



Writ Petition No.35719 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 28.03.2025

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition No.35719 of 2024

and

W.M.P.Nos.38575 & 38580 of 2024

1. MARUTHAYEE

W/o.Mr.Natesan,
Kural Village, Chinnasalem Taluk,
Kallakurichi District.

2.Vellaiammal,

W/o.Mr.Muthusamy,
Kural Village, Chinnasalem Taluk,
Kallakurichi District.

3.Malarkodi,

W/o. Mr.Selvarasu,
Kural Village, Chinnasalem Taluk,
Kallakurichi District.

4.M.Rayappan,

S/o. Late Muthusamy,
Kural Village, Chinnasalem Taluk,
Kallakurichi District.

5.M.Duraisamy,

S/o.Late Muthusamy,
Kural Village, Chinnasalem Taluk,
Kallakurichi District.

Petitioners

Vs



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1. The Secretary To Government
Social Welfare Department, Secretariat,
Fort St. George, Chennai -600 009.

2. The Secretary To Government,
Adi Dravidar and Tribal Welfare Department,
Secretariat, Fort St. George, Chennai -600 009.

3. The Commissioner of Land Administration
O/o. Commissioner of Land Administration,
Land Administration Department, 2nd Floor,
Ezhilagam, Chepauk, Chennai -600 005.

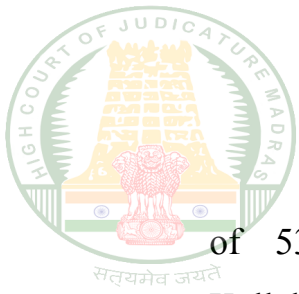
4. The District Collector,
Office Of The District Collector,
Kallakurichi, Kallakurichi District.

5. The District Revenue Officer,
O/o. The District Revenue Officer,
Kottaimedu, Kallakurichi -606213.

6. The Special Tahsildar(I.A),
Kallakurichi, Kallakurichi -636 202.

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Declaration declaring that the land acquisition proceedings initiated under Sec. 4(1) of the Land acquisition Act, 1894 vide proceedings-in W1/64385/84 dated 25.08.1984 of the 4th Respondent, followed by Rule 6 Declaration issued vide proceedings in W1/64385/84 dated 27.06.1985 by the 5th Respondent and Award No.2/85-86 dated 10.03.1986 of the 6th Respondent, with respect to the land comprised in S.No.46/3B measuring 8 Ares (19.77 cents) and S.No.46/4 measuring 13.5 Ares (33.36 cents), totally measuring an extent



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of 53.15 cents situated at Kural Village, Chinnasalem Taluk, Kallakurichi District, belonging to the petitioners, stands lapsed as per the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, in view of the admitted position that the physical possession of the said land has neither been taken nor vested with the Government of Tamil Nadu and consequently direct the respondents to effect necessary changes in the revenue records by incorporating the names of the petitioners with respect to the said land.

For Petitioners : Mr.R.Gopinath
For Respondents : Mr.A.Selvendran
Special Government Pleader

ORDER

This writ petition has been filed seeking for a declaration to declare the land acquisition proceedings initiated under the Land Acquisition Act, 1894, as lapsed under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013 (Central Act No.30/2013) [hereinafter referred to as 'the Act'].



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2. The case of the petitioners is that the lands were acquired by notification under Section 4(1) of the Land Acquisition Act, 1894, dated 25.08.1984. Thereafter, Section 6 declaration was published on 27.06.1985. An award was passed by the fourth respondent in Award No.2/85-86 on 10.03.1986 and this was objected by the petitioners' father.

3. The specific case of the petitioners is that neither possession was taken nor compensation was tendered to the petitioners and therefore, the acquisition proceedings lapsed in view of Section 24(2) of the Act.

4. The sixth respondent has filed a counter affidavit on behalf of the respondents. A stand has been taken to the effect that the entire acquisition proceedings have been completed and steps are being taken to allot the property to persons belonging to Adidravidar families as house sites. That apart, the lands are now classified as Natham poramboke. It is further stated that the father of the petitioners, who was the owner of the property, refused to receive the compensation amount and therefore, the compensation was deposited under revenue deposit.



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Insofar as the possession is concerned, the petitioners did not allow the respondents to evict them from the property. However, the possession has been taken in accordance with 1894 Act. In view of the same, the respondents have taken a stand that the petitioners are not entitled for the relief sought for in this writ petition and accordingly, sought for the dismissal of the writ petition.

