



W.A.No.606 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:08.08.2023

Delivered on: 21.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.A.No.606 of 2018

and

C.M.P.No.5889 of 2018

The Member Secretary
Chennai Metropolitan Development Authority
Egmore
Chennai-600 008

.. Appellant

Vs.

1.Vasantha

2.M.Selvam

3.The Government of Tamil Nadu
rep by its Secretary to Government
Housing and Urban Development Department
Secretariat
Chennai-600 009

4.The District Collector
Collectorate
Kanchipuram



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5.The Sub-Collector/Revenue Divisional Authority
Chengalpattu Sub Collector's office
Chengalpattu

6.The Special Tahsildar (Land Acquisition)
Maramalai Nagar Scheme
Kattankolathur
Kanchipuram District

.. Respondents

Prayer:- Appeal filed under Clause 15 of Letter Patent praying to set aside the order passed by this Court in W.P.No.27532 of 2015 dated 04.04.2016.

For Appellant : Mr. T. Kumaresan, AAG,
assisted by Ms.C.N.Vinobha, SC(CMDA)

For Respondents : Mr.U.M.Ravichandran, Spl.G.P for R3 to 6
No Appearance for R1 and 2

JUDGMENT

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

The Member Secretary, CMDA has preferred the present Appeal, aggrieved by the order of the Writ Court in W.P.No.27352 of 2015 dated 04.04.2016.



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2. The case of the respondents 1 and 2 herein as petitioners in the Writ Petition was that they were co-owners of the property which was the subject matter of the acquisition proceedings. For formation of a new town under the name Maraimalai Nagar, the acquisition proceedings were initiated. The petitioners contending that they have not been paid a single pie since the award in the year 1986 and that they have also not been dispossessed from the land in question sought for issuance of a Writ of Declaration, to declare that the acquisition pertaining to the petitioner's lands had lapsed in terms of Sec.24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013.

3. The Writ Court, finding that the compensation amount was deposited in Sub-Treasury, Chengalpet and kept in a revenue deposit and possession was also not taken by preparation of Panchanama in the presence of witnesses or by some other mode, and mere taking over possession by executing a land delivery receipt would not suffice, allowed the Writ Petition.



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4. The Writ Court placed reliance on the Division Bench judgment of this Court in *Tamil Nadu Housing Board and another Vs. Igate Global Solutions Ltd*, reported in *2016 (2) MLJ 385*.

5. The counsel for the appellant would contend that physical possession had been taken over and patta No.172 was also obtained in the name of appellant as early as on 06.09.2009. It is also contended that even compensation has been paid and deposit was made only because the father of the respondents 1 and 2 did not come forward to receive the compensation. According to the appellant, an award U/s.11 was also passed and the acquired land vests absolutely with the State thereafter and therefore prayed for the Writ Appeal being allowed.

6. Heard Ms.C.N.Vinobha, learned counsel for CMDA and Mr.U.M.Ravichandran, learned Special Government Pleader for respondents 3 to 6. The Writ Petitioners who are respondents 1 and 2, despite having been served notice in the above Writ Appeal, have chosen not to appear either in person or through a counsel. We have perused the material records and also the order of the learned Single Judge.



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7. The Writ Court has proceeded to allow the Writ Petition holding that revenue deposit is not a proper deposit and that taking over possession by executing a delivery receipt will not amount to actual taking of physical possession.

8. The law on these aspects is now settled by the Constitution Bench of the Hon'ble Supreme Court in ***Indore Development Authority Vs. Manoharlal and Ors***, reported in ***(2020) 8 SCC 129***, wherein the Hon'ble Supreme Court has held that even if one of the two conditions viz., payment of compensation or taking over possession is established, then the proceedings would not lapse U/s. 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013. The earlier ratio laid down by the Apex Court in ***Pune Municipal Corporation & another Vs. Harakchand Misirimal Solanki*** reported in ***(2014) 3 SCC 183***, that there would be a lapse of land acquisition proceedings and in order to invoke Sec.24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013, both the conditions viz., compensation having been paid and physical possession having been taken from the land



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owners would have to be fulfilled, has been overruled by ***Indore Development Authority Vs. Manoharlal and Ors***, reported in (2020) 8 SCC 129.

9. In the the latest judgment of the Hon'ble Supreme Court in ***Indore Development Authority's*** case it has been held that a revenue or treasury deposit does not cause any prejudice to the land owners and that on such technical ground, the land acquisition proceedings cannot be allowed to lapse. In so far as possession is concerned, it is the specific case of the appellant that they have taken over physical possession from the respondents 1 and 2 and the project, Maramalai Nagar has been functioning for the past several decades and the acquisition proceedings have also been completed long back.

10. The Constitution Bench, answering the various contentious issues concluded the judgment 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



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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 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



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(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 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



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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 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*



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proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition.

*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. In light of the above discussions, we hold that pursuant to the father of the respondents 1 and 2/Writ Petitioners not coming forward to receive compensation, the compensation amount was deposited in Sub-Treasury Chengalpet under revenue deposit. There is no infirmity in such a procedure adopted by the statutory authorities. In so far as possession, it is the specific case that the appellant has taken possession and the project was also completed long before the 2013 Act, came into force. In any event, the acquisition proceedings having been concluded way back in the year 1986, the Writ Petition filed in the year 2015 is belated and there is no room for any equity also being exercised in favour of the respondents 1 and 2.



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For all the above reasons, we are constrained to interfere with the order of the Writ Court. Consequently, Writ Appeal stands allowed and the order passed in W.P.No.27352 of 2015 dated 04.04.2016 is set aside. No costs. Consequently, connected miscellaneous petition is closed.

(D.K.K.J) & (P.B.B.J)
21.08.2023

Internet : Yes

Index: Yes/No

Neutral Citation: Yes/No

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To

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

2.The District Collector
Collectorate, Kanchipuram

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D.KRISHNAKUMAR, J.,
and
P.B.BALAJI, J

(kpr)

Pre-delivery judgment in
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