



W.A.No.16 of 2012
and W.A.No.1641 of 2016

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 09.08.2023

DELIVERED ON: 30.08.2023

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HON'BLE MR.JUSTICE P.B.BALAJI

W.A.Nos.16 of 2012 & 1641 of 2016

and M.P.Nos.1/2014, 1/2015

CMP.No.20357 of 2016

W.A.No.16 of 2012

- 1.T.Kalarani
- 2.R.T.Ramesh (Died),
- 3.R.T.Suresh,
- 4.R.Rathi
- 5.Rajkumar
- 6.Radhika
- 7.Vaideeshwari
- 8.Latha

(Appellants 5 to 8 brought into record
as Legal Heirs of the deceased 2nd Appellant)
vide order dated 29.11.2021

.. Appellant

Vs.

- 1.State of Tamil Nadu,
Rep. by its Secretary,
Housing and Urban Development Department,
Fort St.George, Chennai-600 009.



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and W.A.No.1641 of 2016

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2.The Chairman,
Tamil Nadu Housing Board,
Nandanam, Chennai-600 006.

3.The Executive Engineer,
Salem Housing Unit,
Tamil Nadu Housing Board,
Ayyanthirumaligai Road,
Salem-636008.

.. Respondents

W.A.No.1641 of 2016

The Chairman,
Tamil Nadu Housing Board,
291, Anna Salai,
Nandanam, Chennai-600 035.

.. Appellant

1.Mrs.T.Kalarani

2.State of Tamil Nadu,
Rep by Secretary to the Department of
Housing and Urban Development,
Secretariat, Fort St.George,
Chennai-600 009./

.. Respondents

Prayer in W.A.No.16 of 2012: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 09.02.2011 in W.P.No.3246 of 2011.



W.A.No.16 of 2012
and W.A.No.1641 of 2016

Prayer in W.A.No.1641 of 2016: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 21.07.2015 made in W.P.No.34236 of 2014.

For Appellants

In W.A.No.16/2012 : Mr.P.Subba Reddy
In W.A.No.1641/2013 : Mr.A.M.Ravindranath Jeyapaul

For Respondents

In W.A.No.16/2012 : Mr.U.M.Ravichandran,
Special Government Pleader for R1
Mr.M.Ravidranath Jeyapaul,
Standing Counsel for R2 and R3

In W.A.No.1641/2016 : Mr.P.Subba Reddy for R1
Mr.U.M.Ravichandran,
Special Government Pleader for R2

COMMON JUDGMENT

D.KRISHNAKUMAR, J.

The appellants in W.A.No.16 of 2012 are the writ petitioners in W.P.No.3426 of 2011 and aggrieved by the dismissal of the writ petition filed claiming reconveyance of their lands under Section 48(B) of the Land Acquisition Act, 1894 [in short "Act, 1894"] on the ground that the lands in question has not been utilised for the purpose for which it has been acquired, had filed the above writ appeal.



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2. The second respondent Board in W.P.No.34236 of 2014 is the appellant in W.A.No.1641 of 2016. The said writ petition was filed by the first appellant in W.A.No.16 of 2012, seeking to declare Section 4(1) Notification and Section 6 Declaration as lapsed by virtue of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 [in short "Act, 2013"]. The said writ petition was allowed, vide order dated 21.07.2015, against which the appellant board has filed the aforesaid writ appeal.

3. Facts of the case, briefly narrated, are as follows. For the sake of convenience, the array of parties in W.A.No.16 of 2012 is adopted.

3.1. The appellants 1 to 4 / writ petitioners are the joint owners of the property in S.Nos.2/10, measuring an extent of 0.31 acre, S.No.2/11, measuring an extent of 0.15 acres and in S.No.2/13 measuring an extent of 0.23 acres at Alagapuram Pudur Village, Salem.



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WEB COPY 3.2. The first respondent initiated acquisition proceedings for the purpose of construction of houses by the Tamil Nadu Housing Board under the neighbourhood scheme in respect of the properties belonging to the petitioner and other adjacent properties totalling 17.67 acres.