5. Heard Mr.R.Gopinath, learned counsel for petitioner and Mr.A.Selvendran, learned Additional Government Pleader appearing for respondents.

6. When the writ petition came up for hearing on 22.11.2024, this Court passed the following order:

"Heard Mr.R.Gopinath, learned counsel for the petitioner and Mr.P.Sathish, learned Additional Government Pleader, who takes notice on behalf of respondents 1 to 6.

2. This Writ Petition has been filed to declare that the land acquisition proceedings initiated under Section 4(1) of the Land Acquisition Act, 1894 dated 25.08.1984 in respect of the land comprised in S.No.46/3B measuring 8 Ares (19.77 cents) and S.No.46/4, measuring 13.5 Ares (33.36 cents), totally measuring an extent of 53.15 cents situated at Kural Village, Chinnasalem Taluk, Kallakurichi District has lapsed, in view of Section 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.



3. The Writ petition for declaration is primarily based on the ground that the respondents have not taken possession of the land to date, as is evident from the findings rendered by the III Additional District Judge, Kallakurichi in O.S.No.317 of 2011 in respect of issue No.1 framed in the suit, namely, "*Whether the plaintiff is entitled to the decree of permanent injunction as claimed by him*". The learned Judge made the following observations in paragraph 15 of the said judgment:

"இருதரப்பு சாட்சிகள் மற்றும் சான்றாவாணங்களை பரிசீலனை செய்யும்போது, தாவா சொத்தானது தற்போது, வாதியின் அனுபவத்தில் உள்ளது என்பதும், பிரதிவாதிகளால் தாவா சொத்தானது கையகப்படுத்தப்படவில்லை என்பதும் தெரியவருகிறது. எனவே, வாதி கோரியுள்ள பரிகாரம் வாதிக்கு கிடைக்கத்தக்கது என்று முடிவு செய்து, இந்த எழுவினா வாதிக்கு ஆதரவாகவும், பிரதிவாதிகளுக்கு எதிராகவும் தீர்மானிக்கப்படுகிறது."

4. Considering the fact that the possession of the property has been decreed in favour of the petitioner in the suit after contest, there shall be an order of interim injunction as prayed for in W.M.P.No.38575 of 2024 till 03.01.2025.

5. Post the matter on 03.01.2025."

7. The matter was once again listed for hearing on 13.03.2025

and the following order was passed by this Court:

"This writ petition has been filed to declare that the acquisition proceedings has lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter called as the Act).

2. The petitioners have taken a specific stand that neither the compensation was paid nor the possession was taken. Insofar as the possession is concerned, the learned counsel relied upon the suit filed in OS No.317 of 2011 on the file of III Additional Sub Court, Kallakurichi where a permanent injunction



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was granted and thereby, the possession and enjoyment of the property continues with the petitioners. Insofar as the compensation is concerned, it was submitted that the compensation was not tendered as per the requirement under Section 12(2) of the Land Acquisition Act, 1894.

3. A counter affidavit has been filed along with the vacate interim injunction petition. It is not clear from the counter as to how the compensation was tendered to the petitioners. It has been merely stated that since the father of the petitioners refused to receive the compensation, it was kept in revenue deposit.

4. There shall be a direction to the learned Additional Government Pleader to produce the original records before this Court to establish the manner in which the compensation was tendered in this case and also to establish the manner in which the possession was taken.

5. Post this writ petition for hearing on 20.03.2025."

8. The original files were placed before this Court and it has been mentioned as if the notice under Section 12(2) of the Act has been served by affixture. This Court must see as to whether possession has been taken and the compensation has been tendered in line with the earlier judgment of this Court in ***K.Saraswathi and another v. State of Tamil Nadu and others*** [2021 (2) CTC 300]. The relevant portions are extracted hereunder:

"16. A close reading of all the above portions culled out from the judgment, clearly point out the fact that drawing of Panchnama of taking possession is the correct mode of taking possession in land acquisition cases, more particularly where the property acquired is a vacant land or a large tract of land. Taking



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possession by adopting to this mode, gives a lot of authenticity to prove that the land has been taken possession. Under the Transfer of Property Act, in cases of vacant land, possession always follow title. However, in the land acquisition proceedings, it works the other way round and here the title vests with the State only after taking possession. In other words, title follows possession. This position is very clear on a bare reading of Section 16 of the 1894 Act.

