



W.A.No.1379 of 2018

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.1379 of 2018

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

... Appellant

Vs.

1.Rojavathy

2. The Principal Secretary to Government,
Housing and Urban Development Department,
Fort St. George, Chennai 600 009.

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

... Respondents

Prayer: Writ Appeal filed under Section 15 of Letters Patent to set aside the order passed by this Court in W.P.No.12259 of 2014 dated 03.09.2014.



W.A.No.1379 of 2018

For Appellant : Ms.C.Shyamala, Standing Counsel

For Respondents : Mr.R.Parthasarathy, Senior Counsel

for Mr.Durai Gunasekaran for R1

Mrs.Geetha Thamarai Selvan,

Special Government Pleader for R2 & R3

JUDGEMENT

(Judgment of the Court was delivered by D.KRISHNAKUMAR, J.)

This Intra Court Appeal has been filed, challenging the order passed by this Court in W.P.No.12259 of 2014 dated 03.09.2014 by the Tamil Nadu Housing Board.

2. The brief facts leading to file the present appeal is as follows.

The first respondent herein filed the above said writ petition stating that the lands at survey No.571/1-B2 in Hosur Village, Krishnagiri District were belonged to her father T.Rajagopal and the same were acquired by the Government vide G.O.Ms.No.137, Housing and Urban Development Department, dated 30.01.1991. The above notification was challenged by her father by filing W.P.No.11715/1991 and pending writ petition her father



W.A.No.1379 of 2018

died. Thereafter, the first respondent's brother was impleaded and subsequently, the writ petition was dismissed with liberty to give representation to the government for deletion of the subject land from acquisition. Accordingly, the first respondent's brother made a representation and the same was rejected by the Government on 27.07.2005 stating that the land in question is essentially required for the Tamil Nadu housing Board and there is no possibility of deletion from acquisition proceedings. Challenging the above said rejection order, the first respondent's brother had filed writ petition No.33542/2005 and the same was also dismissed by this Court on 27.07.2005.

2.1. According to the first respondent, the land acquisition proceedings were initiated in the year 1991 and the Award No.2/1994 was passed on 08.04.1994, however, the physical possession of the property is with them, further, no compensation amount has been deposited in the name of the land owners. Therefore, in view of the provision under Central Act of the Right to Fair Compensation and Transparency in land acquisition rehabilitation and resettlement, 2013, non payment of the Award amount to



W.A.No.1379 of 2018

the original land owners is a vitiated one. Hence, the first respondent has filed the writ petition to quash the Award No.2/1994 dated 08.04.1994 in so far as the her land is concerned in S.No.571/1B2 in Housur Village, Hosur Taluk, Krishnagiri District to an extent of 0.57.0 hectare and for a direction to the government to put the petitioner into possession of the property within a time frame to be stipulated by the Court.

2.2. After analyzing the documents and the submission made by both the parties, the Writ Court has observed that as of now, the petitioner is in possession and enjoyment of the property and also since there is no proof for payment of compensation, the petitioner is entitled to get the relief under the New Act i.e. Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 i.e., the Central Act 30 of 2013 and consequently, quash the Award No.2/2014 dated 8.4.1994 and discharged the petitioner's land from the acquisition proceedings. Challenging the above order passed by the learned Single Judge, this intra court appeal has been filed.



W.A.No.1379 of 2018

3. The learned counsel for the appellant submitted that the learned Single Judge has erred in holding that the provisions of Section 24(2) of Act 30 of 2013 operated in the present case, but Section 24(2) would only come into operation in the cases, where the award under the Old Act had been passed five years or more prior to the commencement of the Act and either of two further conditions are satisfied, namely, where the physical possession of the land has not been taken or the compensation has not been paid to the land owners. However, the first respondent's prayer itself discloses that she does not have possession of the lands. Further, though the first respondent/ writ petitioner has challenged the Award No.2/2014, the learned Single Judge has discussed the matter under Section 24(2) of Act 30 of 2013. Therefore, the order passed by the Writ Court is beyond the scope of prayer sought for in the writ petition and hence, the same is liable to be set aside.

