

(2014) 04 MAD CK 0227
In the Madras High Court
Case No : Writ Appeal No. 918 of 2010

P. Jayadevan

APPELLANT

Vs

The State Government and The Tamil Nadu Housing Board

RESPONDENT

Date of Decision : 03-04-2014

Acts Referred:

General Clauses Act, 1897 — Section 6
Land Acquisition Act, 1894 — Section 11, 18, 31, 31(2)
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 11, 114, 114(1), 114(2), 24

Citation : (2014) 5 CTC 187 : (2014) 2 LW 785 : (2014) 4 MLJ 325

Hon'ble Judges : N. Paul Vasantha Kumar, J; Meenakshi Sundaram Sathyanarayanan, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M. Sathyanarayanan, J.—The writ petitioner is the appellant and W.P. No. 13800/2008 has been filed by him for quashment of the order dated 11.10.2007, passed by the first respondent, by and under which, his request for re-conveyance of lands admeasuring 0.62.0 hectares in Survey No. 890/1B and 0.49.0 hectares in Survey No. 889/1B, came to be rejected, and the said writ petition, after contest, came to be dismissed on 29.3.2010, and hence this appeal. The facts narrated in brief, leading to the filing of this writ appeal, are as follows:

1(i) The first respondent has sought to acquire the lands situated in Hosur, Dharmapuri District, now Krishnagiri District, for the purpose of Housing Neighbourhood Scheme Phase XV and XVI for Hosur Housing Unit of Tamil Nadu Housing Board and accordingly, issued G.O.Ms. No. 850, Housing and Urban Development Department, dated 21.5.1991, u/s 4(1) of the Land Acquisition Act, 1894, and it was published in the Gazette of the Government of Tamil Nadu on 19.6.1991. Thereafter, a declaration u/s 6 of the Act came to be issued in G.O.Ms. No. 528, Housing and Urban Development Department, dated

12.8.1992, and was also published in the Gazette of Government of Tamil Nadu on 12.8.1992, for acquisition of 6.52.5 hectares for the said scheme.

1(ii) The appellant claims that he was the owner of the land admeasuring 0.62.0 hectares in Survey No. 890/1B, and the land admeasuring 0.49.0 hectares in Survey No. 889/1, belonged to his family and challenging the legality of the said acquisition, he along with four of his relatives filed W.P. No. 1261/1993, on the file of this Court, and it came to be dismissed on merits, on 12.4.2000.

1(iii) The appellant herein submitted a representation praying for re-conveyance of the above said lands, situated in the said Survey Numbers, and since it was not disposed of, filed W.P. No. 4142/2007. Learned Single Judge of this Court has disposed of the said writ petition by order dated 6.2.2007, directing the respondents therein, who are also arrayed as respondents in the present writ appeal, to consider and dispose of the said representation within a stipulated time.

1(iv) The first respondent in compliance of the order, has considered the request made by the appellant for re-conveyance of the lands, and rejected the same vide letter No. 3797/LA.2(2)/2007-5 dated 11.10.2007, stating among other things, that after Section 6 declaration, an award came to be passed on 12.8.1994, in Award No. 17/1994 and on account of order of stay with regard to dispossession, the lands in question, have not been handed over to the Land Acquisition Officer and subsequently, possession was taken and handed over to Tamil Nadu Housing Board on 15.12.2000. It is further stated in the said letter, that the lands in question, are essentially required for the implementation of the Housing Scheme and the request for re-conveyance cannot be feasible of compliance and therefore, the first respondent rejected the said request.

1(v) The Tamil Nadu Housing Board in turn, sent a letter dated 1.2.2008, to the appellant conveying the information about the rejection of his request by the Government and challenging the correctness of the proceedings dated 11.10.2007, the appellant herein filed W.P. No. 13800/2008, contending among other things, that the persons similarly placed like him, had approached this Court and got the relief and therefore, his request for re-conveyance ought to have been considered positively.

