



W.P.(MD)No.11013 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

<i>Judgment Reserved On</i>	<i>Judgment Pronounced On</i>
31.07.2024	16.08.2024

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No. 11013 of 2020
and
W.M.P.(MD)No.14827 of 2023

1. A.R.Jayaraman
2. A.R.Udhayasankaran
3. A.R.Senthilkumar

... Petitioners

Vs.

1. The State of Tamil Nadu,
Represented by the Commissioner and Secretary to Government,
Housing Department,
Fort. Saint George, Chennai-600 009.
2. The District Collector of Thanjavur,
(Land Acquisition Officer),
Office of the District Collectorate,
Thanjavur District.
3. The Revenue Divisional Officer,
(Previous Notice Sent to the Sub-Collector),
(Land Acquisition Officer),
Office of the Revenue Divisional Officer,
Kumbakonam, Thanjavur District.

... Respondents



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PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of ***Writ of Mandamus***, directing the Respondents to initiate proceedings under Section 24 of the Act 30/2013 The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and pay the Compensation amount to the Petitioners for the lands in T.S.No.1031/2, Extent of 0 Acre, 42169 Sq. ft. situated at 113 Pazhavatthankattalai, Kumbakonam, Thanjavur District mentioned in the earlier Land Acquisition Notice R.C.15351/78 Award No. 1/79 dt.08.01.1979 for T.S.No.1031/2, Extent of 0 Acre 42169 square feet situated at 113 Pazhavatthankattalai, Kumbakonam, Thanjavur District (now New Bus Stand Part and John Selvaraj Nagar Part, Kumbakonam) which was mentioned in the Representation dated 20.02.2020, and replied by the 2nd Respondent on 04.03.2020.

For Petitioners	: Mr.V.Santharaman
For Respondents	: Mr.Veera Kathiravan Additional Advocate General Assisted by Mr.B.Saravanan, Additional Government Pleader

ORDER

The petition is filed for writ of Mandamus to initiate proceedings under section 24 of the Act 30/2013 the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and



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to pay the compensation amount to the petitioners for the lands in T.S.No.1031/2, Extent of 0 Acre, 42169 Sq. ft. situated at 113 Pazhavatthankattalai, Kumbakonam, Thanjavur District mentioned in the earlier Land Acquisition Notice R.C.15351/78 Award No. 1/79 dated 08.01.1979 for T.S.No.1031/2, Extent of 0 Acre 42169 sq. ft. situated at 113 Pazhavatthankattalai, Kumbakonam, Thanjavur District (now New Bus Stand Part and John Selvaraj Nagar Part, Kumbakonam) based on the Representation dated 20.02.2020 and reply by the 2nd Respondent on 04.03.2020. The petitioners are seeking to held the earlier acquisition proceedings has lapsed.

2. The brief facts as stated in the affidavit is that the 1st petitioner A.R.Jayaraman and the 2nd petitioner A.R.Udhayasankaran are brothers and the 3rd petitioner is the son of the deceased brother A.R.Ragavan. Originally the father namely A.R.Ramasamy was the owner of the property in question. The said A.R.Ramasamy died on 10.04.1992 leaving behind the legal heirs namely A.R.Nannabai (wife), A.R.Ragavan (son), A.R.Jayaraman (son), A.R.Gowri (daughter) and A.R.Udhayasankaran (son). The said A.R.Nannabai (mother of the



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petitioners) died on 22-09-2009. The said A.R.Ragavan (one of the brothers of the petitioner 1 and 2 and father of the 3rd petitioner) died on 26-06-2003 leaving A.R.Rukmani, A.R.Senthil Kumar and Rajarajeswari as his Legal heirs and for them the 3rd petitioner A.R.Senthil Kumar is filing the writ petition. The said A.R.Gowri died in Salem, hence at present the 1st petitioner A.R.Jayaraman and A.R.Udhayasankaran are the surviving legal heirs of A.R.Ramasamy. Further the said A.R.Senthil Kumar is one of the legal heir of A.R.Ragavan who died subsequently on 26-06-2003.

3. The present writ is filed by the petitioners for themselves and on behalf of other legal heirs of A.R.Gowri (died) and A.R.Ragavan (died). The Land Acquisition Award Notification Naka. A2/14508/76 dated 13-07-1977 was issued by the 2nd respondent, but that Notification was quashed by the Hon'ble Court in W.P.No.2400 & 2508 to 2511/1977 on 13-02-1978 which has been mentioned in W.P.470 to 472/1979, the subsequent writ filed by the father A.R.Ramasamy and two others. Hence a second Notification for the same Property was issued in Naka.A2/15351/78A2 on 10-12-1978. Hence all the petitioners are filing the present writ petition as the legal heirs of deceased



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A.R.Ramasamy who was the owner of the property in T.S.No.1031/2, 0-42169 sq. ft. situated at Kumbakonam and the said property was acquired under Land Acquisition Notice Na.Ka.A2/15351/78A2 dated 10-12-1978 by Sub-Collector Office, Kumbakonam and the disputed property is shown in Page 2, Item 7 of the impugned notice.

