



W.P.No.30061 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.30061 of 2017

and

W.M.P.No.32632 of 2017

K.Radha

...Petitioner

-Vs-

1.State rep. by its Secretary,
Housing & Urban Development Department,
Fort St. George,
Chennai – 600 009.

2.The Tamil Nadu Housing Board,
Rep. by its Managing Director,
No.33, Anna Salai,
Nandanam, Chennai – 600 035.

3.The Executive Engineer,
Tamil Nadu Housing Board,
Bhagalur Road,
Hosur – 635 109.

4.The Special Tahsildar (L.A.),
Hosur Housing Scheme,
Bhagalur Road,
Hosur, Krishnagiri District.

...Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a direction in the nature of Writ of Declaration, declaring that the Land Acquisition Proceedings initiated under the Land Acquisition Act 1894 in respect of land to an extent of 0.23.0 acres in S.No.660/2, at Hosur Village and Taluk, Krishnagiri District covered by Notification issued under Section 4(1) of Land Acquisition Act, 1894 vide G.O.Ms.No.300 Housing and Urban Development Department dated 04.03.1991 and Award 10/1994 dated -06.1994 deemed to have lapsed and in view of Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-Settlement Act, 2013 and pass such further orders.

For Petitioner	:	Mr.R.Bharath Kumar
For R1 & R4	:	Mr.K.Suresh, Government Advocate
For R2 & R3	:	Mr.S.Ramachandran Standing Counsel

ORDER

This writ petition is filed for issuance of a Writ of Declaration, declaring that the Land Acquisition Proceedings initiated under the Land Acquisition Act 1894 in respect of land to an extent of 0.23.0 acres in S.No.660/2, at Hosur Village and Taluk, Krishnagiri District covered by Notification issued under Section 4(1) of Land Acquisition Act, 1894 vide



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G.O.Ms.No.300 Housing and Urban Development Department dated 04.03.1991 and Award 10/1994 dated -06.1994 deemed to have lapsed and in view of Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-Settlement Act, 2013.

2. Brief facts that are necessary for the disposal of this writ petition are as follows:

2.1 The petitioner was the absolute owner of lands to an extent of 0.11 ½ acres in Survey No.660/2, and lands in Survey Nos. 641, 625/2,3,7 and 626/3 and purchased the same by a registered Sale Deed dated 15-11-1978 registered as Document No.3395 of 1978 at Sub-registrar Office, Hosur, for valid consideration. Ever since the date of purchase, the petitioner has been in peaceful possession and enjoyment of the same by remitting necessary taxes and public dues. Similarly, the petitioner's husband, viz., Kunjimon, had also purchased land to an extent of 0.11 ½ acres in Survey No.660/2 under registered Sale Deed dated 19.11.1978 registered as Document No.3396 of 1978 at Sub-registrar Office in Hosur. The petitioner's husband died, leaving behind him, as the sole surviving legal heir to succeed his estate.



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2.2 It is seen that the petitioner was settled in the State of Kerala

and she was not available at Hosur from the year 1990 to 2008.

Subsequently, in the year 2008, when she tried to obtain a computerized Patta for the said land, she was shocked to know that the first respondent herein issued Notification under Section 4(1) of Land Acquisition Act, 1894 in G.O.Ms.No.300, Housing and Urban Development Department dated 04.03.1991 and initiated land acquisition proceedings in respect of various Survey Numbers including Survey No.660/2 for the benefit of the Tamil Nadu Housing Board.

2.3 Pursuant to Section 4(1) Notification, Section 6 Declaration was also issued in G.O.Ms.No.386, Housing and Urban Development Department dated 25.06.1992. The petitioner also further came to know that her adjacent land owners relating to Survey Nos.661, 659 etc., had filed writ petitions before this Court challenging the said land acquisition proceedings and obtained an Order of Interim Stay of possession and subsequently, the writ petitions were allowed, thereby quashing the entire land acquisition proceedings. Further, no appeal was filed challenging the order, quashing the land acquisition proceedings and the land acquisition proceedings had



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attained finality. In view of the order of Interim Stay of taking possession, no development had taken place and vacant possession was not handed over to the requisitioning body by the Government.

