



W.A.No.1317 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 13.07.2023

DELIVERED ON: 01.09.2023

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

and

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

W.A.No.1317 of 2017
and CMP.No. 2413 of 2018

1.B.Venkatesalu
2..B.Govindappa

.Appellants

Vs

1. The Secretary to Government of Tamil Nadu,
Industries (MIG.2) Department,
Secretariat, Chennai-600009.

2.The Special Tahsildar (LA)
SIPCOT Phase II, Hosur,
Krishnagiri District.

3.The Managing Director,
SIPCOT,
19A, Rukmani Lakshmipathi Road,
Egmore, Chennai-600008.



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4.M/s. Ashok Leyland Pvt. Ltd.,
Rep. By its Manager,
Legal & Insurance,
No.1, Sardar Patel Road,
Guindy, Chennai – 600032.

..Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent to set aside the order dated 08.08.2017 made in Review Application (W) No. 27 of 2016 in W.P.No. 7103 of 2014 and consequently allow the writ petition in W.P.No. 7103 of 2014 and pass such further or other orders.

For Appellants : Mr.S.Sathiyaseelan

For Respondents : Mr.V.Manoharan, AGP – R1 & R2
Mr.G.Suresh Kumar, Standing Counsel
-R3

Mr.Jayesh B Dolia,
For M/s. Aiyar & Dolia - R4

JUDGMENT

D.KRISHNAKUMAR, J.

Challenging the order dated 08.08.2017 made in Review Application (W) No. 27 of 2016 in W.P.No. 7103 of 2014, the appellant has filed the present writ appeal. For sake of convenience, the parties are referred as per their status before the writ Court.



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2. The learned counsel for the appellants has submitted that originally the property in question in survey no. 583 to an extent of 4.46 acres of land belongs to the father of the petitioners. The respondent passed G.O. Ms.No. 1702 (Industries) dated 16.12.1980 to acquire the land for the purpose of Second Industrial Complex at Mornapalli Village in the year 1980 itself. The land acquisition notification in G.O.Ms.No. 1339 (Industries) dated 20.09.1982 was issued invoking urgency provisions of the Land Acquisition Act only on 06.10.1982. The compensation amount was awarded by the respondents for survey no. 581 to an extent 4.46 acres.

3. The Government has passed Government Order in G.O.Ms.No. 1339 (Industries) dated 20.09.1982 specifically stating that the land is acquired for the formation of Second Industrial Complex by SIPCOT only. The above agricultural land in S.No. 583 to an extent of 4.46 acres being separated from the rest of the acquired lands for second Industrial Complex for SIPCOT by the KRP Canal, was continuously cultivated without any kind of



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disturbance from anybody by the petitioners under the KRP Canal water project till 2012. By invoking urgency clause under Section 17 of the Land Acquisition Act, 1894, the petitioner's agricultural lands were acquired by the 1st respondent-Government for the purpose of setting up industrial complex by the 3rd respondent SIPCOT. Later the said lands were transferred to 4th respondent-private company in the year 1992.

4. Though the petitioner's land was acquired in the year 1982 itself under urgency provisions of the 1894 Act, it was still not utilised for more than about 30 years. Only after 10 years since acquisition on 30/07/1992, a lease deed was executed in favour of the 4th respondent by the 2nd respondent, SIPCOT. The 4th respondent-company till date has not utilised the acquired land because the petitioners' land is being separated by a Kelavarapalli Reservoir Project Canal from the rest of the land acquired and the petitioners were cultivating the land till 2012.



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5. The 4th respondent -Company started preventing the petitioners from entering and cultivating the acquired land with malafide intention to get over the legal proceedings, if any, initiated by the petitioners for re-conveyance in the year 2012. But no development has been taken place so far as and the land is being kept vacant. The petitioners have made representation to the authority seeking re-conveyance of their land but no action was taken by the authorities. Thereafter the petitioners have filed a writ petition in W.P.No. 10751 of 2012 and by order dated 18.04.2012, this Court directed the 1st respondent to consider the petitioners' representation for re-conveyance. But the 1st respondent by order dated 27.08.2012, rejected the petitioners' claim for re-conveyance. Thereafter, the petitioners have filed two other writ petitions in W.P.No. 2518 of 2013 challenging the 1st respondent's rejection order and W.P.No. 5263 of 2013 challenging the land acquisition proceedings in G.O.Ms.No. 1339, dated 20.09.1982 invoking Section 17 of the 1894 Act and the said writ petitions are pending before this Court.



