



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2016

WEB COPY

Date of Reserving the Order	Date of Pronouncing the Order
26.04.2016	29.04.2016

CORAM

THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM

W.P.Nos.43,44, 19322 of 2013
W.P.Nos.34939, 34940, 35426,
21037, 26112 to 26115 of 2012
& Connected M.Ps.,

K.Natarajan	...Petitioner in WP.43/2013
Dugaram	...Petitioner in WP.44/2013
N.Vennila	...Petitioner in WP.34939/2012
V.G.Harikrishnan	...Petitioner in WP.34940/2012
S.Renganayaghi	...Petitioner in WP.35426/2012
Ganesan @ Krishnasamy	...Petitioner in WP.21037/2012
L.Rajendran	...Petitioner in WP.26112/2012
E.Arunasadesan	...Petitioner in WP.26113/2012
K.Jayabalan	...Petitioner in WP.26114/2012
Malararasi	...Petitioner in WP.26115/2012
V.Shanmugavelu	...Petitioner in WP.19322/2013

Vs

1. Govt., of Puducherry,
Rep., by its Special Secretary to Govt.,
Department of Revenue and
Special Disaster Management,
Puducherry.
2. Sub Collector (Revenue),
Cum Land Acquisition Officer,
Officer of the Sub Collector,
Karaikkal.
3. Tahsildar (Land Acquisition),
Office of the Tahsildar,
Karaikkal.

...Respondents in all
Petitions



Prayer in W.P.No.43 of 2013 : Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus, to call for records from the first respondent relating to the impugned notification issued under Section 4(1) of the Land Acquisition Act (Central Act 1 of 1894) in G.O.Ms.No.4, dated 27.06.2011, and the consequent declaration made under Section 6 of the said Act in G.O.Ms.No.7, dated 29.07.2011 by the Department of Revenue and Disaster Management, Govt., of Puducherry and quash the same as illegal and unsustainable in so far which are against the interests and claim of the petitioner and consequently forbear them from acquiring his lands situated in S.No.84/13 and 84/14 to an extent of 0.11.50 and 0.09.50 ares respectively in Kottucherry Commune, Karaikkal Taluk, Pondicherry State as notified by them in the aforesaid impugned proceedings.

Prayer in W.P.No.44 of 2013 : To call for records from the first respondent relating to the impugned Notification issued under Section 4(1) of the Land Acquisition Act (Central Act 1 of 1894) in G.O.Ms.No.4 dated 27.6.2011 and the consequent declaration made under Section 6 of the said Act in G.O.Ms.No.7 dated 29.7.2011 by the Department of Revenue and Disaster Management, Government of Puducherry and quash the same as illegal and unsustainable in so far which are against the interests and claim of the petitioner and consequently forbear them from acquiring his lands situated in S.No.84/16 to an extent of 0.09.50 ares in Kottucherry Commune, Karaikkal Taluk, Pondicherry State as notified by them in the aforesaid impugned proceedings.

Prayer in W.P.No.19322 of 2013 : To call for records from the respondents relating to the impugned Notification issued under Section 4(1) of the Land Acquisition Act 89 (Central Act 1 of 1894) in G.O.Ms. No.4 dated 27.6.2011 and the consequent declaration made under Section 6 of the said Act in G.O.Ms.No.7 dated 29.7.11 by the Department of Revenue and Disaster Management, Government of Puducherry and quash the same as illegal and unsustainable in so far which are against the interests and claim of the petitioner and consequently forbear them from acquiring their lands situated in Survey No.87/2, to an extent of 0.94.00 Ares, in Survey No.87/3 to an extent of 0.20.50 Ares and in Survey No.857/4 to an extent of 0.18.00 Ares in Kottucherry Commune, Karaikkal Taluk, Pondicherry State as notified by them in the aforesaid impugned proceedings.

Prayer in W.P.No.34939 of 2012 : To call for records from the respondents relating to the impugned notification issued under section 4(1) of the Land Acquisition Act (Central Act 1 of 1894) in G.O.Ms.No.4 dated 27.6.2011 and the consequent declaration



made under section 6 of the said Act in G.O.Ms.No.7 dt. 29.7.2011 by the Department of Revenue and Disaster Management, Government of Pudhucherry and quash the same as illegal and unsustainable in so far which are against the interests and claim of the petitioner and consequently forbear them from acquiring her lands situated in S.No.86/4 to an extent of 0.15.50 ares in Kottucherry commune, Karaikkal Taluk, Pondicherry State as notified by them in the aforesaid impugned proceedings.

