

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 08.02.2016

DATE OF DECISION: 26.02.2016

CORAM:

THE HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI
and
THE HON'BLE MR. JUSTICE M. VENUGOPAL

W.A. No.1100 of 2014

1 R. Rajaram

2 R. Murugesan

3 K. Rakkiana Gounder

4 S. Selvamani

5 S. Selvamurali

6 S. Selvananth

Vs.

Appellants

1 The Secretary to Government
Housing and Urban Development Department
Fort St. George
Chennai 600 009

2 The Special Tahsildar (Land Acquisition)
Neighbourhood Scheme
Salem 600 008

3 The Tamil Nadu Housing Board
represented by its Executive Engineer &
Administrative Officer
Salem Housing Unit, Salem - 636 008

Respondents

Writ Appeal preferred under Clause 15 of the Letters Patent
challenging the order dated 28.02.2014 passed in W.P. No.6039 of
2014.

This Writ Petition has been filed under Article 226 of the
Constitution of India, praying for the issuance of a Writ of
Certiorari, to call for the records in G.O.Ms.No.879 Housing and
Urban Development Dated on 28.5.1991 published in the Tamilnadu

Government Gazettee on 19.6.1991 with regard to the notification U/s. 4 of the Land Acquisition Act and G.O.Ms.No. 447 Housing and Urban Development Dated on 20.7.1992 published in the Tamilnadu Government Gazettee Extraordinary on 21.7.1992 with regard to the declaration under Section 6 of the Land Acquisition Act issued by the First Respondent in respect of Land in Survey No.66/1 to Extent of 0.91.0 Hec. and quash the same.

For appellants:Mr. AR.L. Sundaresan, Sr. Counsel
for Mr. M. Elango

For RR 1 & 2 :Mrs. A. Srijayanthi, Spl. Govt. Pleader
for R3 :Mr.S. Gomathynayagam, Addl. Adv. General
assisted by
Mr. V. Anandhamurthy, Standing Counsel

JUDGMENT

The instant appeal arises from the order dated 28 February 2014 passed in W.P. No.6039 of 2014.

2 To avoid prolixity, the parties are referred to as per their rank in the instant appeal.

3 The appellants preferred the instant writ petition being W.P.No.6039 of 2014, calling in question, the legality and validity of G.O. Ms.No.879, Housing and Urban Development Department dated 28 May 1991 published in the Tamil Nadu Government Gazette on 19 June 1991 with regard to the notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Old Act, 1894") and also G.O. Ms. No.447, Housing and Urban Development Department dated 20 July 1992 published in the Tamil Nadu Government Gazette Extraordinary on 21 July 1992 with regard to the declaration under Section 6 of the Old Act, 1894 issued by the first respondent in respect of land in S.No.66/1 to an extent of 0.91.0 hectare.

4 The learned Single Judge, examining all the facts of the case at length, came to the following conclusion:

"24. In the light of the decision reported in Om Prakash's case (cited supra), the contentions of the petitioners in this writ petition, are wholly untenable, moreso, when the petitioners themselves have obtained an interim order of dispossession.

25 Having regard to the judgments of the Hon'ble Supreme Court, as to how the period has to be computed, when there is an order of interim stay, with due respect, the judgment made in Pune Municipal

Corporation's case (cited supra), is not applicable to the case on hand. The petitioners have prevented the respondents from taking possession, by obtaining an interim order and taking advantage of the same, they now seek to quash the acquisition proceedings, which has culminated into award in the year 1994 itself.

26 There is absolutely no merit in the writ petition warranting interference from this Court. Accordingly, the writ petition fails and it is dismissed. No costs."

5 During pendency of the writ petition, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "the Act, 2013") came into effect from 01 January 2014, whereunder, the provisions of the Old Act, 1894 came to be repealed.

6 Now, the question that arises for our consideration is as to whether the acquisition proceedings initiated under the provisions of the Old Act, 1894 in June 1991, whereunder, the award under Section 11 of the Old Act, 1894 was passed on 20 July 1994, will hold good even after coming to force of the Act, 2013. However, as posited by the appellants, possession could not be taken five years before the enforcement of the Act, 2013.