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6. Thereafter, through Right To Information Act, the petitioners were informed that the Land Acquisition Award made in No. 17/84 dated 29.09.1984 for a sum of Rs. 13,883.60 has been deposited in the revenue account of Sub-Treasury, Hosur vide Challan No. 459 on 13.12.1984.

7. According to the learned counsel for the appellants, in view of Section 24(2) of the new Act, Act 30 of 2013 though the petitioners' land was acquired way back in 1982, cause of action arose for them only from the date of commencement of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. In the above circumstances, as per Section 24(2) of 2013 Act r/w Section 31 of the 1894 Act, the deposit of compensation amount in the Government Treasury is of no avail and cannot be held to be equivalent to compensation paid to the land owners/persons interested i.e to the petitioners herein. Therefore, by creating legal



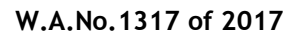
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fiction in Section 24(2) of the 2013 Act, the land acquired vide G.O.Ms.No. 1339, Industries, dated 20.09.1982 deemed to have lapsed and hence, liable to be quashed.

8. Counter affidavit has been filed by the 2nd respondent /Special Tahsildar (LA), SIPCOT, Hosur stating that the Government issued G.O Ms. No. 1339 Industries Department dated 20.09.1982. In respect of the Acquisition of the petitioners' lands to an extent of 4.46 acres in S.F.No.583 in Mornappalli Village, Hosur Taluk and the same was published in Tamil Nadu Gazette (39-A) dated 06.10.1982. The above Land Acquisition was made under the provision of the Land Acquisition Act 1894 and acquired for SIPCOT Industrial Complex.

9. It is further stated in the counter that the provisions prescribed by the Act is strictly followed by the respondent. The petitioners and their father made several attempts before this Court for quashing 4(1) Notification and for the re-conveyance, but failed



10. The learned Additional Government Pleader appearing for the 2nd respondent has submitted that Section 24 (2) of Fair Compensation Act 2013 does not applicable to the present case, since no proceeding is pending or no procedural lapse is there in this case. As per records, notice under Section 12 (2) was served on 29.09.1984. The said notice was dispatched by the 2nd respondent on 10.10.1984 and the same was delivered to the petitioners' father on 16.10.1984 and the acknowledgment was received by the 2nd respondent on 18.10.1984. Since the petitioner's father has not received the award amount, the same was deposited in the Sub Treasury, Hosur.

11. According to the learned Additional Government Pleader, once the award is passed, the land acquisition proceedings comes to



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an end. Now after 30 years, the petitioners are challenging the acquisition proceedings which is unsustainable in the eye of law. Evidently, in this case award was passed in the year 1984 and the same was communicated to the father of the petitioners on time and therefore as per the rulings of this Court and the Hon'ble Supreme Court, the appeal is liable to be dismissed.

12. Heard both sides and perused the materials available on record.

13. Admittedly, a perusal of records clearly shows that the attempts were made by the petitioners' father and the petitioners to protect their possession by way of writ petitions and writ appeals before this Court and the same had ended in failure. The impugned order under challenge made in Review application No. 27 of 2016, dated 08.08.2017 against the order in W.P.No. 7103 of 2014 also came to be dismissed as against the petitioners. Hence, the present writ appeal.



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14. It is seen from the records that the petitioners herein have earlier filed a writ petition in W.P.No.2518 of 2013 challenging the order passed by the 1st respondent in Letter No.8511/MIG.2/2012-2, dated 27.08.2012 rejecting the claim of the petitioners and to quash the same and direct the respondents to re-convey land to the petitioners herein to an extent of 4.46 acres in S.No.583 in the subject land viz., No. 105, Mornapalli Village in Hosur Taluk, Krishnagiri District.

