



W.P(MD).No.12035 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 09.11.2022

ORDER PRONOUNCED ON : 03.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

**W.P.(MD).No.12035 of 2015
and M.P(MD).Nos.2 & 3 of 2015**

1.K.Perumal

2.P.Sundari

3.K.Alagar Ammal (Deceased)

4.K.Pushpam (Deceased)

5.Mohandass

6.Chandrasekaran

7.Renugadevi

8.Nagalakshmi

9.Madhana

....Petitioners

(Petitioners 5 to 9 are substituted
vide Court order dated 11.08.2022)

Vs

1.The State of Tamil Nadu
Represented by its Secretary to Government
Housing & Urban Development Department
Fort St.George
Chennai



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2.The Special Tahsildar (L& A)
Ellis Nagar
Neighbourhood Scheme
Madurai 625 020

3.The Executive Engineer and
Administrative Officer
Tamil Nadu Housing Board
Madurai

....Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Declaration to declare that the Land Acquisition Proceedings initiated under the Land Acquisition Act, 1894, with respect to the lands of an extent of 2.69 Acres comprised in S.No.18/3, Ponmeni Village now at Madurai West Taluk, Madurai belonging to the petitioners as lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act 2013 (Act 30 of 2013).

For Petitioners	: Mr.S.Meenakshi Sundaram Senior Counsel For Mr.G.Aravindan
For R1 & R2	: Mr.A.Baskaran Additional Government Pleader
For R3	: Mr.R.Sivakumar Standing Counsel

ORDER

The present writ petition has been filed for a declaration that the acquisition proceedings initiated under Land Acquisition Act, 1894 in respect



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of 2.69 acres for Survey No.18/3, Ponmeni Village, Madurai West Taluk, Madurai has lapsed in view of Section 24(2) of Central Act 30 of 2013.

2. According to the learned Senior Counsel appearing for the petitioners, the survey numbers in dispute were acquired by the respondents herein by way of 4(1) Notification dated 07.03.1979. Declaration under Section 6 was issued on 02.07.1980. An award was passed under Section 11 on 28.04.1982. A perusal of the award indicates that none of the land owners have appeared during the enquiry. Therefore, it is clear that the enquiry has been conducted in the absence of the land owners/claimants.

3. The learned Senior Counsel had further contended that the possession of the land was never taken over by the Government pursuant to the acquisition proceedings and it was not handed over by the Government to the Housing Board. Even as on the date of filing of the writ petition, the possession was retained by the land owners namely the writ petitioners. The learned Senior Counsel had relied upon a judgment of the Hon'ble Supreme Court reported in **(2020) 8 SCC 129 (Indore Development Authority -vs- Manoharlal and others)** and contended that when possession has not been taken and the award amount has not been paid/deposited to the land owners, the entire land acquisition proceedings will get lapsed. The only option open



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to the authorities is to go for a fresh acquisition proceedings. The learned Senior Counsel had specifically relied upon Paragraph No.277 of the said Judgment.

4.The learned Senior Counsel for the petitioners had further relied upon a judgement of this Court reported in **2021 (2) CTC 300 (K.Saraswathi and another -vs- The State of Tamil Nadu and others)**. The learned Senior Counsel had specifically referred Paragraph Nos. 16 and 18 of the said judgement to contend that the possession has to be taken only by way of drawing of Panchnama with signature of the witnesses. In the present case, neither the Government nor the Housing Board have produced a copy of the Panchnama to disclose whether possession has been taken in the said mode or not. The learned Senior Counsel had further contended that unless the respondent authorities produced the Panchnama under which possession was taken, it has to be presumed that the possession is with the land owners. He had further contended that drawing of Panchnama is only mode of taking possession by the Government after an award has been passed under Section 11 of the Act.

5.The learned Senior Counsel had further contended that the respondent authorities have not produced any document whatsoever to prove



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either payment of the award amount to the writ petitioners or deposit of the said amount in the treasury or in the Court. Admittedly, the award amount has not been paid to the land owners. The learned Senior Counsel had relied upon the Hon'ble Supreme Court judgement cited supra and contended that both the conditions namely possession and non-payment of award amount have been satisfied. In the present case, the acquisition proceedings may be declared to have lapsed as contemplated under Section 24(2) of the Central Act 30 of 2013.

6.Per contra, the learned Standing Counsel appearing for the Housing Board had contended that drawing of Panchnama is not the only mode of taking possession from the land owners. In the present case, the Special Tahsildar (Land Acquisition) has handed over possession to the Housing Board under handing over and taking over charge certificate dated 04.12.1982. In the said order, Survey No.18/3 has been specifically mentioned to the effect that possession of the said land has been taken and it was handed over to the Housing Board authorities.