Prayer in W.P.No.34940 of 2012 : To call for records from the respondents relating to the impugned notification issued under section 4(1) of the Land Acquisition Act (Central Act 1 of 1894) in G.O.Ms.No.4 dated 27.6.2011 and the consequent declaration made under section 6 of the said Act in G.O.Ms.No.7 dt. 29.7.2011 by the Department of Revenue and Disaster Management, Government of Pudhucherry and quash the same as illegal and unsustainable in so far which are against the interests and claim of the petitioner and consequently forbear them from acquiring her lands situated in S.No.84/9 to an extent of 0.05.50 ares in Kottucherry commune, Karaikkal Taluk, Pondicherry State as notified by them in the aforesaid impugned proceedings.

Prayer in W.P.No.35426 of 2012 : To call for records from the 1st respondent relating to the impugned Notification issued under section 4 (1) of the Land Acquisition Act (Central Act 1 of 1894) in G.O.Ms. No.4 dated 27.6.2011 and the consequent declaration made under section 6 of the said Act in G.O.ms. No.7 dated 29.7.2011 by the department of Revenue and Disaster Management, Government of Puducherry and quash the same as illegal and unsustainable in so far which are against the interests and claim of the petitioner and consequently forbear them from acquiring their lands situated in Survey No.81/11 to an extent of 0.27.00 Ares, in Kottucherry Commune, Karaikkal Taluk, Pondicherry State as notified by them in the aforesaid impugned proceedings.

Prayer in W.P.No.21037 of 2012 : To call for records from the respondents relating to the impugned notification issued under Section 4(1) of the Land Acquisition Act (Central Act 1 of 1894) in G.O.Ms.No.4 dated 27.6.2011 and the consequent declaration made under Section 6 of the said Act in G.O.Ms.No.7 dt. 29.7.2011 by the Department of Revenue and Disaster Management, Govt. of Pudhucherry and quash the same as illegal and unsustainable in so far which are against the interests and claim of the petitioner and consequently forbear them from acquiring his lands as notified by them in the aforesaid impugned proceedings.



Prayer in W.P.No.26112 of 2012 : To call for records from the respondents relating to the impugned Notification issued under Section 4(1) of the Land Acquisition Act (Central Act 1 of 1894) in G.O.Ms.No.4 dated 27.6.2011 and the consequent declaration made under Section 6 of the said Act in G.O.Ms.No.7 dated 29.7.2011 by the Department of Revenue and Disaster Management, Government of Puducherry and quash the same as illegal and unsustainable in so far which are against the interests and claim of the petitioner and consequently forbear them from acquiring his lands situated in S.No.80/2 to an extent of 0.62.0 Ares respectively in Kottucherry Commune, Karaikkal Taluk, Pondicherry State as notified by them in the aforesaid impugned proceedings.

Prayer in W.P.No.26113 of 2012 : To call for records from the respondents relating to the impugned Notification issued under Section 4(1) of the Land Acquisition Act (Central Act 1 of 1894) in G.O.Ms.No.4 dated 27.6.2011 and the consequent declaration made under Section 6 of the said Act in G.O.Ms.No.7 dated 29.7.2011 by the Department of Revenue and Disaster Management, Government of Puducherry and quash the same as illegal and unsustainable in so far which are against the interests and claim of the petitioner and consequently forbear them from acquiring his lands situated in S.No.80/1A to an extent of 0.31.00 Ares respectively in Kottucherry Commune, Karaikkal Taluk, Pondicherry State as notified by them in the aforesaid impugned proceedings.

Prayer in W.P.No.26114 of 2012 : To call for records from the respondents relating to the impugned Notification issued under Section 4(1) of the Land Acquisition Act (Central Act 1 of 1894) in G.O.Ms.No.4 dated 27.6.2011 and the consequent declaration made under Section 6 of the said Act in G.O.Ms.No.7 dated 29.7.2011 by the Department of Revenue and Disaster Management, Government of Puducherry and quash the same as illegal and unsustainable in so far which are against the interests and claim of the petitioner and consequently forbear them from acquiring his lands situated in S.No.86/1 to an extent of 0.25.00 Ares respectively in Kottucherry Commune, Karaikkal Taluk, Pondicherry State as notified by them in the aforesaid impugned proceedings.

Prayer in W.P.No.26115 of 2012 : To call for records from the respondents relating to the impugned Notification issued under Section 4(1) of the Land Acquisition Act (Central Act 1 of 1894) in G.O.Ms.No.4 dated 27.6.2011 and the consequent declaration made under Section 6 of the said Act in G.O.Ms.No.7 dated 29.7.2011 by the Department of Revenue and Disaster Management,



Govt. of Puducherry and quash the same as illegal and unsustainable in so far which are against the interests and claim of the petitioner and consequently forbear them from acquiring her lands situated in S.Nos. 80/1B & 85/3A to an extent of 0.29.50 and 0.49.25 Ares respectively in Kottucherry Commune, Karaikkal Taluk, Pondicherry State as notified by them in the aforesaid impugned proceedings.

