



W.P.No.19766 of 2017 etc., batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2024

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.No.19766, 21708, 21709, 21710, 25027, 30993, 30994, 30995 and 30996 of 2017, W.P.Nos.1449, 2946, 2947, 11869, 11870, 19927 and 19928 of 2018, W.P.No.11283 of 2019 and W.P.Nos.4898, 4899 and 4900 of 2021 and W.M.P.No.11639 of 2019

W.P.No.19766 of 2017:

1.T.Venkatesh @ T.Chinnabbiah

2.Chinnagurappa

... Petitioners

VS.

1.State of Tamil Nadu

Rep by its, Secretary to Government,
Housing and Urban Development Department
Secretariat, Chennai 600 009.

2.Tamil Nadu Housing Board

Rep by its Chairman – cum – Managing Director,
No.493, Anna Salai,
Chennai – 600 035.

3.The Executive Engineer,

Tamil Nadu Housing Board,
Bagalur Road,
Hosur,
Krishnagiri District.



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4.The Special Tahsildar,
Land Acquisition,
Housing Scheme,
Bagalur Road,
Hosur, Krishnagiri District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Declaration, declaring that the Land Acquisition Proceedings initiated under the Land Acquisition Act, 1894 in respect of land bearing Plot No.29 measuring an extent of 1440 Sq.Ft comprised in Survey No.863 of Chennathur Village, Hosur Taluk, Krishnagiri District covered by Notification issued under Section 4(1) of the Land Acquisition Act, 1894 in G.O.Ms.No.890, Housing and Urban Development Department, dated 29.05.1991 and Section 6 Declaration in G.O.Ms.No.691 Housing and Urban Development Department, dated 09.10.1992 deemed to have lapsed in view of Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

For Petitioners : Mr.R.Bharath Kumar
(in all WPs)

For R1 and R4 : Mr.P.Kumeresan
Additional Advocate General
Assisted by M/s.R.L.Karthiga
(in all WPs)

For R2 and R3 : Mr.S.Ramachandran
(in all WPs)



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COMMON ORDER

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These Writ Petitions are filed seeking a declaration that Land Acquisition Proceedings initiated under the Land Acquisition Act, 1894 in respect of the petitioners land situated in Survey Nos.863, 864 and 844 of Chennathur Village, Hosur Taluk, Krishnagiri District, covered by Notification issued under Section 4(1) of the Land Acquisition Act, 1894, in G.O.Ms.No.890, Housing and Urban Development Department, dated 29.05.1991 and Section 6 Declaration in G.O.Ms.No.691, Housing and Urban Development Department, dated 09.10.1992 deemed to have lapsed in view of Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

2. It is the case of the petitioners that they purchased house sites with small extent in a layout called as 'Ragavendra Nagar' situated in Survey Nos.863, 864 and 844 situated at Chennathur Village of Hosur Taluk, Krishnagiri District during the year 1988 and 1989 through registered Sale Deeds from previous owners. The 1st respondent issued 4(1) notification for acquisition of lands situated in Survey Nos.863, 864 and 844 for formation



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of Housing Scheme to be promoted by 2nd respondent. The 4(1) notification was issued on 29.05.1991. Subsequently, Section 6 declaration was made on 09.10.1992. The acquisition proceedings were challenged by the petitioners through an association called as 'Sri Ragavendra Nagar Residents Welfare Association' in W.P.No.13943 of 1994 and an interim stay of dispossession was also obtained. The writ petition came to be dismissed on 20.07.2001. Sri Ragavendra Nagar Residents Welfare Association filed W.A.No.2832 of 2004 and the same was disposed on 02.08.2004 with the following observation:-

“4. Mr.Subba Reddy, learned counsel for the appellant submitted that as yet the possession has not been taken over even though twelve years have passed after the notification was issued and that he is still in possession of the property. It is for the appellant to choose to file a proper application under Section 48B of the Land Acquisition Land and if such an application is filed it is for the authority to consider it in accordance with law.”