1(vi) It is further contended that the official respondents have not even chosen to deposit the amount due and payable towards compensation, till the date of filing of the writ petition and in reality, the appellant/writ petitioner has not been allowed to avail the benefits of the acquisition process and even today, the land is used for agricultural purpose and hence, he prayed for quashment of the above said order passed by the first respondent herein.

1(vii) The learned Single Judge having considered the factual aspects and legal position, found that the relief sought for by the writ petitioner/appellant herein for re-conveyance, cannot be granted and therefore, dismissed the writ petition vide final order dated 29.3.2010, and hence this appeal.

2. The learned Counsel appearing for the appellant/writ petitioner, has submitted that "The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (Central Act 30 of 2013)" came to be passed in the Parliament and it came into force with effect from 1.1.2014, and also invited the attention of this Court to Section 24 of the said Act and would contend that as per sub-section (2) of Section 24, where an award u/s 11 has been made five years or more prior to the commencement of the present Act, but physical possession of the land has not been taken and compensation has not been paid, the said proceedings shall be deemed to have lapsed and the appropriate Government, if so chooses, shall initiate proceedings of such land acquisition afresh in accordance with the provisions of the Act.

3. It is further contended that admittedly, the award came to be passed in respect of the lands in question, and other lands, vide Award No. 17/1994 dated 12.8.1994, and the Tamil Nadu Housing Board has deposited a sum of Rs. 1,79,53,793/-, on the file of the third respondent herein, on 2.2.1995, and the third respondent in turn, has deposited the said amount to the credit of "Civil Deposit for works done for public bodies work deposit", on 16.2.1995, in State Bank of Mysore, Hosur Branch, and pendency of this writ appeal, this Court vide order dated 27.9.2012, has directed the respondents herein to withdraw the sum from the Treasury Account and deposit the same before the Sub Court, Hosur, within a period of two weeks from that date and a sum of Rs. 4,06,199/- being the amount of compensation payable to the petitioner and his relatives, was deposited on the file of the Sub Court, Hosur, on 29.10.2012.

4. It is the primordial submission of the learned Counsel appearing for the appellant, that though the sanction order came to be passed as early as on 4.1.1995, and the Housing Board has also deposited the entire compensation amount by way of a cheque in favour of the third respondent on 2.2.1995, the third respondent instead of depositing the amount into the jurisdictional Court viz. Sub Court at Hosur, has chosen to deposit the same to the credit of "Civil Deposit for works done for public bodies work deposit" on 16.2.1995, and only pursuant to the interim order dated 27.9.2012, made in this writ appeal, attempted to deposit the amount on the file of the Sub Court at Hosur on 29.10.2012, which was objected by the Sub Court as the time limit given by this Court, lapsed and no extension of time was obtained to deposit the amount and in the light of Section 24(2) of Central Act 30 of 2013, the land acquisition proceedings shall be deemed to have lapsed, insofar as the petitioner and his relatives are concerned, and hence, he prays for quashment of the land acquisition proceedings and consequential re-conveyance to them.

5. Per contra, Mr. S. Gomathinayagam, learned Additional Advocate General III, assisted by Mr. C. Kasirajan, learned Standing Counsel appearing for the Tamil Nadu Housing Board/second respondent, and Mr. V. Subbiah, learned Special Government Pleader appearing for the respondents 1 and 3, had vehemently contended that challenging the correctness of the acquisition, the appellant and

