



W.A.No.32 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 19.09.2023

DELIVERED ON: 01.11.2023

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

and

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

W.A.No.32 of 2016

and

CMP.No. 437 of 2016

1. The Government of Tamil Nadu

Rep. By its Secretary to Government,
Public Works Department,
Fort St.George, Secretariat,
Chennai-600009.

2.The District Collector,
Kancheepuram District,
Kancheepuram.

3.The Assistant Divisional Officer (Highways)
Construction and Maintenance,
Chengalpet,
Kancheepuram District

--Appellants



W.A.No.32 of 2016

Vs

WEB COPY

M/s.BDVS Hotels (P) Ltd.,
Rep. By its Director,
having its Registered Office at
No. 9-D, 1st Lane,
Karuneeswaran Koil Street,
Mylapore, Chennai-600004.

..Respondent.

Prayer: Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 02.12.2014 in W.P.No.24746 of 2014.

For Appellants : Mr S.Silambanan, AAG

Asst. by Mrs. Geetha Thamaraselvan

For Respondents : Mr. A.R.L.Sundaresan, Senior Counsel

For Mr.Karthik Lakshmanan

JUDGMENT

D.KRISHNAKUMAR, J.

Aggrieved by the order passed by the writ court in W.P.No. 24746 of 2014 dated 01.12.2013, the present writ appeal has been filed.

2. Background of the case:

The respondent herein/writ petitioner is the original owner of



W.A.No.32 of 2016

WEB COPY

the lands measuring 5.60 hectares (14.04 acres) situate in Mamallapuram Village, which was acquired by the Government under the provisions of Land Acquisition Act, 1894 by invoking the urgency clause. According to the respondent/writ petitioner they were not served with any notice in the land acquisition proceedings and that the compensation amount for the acquired lands has not been paid and the possession also not taken by the department. Therefore, the entire land acquisition proceedings has lapsed by virtue of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition Act, Rehabilitation and Resettlement Act, 2013 (herein after referred to 2013 Act). Challenging the said land acquisition proceedings the respondent herein has filed a writ petition in W.P.No.24746 of 2014 before this Court and the same was allowed by order dated 02.12.2014. Aggrieved by the said order of the writ Court, the present writ appeal has been preferred by the Government.



W.A.No.32 of 2016

WEB COPY

3. The learned Additional Advocate General appearing for the appellants submitted that the land acquisition proceeding was initiated under the 1894 Act and now the New Act has come into force from the year 2013. Therefore under Section 24(2) of the 2013 Act, the landowners must prove that the compensation awarded for the acquired land has not been paid to them or deposited in the Treasury, or deposited in the Civil Court and they must establish that the physical possession of the acquired land has not been taken from them.

4 . The learned Additional Advocate General appearing for the appellants further submitted that the land was acquired from the writ petitioner in two Survey Numbers, 18/1B (22 cents) and 18/3A (20 cents). The District Collector, in response to the directions issued by this Court vide dated 02.08.2023, submitted a report indicating that the writ petitioner had encroached upon an extent of 207.4 sq. meters (5 cents) in Survey No. 18/3A, which is situated



W.A.No.32 of 2016

on the Eastern side of the East Coast Road. This suggests that a significant portion of the land (about 15 cents out of 22 cents) was used for road expansion. Additionally, the entire acquired land in Survey No. 18/1B is under government possession, and the acquired lands are still required for future expansion of the East Coast Road. Therefore, the appellant argues that the government has taken physical possession of the acquired land.

5. The learned Additional Advocate General appearing for the appellants further submitted that to claim the benefit under Section 24(2) of the 2013 Act, there cannot be partial dispossession, and it must be established that the entire extent acquired from the landowner remains in the possession of the landowner. The fact that the East Coast Road has been formed and is in use by the general public indicates that the government has taken possession. Furthermore, the fact that the writ petitioner has encroached an extent of 5 cents (207.4 sq. meters) out of 22 cents indicates that the government has taken physical possession. The



W.A.No.32 of 2016

writ petitioner was also issued a notice under Sections 27 & 28 of the Tamil Nadu Highways Act, which suggests that the portion of the acquired land occupied by the petitioner can only be considered as an encroachment.