3. It is asserted by the petitioners that though 6 declaration was made as early as 09.10.1992, physical possession has not been taken over by the



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respondents and petitioners continued to be in possession of their property.

It is also averred in the affidavit filed in support of these writ petitions that though award was passed on 10.10.1994 vide Award No.27/1994, the compensation amount has not been paid to the petitioners. Therefore, it is the contention of the learned counsel appearing for the petitioners that the twin conditions laid down in the case of **Indore Development Authority vs. Manoharlal and others** reported in **2020 SCC Online SC 316** had been satisfied and as a consequence, land acquisition proceedings got lapsed under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

4. Per contra, Mr.P.Kumeresan, learned Additional Advocate General appearing for the respondents 1 and 4 and Mr.S.Ramachandran, learned counsel appearing for the respondents 2 and 3 by taking this Court to the Possession Certificate dated 12.12.1994 and 18.03.2002 submitted that possession of the writ petitioners land in Survey No.844 was taken over on 12.12.1994 and possession of the land in Survey Nos.863 and 864 were taken over on 18.03.2002. The learned Additional Advocate General further submitted that the award was passed as early as 10.10.1994 and the award



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amount was deposited in treasury account as early as 16.02.1995. Therefore, it is the specific submission of the learned Additional Advocate General and the learned counsel appearing for the Housing Board that both the conditions mentioned in **Indore Development Authority** case are not satisfied in these cases. The learned Additional Advocate General further submitted that even if any one of the conditions mentioned in **Indore Development Authority** case is not satisfied, there is no lapse under Section 24(2) of New Act. However, in the case on hand, according to the learned Additional Advocate General both the conditions mentioned in the **Indore Development Authority** case are not satisfied and therefore, all the writ petitions are liable to be dismissed.

5. In **Indore Development Authority** case cited supra, the Apex Court laid down under what circumstances the acquisition proceedings initiated under Old Act will get lapsed under Section 24(2) of New Act, the relevant observation of the Apex Court reads as follows:-

“402.(3). The word ‘or’ used in Section 24(2) between possession and compensation has to be read as ‘nor’ or as ‘and’. The deemed lapse of land acquisition proceedings under



Section 24(2) of the 2013 Act takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of land has not been taken nor compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.”

6. Therefore, in order to hold that land acquisition proceedings initiated under Old Act got lapsed under Section 24(2) of New Act of 2013 following conditions shall be satisfied:-

(i) The award should have been passed five years prior to the commencement of the New Act and the same shall be accompanied by following two conditions:-

(a) Physical Possession of the land should not have been taken.

(b) Compensation should not have been paid to the land owners.

Therefore, in all cases where land acquisition proceedings had been initiated under the Old Act and an award had been passed five years prior to the coming into force of the New Act, the Proceedings under the Old Act will



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get lapsed under Section 24(2) of New Act, if following two conditions are satisfied:-

- (a) physical possession has not been taken from the land owners;
- (b) compensation amount has not been paid to the land owners;

7. In the case on hand, admittedly award had been passed long back, well prior to coming into force of New Act. In the light of the law laid down by the Apex Court in *Indore Development Authority* case, we have to see whether the twin conditions laid therein are satisfied in the present case. In the affidavit filed in support of these writ petitions, it was asserted by the petitioners that physical possession has not been taken over from them. However, in the counter affidavit filed on behalf of the respondents, it has been stated that in respect of lands in Survey No.844, physical possession had been taken on 12.12.1994 and in respect of lands in Survey Nos.863 and 864, physical possession had been taken on 18.03.2002. In support of the said averment in the counter affidavit, the certificates signed by Higher Grade Revenue Inspector, Housing Project, Hosur and Chief Surveyor, Tamil Nadu Housing Board, Hosur, dated 12.12.1994 and 18.03.2002 are filed in the typed-set of papers filed by the respondents.