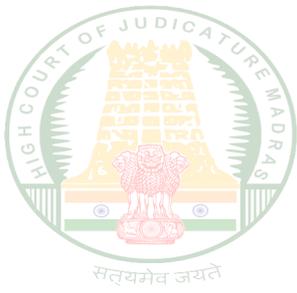
3.3. Section 4(1) Notification under Act, 1894 Act was issued in G.O.Ms.No.1058, Housing and Urban Department dated **06.07.1978** and published in the Tamil Nadu Government Gazette on 26.07.1978. Section 6 Declaration was issued in G.O.Ms.No.715, Housing and Urban Department dated **03.06.1980** and published in the Gazette on 25.06.1980. In respect of S.Nos.1/3, 1/4, 2/3 & 199/3 Award No.10/86-87 came to be passed on 19.09.1986 and in respect of S.Nos.2/10, 2/13, 2/11 Award No.1/90-91 came to be passed on 31.08.1990. Possession Certificate was issued on 28.07.1999 by the Special Tahsildar (LA), Neighbourhood Scheme, Salem-8 handing over the subject lands in question to Surveyor, Salem housing Unit of Tamil Nadu Housing Board.



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WEB COPY 3.4. Thereafter several landowners filed several writ petitions challenging the land acquisition proceedings at various point of time and prayed for reconveyance one after another and all the cases have ended in favour of the respondent Board.

3.5. The request made by the first appellant on 06.11.2004 to the respondents 2 and 3 praying for reconveyance of the land was rejected vide orders dated 04.03.2004 and 10.02.2010 passed by the second respondent. Challenging the said orders, the appellants 1 to 4 initially had filed W.P.No.3246 of 2011 on the ground that the lands were not utilized for the purpose for which they were acquired and therefore, prayed for reconveyance of the lands under Section 48-B of the Act, 1894. The Writ Court taking into consideration of the fact that the proceedings initiated under the Land Acquisition Act, 1894 is completed and possession of the property is admittedly with the Tamil Nadu Housing Board and by relying upon the decision in ***Tamil Nadu Housing Board v. L.Chandrasekaran (dead) by LRs. and Others [(2010) 2 SCC 786]*** has dismissed the writ petition, vide order dated 09.02.2011.



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Challenging the same, the appellants 1 to 4 have filed W.A.No.16 of 2012.

3.5. After the enactment of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the first appellant viz., Tmt.T.Kalarani once again filed W.P.No.34236 of 2014, seeking to declare Section 4(1) Notification and Section 6 Declaration as void by invoking Section 24(2) of the Fair Compensation Act, 2013. The said writ petition, after contest, came to be allowed, vide order dated 21.07.2015, against which the second respondent therein has filed W.A.No.1641 of 2016.

5. Mr.P.Subba Reddy, learned counsel for the appellants has raised the following grounds:

(i) Award was not passed within two years from the date of Section 6 Declaration.

(ii) Physical Possession has not been taken by the respondents and it still vested with the appellants.



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WEB COPY (iii) Compensation has not been paid even after a period of 45 years from the date of Section 4(1) Notification.

The learned counsel for the appellants, in support of his contentions relied upon the following decisions:

(i) Shakuntala Yadava and Others v. State of Haryana and Others [(2016) 3 MLJ 27(SC)]

(ii) Vijay Latka and another v. State of Haryana and Others [2016 (2) MWN (Civil) 773]

(iii) Indore Development Authority and Manoharlal and Others [(2020) 8 SCC 129].

6. Mr.A.M.Ravindranath Jeyapaul, learned Standing Counsel appearing for the respondents Board would submit that Section 24(2) of the Act, 2013 would come into operation in cases where the award under the Old Act had been passed five years or more prior to the commencement of the Act and either of the two conditions are satisfied, namely where the physical possession of the land has not been taken or compensation has not been paid to the landowners and in the case on



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hand, physical possession of the lands had been taken by the Land Acquisition Officer and handed over to the Tamil Nadu Housing Board and the compensation had been deposited in the Civil Court and as such, the order of the Writ Court in W.P.No.34236 of 2014 warrants interference.