For petitioners : Mr.S.Kanniah

For Respondents : Mr.M.Govindaraj
Government Pleader
Assisted by
Mr.A.Tamilvannan
Government Advocate

C O M M O N O R D E R

In all these Writ Petitions, the petitioners who are land owners have challenged the land acquisition proceedings initiated by the respondents under the provisions of the Land Acquisition Act, 1894, (hereinafter referred to as the 'Act'), for establishment of the National Institute of Technology (NIT), Puducherry.

2. The petitioners claiming themselves to be agriculturists owning meagre extent of land are aggrieved by the impugned acquisition proceedings. The undisputed facts are that notification under Section 4(1) of the Act was issued on 07.06.2011 and the enquiry to be conducted under Section 5A of the Act was dispensed with invoking the urgency provision under Section 17 of the Act and declaration under Section 6 was issued on 29.07.2011.

3. The challenge to the impugned land acquisition proceedings are on the following grounds as raised by the learned counsel appearing for the petitioner.

(i) that the notification under Section 4(1) of the Act was published in the gazette only on 02.08.2011, and prior to that the notification was published in the newspapers and this is not in accordance with the procedure under Section 4(1) of the Act;

(ii) likewise the declaration issued under Section 6 of the Act was published in the gazette only on 10.08.2011, whereas it was published in the newspapers on 06.08.2011;

(iii) that prior approval of the Government under Section 3 (7)(vi) was not obtained for the proposed acquisition, the names of the petitioners, who are the owners of the property were not included in the notification under Section 4(1) of the Act,



instead the names of the dead persons and predecessors in title were mentioned;

(iv) the invoking emergency power under Section 17 of the Act by dispensing with the enquiry under Section 5A of the Act was unnecessary;

(v) the willingness of the petitioners to receive higher compensation will not constitute estoppel nor can it operate as a bar for filing the Writ Petition challenging the acquisition proceedings;

(vi) the entire land acquisition proceedings stand lapsed in terms of Section 24(2) of the Act, as the petitioners continue to be in possession of the lands in question and compensation amount has not been paid.

(vii) in support of his contentions, the learned counsel referred to the decision of the Hon'ble Supreme Court in the cases of Collector (District Magistrate), Allahabad & Anr., vs. Raja Ram, Jaiswal reported in (1985) 3 SCC 1; Urban Improvement Trust, Udaipur vs. Bheru Lal & Ors., reported in 2003 (1) CTC 59; Radhy Shyam (Dead) through Lrs., & Anr., vs. State of U.P. & Ors., reported in (2011) 5 SCC 553; Pune Municipal Corporation & Anr., vs. Harakchand Misirimal Solanki & Ors., reported in 2014 (1) CTC 755.

4. The learned Government Pleader (Puducherry) appearing for the respondents elaborately referred to the factual matrix and invited the attention of this Court to the counter affidavits filed by the second respondent, dated 27.11.2014, which is a common counter in all the Writ Petitions and the counter affidavits dated 12.12.2014, which are individual counter affidavits in the Writ Petitions. It is submitted that the Government of India, by order dated 30.10.2009, decided to establish 10 new National Institute of Technologies during the 11th five year plan across 10 destinations in the country and one of which was in Karaikal, Puducherry, Union Territory. The institution was established in a rental premises during the academic year 2010-11 and in order to have a permanent campus, the lands which are subject matter of these Writ Petitions at Thiruvettakudi Revenue village were notified to be acquired. The notification under Section 4(1) of the Act was approved by G.O.Ms.No.4, dated 27.06.2011, and published in the four modes namely, in the Tamil daily on 30.06.2011, English daily dated 30.06.2011, State Gazette No.98, dated 02.08.2011 and by affixure of public notice, dated 12.08.2011. It is further submitted that Section 6 declaration was published after invoking Section 17(1) of the Act, by dispensing with the enquiry under Section 5A of the Act. The declaration was approved vide G.O.Ms.No.7, dated 29.07.2011, published in the Tamil and English dailies on 06.08.2011, in the Government Gazette No.100, dated 10.08.2011 and by affixure of public