28. The term “tendering of amount” involves an offer made for payment of money to the person who is entitled to receive the same. That would mean that the Collector must be armed with the amount of compensation payable to the persons interested and sufficient notice must be given to them to assemble in a place in order to receive the compensation amount. It is only for this purpose, Section 12[2] of the 1894 Act provides for issuance of notice to the land owner after the Award enquiry and determination of compensation and if this notice is issued and the land owner, either refuses to receive this amount or does not appear even after the receipt of the notice, the Court deposit made thereafter, will amount to a proper tendering/paying of the compensation amount. Even for the sake of arguments if the contention raised by the learned Advocate General that the deposit made without strictly following the letter of law will not vitiate the deposit, is taken as it is, that stage will be reached only if a notice is given to the land owner asking him to receive the compensation under Section 12[2] of the 1894 Act and admittedly, in the present case, no such notice has been issued to the land owners. Therefore, the land owners may not even be knowing that the compensation amount has been deposited in some account. When the State with its eminent domain powers, acquires the land of a person, it is the duty of the State to tender/pay the compensation by calling the owner of the property and the owner of the property is not expected to voluntarily go and stand before the authority with a begging bowl. This position of law has been made clear by the following judgments of the Hon'ble Supreme Court of India:—

(a) *DDA v. Sukhbir Singh* reported in [\(2016\) 16 SCC 258](#) : (2017) 5 SCC (Civil) 779 : [2016 SCC OnLine SC 929](#) and the relevant portion is extracted hereunder:—

“9. The scheme of the Land Acquisition Act, insofar as the making of award and the payment of compensation to persons



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interested, is as follows. On the day fixed, the Collector after the inquiry that is contemplated under Section 11, has to make an award which must contain the necessary ingredients mentioned in Section 11. As soon as the award is made, under Section 12(2) of the Act, the Collector is to give immediate notice of the award to such of the persons interested as are not present personally. This provision, when read with Section 31 of the Act, makes it clear that the statutory scheme is that the Collector is to tender payment of compensation awarded by him to the persons who are interested and entitled thereto, according to the award, on the date of making the award itself. It is, therefore, clear that under the statutory scheme, the Collector must be armed with the amount of compensation payable to persons interested as soon as the award is made. Such persons have to be paid the sum mentioned in the award, it being well settled that the award is only an offer which may be accepted or rejected by the claimants. If accepted, whether under protest or otherwise, it is the duty of the Collector to make payment as soon as possible after making the award. It is only in a situation where the persons interested refuse consent to receive monies payable, or there be no person competent to alienate the land, or if there be any dispute as to title to receive compensation or its apportionment, is the Collector to deposit the amount of compensation in the Reference Court. It is only after these steps have been taken that the Collector may take possession of the land, which shall thereupon vest absolutely in the Government free from all encumbrances. The Act further makes it clear, on a reading of Section 34, that where such compensation is neither paid or deposited on or before taking possession of the land, interest is payable @ 9% p.a. for one year and 15% p.a. thereafter. This is because a person becomes divested of both possession and title to his property without compensation having been paid or deposited, as the case may be. This statutory scheme has been adverted to in some of the decisions of this Court.”

The Court then considered the provisions of the Standing Orders applicable to the NCT of Delhi and observed as under:

"17. Far from the aforesaid Standing Order coming to the assistance of the appellants, it is clear that the said Standing Order fleshes out Section 31 of the Land Acquisition Act by insisting that compensation must be paid as soon as the award is announced, vide Para 71. Sufficient notice must be given to enable all payees to assemble at a place where they will



receive their dues immediately. It is emphasised by the said paragraph that much trouble will be avoided if the principle that payment of compensation should be made at the time of the award, is strictly observed. Also, it is important that the authorities draw in advance a sum sufficient to cover the probable amount of the award and to make payments.”

(b) The expression “tender” occurring in Section 31(2) was considered by a three judge Bench in *Indore Development Authority v. Shailendra*, [\(2018\) 3 SCC 412](#). Arun Mishra, J has observed as under:

“Meaning of “paid” in Section 31 of the 1894 Act and Section 24(2) of the 2013 Act

34. The question arises what is the meaning of the expression “paid” in Section 24 and “tender” in Section 31(2) of the 1894 Act. Whether the tender of compensation amount to discharge of obligations to make payment. The meaning of expression “tender” : is when a person has tendered the amount and made it unconditionally available and the landowner has refused to receive it, the person who has tendered the amount cannot be saddled with the liability, which is to be visited for non-payment of the amount. “Tender” has been defined in Black's Law Dictionary thus:

“tender, n. (16c) 1. A valid and sufficient offer of performance; specific, an unconditional offer of money or performance to satisfy a debt or obligation a tender of delivery. The tender may save the tendering party from a penalty for non-payment or non-performance or may, if the other party unjustifiably refuses the tender, place the other party in default. Cf. offer or performance; consignment.”