7 In the case on hand, indisputably, stay of dispossession was granted by the High Court in W.P. No.15236 of 1994 on 30 August 1994, which came to be vacated on dismissal of the said writ petition on 17 August 2001. Again, on 10 December 2004, in W.P. No. 36491 of 2004 filed by the appellants 1 to 3 herein, interim stay of dispossession was granted. After the 2013 Act came into force on 01 January 2014, the instant writ petition was filed on 16 February 2014, on the ground the land acquisition proceedings initiated under the Old Act, 1894 Act stood abated. Eventually, the instant writ petition was dismissed, as aforestated.

8 The learned Senior Counsel appearing for the appellants would contend that indisputably, the physical possession of the land in question was not taken over. Under the provisions of Section 24(2) of the Act, 2013, the land acquisition process stand lapsed as the award was passed under Section 11 of the Old Act, 1894 on 20 July 1994 much more before 5 years, prior to the commencement of the Act, 2013.

9 It is further submitted that the provisions of Section 24(2) of the Act, 2013 do not provide for any exemption or exception of the period, wherein, the stay of dispossession was granted by any Court, as the Legislature, in its wisdom, has thought fit not to give any exemption or exception to such an

eventuality. In support of this contention, the learned Senior Counsel for the appellants places reliance on the judgments of the Supreme Court in *Sree Balaji Nagar Residential Association vs. State of Tamil Nadu and others*¹ and *Rajiv Chowdhrie HUF vs. Union of India and others*².

10 It is further urged by the learned Senior Counsel appearing for the appellants that the submission of the learned Additional Advocate General appearing for the Housing Board that the word "or" employed in Section 24(2) of the Act, 2013 between the passages "physical possession of the land has not been taken" and "the compensation has not been paid" be read as "and", is liable to be rejected. In support of this contention, the learned Senior Counsel for the appellants relied on *Manmohan Das Shah and Others vs. Bishun Das and Others*³, *Hyderabad Asbestos Cement Products and another vs. Union of India and Others*⁴ and *Pune Municipal Corporation and another vs. Harakchand Misirimal Solanki and others*⁵.

11 Per contra, the learned Additional Advocate General would submit that the word "or" is employed twice in the provisions of Section 24(2) of the Act, 2013, firstly, in the passage "The Award should have been passed under Section 11 of the Old Act, 1894, 5 years or more, prior to the commencement of the new Act" and secondly, in the passage "physical possession of the land has not been taken or the compensation has not been paid." The word "or" employed in both these places cannot be read as disjunctive, for the reason that, if the word "or" in case of passage "5 years or more" is read as disjunctive, there can be anomaly, as the expression "more", would not make any intelligible meaning without the expression "five years", because, the intention of the Legislature is to set five years as the limitation, above which, the expression "more" would apply. Likewise, the expression "or" employed in the passage, i.e., "physical possession of the land has not been taken or the compensation has not been paid" be read as conjunctive and thus, the condition to lapse judicial proceedings means, both the conditions, i.e., physical possession of the land has not been taken and the compensation has not been paid be satisfied. If one part has been satisfied and the other part is not satisfied, the land owners could not be entitled to any benefit under the said provision. In support of this contention, the learned Additional Advocate General places reliance on *Regina vs. Oakes*⁶, *Tilkayat Shri Govindlalji Maharaj, etc. vs. State of Rajasthan*

1 (2015) 3 SCC 353

2 (2015) 3 SCC 541

3 AIR 1967 SC 643

4 (2000) 1 SCC 426

5 (2014) 3 SCC 183

6 (1959) 2QB 350

and others⁷, and Spentex Industries Limited vs. Commissioner of Central Excise and Others⁸.

12 On the question of compensation, it is contended by the learned Additional Advocate General that the possession of the land could not be taken over on account of interim stay granted by the Courts and as such, the period of 5 years would not be applicable in the case on hand. The learned Additional Advocate General would further submit that in view of the fact that compensation was paid, albeit, possession of the land in question could not be taken, the land acquisition proceedings initiated earlier, would not stand lapsed.