notice on 24.08.2011. It is further submitted that the possession of the lands were taken over on 23.02.2012 and handed over to the requisitioning department i.e., Education Department, on 14.03.2012. Further, it is submitted that notices under Section 17(3A) of the Act was issued on 28.11.2011, fixing the date of enquiry as 23.12.2011, on which date, 18 land owners appeared for enquiry and since most of the lands belong to one M/s.DCM Sri Ram, Thiru.Ashokan appeared on behalf of the said company and the petitioner also appeared for enquiry on 23.12.2011. It is further submitted that the compensation has been paid to the claimants, who have produced original documents, whereas the compensation to the petitioners has not been paid till date, since they have not produced original documents, parent deeds, copy of patta, etc. Further in the counter affidavit, it has been stated that the petitioners Vennila, Renganaiyaki, Shanmugavel, Harikrishnan, Natarajan and Durugram have appeared in person on 02.01.2012 and submitted representations to drop the acquisition proceedings. It is further stated in the counter affidavit that notices for taking over possession of the lands were issued on 18.01.2012, to each and every land owners/interested persons requesting to be present at the spot on 23.01.2012 at 11.00 a.m. It is stated that on receipt of the notices, they appeared on the spot on 23.01.2012, and the lands were taken over on 23.02.2012. The counter affidavit dated 23.12.2014, is a verbatim repetition of the earlier counter. The learned Government Pleader further submitted that the acquisition proceedings have been validly done and the project is of utmost importance and there are absolutely no merits in the Writ Petitions. It is submitted that it is not mandatory that the notification under Section 4 (1) of the Act and the declaration issued under Section 6 of the Act, should be first published in the Government Gazette and only thereafter, in the newspapers and local publication. It is further submitted that there is no necessity to follow such an order while making the publication and what is relevant, is a last of such publication. To support such contention, reference was made to the decision of the Hon'ble Division Bench in Sundara Naicker vs. The State of Tamil Nadu & Anr., reported in 1996 (II) CTC 746.

5. Heard the learned counsels appearing for the parties and perused the materials placed on record.

6. The first issue to be considered is whether the notification issued under Section 4(1) of the Act and the declaration under Section 6 of the Act have been published in the manner provided under the statute. It is not in dispute that both the notification under Section 4(1) and the declaration under Section 6, were not published in the



Government Gazette at the first instance and in fact, the gazette publication is the last publication of the notification/declaration. The Hon'ble Supreme Court in the case of Collector (District Magistrate), Allahabad & Anr., vs. Raja Ram, Jaiswal (supra), while considering this issue pointed out that the expression 'notification in Section 4(1) of the Act' would clearly spell out that first the Government should reach a decision to acquire land, then publish a notification under Section 4(1) and simultaneously or within a reasonable time from the date of publication of the notification, cause a notice to be published containing substance of such notification meaning thereby that notification which is published and there cannot be a publication in the locality prior to issuance of the notification. It was further pointed out that where a decision of the Government to be effective and valid has to be notified in the Government Gazette, the decision itself does not become effective, unless a notification in the Official Gazette follows. The Hon'ble Supreme Court in the case of Urban Improvement Trust, Udaipur vs. Bheru Lal & Ors., (supra), after referring to the decision in Collector (District Magistrate), Allahabad & Anr., vs. Raja Ram, Jaiswal (supra), held that publication of the notification made or prepared by the Government would be of no effect, till it is published in the official gazette and that publication in the official gazette is a condition precedent for acquiring the land. It was further pointed out that the acquisition process starts after publication of the notification in the official gazette.

7. In M.Rajagopal vs. State of Tamil Nadu reported in 1992 (II) MLJ 404, this issue was considered. In the said case, the challenge was to a land acquisition proceedings on the ground that unless decision to acquire a land is notified in the Government Gazette by an appropriate notification, the proceedings for acquisition cannot be said to have been initiated and the decision would remain a paper decision. After taking into consideration the decision in the case of Collector (District Magistrate), Allahabad & Anr., vs. Raja Ram, Jaiswal (supra), and other cases, it was held as follows:-

4. As both these matters arise out of the same judgment, they were heard together and are being disposed of by a common judgment. It may be mentioned that connected Civil Appeal No. 2437 of 1981 was to be taken up for hearing after the hearing concluded in the present appeal and therefore, the judgment in this matter was postponed because the observations in one were likely to have some impact on the disposal on merits of the contentions in the cognate appeal. Though very much delayed by circumstances beyond



WEB COPY

our control, few days back the hearing in the cognate appeal is over and therefore, both the appeals can now be disposed of, though by separate judgments.

