IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.12.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No. 9646 of 2024
and W.M.P.No.10681 of 2024

1 B.Shanthilal
2 B.Gyan Prakash
3 Manjula
4 Sumathi
5 B.Padam Kumar
6 Rekha ...Petitioners

Vs.

1 The Government of Tamilnadu,
Rep. by its Principal Secretary,
Municipal Administration & Water Supply Department
Fort St.George, Chennai – 600 009

2 The Commissioner,
Corporation of Chennai
Ripon Buildings, Chennai – 600 003 ...Respondents

Prayer: Writ Petition is filed under Article 226 of the constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records in Letter(D) No.16/MC.2/2024 dated 12.01.2024 on the file of the 1st Respondent and quash the same as illegal, arbitrary and unjustifiable and direct the respondents to release the property bearing Door No.78/85, Big Street(Veera Ragava Mudali Street), Triplicane, Chennai- 600 005 in R.S.No.2329 to an extent of 3850 sq.ft to the petitioners.

For Petitioners	:	Dr.A.Thyagarajan,Senior Counsel For Mr.S.Ramesh Kumar
For Respondent 1	:	Mr.A.Selvendran Special Government Pleader
For Respondent 2	:	Mr.E.C.Ramesh

ORDER

The writ petition has been filed for the following reliefs:

"To issue a writ of certiorarified Mandamus to call for the records in Letter (D) No.16/MC.2/2024 dated 12.01.2024 on the file of the 1st respondent and quash the same as illegal, arbitrary and unjustifiable and direct the respondents to release the property bearing Door No.78/85, Big Street(Veera Ragava Mudali Street), Triplicane, Chennai- 600 005 in R.S.No.2329 to an extent of 3850 sq.ft to the petitioners."

2. It is the case of the petitioners that their father, late Budhmal Jain, had purchased the property in question measuring an extent of 3850 sq.ft. bearing Door No.78/85, Big Street (Veera Ragava Mudali

Street), Triplicane, Chennai in R.S.No.2329 under a registered Sale Deed dated 19.07.1972. After the purchase, the revenue records had been mutated and the property tax as well as the metro and sewarage water tax had been transferred in his name.

3. While so, the subject land was acquired by the 1st respondent vide G.O.Ms.No.757, Education Department dated 08.04.1971 and G.O.Ms.No.2796, Education Department dated 23.11.1972. The said Budhmal Jain had challenged the same and after repeated requests, the 1st respondent had issued G.O.Ms.No.222, Municipal Administration and Water Supply Department dated 06.11.1995, directing the 2nd respondent to re-convey the said property on collection of the compensation of Rs.31,958/- which was paid and retained by the Land Acquisition office. On receipt of the said Government order, the petitioners' father had submitted a representation to the 1st respondent to re-convey the said property. Since there was no response, he had filed W.P.No.4143 of 1996 seeking for a direction to the respondents to implement the Government Order.

4. While the above writ was pending, another Government Order was issued vide G.O.Ms.No.90, Municipal Administration and Water Supply Department dated 11.04.1997, cancelling the earlier G.O.Ms.No.222 dated 06.11.1996. This G.O was challenged by their father, Budhmal Jain in W.P.No.10349 of 1997. In the said writ petition, the 1st respondent requested the Government to collect the market value of the property before the re-conveyance, as the Award amount was not paid. Thereafter, W.P.No.4143 of 1996 was closed since the petitioner therein were entitled to relief in W.P.No.10349 of 1997. By order dated 16.09.1999, this Court had set aside G.O.Ms.No.90 of 1997 dated 11.04.1997 and the respondents were directed to release the land back to the petitioner therein within a period of 4 weeks from the date of receipt of the order. Against the said order, the 2nd respondent had preferred a Writ Appeal in W.A.No.2486 of 1999, which was dismissed by the Division Bench of this Court by order dated 14.06.2007. However, liberty was granted to the 2nd respondent to pursue the matter with the 1st respondent to take an

appropriate decision, if the land was still required for the public purpose.

5. The 1st respondent in the meanwhile had filed W.A.No.515 of 2000 against the order passed in W.P.No.10349 of 1997. This appeal was disposed of by the Division Bench by its order dated 13.09.2010 in the same lines as W.A.No.2486 of 1999. The said Budhmal Jain passed away. The petitioners would submit that thereafter they had made a representation to the 1st respondent on 21.12.2010 contending that the land was totally unsuitable for constructing a school. However, by impugned order, the request for re-conveyance was rejected. Despite the earlier orders of this Court stating that the property should be conveyed back to the petitioner, the respondents have wantonly refused to comply with the orders. Hence, the petitioner is before this Court.

