

In the High Court of Judicature at Madras

Dated : 10.04.2015

CORAM :

The Hon'ble Mr. Justice V. DHANAPALAN
and
The Hon'ble Mr. Justice G. CHOCKALINGAM

Writ Appeal Nos: 1200 to 1202 of 2014

M/s.ADVANCE Infra Developers Pvt. Ltd.,
represented by Its Director P.J.Sunderrajan,
No.414, Bharthi Street,
Puducherry 605 001
now shifted to
MMG Nagar Extension, Kovilpathu, ... Appellant in W.A.
Karaikal, Puducherry 609 602. No.1200 of 2014

M/s.ARCHANA Infra Developers Pvt. Ltd.,
represented by Its Director P.J.Sunderrajan,
No.414, Bharthi Street,
Puducherry 605 001
now shifted to
MMG Nagar Extension, Kovilpathu, ... Appellant in W.A.
Karaikal, Puducherry 609 602. No.1201 of 2014

M/s.AGNI Infra Developers Pvt. Ltd.,
represented by Its Director P.J.Sunderrajan,
No.414, Bharthi Street,
Puducherry 605 001
now shifted to
MMG Nagar Extension, Kovilpathu, ... Appellant in W.A.
Karaikal, Puducherry 609 602. No.1202 of 2014

-vs-

1. The Government of Tamilnadu,
rep. By its Secretary to Government,
Animal and Husbandary,
Dairying and Fisheries Department,
Fort St. George,
Chennai 600 009.

2. The Collector,
Nagapattinam District,
Nagapattinam.

... Respondents in all the
Writ appeals

Writ Appeals filed under Clause 15 of the Letters Patent against the common order dated 01.08.2014 made in W.P. Nos.28648 to 28650 of 2013.

WP No. 28648 of 2013:- Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari quashing the notification under Section 4 (1) of the Land Acquisition Act published in Government of Tamil Nadu Gazzette in Part II - Section 2 (41) in G.O. Ms. No.173, Animal Husbandary, Dairying and Fisheries (FS-4) dated 08.10.2012 and the consequential declaration under Section 6 of the Land Acquisition Act 1894 (Central Act I of 1894) published in Tamil Nadu Government Gazette, Extraordinary in Part-II - Section 2 (274) in G.O. Ms. No.243, Animal Husbandary, Dairying and Fisheries (FS-4) dated 23.09.2013 in so far as the petitioner is concerned.

WP No. 28649 of 2013:- Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari calling for the records on the file of the first respondent notification under Section 4 (1) of the Land Acquisition Act published in Government of Tamil Nadu Gazzette in Part II - Section 2 (41) in G.O. Ms. No.173, Animal Husbandary, Dairying and Fisheries (FS-4) dated 08.10.2012 and the consequential declaration under Section 6 of the Land Acquisition Act 1894 (Central Act I of 1894) published in Tamil Nadu Government Gazette, Extraordinary in Part-II - Section 2 (274) in G.O. Ms. No.243, Animal Husbandary, Dairying and Fisheries (FS-4) dated 23.09.2013 and quash the same in so far as the petitioner is concerned.

WP No. 28650 of 2013:- Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari quashing the notification under Section 4 (1) of the Land Acquisition Act published in Government of Tamil Nadu Gazzette in Part II - Section 2 (41) in G.O. Ms. No.173, Animal Husbandary, Dairying and Fisheries (FS-4) dated 08.10.2012 and the consequential declaration under Section 6 of the Land Acquisition Act 1894 (Central Act I of 1894) published in Tamil Nadu Government Gazette, Extraordinary in Part-II - Section 2 (274) in G.O. Ms. No.243, Animal Husbandary, Dairying and Fisheries (FS-4) dated 23.09.2013 in so far as the petitioner is concerned.

For Appellant : Mr.M.Krishnappan,
Senior Counsel for
M/s.Kumar and Ravi

For Respondents : Mr.A.L.Somayaji,
Advocate General
assisted by R.Vijayakumar,
Additional Government Pleader

Date of Reserving the Judgment : 18.02.2015
Date of Pronouncing the Judgment : 10.04.2015

C O M M O N J U D G M E N T

V.Dhanapalan, J.

By consent of the learned counsel on either side, these Writ Appeals are taken up for final disposal by a common judgment.