7. This Court has considered the rival submissions and also perused the materials on record.

8. Admittedly, in the case on hand, the acquisition proceedings commenced in the year 1978 by issuance of Section 4(1) Notification on 06.07.1978, Section 6 Declaration on 03.06.1980 and award came to be passed in two phases (i) Award No.10/86-87 on 19.09.1986 in respect of S.Nos.1/3, 1/4, 2/3 and 199/3 and Award No.1/90-91 on 31.08.1990 in respect of S.Nos.2/10, 2/13 and 2/11. Though several writ petitions were filed by various land owners at various points of time challenging the land acquisition proceedings in W.P.No.7490/82, W.A.No.621/90 in W.P.No.7490/82, W.P.No.6078/91, W.P.No.1508/91, W.P.No.16474/91,



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W.P.No.16678/91, W.P.No.389/2005, W.P.No.16340 /07 and

W.P.No.3246/2011 (filed by the appellant in W.A.No.16/2012), all those writ petitions ended in favour of the respondents /Tamil Nadu Housing Board. After the enactment of Act, 2013, the first appellant had filed W.P.No.34236 of 2014, by invoking Section 24(2) of the said Act, which ended in her favour, against which W.A.No.1641/2016 has been filed before this Court by the respondents Board.

9. It is the primordial contention of the appellants that possession of the lands still vests with them and compensation amount was not paid even after 45 years from the date of Section 4(1) Notification and as such, in the light of the decision in *Indore Development Authority case (cited supra)*, they are entitled to get relief under Section 24(2) of the Act, 2013.

10. The respondents 2 and 3 in their counter affidavit has stated that the lands were taken in respect of S.Nos.1/3, 1/4, 2/10 and 2/13. The compensation amount of Rs.10,30,638.10 was handed over to the Land



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Acquisition Officer on 21.03.1980 vide Cheque No.562136 dated 29.02.80 and the same was kept under Work Deposit and the compensation was duly deposited under Section 31(2) of Land Acquisition Act before the competent Civil Court in respect of Survey Numbers 1/3, 1/4, 2/3, in LAOP Nos.224 of 1998, LAOP Nos.223 of 1988 respectively on the file of the Sub-Court, Salem. The compensation amount of Rs.49,718/- in respect of Survey Numbers 2/10, 2/13 and 2/11 was handed over to the Land Acquisition Officer on 08.01.1992, vide Cheque No.623342 dated 31.12.1991 and the same was duly deposited and later it was deposited in Sub Court Salem on 23.09.2016, vide Land Acquisition Officer Letter No.ROC 3/87 vide Cheque No.02124288 dated 31.08.2016.

11. It is further seen from the counter affidavit of the respondents that possession has been taken over by the Land Acquisition Officer between 24.11.1986 and 28.07.1999 and patta for the land in T.S.No.1/3, 1/4, 2/3, 2/10 and 2/13 were transferred to the Tamil Nadu Housing Board as per the revenue records and after taking over the lands in



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WEB COPY S.F.No.1/3 etc., to an extent of 2.71 Acres, the respondents Board has proposed to develop Commercial plots and Residential plots and the Director of Town and Country Planning / Chennai had approved 18 Commercial Plots, vide LP/DTCP No.60/2003 dated 18.3.2003 and the Board has also approved the Scheme, vide Board Resolution No.4.01 dated 21.07.2006 for Rs.96.54 Lakhs and as per the approved layout, the development works of 18 commercial plots has been completed during the year 2010.

12. The Hon'ble Supreme Court in a landmark decision in ***Indore Development Authority v. Manoharlal and Others [(2020) 8 SCC 129]*** has held as under:

"343. By and large, concluded cases are being questioned by way of invoking the provisions contained in Section 24. In our considered opinion, the legality of concluded cases cannot be questioned under the guise of Section 24(2) as it does not envisage or confer any such right to question the proceedings and the acquisitions have been concluded long back, or in several rounds of litigation as mentioned above, rights of the parties have been settled.

.....

366.9. Section 24(2) of the 2013 Act does not give rise to new cause of action to question the legality of



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concluded proceedings of land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the 2013 Act 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."

13. In the case on hand, the entire land acquisition proceedings got concluded in the year 1990 itself and the lands were utilized for the purpose for which they were acquired, as evidenced from the counter affidavit filed by the respondents and the appellants are unable to produce any substantive material before this Court to refute the aforesaid stand taken by the respondents. In the light of the aforesaid decision of this Court, the appellant cannot challenge the land acquisition proceedings which got concluded long back in the year 1990 and therefore, the claim of the appellants is legally unsustainable.