2.4 It is further stated that no notice was issued to the petitioner under Section 4(1) and Section 6 Declaration. The petitioner has requested the 4th respondent to furnish a copy of the Award passed in the above matter and accordingly, a copy of the Award passed in Award No.10 of 1994 was furnished to the petitioner by the 4th respondent herein. On perusal of the Award, the petitioner came to know that her land to an extent of 0.10.5 hectare in Survey No.660/2-A covered by Patta No.1059 was acquired under the said Notification and an Award was passed determining compensation of Rs.39,113/-.

2.5 On verification of the records, the petitioner came to know that the said amount has not been deposited into the Jurisdictional of Sub-Court as per the Provisions of the Land Acquisition Act, 1894. The petitioner has also not received the Award amount from the Government. As on date, the petitioner was in peaceful possession and enjoyment of the subject matter of



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the land. The Award amount has also not been paid to the petitioner in the manner known to Law.

2.6 It is pertinent to mention here that the land acquisition proceedings initiated in respect of the lands adjoining to her land have been quashed. The respondents have not taken any steps to take possession of the land in Survey No.660/2. In other words, the respondents have abandoned the acquisition proceedings in respect of the aforesaid land. The physical and actual possession of the petitioner's land is still with the petitioner and the petitioner have been enjoying the land from the date of purchase. The award amount has not been deposited into the Court in respect of the petitioner's land nor paid to her.

2.7 Recently the Government of India enacted a new Act, viz., Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-Settlement Act 2013 (30 of 2013). (Hereinafter referred to as the New Act). Admittedly, Award No.10 of 1994 was passed on 02.07.1994 and physical and actual possession of the subject matter of the land has not been taken so far and the same remains with the petitioner. No



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compensation amount has been paid to the Petitioner nor deposited into the Court by the Land Acquisition Officer.

3. Learned counsel for the petitioner submitted that the subject matter land was purchased by the petitioner on 15.11.1978 and the land acquisition proceedings dated 04.03.1991 and the Award was passed on 02.07.1994. Thereafter, the possession was not taken and the respondents claimed that the money had been deposited in the State Bank of India, Hosur Branch, where the names of the landowner, survey number and no other details were mentioned. It is not clear whether the compensation amount deposited is for the land supported by the petitioner.

4. Learned counsel drew the attention of this Court of the possession Taken Over Certificate dated 08.12.1994, in which it is stated that the subject matter land was handed over by the Senior Revenue Inspector, Hosur Housing Scheme, and handed over the same to the Head Surveyor, Tamil Nadu Housing Board and this certificate is only handing over the property within the Tamil Nadu Housing Board.



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5. Learned counsel further submitted that there is no proof of how the land was acquired from the land owner, on which date, and no Panchanama has been filed or any other relevant document to prove that the possession has been taken by the Tamil Nadu Housing Board. Therefore, the entire land acquisition proceedings initiated under the Central Act 1894, have lapsed in view of Section 24(2) of the New Act. Hence, the present writ petition has been filed.

6. Learned counsel for the petitioner relied upon the judgment of this Court in *W.P.Nos.1091, 10920 & 11535 of 2020 dated 15.09.2020 (M.Palanisamy and others Vs. The State of Tamil Nadu, rep. by its Secretary to Government, Housing and Urban Development Department, Secretariat, Fort St. George, Chennai – 00 009.*

7. Learned counsel submitted that the above order was challenged and the same was confirmed by the Division Bench of this Court in *W.A.Nos.357 of 2017 batch dated 31.01.2023 (N.Devanathan and others Vs. The State of Tamil Nadu, rep. by its Secretary to Government, Housing and Urban Development Department, Secretariat, Fort St. George, Chennai – 00 009).* It has attained finality and no Special Leave Petition has



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been preferred before the Hon'ble Supreme Court of India. Hence, it has reached finality.

8. A counter affidavit was filed on behalf of the third respondent dated 22.07.2024.

9. Learned standing counsel appearing for respondents 2 and 3 Tamil Nadu Housing Board submitted that the Hon'ble Apex Court has settled the dictum of law in the Constitutional judgment in Indore Development Authority Case, wherein it has been observed that "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 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".