4. The petitioner submitted that his father had filed writ petition against the 1st and 3rd respondents challenging the earlier declaration under Section 6 of the Act on 22.06.1977 and the same was quashed stating that it was a colourable exercise of power by the Hon'ble High Court, Chennai in W.P.Nos. 2400 & 2508 to 2511 of 1977 dated 13.02.1978 and the same has been mentioned in the subsequent writ petition filed by the petitioners father in W.P.No.470, 471 and 472 of 1979 batch. Subsequently, the 3rd respondent Revenue Divisional Officer, Kumbakonam (hereinafter referred to as RDO) issued Na.Ka.No.A2/15351/78A2 for the same survey number for the same purpose to be exercised by the 3rd Respondent RDO and the same was heard by the High Court on 13.10.1981 and was disposed stating that "the mere fact that only a token payment is to be made by the Government from out of the Public Revenue for the



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purpose of Acquisition of certain lands stated to be for public purpose does not render the proceedings colourable or fraud of the statute.” Subsequent to the dismissal order dated 13.10.1981, no notice of possession was issued to the petitioner’s father, no compensation amount was paid to the petitioner’s father under the Land Acquisition Act 1/1894 for the Land T.S.No.1031/2, 0-42169 square feet based on Land Acquisition Notice Na.Ka.No.A2/15351/78A2 dated 10-12-1978 of Sub-Collector Office, Kumbakonam. But the property of the petitioner’s father is shown in Page 2, Item 7 of the Notice as "A.R.Ramasamy T.S.No.1031/ 2, 0-42169 square feet”.

5. The petitioner’s father died on 10.04.1992, at that time the petitioners was employed elsewhere and the petitioners did not know anything about the Land Acquisition Proceedings dated 10-12-1978 (received on 17-12-1978) which notice was challenged in W.P.Nos.470 of 1979 to 472 of 1979 which was ordered on 13-10-1981. Subsequently the petitioner’s brother A.R.Ragavan and petitioner had issued Notice dated 28.07.2000 to the 3rd respondent RDO narrating the facts and the respondents had send reply letter dated 14-10-2000 in Na.ka.5051/2000/A2, wherein the 3rd respondent has given



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false information as if the compensation amount has been paid under Award 1/79, dated 08-01-1979 before the Kumbakonam Sub-Court and directed the petitioner's to approach the Sub-Court, Kumbakonam. However, the petitioners could not trace anything from the Sub-Court, Kumbakonam or from the 3rd respondent office since they did not give any further information. Hence, notice dated 16.08.2018 was issued on behalf of the other legal heirs of A.R.Ramasamy including the petitioner under Section 24 of the Central Act 30/2013 the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, but no reply was issued by the 3rd respondent. Subsequently, with great difficulty by filing a third-party application to the Land Acquisition Proceedings the petitioner got the copies pertaining to Award 1/1979 passed by the 3rd respondent RDO, which was referred to the Sub Court, Kumbakonam. The relevant Land Acquisition Reference Petitions are L.A.O.P.Nos.29/1979, 30/1979, 31/1979, 43/1979 and L.A.O.P.9/1980, L.A.O.P.No.10/ 1980 and L.A.O.P.11/1980. All the above stated reference L.A.O.P. Petitions pertains to some other parties mentioned in the above stated Na.Ka.15351/78-12 dated 10.12.1978. The petitioner's father's name was not found in any of the Reference Land Acquisition Petitions as informed by the 3rd



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respondent RDO in his letter issued in Pa.Mu.5051/2000 2 dated 14-10-2000, hence it is evident the same is false.

6. Hence, it is quite clear that the 3rd respondent, who is the Land Acquisition Officer after taking possession of land without notice to the petitioner's father in the acquisition proceedings, did not also deposit any amount as stated by the respondents inspite of the fact that the said land was mentioned in Page 2, Item No.7 of the above stated Land Acquisition Notice. Hence, after getting all documents from the Kumbakonam Sub-Court, which is the Reference Court under Land Acquisition Act and after the issuance of section 24 notice under Act 30/2013 as referred, the petitioners filed a fresh notice / representation on 20.02.2020 narrating all the matters and annexing all the Land Acquisition documents to the 2nd respondent District Collector and the 3rd respondent the Sub-Collector / Land Acquisition Officer, Kumbakonam. Even though the possession was taken by the 3rd respondent and handed over to the beneficiary party on the basis of the earlier Na.Ka.15351/78-Aa2 dated 10.12.1978 mentioned as Item No.7 in T.S.No.1031/2 to an extent 0.42169 square feet, no amount was paid to the petitioner's father under Act 1/1894. Since no notice was given before



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taking possession under Land Acquisition Act 1/1894 and no compensation amount was paid for the above-mentioned Land, it has to be presumed that the 3rd respondent has played a fraud on the land owners. Since possession is taken and no amount is paid to the petitioners inspite of the previous writ petitions, the provisions of section 24 of the Central Act 30/2013 namely Section 24 (2) proviso of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is clearly applicable to petitioners for the land acquired under Na.Ka.15351/78-2 dated 10.12.1978 for item 7 in T.S.No.1031/2 to an extent 0-42169 square feet, which was the subject matter of earlier W.P.470 /1979, 471/1979, and 472/1979 dismissed vide order dated 13.10.1981. At present if calculated under the Act 30/2013 under Section 26 read with Sections 24 and 24 (2) of Act 30/2013 the estimated compensation payable to the petitioner under the New Act 30/2013 will be worth several crores which may extend to more than ten crores.

7. The 2nd respondent District Collector had considered the representation / notice issued under Sec 24 of Act 30/2013, thereafter directed the 3rd respondent to take action under the New Act by letter dated 04-03-2020, but



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the 3rd respondent has not taken any action. Hence the present writ petition to pay compensation under New Act.

