



W.A.No.1377 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:17.08.2023	Delivered on: 27.09.2023
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CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.A.No.1377 of 2018
and
C.M.P.No.10865 of 2018

Tamil Nadu Housing Board,
rep. by its Chairman,
Nandanam,
Chennai-600 035.

.. Appellant

Vs.

1.K.Chitra Kumar
2.Sholinganallur Town Panchayat
rep. by its Executive Officer
Sholinghanallur
Chennai-600 119.

.. Respondents

Prayer:- Appeal filed under Clause 15 of Letter Patent praying to allow this Writ Appeal by setting aside the order made in W.P.No.25063 of 2007 dated 06.10.2007 passed by this Court.

For Appellant : Mr.D.R.Arunkumar,
Standing Counsel for TNHB

For Respondents : Mr. P. Nethaji (for R2)
R1 – Not ready notice



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JUDGMENT

(Judgment of the Court was made by P.B.BALAJI,J.)

The Tamil Nadu Housing Board, aggrieved by the order of the Writ Court in W.P.No.25063 of 2007 dated 06.10.2007 is the appellant before us.

2. The Writ Petitioner/1st respondent herein sought for issuance of a Writ of Mandamus from the Writ Court, directing the Sholinganallur Town Panchayat, the 1st respondent in the Writ Petition, to consider and accord planning permission on the Writ Petitioner's application for proposed construction at S.No.676/2A, 15th Cross Street, Sholinganallur Village, Tambaram Taluk, Kanchipuram District, without insisting on a no objection certificate from the appellant.

3. The brief facts that are necessary for effective adjudication of the present Writ Appeal are as follows:

The land acquisition proceedings were initiated and the Writ Petitioner's property was sought to be acquired. An award also came to be passed. It was the specific case of the petitioner that she had purchased the



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subject property on 21.06.2006 in and by a registered sale deed and that she was in continuous possession and enjoyment of the same and when she approached the Town Panchayat for necessary planning permission, she was called upon to produce a no objection certificate from the appellant herein.

4. It is the specific case of the Writ Petitioner that though some land acquisition proceedings were initiated, the same were quashed by this Court on 24.01.1996 in a batch of Writ Petitions in W.P.Nos. 10420 to 10424 of 1991 and subsequently even the CMDA had accorded planning permission to neighbouring lands.

5. The Writ Court, heard the Writ Petition finally, on the date of admission itself and held that the award has been passed belatedly and therefore the entire land acquisition proceedings stood vitiated and in such circumstances, the Writ Petitioner was entitled to a sanctioned plan, without a no objection certificate from the appellant herein.



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6. The main grounds of challenge laid by the appellant are that Sec.4(1) notification under the Land Acquisition was issued on 23.05.1990 and duly published on 06.06.1990 and subsequently a draft declaration U/s. 6 was approved by the Government in G.O.Ms.No.996 dated 17.05.1991. Three awards have been passed in respect of the neighbourhood scheme for which the lands have been acquired. According to the appellant, the lands were handed over to it by the Land Acquisition Officer on 11.05.2006 and the same vested with the appellant thereon; the Writ Petitioner purchased the property only 21.06.2006 after the passing of the award and possession was handed over to the appellant board by the Land Acquisition Officer; the reference to the quashing of land acquisition proceedings pertain to a totally different survey number and not to the concerned survey number for which the Writ Petitioner approached the Court; the original owner themselves had approached this Court in W.P. No.15904 of 2007 and only sought for exemption of their lands, accepting the validity of the acquisition proceedings. This Court directed the representation of the land owners to be considered and subsequently the Government had rejected the request of the land owners for exclusion of the subject lands from acquisition proceedings; legal heirs of the original



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owners also agitated the issue by filing W.P.No.22190 of 2007, challenging the order of rejection of the Government, by proceedings dated 14.06.2007 and the said Writ Petition was also disposed of on 30.07.2007; the Writ Petitioner being a subsequent purchaser cannot maintain the Writ Petition and seek for planning permission, that too, without insisting on a no objection certificate from the appellant.

7. Though the 1st respondent Writ Petitioner has chosen not to appear in the Writ Appeal, we directed the appellant to take steps to serve the 1st respondent. The notice sent by the appellant through Court to the Writ Petitioner was returned with endorsement “no such person”. It was also brought to our notice that originally the property was falling within the Sholinganallur Town Panchayat, and pending the Writ Appeal, the said area now falls within the limit of Greater Chennai Corporation. We therefore, requested the counsel for the appellant to find out as to whether subsequent to the order of Writ Court, any planning permission had been given to the Writ Petitioner and as to whether any construction has been put up by the petitioner in the subject property, pursuant to any sanctioned plan.



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8. On the hearing date viz., 17.08.2023, the appellants have produced photographs to show that there is no construction put up by the Writ Petitioner and also stated that no planning permission was also issued to the Writ Petitioner pursuant to the order of the Writ Court. We are able to see from the photographs produced by the 2nd respondent that there is no permanent construction and only a temporary hut and a metal sheet structure of temporary nature has been put up. The property has been acquired under the Land Acquisition Act and wrongful title and possession vests with the appellant Board.

9. In fact the Constitution Bench of the Hon'ble Supreme Court in ***Indore Development Authority Vs. Manoharlal and Ors***, reported in ***(2020) 8 SCC 129***, has clearly stated as follows:

'366. 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



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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.

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



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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 of 2013.

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



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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 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.



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10. Considering the above submissions and also in the light of the dictum of the Hon'ble Supreme Court in **Indore Development Authority's** case, we do not deem it fit to reopen the acquisition proceedings that have concluded long back, that too on the grounds taken by the respondents 1 and 2 in the Writ Petition viz., non payment of compensation and possession not being taken over.'

11. Thus, the temporary construction put up in the subject property amounts only to an encroachment/trespass and no legal status can be conferred on such construction. Moreover, the Writ Petitioner is only a subsequent purchaser and she has not even challenged the acquisition proceedings. It was also brought to our notice that the original land owners challenged the land acquisition proceedings unsuccessfully. However, noticing that the prayer sought for in the Writ Petition was only to consider and accord sanction to the planning application of the Writ Petitioner for putting up construction in the subject property without insisting on a no objection certificate from the appellant, we do not agree with findings of the Writ Court that the acquisition proceedings stood vitiated on the ground of



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delay. Considering that the Writ Petitioner has also not been served in the present Writ Appeal till date and there is no appearance for the Writ Petitioner/1st respondent, we thought it fit that interest of justice would be protected if the following order is passed:

(i) The finding of the Writ Court that the award being passed belatedly, the entire land acquisition proceedings were vitiated stands set aside.

(ii) However, the appellant shall independently consider and pass orders on the application of the 1st respondent/writ petitioner for planning permission and pass orders on merits and in accordance with law including taking a call on whether the no objection certificate from the Tamil Nadu Housing Board is required or not, after providing an opportunity to the Writ Petitioner. With these modifications the Writ Appeal is partly allowed.

There shall be no order as to costs.

(D.K.K.J) & (P.B.B.J)
.09.2023

Internet : Yes
Index: Yes/No
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To
The Executive Officer
Sholinganallur Town Panchayat



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Sholinghanallur
Chennai-600 119.

D.KRISHNAKUMAR, J.,
and
P.B.BALAJI,J.
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Pre-delivery judgment in
W.A.No.1377 of 2018

.09.2023