8. A perusal of the certificates would suggest that the Possession Certificates were signed only by the officers of the respondents and no signature was obtained from petitioners or any respectable persons living in the locality. In **Indore Development Authority** case, while considering the question of taking possession from the land owners under Land Acquisition Proceedings, the Apex Court categorically held that preparation of Memorandum or Panchnama by the Land Acquisition Officer in the presence of witnesses would constitute a mode of taking possession of the land, the relevant observation reads as follows:-

“294. In Tamil Nadu Housing Board v. A. Viswam, (supra) it was held that drawing of Panchnama in the presence of witnesses would constitute a mode of taking possession. This court observed:

“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



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the owner/interested person may not cooperate in taking possession of the land.”

9. Ultimately, in Paragraph No.311, it was categorically held as follows:-

“311. We hold that drawing of Panchnama of taking possession is the mode of taking possession in land acquisition cases, thereupon land vests in the State and any re-entry or retaining the possession thereafter is unlawful and does not inure for conferring benefits under section 24(2) of the Act of 2013.”

10. In concluding Paragraph No.402.(7), it was observed as follows:-

“402.(7). The mode of taking possession under the Act of 1894 and as contemplated under Section 24(2) is by drawing of inquest report/ memorandum. Once award has been passed on taking possession under Section 16 of the Act of 1894, the land vests in State there is no divesting provided under Section 24(2) of the Act of 2013, as once possession has been taken there is no lapse under Section 24(2).”

11. Therefore, it is very clear that the accepted mode of taking possession in land acquisition cases as categorically held by Constitution



Bench Judgment in **Indore Development Authority** case, is drawing of Panchnama/Memorandum by the Land Acquisition Officer in the presence of witnesses. In the case on hand, the Possession Certificates relied on by the respondents are documents signed by Officers of the respondent's Department and Housing Board and the signatures of the independent witnesses do not find place. Therefore, it cannot be treated as drawing of Memorandum/Panchnama as held in **Indore Development Authority** case.

12. When the respondents are not able to produce Panchnama signed by independent witnesses to establish that the possession was indeed taken from the petitioners, I am unable to accept the contention raised on behalf of the respondents that possession was taken from the petitioners. The Possession Certificates relied on by the respondents signed by the Officers of the Housing Board and respondent's Department cannot be safely relied upon as a document evidencing taking possession, in the absence of signatures of independent witnesses as held in the **Indore Development Authority** case. Further, there is no evidence available on record to show that subject lands were developed by the Housing Board and sold to the third parties. No Sale Deeds in favour of third parties have been produced



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before this Court. Though a layout drawing prepared by Executive Engineer of Hosur Housing Unit was produced before this Court as if the lands in Survey Nos.863, 864 and 844 were also part of the layout drawings, a close scrutiny of the same would suggest that the drawing was not approved by the Competent Planning Authority. It is only a layout drawing prepared by the Officers of the Housing Board, not approved by the Planning Authority. Therefore, it is clear that respondents are not able to produce any material to show that lands in question were taken over and utilised for Housing Schemes promoted by the Housing Board. In such circumstances, I have no hesitation in coming to the conclusion that the respondents failed to establish the subject lands were taken over from writ petitioners.

13. Coming to the question of payment of compensation, it was asserted by the petitioners that the compensation amount was not paid to them. On the other hand, it was contended by the respondents that at the time of passing award on 10.10.1994, there was a stay of dispossession obtained by Sri Ragavendra Nagar Residents Welfare Association in W.P.No.13943 of 1994 and therefore, the amount was directed to be deposited in court. The learned Additional Advocate General also drawn the



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attention of this Court to the Challan dated 16.02.1995 to fortify his contention that compensation amount was deposited in Treasury Account.

