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W.P.Nos.4824 & 4826 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2023

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.Nos.4824 & 4826 of 2023

T.Uttamchand	..	Petitioner in W.P.No.4824 of 2023
J.Parsan Chand	..	Petitioner in W.P.No.4826 of 2023

vs

1. The State of Tamil Nadu
Rep. by its Secretary
Housing and Urban Development Department
Fort St. George
Chennai – 600 009.
2. The Tamil Nadu Housing Board
Rep. by its Managing Director
No.331, Anna Salai
Nandanam, Chennai – 600 034.
3. The Executive Engineer & Administrative Officer
Besant Nagar Division
Tamil Nadu Housing Board
No.48, Dr.Muthulakshmi Salai
I Floor Shopping Complex
Shastrinagar, Adyar
Chennai – 600 020.
4. The Special Tahsildar
Land Acquisition, Unit – V
Tamil Nadu Housing Board Schemes
Aringar Anna Shopping Complex
7th Avenue, Thirumangalam
Chennai – 600 101.

Respondents
.. in both W.Ps



W.P.Nos.4824 & 4826 of 2023

Prayer in W.P.No.4824 of 2023: Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Declaration, to declare that the land acquisition proceedings initiated under the Land Acquisition Act, 1894 in respect of the petitioner's land comprised in S.No.612/4C of Shozhinganallur Village, Shozhinganallur Taluk. Kancheepuram District has lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 which came into force with effect from 01.01.2014;

Prayer in W.P.No.4826 of 2023: Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Declaration, to declare that the land acquisition proceedings initiated under the Land Acquisition Act, 1894 in respect of the petitioner's land comprised in S.No.612/4D of Shozhinganallur Village, Shozhinganallur Taluk. Kancheepuram District has lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 which came into force with effect from 01.01.2014.

For Petitioners
in both W.Ps : Mr.P.H.Aravind Pandian
Senior Counsel
for Mr.Vikram Veerasamy

For Respondents
in both W.Ps : Mr.P.Sathish
Additional Government Pleader



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COMMON ORDER

Since the issue raised in these writ petitions is one and the same, these writ petitions were taken together with the consent of the learned counsel appearing for both sides and are being disposed of by this common order.

2. The Land Acquisition 4(1) notification was issued on 14.05.1990 and the declaration under Section 6 was made on 07.06.1991. The petitioners purchased a part of the property on 05.12.1994. Thereafter, award enquiry was conducted, wherein, according to the learned Senior Counsel appearing for the petitioners, no notice has been given to the petitioners and the petitioners have not participated in the enquiry. Be that as it may. The award was passed on 23.04.1997. Thereafter, according to the learned Senior Counsel appearing for the petitioners, no deposit of the award amount has been made and it is also an admitted fact that the possession of the property is retained by the petitioners till date and the possession has not been taken by the respondents. Therefore, according to the learned Senior Counsel appearing for the petitioners, the respondents have not passed either of the twin tests under Section 24(2) of the 2013 Act i.e., the Central Act 30 of 2013. On that ground the petitioners have chosen to challenge the acquisition proceedings, seeking declaration within the meaning of Section 24(2) of the 2013 Act.



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3. Heard Mr.P.H.Aravind Pandian, learned Senior Counsel appearing for the petitioner, who would submit that, the very same acquisition proceedings on the same point, since has been already challenged, seeking declaration under Section 24(2) of the 2013 Act, came to be decided by a learned Judge of this Court in W.P.No.32306 of 2014 in the matter of ***R.Bindhu and Ors. Vs The State of Tamil Nadu and Ors.***, wherein, the learned Judge of this Court, by passing an exhaustive order, came to the conclusion that the twin test has not been passed by the respondents, therefore, the petitioners are entitled to get the declaration under Section 24(2) of the 2013 Act and the relevant portion of the order of the learned Judge reads thus:

“.. 6. On a perusal of the materials available on record particularly the counter affidavit filed by the respondents, it is seen that the claim of the respondents is that the petitioners herein are the subsequent purchasers and the acquisition proceedings were initiated as early as in the year 1990 and the award was passed in the year 1997 itself, while so, the petitioners herein are claiming rights over the subject property on the strength of the partition deed dated 05.10.2006 said to have been entered into between the petitioner's Late husband, his father and his brother, which was after a lapse of 16 years from the date on initiation of the acquisition proceedings.



7. However, even a bare perusal of the affidavit filed by the petitioners to substantiate their contentions makes it clear that, the petitioners herein are not the subsequent purchasers, the said Sulochana, against whom the above acquisition proceedings is said to have been initiated is none other than the mother in law of the 1st petitioner and the subject property was allotted in favour of the 1st petitioner's husband and after his demise, the petitioners herein being the legal heirs have derived the same and are in absolute possession and enjoyment of the subject property, while so, the respondents have not verified the relation in between the petitioners and the original owner properly and have mechanically filed the present counter affidavit.

