



W.A.(MD)No.2060 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.06.2024

WEB COPY

CORAM

**THE HON'BLE MR.JUSTICE R.SURESH KUMAR
AND
THE HON'BLE MR.JUSTICE G.ARUL MURUGAN**

**W.A(MD)No.2060 of 2023
and
C.M.P.(MD)No.16484 of 2023**

1.The State of Tamil Nadu,
represented by its Secretary,
Adi Dravidar and Tribal Welfare Department,
Fort St.George, Chennai – 600 009.

2.The District Collector,
Virudhunagar District, Virudhunagar.

3.The Special Tahsildar,
Adi Dravidar Welfare (Land Acquisition),
Srivilliputhur, Virudhunagar District.

... Appellants

vs

K.Natarajan

...Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order of this Court dated 01.09.2022 passed in W.P(MD)No.21151 of 2014.



W.A.(MD)No.2060 of 2023

For Appellants : Mr.Veera Kathiravan
Additional Advocate General
assisted by Mr.N.Sathish Kumar
Additional Government Pleader

For Respondent : Mr.PT.S.Narendra Vasan

JUDGMENT

(Judgment of this Court was delivered by **G.ARUL MURUGAN, J.**)

The Writ Appeal is directed against the order, dated 01.09.2022 in W.P.(MD)No.21151 of 2014 in respect of allowing the Writ Petition for payment of compensation under the new Act.

2.The short facts involved in the appeal is that that the respondent/Writ Petitioner was the owner of a land measuring 0.41.0 hectares in S.F.No.1543/3 (part) and 0.18.0 hectares in S.F.No.1544/2 (part) of Solapuram Village, Rajapalayam Taluk, Virudhunagar District, which was sought to be acquired for the purpose for providing house sites for Adi Dravidars of Solapuram and Kunnakudi Villages. Section 4(1) Notification was issued under the Land Acquisition Act, 1894, herein after called as the ‘Act’ vide G.O.No.1862, dated 15.11.1990, which was followed by a declaration under Section 6 issued vide G.O(3-D)No.952, Adi Dravidar and



W.A.(MD)No.2060 of 2023

Tribal Welfare Department, dated 11.10.1991. An enquiry under Section 5A was conducted and pursuant to which, an award was passed on 26.03.1992 by fixing a compensation of Rs.9,000/- per acre and a sum of Rs.18,187/- was awarded, as compensation. As the respondent objected and sought for reference, the same was referred under Section 18 of the Act, which was taken on file in L.A.O.P.No.8 of 2002 before the Subordinate Court, Srivilliputhur. The Land Acquisition Tribunal, by award, dated 28.02.2006 enhanced the compensation from Rs.9,000/- per acre to Rs.1,05,000/- per acre. Since the enhanced compensation, as fixed by the Tribunal, was not paid, the respondent herein filed Execution Petition in E.P.No.71 of 2010. However even then the appellants did not pay or deposit the amount, as awarded by the Tribunal.

3.In the meantime, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013, (hereinafter referred as “the new Act”) was promulgated and the new Act came into force on 01.01.2014 and the respondent preferred the Writ Petition to declare that the land acquisition proceedings initiated by the appellants got lapsed in view of Section 24(2) of the new Act or in the alternative, to declare that the respondent is entitled for compensation under the new Act,

3/20



W.A.(MD)No.2060 of 2023

as per proviso to Section 24(2) of the new Act. Pursuant to the filing of the Writ Petition, the appellants had deposited the award, as fixed by the Tribunal, only on 14.09.2018.

4.The learned Judge after taking note of the above factual aspects and following the judgment of the Hon'ble Supreme Court in the case of ***Indore Development Authority vs Manoharlal and others***, reported in ***(2020) 8 SCC 129***, dismissed the Writ Petition by holding that the land acquisition proceedings under the old Act did not lapse, as the possession of the property has been taken from the respondent, which was given voluntarily through a letter, dated 29.12.1989, ie., even before the 4(1) Notification and also the orders of assignment were also given to the beneficiaries on 02.06.1992. However, the learned Judge found that since the compensation, as fixed by the Tribunal in the LAOP, was not paid or not deposited prior to coming into force of the new Act, held that the respondent is entitled for enhanced compensation under the new Act. In so far as allowing the Writ Petition for enhanced compensation under the new Act, the Government has preferred the above appeal.