7. Petitioner Jaiswal along with the members of his family purchased land bearing Plot No. 26 with a building thereon admeasuring 2978 sq. yds. situated at K.P. Kakkar Road in March 1970. The petitioner wanted to build a sound-proof air-conditioned cinema theatre on the Plot No. 26 purchased by him. The plan for the proposed theatre was sanctioned both by the District Magistrate and the local municipality in December 1970. It may be recalled here that the judgment of this Court holding Hindi Sahitya Sammelan Act unconstitutional was rendered on February 23, 1971. The Sammelan was wholly opposed to the construction of a theatre near its campus as in its view a theatre and a research-cum-study centre can go ill together. Therefore, when the petitioner applied for a certificate of approval under Rule 3 read with Rule 7(2) of the U.P. Cinematograph Rules, 1951 for construction of a cinema theatre, authorities of the Sammelan raised a storm of protest, sometimes peaceful occasionally likely to turn violent impelling authorities to impose restrictive orders under Section 144, Code of Criminal Procedure. Sammelan also submitted a long memorandum setting out its objections with a view to persuading the authorities not to grant a certificate of approval for construction of a cinema building. Overruling the objections the District Magistrate, the Licensing Authority under the U.P. Cinemas (Regulation) Act, 1955 granted the requisite certificate of approval under Rule 3 which would in law imply that having regard to the provisions of the 1955 Act and 1951 Rules, there was no legal impediment to constructing a cinema theatre on Plot No. 26. Thereupon, Secretary of the Sammelan addressed a letter to the Chief Minister of State of U.P. complaining against the grant of the permission by the District Magistrate and requesting the Chief Minister to cancel the permission. Ultimately, having failed to thwart the grant of certificate of approval, the Sammelan wrote a letter on October 13, 1971 for acquiring land bearing Plot No. 26. It may be recalled that the certificate



WEB COPY

of approval for constructing a cinema building was granted by the District Magistrate on March 24, 1972. The Sammelan addressed various letters to various authorities including the then Prime Minister of India requesting them to cancel the certificate of approval granted to the petitioner. Ultimately on January 31, 1974, a notification under Section 4(1) of the Land Acquisition Act, 1894 was issued stating therein that "the land bearing Plot No. 26 admeasuring approximately 2865 sq. yds. was needed for a public purpose namely ⁸ for extension of Hindi Sangrahalaya of Hindi Sahitya Sammelan, Prayag". This notification was published in the U.P. Government Gazette on February 9, 1974. A notice under Section 4(1) bearing the same date was served upon the petitioner as also the same was published in the locality. The petitioner challenged the validity of this notification on diverse grounds in Writ Petition No. 1932 of 1974 and as a measure of interim relief, the High Court stayed further proceeding that may be taken to acquire the land. In the meantime by notification dated February 6, 1975, the earlier notification under Section 4(1) dated January 31, 1974 was cancelled and a fresh notification was issued to acquire "land bearing Plot No. 62 admeasuring 8265 sq. yds. for the earlier mentioned public purpose". Consequently the writ petition in which the validity of the earlier notification was questioned was disposed of as infructuous. The second notification dated February 6, 1975 was published in the U.P. Gazette on February 15, 1975. A notice dated March 6, 1975 under Section 5-A of the Land Acquisition Act was served upon the petitioner inviting him to file his objection, if there be any, against the proposed acquisition. The petitioner filed detailed objections on March 8, 1975 inter alia contending that the acquisition is for a company and the pre-requisite for acquisition for a company having not been carried out, the acquisition is bad in law. It was also contended that the petitioner is not the owner of Plot No. 62 admeasuring 8265 sq. yds. Promptly on March 13, 1975, a corrigendum was issued and published in the Gazette on March 22, 1975 correcting the notification dated February 6, 1975 to read that instead of Plot No. 62, Plot



WEB COPY

No. 26 be read and instead of area 5265 sq. yds., 2865 sq. yds. be read. In between the issue of the notification and the corrigendum, the petitioner filed Writ Petition 3174 of 1975 questioning the validity of the notification dated February 6, 1975. The High Court struck down the notification as invalid and during the pendency of the writ petition in the High Court, further continuance of the acquisition proceedings were stayed.

8. If the petitioner questioned the validity of the notification on ground of mala fides, he ought to have joined Sammelan as respondent. Having failed to implead a proper party, he behaved curiously in opposing the application of the Sammelan for being impleaded as a party. The High Court was in error in rejecting the application. Therefore, when the Sammelan moved an application for intervention under Order 20 Rule 3 of the Supreme Court Rules, 1966, we granted the same and Mr S.N. Kacker, learned counsel appeared for the Sammelan at the hearing of these appeals and addressed his oral arguments and submitted written submissions.

8. In terms of the above decision, the notification in the gazette should be published first and then only paper publication should be made and Section 4(1) itself has given the modes of publication in seriatum namely, the first publication should be in the official gazette, the second publication to be two daily newspapers and the third by way of public notice of the substance of the said notification at the convenient place.