8. The 3rd respondent had filed preliminary counter dated 14.10.2020 wherein it is stated that the writ petition as framed is unsustainable in law, liable to be dismissed in limine and further the writ petition is hit by limitation / laches. And submitted that the land acquisition proceedings, when had taken in a single slot and awarding compensation had taken place simultaneously to other litigants and majority of the people had received the settlements, hence it is strange that these writ petitioners coming with new prayer as if they have not received any compensation in accordance with the provisions of the Land Acquisition Act and that too as if notice itself not received is totally denied by these respondents. It is an admitted fact by the petitioners themselves that they had received the communication passed in Pa.Mu.5051/2000A2 dated 14.10.2000, which would show that the petitioners had knowledge, hence the petitioners had not come with clean hands and just want to make use of the new Act 30 of 2013 in their favour and the same unacceptable, since after 2000 there has been a total lapse of 20 years. This itself would show the petition is hit by limitation. Further the files



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could have been destroyed also and these respondents reserves their right to file additional counter and prays to dismiss the writ petition with huge cost.

9. Thereafter the Court had issued interim order dated 13.07.2023 directing the respondents to deposit Rs.10,00,000/-. The respondents had filed petition to vacate the interim order along with detailed counter, wherein it is stated that originally the Housing and Urban Development Department had issued notification for land acquisition for the purpose of constructing houses to the members of Kumbakonam Municipal employees, Cooperative House Building Society, Kumbakonam and the said notification was published in the Gazette No.343 dated 20.11.1978, wherein several lands were proposed to acquire under the Land Acquisition Act 1894. The land situated in T.S.No.1031/2 belonging to one Late. A.R.Ramssamy Iyer was also proposed for acquisition and the said land was notified under the said notification. Challenging the said notification dated 20.11.1978 the petitioners' father A.R.Ramasamy had filed W.P.No.471 of 1979 and the other persons had filed W.P.No.470 of 1979 and W.P.No.472 of 1979. All the writ petitions were dismissed vide order dated 28.02.1979. Thereafter notices under section 9 (1) and 10 and 9(3) and 10 of the



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Land Acquisition Act were served on the individuals concerned on 19.12.1978, in the villages on 17.12.1978 and published in the Taluk Office, Kumbakonam, Sub-Collectors Office, Kumbakonam on 14.12.1978. After the issuance of the said notification, the objections from the land owners were called for by the respondents. As a result, the petitioners' father Late A.R.Ramasamy Iyer, who was the original owner of the land had also appeared for enquiry and submitted his detailed objection before the RDO, Kumbakonam on 08.01.1979. After considering the objection submitted by the petitioners' father and other land owners, the land acquisition officer had finally passed Award in Award No. 1/79 in R.C.No.15351/78.A2 dated 08.01.1979. As per the said Award, the compensation amount for the petitioner lands i.e., T.S.No.1031/2 was fixed as Rs. 25,702.05/-. The copy of the award was also intimated to the petitioners' father Late A.R.Ramasamy Iyer on 03.02.1979 by way of Section 12(2) notice issued by the RDO, Kumbakonam. The said notice was served on A.B.Vasanth who received the said notice on behalf of A.R.Ramasamy Iyer, A.R.Lakshmi Ammal and A.G.Backiyam. Thereafter, the award amount Rs.25,702.05/- was deposited as "Revenue Deposit" in the office of the RDO, Kumbakonam on 10.12.1979.



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10. Though, most of the land owners accepted the value of the compensation and received the same, the petitioners' father A.R.Ramasamy Iyer did not come forward to receive the compensation amount and hence the authorities having left with no other option had deposited the amount in the Revenue Deposit in accordance with law. The said fact has been reflected in the records also.

11. Hence the stand taken by the petitioners' that no compensation was paid to them is nothing but utter false and misleading. There is no mistake on the part of the respondents, because as per the procedure laid down in the Land Acquisition Act, the respondents had issued notification, enquiry notices, conducted enquiry, received objections from the land owners including the petitioners' father and finally passed award by fixing fair compensation and deposited the compensation amount as Revenue Deposit in the cases where the land owners refused to receive the compensation amount. Therefore, in the case on hand, the authorities concerned had strictly followed the procedure for land acquisition. When the award amount was deposited in the year 1979 itself, either the petitioners or their father A.R.Ramasamy Iyer ought to have approached the



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concerned legal forum for the enhancement of compensation without any delay. But in the case on hand, award amount was deposited in the year 1979, whereas the legal heirs of A.R.Ramasamy Iyer had filed the present writ petition in the year 2020 seeking for compensation which is legally unsustainable. Further the original land owner A.R.Ramasamy Iyer did not receive the amount, the same was deposited as Revenue Deposit. Even assuming that the petitioners' father was aggrieved by the fixation of Award Amount, he had to file an application before the District Collector under Section 18 of the Land Acquisition Act, 1894 for reference to the Court within six weeks as stated under section 18(2). In the case on hand, the award was passed on 08.01.1979, the notice under section 12(2) was issued on 08.01.1979, the same was served on the petitioners' father on 03.02.1979 in the hands of one A.B.Vasantha. Therefore, in view of Sec 18(2) (a) (b) the limitation for filing application before the District Collector was expired in the year 1979 itself.

