court has held as under:

"343. By and large, concluded cases are being questioned by way of invoking the provisions contained in Section 24. In our considered opinion, the legality of concluded cases cannot be questioned under the guise of Section 24(2) as it does not envisage or confer any such right to question the proceedings and the acquisitions have been concluded long back, or in several rounds of litigation as mentioned above, rights of the parties have been settled.



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366.9. *Section 24(2) of the 2013 Act 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 2013 Act 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."*

18. In a latest decision in ***Land and Building Department through Secretary and another v. Attro Devi & Others [2023 LiveLaw (SC) 302]***, the

Hon'ble Supreme Court held as under:

13. It is also a fact to be noticed and taken care of that large chunk of land is acquired for planned development to take care of immediate need and also keep buffer for future requirements. Such portion of land may be lying vacant also. As has been observed in ***Indore Development Authority's case*** (supra) by this Court, the State agencies are not supposed to put police force to protect possession of the land taken after process of acquisition is complete. As far as the case in hand is concerned, the land even if was lying 5 vacant, is required now for a project of national importance for construction of the Delhi-Saharanpur-Dehradun Highway starting from Akshardham Junction to Delhi/UP Border, in the State of Delhi in Phase-I of Bharatmala Pariyojana.

14. It is the undisputed fact on the record, as has been noticed in the impugned order passed by the High Court, the possession of the land was taken over by the Land Acquisition Collector and handed over to Delhi Development Authority. Report of possession proceedings dated 06.12.2012 has also



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been placed on record. Hence, one of the conditions being satisfied, we need not examine any other argument.

15. Keeping in view the aforesaid fact and the law laid down by the Constitution Bench of this Court in Indore Development Authority's case (supra), in our opinion the order passed by the High Court cannot be legally sustained and the same is accordingly set aside. However, the respondents shall be entitled to receive compensation as per their entitlement. The Land Acquisition Officer should also take steps to pay the same to the rightful owner."

In the case on hand, admittedly, the respondent/ writ petitioner earlier had filed W.P.No.26450 of 2012 praying for reconveyance of the land in question, which amply proved that the possession was already taken over and therefore, the appellant Board has satisfied one of the twin conditions and as such, the respondent / writ petitioner is not entitled to any relief under Section 24(2) of the Fair Compensation Act in the light of the decision of the Hon'ble Supreme Court in *Indore Development Authority* case.

19. The first respondent / writ petitioner has earlier challenged the land acquisition proceedings before this court and was unsuccessful and the writ appeal filed there against was also dismissed and the entire acquisition proceedings were concluded long back. In the light of the decision in *Indore Development Authority case*, the respondent / writ petitioner is not entitled



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to any relief under Section 24(2) of the Fair Compensation Act, 2013 and as such, the contention of the first respondent is legally unsustainable and therefore, the order of the Writ Court warrants interference.

20. In the light of the reasons assigned above, the Writ Appeal stands allowed and the order of the Writ Court dated 03.09.2014 passed in W.P.No.15807 of 2014 is set aside. No costs. Consequently, connected miscellaneous petition is dismissed.

[D.K.K., J.] [P.B.B., J.]
10.08.2023

Index : Yes / No
Internet : Yes / No
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To

1.The Secretary to Government,
The Government of Tamil Nadu,
Housing and Urban Development Department,
Fort St.George, Chennai-600 009.

2.The Special Tahsildar,
(Land Acquisition), Housing Scheme,
Hosur, Dharmapuri District.



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AND
P.B.BALAJI, J.
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