2. Heard Mr.M.Krishnappan, learned Senior Counsel appearing for the appellants and Mr.A.L.Somayaji, learned Advocate General assisted by Mr.R.Vijayakumar, learned Additional Government Pleader, appearing for the respondents.

3. The appellants/writ petitioners are Private Limited Companies registered as per the Companies Act, 1956. For the purpose of implementing warehousing and ice factory projects and other projects, the appellant Companies represented by its Managing Director, purchased lands vide registered Sale Deeds and are at present doing agricultural cultivation in the said properties.

4. M/s.Advance Infra Developers Private Limited purchased an extent of 9.077 acres vide registered Sale Deed in Document Nos.1205/2009, 1293/2009, 1294/2009, 1299/2009 and 1304/2009, dated 09.10.2009, 06.11.2009, 06.11.2009, 10.11.2009 and 09.11.2009; M/s.Archana Infra Developers Private Limited and M/s.Agni Infra Developers Private Limited purchased an extent of 4.607 acres, respectively, vide registered Sale Deeds in Document Nos.1302/2009, 1300/2009 and 202/2010, dated 10.11.2009, 09.11.2009 and 15.02.2010, respectively, at S.R.O., Nagoor. All the appellants obtained patta in respect of the said lands on 05.06.2012 and necessary mutations in the name of the appellants have been included in the Revenue records.

5. Thereafter, the appellants came to understand that the 1st respondent/Government proposed to acquire for establishment of a Fisheries University and Institute of Fisheries Technology situated in Nagoor University and Institute of Fisheries Technology situated in Nagoor (Muttam) Village, Nagapattinam Taluk, Nagapattinam District. The administrative sanction for acquiring the land to a total extent of 36.42.5 in S.No.67/3A etc. has been given on 03.07.2012. Subsequently, the 4(1) notification was issued on 13.10.2012 in the Daily newspaper 'Dinamani'. According to the appellants, in the 4(1) notification, the name of the appellants, whose lands are sought to be acquired have not been mentioned. However, in Section 6 declaration published in the Daily 'The Hindu' newspaper on 04.10.2013, the names of the appellants, for the first time have been included for the proposed acquisition. Seeking to quash the said declaration under Section 6 of the Land Acquisition Act, 1894 (Central Act I of 1894) (hereinafter referred to as 'Act') as well as the Notification under Section 4(1) of the Act, as illegal without jurisdiction and is in violation of the principles of natural justice, the appellants/writ petitioners filed Writ Petitions in W.P.Nos.28648 to 28650 of 2013.

6. The 2nd respondent/District Collector filed a counter affidavit before the Writ Court to the following effect:

6.1. The Government of Tamilnadu has accorded administrative sanction vide G.O.Ms.No.115, Animal Husbandry and Fisheries (FS4) Department, dated 03.07.2012 for the acquisition of 22.50.0 hectares of private patta lands classified as Wet and Dry comprised in R.S.No.67/3A, etc in Nagore Village of Nagapattinam Taluk, Nagapattinam District for the prupose of formation of Tamil Nadu Fisheries University. Accordingly, land acquisition proceedings have been initiated and the Government has approved the notification under Section 4(1) of the Act vide G.O.No.173, Animal Husbandry, Dairying and Fisheries Department, dated 08.10.2012. The said notification under Section 4(1) was published in the manner prescribed under the Rules. Consequently, the objections raised by the land owners were considered and necessary enquiry under Section 5A of the Act was conducted by the Revenue Divisional Officer, Nagapattinam on 22.01.2013. Considering the unavoidable circumstances, the Government has overruled the objections raised by the land owners and approved the notification under Section 6(1) of the Act vide G.O.No.243 Animal Husbandry, Dairying and Fisheries Department, dated 23.09.2013. The said notification under Section 6 (1) of the Act has also been published in Tamilnadu Government Gazette No.274 in Part II Section 2, dated 23.09.2013 and also published in the Locality. At this juncture, the Writ petitioners filed the present Writ Petitions challenging the Notification under Section 4(1) of the Act.