13 We have heard the learned Senior Counsel appearing for the appellants and the learned Additional Advocate General appearing for the respondent-Housing Board. We have also perused the pleadings and documents appended thereto.

14 To appreciate the ambit and scope of Section 24 of the Act, 2013, it is apt to refer to the same. The relevant provision reads as under :

"24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.—

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

(a) where no award 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

7 AIR 1963 SC 1638

8 (2016) 1 SCC 780

compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

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

15 Now, we will deal first the interpretation of Section 24(2) of the Act, 2013, as to the word "OR" employed between physical possession of the land has not been taken and the compensation has not been paid.

16 At this juncture, it is apposite to refer to the explanation given to the words "or" and "and" in Principles of Statutory Interpretation, 14th Edition, authored by Justice G.P. Singh and revised by Justice A.K. Patnaik, former Judge, Supreme Court of India, which reads thus:

"The word 'or' is normally disjunctive and 'and' is normally conjunctive⁹ but at times they are read as vice versa to give effect to the manifest intention of the Legislature as disclosed from the context¹⁰. As stated by Scrutton, L.J.: "You do sometimes read 'or' as 'and' in a statute. But you do not do it unless you are obliged because 'or' does not generally mean 'and' and 'and' does not generally mean 'or'.¹¹ And as pointed out by Lord Halsbury, the reading of 'or' as 'and' is not to be resorted to, "unless some other part of the same statute or the clear intention of it requires that to be done."¹² Where provision is clear and unambiguous the word 'or' cannot be read as 'and' by applying the principle of reading down.¹³"

17 In Regina (supra) cited by the learned Additional

9 Hyderabad Asbestos Cement Product vs. Union of India, (2000) 1 SCC 426

10 Ishwar Singh Bindra vs.State of U.P., AIR 1968 SC 1450

11 Green v. Premier Glynrhonwy Slate Co. , (1928) 1 KB 561

12 Mersey Docks and Harbour Board vs. Henderson Bros, (1888) 13 AC 595

13 Union of India & others vs. Ind-Swift Laboratories Ltd., (2011) 4 SCC 635

Advocate General, the Queen's Bench Division, while examining the provisions of Section 7 of the Official Secrets Act, whereunder, the word "or" was employed, observed as under:

"Accordingly, for all those reasons it seems to this Court that, read literally, no intelligible meaning can be given to this section and accordingly, this Court agrees with Slade J. The judge thought that the natural way of getting over the difficulty was to read into the Act after the word "and" and before the word "does" the opening words of the section, "Any person who," so that it would read, "or aids or abets and any person who does "any act preparatory to the commission of an offence under the "principal Act or this Act." The Court, on the whole, prefers to read the word "or" for "and" because if the words "any person who" are inserted it leaves the words "aids or abets" in the air, whereas, if "and" is changed to "or" it will read in this way: "or aids or abets or does any act preparatory to," and then I insert a comma "the commission of an offence." Indeed, read in that way, it happens very closely to correspond with the only two enactments near the time, namely, the regulations of 1914 and of 1921."

18 In *Union of India and others vs. Ind-Swift Laboratories Ltd.*¹³, (supra) when the word "or" employed in Rule 14 of the CENVAT Credit Rules, 2004, was under examination by the Supreme Court, it was held as under:

"17. A statutory provision is generally read down in order to save the said provision from being declared unconstitutional or illegal. Rule 14 specifically provides that where CENVAT credit has been taken or utilised wrongly or has been erroneously refunded, the same along with interest would be recovered from the manufacturer or the provider of the output service. The issue is as to whether the aforesaid word "or" appearing in Rule 14, twice, could be read as "and" by way of reading it down as has been done by the High Court. If the aforesaid provision is read as a whole we find no reason to read the word "or" in between the expressions "taken" or "utilised wrongly" or "has been erroneously refunded" as the word "and". On the happening of any of the three aforesaid circumstances such credit becomes recoverable along with interest."

