
(2014) 08 MAD CK 0153

In the Madras High Court

Case No : Writ Petition Nos. 8497 and 8498 of 2000

N. Manoharan

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 12-08-2014

Acts Referred:

General Clauses Act, 1897 — Section 6

Land Acquisition Act, 1894 — Section 11, 18, 24, 24(2), 31, 31

Citation : (2014) WritLR 1048

Hon'ble Judges : N. Paul Vasantha Kumar, J;K. Ravichandra Babu, J

Bench : Division Bench

Judgement

K. Ravichandra Babu, J.—W.P. No. 8497 of 2000 is filed by the petitioners challenging the order of the 1st respondent dated 17.4.2000 in Letter No. 277/28/LA3(1)/98-6 and consequently for a direction to the respondents to exclude the land in S. No. 388/C in Sithravuthanpalayam village, Dharapuram Taluk, Erode District from the land acquisition proceedings. Through the said impugned order dated 17.4.2000, the 1st respondent-State of Tamilnadu has rejected the request of the petitioners to exclude their land from the land acquisition proceedings. W.P. No. 8498 of 2000 is filed by the petitioners challenging the notification issued under Section 4(1) of Land Acquisition Act issued in G.O.Ms. No. 737, dated 11.8.1982 by the 1st respondent and the subsequent declaration issued under Section 6 of the Act, published in G.O.Ms. No. 552, Housing and Urban Development Department, dated 03.6.1985 insofar it relates to S. No. 388/C in Sithravuthanpalayam village, Dharapuram Taluk, Erode District.

2. Since the issue involved in W.P. No. 8498 of 2000 is covered by the decision of the Hon'ble Supreme Court, reported in Pune Municipal Corporation and Another Vs. Harakchand Misirimal Solanki and Others, infavour of the petitioners, we take up W.P. No. 8498 of 2000 first for consideration and decision.

3. The petitioners have challenged the land acquisition proceedings issued under

Section 4(1) and declaration under Section 6 of Land Acquisition Act by raising very many grounds, including the ground that there was a delay of three years in passing declaration under Section 6 of the Land Acquisition Act and that the 3rd respondent has not at all obtained any sanction or approval from the competent authority as per Section 11 of the Land Acquisition Act, while passing the Award. It is the specific contention of the petitioners that though Award No. 4 of 1988 was passed on 25.8.1988, possession of the subject matter of the land is still with the petitioners and they have not been dispossessed at any point of time. It is the further contention of the petitioners that though Award was passed fixing the compensation of Rs. 29,446.80, the same has neither been deposited into the Civil Court nor paid to the petitioners. On the other hand, it is seen from the letter addressed by the Executive Engineer-cum-Administrative Officer, Erode Housing Board Section, Erode in Letter No.Ni.Kai. 2/51/3, dated 6.8.2014 to the Standing Counsel for the Tamil Nadu Housing Board, the said amount was only handed over by way of Cheque to the Special Tahsildar (Land Acquisition) on 11.6.1987. It is also specifically admitted in the same communication that the possession of the land has not been taken from the hands of the petitioners as on 06.8.2014.

4. During the pendency of these writ petitions, the petitioners have filed W.P.M.P. Nos. 87 and 88 of 2014 in W.P. Nos. 8497 and 8498 of 2000 seeking for permission to raise additional grounds claiming benefit under Section 24(2) of the Land Acquisition Rehabilitation and Resettlement Act, 2013 and the said applications were also allowed by this Court on 18.7.2014.

5. Considering the above said facts and circumstances, the points that arise for consideration in these writ petitions are as to whether the petitioners are entitled to succeed in view of Section 24(2) of the Land Acquisition Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013) and as to whether the entire acquisition proceedings stand lapsed on the reason that the possession of the land is not taken away from the petitioners, even as on today.

6. The learned counsel for the petitioners, in support of his contentions, relied on the decision of the Hon"ble Supreme Court, reported in Pune Municipal Corporation and Another Vs. Harakchand Misirimal Solanki and Others, , which has been followed by the Division Bench of this Court in P. Jayadevan Vs. The State Government and The Tamil Nadu Housing Board, in which one of us (N.P.V.J.) was a member. The relevant paragraphs of the judgment made in W.A. No. 918 of 2010, dated 03.4.2014, are extracted hereunder:-

"17. On behalf of the landowners/respondents in the said Civil Appeals, it was contended that by virtue of Section 24(2) of the Central Act 30 of 2013, the subject acquisition shall be deemed to have been lapsed because the award under Section 11 of the Central Act, 1894, came to be passed more than five years prior to the commencement of the present Act and no compensation has been paid to the owners, nor the amount of compensation has been deposited in the Court by the Land Acquisition Officer. On behalf of the appellant/Pune

Municipal Corporation, it was contended that since the landowners neither received the compensation nor made any request to make a reference, it was deposited in Government treasury and therefore, there was no default on their part for paying the compensation.

