

W.A.No.1204 of 2022, etc. batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.06.2022

Coram:

THE HONOURABLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE
AND
THE HONOURABLE MRS.JUSTICE N.MALA

W.A.Nos.1204, 1209, 1210, 1214, 1216, 1217, 1218 and 1239 of 2022
and
C.M.P.Nos.7614, 7697, 7704, 7717, 7719, 7739, 7741, 7750 to 7753, 7755,
7756, 7837 and 7841 of 2022

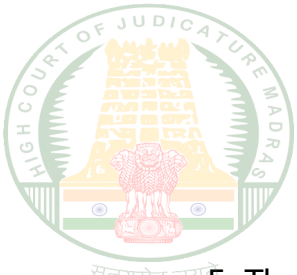
B.Nagaraj

.. Appellant in W.A.No.1204 of 2022

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary,
Industries Department,
Fort St. George,
Chennai - 600 009.
2. The District Collector,
Thiruvallur District.
3. The Special Tahsildar (Land Acquisition),
Chennai Petroleum Corporation Limited,
No.62/1, East Jones Road,
Saidapet, Chennai - 600 015.
4. The Tahsildar,
Madhavaram Taluk,
Chennai - 600 060.

Page No.1/12



W.A.No.1204 of 2022, etc. batch

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5. The Superintending Engineer,
Transmission,
Tamil Nadu Electricity Board,
800, Anna Salai, Electricity Avenue,
Chennai - 600 002.

..Respondents in W.A.No.1204 of 2022

Writ Appeal No.1204 of 2022 filed under Clause 15 of Letters Patent against the order dated 13.12.2021 passed by the learned Single Judge, in W.P.No.28331 of 2014 on the file of this Court.

For Appellant
in W.A.No.1204 of 2022 : Mr.G.Ethirajulu

For Respondents
in W.A.No.1204 of 2022 : Mr.P.Muthukumar, State Govt. Pleader
assisted by
Mr.Alagu Gowtham, Govt. Advocate
for R1 to R4

COMMON JUDGMENT

(Common Judgment of the Court was delivered by The Honourable Chief Justice)

The Writ Appeals have been preferred to challenge the judgment dated 13.12.2021, by which a batch of Writ Petitions to challenge the acquisition of the land under the Land Acquisition Act, 1894 and even in reference to Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition and Rehabilitation and Re-settlement Act, 2013 (Act 30 of 2013), was dismissed.

Page No.2/12



W.A.No.1204 of 2022, etc. batch

WEB COPY 2. The learned counsel for the appellants submitted that the Notification under Section 4(1) of the Act of 1894 was issued on 04.12.1990 and the Declaration under Section of the Act of 1894 was issued on 27.07.1992, followed by the Award, dated 26.08.1994. The said Award lapsed as per the provisions of the Act of 1894 and Section 24(2) of the Act of 2013. However, it is in fact admitted by the learned counsel for the appellants that the Writ Petitioners purchased the lands after entering into the agreement in the year 2010, i.e., much subsequent to the Notification issued under Section 4(1) of the Act of 1894. The learned Single Judge, referring to the detailed facts of the case, dismissed the Writ Petitions after referring to the judgment of the Supreme Court in the case of Shiv Kumar Vs. Union of India (reported in 2019 (10) SCC 229). It is also after referring to the judgment of the Supreme Court in the case of Indore Development Authority Vs. Manoharlal (reported in 2020 (8) SCC 129).

3. The main ground to challenge the acquisition is the delay in passing the Award, and therefore, the acquisition proceedings would lapse. According to the learned counsel for the appellants, the Award could not have been passed beyond the period of two years from the date of Declaration under Section 6 of the Act of 1894, whereas in the case on hand, the Declaration under Section 6 of

Page No.3/12



W.A.No.1204 of 2022, etc. batch

the Act of 1894 was issued on 27.07.1992, whereas the Award was passed on 26.08.1994, and therefore, the acquisition proceedings should have lapsed.

4. Before addressing the issue in regard to the lapse, the question is about the locus of the writ petitioners to challenge the acquisition proceedings and to seek its lapse, because, the writ petitioners had purchased the land much subsequent to the issuance of the Notification under Section 4(1) of the Act of 1894.