6. The learned Additional Advocate General appearing for the appellants further submitted that it is settled law that the validity of land acquisition proceedings cannot be challenged after the award has been passed. In this case, the notification under section 4(1) was issued in 1992, the declaration under section 6 was made in 1993, and the award was passed in 1995. The writ petition was filed in the year 2014, nearly 19 years after the award. The appellant argues that the validity of the land acquisition proceedings cannot be challenged at this stage. The acquired lands in Survey No. 18/1B and 18/3A were classified as roads in the revenue records. The adangal extract and A-Register confirm this classification. Therefore, the acquired lands cannot be said to be in the possession of the writ petitioner.



W.A.No.32 of 2016

WEB COPY

7. The learned Additional Advocate General appearing for the appellants further submitted that by relying upon the judgment by the Hon'ble Apex Court in 2020 (8) SCC 129, in the case of Indore Development Authority, has argued that the land acquisition proceedings under the 1894 Act will only lapse if both conditions provided in Section 24(2) of the 2013 Act are fulfilled. In this case, a major portion of the land acquired from the writ petitioner was used for road construction, and the compensation amount was deposited in the Treasury. Therefore, the land acquisition proceedings initiated under the 1894 Act should not be considered as lapsed and the impugned order of the writ court is liable to be set aside.

8. On the other hand, the learned senior counsel appearing for the respondent would submit that the respondent/writ petitioner is the absolute owner of the property measuring an extent of 58 Cents (0.23.5 hectares) comprised in Survey No.18/1 and 6.81 acres



W.A.No.32 of 2016

WEB COPY

(2.75.6 hectares) comprised in survey no. 18/3 in Mamallapuram Vilage. They have purchased the said property from its owners vide registered sale deeds viz., (i) Sale Deed datd 11.12.1972, registered as Document No. 2905/1972, (ii) Sale Deed dated 11.12.1972 registered as Document No. 29065/1972, (iii) Sale deed dated 11.12.1972, registered as Document No. 2907/1972 and (iv) Sale Deed dated 14.12.1972, registered as document No. 2940 of 1972. Ever since the date of purchase, the respondent has been in possession and enjoyment of the aforesaid property and is running a Hotel and Beach Resort under the name and style of M/s.Golden Sun. The respondent has been paying property tax assessed by the Town Panchayat, Mamallapuram, Kancheepuram District. Patta in respect of the property was also transferred in favour of the respondent on 20.09.1994.

9.The learned senior counsel for the respondent would further submit that the award in respect of land acquisition proceedings under the Land Acquisition Act, 1894 is said to have been passed



W.A.No.32 of 2016

WEB COPY

under Award No. 9 of 1995 on 19.09.1995 and a sum of Rs.69,574/- said to have been awarded as compensation in the name of Vendors of the petitioner namely i. B.V.Rathinam, ii. B.V.Rangarathina, (iii) B.V.Gopinath and (iv) Kamalam Ramasamy (wife of one of the vendors of the petitioner) and not in the name of the respondent herein. Further, notice under Section 27(2)(ii) of Tamil Nadu Highways Act 2001 issued by the 3rd appellant herein was handed over to the Security Personnel of the respondent Hotel on 19.01.2014.

10. The learned senior counsel for the respondent further submitted that even though the patta in respect of the lands was transferred in favour of the respondent only on 20.09.1994, the respondent was in actual possession of the property ever since the date of sale deed in their favour i.e 1972. Therefore, at any rate, the land acquisition proceedings initiated under the Land Acquisition Act 1894 have lapsed. The writ court has rightly considered all the above aspects and held that the entire acquisition proceedings



W.A.No.32 of 2016

WEB COPY

initiated against the respondent's lands in survey no. 18/1A and 18/3B have lapsed. Therefore the order of the writ Court does not require any interference by this Court.

11. Heard Mr. S.Silambanan, learned Additional Advocate General for the appellants and Mr.A.R.L.Sundaresan, learned Senior Counsel appearing for the respondent and perused the materials available on record.

12. Points for consideration in the appeal is as follows;

- i. whether the appellant-department has satisfied the provisions prescribed under Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition Act, Rehabilitation and Resettlement Act, 2013 in the land acquisition proceedings initiated against the respondent's land.
- ii. whether in the absence of respondent's name who claimed to be the owner of the subject lands in the acquisition proceedings, can entire acquisition proceedings be construed as lapsed?