18. The Hon^{ble} Supreme Court of India has considered the said issue in extenso, and held as follows:

"17. While enacting Section 24(2), Parliament definitely had in its view Section 31 of the 1894 Act. From that one thing is clear that it did not intend to equate the word "paid" to "offered" or "tendered". But at the same time, we do not think that by use of the word "paid", Parliament intended receipt of compensation by the landowners/persons interested. In our view, it is not appropriate to give a literal construction to the expression "paid" used in this sub-section (sub-section (2) of Section 24). If a literal construction were to be given, then it would amount to ignoring procedure, mode and manner of deposit provided in Section 31(2) of the 1894 Act in the event of happening of any of the contingencies contemplated therein which may prevent the Collector from making actual payment of compensation. We are of the view, therefore, that for the purposes of Section 24(2), the compensation shall be regarded as "paid" if the compensation has been offered to the person interested and such compensation has been deposited in the court where reference under Section 18 can be made on happening of any of the contingencies contemplated under Section 31(2) of the 1894 Act. In other words, the compensation may be said to have been "paid" within the meaning of Section 24(2) when the Collector (or for that matter Land Acquisition Officer) has discharged his obligation and deposited the amount of compensation in court and made that amount available to the interested person to be dealt with as provided in Sections 32 and 33.

18. 1894 Act being an expropriatory legislation has to be strictly followed. The procedure, mode and manner for payment of compensation are prescribed in Part V (Sections 31-34) of the 1894 Act. The Collector, with regard to the payment of compensation, can only act in the manner so provided. It is settled proposition of law [classic statement of Lord Roche in AIR 1936 253 (Privy Council)] that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.

19. Now, this is admitted position that award was made on 31.01.2008. Notices were issued to the landowners to receive the compensation and since they did not receive the compensation, the amount (Rs. 17 crores) was deposited in the Government treasury. Can it be said that deposit of the amount of compensation in the Government treasury is equivalent to the amount of compensation paid to the land owners/persons interested? We do not think so. In a comparatively recent decision, this Court in Ivo Agnelo Santimano Fernandes and Others Vs. Government of Goa and Another, , relying upon the earlier decision in Prem Nath Kapur and Another Vs. National Fertilizers Corpn. of India Ltd. and Others, , has

held that the deposit of the amount of the compensation in the state's revenue account is of no avail and the liability of the state to pay interest subsists till the amount has not been deposited in court.

20. From the above, it is clear that the award pertaining to the subject land has been made by the Special Land Acquisition Officer more than five years prior to the commencement of the 2013 Act. It is also admitted position that compensation so awarded has neither been paid to the landowners/persons interested nor deposited in the court. The deposit of compensation amount in the Government treasury is of no avail and cannot be held to be equivalent to compensation paid to the landowners/persons interested. We have, therefore, no hesitation in holding that the subject land acquisition proceedings shall be deemed to have lapsed under Section 24(2) of the 2013 Act.

21. The argument on behalf of the Corporation that the subject land acquisition proceedings have been concluded in all respects under the 1894 Act and that they are not affected at all in view of Section 114(2) of the 2013 Act, has no merit at all, and is noted to be rejected. Section 114(1) of the 2013 Act repeals 1894 Act. Sub-section (2) of Section 114, however, makes Section 6 of the General Clauses Act, 1897 applicable with regard to the effect of repeal but this is subject to the provisions in the 2013 Act. Under Section 24(2) land acquisition proceedings initiated under the 1894 Act, by legal fiction, are deemed to have lapsed where award has been made five years or more prior to the commencement of 2013 Act and possession of the land is not taken or compensation has not been paid. The legal fiction under Section 24(2) comes into operation as soon as conditions stated therein are satisfied. The applicability of Section 6 of the General Clauses Act being subject to Section 24(2), there is no merit in the contention of the Corporation."

19. In the considered opinion of the Court, the above cited judgment is squarely applicable to the facts of this case for the following reasons.