15. The first contention of the petitioners is that the physical possession of the property was not taken. However it is seen that after acquiring land by invoking urgency clause under Section 17(1) and (4) of the Land Acquisition Act, 1894, the said property was handed over to SIPCOT in the year 1982 and the same was taken possession by the M/s. Ashok Leyland/4th respondent in the year 1992 and they set up industries in the said land and they are in possession of the property. That apart the petitioners had also filed



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a writ petition in W.P.5263 of 2013 challenging the 4(1) Notification issued in G.O.Ms.No.1339, Industries, dated 20.09.1982 and the petitioners themselves sought for handing over possession of their land to an extent of 4.46 acres in S.No.583 in 105, Mornapalli Village in Hosur Taluk, Krishnagiri District. Thus the petitioners themselves admit that they are not in possession of the acquired land and therefore in light of the judgment of the Hon'ble Supreme Court in *Indore Development Authority case reported in (2020) 8 SCC 129*, the petitioners cannot invoke Section 24(2) of the 2013 Act to declare the land acquisition proceedings as lapsed.

16. The second contention of the petitioners is that award notice under Section 12 (2) was not served on them. However it is the categorical stand taken by the 2nd respondent in the counter affidavit that the notice under Section 12 (2) was served to the father of the petitioners, which was duly acknowledged by him on 16.10.1984, informing that the Land Acquisition Award was made in No. 17/84 dated 26.09.1984 for a sum of Rs. 13,883.60. Since



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the petitioners' father refused to receive the compensation amount, the same was deposited in the Sub Treasury, Poonamallee. Therefore, it is automatically implied that the compensation amount has been paid in this case.

17. In the case on hand, the award was passed in the year 1984 and the petitioners have filed various writ petitions challenging the land acquisition proceedings at every stage which ultimately ended in dismissal. The instant writ petition is of the year 2014, challenging the land acquisition proceedings which got concluded long back during 1984. The Hon'ble Supreme Court in Indore Development Authority's case, cited supra, has observed that the legality of concluded cases cannot be questioned under the guise of invoking Section 24(2) of the Act 2013. It is useful to extract the said portion of the Judgment.

"343. By and large, concluded cases are being questioned by way of invoking the provisions contained in Section 24. In our considered opinion, the legality of concluded cases cannot be questioned



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under the guise of Section 24(2) as it does not envisage or confer any such right to question the proceedings and the acquisitions have been concluded long back, or in several rounds of litigation as mentioned above, rights of the parties have been settled.

18. The Hon'ble Supreme Court in a recent judgment in the case of ***Land and Building Department Through Secretary & another Vs. Attro Devi & Others in Civil Appeal No. 2794 of 2023 dated 11.04.2023, [reported in 2023 Live Law (SC) 302]*** by citing the ***Indore Development Authority's case*** held that if after the process of acquisition is complete, any person retaining the land or any re-entry made by any person is nothing else but trespass on the State land and also held that even if one of the conditions is satisfied, the Court cannot examine any other argument. The relevant paragraphs are extracted below:-

256. Thus, it is apparent that vesting is with possession and the statute has provided under Sections 16 and 17 of the Act of 1894 that once possession is taken, absolute vesting occurred. It is an indefeasible right and vesting is with possession thereafter. The vesting specified under Section 16,



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takes place after various steps, such as, notification under Section 4, declaration under Section 6, notice under Section 9, award under Section 11 and then possession. The statutory provision of vesting of property absolutely free from all encumbrances has to be accorded full effect. Not only the possession vests in the State but all other encumbrances are also removed forthwith. The title of the landholder ceases and the state becomes the absolute owner and in possession of the property. Thereafter there is no control of the landowner over the property. He cannot have any animus to take the property and to control it. Even if he has retained the possession or otherwise trespassed upon it after possession has been taken by the State, he is a trespasser and such possession of trespasser enures for his benefit and on behalf of the owner ."