W.A.No.32 of 2016

WEB COPY

13. Possession:

13.1 According to the appellant, the department had initiated acquisition proceedings to acquire the lands to an extent of 0.07.0 hectares (022 cents) in Survey No. 18/1A and 18/3B of Mamallapuram Village, Thirukazhukundram Taluk, Kancheepuram District for laying two lane road between Thiruvanmiyur-Mamallapuram- Marakkanam-Pondicherry NH 49 and acquired the lands and possession has also taken and compensation was also paid after conducting award enquiry by the appellant-department after following procedure as required under the Act. The compensation amount of Rs. 69,574/- was determined for the land owners Tvl.B.V.Rathinam, B.V.Rangarathinam and Kamala Ramasamy and same was deposited in Revenue Deposit under Voucher No.7 dated 27.03.1996 at Sub treasury, Chegalpattu.

13.2 According to the appellant-department, the said acquisition was contemplated under urgency clause, therefore the



W.A.No.32 of 2016

WEB COPY

enquiry under Section 5(A) of the Act was dispensed with. The respondent herein, who is the purchaser of the acquired property from the erstwhile owners did not approach the revenue authorities to change the mutations of the revenue records. Therefore, the appellant-department proceeded against the erstwhile land owners by issuing notices to them and deposited the compensation amount in their names. It is also contended by the appellant that the department has taken physical possession of the acquired lands. The learned single judge without considering the said contention of the appellant-department, held that the writ petitioner/respondent herein is entitled to the relief under Section 24(2) of the 2013 Act.

13.3 The learned counsel for the respondent has made objections that no such notices were served to them intimating the acquisition of their lands. According to the respondent, they are running hotel business in the said property and they have been in possession of the said property. A compound wall also constructed in the said property. In support of the said contention, the learned



W.A.No.32 of 2016

counsel for the respondent has filed a copy of the registered sale deeds in their favour viz., registered documents no. 2905 of 1972, 2906 of 1972, 2907 of 1972 and 2940 of 1972 dated 11.12.1972 and 14.12.1972 respectively.

13.4 At the time of hearing, the respondent had strongly objected to the submission of the appellant with regard to the physical possession of the property and submitted that the property in question is still in possession of the respondent and the project for widening the road has been completed and there is no purpose for taking over the possession of the property by the appellant – department at this stage. In view of the contradictory statement made by the learned counsels on either side, this Court by order dated 02.08.2023 directed the 2nd appellant/District Collector, Chengalpattu to inspect the property and file a status report before this Court. Accordingly, the appellant has placed the status report before this Court. The relevant portion is extracted below;

“7. It is submitted that pursuant to the above direction of this Hon'ble Court, the pieces of land in question comprised in Survey Numbers. 18/1B and 18/3A in Mamallapuram Village of Chengalpattu district, was inspected on 21.08.2023 along with the Officials of Survey and Highways department. From the survey



W.A.No.32 of 2016

WEB COPY

conducted during the day of inspection it becomes known that the disputed land falls at km 51/570 to 51/630 km on the East Coast Road. Further it is submitted that the lands comprised in S.No.18/1B admeasuring 0.09.0 Hec, and in S.No.18/3A admeasuring 0.08.0 Hec in Mamallapuram Village, Thirukazhukundram Taluk were acquired for the purpose of implementation of the scheme of expansion of East Coast Road vide Award No.9/1995 dated.08.05.1995.

8. It is further submitted that the inspection reveals that the acquired land comprised in S.No.18/3A which falls on the eastern side of the ECR has been partly encroached upon by M/s.BDVS Hotels Pvt Ltd., by way of constructing a compound wall in such a way that he has made an ingress into the East Coast Road to the extent of 3.4 meters from the land legally owned by him, thereby keeping a total extent of 207.4 Sq.mt (61 mt X 3.4 mt) of acquired land under his illegal possession

9. It is further submitted that the acquired land comprised in S.No.18/1B admeasuring to an extent of 0.09.0 Hec falling on the western side of the East Coast Road is still under the possession of the Government. Moreover, the village revenue accounts in respect of aforesaid Survey Numbers.18/1B and 18/3A were classified as "Government Poramboke East Coast Road".

10. It is submitted that the Divisional Engineer (Highways) (Construction and Maintenance) Chengalpattu has Confirmed that the aforesaid acquired lands comprised in Survey Numbers.18/1B and 18/3A of Mamallapuram Village are entirely and essentially required for future expansion of the East Coast Road."

13.5 The above status report of the District Collector, Chengalpet reveals that the project for widening the road has been completed for formation of two lane road between Thiruvanmiyur-Mamallapuram-Marakkanam-Pondicherry NH 49 and in respect of



W.A.No.32 of 2016

the respondent's lands in survey numbers 18/1B and 18/3A of Mamallapuram Village are not put in use and it is required only for future expansion.