others filed W.P. No. 1261/1993 and it came to be dismissed on 12.4.2000, and seven years thereafter, the appellant alone made a requisition for re-conveyance and this Court in the order dated 6.2.2007, made in W.P. No. 4142/2007, has directed the Government to consider and dispose of the said representation and the Government after thorough examination of the materials placed before it, has rejected it on 11.10.2007, and the said decision was also conveyed by the Tamil Nadu Housing Board to the appellant herein and only in the year 2008, the appellant herein has chosen to make a challenge to the said order by filing W.P. No. 13800/2008 and the learned Single Judge on a thorough and detailed consideration of factual aspects and legal position, has rightly dismissed the writ petition on 29.3.2010, and in the absence of any infirmity, the said order may not be interfered. It is further contended that the lands in question, have been taken possession as early as on 15.12.2000, and are absolutely required for the proper and effective implementation of Housing Neighbourhood Scheme Phase XV and XVI and in the light of the said factual aspect also, the present writ appeal lacks merit and substance and hence, they pray for dismissal of this appeal. The learned Additional Advocate General further submitted that even if there is delay in depositing the compensation in Court, the appellant is entitled to claim interest as per Section 34 of the Land Acquisition Act, 1894.

6. This Court paid its anxious consideration to the rival submissions and also perused the typed-set of documents filed by the appellant as well as by the respondents.

7. The question that arises for consideration, is that in the light of Section 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (Central Act 30 of 2013), whether the impugned land acquisition proceedings are deemed to have lapsed or not?

8. No doubt, the challenge made by the writ petitioner and his relatives as to the legality of the land acquisition proceedings, has ended in dismissal vide order dated 12.4.2000, made in W.P. No. 1261/1993, and thereafter, the appellant herein submitted a representation for re-conveyance of the lands on the ground that a similar request was considered and favourably responded by the Government in respect of adjacent landowners and since no orders came to be passed on the said representation, the appellant herein filed W.P. No. 4142/2007 and obtained orders on 6.2.2007, directing the Government to consider the said representation and pass orders and accordingly, the Government has passed an order dated 11.10.2007, rejecting the said request, and the said decision was also conveyed by the second respondent/Tamil Nadu Housing Board on 1.2.2008. The said order of rejection was once again challenged by the writ petitioner in W.P. No. 13800/2008, and it came to be dismissed on 29.3.2010 and hence the present appeal.

9. During the pendency of this appeal, the new Act viz. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (Central Act 30 of 2013), came to be passed and it

came into force with effect from 1.1.2014, and it is relevant to extract Section 24 of the said Act as follows:

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 (1 of 1894),-

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

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

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

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition u/s 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.

10. A careful scrutiny of the materials placed before this Court, especially the Award No. 17/1994 dated 12.8.1994, would disclose that the appellant and his brother viz. P. Srinivasan, had participated in the Section 5A enquiry and objected to the acquisition and it was considered and rejected and thereafter, the award came to be passed stating that from the date of Section 4(1) notification i.e., 15.8.1991, to the date of award i.e., 12.8.1994, the claimants are entitled to interest at the rate of 12% per annum. Insofar as the lands acquired from the appellant and his brother are concerned, it is stated in the said award that in W.P. No. 1261/1993, interim stay of dispossession came to be passed on 21.1.1993, in W.M.P. No. 1959/1993 and with regard to the other proceedings, no order of stay has been granted and considering the judgment rendered by this Court and the fact that the appellant and his brother had also refused to accept the compensation, a decision has been taken to make a reference u/s 18, on the file of the Court of Subordinate Judge at Krishnagiri, and to deposit the compensation amount due and payable to them, viz. Rs. 4,06,199/-, u/s 31(2) of the Land Acquisition Act, 1894.

11. It is very pertinent to point out at this juncture, that the award came to be passed during August, 1994, and within a short span of time, the Tamil Nadu Housing Board has deposited the sum of Rs. 24,97,439/- due and payable in respect of Award No. 17/1994, along with 8 other awards aggregating to a sum of Rs. 1,79,53,793/- by issuing a cheque in favour of the third respondent on 2.2.1995, and therefore, the second respondent/Tamil Nadu Housing Board cannot be faulted. The third respondent on receipt of the said compensation, as required to be deposited under the Act before the Court, deposited the same to the credit of Head of Account 8443 "Civil Deposit for works done for public bodies work deposit", in the State Bank of Mysore, Hosur on 16.2.1995.