9. If the law as stated above is applied to the facts of the case, the only conclusion that can be arrived is that the acquisition proceedings are vitiated for not following the procedure in the matter of publication of the notification and the declaration. This is so because the respondents have admitted in their counter affidavit that the gazette publication was done after nearly two months after the notification was published in the newspapers. Therefore, this is a good ground to quash the impugned acquisition proceedings.

10. The learned Government Pleader appearing for the respondents referred to the decision in the case of Sundara Naicker vs. The State of Tamil Nadu & Anr., (supra), wherein the Hon'ble First Bench of this Court after referring to the decisions of the Hon'ble Supreme Court in the case of Collector (District Magistrate), Allahabad & Anr., vs. Raja Ram, Jaiswal



(supra), Raghbir Singh Sehrawat vs. State of Haryana & Ors., reported in (2012) 1 SCC 792, had overruled the decision in the case of M.Rajagopal vs. State of Tamil Nadu (supra). For better appreciation, the relevant portion of the judgment is quoted herein below:-

8. We find it very difficult to agree with the aforesaid decisions, consequently, to agree with the contention of the learned counsel for the appellant. It has to be remembered that literal construction of a statute should always be avoided, if it leads to defeat the very object of the provision. Whether the notification is published first in the newspaper or in the gazettee, it is a notification issued under the statute by the State Government proposing to acquire the land. In addition to that, the provisions contained in Section 4(1) would make it clear that the last of the dates of the publications shall be deemed to be the date of publication of such notification, viz., the notification issued under Section 4(1) of the Act. That being so, as long as the publication in the newspaper and in the Gazette have taken place, whether the newspaper publication is earlier and the publication in the gazette is later, matters very little, as long as those publications have been made, without an unduly long gap between the two publications, it is not possible to hold that a publication of the notification in the news paper preceding the publication of the same in the official gazette, would lead to non-compliance with the provisions of Section 4(1) of the Act and thereby it would lead to nullifying the acquisition. It may be pointed out here that the decision of the Supreme Court in Raja Ram Jaiswal, on which reliance is placed in M. Rajagopal's case, 1992 (II) MLJ 404, did not concern with Section 4(1) as it.... stands today. It was concerned with Section 4 (1) as it stood before the amendment and it did not provide for publication of the Notification in two newspapers published in the locality. Not only this, the unamended Section 4 also did not contain a provision to the effect that the last of the dates of such publication and giving of such public notice as the date of the publication of the notification. Therefore, the decision in Raja Ram Jaiswal's case, . I cannot have any bearing in construing the provisions of Section 4



WEB COPY

(1) as amended. Whether the notification in the official gazette proceeds the notification in the news paper or the publication of the notification in the newspaper precede the gazette notification, matters very little as long as it is the last of the dates of such publication and the giving of such public notice being referred to as the date of publication of the notification, which alone would determine the date of publication of the Notification. That being so, the aforesaid two decisions in M. Rajagopal v. State of Tamil Nadu, 1992 (II) MLJ 404 and Muthukaruppan and Ors. v. State of Tamil Nadu, 1994 (I) MLJ 303, in our view do not lay down the law correctly. As such the same require to be overruled and the same are overruled.

11. In a subsequent decision of the Hon'ble Supreme Court in the case of Urban Improvement Trust, Udaipur vs. Bheru Lal & Ors., (supra), both the decisions in the cases of Collector (District Magistrate), Allahabad & Anr., vs. Raja Ram, Jaiswal (supra), Raghbir Singh Sehrawat vs. State of Haryana & Ors., (supra), were referred and the Hon'ble Supreme Court pointed out that the acquisition process starts after publication of the notification in the official gazette. However, it was pointed out that the distinction pointed out by the Hon'ble First Bench after referring to the judgment of the Hon'ble Supreme Court in the case of Collector (District Magistrate), Allahabad & Anr., vs. Raja Ram, Jaiswal (supra), was in the light of the amendment which was made to the provisions of the Land Acquisition Act, 1894. Therefore, this issue could be left at this stage and it can be considered as to whether the acquisition proceedings have been validly done otherwise.

12. The acquisition proceedings have been initiated and notification under Section 4 of the Act was issued and declaration under Section 6 was issued by dispensing with the enquiry under Section 5A of the Act by invoking Section 17 of the Act. While taking over possession invoking the urgency clause, sub-section (3A) of Section 17 mandates that before taking possession of the lands under sub-section (1) or sub-section (2) of Section 17, the collector shall, without prejudice to the provision of sub-section (3A), tender payment of 80% of compensation for such land as estimated by him to the persons interested entitled thereto and (b) payee to them unless prevented by some one or more of the contingencies mentioned in Section 31(2). From the counter affidavit, it is seen that this mandatory provision has not been complied with, there is no



whisper as to whether the compensation amount was arrived at prior to the alleged taking over of possession whether there was any tender of payment of 80% compensation to the land owners and whether there was any dispute which prevented 80% payment to be made. Therefore, on this ground, the acquisition proceedings are vitiated.