13.6 A perusal of records clearly shows that the department has served only printed form of eviction notice, dated 27.12.2013 without mentioning the name and address of the respondent, under Section 27 (2) (ii) of Tamilnadu Highways Act 2001 to the security person of the respondent-hotels on 19.01.2014. Thus, appellant-department proceeded with the acquisition proceedings, without serving proper notice to the respondent, which is *per se* illegal and the same is liable to be quashed. Hence, the contention of the learned Additional Advocate General for the appellant with regard to the physical possession of the property by relying upon the said notice served to the security person of the respondent's property cannot be countenanced and the same is liable to be rejected.

13.7 In view of the above facts and the status report submitted by the 2nd respondent/District Collector, Kancheepuram, it is clearly proved that the respondent has been in physical



W.A.No.32 of 2016

possession of the property. Therefore this Court holds that the appellants has not taken possession of the respondent's lands and failed to satisfy one of the twin conditions as prescribed under Section 24(2) of the 2013 Act i.e. taking possession of the acquired lands.

14. Compensation:

14.1 Insofar as other condition namely payment of compensation to the rightful title holders of the acquired lands is concerned, we have carefully gone through the copy of the award dated 19.05.1995 passed by the Land acquisition officer and Special Tahsildar, Chengalpattu and the summons issued by the Revenue Divisional Officer, Chengalpattu, dated 22.03.2002, requiring the land owners to attend for an enquiry for disbursement of the award amount determined by the Government for the acquired lands. In the said award dated 19.05.1995, only the names of erstwhile owners was mentioned and determined the compensation amount of Rs. 69,574/- for both the survey numbers 18/1B and 18/3A for total extent of 0.42 Acres. But contrary to the



W.A.No.32 of 2016

WEB COPY

said award, in the enquiry summons dated 22.03.2002, totally 95 names of land owners were listed along with the survey numbers and extent of land acquired. The acquired land belongs to the respondent is mentioned at Sl. No. 27, the names of the erstwhile land owners are mentioned in the said enquiry summons and the survey number shown as 18/1B to an extent 0.15.0 Ares and the remaining extent of land in survey no. 18/3A was not found in the same enquiry summons. Therefore, non mentioning of the rightful title holders/respondent herein in the award dated 19.05.1995 and non mentioning of correct survey numbers of the respondent's lands in the enquiry summons dated 22.03.2002 vitiates the acquisition proceedings. Hence the contentions of the appellant that the compensation was determined for said two survey numbers viz. 18/1B and 18/3A and deposited under Revenue Deposit cannot be considered as a valid contention and the same is liable to be rejected. Therefore, we hold that the compensation amount was not deposited or paid to the rightful title holder of the acquired lands. The appellant-department has failed to satisfy both the conditions



W.A.No.32 of 2016

under Section 24(2) of the 2013 Act and the writ appeal stands failed and liable to be dismissed.

14.2 Apart from the above discussions, the statment made in the status report filed by the District Collector, Chegalpattu that the respondent's lands are required only for future expansion of road, confirms that the project was completed and the same is required for furture expansion. Since the said acquisition proceedings were initiated by invoking urgency clause for widening and strengthening the road and the said purpose of acquisition was also completed and the respondent's land are required only for future expansion which has been proved by the status report of the District Collector. Therefore, we do not find any force on the contention of the appellants.

15. In light of the above discussions, we conclude that the appellant -department has failed to satisfy both the conditions as laid down by the Hon'ble Supreme Court in ***Indore Development Authority Vs. Manoharlal and others reported in (2020) 8 SCC***



W.A.No.32 of 2016

WEB COPY

129 viz., taking possession and payment of compensation as prescribed under Section 24(2) of the 2013 Act in respect of the acquired lands to an extent of 0.07.0 hectares (22 cents) in survey no. 18/1 and an extent of 0.08.0 hectares (20 cents) in survey no. 18/3A in Mamallapuram Village, then Chengalpet Taluk, now Thirukazhukundram Taluk, Kancheepuram District and the same is lapsed under Section 24(2) of the 2013 Act. Confirming the order of the learned Single Judge, this Court finds no reason to interfere with the order passed by the writ Court in W.P.No. 24746 of 2016, dated 02.12.2014.

16. In the result, the writ appeal is dismissed. No costs. Consequently, connected Miscellanies Petition is closed.

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

01.11.2023

Index: yes/no

Internet:yes

Speaking Order

ak



WEB COPY



W.A.No.32 of 2016