12. The said issue was well discussed and settled by the Hon'ble Apex Court in the *State of Punjab and An - Vs - Shri Satinder Bir Singh reported in 1995 SCC (3) page 330*. In the meanwhile, on 13.07.2023, when the



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present writ petition came up for hearing, this Hon'ble Court was pleased to direct the respondents to be present before this Court and to directed the respondents to deposit Rs.10,00,000/- (Rupees Ten Lakh Only) in the case number in W.P.(MD)No.11013 of 2020 in the Indian Bank attached to Madurai Bench of Madras High Court on or before 20.07.2023. The petitioners were directed to withdraw 50% of the amount from the said deposit. Originally, the respondents have rightly followed the procedure for acquiring the petitioners' land. There is no error on the part of the authorities. The award amount was fixed fairly and the same was deposited as Revenue Deposit, since the original land owner refused to receive the same. In fact, the petitioners alone had approached this Hon'ble Court for compensation with a huge delay of 4 decades. Hence, the respondents prayed to vacate the interim order dated 13.07.2023 and also to dismiss the writ petition.

13. The writ petitioner had filed counter to the vacate stay petition and the same is taken as rejoinder to the counter filed by the respondents. In the rejoinder it is stated one of the main objections taken is that the copy of Award was not served on the petitioner's father and was not given to the petitioner's



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father either in person or in a manner known to law and the 12(2) notice was not at all served upon the father at all. Even in the affidavit of the RDO, it was clearly admitted that no Award copy was served upon the father and the affidavit states “the copy of the Award was also intimated to the petitioner's father late A.R.Ramasamy Iyer on 03-02-1979 by way of section 12(2) notice issued by the Revenue Divisional Officer Kumbakonam”. When the petitioner had stated in his letter dated 28.07.2000 that no notice was served upon his father, this averment in the counter is an implied admission that the Award copy was not served along with a 12(2) notice.

14. As per provisions of the Act the Award copy should have been served upon the owner personally along with the 12(2) notice. Further the reply of the RDO that as per Award 1/79 the compensation has been paid before the Kumbakonam Sub Court and the petitioner can approach the Court, would conclusively prove that the Award copy was not given to the petitioner's father A.R.Ramasamy. Furthermore, on perusal of the typed set of papers served to the petitioners, it is proved that the copy of the Award was not served upon the petitioner's father and the 12(2) notice N.K.15351/78.A2 dated 08.01.1979 by



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the RDO does not contain the word Award No.1/79. The entire alleged 12(2) notice [ஆக்ட் - 12-வது பிரிவை சேர்ந்த (2) குறிப்பிட்ட உப்பிரிவின் படி நோட்டீஸ்] was produced and a sheet written in manuscript of two pages without mentioning it was served by whom and at what time is produced and without mentioning what is the sheet is meant for and the same could be a preparation to circumvent the law. All the other notices and communications are in cyclostyled format and this sheet alone is without disclosing the designation of the person who served and any signature and a seal of the RDO and without any word that the Award 1/79 was intimated. Hence the alleged notice produced is suspicious and the same is against the provision of section 12(2) of the Land Acquisition Act.

15. The said section stipulates "unless the notice of the Award is accompanied by a copy of the Award, it would not be effective notice within the meaning of section 12(2) of the Act". In this case, it is the implied admission that the Award copy is not served as per the affidavit and also there is no mention in the sheet that the Award copy was served. Further in the sheet three names are written as (26) எ.ஆர்.ராமசாமி அய்யர் (27) எ.ஆர்.லெட்சுமி அம்மாள் (28)



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எ.ஜி.யக்யம் and the same is bracketed and a female name A.B.Vasanth 3-2-79 is written, which is not a correct service of notice 12(2) and the same does not fulfill the requirement of section 45(2) of the Land Acquisition Act 1 of 1894. The mode of service stipulated in 45(3) proviso read with the Tamil Nadu Amendment Act 14 of 1964 Section 4 and Schedule II. In the present case, the factum of serving the 12(2) notice along with the copy of the Award is not carried on by the Land Acquisition Officer as mentioned in the Amending Tamil Nadu Act 14 of 1964. Besides the service upon a female that too when the said person is not known to the petitioners is not a valid notice under Law as the notice is not sent as per the Tamil Nadu Amending Act. Any notice served upon a female member also cannot be deemed to have been served in accordance with law.

16. Hence once the 12(2) notice is not served on the petitioner's father in person in accordance to law, all further proceedings consequent to it are deemed to be illegal. Further as per the affidavit of the RDO nowhere it is averred that the notice has been sent by Registered post as per Tamil Nadu Amending Act 14 of 1964 and it is clear that once the Tamil Nadu Amending Act 14 of 1964 proviso (The Land Acquisition Act 1 of 1894) and the proviso to



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section-45(3) are not followed, then all subsequent acts done thereby, if any, in pursuance of the invalid 12(2) notice are deemed to be invalid. The deposit is not done as stipulated under section-31(2) before the Principal Sub Court Kumbakonam, where a reference under section 18 of the Land Acquisition Act is to be made. In this case the deposit is not as per the Land Acquisition Act section-31(2) but it is done as per the whims and fancies of the officers who did not follow the Acts and Rules of the Land Acquisition Act.

17. Further on 21.07.2023 the respondents submitted that the deposit is under Award 1 of 78, but it is the specific case of the petitioner that as per the Award 1 of 79 no amount was tendered nor paid to the petitioner's father and no amount as per the Award was not offered to the petitioner's father and hence any deposit without a valid service of notice under section 12(2) read with section 45(3) of the Land Acquisition Act 1 of 1894 is invalid under law. Moreover, it was submitted by the respondents that the Award 1/79 was not challenged, but the respondents failed to see that an Award can only be challenged by a reference.