14. A reading of Award dated 10.10.1994 in Award No.27/1994 would suggest that in view of stay by this Court, the compensation amount was directed to be deposited before the Court. However, the respondents have not deposited the amount before the Court but deposited it in Treasury Account as seen from the copy of Challan included in the respondent's typed-set of papers. As rightly pointed out by the learned counsel appearing for the petitioners that in the backside of the Challan while mentioning the award number, it was originally written as 25/94 and thereafter, it was rounded and corrected as 27/94. Further, the date of award was mentioned as 12.10.1994 as against actual date of 10.10.1994. Therefore, it is not clear whether the Challan dated 16.02.1995 produced in the typed-set of papers filed by the respondents is relating to the Award No.27/94 or 25/94. Further, in **Indore Development Authority** case, while considering the question of payment of compensation amount to the land owners, the Apex Court held as follows:-



“402.(5). In case a person has been tendered the compensation as provided under Section 31(1) of the Act of 1894, it is not open to him to claim that acquisition has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in court. The obligation to pay is complete by tendering the amount under Section 31(1). Land owners who had refused to accept compensation or who sought reference for higher compensation, cannot claim that the acquisition proceedings had lapsed under Section 24(2) of the Act of 2013.”

15. Therefore, it is clear that there must be some evidence on the part of respondents to show that compensation amount was actually tendered to the land owners and they refused to receive the same and as a consequence, the amount was either deposited in the court deposit or in the treasury deposit. In the case on hand, absolutely there is no evidence available on record to show that the amount was tendered to the land owners and refused by them. In the award, it was stated that in view of pendency of writ petition and interim stay of dispossession, the amount was directed to be deposited in the court. However, the respondents have not deposited the amount before the Court but deposited it in treasury account.



16. As per the law laid down in **Indore Development Authority** case, even if amount is deposited in the interest earning treasury account that is sufficient provided prior to the deposit, amount was tendered to the land owners and refused by them. The writ petition filed by the petitioner was dismissed as early as 20.07.2001 and writ appeal filed by the petitioner was also disposed of as early as 02.08.2004. The respondents could have at least tendered the amount to the land owners after disposal of the writ appeal. Now, 20 years have gone from the date of disposal of writ appeal, still the amount appeared to be in treasury deposit. Absolutely, there is no evidence available on record to show why there was no attempt made by the respondents to tender the amount to the land owners at least after disposal of the writ appeal in the year 2004.

17. It is also brought to the notice of this Court that similar writ petitions filed by the other land owners covered by the same Land Acquisition Notification in W.P.No.27224 of 2014 and W.P.Nos.9753 to 9755 of 2015 and the same were allowed by this Court by order dated 04.04.2016 declaring lapse of land acquisition notification issued under Old Act.



18. In such circumstances, I have no hesitation in coming to the conclusion that the respondents failed to show that the compensation amount was tendered to the land owners and refused by them. The respondents have not produced any document to show that the amount was tendered to the petitioners or the previous land owners in whose favour the revenue records stood at the time of acquisition. Mere deposit of the compensation amount in the treasury account would not amount to tendering of the compensation amount to the land owners. Therefore, I hold, the respondents failed to establish that compensation amount was actually tendered to the land owners and refused by them.

19. In view of the discussion made earlier, the twin conditions mentioned in ***Indore Development Authority*** case namely failure to take possession from the land owners and failure to tender the compensation amount to the land owners are satisfied in the present case. Therefore, the Land Acquisition Proceedings initiated under the Old Act got lapsed under Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.



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20. Accordingly, all the Writ Petitions are Allowed. No costs.

Consequently, the connected writ miscellaneous petition is closed.

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Index : Yes

Speaking order: Yes

Neutral Citation: Yes

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To

1. The Secretary to Government,
State of Tamil Nadu
Housing and Urban Development Department
Secretariat, Chennai 600 009.

2. The Chairman – cum – Managing Director,
Tamil Nadu Housing Board
No.493, Anna Salai,
Chennai – 600 035.

3. The Executive Engineer,
Tamil Nadu Housing Board,
Bagalur Road,
Hosur, Krishnagiri District.

4. The Special Tahsildar,
Land Acquisition, Housing Scheme,
Bagalur Road, Hosur, Krishnagiri District.



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S.SOUNTHAR, J.

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