



CRP (MD) No.1601 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	17.07.2023
Delivered on	13.12.2023

CORAM

THE HON'BLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P.(MD) No.1601 of 2023

and

C.M.P.(MD) No.7866 of 2023

1.S.Subramaniam

N.Krishnan (Died)

2.Rajammal

3.S.Nagamony

4.S.Nadarajan

5.S.Kumaraswamy

6.K.Rohin Kumar

... Petitioners

Vs.

1.The Revenue Divisional Officer [LA],
Padmanabhapuram,
Kalkulam Taluk,
Kanyakumari District.

2.Abusha Beevi

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3.Tahira

4.Imthiyas Mohammed

5.Inthikar Alam
Respondents

...

Prayer:- This Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 13.03.2023 passed in I.A.No.1 of 2021 in L.A.O.P.No.1 of 2007 on the file of the Sub Court [Land Acquisition Tribunal], Kuzhithurai.

For Petitioners : Mr.M.Suri

For R1 : Mr.G.Suriyananth
Additional Government Pleader

ORDER

This Civil Revision Petition has been filed by the petitioners as against the fair and decreetal order dated 13.03.2023 passed in I.A.No.1 of 2021 in L.A.O.P.No.1 of 2007 on the file of the Sub Court [Land Acquisition Tribunal], Kuzhithurai.

2. According to the petitioners, I.A.No.1 of 2021 was filed by them for



termination of the referral proceedings in L.A.O.P.No.1 of 2007 since the procedures contemplated under the Land Acquisition Act, 1894 (old Act) are violated. No final order of award was passed by the first respondent as envisaged in Section 12 of the Land Acquisition Act, 1894. The Tribunal has dismissed the said I.A.No.1 of 2021 in L.A.O.P.No.1 of 2007 *vide* impugned order.

3. The learned counsel for the petitioners would submit that the reference under Section 18 of the Land Acquisition Act can be made only when the particulars, such as date of 4(1) Notification, the date of possession and the date of final award under Section 12 of the Land Acquisition Act, are mentioned in the referral proceedings. In the present case, the date of 4(1) Notification was alone mentioned, namely 19.07.2007.

4. It is submitted that the reference made by the first respondent is only with respect to the draft award under Section 11 of the Land Acquisition Act and not under Section 12 of the Land Acquisition Act, 1894. It is further submitted that for determination of compensation under Section 23 of the old



Act and for the land acquired by the first respondent from the claimants, it is highly essential and necessary to mention about the date of 4(1) Notification, the date of possession and date of final award under Section 12 of the Land Acquisition Act as per Section 23 of the old Act which are absent in the present case.

5. It is submitted that without the above particulars, neither the Tribunal nor the claimants can calculate and determine the compensation as per the provisions of Section 23 of the Land Acquisition Act. It is further contended that the Tribunal cannot accept the reference made by the first respondent since the provisions under Section 12(2) of the Land Acquisition Act, 1894 are violated. The first respondent has not taken possession of the land from the claimants.

6. It is further submitted that the Tribunal while dealing with reference under Section 31 of the Land Acquisition Act, 1894, provisions of Section 18 of the Land Acquisition Act, 1894 ought to have been complied with by the first respondent. In the absence of the particulars with regard to the date of



possession and the date of final award, reference under Section 18 of the Land Acquisition Act, 1894 is vitiated.

7. It is further submitted that when there is a procedural irregularity in the reference made by the first respondent, the determination of compensation under Section 23 of the Land Acquisition Act, 1894 cannot be done as per law and therefore, the reference under the old Act cannot be entertained and it should be terminated. It is further submitted that for the purpose of determination of compensation, the provisions of the 2013 Act are to be applied.

8. It is further submitted that no Panchanama was produced by the Acquisition Officer to evident the possession said to have been taken by the first respondent. No notice was served on the claimants as per Section 12(2) of the Land Acquisition Act, 1894 and no possession was taken from the claimants since stay was granted by the Madras High Court (Principal Seat of this Court) in W.P.No.32005 of 2007. It is submitted that the pendency of the above Writ Petition was also informed to the first respondent, in which, the stay was granted on 04.10.2007 and the stay was in force till the dismissal of



the above Writ Petition on 01.09.2015.