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18. In the present case since the copy of the Award of Award 1 of 79 is not attached to the notice and the same has not been served on the claimant by Registered post, hence the same could not be challenged, hence there is no reference at all in the petitioner case. The RDO vide letter dated 16.10.2000 clearly mentioned that the Award No.1/79 has been passed and the Award amount has been deposited before the Kumbakonam Sub Court. In the present case the Kumbakonam Sub Court happens to be the Court wherein several references of this Award 1/79 have been referred. The actual wordings of one such reference is that “பார்வை கடிதங்களின்படி இவ்வலுவலக தீர்ப்பாணை 1-79 □ 8.1.79-ன் படி இழப்பீட்டு தொகை கும்பகோணம் சார்பு நீதிமன்றத்தில் செலுத்தப்பட்டுவிட்டது. மேற்கண்ட நிலங்கள் மீது மனுதாரர்கள் தங்களுக்குள்ள உரிமையை நிலைநாட்டி கும்பகோணம் சார்பு நீதிமன்றத்தை தொடர்பு கொள்ள அறிவிக்கப்படுகிறது ”. But the alleged letter regarding the petitioner’s father land would only be created and inserted one. Under section 31(2) of the Land Acquisition Act the amount of compensation as per Award shall be deposited in the Court if the land owner refused to receive or in one or more contingencies. Hence the petitioner submitted that the Revenue deposit could have been made to



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deprive the claimant A.R.Ramasamy and the records could have been subsequently added to the file, which is evident from the letter dated 16.10.2000.

19. It is pertinent to mention in the earlier counter the RDO had stated that the file was missing. The respondents had not given notice under section 12(2) to the owner along with the copy of the Award of Award 1 of 79, the subsequent deposit is not made before the Sub Court, Kumbakonam, the Revenue deposit without tendering or offering of the compensation to the owner and without notice of Revenue deposit to the owner is not a valid one since the same are made to circumvent the lawful procedures under Act 1 of 1894. Hence the petitioner is claiming that he is entitled to compensation under the New Act.

20. Heard Mr.V.Santharaman, the Learned Counsel appearing for the petitioners and Mr.Veera Kathiravan, the Learned Additional Advocate General assisted by Mr.B.Saravanan, the Learned Additional Government Pleader appearing for the respondents and perused the material documents available on record.



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21. The primary contention of the petitioner is that the respondents had not issued section 12(2) under Land Acquisition Act to petitioner's father A.R.Ramasamy and in order to ascertain the Court perused the records. In the Award No.1/79 passed in RC.No.15351/78.12 dated 08.01.1979 it is stated that for various lands including T.S.No.1031/2 enquiry was conducted. The petitioner's father A.R.Ramasamy had submitted written objections through post, again submitted written objection dated 11.08.1978 to fix the rate of compensation as Rs.2.50 or 3 per square feet, then participated in the enquiry proceedings through advocate and opposed the very notification and the same is extracted hereunder:

.....

“Thiruvallargal A.G.Yagyam, A.S.Vasan, A.R.Ramasamy and Tmt. A.R.Lakshmi Ammal have prayed for payment of compensation at Rs.2.50 or 3 per square feet in their reply objection filed on 11.08.1978. The value of the acquisition site is fixed due inspection considering all the merits and demerits of the valuation sites.”

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“4. That the persons in Sl.No.1 to 5 reserve their right to question the notification before the High Court in proper writ proceedings”

22. The petitioner's father had submitted further objection on 08.01.1979 i.e. the date on which the award was passed and the respondents had annexed the said objection letter in their typed set of papers. When on the date of passing the order the petitioner's father had submitted another objection stating that he is objecting to the acquisition, then it evident that the petitioner's father had left the enquiry proceedings after submitting the objection letter dated 08.01.1979, thereafter had preferred writ petitions in W.P.No.470, 471 and 471 of 1979 and the same was dismissed on 13.10.1981 (even though the respondents had stated the writ petitions are dismissed on 28.02.1979, but actually the writ petition was dismissed on 13.10.1981). When the petitioner's father had submitted his objections on 08.01.1979 without receiving the compensation (on the date of the award) and had objected for the rate of compensation, the respondents had rightly placed the petitioner's father's name in the list of persons where notice under section 12(2) ought to be issued. The respondents ought to



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have issued the notice from the date of the award, but due to pendency of writ petition the respondents had failed to issued section 12(2) notice to the petitioner's father, which is evident from the records.

23. The next contention of the petitioner is that the respondents had produced the "award proceedings", but the same is not containing the crucial three pages which is the actual award copy. It is pertinent to state the petitioner had produced the copy of the award proceedings along with the "actual award copy" issued to other persons, wherein it is stated that the,

*"1/79 award is made by Thiru. V. Shamugam,
Revenue Divisional Officer & Land Acquisition Officer,
Kumbakonam etc."*

In the said award copy the petitioner had relied on the words stated after the tabulation wherein it is stated as "(iii) the person or persons to whom the compensation is due". In the said list the petitioner's father was listed in serial number 7 and had recorded that the amount is due to him. But the said award copy was not accompanied along with the alleged notice. Unless the notice of the Award is accompanied by a copy of the Award it would not be effective notice



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within the meaning of section 12(2) notice and the Learned Counsel appearing for the petitioner relied on the judgment rendered by Hon'ble Division Bench in the case of T.A.K.M. Ramalakshmi Ammal Vs. The Revenual Divisional Officer, Sivakasi reported in (1985) 98 Law Weekly 681 (1985 WLR 504).