10. Learned standing counsel further submitted that the Hosur Housing Unit of Tamil Nadu Housing Board had proposed to acquire the lands for the implementation of a housing scheme in and around Hosur town



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in a phased manner. The Hosur Neighborhood scheme, Phase VII in Hosur village is one of the schemes and it was proposed to acquire the land to an extent of 86.13 acres in Hosur village. The scheme layout was approved by DTCP vide LP/DTCP No.231/2002 in that 85 percent of plots were also sold out. In part of that, TNHB constructed houses and sold it out. The subject land was part of the said scheme. Lands around the subject land were under Court case from the time of award. The subject will be utilized after Court cases are got finalized and the land is more essential for a combined development scheme. If Tamil Nadu Housing Board doesn't have subject land, then it is impossible to implement the comprehensive housing scheme in the lands behind it. Hence, the subject land is more essential for Tamil Nadu Housing Board.

11. Learned standing counsel further submitted that the petitioner's land, measuring to an extent of 0.10.5 Hectares comprised in Survey No.660/2A of Hosur Village and Taluk, Krishnagiri, was acquired through land acquisition proceedings. The petitioner's land having an extent of 0.10.5 Hectares in S.F.No.660/2A was included in 6.26.5 Hectares for which notice under Section 4(1) was published in G.O.Ms.No.300, Housing and Urban



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Development Department, dated 04.03.1991 and 4(1) notification was published in the Government Gazette dated 24.04.1991 and on 10.06.1991, the same was published in local newspaper viz., in 'Dinamalar', 'Murasoli' and 'Dinapuritchi'. 5A enquiry Notice was issued on 16.09.1991. But Nobody Can Attend the 5A Enquiry. The Draft declaration u/s 6 of Land Acquisition has been approved vide G.O.Ms.No.386 of Housing & Urban Development Department, Chennai dated 25.06.1992 and the Award No.10 of 94, dated 02.07.1994 has been passed by the Land Acquisition Officer. The land in S.No.660/2A was handed over to Tamil Nadu Housing Board by the Land Acquisition Officer on 08.12.1994 and the name was also transferred in revenue records in favour of the Tamil Nadu Housing Board in Patta No.444 of Hosur Village.

12. Learned standing counsel further submitted that for the subject land, Award No.10 of 1994 dated 02.07.1994 was passed after following all due processes of law conferred in the Land Acquisition Act 1984. The award amount of Rs.23,86,637/- was deposited in Treasury vide Challan No.275 dated 23.06.1994 for the entire lands covered in the said Award, Out of which the Award Amount of Rs.39,113/- was paid for the subject land to the



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owner of the land. The possession of subject land was handed over to Tamil Nadu Housing Board on 08.12.1994. Because the surrounding lands were under court case from award time, the subject land was vacant. The subject land will be utilized after Court cases are got finalized and the land is more essential for a combined development scheme. The land has been taken over by Tamil Nadu Housing Board and a name transfer made in all revenue records. Subsequently, the layout has got approved from LP/DTCP/N0. 231/2002.

13. Heard both sides and perused the materials placed on record.

14. In the case on hand, the Land Acquisition Proceedings initiated under the Land Acquisition Act 1894, covered by Notification issued under Section 4(1) of Land Acquisition Act, 1894 vide G.O.Ms.No.300 Housing and Urban Development Department dated 04.03.1991 and the 4(1) notification was published in the Government Gazette dated 24.04.1991 and the Award No.10 of 94 dated 02.07.1994 has been passed by the Land Acquisition Officer.



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15. In the counter affidavit itself, it is stated that the land in S.No.660/2A was handed over to the Tamil Nadu Housing Board by the Land Acquisition Officer on 08.12.1994 but no document has been filed to substantiate the same before this Court. There is no Possession Certificate or the Panchanama to prove the possession taken over by the Tamil Nadu Housing Board.

16. It is pertinent to note that the amount which was deposited in the State Bank of India, Hosur, dated 23.06.1994, does not mention the names of the land owner, the survey numbers, the village or to whom the possession has been deposited. In the challan, it is mentioned that “8443, Civil Deposit for works done for public bodies”. The Handing Over and Taken Over Certificate dated 08.12.1994 submitted by the Tamil Nadu Housing Board, in which it is mentioned that the land was handed over by the Senior Revenue Inspector, Hosur Housing Scheme, and handed over the same to the Head Surveyor, Tamil Nadu Housing Board, is not Possession Certificate as contended by the learned standing counsel appearing for respondents 2 and 3 (TNHB).