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9. It is submitted that the first respondent suppressed the facts regarding the request made by the claimants for adjournment of the award enquiry which was posted on 28.09.2007. It is further submitted that draft award was passed on 28.09.2007 which was more than 5 years prior to the coming into effect of the new Act, namely Right to Fair Compensation and Transparency in land Acquisition, Rehabilitation and Resettlement Act, 2013, on 01.01.2014.

10. The learned counsel for the petitioners would further submit that the acquisition proceedings initiated under old act is deemed to have lapsed under Section 24(2) of the New Act, since the possession of the subject land was not taken by the Acquisition Authorities in the prescribed manner. The normal mode of taking possession is by drafting of a Panchanama which is absent in the present case. He would further submit that mode of taking possession under the 1894 Act and as contemplated under Section 24(2) of the Act is by drawing of inquest report/memorandum. But, the first



respondent failed to establish that the possession was taken in the presence of any witness.

11. He would further contend that Section 12(2) of the Act mandates the Collector to give immediate notice of the award to such of the persons interested as are not present personally or by their representatives under Section 11 of the Act. He would also contend that it is well settled proposition that notice under Section 12(2) of the Act is a clear intimation of making of the award, requiring the person interested to receive the compensation awarded under the Act.

12. The learned counsel would further submit that only if a notice is given to the land owner asking him to receive the compensation under Section 12(2) of the Land Acquisition Act, 1894, the stage of deposit of compensation will be reached and admittedly, in the present case, no such notice was issued to the land owners. It is further submitted that only after the above steps were taken, the Collector can take possession of the land which shall thereupon vest absolutely in the Government free from all



encumbrance.

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13. The learned counsel would further submit that the proceedings under the 1894 Act is to be lapsed until both conditions, i.e. taking of possession and payment of compensation are satisfied for taking benefit under the 2013 Act. In support of his contention, the learned counsel for the petitioners has relied upon the following decisions:-

K.Saraswathi and another Vs. State of Tamil Nadu rep. by its Secretary to Government, Housing and Urban Development Department and others, 2021 (2) CTC 300 in which it has held that Proceedings under 1894 Act to lapse only if both conditions viz. Taking possession and payment of Compensation satisfied for taking benefit under 2013 Act—Ratio laid down in Indore Development Authority v. Monohar Lal and others applied.

The Coimbatore Cricket Club Trust, Coimbatore rep. by its Trustees Vs. The



Secretary to Government, Housing and Urban Development Department and others, 2023 – 2
– L.W. 937 in which it has held that the normal mode of taking possession is by drafting of a panchanama, in the presence of panchas and taking possession and giving delivery to the beneficiary is the accepted mode of taking possession of the land.939

14. Hence, he would submit that in the present case taking possession and payment of compensation was not established by the respondents and therefore, the twin requirement under Section 24 (2) of the new Act is not complied. Therefore, the entire acquisition proceedings initiated by the respondents has lapsed by operation of law under Section 24 (2) of the right to Fair compensation and transparency in land acquisition, rehabilitation and resettlement Act 2013 (Act 30 of 2013)

15. Therefore, he would submit that land acquisition proceedings initiated under L.A.O.P.No.1 of 2007 cannot be proceeded and prays for dismissal of the proceedings under L.A.O.P.No.1 of 2007 by setting aside the



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impugned order dated 13.03.2023 passed by the Tribunal in I.A.No.1 of 2021.

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16. On the other hand, the learned Additional Government Pleader for the first respondent would submit that since the award was passed and the amount was deposited by following formalities required in the matter of acquisition, the I.A. was rightly dismissed by the Tribunal which calls for no interference. He would submit that, the Tribunal in the impugned order in I.A.No.1 of 2021 in L.A.O.P.No.1 of 2007 has rendered its finding that on perusal of Ex.P2, it is found that the award was passed and amount was deposited and therefore, the contention of the petitioners that after lapse of Ex.P1 Notification, first respondent has not taken possession, was not acceptable. It is therefore submitted that there is no merit in the present Civil Revision Petition.