6.2. The main contention of the writ petitioners is that their names were not published in the Draft Notification published under Section 4(1) of the Act. According to the 2nd respondent, 4(1) notification is only a preliminary Draft notification and at the time of making such notification, the name of the writ petitioners did not find place in the Village Revenue Accounts, such as Chittah and Adangal and hence, the name of the writ petitioners have not been notified. However, the names of the writ petitioners have been duly incorporated in the Final notification, i.e. Section 6 declaration. Though the lands owned by the writ petitioners have been duly published in the 4(1) notification, the writ petitioners have not chosen to file any objection to the proposed acquisition at the appropriate time to the Land Acquisition Officer i.e. Revenue Divisional Officer, Nagapattinam. Inasmuch as the said 4 (1) notification is followed by the Declaration under Section 6(1) of the Act, there is no provision to hear any objection at this juncture. Further, the objections raised by the land owners of the adjoining lands were overruled, since there was no valid objection and that the writ petitioners have no valid objection to the proposed acquisition.

6.3. Draft notification under Section 4(1) of the Act was published in two Local Dailies, namely, Thinaboomi on 13.10.2012 and Thinamani on 13.10.2012. In addition to the above publication in the local Daily newspapers, local publication was also made in the Village. Consequently, notice was issued to all the land owners and interested person vide Lr.No.8394/A3/2011, dated 31.12.2012 providing opportunity to the land owners and interested persons to prefer their objections, if any, for the proposed land acquisition. During the course of service of the said notice for 5A enquiry, it was brought to the notice of the Land Acquisition Officer by the concerned Village Administrative Officer that the lands in S.Nos.13 to 22 and 58 in 6(1) Draft Declaration proposed for acquisition belongs to the writ petitioners and it was not carried out in the Village Accounts and hence, the writ petitioners are interested person in the Land Acquisition. Hence, a notice was issued by the Land Acquisition Officer vide Lr.No.Rc.8394/A3/2011, dated 31.12.2012 to the writ petitioners. But, the notice sent to the writ petitioners by Registered Post was received back undelivered with postal endorsement 'No such addressee'. Further, one (i) G.R. Apparaj (ii) Muthuvel (iii) Karunakaran and some others have sent objection petitions to the Land Acquisition Officer within the time allowed in the notification under Section 4 (1) of the Act and all the objections were forwarded to the Fisheries Department for their opinion. The main objections of the land owners are :

(i) Acquisition of wet lands without sanction by the Government

- (ii) Acquisition of lands within the Coastal Regular Zone
- (iii) Acquisition of lands without public hearing
- (iv) There are Government poramboke lands in other areas of Nagapattinam District.

(v) The land owners are depending upon the land for eking their livelihood.

6.4. The Joint Special Officer, Tamilnadu Fisheries University has furnished remarks on the issues raised by the Objectors vide his letter No.JSO/TNFU/L.A.2013/, dated 15.02.2013. The reply furnished by the Requisition Department was duly communicated to the Objectors. Regarding the Government poramboke lands available in the part of this District, it was stated by the Requisition Department that the government lands referred by the objection petitioners are far away and it is not suitable for the purpose of construction of Fisheries University. As regards the acquisition of wet lands is concerned, the Government has already accorded administrative sanction for the acquisition of the lands for the purpose of construction of Fisheries University. The other issues regarding the livelihood of the land owners, acquisition of lands within CRZ zone have all been considered in detail by the Land Acquisition Officer and the objections raised by the land owners was overruled as there is no merit on the objections raised by the land owners. Though local publication was made about the proposed acquisition of lands, the writ petitioners have not preferred any objection to the Land Acquisition Officer. From the non-delivery of the Notice issued for the enquiry under Section 5A, it is evident that the writ petitioners are not in possession and enjoyment of the land or have any representative in the Village to look after these lands. The Land Acquisition Officer has issued proceedings under Section 5A of the Act vide R.C.No.8394/A3/2011, dated 15.02.2013. Consequently, the Land Acquisition Officer has sent proposals for the approval of declaration under Section 6(1) of the Act. After considering the proposal sent by the Land Acquisition Officer, the Government has also approved the notification under Section 6(1) of the Act vide G.O.No.243, Animal Husbandry, Dairying and Fisheries Department, dated 23.09.2013. The said notification under Section 6(1) of the Act has also been published in Tamilnadu Government Gazette No.274 in Part II Section 2, dated 23.09.2013 and also published in the locality. In the above circumstances, the objection raised by the writ petitioners at this juncture has not merit and it deserves no consideration at all.