13. The petitioner has also raised another substantial contention by referring to Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (Act 30 of 2013). The parameters, which has been pleaded are that possession has not been taken over from the petitioners and compensation has not been paid.

14. The Hon'ble Division Bench in a recent decision in the case of TNHB vs. Igate Global Solutions Ltd., reported in 2016 (2) MLJ 385, threadbare considered the scope of Section 24(2) of Act 30 of 2013 and after taking note of the decisions of the Hon'ble Supreme Court, pointed out the manner in which the possession has to be taken and how compensation has to be paid etc. At this stage, it would be beneficial to refer to the operative portion of the judgment:-

60 The ratio deducible from the aforesaid judicial pronouncements is that for taking over of possession of the land under Section 16 of the Old Act, 1894, the revenue authorities must establish by producing some evidence, i.e., either preparation of panchanama in the presence of the witnesses or some other documents. The transfer certificates subsequently prepared by the revenue authorities for delivering possession of the land in question to the Housing Board in absence of a witness or land owner, will not be sufficient to establish that possession of the lands was taken over from the land owners. In the case on hand, it is strongly pleaded by the learned counsel appearing for the private respondents that the land owners or their successors are continuing in possession till date. Thus, it is held that the possession of the lands in question were not taken over after passing of the Award.

61 On plain reading of the provisions of Section 24(2) of the Act, 2013, which is non-obstante clause, it is evident that in all cases, where an Award under Section 11 of the Old Act, 1894 has been made five years or more prior to the commencement of the Act, 2013,



WEB COPY

there is no period prescribed for taking over physical possession of the land or payment of compensation. Indisputably, in all the cases, the Award under Section 11 of the Old Act, 1894 was passed much more than five years before the commencement of the Act, 2013. As aforesaid, compensation was paid, excepting in W.A.Nos.164 and 329 of 2015. The appellants have failed to produce any material to establish that possession of land in question was taken over from the land owners or their successors in accordance with the provisions of law, as aforesaid. Purported transfer of the land under transfer certificate from the State Government to the Housing Board in absence of a witness or the land owner is of no significance. Thus, it cannot be held that possession of the land has been taken over after passing of the Award.

62 In W.A.No.329 of 2015, as per the pleadings of the Housing Board, compensation amount of Rs.300.15 was kept under the work deposit on 9th April, 1983, which could not be made over to the land owner. Except the bald statement that the physical possession of the land in question was taken over by the land acquisition officer on 13th December, 1984, no material has been produced to establish the factum of taking over of possession. Likewise, in W.A.No.164 of 2015, no material has been produced to establish the factum of taking over possession of the land. Thus these appeals stand on the same footing. In the cases on hand, even transfer certificate delivering the land from the State Government to the Housing Board has not been produced.

63 The case of the appellants-Housing Board and the State Government is that once the Award is passed, the property vests in the Government and no further action is necessary. This contention is misplaced and deserves to be rejected. Section 11 of the Old Act, 1894 contemplates passing of the Award followed by taking over of possession under Section 16 of the Old Act, 1894. Only after possession is taken over, the land shall vest in the Government as it is established that the possession of the land was never taken over and as such, it never vested in the State



WEB COPY

Government. Thus, in the facts of the case, though compensation has been made in all the cases, except in W.A.Nos.164 and 329 of 2015, possession of the lands in question, were not taken over. Therefore, the provisions of Section 24(2) of the Act, 2013 would be attracted and the land acquisition proceedings stand lapsed.

15. In terms of the above decision, mere recording in the files that possession has been taken over is not sufficient. In the instant case, respondents in their counter affidavits have stated that notice was issued to the land owners, while taking over possession and they were directed to be present on the spot on 23.01.2012 at 11.00 a.m. However, the counter does not say what happened thereafter, whether the land owners voluntarily surrendered possession, but all that has been stated is that the lands were taken over on 23.02.2012. The use of the expression 'taken over' would denote that the petitioners did not voluntarily hand over possession, this is fortified by the admission in the counter affidavit wherein, they accepted that the land owners/petitioners appeared in person on 02.01.2012 and requested for dropping the acquisition process. Therefore, the possession of the land having not been taken over as required to be done, which has been clearly pointed out by the Hon'ble Division Bench in the aforesaid decision, it is held that the petitioners are entitled to benefit of Section 24 of the Act 30 of 2013.

