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W.A.No.657 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 06.07.2023

DELIVERED ON: 26.07.2023

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

and

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

W.A.No.657 of 2016

and CMP.No.8451 of 2016 & CMP.No.13663 of 2022

P.Lingan

.. Appellant

Vs.

1.The Chairman,
Tamil Nadu Housing Board,
Nandanam, Chennai-600 035.

2.The Special Tahsildar (Land Acquisition),
Tamil Nadu Housing Board,
Nandanam, Chennai-600 035.

3.The Executive Engineer,
Tamil Nadu Housing Board,
K.K.Nagar, Chennai-600 078.

4.The Tahsildar,
GST Road, Kadapperi,
Tambaram-600 045.

.. Respondents



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Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 28.10.2015 in W.P.No.30635 of 2015.

For Appellant : Mr.V.Ramesh
for Mr.T.Thiyagarajan

For Respondents : Mr.Vedhar Baghath Singh
Special Government Pleader for R2 & R4

Mr.C.Shyamala, Standing Counsel for TNHB

JUDGMENT

D.KRISHNAKUMAR, J.

The writ petitioner is the appellant herein. He filed W.P.No.30635 of 2015, seeking to declare the land acquisition proceedings as lapsed in view of the Section 24(2) of the Tamil Nadu Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 [in short "Fair Compensation Act"], so as to enable the fourth respondent Tahsildar to incorporate the name of the petitioner as owner of the land. The Writ Court dismissed the same, vide order dated 28.10.2015, against which the present writ appeal has been filed.

2. The appellant/writ petitioner is the owner of the land in



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S.No.233/5, by virtue of Sale Deed dated 25.10.2004 bearing Document Nos.7385 and 7386 of 2004 from one Mrs.G.Geetha and Mr.P.Mathivanan respectively. The petitioner also put up construction of Stilt + 2 floors after obtaining permission from CMDA and the building has also been assessed to property tax and other statutory levies. The appellant questioned the land acquisition proceedings dated 15.05.1978 in W.P.Nos.24170 and 24171 of 2005, challenging the notification issued under Section 4(1) and Section 6 Declaration dated 06.06.1981 issued under the Land Acquisition Act, 1894 [Old Act] and further sought for a direction to the respondents to convey the land to the petitioner. The said writ petitions were allowed by this Court, vide order dated 25.08.2005 and on appeal by the Government, the order of the learned Single Judge was set aside, vide judgment dated 27.06.2008. However, the appellant/writ petitioner continues to be in possession of the property. In the meantime, The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 came into force and according to the petitioner, under Section 24(2) of the new Act, the acquisition proceedings got lapsed as the petitioner/appellant is in possession of the property. On that ground, the petitioner has filed the



3. The Writ Court, taking into consideration of the fact that the petitioner/appellant has purchased the property only in the year 2004 and whereas according to the respondents possession was taken as early as on 21.10.1986 and the petitioner is only a subsequent purchaser and in the light of the well settled position of law that subsequent purchaser cannot have any right to challenge the land acquisition proceedings, has dismissed the same, vide order dated 28.10.2015. Hence, the present writ appeal.

4. The respondents 1 and 2 have filed a counter affidavit stating that when the award has been passed in the year 1986 under Award No.12/86 dated 14.08.1986, possession has been taken over on 21.10.1986 and the compensation amount has also been deposited, the petitioner cannot seek any benefit under the new Act. The appellant, being a subsequent purchaser from one Ramakrishnan, who is the original owner of the land, has no locus standi to challenge the land acquisition proceedings after passing of award and taking possession of



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the land in the year 1986 by the respondent Board. Merely because the appellant obtained approval plan from CMDA authorities and constructed superstructure and the same was subjected to statutory levies, the same will not create any right to the appellant and therefore, the respondents prayed for dismissal of the writ appeal.

5. Mr.V.Ramesh, learned counsel for the appellant contended that the respondents have not taken actual physical possession of the land under the old Act and the respondents have not produced any record to show that they have taken actual physical possession under the old Act and hence, the land acquisition proceedings initiated under the old Land Acquisition Act is deemed to have lapsed under Section 24(2) of the Fair Compensation Act, 2013. It is further contended that when one wing of the Government authorities having recognized the right, title and possession of the appellant by granting planning permission for construction of the building, the other wing of the Government, namely the respondents claiming that they have taken possession, is wholly unsustainable. The learned counsel for the appellant, in support of his contentions, has placed reliance on the Division Bench decision of this



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Court dated 20.02.2023 made in *W.A.No.1100 & 1101 of 2016 [The Managing Director, Tamil Nadu Housing Board & Others v. C.Durairaju & Others]*.