5.Mr.Veera Kathiravan, learned Additional Advocate General
4/20



W.A.(MD)No.2060 of 2023

appearing for the appellants argued that the land acquisition proceedings were initiated, as early as on 15.11.1990, by issuance of 4(1) Notification and the award was passed on 26.03.1992 and the same was also paid. In fact, based on the consent letter given by the respondent, the possession of the property was taken in the year 1989 itself and also assignment orders in favour of the beneficiaries have also been issued. The learned Additional Advocate General further contended that when the learned Judge has rightly dismissed the Writ Petition by holding that since the possession was voluntarily handed over even prior to 4(1) Notification, therefore, the land acquisition proceedings under the old Act will not lapse, however, had erroneously allowed the alternative prayer for enhanced compensation under the new Act. He further contended that when once the award amount, as fixed under the award, dated 26.03.1992, has been received by the respondent, even though under protest, the respondent will not be entitled to seek for enhanced compensation under the new Act. By relying on proviso to Section 24(2) of the Act, he submitted that when once the award is passed under the old Act and the award amount is paid, the entire land acquisition proceedings under the old Act gets completed and any enhanced compensation awarded by the Land Acquisition Tribunal cannot be a basis to hold that compensation was not paid to seek remedy under the proviso to

5/20



W.A.(MD)No.2060 of 2023

Section 24(2) of the Act, he contended.

WEB COPY

6.The learned Additional Advocate General further submitted that when already the amount, as awarded by the Land Acquisition Tribunal in L.A.O.P., has been deposited before the Subordinate Court, Srivilliputhur, on 14.09.2018, at the maximum, the respondent can only be eligible for any remedy under the old Act in respect of interest and cannot seek enhanced compensation under the new Act and sought for allowing of the Writ Appeal.

7.The learned Counsel for the respondent submitted that in as much as the appellants did not bother to make the payment, as fixed by the Tribunal, even after filing of the Execution Petition, the award which was passed as early as on 28.02.2006, was deposited only on 14.09.2018, the respondent is entitled for the compensation under the new Act, as the new Act came into force on 01.01.2014, which has been rightly taken note of by the learned Judge and therefore, sought for dismissal of the appeal.

8.Heard the learned Counsel on either side and perused the materials available on record.

6/20



W.A.(MD)No.2060 of 2023

WEB COPY

9. Admittedly, the respondent herein is the owner of the property for which the appellants had issued 4(1) Notification under the Land Acquisition Act, 1894 on 15.11.1990 and followed by the publication of the declaration under Section 6 on 11.10.1991. Pursuant to the award enquiry, an award has also been passed by the Land Acquisition Officer on 26.03.1992. In fact, even prior to the issuance of 4(1) Notification, based on the consent letter given by the respondent, possession of the property had been taken on 29.12.1989 and also assignment orders have also been issued in favour of the beneficiaries on 02.06.1992. The award amount, as fixed in the award has been received by the respondent under protest and since he sought for reference, the same was referred to the Land Acquisition Tribunal under Section 18 and taken on file in L.A.O.P.No.8 of 2002 on the file of the Subordinate Court, Srivilliputhur. Further, the Land Acquisition Tribunal, by award, dated 28.02.2006, has enhanced the compensation from Rs. 9,000/- per acre to Rs.1,05,000/- per acre.

10. Even though the compensation was fixed by the Tribunal, as early as on 28.02.2006, the same was not paid and the respondent herein filed an Execution Petition in E.P.No.7 of 2010. When the respondent had



voluntarily surrendered the possession of the property even prior to 4(1) notification itself and also 21 years lapsed and also the Execution Petition was filed, still the appellants did not pay the compensation amount, as fixed by the Tribunal. In the meantime, the new Act was promulgated, which came into force on 01.01.2014. Section 24 of the new Act deals with the situation, where the proceedings under the old Act will get lapsed and also in respect of the payment of higher compensation. Section 24 of the new Act is extracted hereunder for easy reference:

“24.Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases. (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894,

(a) where no award under Section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said Section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2)Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said Section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not



W.A.(MD)No.2060 of 2023

been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under Section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act”.