6.5. It is the stand of the 2nd respondent before the Writ Court that since Nagapattinam District is a Coastal belt and therefore, the Government has decided for the formation of Fisheries Research University nearby the District Headquarters i.e.

Nagore and suitable in Nagore Village has been selected.

7. After hearing the learned counsel on either side, the Writ Court, by a common order dated 01.08.2014, while upholding the notification issued under Section 4(1) of the Act, partly allowed the Writ Petitions. Relevant portion of the said order is extracted hereunder:

"15. Even according to the respondents, when the notice dated 31.12.2012 sent to the petitioners were returned, they have not taken any steps to serve notice on the petitioners by following the other modes prescribed under Section 45 (3) of the Act. As held by this Court in the decision mentioned supra, first, a notice should be served on the person concerned and when it is not feasible, then resort should be made to serve notice by means of affixture. In this case, a perusal of the file would disclose that the respondents have not taken any steps to serve notice either in person or by means of affixture before conducting the enquiry under Section 5-A of the Act. In other words, the respondents seems to have resorted to send only a notice by registered post but they have not taken steps to serve such notice either in person or by affixture, when once the notice sent by registered post was returned. As held by this Court in the decision mentioned supra, an enquiry under Section 5-A of the Act is not an empty formality but it is a mandatory enquiry required to be conducted to hear the objections of the land owners before acquiring their valuable lands. Therefore, this Court feels that after the notice sent by registered post was returned, the respondents ought to have resorted to serve notice either in person or by affixture, being the other mode prescribed under Section 45 (3) of the Act. This is more so that at the stage of conducting enquiry under Section 5-A of the Act, the names of the petitioners have been incorporated in the revenue records and the respondents are well aware about the ownership of the petitioners. Admittedly, either from the files or from the counter, I am unable to see that the respondents have resorted to any other modes of service after the notice dated 31.12.2012 was returned unserved or before that in any manner known to law.

16. In the decision relied on by the learned senior counsel for the petitioner in the case of (S. Muthurajan and 3 others vs. The State of Tamil Nadu, rep. By its Secretary to Government, Housing and Urban Development Department, Chennai and another) reported

in CDJ 2001 MHC 944 = 2001 (4) CTC 12 and 2001 (3) MLJ 357 in para No.6, it was held as follows:-

"6. Coming to the facts of this case, it is not in dispute that the petitioners have purchased the lands sought to be acquired under the land acquisition proceedings under challenge as early as on 8.2.89 and the mutation also was effected and pattas also granted on 30.3.89 much prior to Section 4(1) notification, which was notified in the Government Gazette on 19.6.91. The only contention of the learned Additional Government Pleader is that, on the date when the proposal was sent to the Government during the year 1988, the petitioners were not the owners and hence they are not entitled to be heard in the 5-A enquiry nor their names be included in Section 4(1) notification. In view of the discussion above, the said contention of the learned Additional Government Pleader cannot be accepted. It would be relevant to refer to the judgment of Mohan, J. reported in Bhama Ramamoorthy v. The State of Tamil Nadu and another, wherein the learned Judge has held that when the name of the owner was not included in Section 4(1) notification even though there was a change in the revenue registry and the corresponding entry of the name of the owner much prior to the 4(1) notification, the land acquisition proceedings are vitiated. In view of the above, the land acquisition proceedings are set aside and the writ petitions are allowed. No costs."

17. In the present case on hand, on the basis of the mutation of the names of the petitioners, notice was sent to them for the enquiry under Section 5-A of the Act. Thus, during the enquiry under Section 5-A of the Act, the respondents are aware of the ownership of the lands by the petitioners. However, the service of notice is not proper inasmuch as the respondents have not resorted to serve notice on them soon after the notice dated 31.12.2012 has been returned unserved.

18. Similarly, in the declaration made under Section 6 of the Act, the name of the petitioners has been included. However, when the enquiry under Section 5-A of the Act in so far as the petitioners is vitiated for improper service of notice, the consequential

declaration made under Section 6 of the Act on 23.01.2013 cannot be sustained. This is more so that when the notice dated 31.12.2012 sent to the petitioners on 04.01.2013 was returned unserved, till the declaration made under Section 6 of the Act on 23.01.2013, the respondents have not taken any steps to serve the notice. Therefore, I hold that while the notification under Section 4 (1) of the Act cannot be interfered with by this Court, definitely, the enquiry under Section 5-A of the Act and the consequential declaration made under Section 6 of the Act are vitiated for non-service of notice in so far as the petitioners alone are concerned.