6. The 2nd respondent has filed a counter *inter-alia* contending that the Corporation of Chennai was running a middle school in a rental

premises in Big Street, Triplicane, Chennai in 1972 and thereafter, they decided to continue to run in the same building. Hence, the land measuring an extent of 1 ground 1450 sq.ft in S.No.2329 was acquired for the purpose of construction of the school building by the Corporation in Award No.18/73 dated 08.10.1973 based on Council Resolution No.186/70 and the land was taken over on 29.10.1980. The respondents would further submit that though the purpose for which the land was acquired could not be implemented, the Government had decided to utilize the same for putting up a night shelter in compliance with the directions of the Hon'ble Supreme Court which had directed that atleast one night shelter had to be formed for every one lakh population. The 2nd respondent had decided to put up 38 new shelters apart from the existing ones and the land in question is brought to be utilized for the said purpose.

7. Heard the learned counsels on either side and perused the materials available on record.

8. The learned Additional Government Pleader appearing for the respondents would draw the attention of this Court to the judgment of the Hon'ble Supreme Court reported in ***2020 (8) SCC 129 [Indore Development Authority Vs. Manoharlal and Others].*** In the said judgment, the Hon'ble Supreme Court deals with the return of unutilised land under Section 101 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-Settlement Act, 2013 (Hereinafter called the 2013 Act) which reads as follows:

101. Return of unutilised land.

- When any land acquired under this Act remains unutilised for a period of five years from the date of taking over the possession, the same shall be returned to the original owner or owners or their legal heirs, as the case may be, or to the Land Bank of the appropriate Government by reversion in the manner as may be prescribed by the appropriate Government.

Further, in the said judgment, the Hon'ble Supreme Court has held in paragraph 364 as follows:

"364. Section 24 deals with lapse of acquisition. Section 101 deals with the return of unutilised land. Section 101 cannot be said to be applicable to an acquisition made under the 1894 Act. The provision of lapse has to be considered on its own strength and not by virtue of Section 101 though the spirit is to give back the land to the original owner or owners or the legal heirs or to the Land Bank. Return of lands is with respect to all lands acquired under the 2013 Act as the expression used in the opening part is "When any land, acquired under this Act remains unutilised". Lapse, on the other hand, occurs when the State does not take steps in terms of Section 24(2). The provisions of Section 101 cannot be applied to the acquisitions made under the 1894 Act. Thus, no such sustenance can be drawn from the provisions contained in Section 101 of the 2013 Act. Five years logic has been carried into effect for the purpose of lapse and not for the purpose of returning the land remaining unutilised under Section 24(2)."

A reading of the aforesaid judgment would indicate that the proceedings initiated under the Land Acquisition Act 1894 is deemed to have lapsed where an Award under Section 11 of the Land Acquisition Act, 1894 had been made 5 years or more prior to the commencement of the 2013 Act, however, two conditions have to be satisfied cumulatively as specified in Section 24(2) of the Act.

a) Possession of the acquired land has not been taken.

b) Compensation has not been paid

The learned Judges have clearly held that Section 101 would not be applicable to the acquisition made under the Land Acquisition Act, 1894. Further, it has been observed as follows:

> *"366.9 Section 24(2) of the 2013 Act does not give rise to new cause of action to question the legality of concluded proceedings of land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the 2013 Act i.e 01.01.2014. It does not revive stale and time-barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition."*

In the instant case, the possession vests with the 2nd respondent which has not been denied. Further, there is nothing to show that the compensation has not been paid to the petitioners.

9. Therefore, in the light of the above observations, the relief claimed by the petitioners cannot be granted. Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

10.12.2024

Index : Yes/No
Internet : Yes/No
srn

To,

1 The Principal Secretary,
Government of Tamilnadu,
Municipal Administration & Water Supply Department
Fort ST.George, Chennai – 600 009

2 The Commissioner,
Corporation of Chennai
Rippon Buildings, Chennai – 600 003

P.T. ASHA, J,

srn

W.P.No. 9646 of 2024
and
W.M.P.No.10681 of 2024

10.12.2024
(2/2)