14. That apart, according to the appellants, the respondent Board has not satisfied the twin conditions, namely possession has not been taken over and compensation amount has not been paid and as such, in the light of Section 24(2) of the Act, 2013 entire land acquisition



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WEB COPY proceedings are declared to be lapsed. The Hon'ble Supreme Court in

Indore Development Authority case (cited supra), in the penultimate paras held as under:

366.3. *The word “or” used in Section 24(2) between possession and compensation has to be read as “nor” or as “and”. The deemed lapse of land acquisition proceedings under Section 24(2) of the 2013 Act takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of land has not been taken nor compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.”*

In the light of the aforesaid decision of the Hon'ble Supreme Court, if any of the conditions has been satisfied by the respondent Board i.e., taking over possession or compensation amount has been paid, the appellants cannot invoke Section 24(2) of the Fair Compensation Act, 2013.

15. In a latest decision in ***Land and Building Department through Secretary and another v. Attro Devi & Others [2023 LiveLaw (SC)]***



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WEB CO 302], the Hon'ble Supreme Court held as under:

13. It is also a fact to be noticed and taken care of that large chunk of land is acquired for planned development to take care of immediate need and also keep buffer for future requirements. Such portion of land may be lying vacant also. As has been observed in *Indore Development Authority's case* (supra) by this Court, the State agencies are not supposed to put police force to protect possession of the land taken after process of acquisition is complete. As far as the case in hand is concerned, the land even if was lying 5 vacant, is required now for a project of national importance for construction of the Delhi-Saharanpur-Dehradun Highway starting from Akshardham Junction to Delhi/UP Border, in the State of Delhi in Phase-I of Bharatmala Pariyojana.

14. It is the undisputed fact on the record, as has been noticed in the impugned order passed by the High Court, the possession of the land was taken over by the Land Acquisition Collector and handed over to Delhi Development Authority. Report of possession proceedings dated 06.12.2012 has also been placed on record. **Hence, one of the conditions being satisfied, we need not examine any other argument.**

15. Keeping in view the aforesaid fact and the law laid down by the Constitution Bench of this Court in *Indore Development Authority's case* (supra), in our opinion the order passed by the High Court cannot be legally sustained and the same is accordingly set aside. However, the respondents shall be entitled to receive compensation as per their entitlement. The Land Acquisition Officer should also take steps to pay the same to the rightful owner."



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WEB COPY 16. In the case on hand, the respondents Board has produced the Possession Certificate in their typed set of documents in ROC.No.3/87 dated 28.07.1999, issued by the Special Tahsildar (LA), Neighbourhood Scheme, Salem-8, in and by which possession of the lands in T.S.Nos.1/4, 2/10, 2/13 totalling an extent of 0.96 acres has been taken over, vide Award No.1/90-91 dated 31.08.90 and handed over to Mr.I.P.Chidambaram, Surveyor, Salem Housing Unit of Tamil Nadu Housing Board, who has signed in the said document. Thus, it is clear that the possession of lands in question has been taken over by the respondent Board as early as on 28.07.1999 and the respondents Board has satisfied one of the twin conditions. Therefore, in the light of the decision *Indore Development Authority case (supra)*, the claim of the appellants by invoking Section 24(2) of the Act, 2013 is legally unsustainable.

17. In the light of the reasons assigned above, the W.A.No.1641 of 2016 stands allowed and the order of the Writ Court dated 21.07.2015 in W.P.No.34236 of 2014 is set aside. Accordingly, W.A.No.16 of 2012



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stands dismissed. No costs. Consequently, connected miscellaneous petitions are dismissed.

[D.K.K., J.] [P.B.B., J.]
30.08.2023

Index:yes/no
Internet:yes
Jvm

To

- 1.The Secretary,
State of Tamil Nadu,
Housing and Urban Development Department,
Fort St.George, Chennai-600 009.
- 2.The Chairman,
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- 3.The Executive Engineer,
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VERDICTUM.IN



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**D.KRISHNAKUMAR, J.,
&
P.B.BALAJI, J.**

Jvm

**Common Judgment in
W.A.Nos.16 of 2012 and 1641 of 2016**

30.08.2023