*13. It is also a fact to be noticed and taken care of that large chunk of land is acquired for planned development to take care of immediate need and also keep buffer for future requirements. Such portion of land may be lying vacant also. As has been observed in **Indore Development Authority's** case (supra) by this Court, the State agencies are not supposed to put police force to protect possession of the land taken after process of acquisition is complete. As far as the case in hand is concerned, the land even if was lying vacant, is required now for a project of national importance for construction of the Delhi Saharanpur Dehradun Highway starting from Akshardham Junction to Delhi/UP Border, in the State of Delhi in Phase I of Bharatmala Pariyojana.*

14. It is the undisputed fact on the record, as has been noticed in the impugned order passed by the High Court, the possession of the land was taken over by the Land Acquisition Collector and handed over to Delhi Development Authority. Report of possession



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proceedings dated 06.12.2012 has also been placed on record. Hence, one of the conditions being satisfied, we need not examine any other argument.

19. In the case on hand, after acquiring land by invoking urgency clause under Section 17(1) and (4) of the Land Acquisition Act, 1894, the said property was handed over to the SIPCOT in the year 1982 and the same was taken possession by the M/s. Ashok Leyland/4th respondent in the year 1992 and they set up industries in the said land and they are in possession of the property. Further, the petitioners were informed that the Land Acquisition Award made in No. 17/84 dated 29.09.1984 for a sum of Rs. 13,883.60 has been deposited in the revenue account of Sub-Treasury, Hosur vide Challan No. 459 on 13.12.1984. As per the above judgment if any one of the conditions is satisfied by the respondent authorities, this Court need not examine any other arguments. In the present case, as discussed above, the respondent-department has satisfied both the conditions. On this sole ground itself, the instant writ appeal is liable to be rejected.



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20. With regard to the other contention of the appellants that they are entitled for enhanced compensation and the same has not been paid to them as per the award No. 5 of 1985 for Rs.4,178.30/-, it is stated in the counter affidavit filed by the 2nd respondent that the said award proceedings was forwarded to the District Revenue Officer for approval and the same was returned by him stating that as per Sl.No.16 of guideline issued in G.O.Ms.No. 44790/R-Spl/82-54, dated 19.01.1985 the land acquisition officers should ensure that the excess payment of compensation should be by way of a supplemental order and not by supplemental award. It is further stated in the counter that the said communication is only an internal communication of the department and has no legal value. Therefore the said contention of the respondent cannot be taken as valid ground and the same is liable to be rejected. However, it is open to the petitioners to approach the authorities concerned, by way of representation, seeking enhancement of compensation along with interest. Upon receipt of such representation, the authorities concerned shall consider the same and pass orders within a period



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of twelve weeks.

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21. On overall consideration of facts and circumstances of the case and the submissions made by the learned counsel appearing on either side, it is proved that the petitioners failed to establish their case with relevant materials to substantiate their claim that they are in possession of the property in question. Therefore, keeping in view the law laid down by the Constitution Bench of the Hon'ble Supreme Court in ***Indore Development Authority's Case (Supra)*** and the latest decision of the Hon'ble Supreme Court in ***Land and Building Department's Case***, the contention raised by the learned counsel for the petitioners that they are in possession of the property and they have satisfied the requirement under Section 24(2) of the Act cannot be considered as a sound submission and the same is unsustainable in law and liable to rejected.



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22. In the result, the Writ Appeal is dismissed. No costs.

Consequently, connected Miscellaneous Petition is closed.

[D.K.K., J.,]

[P.B.B., J.]

01 .09.2023

Index:yes/no

Internet:yes

Speaking Order/Non speaking order.

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To

1. The Secretary to Government of Tamil Nadu,
Industries (MIG.2) Department,
Secretariat, Chennai-600009.

2.The Special Tahsildar (LA)
SIPCOT Phase II, Hosur,
Krishnagiri District.

3.The Managing Director,
SIPCOT,
19A, Rukmani Lakshmipathi Road,
Egmore, Chennai-600008.



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**D.KRISHNAKUMAR, J.,
&
P.B.BALAJI, J.**

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**Pre-Delivery Judgment in
W.A.No.1317 of 2017
and
CMP.Nos. 2413 of 2018**

01.09.2023