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W.P.No.3351 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	19.04.2023
Pronounced on	28.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.3351 of 2020
and W.M.P.No.3890 of 2020

The Coimbatore Cricket Club Trust,
Coimbatore rep. by its Trustees
Manilal Govindji Khona
S/o.Govindji
M.Soundarajan
S/o.Muthusamy
D.Lakshminnarayanasamy
S/o.Duraisamy
Having office at No.1133, Trichy Road,
Coimbatore, Coimbatore District.

... Petitioner

Vs.

- 1.The Secretary to Government,
Housing & Urban Development Department,
Fort St. George,
Chennai – 600 009.
- 2.The Special Tahsildar (Land Acquisition),
Housing Scheme No.III,
Tatabad, Sivananda Colony,
Coimbatore -600 012.
- 3.The Executive Engineer cum
Administrative Officer,
Coimbatore Housing Unit,
Tamil Nadu Housing Board,
Tatabad, Sivananda Colony,
Coimbatore- 600 012.



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4. The Tahsildar,
Coimbatore (North) Taluk,
Coimbatore.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Declaration, declaring that the entire acquisition proceedings initiated by the first respondent under the Land Acquisition Act 1894, covered in Award No.10/87 dated 16.10.1987 in respect of the lands of an extent of 1.16 acres comprised in Survey No.455 and an extent of 6.50 acres comprised in S.No.456, totally ad-measuring about 7.66 acres situated in Telugupalayam Village, Coimbatore District belonging to the petitioner Trust, as lapsed by operation of law in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013 (Act 30 of 2013).

For Petitioner : Mr.R.N.Amarnath

For Respondent : Mr.P.Sathish, AGP
Nos.1, 2 & 4

For Respondent-3 : Mr.A.M.Ravindranath Jeyapal

ORDER

The present Writ Petition has been filed claiming benefits under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Re-habitation and Resettlement Act, 2013 [hereinafter referred to as "New Act"].



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2. Heard Mr.R.N.Amarnath, learned counsel for the petitioner and Mr.P.Sathish, learned Additional Government Pleader appearing on behalf of the respondents 1, 3 & 4 as well as Mr.A.M.Ravindranath Jeyapal, learned counsel for the third respondent.

3. The properties comprised in Survey Nos.455 & 456 measuring an extent of 7.71 acres were the subject matter of the acquisition proceedings initiated by the first respondent under Land Acquisition Act, 1894 (hereinafter referred to as "Old Act") and covered under Award No.10 of 1987 dated 16.10.1987 under L.A.No.11 of 1981.

4. The submission of the learned counsel for the petitioner is that the acquisition proceedings initiated under the Old Act is deemed to have lapsed under Section 24(2) of the New Act, since the acquisition authorities had neither paid the compensation for the acquisition proceedings of the subject lands to the petitioners under Form B nor was the physical possession of the subject lands were taken by the authorities in the prescribed manner.



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5. Per contra, the learned Additional Government Pleader, as well as the learned counsel for the Tamil Nadu Housing Board (TNHB), submitted that the compensation amount for acquisition of the subject properties was properly deposited in the Civil Court and possession of the subject lands were also taken and handed over to the TNHB and therefore, the claim of the petitioner that the acquisition proceedings had lapsed, cannot be sustained.

6. Physical Possession:-

The law relating to mode of taking physical possession under the Old Act and as contemplated under Section 24(2) of the New Act has been well settled through a catena of judgments. In ***Balmokand Khatri Educational and Industrial Trust, Amirstar Vs. State of Punjab*** reported in **1996 (4) SCC 212**, it was held that the normal mode of taking possession is by drafting of a panchanama, in the presence of panchas and taking possession and giving delivery to the beneficiary is the accepted mode of taking possession of the land. In the subsequent landmark decision of the Hon'ble Supreme Court in the case of ***Indore Development Authority Vs. Manoharlal and Others*** reported in **2020 (8) SCC 129**, this ratio was summed up in the



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following manner:-

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"366.7. The mode of taking possession under the 1894 Act 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 1894 Act, the land vests in State there is no divesting provided under [Section 24\(2\)](#) of the 2013 Act, as once possession has been taken there is no lapse under [Section 24\(2\)](#)."

7. In the instant case, the possession certificate issued by the Tahsildar, Coimbatore states that the possession of the subject lands were handed over to the Surveyor, Coimbatore Housing Unit, Coimbatore on 16.10.1987. Apart from this possession certificate, there is no other document evidencing such a possession was handed over in the presence of witnesses by drafting of panchanama. Neither the counter affidavit nor the respondents herein were able to substantiate before this Court that such taking over possession and handing over the same to the beneficiary Board was in the presence of any witness. In the absence of the same and in the light of the well laid down decision of the Hon'ble Supreme Court as stated above, the mode of taking over possession of the subject properties is not in conformity



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with the established procedure in law and thus, the possession is deemed to have been retained by the petitioner.

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8. Payment of Compensation:-

Under Section 31 of the Old Act, when an award under Section 11 is made by the Collector, he shall tender payment of the compensation to the persons interested and entitled to and pay the same. When such compensation is refused or in view of any dispute with regard to entitlement of the claimants or as to the apportionment of it, the Collector is mandated to deposit the compensation amount in the Court in reference under Section 18 has been made. Thus, the obligation to pay would be completed only when the compensation amount is tendered in the manner provided under Section 31 of the Old Act.