12. The uncontroverted fact is that the compensation amount of Rs. 24,97,439/- in respect of Award No. 17/1994, which was also included in the sum of Rs. 1,79,53,793/-, was not deposited to the credit of the then jurisdictional Court viz., Sub Court, Krishnagiri, though a reference to that effect has been clearly made in the award itself.

13. As already stated, the appellant has filed W.P. No. 13800/2008 challenging the correctness of the order rejecting his request for re-conveyance, which ended in dismissal, and in the present writ appeal in W.A. No. 918/2010, this Court vide interim order dated 27.9.2012, has directed the respondents herein to withdraw the said sum from the credit of the above said account and deposit the same before the Sub Court at Hosur, which, at present, is the jurisdictional Court and accordingly, the third respondent has withdrawn the said sum and deposited to the credit of Sub Court, Hosur on 29.10.2012.

14. On behalf of the second respondent, counter affidavit has been filed in this writ appeal, which is almost the verbatim reproduction of the counter affidavit filed in W.P. No. 13800/2008. The third respondent has failed to offer any plausible explanation as to what made him to keep the deposit of compensation in respect of Award No. 17/1994, to the credit of the above said account though it has been indicated in the award itself that since the appellant herein and his brother have refused to receive the award, it will be deposited to the credit of jurisdictional Court viz. Sub Court at Krishnagiri by invoking Section 31(2) of the Central Act, 1894. As already pointed out, only pursuant to the interim order passed by this Court in this appeal, a sum of Rs. 4,06,199/- has been taken from the above said Head of Account and deposited in the said jurisdictional Court on 29.10.2012, which was also not accepted by the Sub Court as the third respondent has not deposited the amount within the stipulated time of two weeks from 27.9.2012 as the period was over by 11.10.2012. As rightly argued by the learned Counsel for the appellant, no extension of time to deposit the amount was obtained to comply with the interim order made in the writ appeal dated 27.9.2012.

15. The scope of sub-section (2) of Section 24 of Central Act 30 of 2013, which came into effect from 1.1.2014, has been considered by the Hon'ble Supreme Court of India in the decision reported in Pune Municipal Corporation and Another

Vs. Harakchand Misirimal Solanki and Others, . The facts of the said case would disclose that the acquisition of lands was made for development of "Forest Garden" and the award came to be passed during the year 2008 and challenging the acquisition and validity of the award, writ petitions came to be filed and the High Court of Bombay had quashed the acquisition proceedings and gave certain directions including restoration of possession, and aggrieved by the same, Pune Municipal Corporation has filed Special Leave Petitions and after admission, they were converted as Civil Appeals.

16. 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 u/s 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.

17. 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 u/s 18 can be made on happening of any of the contingencies contemplated u/s 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 u/s 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. u/s 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 u/s 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.

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

19. 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.

20. 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.

21. The contention of the State that in the earlier round of litigation, the appellant was denied relief and hence he is not entitled to indirectly challenge the proceeding cannot be countenanced as the challenge now made is for not depositing the compensation in the Court, which is in subsequent stage and by operation of law, the proceeding is deemed to be lapsed. In the result, this writ appeal is allowed and the order dated 29.3.2010, made in W.P. No. 13800/2008, is set aside and consequently, Section 4(1) Notification in G.O.Ms. No. 850, Housing and Urban Development Department, dated 21.5.1991, and Section 6 Declaration in G.O.Ms. No. 528, Housing and Urban Development Department, dated 12.8.1992, insofar as the land admeasuring to an extent 0.62.0 hectares in Survey No. 890/1B, and the land admeasuring to an extent of 0.49.0 hectares

in Survey No. 889/1B, are deemed to have lapsed. However, the respondents are at liberty to initiate proceedings afresh in accordance with Central Act 30 of 2013. The respondents are permitted to withdraw the sum of Rs. 4,06,199/- allegedly deposited, with accrued interest if any, in respect of Award No. 17/1994. In the circumstances of the case, there shall be no order as to costs.