19 In *Spentex* (supra), when the employment of the word "or" in Rule 18 of the Central Excise Rules, 2002, came up for

examination, the Supreme Court held as under:

"28. The aforesaid discussion leads us to the only inevitable consequence which is this: the word "OR" occurring in Rule 18 cannot be given literal interpretation as that leads to various disastrous results pointed out in the preceding discussion and, therefore, this word has to be read as "and" as that is what was intended by the rule-maker in the scheme of things and to carry out the objectives of Rule 18 and also to bring it on a par with Rule 19.

29. We are conscious of the principle that the word "or" is normally disjunctive and "and" is normally conjunctive (see *Union of India v. Kamalabai Harjivandas Parekh*). However, there may be circumstances where these words are to be read as vice versa to give effect to manifest intention of the legislature as disclosed from the context.

30. Of course, these two words normally "or" and "and" are to be given their literal meaning in unless some other part of the same statute or the clear intention of it requires that to be done. However, wherever use of such a word viz. "and"/"or" produces unintelligible or absurd results, the Court has the power to read the word "or" as "and" and vice versa to give effect to the intention of the legislature which is otherwise quite clear. This was so done in *State of Bombay v. R.M.D. Chamarbaugwala* and while doing so, the Court observed as under: (AIR p. 709, para 20)"

"20. ... Considering the nature, scope and effect of the impugned Act, we entertain no doubt whatever that the first category of prize competitions does not include any innocent prize competitions. Such is what we conceive to be the clear intention of the legislature as expressed in the impugned Act read as a whole and to give effect to this obvious intention as we are bound to do, we have perforce to read the word 'or' appearing in the qualifying clause after the word 'promoter' and before the word 'or' as 'and'. Well-known canons of construction of statutes permit us to do so. (See *Maxwell on the Interpretation of Statutes*, 10th Edn., p. 238.)"

20 In *Tilkayat Shri Govindlalji Maharaj* (supra), while examining the validity of the *Nathdwara Temple Act, 1959*, a Constitution Bench of the Supreme Court observed as under:

"The composition of the Board has been prescribed by Section 5: it shall consist of a President, the Collector of Udaipur District and nine other members. The proviso to the section is important: it says that the Goswami shall be one of such members if he is not otherwise disqualified to be a member and is willing to serve as such. Section 5(2) prescribes the disqualifications specified in clauses (a) to (g) – unsoundness of mind adjudicated upon by competent court, conviction involving moral turpitude; adjudication as an insolvent or the status of an undischarged insolvent; minority, the defect of being deaf-mute or leprosy; holding an office or being a servant of the temple or being in receipt of any emoluments or perquisites from the temple; being interested in a subsisting contract entered into with the temple; and lastly, not professing the Hindu religion or not belonging to the Pushti-Margiya Vallabhi Sampradaya. There can be no doubt that "or" in clause (g) must mean "and", for the context clearly indicates that way."

21 In *Manmohan Das Shan* (supra) cited by the learned Senior Counsel for the appellants, the Supreme Court, while examining the employment of the word "or" in Section 3(1)(c) of the *U.P. (Temporary) Control of Rent and Eviction Act (3 of 1947)*, observed as under:

"8. In our view clause (c) of Section 3(1) cannot bear the construction suggested by Mr Desai. The clause is couched in simple and unambiguous language and in its plain meaning provides that it would be a good ground enabling a landlord to sue for eviction without the permission of the District Magistrate if the tenant has made or has permitted to be made without the landlord's consent in writing such construction which materially alters the accommodation or is likely substantially to diminish its value. The language of the clause makes it clear that the legislature wanted to lay down two alternatives which would furnish a ground to the landlord to sue without the District Magistrate's permission, that is, where the tenant has made such construction which would materially alter the accommodation or which would be likely to substantially diminish its value. The ordinary rule of construction is that a provision of a statute must be construed in accordance with the language used therein unless there