6. Mrs.C.Shyamala, learned Standing Counsel for the respondents 1 and 3 has drawn the attention of this Court to the additional counter affidavit filed by the respondents 1 and 3 and would submit that the appellant is a subsequent purchaser of the land admeasuring 0.14 acre in S.No.233/5A of Tambaram Village, vide Sale Deed dated 25.10.2004 bearing Document Nos.7385 and 7386 of 2004 from one Mrs.G.Geetha and Mr.P.Mathivanan respectively after acquisition of the land by passing of an award as early as in the year 1986, vide Award No.12/86 dated 14.08.1986 and taken over possession of the land by the respondent Board on 21.10.1986 from the Land Acquisition Officer. The compensation amount was deposited on 11.05.1990 and the appellant is purely an encroacher of the property vested with the respondent Board, since the date of taking possession by respondent Board on 21.10.1986 from Land Acquisition Officer. The learned Standing Counsel for



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respondent Board further contended that the land acquisition proceedings were concluded in the year 1986 itself and the appellant has already challenged the land acquisition proceedings in the first round of litigation in W.P.No.24170 of 2005, which was allowed in favour of the appellant on 25.08.2005, against which writ appeal No.1511 of 2007 was filed and it was allowed in favour of the respondent Board. The appellant has purchased the land in the year 2004 i.e., 18 years after passing of award and he, not being a part of the land acquisition proceedings, has no locus standi and hence, prayed for dismissal of the writ appeal. The learned Standing Counsel for respondent Board, in support of her contentions, has relied on the following judgments:

(i) M/s.Star Wire (India) Ltd., v. The State of Haryana and Others dated 25.09.1996

(ii) Shiv Kumar and another v. Union of India & Ors. [Civil Appeal No.8003 of 2019 dated 14.10.2019]

(iii) W.A.Nos.1204 of 2022 etc., batch dated 09.06.2022 [B.Nagaraj v. The State of T.N. and Others]

(iv) Civil Appeal Nos.3823 of 2017 [Shakunthala Choudhry and



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Others]

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(v) Tamil Nadu Housing Board v. L.Chandrasekaran and Others [(2010) 2 SCC 786]

(vi) Indore Development Authority v. Manoharlal and Others [(2020) 8 SCC 129].

7. This Court has considered the rival submissions and also perused the materials on record.

8. Admittedly, the appellant/writ petitioner is a subsequent purchaser of the land, admeasuring 0.14 acre in S.No.233/5A of Tambaram Village, vide Sale Deed dated 25.10.2004 bearing Document Nos.7385 and 7386 of 2004 from one Mrs.G.Geetha and Mr.P.Mathivanan respectively after acquisition of the land by passing of an award as early as in the year 1986, vide Award No.12/86 dated 14.08.1986. According to the respondents, possession of the land was handed over to the respondent Board on 21.10.1986 by the Land Acquisition Officer and the compensation amount was deposited on



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11.05.1990 and while that being so, the appellant may at best be construed as encroacher of the land that was vested with TNHB.

9. It is the contention of the appellant/writ petitioner that he is only a bonafide purchaser and they have put up stilt plus two floors after obtaining necessary planning permission from authorities on 18.11.2009 and the property was also accessed to statutory levies and taxes. The appellant has also raised a specific ground that when one wing of the Government having recognized the right title and possession of the appellant, the other wing of the Government claiming that they have taken possession is totally unsustainable.

10. It is the stand of the respondents in the counter affidavit that since the compensation amount was deposited and possession was taken over from the Land Acquisition Officer, the same is therefore vested with TNHB since then with valid documentary evidences such as Transfer of Charge Certificate and Field Measurement Book Sketch etc., as per Land acquisition Act and now patta also stands in the name of the respondent Board, the petitioner has no locus standi to challenge the land acquisition



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proceedings. According to the respondents, the land is vested with the respondent Board from the year 1986, but the petitioner purchased the property only in the year 2004, after several years of passing of the Award No.12/86 dated 14.08.1996. As per the sale deed mentioned by the petitioner, vide Document No.204/1971 dated 29.01.1971, the original land owner of the subject land in S.No.233/5 to an extent of 0.25 acres was one Mr.Ramakrishnan and the sale was made only for 01.11 acres out of 0.25 acres and balance extent of land measuring 0.14 acres was with the original land owner as on 1971 and the land acquisition proceedings were carried out in S.No.233/5A for an extent of 0.14 acres.