(emphasis supplied)

It is apparent from aforesaid that “tender” may save the tendering party from the penalty for non-payment or non-performance or penalty if another party unjustifiably refusing the tender, places the other party in default. A formal offer duly made by one party to another especially an offer of money in discharge of liability fulfils the terms of the law and of the liability. Tender is to offer money in satisfaction of a debt, by producing and showing the amount to a creditor or party claiming and expressing verbally, willingness to pay it. The expression “tender” has been used in Section 31. The concept of deposited in court is different from tender and “paid”.

In his supplementing opinion Shantanagoudar, J has also adverted to the essentials of a valid “tender” in the following passage



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“238. The definition of “tender” has been outlined by this Court in Tata Cellular v. Union of India [Tata Cellular v. Union of India, [\(1994\) 6 SCC 651](#)] as follows : (SCC p. 675, para 69) “69. A tender is an offer. It is something which invites and is communicated to notify acceptance. Broadly stated, the following are the requisites of a valid tender:

- 1. It must be unconditional.*
- 2. Must be made at the proper place.*
- 3. Must conform to the terms of obligation.*
- 4. Must be made at the proper time.*
- 5. Must be made in the proper form.*
- 6. The person by whom the tender is made must be able and willing to perform his obligations.*
- 7. There must be reasonable opportunity for inspection.*
- 8. Tender must be made to the proper person.*
- 9. It must be of full amount.*

29. It is clear from the above judgments that it is the duty of the Collector to make payment by issuing proper notice to the concerned land owner and calling him to receive the compensation amount. Unless this crucial step is followed, the land owner may not even know whether it was deposited and if so, when the amount was deposited. Even if a notified person or his representative participates in the Award proceedings, that will not amount to a presumption that he has the notice of the compensation amount being readily available for payment. That is why Section 12[2] of the 1894 Act specifically mandates issuance of such notice. If the notice is issued and thereafter, the land owner refuses to receive the compensation or does not come to the specified place to receive the compensation and the compensation amount gets deposited in a Treasury account or the Court, as the case may be, the land owner cannot be permitted to turn around at a later point of time and complain that the compensation amount was not tendered/paid to him."

9. Insofar as the possession is concerned, this Court had already taken into account the fact that a suit was filed in O.S.No.317 of 2011 before the III Additional District Judge, Kallakurichi and a decree



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for permanent injunction was granted. In any case, the panchanama has not been drawn and possession has not been taken as mandated and therefore, there is no material to show that the physical possession of the property was taken over by the respondents.

10. Insofar as tendering the compensation is concerned, even if it is assumed that the father of the petitioners had participated in the award proceedings, the issuance of notice under Section 12(2) of the Act is mandatory and the land owner must be called upon to receive the compensation amount. Unless this crucial step is followed, the land owner may not even know whether it has been deposited. This Court, in paragraph No.29 of the judgment in ***K.Saraswathi*** case, referred supra, has held that issuance of notice under Section 12(2) of the Act is mandatory and only in a case where the notice has been refused to be received or the notice is received and the land owner refused to receive the compensation, the amount thereafter gets deposited in the treasury account or in the Court as the case may be. If this has not been done, it cannot be treated as proper tendering of compensation amount to the land owner.



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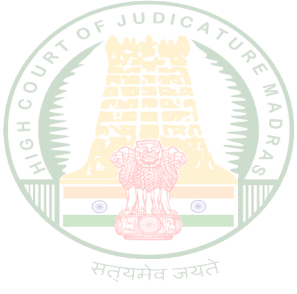
11. In the case in hand, admittedly no attempt was made to send the notice to the land owner and the respondents have resorted to affixture of notice. Thereafter, the compensation amount has been deposited in the revenue deposit.

12. In the light of the above discussion, this Court holds that neither possession was taken nor the compensation has been tendered and in view of the same, this Court holds that the petitioners satisfy the twin requirements under Section 24(2) of the Act and consequently, it is declared that the acquisition proceedings has lapsed by operation of Section 24(2) of the Act.

Accordingly, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

28.03.2025

Neutral Citation: Yes/No
Index: Yes/no
Speaking Order/Non-Speaking Order
gm



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N.ANAND VENKATESH, J

gm

To

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