“5. Under Section 18(2) of the Act, the claimant should intimate the Land Acquisition Officer about his request for reference to Court within six weeks of the receipt of the notice from the Collector under Section 18(2), because he was not admittedly present. In our view, it is but fundamental that when a claimant's property is being acquired, he should be served with a copy of the award. It is not for the respondent to decide as to how the claimant would utilize the award. We would emphasize that it is the fundamental right of the claimant to have a copy of the award served on him. How he may use it is none of the concern of the respondent. For instance, taken an illustration. In the award a reference is made to a decision of the Supreme Court and on that basis the quantum of compensation is fixed, in such a case it might be that the claimant would not plunge into a costly litigation, but would be content with the quantum awarded by the Officer. Take a case, where compensation is not only in respect of the land, but also in respect of the standing trees. In that case, if the consolidated figure alone is shown as compensation in the award, how cold the claimant be put on notice of the breakup of the figures so as to entitle him to decide his next course of action. Can it be said then, there is sufficient compliance of Section 12(2) of the Act. As long as neither in the



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Act nor in the Rules, is there any provisions which enables the claimant to obtain the certified copy of the award and as long as Section 18(2) of the Act mandates that the claimant's reference should be notified to the Land Acquisition Officer within six weeks of the receipt of the notice from the Collector under Section 12(2) of the Act it is but reasonable to construe Section 12(2) of the Act, as requiring the Collector when he sends the notice of his award, to enclose therewith a copy of the award."

The aforesaid judgment categorically held that if the notice is not accompanied by the copy of the award, which is fundamental for issuing notice, then there is not effective notice at all. In the present case it is evident that the respondents had not issued notice along with the copy of the award and hence the aforesaid judgment is squarely applicable to the present facts of the case. Therefore, this Court is of the considered opinion that there is no effective notice under Section 12(2) and 18(2) of the Land Acquisition Act.

24. The next contention of the petitioner is that the petitioner's father was not in receipt of the notice under section 12(2), since respondents did not issue the section 12(2) to the petitioner's father in person or through registered post or by affixture or by any means as provided under the Act. The petitioner has relied on the counter affidavit filed by the RDO wherein it is stated,



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*“the copy of the Award was also **intimated** to the petitioner's father late A.R.Ramasamy lyer on 03-02-1979 by way of section 12(2) notice issued by the Revenue Divisional Officer Kumbakonam”*

25. By referring to the above, the petitioner submitted that the respondents themselves had admitted that the notice was **not served but only intimated, that too intimated to someone else**. This would clearly prove that the petitioner's father was not served notice as per law and the petitioner's father had not received the notice.

26. The further contention of the petitioner is that the respondents had not issued section 12(2) notice to the petitioner's father but to someone else. But the contention of the respondents is that the same was issued to the petitioner's father. Hence in order to ascertain the same it is necessary to peruse the original file. It is seen in the preliminary counter the respondents had stated that the files are destroyed, but during the course of the argument the respondents submitted that the files are available. Hence the respondents were directed to



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produce the original file along with copies. Also directed to serve a copy of the records to the petitioner. After perusing the records, the petitioner vehemently submitted that the notice was not issued and not served to the petitioner's father in person. According to the respondents the same was issued to one A.B. Vasantha, who had received on behalf of the A.R.Ramasamy, A.R.Lakshmiammal and A.G.Yagyam. The notice under section 12 ought to be served in person to the exact owner of the land and not to someone else. Further if the notice could not be serviced in person, then the respondents ought to service the notice through registered post or by affixture, otherwise the said notice cannot be construed as "receipt of notice" as stated under section 18 of the Act. The said issued is considered by the Hon'ble Court in the case of O.A.O.A.M.Muthiah Chettiar and others Vs. the Revenue Divisional Officer (Land Acquisition Officer) Tirukoilur, South Arcot District reported in 1968-1 MLJ 107, wherein it is held service of notice ought to be as per law and the relevant portion is extracted hereunder:

"3 . It appears to me that the contention thus raised in the counter affidavit is not sustainable. Section 12(2) provides that the Collector shall give immediate notice of his award to the persons who are interested and who are not personally present at the time of the award. Section 18 which is the relevant section for making



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reference to Court, grants to the aggrieved person six weeks' time from the date of receipt of the notice from the Collector under Section 12(2). This would show that the notice to be a valid notice should not only be sent by registered post, but should also be delivered to the claimant, because, without such delivery there could be no receipt. The position is made further clear in Section 45 of the Land Acquisition Act, wherein the statute itself lays down the provisions for proper service of notices under the Act. The ordinary rule of service mentioned in Section 45 is delivering or tendering a copy of the notice to the person concerned, and if the person could not be found it can be served on any adult male member of the family residing with him. If no such adult male member could be found, it can be served by affixture of the notice in his house. The proviso to Section 45(3) permits the Collector to send a notice by registered post. But in that event, the factum of service should be proved by the production of the addressee's receipt. As the petitioner was not served with the postal notice in this case, it could not be deemed to be valid service of the registered post notice, under the proviso above mentioned to Section 45. The Land Acquisition Officer is obliged, for the purpose of compliance with the statute, to resort to one of the several modes mentioned in Section 45, i.e., either by delivery of tender or by service by affixture to the house and if any such mode of service cannot be undertaken, then by actual service of a notice sent by registered post. But such service has not been effected in this case.