11. In view of the above provision, the respondent herein preferred the Writ Petition on 17.12.2014, seeking to declare that the land acquisition proceedings under the Land Acquisition Act, 1984, as lapsed or in the alternative, to allow for enhanced compensation under the new Act. After four years from the date of filing of the Writ Petition, the appellants chose to deposit the award amount, as fixed in the LAOP before the Subordinate Court, Srivilliputhur on 14.09.2018.

12. By taking note of the fact that the amount, as fixed by the Land Acquisition Tribunal, as early as on 28.06.2006, was neither paid nor deposited in the Court or Treasury till 01.01.2014, the date on which, the new Act came into force and the same was deposited only on 14.09.2018, the learned Judge by relying on the judgment of Hon'ble Supreme Court in ***Indore Development Authority*** case, though dismissed the Writ Petition in respect of the prayer to declare that the proceedings got lapsed, but however, allowed the relief of enhanced compensation under the new Act.



WEB COPY

13. In fact, on the issue in respect of the acquisition proceedings getting lapsed in view of Section 24(2) of the new Act on non-fulfillment of the twin conditions, the Hon'ble Constitutional Bench of Supreme Court in the decision reported in **(2020) 8 SCC 129, Indore Development Authority case**, answered the reference and the relevant portion is extracted hereunder:

“366. In view of the aforesaid discussion, we answer the questions as under:

1. Under the provisions of Section 24(1)(a) in case the award is not made as on 1.1.2014 the date of commencement of Act of 2013, there is no lapse of proceedings. Compensation has to be determined under the provisions of Act of 2013.

2. In case the award has been passed within the window period of five years excluding the period covered by an interim order of the court, then proceedings shall continue as provided under Section 24(1)(b) of the Act of 2013 under the Act of 1894 as if it has not been repealed.

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 Act of 2013 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.

4. The expression 'paid' in the main part of Section 24(2) of the Act of 2013 does not include a deposit of compensation in court. The consequence of non-deposit is provided in proviso to Section 24(2) in case it has not been deposited with respect to majority of land holdings then all beneficiaries (landowners) as on the date of notification for land acquisition under Section 4 of the Act of 1894 shall be entitled to compensation in accordance with the provisions of the Act of 2013. In case the obligation



WEB COPY



W.A.(MD)No.2060 of 2023

under Section 31 of the Land Acquisition Act of 1894 has not been fulfilled, interest under Section 34 of the said Act can be granted. Non-deposit of compensation (in court) does not result in the lapse of land acquisition proceedings. In case of non-deposit with respect to the majority of holdings for five years or more, compensation under the Act of 2013 has to be paid to the "landowners" as on the date of notification for land acquisition under Section 4 of the Act of 1894.

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.

6. The proviso to Section 24(2) of the Act of 2013 is to be treated as part of Section 24(2) not part of Section 24(1)(b).

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).

8. The provisions of Section 24(2) providing for a deemed lapse of proceedings are applicable in case authorities have failed due to their inaction to take possession and pay compensation for five years or more before the Act of 2013 came into force, in a proceeding for land acquisition pending with concerned authority as on 1.1.2014. The period of subsistence of interim orders passed by court has to be excluded in the computation of five years.

9. Section 24(2) of the Act of 2013 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 Act of 2013, i.e., 1.1.2014. 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."



WEB COPY

14. In so far as the payment of compensation, the interpretation of Section 24(2) and its proviso, as made in the ***Indore Development Authority*** case cited supra, is as follows:

187.If we hold that even if the award has been passed within 5 years and the compensation amount has not been deposited with respect to such an award passed in the window period, higher compensation to follow if it is not deposited with respect to the majority of the holdings would amount to re-writing the statute. The provision of section 24(1)(a) is clear if an award has not been passed, higher compensation to follow. No lapse is provided. In case award has been passed within the window period of section 24(1)(b), inter alia, the provisions for compensation would be that of the Act of 1894. The only exception to section 24(1) is created by the non-obstante clause in section 24(2) by providing that in case the requisite steps have not been taken for 5 years or more, then there is lapse as a negative condition. The proviso contemplates higher compensation, in case compensation has not been paid, and the amount has not been deposited with respect to the majority of the holdings, to all the beneficiaries under the Act of 2013, who were holding land on the date of notification under Section 4. If the proviso is added, section 24(1) (b) will destroy the very provision of section 24(1)(b) providing proceedings to continue under the Act of 1894, which is not the function of the proviso to substitute the main Section but to explain it. It is not to cause repugnancy with the main provision. The function of the proviso is to explain or widen the scope. It is a settled proposition of law that the proviso cannot travel beyond the provision to which it is attached. The proviso would travel beyond the Act of 1894 as it is the intention of section 24(1)(b) the proceedings to govern by the Act of 1894. Thus, the proviso has no space to exist with section 24(1)(b), and it has rightly not been attached by Parliament, with Section 24(2) and has been placed at the right place where it should have been.

188.It is in the cases where there is no lapse under section 24(2) if either step has been taken the proviso operates to provide higher compensation. In the cases where possession has been



WEB COPY



W.A.(MD)No.2060 of 2023

taken, but the amount has not been deposited as required under the proviso, higher compensation to all the beneficiaries has to follow as once possession has been taken, the land is vested in the State and payment is necessary for any acquisition. As such, Parliament has provided in such cases higher compensation to follow as envisaged in the proviso to section 24(2). Lapse of acquisition is provided only in the exigencies where possession has not been taken, nor compensation has been paid in the proceedings for acquisition pending as on the date on which the Act of 2013 came into force, then the State Government has to initiate fresh proceedings if it so desires. The proviso is part of the scheme of section 24(2), and the entire provision of section 24(2), including the proviso, operates when inaction is there for a period of 5 years or more, as contemplated therein.

189. The fundamental consideration is that the proviso cannot supersede the main provision of section 24(1)(b) and destroy it. The function of the proviso is to except out the pressing provisions to which it is attached. In case possession has been taken, but only a few beneficiaries have been paid, there is no lapse. Even if nobody has been paid, there is no lapse once possession has been taken. In case compensation has not been deposited with respect to the majority of the holdings, there is no lapse, but higher compensation to all the beneficiaries has to follow. The provision provides equal treatment to all, not only to a few- and, in effect, is similar to Section 28A of the Act of 1894- in case the obligation to pay or deposit has not been discharged and there is no arrangement of money to discharge the obligation either by paying or depositing in the Reference Court and, if permissible, in the treasury. Section 24(2) saves land which has been vested in the State, once award has been passed and possession of land. However, in case compensation has not been deposited with respect to majority of landowners, in any given award, all beneficiaries have to be paid higher compensation under the new Act”.

15. In view of proviso to Section 24(2) of the new Act and the judgment of the Hon'ble Supreme Court, as extracted above, makes it clear



W.A.(MD)No.2060 of 2023

that the proceedings initiated under the Land Acquisition Act, 1984, will not lapse, if the possession has been taken and even if the compensation has not been paid. Only if both of the twin conditions in respect of taking over possession and payment of compensation is not made within the period of five years preceding the new Act coming into force, then the proceedings initiated under the old Act will lapse. However, if the compensation has not been deposited in respect of the majority of the holdings, then the higher compensation has to be paid to all the beneficiaries covered under the Notification.

16.The word “*compensation*” cannot be construed to only refer the award amount, but it will include the enhanced compensation, if any awarded by the Statutory Tribunal. In other words, the compensation is the value fixed for the land, that has been acquired from the land owner and if the statutory authority had fixed a lower value in the award passed under Section 11, which has been assessed and rightly enhanced by the statutory Tribunal under Section 18, then the enhanced compensation awarded by the statutory Tribunal would get merged with the award passed by the statutory authority. Therefore, we are not able to appreciate the arguments advanced by the learned Additional Advocate General that merely because, the

14/20



W.A.(MD)No.2060 of 2023

amount, as fixed in the award by the Land Acquisition Officer, has even though under protest has been received by the respondent, the subsequent enhancement of the award, as fixed by the Land Acquisition Tribunal, cannot be taken into account to hold that the compensation amount has not been paid.