19. In the result, while upholding the notification issued under Section 4 (1) of the Act published in Government of Tamil Nadu Gazzette in Part II - Section 2 (41) in G.O. Ms. No.173, Animal Husbandary, Dairying and Fisheries (FS-4) dated 08.10.2012 as valid, the consequential declaration made by the respondents under Section 6 of the Land Acquisition Act 1894 (Central Act I of 1894) published in Tamil Nadu Government Gazette, Extraordinary in Part-II - Section 2 (274) in G.O. Ms. No.243, Animal Husbandary, Dairying and Fisheries (FS-4) dated 23.09.2013 is set aside in so far as it relates to the acquisition of lands of the petitioners. Accordingly, all the writ petitions are partly allowed. No costs. It is made clear that the respondents shall conduct enquiry from the stage as contemplated under 5-A of the Act in so far as the petitioners alone are concerned, afford opportunity to the petitioners to submit their objections and then proceed further in accordance with law.

8. Learned Senior Counsel appearing for the appellants would contend that the learned Single Judge ought to have quashed the 4 (1) notification on the ground that the appellants have purchased the property prior to the 4(1) notification and also transfer Patta in their name prior to the 4(1) notification and that omission to mention the name of the appellants in the 4(1) notification would vitiate the entire proceedings.

9. On the other hand, learned Advocate General appearing for the respondents would submit that for the enquiry under Section 5-A of the Act, a notice was sent to the appellants by Registered Post calling upon them to attend the enquiry and that all the formalities have been duly complied with before conducting enquiry under Section 5-A of the Act.

10. We have given careful consideration to the submissions of the learned counsel on either side and perused the material documents available on record.

11. What is challenged in these writ appeals is the common order passed by a learned single Judge of this Court in quashing the notification issued under Section 4 (1) of the Land Acquisition Act published in Government of Tamil Nadu Gazette in Part II in G.O. Ms. No: 173, Animal Husbandary, Dairying and Fisheries (FS-4) dated 08.10.2012 and the consequential declaration issued under Section 6 of the Act vide G.O. Ms. No: 243 dated 23.09.2013 in so far as the petitioners are concerned.

12. It is seen that the respondents, for the purpose of establishment of a Fisheries University and Institute of Fisheries Technology in Nagoor (Muttam) Village, Nagapattinam Taluk and District, proposed to acquire lands measuring a total extent of 36.42.5 hectares in various survey numbers owned by various persons, including the lands of the petitioners. There was a notification issued as stated supra. The claim of the appellants / petitioners was that they were not served with any notice even though they have purchased the land in question during the years 2009-2010 by various sale deeds and therefore, they sought for quashing of the land acquisition proceedings.

13. It was contended by the learned counsel for the appellants that the appellants have purchased the lands in question by means of registered sale deeds commencing from 09.10.2009 to 15.02.2010. But in the notification issued under Section 4 (1) of the Act on 08.10.2012, the name of the petitioners have not been incorporated and no notice under Section 4 (1) of the Act was issued to them and also no notice of enquiry under Section 5-A of the Act was issued to them. Thus, without affording an opportunity to the petitioners/appellants in the enquiry under Section 5-A of the Act, the declaration under Section 6 was made under Section 6 of the Act on 23.09.2013. In the meantime, on 05.06.2012, patta was issued to the petitioners under Patta No.808 and 809. Subsequently, the notification under Section 4 (1) of the Act was issued and published on 17.10.2012 and the declaration was made in the Government gazette on 23.09.2013 and therefore, the notification issued under Section 4 (1) of the Act as well as the declaration made under Section 6 of the Act are liable to be set aside for non-service of notice to the appellants / petitioners.

14. To substantiate his contentions the learned senior counsel appearing for the appellants / petitioners relied on the decision of this Court in the case of Muthu vs. The Government of Tamil Nadu, rep. By the Secretary, Social Welfare Department,

Madras - 2, reported in 1986 Writ Law Reporter 391 to contend that the service of notice contemplated under Section 45 of the Act is mandatory under law. It was further pointed out that only after an attempt was made to serve the notice on the party to the acquisition proceedings, resort should be made to serve notice by affixture.