11. The undisputed fact remains that the appellant/writ petitioner earlier filed W.P.Nos.24170 of 24171 of 2005 challenging the acquisition proceedings and was successful before the Writ Court, however, it was negated on appeal by the Government in the writ appeal. Thereafter, the appellant/writ petitioner continued to be in possession of the property and after the enactment of Fair Compensation Act, 2013, the appellant/writ petitioner filed the writ petition claiming that the entire land acquisition proceedings is deemed to have lapsed in the light of



12. During the course of hearing the writ appeal, the appellant had conceded the fact that he is only a subsequent purchaser and after purchase, he had put up construction after obtaining planning permission and residing there and in view of the same, he also expressed his willingness to alternatively handover 14 cents out of 38 3/4 cents in Old No.131, New No.104, Pulikoradu Village, Patta No.615, Nanjai S.No.22/2b, Tambaram Taluk, Kanchipuram District and also sent a letter to the respondent Board to exchange the land. The said fact was recorded by the Division Bench in the earlier orders dated 09.01.2023 and 13.04.2023. Based on the said undertaking given by the appellant for exchange of land, the third respondent inspected the alternative site and it was found that it was not a fit place for exchange and there had been Veeranam Pipeline of the Government, running across the land and the said lands is in water logged area near the highway in a low lying area and therefore, the respondent Board declined to accept the exchange of land offered by the appellant, vide communication dated 19.06.2023.



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13. It is trite law that subsequent purchaser cannot have any right to challenge the land acquisition proceedings. The Hon'ble Supreme Court in *V. Chandrasekaran and Ors. vs. The Administrative Officer and Ors. Reported in MANU/SC/0751/2012*, has held as follows;

'A person who purchases land subsequent to the issuance of a Section 4 Notification with respect to it, is not competent to challenge the validity of the acquisition proceedings on any ground whatsoever, for the reason that the sale deed executed in his favour does not confer upon him, any title and at the most he can claim compensation on the basis of his vendor's title.'

In the light of the aforesaid decision of the Hon'ble Supreme Court, the petitioner, being a subsequent purchaser, is not entitled to challenge the land acquisition proceedings.

14. The Hon'ble Supreme Court in a landmark decision in *Indore Development Authority v. Manoharlal and Others [(2020) 8 SCC 129]* has held as under:

366.3. *The word “or” used in Section 24(2) between*



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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 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."

In the light of the aforesaid decision of the Hon'ble Supreme Court, if any of the conditions has been satisfied by the respondent Board i.e., taking over possession or compensation amount has been paid, the petitioner cannot invoke Section 24(2) of the Fair Compensation Act, 2013.

15. In the case on hand, Land Acquisition Officer has taken possession and handed over possession to the respondent Board on 21.10.1986 and compensation amount has been deposited on 11.05.1990 and at present, land in question vests with the respondent Board. The appellant/writ petitioner is a subsequent purchaser and encroacher in the



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property of respondent Board and has no locus standi to challenge the land acquisition proceedings in the light of the decision of the Hon'ble Supreme Court in *V.Chandrasekaran case (cited supra)*. The petitioner earlier has made a challenge to the acquisition proceedings, under the guise of invoking the new Act and the same was already negated by this Court. The Writ Court has rightly observed in the impugned order that merely because the petitioner had obtained approval plan from the authorities and constructed superstructure and the same was levied tax and the petitioner also got subsequent patta in his name, the same will not create right on the petitioner. The Writ Court has considered all these aspects in proper perspective and rightly rejected the claim of the petitioner. This Court, finds no reason to interfere with the order of the Writ Court and finds no merit in the writ appeal.

16. In the light of the reasons assigned above, the Writ Appeal stands dismissed. No costs. Consequently, connected miscellaneous petitions are dismissed.

[D.K.K., J.] [P.B.B., J.]
26.07.2023

Index:yes/no
Internet:yes
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**D.KRISHNAKUMAR, J.,
&
P.B.BALAJI, J.**

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Order in
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