7.The learned Standing Counsel had relied upon the judgments of the Hon'ble Supreme Court reported in **(1996) 8 SCC 259 (Tamil Nadu Housing Board Vs. A.Viswam)** and **(2011) 5 SCC 394 (Banda Development**



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Authority, Banda -vs- Motilal Agarwal and others) to contend that Panchnama is not the only mode of taking possession and therefore, possession has already been taken over by the Government from the land owners by way of handing over and taking over charge certificate. The learned Standing Counsel had further contended that the petitioners had addressed a letter to the Housing Board on 15.07.2011 contending that the acquisition proceedings have been withdrawn and possession has been handed over to some of the other land owners. But in the case of the petitioners, the lands are yet to be handed over to them. The Housing Board has sent a reply to the petitioners on 02.03.2012 to the effect that possession has already been taken over by the Housing Board and their request for return of the land is not possible.

8. The learned Standing Counsel had further contended that the petitioners have themselves admitted that the possession has been taken over by the Housing Board and the Housing Board has sent a reply that it is not possible to return the said lands. The learned Standing Counsel had produced a sketch relating to the acquired lands and contended that the project has been completed and hence, the dispute relating to the fact that whether possession was taken from the land owners or not cannot be raised at this length of time. He had further contended that the records relating to the payment of award amount to the petitioners could not be traced.



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9. The learned Standing Counsel for the Housing Board had further stated that when possession has been taken over by the Government and handed over to the Housing Board and project has been completed, there cannot be any dispute with regard to the taking over of possession by the Government authorities. When one of the ingredients as required under Section 24(2) of the Central Act 30 of 2013 has not been satisfied, the question of lapse under the said provision of law will not arise. Only when both the ingredients, namely non-taking of possession and non-payment of the award amount are available, the acquisition proceedings will get lapsed as laid down by the Hon'ble Supreme Court in the judgment reported in **(2020) 8 SCC 129 (Indore Development Authority -vs- Manoharlal and others)**. Therefore, the prayer for declaring that the acquisition proceedings have got lapsed is not legally sustainable. Hence, he prayed for dismissal of the writ petition.

10. I have considered the submissions made on either side and perused the materials available on record.

11. The present writ petition has been filed to declare that the acquisition proceedings have got lapsed under Section 24(2) of the Central Act 30 of 2013, in view of the judgement of the Hon'ble Supreme Court reported in **(2020) 8 SCC 129 (Indore Development Authority -vs- Manoharlal and others)**. Unless the land owners are able to prove that the



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possession is retained with them and the compensation amount has not been paid as on date of coming into force of the Central Act, the acquisition proceedings will not get lapsed. Even assuming that any one of the criteria are available, the acquisition proceedings will not get lapsed. In the light of the above said facts, let us consider the present case.

12.The main contention of the learned Senior Counsel appearing for the petitioners is that the possession is still retained by the land owners and there is no drawing of Panchnama to prove that the possession was ever taken over by the Government. According to the learned Senior Counsel, drawing of Panchnama is the only authorised mode of taking possession from the land owners under the Land Acquisition Act. The Hon'ble Supreme Court in a judgment reported in **(1996) 8 SCC 259 (Tamil Nadu Housing Board Vs. A.Viswam)** in Paragraph No.9 has held as follows:

“9.It is settled law by series of judgments of this Court that one of the accepted modes of taking possession of the acquired land is recording of a memorandum or Panchnama by the LAO in the presence of witnesses signed by him/them and that would constitute taking possession of the land as it would be impossible to take physical possession of the acquired land. It is common knowledge that in some cases the owner/interested person may not co-operate in taking possession of the land”.



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13.A perusal of the judgment of the Hon'ble Supreme Court will clearly indicate that drawing of Panchnama is one of the mode of taking delivery of possession of the property from the land owners in land acquisition proceedings. However, it is not the sole mode of taking possession. The parties in the present case have taken possession under handed over and taken over certificate. The project has already been completed by Tamil Nadu Housing Board after taking over possession of the said land. Hence, the contention of the learned Senior Counsel is that drawing of Panchnama is the only mode of taking delivery of possession is not legally sustainable.

14.The learned Senior Counsel had contended that the compensation amount has neither been deposited nor been paid to the land owners. According to the learned Senior Counsel, there are no records to indicate that the compensation was paid to the land owners. Therefore, it is clear that one of the ingredients as contemplated under Section 24(2) of the Central Act 30 of 2013 has not been satisfied. Therefore, it is for the authorities to decide and pay compensation under the new Act namely Central Act 30 of 2013 after giving due opportunity to the writ petitioners/ land owners.

15.In view of the above said discussions, the prayer sought for in the writ petition relating to lapse of acquisition proceedings cannot be granted.

However, the respondent authorities are directed to conduct an enquiry and



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pass an award in favour of the writ petitioners/land owners under the Central Act 30 of 2013 taking base year as 01.01.2014 with regard to valuation of the properties.

16. Accordingly, the writ petition is partly allowed to the extent as stated above. No costs. Consequently, connected miscellaneous petitions are closed.

03.01.2023

Internet : Yes/No
Index : Yes/No
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Housing & Urban Development Department
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2. The Special Tahsildar (L& A)
Ellis Nagar
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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

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