15. The learned senior counsel also relied on the decision of this Court in the case of S. Muthurajan and 3 others vs. The State of Tamil Nadu, rep. By its Secretary to Government, Housing and Urban Development Department, Chennai and another reported in CDJ 2001 MHC 944 = 2001 (4) CTC 12 and 2001 (3) MLJ 357 wherein it was held that when the name of the owner or person in occupation of the land has not been mentioned in the notification under Section 4 (1) of the Act, even though there was a change in the revenue registry and the corresponding entry of the name of the owner much prior to the notification under Section 4 (1) of the Act, the land acquisition proceedings are vitiated.

16. The learned senior counsel for the appellants / petitioners would lastly contend that the enquiry contemplated under Section 5-A of the Act is not an ordinary enquiry and it is a mandatory enquiry to be conducted to seek the objection of the land owner. When the notice was not issued to the appellants for such enquiry, the entire acquisition proceedings are vitiated. Further, the appellants are companies registered under the Companies Act, 1956. While so, the non-service of notice to the appellants company vitiates the entire proceedings. Therefore, the learned senior counsel for the appellants would contend that atleast the enquiry under Section 5-A of the Act has to be commenced afresh in so far as the appellants are concerned.

17. To the above claim of the appellants, respondents filed a counter affidavit and contended that even as early as on 04.11.2011, the Tahsildar had sent a proposal for acquisition of the lands in question to the Revenue Divisional Officer. In that proposal, the lands owned by the appellants were also mentioned. Further, the name of the vendors of the appellants' has also been mentioned therein. Even though the appellants' claimed to have purchased the lands during the year 2009 - 2010, their names have not been mutated in the revenue records and therefore, the names of the vendors of the appellants has been indicated therein. On receipt of such proposal sent by the Tahsildar, immediately, the Revenue Divisional Officer, sent a proposal on 05.11.2011 to the District Collector in which also the name of the vendors of the appellants has been duly incorporated. Thereafter, on 17.11.2011, the District Collector forwarded a proposal to the Commissioner of Land Reforms in which also the name of the appellants' vendor has been incorporated. The Commissioner of Land Reforms, in turn, sent

a proposal on 03.12.2011 to the Government. Thereafter, the notification under Section 4 (1) of the Act came to be issued on 08.10.2012 in GO Ms. No.173, Animal Husbandry, Dairying and Fisheries Department. In the interregnum period, on 05.06.2012, patta was issued in favour of the appellants.

18. On the above background situation, the learned Additional Advocate General appearing for the State highlighted that for the enquiry under Section 5-A of the Act, a notice dated 31.12.2012 was sent to the appellants on 04.01.2013 by registered post calling upon them to attend the enquiry on 17.01.2013. The said letter was sent to the correct address of the appellants as has been indicated in the sale deeds i.e., Mr.G.Ramesh Babu, who represented the appellant company in getting the sale deeds executed. Therefore, it cannot be said that the acquisition proceedings are vitiated for non-service of notice. It was further contended that a draft preliminary notification under Section 4 (1) of the Act was prepared and at that time, the name of the appellants did not find place in the revenue records such as Adangal, Chitta etc., Therefore, the name of the appellants have not been incorporated in the notification under Section 4 (1) of the Act. However, in the declaration made under Section 6 (1) of the Act, name of the appellants have been duly incorporated. The appellants' lands have been notified under Section 4 (1) of the Act which was also widely published. In fact, for the enquiry under Section 5-A of the Act, notice was issued on 31.12.2012 by registered post calling upon the appellants to attend the enquiry. The said notice dated 31.12.2012 was sent to the correct address of the appellants as mentioned in the sale deeds. However, the notice was returned as no such addressee and consequently the appellants did not participate in the enquiry under Section 5-A of the Act. However, all the other land owners have attended the enquiry under Section 5-A of the Act on receipt of notice sent by the land acquisition officer. Therefore, the fact that the notice sent to the correct address of the petitioners was returned would indicate that the petitioners are not in possession of the property in question or any representative is looking after the lands. In any event, all the formalities have been duly completed before conducting the enquiry under Section 5-A of the Act. Therefore, the learned Additional Advocate General would pray for dismissal of the writ petition.