16. The next aspect would be whether the compensation amount has been tendered or paid to the land owners. As pointed out by the Hon'ble Division Bench, it is not necessary for the land owners to satisfy both the conditions under Section 24(2) of the Act 30 of 2013 and it is sufficient, if one of the conditions are satisfied. This Court has held that one of the conditions stands satisfied as possession has not been taken in the manner required under law.

17. Nevertheless, this Court examined the other issue also and from the counter affidavit, it is clear that the compensation amount has not been paid to the land owners nor tendered nor deposited before the Civil Court. Therefore, this is one more reason to hold that the petitioners are entitled to the benefit under Section 24(2) of the Act 30 of 2013.

18. In the preceding paragraphs, this Court pointed out that there has been non-compliance of Section 17(3A) of the Act. While on this issue, this Court would wish to point out that the necessity to invoke the urgency clause appears to be unrealistic, after all 30 days is required to conduct the



enquiry under Section 5A of the Act. The Hon'ble Supreme Court in the case of Radhy Shyam (Dead) through Lrs., & Anr., vs. State of U.P. & Ors., (supra), pointed out that a public purpose, however, laudable it may be does not entitle the State to invoke urgency provisions because the same have the effect of depriving the owner of his right to property without being heard and only in case of real urgency, the State can invoke the urgency provisions and dispense with the requirement of hearing the landowner or other interested persons, that the provisions can be invoked only when the purpose of acquisition cannot brook the delay of even few weeks or months. While considering the various purposes for which acquisition of land is made, the Hon'ble Supreme Court also took into consideration, when acquisition is for institutional purposes and it was held as follows:-

77(viii) The acquisition of land for residential, commercial, industrial or institutional purposes can be treated as an acquisition for public purposes within the meaning of Section 4 but that, by itself, does not justify the exercise of power by the Government under Section 17(1) and/or 17(4). The Court can take judicial notice of the fact that planning, execution and implementation of the schemes relating to development of residential, commercial, industrial or institutional areas usually take few years. Therefore, the private property cannot be acquired for such purpose by invoking the urgency provision contained in Section 17(1). In any case, exclusion of the rule of audi alteram partem embodied in Section 5-A (1) and (2) is not at all warranted in such matters.

19. From the counter affidavit it is seen that the Government of India issued orders for establishing 10 National Institute of Technology through out the country by order dated 30.10.2009. The proposal was implemented and the National Institute of Technology was established in Karaikal during the academic year 2010-11 in a rental building which was a building meant for a college. After the institution was established acquisition proceedings were initiated. By issuance of notification under Section 4 of the Act, though 4(1) notification was published in the newspapers on 30.06.2011, for nearly two months, no steps were taken to gazette the notification and the gazette publication was only on 20.08.2011. This delay has not been explained in the counter affidavit. In any event, the property sought to be acquired was a property owned by private persons and that could not have been acquired invoking the urgency provision contained under Section 17(1) of the Act.



20. Hence, for all the above reasons, the Writ Petitions are allowed for the following reasons:-

(i) The invocation of urgency provisions under Section 17 of the Act is vitiated on account of non-adherence to the mandatory requirements under subsection(3A) of Section 17 and in utter disregard to the law laid by the Hon'ble Supreme Court in the case of Radhy Shyam (Dead) through Lrs., & Anr., vs. State of U.P. & Ors., (supra).

(ii) As the possession of the lands have not been taken over as required under law as pointed out by the Hon'ble Division Bench in the case of TNHB vs. Igate Global Solutions Ltd., (supra) and the compensation having not been tendered or paid to the landowners or deposited before the Civil Court, the land acquisition proceedings would stand lapsed in terms of Section 24(2) of the Act 30 of 2013. As this Court has set aside the acquisition proceedings as having been lapsed, liberty is granted to issue fresh notification under Act 30 of 2013, if the respondents so desire.

No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

pbn

To

1. The Special Secretary to Govt.,
Govt., of Puducherry,
Department of Revenue and
Special Disaster Management,
Puducherry.
2. The Sub Collector (Revenue),
Cum Land Acquisition Officer,
Officer of the Sub Collector,
Karaikkal.



3. The Tahsildar (Land Acquisition),
Office of the Tahsildar,
Karaikkal.

WEB COPY

+4cc's to Mr.S.Kanniah, Advocate, S.R.No.27595

+1cc to the Government Pleader(Pondy), S.R.No.28039 to 28049

W.P.Nos.43,44, 19322 of 2013

W.P.Nos.34939, 34940, 35426,
21037, 26112 to 26115 of 2012

LRS (CO)
CA(17/05/2016)