5. The Apex Court, while dealing with the issue in the case of Shiv Kumar (supra), has held that the purchaser of the land, after issuance of Notification under Section 4 of the Act of 1894, has no right to challenge the acquisition proceedings and he can, at the best, claim compensation. It is for the aforesaid, even the issue in reference to Section 24 of the Act of 2013, was also dealt with, because, any purchase, after the Notification under Section 4(1) of the Act of 1894, is termed to be "void ab-initio" and therefore, no Declaration can be sought regarding the lapse of the acquisition under the Act of 1894 or the Act of 2013. The relevant paragraphs of the judgment are quoted hereunder for ready reference:

"7.7. In M.Venkatesh Vs. BDA (2015 (17) SCC 1 : 2017 (5) SCC (Civ) 387), a three-Judge Bench

Page No.4/12



WEB COPY



W.A.No.1204 of 2022, etc. batch

has opined: (SCC pp.8-9, para 16):

"16. That brings us to the question of whether Prabhaudas Patel and other respondents in SLP (C) No.12016 of 2013 were entitled to any relief from the Court. These respondents claim to have purchased the suit property in terms of a sale deed dated 22.08.1990 i.e. long after the issuance of the preliminary notification published in July 1984. The legal position about the validity of any such sale, post-issuance of preliminary notification, is fairly well settled by a long line of the decisions of this Court. The sale in such cases is void and non est in the eye of the law giving to the vendee the limited right to claim compensation and no more. Reference may in this regard be made to the decision of this Court in U.P.Jal Nigam Vs. Kalra Properties (P) Ltd. (1996 (3) SCC 124), wherein this Court said: (SCC: pp.126-27, para 3):

"3. It is settled law that after the notification under Section 4(1) is published in the gazette, any encumbrance created by the owner does not bind the Government, and the purchaser does not acquire any title to the property. In this case, Notification under Section 4(1) was published on 24.3.1973; possession of the land admittedly was taken on 5.7.1973, and the pumping station house was constructed. No doubt, declaration under Section 6 was published later on 8.7.1973. Admittedly power under Section 17(4) was exercised dispensing with the inquiry under Section 5-A and on service of the notice under Section 9 possession was taken, since urgency was acute viz. pumping station house



WEB COPY



W.A.No.1204 of 2022, etc. batch

was to be constructed to drain out the flood water. Consequently, the land stood vested in the State under Section 17(2) free from all encumbrances. It is further settled law that once possession is taken, by operation of Section 17(2), the land vests in the State free from all encumbrances unless a notification under Section 48(1) is published in the gazette withdrawing from the acquisition. Section 11-A, as amended by Act 68 of 1984, therefore, does not apply, and the acquisition does not lapse. The notification under Section 4(1) and the declaration under Section 6, therefore, remain valid. There is no other provision under the Act to have the acquired land divested, unless, as stated earlier, notification under Section 48(1) was published, and the possession is surrendered pursuant thereto. *That apart, since M/s.Kalra properties, the respondent had purchased the land after the notification under Section 4(1) was published, its sale is void against the State, and it acquired no right, title, or interest in the land. Consequently, it is settled law that it cannot challenge the validity of the notification or the regularity in taking possession of the land before the publication of the declaration under Section 6 was published.' "* (emphasis supplied)

"8. It has been laid down that the purchasers on any ground whatsoever cannot question proceedings for taking possession. A purchaser after Section 4 notification does not acquire any right in the



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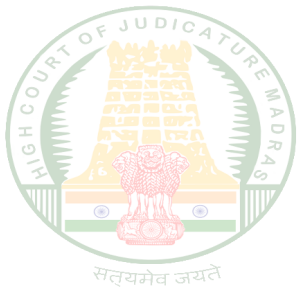


W.A.No.1204 of 2022, etc. batch

land as the sale is ab initio void and has no right to claim land under the policy."

"19. The 2013 Act presupposes that a person is required to be rehabilitated and resettled. Such a person who has purchased after Section 4 notification as sale deed is void under the 1894 Act, cannot claim rehabilitation and resettlement as per policy envisaged under the 2013 Act, as his land has not been acquired, but he has purchased a property which has already been acquired by the State Government, he cannot claim even higher compensation, as per proviso to Section 24(2) under the 2013 Act. An original landowner cannot be deprived of higher value under the 2013 Act, which higher compensation was not so contemplated when the void transaction of sale had been entered, and right is conferred under the proviso to Section 24(2) on recorded owners under the 1894 Act. We have come across instances in which after notification under Section 4 were issued and, the property was purchased at throwaway prices by the builders and unscrupulous persons, such purchases are void and confer no right even to claim higher compensation under Section 24(2) of the 2013 Act as it is to be given to the owner as mentioned in the notification.

20. Given that, the transaction of sale, effected after Section 4 notification, is void, is ineffective to transfer the land, such incumbents cannot invoke the provisions of Section 24. As the sale transaction did not clothe them with the title when the purchase was made; they cannot claim "possession" and challenge the acquisition as having lapsed under Section 24 by questioning the legality or regularity of proceedings of taking over of possession under the 1894 Act. It would be unfair and profoundly unjust and against the policy of the law to permit such a person to claim resettlement or claim the land back as envisaged under the 2013 Act. When he has not been deprived of his livelihood but is a purchaser under a void



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W.A.No.1204 of 2022, etc. batch

transaction, the outcome of exploitative tactics played upon poor farmers who were unable to defend themselves."