are compelling reasons, such as, where a literal construction would reduce the provision to absurdity or prevent the manifest intention of the legislature from being carried out. There is no reason why the word "or" should be construed otherwise than in its ordinary meaning. If the construction suggested by Mr Desai were to be accepted and the word "or" were to be construed as meaning "and" it would mean that the construction should not only be such as materially alters the accommodation but is also such that it would substantially diminish its value. Such an interpretation is not warranted for the simple reason that there may conceivably be material alterations which do not, however, diminish the value of the accommodation and on the other hand there may equally conceivably be alterations which are not material alterations but nevertheless would substantially diminish the value of the premises. It seems to us that the legislature intended to provide for both the contingencies and where one or the other exists it was intended to furnish a ground to the landlord to sue his tenant without having to obtain the previous permission of the District Magistrate. The construction of clause (c) placed by the High Court is therefore not correct."

22 In Hyderabad Asbestos Cement Products (supra), where, the usage of word "and" in provisos (i) and (ii) of Rule 56-A of the Central Excise Rules, 1944 was under consideration, the Supreme Court held as under:

"8. The language of the rule is plain and simple. It does not admit of any doubt in interpretation. Provisos (i) and (ii) are separated by the use of the conjunction "and". They have to be read conjointly. The requirement of both the provisos has to be satisfied to avail the benefit. Clauses (a) and (b) of proviso (ii) are separated by the use of an "or" and there the availability of one of the two alternatives would suffice. Inasmuch as cement and asbestos fibre used by the appellants in the manufacture of their finished excisable goods are liable to duty under different tariff items, the benefit of pro forma credit extended by Rule 56-A cannot be availed of by the appellants and has been rightly denied by the authorities of the Department."

23 The ratio deducible from the aforesaid judicial pronouncements is that when a provision is clear and unambiguous, leaving no room or scope for vagueness, the word "or" cannot be understood and interpreted as "and". The

intention of the Legislature must be given full effect to, unless it creates anomaly. In the case on hand, the word "or" used in two places in the passage in Rule 24(2) of the 2013 Act, viz., "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" clearly indicates that after the award is passed 5 years or more, prior to the commencement of the 2013 Act, the proceedings initiated under the Old Act, 1894, shall be deemed to have lapsed. Thus, in any eventuality, either if the compensation is not paid or possession of the land is not taken over, the provisions of Section 24(2) would be attracted. Thus, the word "or" employed in Section 24(2) of the 2013 Act in the aforesaid two places, has to be read disjunctively and not conjunctively, as pleaded by the learned Additional Advocate General.

24 The manifest intention of the Legislature can be derived from the Statement of Objects and Reasons, read with the plain language of Section 24(2) of the 2013 Act. Clause 18 of the Statement of Objects and Reasons clearly stipulates that the benefits under the new law would be available in all the cases of land acquisition under the Old Act, 1894, where, award has not been made or possession of land has not been taken. In line with the objective of the enactment, Section 24(2) of the 2013 Act plainly reads that where an award under Section 11 has been made 5 years or more prior to the commencement of the 2013 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. Thus, it is eloquent that the word "or" employed in two places in the passage "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" is disjunctive and not conjunctive. On happening of one event, the land owner would be entitled to the benefit under the provisions of Section 24(2) of the 2013 Act.

25 Coming to the second contention of the respondents that the possession of the land could not be taken over on account of the order of interim stay granted by the Courts, indisputably, the award was passed on 20 July 1994. Thereafter, stay of dispossession was granted, which continued till 17 August 2001. Again, stay was granted on 10 December 2004 and on account of the stay of dispossession granted by the Courts, possession, according to the respondents, could not be taken over.

26 In this context, it is pertinent to point out that the period of 5 years stipulated in the 2013 Act is relevant only for the purpose of passing of the award under Section 16 of the

Old Act, 1894, i.e., any award which has been passed 5 years or more, prior to the commencement of the 2013 Act, that shall stand lapsed, if, either possession of the land is not taken over or compensation has not been paid.