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4. *For the above reasons, I am of opinion that there has been no valid service of the notice under Section 12(2) as required under the Statute, on the petitioner in this case, and the petitioner is, therefore, entitled to a writ of mandamus as prayed for by him directing the issue of a fresh notice under Section 12(2) in one of the methods of service provided in Section 45 of the Act.*

5. *There was an argument by learned Counsel for the Government that such service cannot be of any avail for the purpose of obtaining remedy under Section 18 of the Act, because the six months period from the date of the Collector's award has already expired. This argument however does not take to account the principle laid down by the Supreme Court in R.H.C. Raj Singh v. Deputy Land Acquisition Officer MANU/SC/0386/ 1961 : [1962]1SCR676 , where, dealing with the date of the award for the purpose of computation of limitation under Section 18 of the Land Acquisition Act, the Supreme Court observed that the date of the award should not be determined solely by reference to the time when it was signed by the Collector or delivered by him in his office, but it must involve the question as to when it was known to the party concerned either actually or constructively. Therefore, if the petitioner can show that, notwithstanding the fact that the award in this case was passed on 31st March, 1959 he had no means to know of it either actually or constructively, it will be open to him to compute the period of limitation from the date of service*



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of a proper notice under Section 12(2) of the Land Acquisition Act.”

27. In the present case the respondents had obtained signature from one A.B. Vasantha and not from the A.R.Ramasamy and hence the said A.R.Ramasamy had not received the notice in person. Further the respondents had not served the notice through Registered post or by affixture as stated under section 45 of the Act. Hence this Court is of the considered opinion that the notice was not served to the petitioner's father and the petitioner's father was not in receipt of notice as stated in section 18 and the aforesaid judgment is squarely applicable to the present case.

28. The next contention of the petitioner is that the service of notice to female member of the family cannot be construed as proper service as per law. The respondents had submitted a report of Revenue Inspector and the report states that the Revenue Inspector had carried on spot verification and it is found that the said A.B. Vasantha is the wife of Badrusamy and is the **“Chitti” (type in Tamil)** of the petitioners. That is the said Badrusamy is the brother of



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A.R.Ramasamy and the said A.B.Vasanth is the wife of Badrusamy. Since she is the female member of the family, the said notice cannot be construed as proper service of notice and the Learned Counsel appearing for the petitioner had relied on the judgment rendered in U. Arunachalam Vs. the Special Tahsildar for Land Acquisition (Harijan Welfare), Chidambaram, South Arcot District reported in 1977-2 MLJ 508, wherein in the said case the notice was issued to female trustees and the Court held it is not proper service. The relevant portion is extracted hereunder:

“Sub section (2) of this section authorizes service on the person interested himself alone and sub section (3) comes into play only if such person cannot be found; and when such is the case, service can be effected only in one of the different ways, that is, by service of notice on any male member of the family of the person to be served or if such a male member also cannot be found, then by affixture of copies of the notice at certain specified places. No part of the section authorizes service of a notice on a female member of the family of the person sought to be served. If a notice was served, therefore, as stated in paragraph 4 of the affidavit it cannot be deemed to have been served in accordance with law. Any service so effected cannot ensue to the benefit of the respondent for the purpose of the sub section 2 of the section 18. No notice under sub



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section 2 of section 12 is alleged to have been served in any other manner...”

29. In the present case, even if the respondents claim that the notice had been served to the said A.B.Vasanth, then the notice is serviced to some female member of the family and as per the aforesaid judgment it is not service at all. It is an admitted fact that the respondents had not issued notice either through Registered post or by affixture. In such circumstances, this Court is of the considered opinion that the notice was not served to the petitioner's father as per law.

30. Further the respondents have not issued the notice along with the copy of award with **“Form of Reference”**. Had that been issued, then the petitioner would not have any case at all. Had that been issued, then only the petitioner's father would have right to Reference under section 18 within a period of six months from the date of **receipt** of the same. The petitioner had produced the form of reference issued to one of the awardee in the same award namely A.S.Vasan. Even in the original file there is no copy of “Form of Reference” to



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the petitioner's father. When the respondents had not issued such "Form of Reference" to the petitioner's father, hence the petitioner's father had lost the valuable right before the Reference Court. The copy of the "Form of Reference" issued to another claimant is annexed hereunder:



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31. Therefore, this Court is of the considered opinion when the respondents had not issued the “Form of Reference”, then the petitioner’s father had lost his right to claim enhanced compensation before the Sub-Court.

32. The next contention of the petitioner is that the petitioners had send a letter dated 28.07.2000 to the 3rd respondent stating that the petitioner’s father was not paid any compensation to the said land. On receipt of the same the respondents vide letter dated 14.10.2000 had furnished false information as if compensation amount has been deposited before Sub Court, Kumbakonam. But no such case was filed and no deposit was made before the Court. Further no notice was issued as per the copies of Suit Register in L.A.O.P.No.29/1979, L.A.O.P.No.30/1979, L.A.O.P.No.31/1979, L.A.O.P.No.43/1979 and L.A.O.P. No. 9/1980, L.A.O.P.No.10/1980, L.A.O.P.No.11/1980 pertaining to the Award No.1 / 1979 dated 08.01.1979 passed by the Land Acquisition Officer. The further contention of the petitioner is that based on the information given by the respondents in the letter dated 14.10.2000 the petitioner had approached the Sub Court and it was found no such case was filed by referring the petitioner’s father name and no such deposit was made for the petitioner’s father’s land in the Sub



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Court. Hence the information stated in the letter dated 14.10.2000 was false. It is seen that the respondents had taken diagonally opposite stand in the second counter filed along with vacate petition wherein the respondents had stated that the amount is deposited in the “Revenue Deposit” and the same would not carry any interest. It is pertinent to state in the preliminary counter the respondents maintained as if the amount is deposited in the Sub Court and further stated the fact was known to the petitioner as earlier as in the year 2000 but had stated diagonally opposite information that the amount is deposited as Revenue Deposit.

