

# **SUPREME COURT OF INDIA**

Sree Balaji Nagar Residential Association

Vs.

State of Tamil Nadu

C.A.No.8700 of 2013

(Fakkir Mohamed Ibrahim Kalifulla and Shiva Kirti Singh JJ.)

10.09.2014

## **JUDGMENT**

### **SHIVA KIRTI SINGH, J.**

1. These civil appeals have been heard together because they involve common questions of law and fact and, therefore, they are being disposed of by this common judgment and order.

2. Whereas in Civil Appeal No.8700 of 2013, filed by an Association of Residents of a particular locality, the challenge is to the order of Government of Tamil Nadu bearing G.O. No.122 dated 14.07.1998 containing a scheme for development of a proposed canal by name Madhavaram Left Flank Water Surplus Course, on the ground that the scheme is misconceived and technically flawed which shall lead to unnecessary acquisition of land and building belonging to the residents of the affected area, the other Civil Appeals contain specific challenge to proceedings initiated under the Land Acquisition Act, 1894 (hereinafter referred to as, ~the Act™) undertaken by the Tamil Nadu State Government for the purpose of implementation of the said scheme covered by G.O. No.122 relating to the proposed canal improvement works. The actual land acquisition proceedings commenced with issuance of Notification under Section 4(1) of the Act on 02.02.2005, insofar as the lands under dispute are concerned. The Award was made on 30.11.2006 but in the meantime as appears from the facts stated in C.A. No.8700 of 2013, upon a challenge made to the Notification

under Section 4(1) of the Act, the High Court stayed dispossession of the concerned land holders by order dated 17.2.2005 but ultimately the writ petitions and other tagged matters were dismissed on 27.4.2007. The matter reached this Court and as a result of an interim order passed by this Court on 18.05.2007 in C.A.No.8701 of 2013 [arising out of S.L.P.(C)No.9492 of 2007] the land holders have remained protected from being dispossessed from their lands in question.

3. The various orders passed by this Court in these cases reveal that the matter was taken up in a much wider perspective in the light of larger issues raised in public interest that alternative scheme be also devised and taken into account to prevent unnecessary displacement of large number of residents and with a view to protect likely pollution of some lakes on account of flood waters entering into such lakes and thereby affecting the cleanliness of possible sources for supply of drinking water. This Court, long back on 10.02.2010 felt the need for and hence directed the respondents to submit a revised comprehensive plan of the area showing location of various water bodies, the construction of canal which had already taken place and the natural flow of water from Ambattur tank to Korattur tank and from Korattur tank to Capt. Cotton Canal. On 31.03.2010, learned senior counsel for the State of Tamil Nadu referred to and submitted a final report by Mott MacDonald, an expert appointed by the Government of Tamil Nadu to study the entire scheme and prepare Storm Water Drainage Master Plan for Madras City and Pre-feasibility Study for Madras Metropolitan Area. On going through the relevant portions of that Report, this Court decided to appoint an expert body to study the environmental aspect of the scheme under challenge because the expert appointed by the State Government had suggested further study/monitoring of ground water outside the Chennai Metropolitan area. By order dated 09.04.2010, this Court appointed a Committee of several experts under the Chairmanship of Hon<sup>TM</sup>ble Mr. Justice Doraiswamy Raju, a former Judge of this Court. The terms of reference included eight points and the Committee was requested to submit its report within three months. The Committee<sup>TM</sup>s report was made available to this Court, belatedly and for one reason or the other, the matter could not be heard finally for a long period. At the stage of hearing, on 10.07.2014, the State of Tamil Nadu expressed its willingness to explore the possibility of arriving at some consensus. This course was adopted in view of relevant map and materials which showed that as a part of Chennai City Waterways Alignment of Surplus Course Package IV, considerable part of the proposed canal had already been constructed but the balance part remained incomplete only on account of present proceedings against

acquisition of lands for the purpose. However, the High Level Committee meeting under Chairmanship of the Chief Secretary of the State involving the petitioners in public interest litigation as well as representatives of the land owners<sup>TM</sup> Association could not prove fruitful. In the meanwhile, on account of a subsequent legislation “ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for brevity, ~2013 Act<sup>TM</sup>) coming into effect from 01.01.2014, through I.A. No.3 filed in Civil Appeal No.8701 of 2013, a plea was raised on behalf of the appellants that the appeals be allowed in terms of Section 24(2) of the 2013 Act by holding that the acquisition proceeding initiated under the Act has lapsed.