19. The learned single Judge, after looking into the material information and on verification of records, has come to the conclusion that the acquisition proceedings commenced way back in the year 2011 by a proposal sent by the Tahsildar on 04.11.2011 to the Revenue Divisional Officer. The Revenue Divisional Officer in turn forwarded a proposal to the District Collector, who in turn forwarded it to the Commissioner of Land Reforms. The Commissioner of Land Reforms in turn forwarded the proposal for acquisition of

the lands to the Government on 03.12.2011. In all these proceedings, on perusal of the files, it could be seen that the name of the vendors of the appellants/ petitioners have been mentioned. Admittedly, even according to the appellants/ petitioners, the revenue records have not been mutated till such time though they have purchased the lands during 2009 - 2010 as the case may be. In other words, soon after purchase, the appellants have not chosen to mutate the revenue records to obtain patta, chitta or adangal in their name. When the proposal was sent from the Tahsildar the name of the vendors of the appellants were mentioned and ultimately, the notification under Section 4 (1) of the Act was issued on 17.10.2012. In the meantime, the appellants have obtained patta Nos. 808 and 809 in their name. Thus, on the date of issuance of notification under Section 4 (1) of the Act the appellants have not changed the revenue records in their name therefore, their names did not find place in the column relating to land owners because the original proposal was made by the Tahsildar on 04.11.2011 which was forwarded to various departments till the notification under Section 4 (1) of the Act was issued by the Government. Therefore, the name of the vendors of the appellants' alone was incorporated in the notification under Section 4 (1) of the Act.

20. From a perusal of the records it is seen that upon mutation of the names of the appellants in the revenue records, notice was sent to the appellants for the enquiry under Section 5-A of the Act, by a notice dated 31.12.2012 was sent to the authorised representative of the appellants Ramesh Babu, to the correct address, as mentioned in the sale deeds, by registered post. The notice was returned with an endorsement "no such addressee". Thus, the appellants could not participate in the enquiry under Section 5-A of the Act. However, from the perusal of the files, it could be seen that notice was issued to all the other land owners and they have participated in the enquiry under Section 5-A of the Act. In the case of Muthu vs. The Government of Tamil Nadu, rep. By the Secretary, Social Welfare Department, Madras - 2 reported in 1986 Writ Law Reporter 391, this Court held that service of notice, as required under Section 45 of the Act is mandatory and such service should be made in a manner known to law. It was further held that service on the person concerned by delivering or tendering a copy of the notice shall be first attempted. Only when such service is not feasible, the other modes of service as contemplated in sub-section 3 of Section 45 should be resorted to. According to the learned senior counsel for the appellants petitioners would contend that as per the Rules, service should be made in accordance with the modes prescribed. Though it was claimed that the notice dated 31.12.2012 sent by registered post was returned, the respondents have not taken any steps to serve notice on the appellants as contemplated under the Act and

Rules before conducting the enquiry under Section 5-A of the Act. It is not even the case of the respondents that when the notice dated 31.12.2012 sent to the appellants were returned, they have taken any steps to serve notice by following the other modes prescribed under Section 45 (3) of the Act. As held by this Court in the decision mentioned supra, first, a notice should be served on the person concerned and when it is not feasible, then resort should be made to serve notice by means of affixture. In this case, the respondents have not taken any steps to serve notice either in person or by means of affixture before conducting the enquiry under Section 5-A of the Act. Because at the stage of conducting enquiry under Section 5-A of the Act, the names of the appellants have been incorporated in the revenue records and the respondents are well aware about the ownership of the appellants. Accordingly, the learned single Judge, while upholding the notification issued under Section 4 (1) of the Act published in Government of Tamil Nadu Gazette in Part II - Section 2 (41) in G.O. Ms. No.173, Animal Husbandary, Dairying and Fisheries (FS-4) dated 08.10.2012 as valid, had set aside the consequential declaration made by the respondents under Section 6 of the Land Acquisition Act 1894 (Central Act I of 1894) published in Tamil Nadu Government Gazette, Extraordinary in Part-II - Section 2 (274) in G.O. Ms. No.243, Animal Husbandary, Dairying and Fisheries (FS-4) dated 23.09.2013 in so far as it relates to the acquisition of lands of the appellants. Accordingly, all the writ petitions were partly allowed. Further it was observed that the respondents shall conduct enquiry from the stage as contemplated under 5-A of the Act in so far as the appellants alone are concerned, afford opportunity to the appellants to submit their objections and then proceed further in accordance with law.