6. This apart, the learned Single Judge has even made a reference to the subsequent judgment of the Apex Court in the case of Indore Development Authority (supra). The issue in the present case is mainly in reference to the lapse of the acquisition proceedings under the Act of 1894 and that too in the hands of the subsequent purchaser after the Notification under Section 4(1) of the Act of 1894.

7. In that regard, the judgment of the Apex Court in the case of Meera Sahni Vs. Lt.Governor of Delhi (reported in 2008 (9) SCC 177), is also relevant, wherein it was held that a person entering to the sale or any injunction of the land under acquisition after issuance of the Notification under Section 4(1) of the Act of 1894, has no right to challenge the acquisition proceedings or seek lapse of the proceedings. The relevant paragraphs of the said judgment, are quoted hereunder for ready reference:

"17. When a piece of land is sought to be acquired, a notification under Section 4 of Land Acquisition Act is required to be issued by the State Government strictly in accordance with law. The said notification is also required to be followed by a

Page No.8/12



WEB COPY



W.A.No.1204 of 2022, etc. batch

declaration to be made under Section 6 of the Land Acquisition Act and with the issuance of such a notification any encumbrance created by the owner, or any transfer made after the issuance of such a notification would be deemed to be void and would not be binding on the government. A number of decisions of this Court have recognized the aforesaid proposition of law wherein it was held that subsequent purchaser cannot challenge acquisition proceedings and also the validity of the notification or the irregularity in taking possession of the land after the declaration under Section 6 of the Act.

18. In U.P.Jal Nigam Vs. Kalra Properties (P) Ltd. (1996 (3) SCC 124), it was stated by this Court that (SCC p.126, para 3):

"3. ...Having regard to the facts of this case, we were not inclined to further adjourn the case nor to remit the case for fresh consideration by the High Court. It is well settled law that after the notification under Section 4(1) is published in the Gazette any encumbrance created by the owner does not bind the Government and the purchaser does not acquire any title to the property."

19. In Sneh Prabha Vs. State of U.P. (1996 (7) SCC 426), it is stated as under (SCC p.430, para 5):

"5. ...It is settled law that any person who purchases land after publication of the notification under Section 4(1), does so at his/her own peril. The object of publication of the notification under Section 4(1) is notice to everyone that the land is needed or is likely to be needed for public purpose and the acquisition proceedings point out and an implement to anyone to encumber the land acquired thereunder. It authorizes the designated officer to



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W.A.No.1204 of 2022, etc. batch

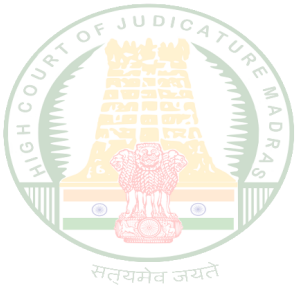
enter upon the land to do preliminaries etc. Therefore, any alienation of the land after the publication of the notification under Section 4(1) does not bind the government or the beneficiary under the acquisition. On taking possession of the land, all rights, title and interests in land stand vested in the State, under Section 16 of the Act, free from all encumbrances and thereby absolute title in the land is acquired thereunder."

8. In the light of the ratio propounded by the Apex Court on the issue, so far as the writ petitioners are concerned, they have no right to challenge the Award issued in the year 1994, on the ground that it was after two years of the Declaration under Section 6 of the Act of 1894, having purchased the land much subsequent to the Notification issued under Section 4(1) of the Act of 1894.

9. The delay is another ground, which is also to be taken note of, because, the acquisition proceedings herein were challenged by the appellants/writ petitioners after a lapse of almost 20 years of the Award and otherwise, the delay was not ignored pursuant to the Act of 2013.

10. The challenge was not made in reference to the possession of the land with the appellants/writ petitioners or non-deposit of the compensation.

Page No.10/12



W.A.No.1204 of 2022, etc. batch

WEB COPY 11. Hence, for the reasons stated above, the Writ Appeals are dismissed.

There shall be no order as to costs. Consequently, C.M.Ps. are closed.

(M.N.B., C.J) (N.M.J)
09.06.2022

Index: Yes/no
Speaking Order: Yes/no
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W.A.No.1204 of 2022, etc. batch

THE HONOURABLE CHIEF JUSTICE

and

N.MALA, J

CS

W.A.Nos.1204 of 2022 etc.

09.06.2022

Page No.12/12