27 The contention of the learned Additional Advocate General that the period of interim stay of dispossession be excluded from the period of 5 years, is misplaced. There is no prescription of 5 years for taking over of the possession or making payment of compensation. The Supreme Court, in Sree Balaji Nagar Residential Association (supra), has observed as under:

"9. 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 proceedings under challenge will have to be treated or declared as lapsed unless we find merit in the contention raised on behalf of the 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.

10. There is no dispute that the 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 lands concerned 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' period or not.

11. 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, the 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 Padma Sundara Rao v. State of T.N."

28 In yet another decision in Rajiv Chowdhrie HUF (supra), wherein, the question of exclusion of any period during which land acquisition proceedings was stayed, came into consideration, the Supreme Court observed as under:

"16. Further, with regard to the legal contention that physical possession of the land could not have been taken by the respondents in view of the interim order of "status quo" passed by this Court. This Court in Sree Balaji Nagar Residential Assn. v. State of T.N., held that Section 24(2) of the 2013 Act does not exclude any period during which the land acquisition proceedings might have remained stayed on account of stay or injunction granted by any court. It was conclusively held that the legislature has consciously omitted to extend the period of five years indicated in Section 24(2) of the 2013 Act for grant of relief in favour of landowners 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. Thus, the said period has to be excluded as provided under the amended proviso to Section 6 of the LA Act by way of an amendment by the legislature to the above Section 6 through Amendment Act 68 of 1984, to add Explanation 1 to the Act, for the purpose of excluding the period, when the proceedings suffered stay by an order of the court, in the context of limitation provided for publishing the declaration notification under Section 6 (1) of the Act. The Explanation to Section 11-A, which was added by Amendment Act 68 of 1984 was to a similar effect. This Court in the above case has examined this legal contention and held that the legislature in its wisdom made the period of five years under Section 24 (2) of the Resettlement Act, 2013, absolute and unaffected by any delay in the proceedings on account of any order of stay by a court of law. The plain wordings used by the legislature under the provisions of Section 24(2) are made very 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, as held by this Court in CIT v. Indo-Mercantile Bank Ltd. as under: (AIR p. 718, para 10)

"10. Lord Macmillan in Madras & Southern Mahratta Railway Co. Ltd. v. Bezwada Municipality laid down the sphere of a proviso as follows: (IA p. 122)

'... The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case. Where, as in the present case, the language of the main enactment is clear and unambiguous, a proviso can have no repercussion on the interpretation of the main enactment, so as to exclude from it, by implication what clearly falls within its express terms.'

The territory of a proviso therefore is to carve out an exception to the main enactment and exclude something which otherwise would have been within the section. It has to operate in the same field and if the language of the main enactment is clear it cannot be used for the purpose of interpreting the main enactment or to exclude by implication what the enactment clearly says unless the words of the proviso are such that that is its necessary effect."

29 As observed hereinabove, applying the well settled principle of law to the facts of this case, the respondents are not entitled to claim any exclusion of the period of stay of dispossession, inasmuch as the time for taking over possession of the land or making payment of compensation is not prescribed in the provisions of Section 24(2) of the 2013 Act.

30 In view of the aforestated analysis, we are of the considered view that after passing of the award on 20 July 1994, the possession of the land remained with the land owners, which had passed on subsequently to the successors-in-interest and as such, the provisions of Section 24(2) of the 2013 Act would be attracted and consequently, the entire land acquisition proceedings shall stand lapsed.

Resultantly, the writ appeal as well as the writ petition stands allowed and the impugned order dismissing the writ petition is set aside. Costs made easy.

cad

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

- 1 The Secretary to Government
Housing and Urban Development Department
Fort St. George
Chennai 600 009
 - 2 The Special Tahsildar (Land Acquisition)
Neighbourhood Scheme
Salem 600 008
 - 3 The Executive Engineer & Administrative Officer
Tamil Nadu Housing Board
Salem Housing Unit, Salem - 636 008.
- + 1 CC TO Mr.M.Elango, Advocate Sr 12355
+ 1 cc to Mr.V.Anandhamurthy, Advocate Sr 12420
+ 1 cc to The Govt.Pleader, Sr 12594 (4/3/16)

KR/3/3/16

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