33. From the aforesaid inconsistent stand of the respondents, it is evident that the respondents had not issue “Form of Reference”, to the Sub Court thereby deprived the petitioner’s father’s valuable right of Reference under section 18. Moreover, by giving false information the respondents had made the petitioners to run from pillar to post.

34. The contention of the respondents that the petitioner had filed the present writ petition belatedly, hence the writ petition is liable to be



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dismissed. It is seen that the petitioner's had approached the respondents in the year 2000, but the respondents without furnishing the case number or other proper information had mislead the petitioner that the amount is deposited in the Sub Court and made the petitioners to run from pillar to post. Thereafter the petitioners had taken earnest efforts to file a petition as third party before the Sub Court and had collected information. Had the respondents furnished the correct information, then the petitioners would have approached the Sub Court to obtain the enhanced compensation. When the fault is on the respondents by not furnishing the Form of Reference, the respondents cannot expect the petitioner to file appropriate petition for enhancement. The period of limitation would start from the date of issuance of notice, from the date of issuance of Form of Reference, when the same was not issued, then there is question of limitation or laches. Hence, the plea of the limitation / laches of the respondents cannot be entertained and accordingly the plea of limitation by the respondents is rejected.

35. The contention of the petitioner is that the petitioner is entitled to compensation along with interest under section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and



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Resettlement Act, 2013 (Act 30 /2013), even though the Land Acquisition was under the erstwhile Act and had relied on the judgment of the Hon'ble Supreme Court rendered in Indore Development Authority Vs. Manoharlal and another reported in (2020) 8 SCC 129. Infact the entire case of the petitioner is based on the said judgment and the present writ petition is filed in the year 2020. In order to consider the case of the petitioner the provisions of Section 24 of the Act 30/2013 is necessary which reads as under:

“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



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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 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.”

36. Various Courts had given different interpretation to section 24, hence in order to settle the issue and give correct interpretation to the section, the issue was referred to Hon’ble Supreme Court in the case of Indore Development Authority’s case referred supra. While considering the reference, the Hon’ble Supreme Court had elaborately discussed section 24 and had held that if compensation had not been paid, then the land owner is entitled to the compensation under section 24 of Act 30 of 2013 and also entitled to interest. In the concluding portion of the judgment the finding is summarised as under:



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363. 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)(6) 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



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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 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



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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.”

37. In the present case, the possession was taken by the respondents but compensation was not paid to the petitioner’s father, rather it was deposited as “Revenue Deposit”. Hence the petitioner would come under Clause No.4 in the



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aforesaid judgment, wherein it is held that compensation “paid” under section 24(2) does not include a deposit of compensation in the Court. It is also held that non-deposit of compensation (in court) does not result in the lapse of land acquisition proceedings, in case of non-deposit, then compensation under the Act of 2013 has to be paid to the "landowners". In the present case the compensation was not even deposited in the Court but was deposited as “Revenue Deposit”. Hence the land acquisition proceedings would not be lapsed, but the petitioners are entitled to compensation under the Act 30 of 2013. Therefore, following the Indore Development Authority’s case this Court is of the considered opinion that the compensation was not paid to the petitioner as contemplated under section 24(2). Consequently the petitioner is entitled to compensation in accordance with the provisions of the Act 30 of 2013 and not under the Act 1894.

38. Having held that the petitioner is entitled to compensation under Act 30 of 2013, then comes the question whether the petitioner is entitled to interest. In the same judgment it is held in case the obligation 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. In the present case since the petitioner had not



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consented to receive the compensation as per the objection letter dated 08.01.1979, in such circumstances the respondents ought to have issued “Form of Reference”, thereafter referred the case to the Court. But the respondents failed to issue under “Form of Reference” and also failed to refer the case to the Sub Court, Kumbakonam, hence the respondents had not fulfilled the obligation as stated in the provisions. Therefore this Court is of the considered opinion that the petitioner is entitled to interest as per the Act.

39. Further as per the judgment stated supra it is not open to a person to claim that acquisition has lapsed due to non-payment or non-deposit of compensation in Court. 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. In the present case the land owner had refused to accept the compensation, that alone is not sufficient to state the acquisition proceedings had lapse. Therefore, this Court is of the considered opinion that the present acquisition proceedings had not lapsed, but the petitioner is entitled to compensation along with interest under Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition,



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Rehabilitation and Resettlement Act, 2013 (Act 30/2013) for the lands in T.S.No. 1031/2 admeasuring 42169 square feet situated at 113 Pazhavatthankattalai, Kumbakonam, Thanjavur District (now New Bus Stand Part and John Selvaraj Nagar Part, Kumbakonam) based on the Land Acquisition Notice R.C.15351/78 Award No. 1/79 dated 08.01.1979.

40. For the reasons stated supra, the writ petition is allowed. No cost.

Connected Miscellaneous Petitions are closed.

Index : Yes / No
Internet : Yes

16.08.2024

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To

1. The State of Tamil Nadu,
Represented by the Commissioner and Secretary to Government,
Housing Department,
Fort. Saint George, Chennai-600 009.
2. The District Collector of Thanjavur,
(Land Acquisition Officer),
Office of the District Collectorate,
Thanjavur District.
3. The Revenue Divisional Officer,
(Previous Notice Sent to the Sub-Collector),
(Land Acquisition Officer),
Office of the Revenue Divisional Officer,
Kumbakonam, Thanjavur District.



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S.SRIMATHY, J

ksa

Pre-Delivery Order made in

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16.08.2024