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W.P.(MD)NO.1250 OF 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.08.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.1250 of 2015

Saadhu Seva Samajam,
Sri Vivekanandha Swamigal Madaalayam,
(Regd. No.21/1944),
Door No.76, Thiruparankundram Road,
Madurai,
Through its President
K.R.Venkatraman

... Petitioner

Vs.

1. The District Collector,
Madurai District,
Madurai.
2. The Revenue Divisional Officer,
Madurai South Taluk,
Madurai.
3. The Tahsildar,
Thiruparankundram Taluk, Madurai.
4. The Senior Engineer,
National Highways Authority of India,
Madurai Division, Madurai.
5. The Secretary to Government,
Union of India,
National Highways Department,
New Delhi.
(R-5 is impleaded vide order dated 17.12.2015
in M.P.(M)No.1 of 2015)



6. Palraj

7. Noah

(R-6 & R-7 are impleaded vide order dated 07.08.2023

in W.M.P.(MD)No.15868 of 2023)

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to reconvey the piece of land measuring 57 cents sitauted in S.No. 192, in Thanakankulam Village, Madurai to the petitioner.

For Petitioner : Mr.B.Saravanan,
Senior counsel,
for Mr.C.Gangaiamaran.

For R-1 to R-3 : Mr.SR.A.Ramachandran,
Additional Government Pleader.

For R-5 : Mr.C.Nandagopal

For R-4 : No appearance.

* * *

ORDER

Heard the learned Senior counsel appearing for the writ petitioner and the learned Additional Government Pleader appearing for the official respondents and the learned counsel appearing for the fifth respondent.



2. The writ petitioner is a religious trust. It owned 57 cents in survey No.192/2, Thanakankulam Village, Madurai. For the purpose of laying road, this land was acquired under the provisions of The Land Acquisition Act 1894. The learned Senior counsel appearing for the writ petitioner contended that the land continues to be in possession of the petitioner and that the compensation was also not paid. Therefore, the petitioner can very well invoke the theory of lapse set out in Section 24(2) of the Central Act 30 of 2013.

3. The learned Additional Government Pleader produced relevant records and pointed out that a sum of Rs.2,762/- was fixed as compensation by the land acquisition officer and that this amount was accepted by the petitioner. Reference under Section 18 of the Land Acquisition Act was also made. The reference was eventually answered by the Sub Court, Madurai on 26.04.1983 in LAOP No.282 of 1980 and the compensation was enhanced to Rs.5,700/-.

4. Section 24 of the Central Act 30 of 2013 had been authoritatively interpreted by the Five Judges Bench of the



Hon'ble Supreme Court in the decision reported in **(2020) 8**

SCC 129 (Indore Development Authority V. Manoharlal

and Others). In the aforesaid decision, the expression “or” occurring in Section 24(b) of the Central Act 30 of 2013 has been interpreted as “and”. Though the respondents are unable to produce any record indicating taking over of possession, the learned Additional Government Pleader contended that since the amount was tendered to the petitioner and it was accepted, the petitioner will not be entitled to invoke the theory of lapse set out in Section 24(2) of the Act. This contention of the learned Additional Government Pleader is sustained.

5. It is submitted by the learned Senior counsel that the purpose for which the land was acquired had not been effectuated and that road had not been laid. Therefore, the Government may transfer such land to the petitioner. Section 48(B) of the Land Acquisition Act, 1894 reads as follows:-

**“ Transfer of land to original owner
in certain cases -**

Where the Government are satisfied that



the land vest in the Government under this Act is not required for the purpose for which it was acquired, or for any other public purpose, the Government may transfer such land to the original owner who is willing to repay the amount paid to him under this Act for the acquisition of such land inclusive of the amount referred to in sub-section (I-A) and (2) of Section 23, if any, paid under this Act. ”

He wants this Court to permit the petitioner to apply to the Government under Section 114 of the Central Act 30 of 2013 is as follows:-

“ Repeal and saving

(1) The Land Acquisition Act, 1894 (1 of 1894) is hereby repealed.

(2) Save as otherwise provided in this Act the repeal under sub-section (1) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeals.”



Section 6 of the General Clauses Act is as follows:-

“ Effect of repeal.— Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder ; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed ; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed ; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege,



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obligation, liability, penalty, forfeiture or punishment as aforesaid ;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act had not been passed.”

6. I am satisfied that the repealing of the 1894 Act will not take away the right of the erstwhile land owner to approach the Government under Section 48(B) of the Old Act. The petitioner is permitted to approach the Government. It is for the Government to take a call in the matter. I must also record that the impleaded respondents have asserted access rights across the acquired land. The impleaded respondents have filed O.S.No.193 of 2016 on the file of the District Munsif Court, Thirumangalam. The suit had been dismissed as against the petitioner. Ex-parte decree was passed as against the Highways Department. It is stated that the Highways Department had filed a petition to set aside the ex-parte decree. Since the impleaded respondents have asserted right



over the land in question, before passing any final order under Section 48(B) of the Land Acquisition Act 1894 the impleaded respondents Thiru.Palraj, S/o.Velusamy and Thiru.Noah, S/o.Selvaraj shall be put on notice. This writ petition stands disposed of with the aforesaid direction. No costs.

07.08.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

PMU

To:

1. The District Collector,
Madurai District,
Madurai.
2. The Revenue Divisional Officer,
Madurai South Taluk,
Madurai.
3. The Tahsildar,
Thiruparankundram Taluk, Madurai.



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G.R.SWAMINATHAN,J.

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