21. While examining the materials on record, it could be seen that in compliance of the orders passed by the learned Single Judge in the writ petitions, the Land Acquisition Officer namely the Revenue Divisional Officer, Nagapattinam, had issued fresh Notice as required under Section 5-A of the Land Acquisition Act and the enquiry was also conducted. The appellants have filed objection petition on 28.08.2014. On the one hand, the appellants have participated in the fresh enquiry held and filed their objections, on the other hand they have filed these writ appeals. The land acquisition proceedings were initiated for a public purpose. True it is that when the draft notification was published under Section 4 (1) of the Act, the appellants' vendors' name was alone mentioned and not of these appellants. It is equally true that the appellants have not applied for change of patta at that point of time. Only subsequently, mutation of records have taken place. Only after taking note of this fact situation, the learned single Judge had, by an order dated 01.08.2014, while upholding the notification issued under Section 4 (1) of the Act and quashed the

enquiry under Section 5 (A) and the declaration made under Section 6 of the Act and directed the 2nd respondent to conduct enquiry from the stage of Section 5-A enquiry. In compliance of the orders of this Court, fresh notices were issued and fresh enquiry was conducted and the appellants have also filed their objections. In a detailed counter affidavit filed in these writ appeals, the District Collector, Nagapattinam, had clearly stated that there are no vast Government Poramboke lands available nearby the District Headquarters of Nagapattinam, that too close to the seashore and that only after considering all the technical and non technical feasibilities to set up the Fisheries Univerisity, the land located in Muttam Village nearby District Headquarters of Nagapattinam was found to be very suitable in all aspects. He had also stated that the Requisitioning Body viz. The Registrar (i/c) Tamil Nadu Fisheries University, Nagapattinam, has offered his remarks on 09.09.2014 against the objector's petitions by stating that "the lands of the concerned petitioners lies in the middle of the lands being acquired for the establishment of Tamil Nadu Fisheries University and without the said lands the project could not be completed and hence, these lands are essentially required and in these circumstances the requests of the petitioners is to be rejected."

22. All these material informations clearly show that the authorities concerned are proceeding strictly in compliance of the orders passed by this Court in the writ petitions. We do not approve the act of the appellants in participating in the enquiry by filing their objections on the one hand and pursuing these writ appeals on the other hand. Therefore, we are constrained to take a view that the approach made by the appellants is unwarranted in the light of the directions issued by this Court to proceed afresh. Moreover, the appellants have not put forth any material before us to show that even before the issuance of the notice under Section 4 (1) of the Act, the alteration in the revenue records had taken place. Admittedly, on the date when the notice under Section 4(1) of the Act came to be issued, the lands stood in the name of the appellants' vendors as per the revenue records. Their names find a place in the notification. Only subsequently, change of patta was effected. That is the why, the learned single Judge had correctly upheld the notification issued under Section 4 (1) of the Act and set aside the enquiry held under Section 5-A and the declaration issued under Section 6 of the Act and directed the second respondent to proceed afresh from the stage of enquiry. Accordingly, we dismiss these writ appeals as unwarranted and uncalled for. However, it is open to the appellants to pursue the remedy available to them, as directed by this Court, to go before the competent authority with a request to consider their objections. In such an event it is for the said authority to give an opportunity to the appellants and take a decision finally and

pass appropriate orders. Connected miscellaneous petitions are closed. There shall be no orders as to the costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gp/abe

To

1. The Government of Tamilnadu,
rep. By its Secretary to Government,
Animal and Husbandary,
Dairying and Fisheries Department,
Fort St. George,
Chennai 600 009.
2. The Collector,
Nagapattinam District,
Nagapattinam.

+1cc to Mrs.Kumar & Ravi, Advocate, S.R.No.19982
+1cc to the Government Pleader, S.R.No.19947

W.A.Nos.1200 to 1202 of 2014

LRS (CO)
CA(23/04/2015)

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