17. Heard on both sides. Records perused.

18. The petitioners filed the above I.A.No.1 of 2021 in L.A.O.P.No.1 of 2007 under Section 151 of the Code of Civil Procedure, 1908 to terminate



the reference proceedings initiated under the Land Acquisition Act, 1987 in the wake of repeal provision under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

19. The petitioners are the claimants and land owners in the reference proceedings. Ex.P1 is the Notification under Section 4(1) of the Land Acquisition Act and Ex.P2 is the Award.

20. According to the petitioners, the twin requirement under Section 24 (2) of the New Act of both taking over possession and payment of compensation is not complied by the respondents and therefore prays for declaring the entire acquisition proceedings initiated by the respondents under the Land Acquisition Act 1984 cannot be proceeded and prays for dismissal of the proceedings under L.A.O.P.No.1 of 2007 by setting aside the impugned order dated 13.03.2023 passed by the Tribunal in I.A.No.1 of 2021.

21. Per contra, on the side of the 1st respondent it is submitted that since



the award was passed and the amount was deposited by following all formalities required in the matter of acquisition and that, the interlocutory application was rightly dismissed by the Tribunal.

22.The specific contention of the petitioners is that the respondents failed to establish that they had properly tendered the compensation by sending of notice under Section 12 (2) to the notified person. Hence, they cannot claim that the consequential deposit before the Court has been properly made. The deposit before the Court is not in accordance with the procedure established by law. The further contention is that no final order of award was passed by the 1st respondent as contemplated in Section 12 of the Land Acquisition Act 1984 and the reference made by the 1st respondent is only with respect to the draft award under Section 11 of the Land Acquisition Act and not under Section 12 of the Land Acquisition Act 1984. It is also submitted that the 1st respondent has not taken possession of the land from the claimant in accordance with the procedure established by law and that the possession of their lands are still within the petitioners. However, the petitioners failed to establish that the acquired lands are still in the possession



of the petitioners. Though it is contended on the side of the petitioners that the Thengapattinam Fishing Harbour Work is completed excluding the lands acquired in the hands of the petitioner, the same is not established by the petitioners. Moreover, on the side of the 1st respondent it is stated that the Thengapattinam Fish Harbour Work has not been completed and the acquisition proceedings are going on. The further submission of the 1st respondent is that As per G.O. M S. No: 216 of Animal Husbandry Diaries and Fisheries Department dated 21.12.2005 has sanctioned the expenditure for the formation of Fishing Harbour at Thengapattanam. Accordingly the Assistant Director of Fisheries has requested for the acquisition of 2.19.99 hectares (5.44 acres) of dry lands in R.S.No.445. 467/2, 468/16 and 468/17 in Painkulam Village, Vilavancode Taluk. The Government in G.O.Ms.No:3 Animal Husbandry Dairies and Fisheries (FSI) Department dated 04.01.2007 has accorded Administrative sanction to acquire 5.44 acres of patta dry land in Survery No: 445 etc. at Painkulam Village of Vilavancode Taluk by invoking urgency laws under section E 17(2) of Land Acquisition Act 1894 for the formation of Fisheries Harbour, Thengapattanam. RDO Padmanabhapuram in pursuant to the Government orders referred above



inspected the land, plan schedule furnished by the requisitioning body (ie) Assistant Director, Fisheries and noted that the proposed land which are going to be acquired for the formation of Fishing Harbour, Thengapattanam is classified as dry land and fit for said purpose.

23.The details of the acquired properties as per village accounts are as given below:

<i>Village</i>	<i>Survey No.</i>	<i>Area</i>	<i>Name of registered holding as per village records</i>
Painkulam	445/1	1.75.07	Subramanian son of Sastha Krishnan son of Nagamony Rajamma wife of Subramanian Nagamony son of Subramanian Natarajan son of Subramanian Kumaraswamy son of Subramanian Abusta Beevi daughter of Mohamed Ismail Tahira daughter of Mohamed Ismail Imthias son of Mohamed Ismail Amlikafh Alam son of Mohamed Ismail
Painkumal	467/2B	0.09.33	Katheeja Beevi wife of Mohamed Noohu
Painkumal	468/16B	0.26.09	Liagath Ali son of Mohamed Noohu
Painkulam	468/17	0.09.50	Liagath Ali son of Mohamed Noohu
		2.19.99 hectares (5.44Acres)	