4. The parties have been heard only on this narrow legal aspect to find out whether the appellants<sup>TM</sup> prayer noted above deserves to be allowed in view of Section 24(2) of 2013 Act or not. In view of the order proposed, we find it futile to refer to and discuss the facts involved in different civil appeals. Section 24 of 2013 Act is as follows:

24. (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, -

(a) where no award under section 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, 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:

5. 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 under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act. It has been contended by learned senior counsel appearing for the appellants that in view of the non obstante clause in sub-section (2) of Section 24, notwithstanding an award passed under Section 11 of the Act in respect of acquisition proceedings under challenge, such proceedings cannot continue under the provisions of the Act because the award was made on 30.11.2006, i.e., more than five years earlier and undisputedly physical possession of the land of the concerned appellants has not been taken as yet. It has further been contended that proceedings have lapsed because in several cases the alleged payment is only by way of deposit in treasury on 30.03.2007 and not by deposit in Court, as required by law. Reliance has been placed upon a judgment of this Court in the case of *Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & Ors.* (2014) 3 SCC 183 in support of the contention that compensation cannot be said to have been paid only by its deposit with the Revenue authorities such as the Government treasury, it can be accepted to have been paid only if it is actually paid to the land owner or is deposited in the Court as per requirement of Section 31 of the Act. For showing that at least in the case of some land holders, the compensation was simply deposited in the Revenue Deposit Account in the sub-treasury and not in the concerned Court, a letter of Spl. Thasildar (LA), Chennai Corporation Waterways Project, Ambattur, Chennai, dated 30.03.2007 has been annexed with I.A. No.3 of 2014 in C.A.No.8701 of 2013.

6. In reply Mr. Subramonium Prasad, AAG for the State of Tamil Nadu has produced some charts and documents to submit that compensation has been deposited in several cases with the concerned Civil Court also and in some cases the payments have been accepted by the land owners. However, even as per the chart containing details of award and payments for 3.31 hectares of land involved in the case of *Vishwanathan & Ors.* in C.A. No.8701 of 2013 [arising out of S.L.P.(C) No.9492 of 2007] an amount of Rs.26,73,851/- is shown to be lying in Revenue deposit whereas only for a small portion of land an amount of Rs.5,50,056/- is in Civil Court deposit. However, this issue need not be pursued any further because admittedly physical possession of the land involved in these appeals has not been taken over by the State and on that account alone, the land acquisition proceeding under challenge will have to be treated or declared as lapsed unless we find merit in the contention raised on behalf of State

that this plea cannot be used against the State because it was prevented from taking physical possession of the lands on account of interim orders passed by the High Court and this Court.

7. There is no dispute that writ petitions were filed even before the making of award and interim orders have operated against the State of Tamil Nadu and, therefore, the State was not at fault in not taking physical possession of the concerned lands under acquisition. But the intention of the Legislature in enacting Section 24(2) of the 2013 Act will have to be culled out from its wordings and on the basis of other relevant provisions of this Act and the relevant case law for deciding whether the period of stay/injunction is required to be excluded in computing the five years<sup>TM</sup> period or not.

8. From a plain reading of Section 24 of the 2013 Act it is clear that Section 24(2) of the 2013 Act does not exclude any period during which the land acquisition proceeding might have remained stayed on account of stay or injunction granted by any court. In the same Act, proviso to Section 19(7) in the context of limitation for publication of declaration under Section 19(1) and the Explanation to Section 69(2) for working out the market value of the land in the context of delay between preliminary notification under Section 11 and the date of the award, specifically provide that the period or periods during which the acquisition proceedings were held up on account of any stay or injunction by the order of any court be excluded in computing the relevant period. In that view of the matter it can be safely concluded that the Legislature has consciously omitted to extend the period of five years indicated in Section 24(2) even if the proceedings had been delayed on account of an order of stay or injunction granted by a court of law or for any reason. Such casus omissus cannot be supplied by the court in view of law on the subject elaborately discussed by this Court in the case of Padma Sundara Rao (Dead) & Ors. v. State of T.N. & Ors. (2002) 3 SCC 533.