4. The learned Senior Counsel appearing for the first respondent submitted that compensation amount has not been paid to the first respondent/ writ petitioner and the appellant Board has not taken



W.A.No.1379 of 2018

possession of the property. Therefore, as per Section 24(2) of Act 30/2013, the entire acquisition proceedings is lapsed. As such, the order passed by the learned Single Judge does not warrant any interference by this Court.

5. Heard the learned counsel for either parties and also we have perused the materials on record.

6. Now, the point for consideration in the writ appeal is whether the order passed by the Writ Court allowing the writ petition under Section 24(2) of Act 30/2013 is maintainable or not?

7. It is the contention of the learned counsel for the first respondent/ writ petitioner that compensation amount has not been paid and possession also not taken by the respondent Board and therefore, by invoking Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 (Central Act 30/2013) and following the decision of the Hon'ble Supreme Court in ***Pune Municipal Corporation Vs. Harakchand Misirimal Solanki*** reported in



W.A.No.1379 of 2018

2014(1) CTC 755, the writ Court has rightly allowed the writ petition. But, the learned counsel for the appellant/Board has submitted that 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]***.

8. At this juncture, it is useful to extract the relevant portion of the above decision in ***Indore Development Authority*** cited supra, which reads as follows.

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



WEB COPY



W.A.No.1379 of 2018

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."

9. According to the appellant board, as per the decision of the Hon'ble Apex Court in the case of ***Indoor development Authoridty*** cited supra, the Writ Court ought to have been taken such decision, if any challenge has been made under Section 24 (2) of the New Act. But, in the case on hand, the writ petition has been filed challenging the rejection order passed by the appellant Board, however, during the course of argument, the Writ Court has considered the proviso to Section 24(2) of the New Act. Therefore, the learned counsel for the appellant specifically stated that there is no sufficient opportunity granted to the appellant Board to contest the case on merits, and hence, the relief under Section 24(2) of the New Act cannot be granted and the appellant Board has also satisfied with the ingriedience of Section 24(2) of the New Act.

10. Admittedly, in the case on hand, the appellant Board has taken the possession of the property; passed the Award 2/94; deposited the



W.A.No.1379 of 2018

WEB COPY

compensation amount of Rs.2,11,243/- in the Sub Court, Hosur and also issued notice to the land owner as to the payment of the deposit. Therefore, the prayer sought for by the first respondent/writ petitioner to put her into the possession of the property is unstainable, in the light of the above decision of the Hon'ble Supreme Court. Further, as rightly stated by the learned counsel for the appellant, there is no pleading or prayer sought for in the writ petition challenging the Award passed by the Board. As such, the order of the Writ Court cannot go beyond the scope of the prayer, when there is no pleadings in the writ petition for enactment of Section 24(2) of the Act. In the light of the above discussion, we are of the view that the order of the learned Single Judge is erroneous and the same is liable to be set aside and the writ appeal deserves to be allowed.

11. At this juncture, the learned Senior Counsel appearing for the first respondent seeks liberty to agitate the matter afresh under Section 24(2) of Central Act 30/2013.



W.A.No.1379 of 2018

WEB COPY

12. Accordingly, the writ appeal stands allowed. It is open to the respondent/ writ petitioner to work out his remedy before the authorities concerned and in such circumstances, the same shall be considered by the authorities concerned in accordance with law.

(D.K.K.J.)

(P.B.B.J.)

10.07.2023

Internet: Yes/No

Index : Yes/No

mst

To

1. The Principal Secretary to Government,
Housing and Urban Development Department,
Fort St. George, Chennai 600 009.
2. The Special Tahsildar, (Land Acquisition),
Housing Scheme, Hosur,
Hosur, Krishnagiri District.



WEB COPY



W.A.No.1379 of 2018

D.KRISHNAKUMAR, J.

and

P. B.BALAJI, J.

mst

W.A.No.1379 of 2018

10.07.2023