8. Though it is the contention of the respondents that the compensation amount has been deposited and, therefore, Section 24 (2) would not stand attracted, however, a bare perusal of the said deposit slip reveals that, the compensation amount is said to have been deposited even prior to passing of Award. This Court is at a loss to understand as to how deposit of a particular amount could be made even before the said amount is quantified and an award is passed. The stand of the respondents that the amount has been deposited in revenue deposit even before passing of the award is unknown



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to land acquisition proceedings. Further, the respondents have not revealed the basis on which amount has been deposited in revenue deposit.

9. Further, Section 24 (2) of the new Act has been pressed into service by the petitioners to contend that where an award under Section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid, the said proceedings shall be deemed to have lapsed. For better appreciation, the relevant provision is extracted hereunder :-

24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.

(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894,—

(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said section 11 has been



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made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.

.....



12. Section 31 clearly stipulates that on the passing of the award, the Collector shall tender the compensation to the persons interested in the said land, and in the event of the land owner failing to receive the compensation, then the respondents, u/s 31 (2) could refer the matter to the civil court. However, in the case on hand, no material is placed before this Court to show compliance of Section 31 (2). Further, as pointed out above, Section 31 (2) could not have been complied for the simple reason that the deposit is shown to have been made even before the passing of the award.

13. For all the reasons aforesaid, the acquisition sought to be made by the respondents stand lapsed by virtue of Section 24 (2), as none of the limb contemplated u/s 24 (2) of the new Act has been complied with. In such circumstances, necessarily this Writ petition has to be allowed.

14. Accordingly, this Writ petition is allowed and the respondents/revenue officials are directed to mutate the revenue records in respect of the subject property in favour of the petitioners forthwith. No costs."

Relying upon this decision, the learned Senior Counsel would contend that, all the benefits that has been extended by the learned Judge in the said order to the



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neighboring land holders covered under the same land acquisition proceedings, the petitioners are also entitled to get the same relief. Hence, the learned Senior Counsel seeks indulgence of this Court.

4. Heard Mr.P.Sathish, learned Additional Government Pleader, appearing for respondents 1 to 4, who would submit that, the respondents have passed at least one out of the twin tests, namely, depositing the award amount on 31.03.1997 and in this regard, the photocopy of certain challan receipt dated 31.03.1997 has been produced by the learned Additional Government Pleader appearing for the respondent Housing Board.

5. By relying upon this receipt, the learned Additional Government Pleader would argue that, since the award amount has already been deposited as early as in 1997, it cannot be stated that even one of the twin tests has not been passed by the respondents.

6. Even though possession still is retained by the petitioner, insofar as the deposit of the award amount is concerned, that has been made well in advance, ie., on 31.03.1997, that is after the declaration under Section 6 of the Act. Thus, the



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petitioner cannot seek indulgence of this Court to invoke Section 24(2) of the 2013

Act, he contended.

7. I have considered the said rival submissions made by the learned counsel appearing for both sides and have perused the materials placed before this Court.

8. It is an admitted fact that the possession, so far, has not been taken and that has been retained by the petitioners. Insofar as the deposit of the award amount is concerned, assuming that it has been deposited in the treasury in the Government account, that should have been made only if the award is passed in this case.

9. The award was passed admittedly on 23.04.1997. Therefore, the deposit, if at all to be made, should have been made only thereafter. However, it is the claim of the respondents that the award has been deposited even on 31.03.1997, that is prior to the award dated 23.04.1997, hence, this cannot be treated as proper deposit of the award amount, as there could not have any chance of depositing any of the award amount before the award itself is passed.



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10. Therefore, this point have been taken into account by the learned Judge, who passed the aforesaid order, which has been extracted hereinabove and accordingly, he allowed the writ petition. I am in complete agreement with the said view taken by the learned Judge in the said writ petition and therefore, the benefit, which was extended to the petitioners in the said writ petition can very well be extended to the present petitioners also. In that view of the matter, this Court is inclined to dispose of these writ petitions with the following orders:

In both the writ petitions, the prayer sought for to declare that the land acquisition proceedings, insofar as the land in question covered under these two writ petitions, are lapsed within the meaning of Section 24(2) of the Act 30 of 2013 is concerned, it is to be accepted, accordingly, these writ petitions are allowed to the aforesaid terms, without any order as to costs.

Index: Yes/No
Neutral Citation :Yes/No
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02.03.2023



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To

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The State of Tamil Nadu
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R. SURESH KUMAR, J.

(drm)

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