9. Even in the Land Acquisition Act of 1894, the Legislature had brought about amendment in Section 6 through an Amendment Act of 1984 to add Explanation 1 for the purpose of excluding the period when the proceeding suffered stay by an order of the court, in the context of limitation provided for publishing the declaration under Section 6(1) of the Act. To a similar effect was Explanation to Section 11A which was added by Amendment Act 68 of 1984. Clearly the Legislature has, in its wisdom, made the period of five years under Section 24(2) of the 2013 Act absolute and unaffected by any delay in the proceedings on account of any order of stay by a court.

The plain wordings used by the Legislature are clear and do not create any ambiguity or conflict. In such a situation, the court is not required to depart from the literal rule of interpretation.

10. It was faintly suggested by Mr. Subramonium Prasad, learned AAG for the State of Tamil Nadu that the proviso may come to the rescue of the State and save the proceedings from suffering lapse if it is held that since there was an award leading to payment of compensation in respect of some of the land holdings only, therefore all the beneficiaries may now be entitled to compensation in accordance with the provisions of the 2013 Act. This contention could have been considered with some more seriousness if physical possession of the land had been taken but since that has not been done, the proviso dealing only with compensation cannot be of any help to the State. Therefore, we are not required to go deeper into the effect and implications of the proviso which prima facie appears to be for the benefit of all the land holders in a case where the award is subsisting because the proceedings have not lapsed and compensation in respect of majority of land holdings has not been deposited in the account of the beneficiaries. There is nothing in the language of the proviso to restrict the meaning of the words used in Section 24(2) mandating that the proceedings shall be deemed to have lapsed if the award is five years or more than five years<sup>TM</sup> old but the physical possession of the land has not been taken over or the compensation has not been paid. The law is trite that when the main enactment is clear and unambiguous, a proviso can have no effect so as to exclude from the main enactment by implication what clearly falls within its express terms, as held by Privy Council in the case of *Madras and Southern Mahratta Railway Co. Ltd. v. Bezwada Municipality* AIR 1944 PC 71 and by this Court in the case of *C.I.T. v. Indo Mercantile Bank Ltd.* AIR 1959 SC 713.

11. The judgment of three Judges<sup>TM</sup> Bench in the case of *Harakchand Misirimal (supra)* has been followed by another Bench of three Judges in the case of *Union of India & Ors. etc. v. Shivraj & Ors. etc.* (2014) 6 SCC 564. In paragraphs 25 and 26 of that judgment, this Court took notice of a clarification issued by the Government of India, Ministry of Urban Development, Delhi Division dated 14.03.2014. Part of the circular extracted in that case clearly shows that the period of five years or more in Section 24(2) of the 2013 Act has been prescribed with a view to benefit the land-losers and the period spent in litigation due to challenge to the award or the land acquisition proceedings cannot be excluded. From the discussions made above, it is

amply clear that though there is lack of clarity on the issue whether compensation has been paid for majority of land holdings under acquisition or not, there is no dispute that physical possession of the lands belonging to the appellants under consideration in these appeals has not been taken by the State or any other authority on its behalf and more than five years have elapsed since the making of the award dated 30.11.2006 and 01.01.2014 when the 2013 Act came into force. Therefore, the conditions mentioned in Section 24(2) of the 2013 Act are satisfied for allowing the plea of the appellants that the land acquisition proceedings must be deemed to have lapsed in terms of Section 24(2) of the 2013 Act. The appeals are disposed of accordingly. It goes without saying that the Government of Tamil Nadu shall be free, if it so chooses to initiate proceedings of such land acquisition afresh in accordance with the provisions of 2013 Act. In the facts and circumstances of the case there shall be no order as to costs.