20. The Award No. 17/1994 came to be passed on 12.8.1994, and there is a clear indication in the said award, that the third respondent was very much conscious of the fact that the appellant and his brother have refused to receive the compensation and it was further stated that the compensation amount will be deposited by invoking Section 31(2) of the Central Act, 1894. The second respondent/Tamil Nadu Housing Board without any loss of time, has issued a cheque dated 2.2.1995, for a sum of Rs. 1,79,53,793/-, which includes the compensation amount in respect of Award No. 17/1994 dated 12.8.1994. The third respondent, after receipt of the said cheque, in turn, deposited the same to the credit of "Civil Deposit for works done for public bodies work deposit" on 16.2.1995; but, he fails to deposit the compensation amount in respect of Award No. 17/1994, on the file of the then jurisdictional Court viz. Sub Court at Krishnagiri, by invoking Section 31(2) of the Central Act, 1894, and only pursuant to the interim order dated 27.9.2012, made in this writ appeal, the third respondent has withdrawn a sum of Rs. 4,06,199/- from the credit of the

above said Account and deposited the same on the file of the present jurisdictional Court viz. Sub Court at Hosur, on 29.10.2012, that too after the expiry of the time granted by this Court. It is to be noted that if extension of time was obtained from this Court and the amount was deposited prior to 1.1.2014, the provisions of Section 24(2) of Act 30 of 2013 may not apply and the appellant could have been denied of the relief. In the light of Section 24(2) of Central Act 30 of 2013 coupled with the above cited decision of the Hon"ble Supreme Court of India, though the award came to be passed five years or more prior to the commencement of the present Central Act 30 of 2013, which came into effect from 1.1.2014, the third respondent has not chosen to withdraw the compensation amount deposited by him to the credit of the said Account, and deposit the same on the file of the jurisdictional Sub Court on time.

21. In view of the above said subsequent development from 1.1.2014, this Court is of the view that the land acquisition proceedings initiated in respect of lands admeasuring 0.62.0 hectares in Survey No. 890/1B and 0.49.0 hectares in Survey No. 889/1B, can be treated to be deemed to have lapsed. However, it is always open to the respondents to initiate proceedings afresh in terms of Central Act 30 of 2013 if the circumstances warrant so."

7. On 07.8.2014, when these writ petitions were taken up for hearing, this Court, in order to ascertain the fact as to whether the possession of the land was really taken from the petitioners or not, the Special Tahsildar (Land Acquisition), Neighbourhood Scheme, Erode (formerly Dharapuram) now at Erode, Erode District was directed to be present before this Court on 12.8.2014 with the relevant File.

8. Today, the Tahsildar, Dharapuram by name Thiru. K. Arumugam is present before this Court, in view of the fact that the post of Special Tahsildar (Land Acquisition), Neighbourhood Scheme, Erode has been abolished. Based on his instruction, the learned Special Government Pleader submitted that the possession of the land has not been taken from the petitioners as on today and the same is still with them only.

9. Considering these undisputed facts with regard to the possession of the land with the petitioners and in view of Section 24(2) of the Central Act 30 of 2013 and in view of the decision of the Hon"ble Supreme Court reported in Pune Municipal Corporation and Another Vs. Harakchand Misirimal Solanki and Others, , which has been followed by the Division Bench of this Court in W.A. No. 918 of 2010 dated 03.4.2014 (P. Jayadevan v. The State Government, rep. by its Secretary to Government, Housing and Urban Development Department, Fort St. George, Chennai - 9 and others), we are of the view that the petitioners are entitled to succeed in W.P. No. 8498 of 2000 and the entire acquisition proceedings have to be declared as lapsed by virtue of introduction of Section 24(2) of the Land Acquisition Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013).

10. Accordingly, W.P. No. 8498 of 2000 is allowed and the impugned acquisition proceedings initiated under Section 4(1) notification issued in G.O.Ms. No. 737, dated 11.8.1988 by the 1st respondent followed by Section 6 declaration published in G.O.Ms. No. 552, Housing and Urban Development Department, dated 03.6.1985 are treated as lapsed, in view of introduction of Section 24(2) of the Land Acquisition Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013). Since W.P. No. 8498 of 2000 is allowed and the impugned acquisition proceedings are treated as lapsed, no further separate order is necessary in W.P. No. 8497 of 2000, which only seeks for exclusion of the land in S. No. 388/C in Sithravuthanpalayam village, Dharapuram Taluk, Erode District from land acquisition proceedings. Accordingly, W.P. No. 8497 of 2000 is disposed of, as closed. No costs.