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24. It is submitted that the above details have been included in the Draft Notification under Section 4(1) and draft Declaration u/s 6 of the Land Acquisition Act. Draft notification was published in Tamil Nadu Government Gazette ordinary No :2009 part II section 2 dated 19.07.2007 and in the dailies on 24.07.2007 and in the locality on 30.07.2007. Draft Declaration was also published in Tamil Nadu Gazette Extraordinary number 246 part II section 2 dated 21.08.2007 and in the two dailies on 28.08.2007 and after publishing the notice containing the details of the names of pattadars and the area involved in the acquisition was affixed in the Painkulam Village Office on 13.09.2007 with direction to all the pattadars to appear before the Revenue Divisional Officer, Padmanabhapuram at Painkulam Village Officer for Award enquiry. The Revenue Divisional Officer, Padmanabhapuram has conducted the award enquiry under section 11 of the Land Acquisition Act on 28.09.2007. All the land owners involved in the land acquisitions were present in the enquiry except the petitioners. But none of the land owners including the petitioners/claimants have not given any objections for acquisition. As per the notification published in the Tamil Nadu Government



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Gazette and Award enquiry the lands comprised in R.S.Nos: 445/1. 467/2B, 468/16B and 468/7 of Painkulam Village were acquired under urgency clause and the acquired lands were handed over to the Assistant director, Fisheries, Nagarcoil on 08.10.2007. the land owners of survey Nos:467/2B,468/16B and 468/7 received the compensation amount as fixed in the award/The owners of land in R.S.No: 445/1 (ie) the petitioners/claimants did not appear in the award enquiry and hence the amount due the land owners (R.S No: 445/1) was deposited before this Hon'ble Court. The State has formed the Fishing Harbour at Thengapattanam for the benefit of the public and not for any individual purpose. Thus, all the formalities in the matter of acquisition were done strictly by following the Land Acquisition Act.

25. Therefore, from the above submissions made by the 1st respondent it appears that the lands of the petitioners were acquired under urgency clause. Therefore, the deposit made and the taking possession of the land without strictly following the letter of law will not vitiate the entire acquisition proceedings. Moreover, the issue raised in this petition has already been finally decided in W.P.(MD).No.32005 of 2007 which is extracted as



hereunder:

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"15..... Therefore, the petitioners are not entitled to receive any relief under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act., 2013 in the given set of facts and current situation. Further, the said property had been acquired for a public purpose i.e., formation of a fishing harbour in Kanyakumari District which is of paramount importance. Hence, the above Writ Petition is dismissed. There is no order as to costs. Consequently, connected miscellaneous petitions are closed."

26.The above order passed by the learned Single Judge was confirmed by the Division Bench in W.A.(MD).No.1874 of 2021. In view of the above conclusion in W.P.No.32005 of 2007. Therefore, the petition in I.A.No. 1/2021 in L.A.O.P.No.1/2007 for dismissing the L.A.O.P.No.1/2007 on the file of Sub Court, Kulithalai, is nothing but reagitating the same issue which is the subject matter in W.P(MD)No.32005 of 2007. Since the issue raised in this petition has already been finally decided in W.P(MD).No.32005 of 2007 by this Court the petitioners cannot raise the very same issue by filing the above petition. Therefore, the contention of the petitioners that the



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proceedings initiated under the old Act lapses on account of Section 24 (2) of the New Act is unsustainable. Therefore, the above civil revision petition is devoid of merits. The impugned order passed by the trial Court is confirmed. Accordingly, this civil revision petition is dismissed. No costs.

13.12.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
jen/vsn

To

- 1.The Sub Judge,
[Land Acquisition Tribunal], Kuzhithurai.
- 2.The Revenue Divisional Officer [LA],
Padmanabhapuram,
Kalkulam Taluk,
Kanyakumari District.
- 3.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

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K.GOVINDARAJAN THILAKAVADI, J.

jen/vsn

Order made in

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