

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 2.8.2023

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.A.No.1014 of 2017 and
C.M.P.No.14276 of 2017

Usha Subramanian ... Appellant/Petitioner

Vs.

- 1 The Secretary to Government
Public Works Department (Highways),
Fort St. George, Chennai-9.
- 2 The Revenue Divisional Officer,
Office of The Revenue Divisional Officer,
Chengalpattu.
- 3 The Special Deputy Collector (Land Acquisition),
Poonamallee, Chennai.
- 4 The Divisional Engineer,
Highways Department, Chengalpattu,
Tamil Nadu-603001.
- 5 The Chief Executive Officer,
Tamil Nadu Road Development Company Limited
No.346, Sindu Pantheon Plaza, Pantheon Road,
Egmore, Chennai-8. ... Respondents/Respondents

Writ Appeal filed under Section 15 of Letters Patent to set aside the order passed in W.P.No.26950/2014 dated 19.08.2015 on the file of this Court.

For Appellant : Mr. T.Thiageswaran for
M/s.Waron & Sai Rams
For Respondents-1to4 : Mr.G.Silambannan, A.A.G.,
Asst. by Mrs.Geetha Thamaraiselvam,
Spl. Govt. Pleader
For Respondent-5 : Mr.S.Sivavarthanan

COMMON ORDER

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

The appellant has filed writ petition challenging the land acquisition proceedings by the first respondent initiated under Land Acquisition Act, 1894, by stating that he had purchased the property by a sale deed dated 31.8.2005 from one Rekha Aggarwal, registered as document Nos.5619 and 5620 of 2005. He further submits that the patta in respect of the property in question had been transferred in his name and the transfer has been entered into all the revenue records.

2. The learned counsel appearing for the appellant submitted that the notification issued by the respondents under Sec.4(1) of the Land Acquisition Act, 1894 dated 19.5.1992 is invalid and deemed to have lapsed as per Sec.24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013. Since the notification

issued in the year 1992 and subsequent proceedings were completed in the year 1995, the award was passed in the year 1995, however, no compensation had been paid to the land owners and the respondents failed to take actual possession of the property acquired under the Land Acquisition proceedings and therefore, the acquisition proceedings initiated by the respondents deemed to have been lapsed.

3. The learned Additional Advocate General appearing for the respondents would submit that the appellant herein had purchased the said property after the Government published 4(1) Notification. The appellant/petitioner is a subsequent purchaser, therefore as per the judgment of Hon'ble Supreme Court in *Shivkumar & another Vs. Union of India & Others, Tamil Nadu Housing Board and other in (Civil Appeal No. 8003 of 2019) dated 14.10.2019*, the appellant has no right to claim over the property as the same was purchased by him after 4(1) Notification published under the Land Acquisition Act. The writ Court after elaborately considering the above facts, has rightly dismissed the writ petition. The impugned order of the writ court does not require any interference by this Court and the instant writ appeal is liable to be dismissed.

4. This Court has already decided the identical issue in ***V.Anantharaman Vs. The Chennai Metropolitan Development Authority, Rep. by its Member Secretary, No.1, Gandhi Irwyn Road, Egmore, Chennai and another [W.A.No.1117 of 2020 dated 26.07.2023]*** wherein this Court has held that it is trite law that subsequent purchaser cannot have any right to challenge the land acquisition proceedings.

5. In ***Shiv Kumar and Ors. vs. Union of India (UOI) and Ors. [2019 (10) SCC 229]*** relied upon by the learned Additional Advocate General appearing for the respondents, the Hon'ble Supreme Court has held as follows:

"(i) The Act of 2013 presupposes that a person is required to be rehabilitated and resettled. Such a person who has purchased after Section 4 notification as sale deed was void under the Act of 1894, could not claim rehabilitation and resettlement as per policy envisaged under the Act of 2013, as his land had not been acquired, but he had purchased a property which had already been acquired by the State Government, he could not claim even higher compensation, as per proviso to Section 24(2) under the Act of 2013. An original landowner could not be deprived of higher value under the Act of 2013, which higher compensation was not so contemplated when the void transaction of sale had been entered, and right is conferred under proviso to Section 24(2) on recorded owners under Act of 1894.

(ii) Given that, the transaction of sale, effected after Section 4 notification, was void, is ineffective to transfer the land, such incumbents could not invoke the provisions of Section 24 of Act. As the sale transaction did not clothe them with the title when the purchase was made, they could not claim possession and challenge the acquisition as having lapsed under Section 24 of Act by questioning the legality or regularity of proceedings of taking over of possession under the Act of 1894. It would be unfair and profoundly unjust and against the policy of the law to permit such a person to claim resettlement or claim the land back as envisaged under the Act of 2013. When he had not been deprived of his livelihood but was a purchaser under a void transaction, the outcome of exploitative tactics played upon poor farmers who were unable to defend themselves.

(iii) Thus, under the provisions of Section 24 of the Act of 2013, challenge to acquisition proceeding of the taking over of possession under the Act of 1894 could not be made, based on a void transaction nor declaration could be sought under Section 24(2) of Act by such incumbents to obtain the land. The declaration that acquisition had lapsed under the Act of 2013 was to get the property back whereas, the transaction once void, was always a void transaction, as no title could be acquired in the land as such no such declaration can be sought. It would not be legal, just and equitable to give the land back to purchaser as land was not capable of being sold which was in process of acquisition under the Act of 1894. The Act of 2013 did not confer any

right on purchaser whose sale was ab initio void. Such void transactions were not validated under the Act of 2013. No rights were conferred by the provisions contained in the 2013 Act on such a purchaser as against the State. [20]."

6. 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 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."

7. It is also useful to refer the judgment of the Hon'ble Supreme Court in the case of ***V. Chandrasekaran and Ors. vs. The Administrative Officer and Ors. Reported in MANU/SC/0751/2012***, wherein the Hon'ble Supreme Court observed with regard to the validity of challenging the acquisition proceedings subsequent to issuance of 4(1) Notification. The Hon'ble Supreme Court 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.'

8. In the light of decisions cited supra, the appellant who had purchased the subject property after issuance of Section 4 Notification, has no locus standi to challenge the validity of the acquisition proceedings. Thus, the appellant cannot challenge the land acquisition proceedings, initiated by the respondents under Land Acquisition Act, 1894.

9. Consequently, the writ appeal stand dismissed. No costs.
Connected miscellaneous petition is closed.

(D.K.K.J.) (P.B.B.J.)
2.8.2023

Speaking/Non Speaking order

Index: Yes

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To

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Public Works Department (Highways), Fort St. George, Chennai-9.

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