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17. Having regard to the averments made in the counter affidavit, it is mentioned that name was also transferred in revenue records in favour of the Tamil Nadu Housing Board in Patta No.444 of Hosur Village, was also issued, but the same was not submitted or filed before this Court only the Chitta issued by the Village Administrative Officer, Hosur Town, has been submitted by the Tamil Nadu Housing Board.

18. The judgment of the learned Single Judge of this Court relied on by the learned counsel for the petitioner in *W.P.Nos.1091, 10920 & 11535 of 2020 dated 15.09.2020 (M.Palanisamy and others Vs. The State of Tamil Nadu, rep. by its Secretary to Government, Housing and Urban Development Department, Secretariat, Fort St. George, Chennai – 00 009)*, wherein this Court held as follows:

“30. A close reading of all the above portions culled out from the judgment, clearly point out the fact that drawing of Panchnama of taking possession is the correct mode of taking possession in land acquisition cases, more particularly where the property acquired is a vacant land or a large tract of land. Taking possession by adopting to this mode, gives a lot of authenticity to prove that the land has been taken possession. Under the Transfer of Property Act,



in cases of vacant land, possession always follow title. However, in the land acquisition proceedings, it works the other way round and here the title vests with the State only after taking possession. In other words, title follows possession. This position is very clear on a bare reading of Section 16 of the 1894 Act.

32. The State Government has not filed any counter affidavit in the present case. There is no material available and nowhere any statement has been made as to when the State took possession of the properties from the land owners. The insistence made under Section 24[2] of the Act as well as the judgment of the Constitution Bench is with regard to taking of possession by the State from the land owners. The handing over of possession by Acquiring Body to the Requisitioning Body may not be very relevant for this purpose since it is an internal document between two Departments. This handing over of the properties to the Requisitioning Body will happen only after the possession is taken by the State from the owners of the lands and therefore, it is more consequential in nature.

35. The conclusion of the above findings culminates at Clause [4] in paragraph No.402 of the judgment. Once the compensation amount is tendered to the land owner, as provided under Section 31[1] of the Act, the obligation to pay gets fulfilled. If it is refused to be received by the land owner, that cannot be put against the State and that will not



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amount to non-payment of the compensation amount. Again, where the compensation is refused to be received and the land owner seeks for enhancement of compensation, that will also not amount to non-payment of compensation. Section 31[2] of the Act provides different situations where the compensation tendered by the State does not actually reach the land owner under the following circumstances:-

- i. If the land owner does not consent or receive it ;*
- ii. No competent person having title is available to receive the compensation ;*
- iii. There is dispute as to title over the property among various persons claiming right over the property ; and*
- iv. There is dispute with regard to the apportionment of compensation among the co-owners of the property.*

In all the above four contingencies, the District Collector will have to deposit the amount of compensation in the Court to which a reference under Section 18 of the Act is normally preferred.”

19. Having regard to the admitted facts and the ratio laid down by this Court, it is crystal clear and evident that there is no proof that the subject matter land has been acquired by the Tamil Nadu Housing Board, no patta was filed and that name was also transferred in the



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revenue records in favour of the Tamil Nadu Housing Board.

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20. Taking into consideration the above factual matrix of the case, the land acquisition proceedings initiated under the Land Acquisition Act 1894 in respect of land to an extent of 0.23.0 acres in S.No.660/2, at Hosur Village and Taluk, Krishnagiri District, covered by Notification issued under Section 4(1) of Land Acquisition Act, 1894 vide G.O.Ms.No.300, Housing and Urban Development Department dated 04.03.1991 and Award 10/1994 dated 02.07.1994, is declared as deemed to have lapsed in view of Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-Settlement Act, 2013.

In the result, the writ petition stands allowed. No costs.
Consequently, connected miscellaneous petition is closed.

30.07.2024

cda



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Index : Yes / No

Speaking / Non-Speaking Order

Neutral Citation : Yes / No

J.SATHYA NARAYANA PRASAD, J.

cda

To

1.The Secretary,
Housing & Urban Development Department,
Fort St. George,
Chennai – 600 009.

2.The Managing Director,
The Tamil Nadu Housing Board,
No.33, Anna Salai,
Nandanam, Chennai – 600 035.

3.The Executive Engineer,
Tamil Nadu Housing Board,
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