17.In the instant case, even though the award amount, as fixed by the Land acquisition Officer through the award, dated 26.03.1992, was received by the respondent under protest, still the same was referred to the Land Acquisition Tribunal under Section 18 of the Land Acquisition Act, 1984, and the Land Acquisition Tribunal has passed an award as early as on 28.04.2006 enhancing the compensation from Rs.9,000/- per acre to Rs. 1,05,000/- per acre. Even after the respondent had filed an Execution Petition, the appellant had not come forward to pay the compensation or make any deposit even before the Court or Treasury, as recorded by the learned Judge.

18.When the compensation for the lands acquired from the respondent has been quantified by the enhanced amount, as fixed by the Land Acquisition Tribunal, as early as on 28.02.2006, the non payment of
15/20



W.A.(MD)No.2060 of 2023

the enhanced amount allows the respondent to seek for compensation under the new act and the argument that since the compensation as fixed by the Land Acquisition Officer was paid and that will absolve the liability of the appellant is rejected. When admittedly, the compensation amount, as quantified by the Land Acquisition Tribunal, as early as on 28.02.2006, was not paid till the new Act came into force on 01.01.2014, which is well beyond the period of 5 years and the appellants has chosen to deposit the quantified enhanced amount only on 14.09.2018, much long after coming into force of the new Act and that too, after the period of four years from the date of filing of the Writ Petition, we have no hesitation to hold that the appellants have not paid the compensation till the new Act came into force.

19.The proviso to Section 24(2) of the new Act and the decision rendered by the Hon'ble Constitutional Bench of the Supreme Court in ***Indore Development Authority*** case makes it clear that if the compensation amount for majority of the land holdings has not been paid till 5 years from the date of passing of the award, then all the land owners, as found in the notification, are entitled for the higher compensation. As such even the land owners, who had received the entire compensation, are entitled to receive the enhanced compensation under the new act, in case if majority of the land

16/20



W.A.(MD)No.2060 of 2023

owners covered under the same acquisition notification has not been paid with the compensation.

20. In the present case, the compensation amount for the lands acquired, as fixed by the Land Acquisition Tribunal under Section 18, which was quantified, as early as in 2006, has not been paid or deposited till the commencement of the new Act, which is more than a period of 5 years. The LAOP proceedings before the Land Acquisition Tribunal under Section 18 is only the continuation of the proceedings in determining the correct value of the acquired land more than that is fixed in the award under Section 11. Therefore it can only be safely concluded that the enhanced compensation, as fixed by the Land Acquisition Tribunal, will form part of the compensation fixed in the original award, which amounts to the compensation not being paid to the majority of the land holdings on the date of coming into force of the new Act.

21. Therefore, for all the above reasons, we hold that since the compensation amount, as quantified by the Land Acquisition Tribunal on 28.02.2006, was not paid or deposited before commencement of the new Act on 01.01.2014, which is beyond the period of 5 years, the respondent is

17/20



W.A.(MD)No.2060 of 2023

entitled for enhanced compensation under the new Act in view of the proviso to Section 24(2) of the Act and the decision rendered by the Hon'ble Supreme Court in *Indore Development Authority* case.

22.The learned Judge has rightly taken note of the above legal aspects and have arrived at a just conclusion, which needs no interference at the hands of this Division bench. Accordingly, the order passed by the learned Judge is sustained. In the result, the Writ Appeal stands dismissed. However, there shall be no order as to costs.

23.At this juncture, the learned Additional Advocate General appearing for the appellants submitted that since the appellants are intending to make the enhanced compensation, as per the new Act, as directed by the Writ Court, seeks indulgence of this Court to grant three months time to make the payment to the respondent. Having considered the same, while dismissing the Writ Appeal, we are inclined to give a period of three months for the appellants to pay the enhanced compensation under the new Act, as directed in the Writ Petition to the respondent, from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

18/20



WEB COPY



W.A.(MD)No.2060 of 2023

**[R.S.K., J] & [G.A.M., J]
07.06.2024**

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

cmr



WEB COPY



W.A.(MD)No.2060 of 2023

R.SURESH KUMAR, J.

AND

G.ARUL MURUGAN, J.

cmr

Judgment made in
W.A(MD)No.2060 of 2023

07.06.2024