9. Section 12(2) of the Old Act, mandates the Collector to give immediate notice of the award to such of the persons interested as are not present personally or by their representatives under Section 11. It is a well settled proposition that the notice under Section 12(2) of the Act is a clear intimation of making of the award, requiring the person interested to receive the compensation awarded under the Act.



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10. It is the stand of the respondents herein that the notice under Section 12(2) in Form 9 dated 16.10.1987 was sent to one Krishnasamy, Managing Trustee of the petitioner's Cricket Club and since no person was available in the said address, the notice was struck in the survey stone of the property.

11. The mode in which the compensation is to be tendered has been dealt in several decisions of the Hon'ble Supreme Court. Summing up some of the decisions on these aspect, a learned Judge of this Court in the case of ***K.Saraswathi and Another Vs. State of Tamil Nadu*** reported in ***2021 (2) CTC 300***, had dealt with the mode of such tender, in the following manner:-

"(28)The next question is whether this deposit made by the respondents satisfies the requirement of tendering / paying the compensation to the land owner. The learned Advocate General submitted that even assuming without admitting that the respondents did not follow the correct procedure for deposit of the compensation amount, the same cannot be questioned at this length of time and it should have been questioned during the contemporaneous time at which it was deposited.



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In order to appreciate this submission made by the learned Advocate General, this Court must clearly enunciate as to what constitutes tendering / paying of compensation amount to a land owner after the compensation is fixed in the Award Proceedings under Section 11 of the 1894 Act.

(29)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



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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 [6] SCC 258 : 2017 [5] SCC [Civ] 779 : 2016 SCC Online SC 929 at page 270 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 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



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*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*



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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*



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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



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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*

"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



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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.

(30) 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



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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.”

The aforesaid extract is self explanatory.

12. Contrary to the mode of “tendering” contemplated in the aforesaid decisions, the respondents have chosen to stick the notice under Section 12(2) in a survey stone in the property. In the award No.10/1987 dated 16.10.1987, the subject lands in Survey Nos.455 & 456 includes a dry garden lands, trees, a building and a well. The building and well, along with the land and trees, have also been valued for the purpose of awarding compensation.



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13. Section 45(3) of the Old Act prescribes the mode of service of notices. As per Sub-section 3 of Section 45, when no person is found in the address, the notice may be served by fixing the copy on the outer door of the house, in which the person therein named ordinarily dwells or carries on business or by fixing a copy thereof in some conspicuous place in the office of the officer aforesaid or of the Collector or in the court-house and also in some conspicuous part of the land to be acquired. The proviso to Sub-section 3 also states that when the Collector directs a notice, it may be sent by registered post to the last known address.

14. The survey stone by no stretch of imagination can be said to be a conspicuous place as referred to in Section 45(3). More particularly, when there was a building and a well in the subject properties. It is rather strange that the respondents claim to have affixed a notice in a survey stone, which by common knowledge, would usually be less than a feet above the ground and can never be said to be a "conspicuous place", as prescribed under Section 45. Even otherwise, the respondents having failed to send the notice under Section 12(2) of the Act by post on the notified person, such a mode cannot be referred to as a 'proper tender'.

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15. For claiming the benefit under Section 24 (2), the mode in which such compensation amount is deemed to have been paid was also dealt with by the Hon'ble Supreme Court in *Indore Development Authority's case (supra)* in the following manner:

"366.5. In case a person has been tendered the compensation as provided under Section 31(1) of the 1894 Act, 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). The 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 2013 Act."

16. When the respondents have failed to establish that they had properly tendered the compensation by sending of a notice under Section 12(2) to the notified person, they cannot claim that the consequential deposit before the Court, has been properly made. As held in *Indore Development Authority's case (supra)*, the obligation to pay has "not been completed" as required under Section 31(1) and thus, it requires to be necessarily held that, the pre-requirement under



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Section 31(1) has not been done. Consequently, the deposit before the Court is not in accordance with the procedure established by law.

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17. In *Indore Development Authority's case (supra)*, the Hon'ble Supreme Court in paragraph 366.8 has held that, 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 2013 Act came into force.

18. In the light of the above findings and observations, the respondents have failed to substantiate the compliance of the twin requirement under Section 24(2) of the New Act, of both taking over possession and payment of compensation. Accordingly, it is hereby declared that the entire acquisition proceedings initiated by the first respondent under the Land Acquisition Act 1894, covered in Award No.10/87 dated 16.10.1987 in respect of the lands of an extent of 1.16 acres comprised in Survey No.455 and an extent of 6.50 acres comprised in S.No.456, totally ad-measuring about 7.66 acres situated in Telugupalayam Village, Coimbatore District belonging to the petitioner Trust, has "lapsed" by operation of law under Section 24(2) of



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the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013 (Act 30 of 2013). In view of the above declaration, the fourth respondent herein shall carry out the necessary mutation of records, by incorporating the petitioner's name as "owner of the subject property" in their revenue records. Consequently, the Writ Petition stands allowed. Connected Miscellaneous Petition is closed. There shall be no order as to costs.

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Index : Yes
Order : Speaking
Neutral Citation : Yes

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Note:Issue order copy on 28.04.2023



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M.S.RAMESH,J.

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ORDER MADE IN

W.P.No.3351 of 2020
and
W.M.P.No.3890 of 2020

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