

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON : 22/12/2014

DATED : 18/01/2016

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.2518 of 2013

1.B.Venkatesalu

2.B.Govindappa

.... Petitioners

vs.

1.The Additional Chief Secretary to
Government of Tamil Nadu,
Industries (MIG.2) Department,
Secretariat, Chennai-600 009.

2.The Managing Director,
SIPCOT, 19A, Rukmani Lakshmipathi Road,
Egmore, Chennai-600 008.

3.The Special Tahsildar (LA),
SIPCOT Phase II, Hosur,
Krishnagiri District.

4.The District Collector,
District Collectorate Office,
Krishnagiri.

5.The District Revenue Officer,
Krishnagiri, Krishnagiri District.

6.M/s.Ashok Leyland Pvt. Ltd.,
Rep. by its Manager,
Legal & Insurance,
No.19, Rajaji Salai,
Chennai-600 001.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for a Writ of Certiorarified Mandamus to call for the records of the first respondent in Letter No.8511/MIG.2/2012-2, dated 27.08.2012 to quash the same and direct the respondents to re-convey land to the petitioners herein to an extent of 4.46 acres in S.No.583 in 105, Mornapalli Village in Hosur Taluk, Krishnagiri District.

For Petitioners: Mr.S.Sathiaseelan
For Respondents: Mr.P.H.Aravind Pandian
Additional Advocate General
Assisted by Mr.M.S.Ramesh
Additional Government Pleader
for R1, R3, R4 and R5
Mr.Ramesh Venkatachalapathy for R2
Mr.Jeyesh B.Dolia and
Mr.V.Kalyana Raman
For M/s.Aiyar and Dolia for R6

O R D E R

The first petitioner has filed the affidavit on behalf of him and on behalf of his elder brother, who is the second petitioner herein. The first petitioner has submitted that their family members are doing cultivation in their ancestral agricultural property situated in S.No.583, lying on the eastern side of Kelavarapalli reservoir, Mornapalli Village, Hosur, Krishnagiri from the year 1923. The above ancestral property was acquired, when it was in the name of his later father, for the formation of Second Industrial Complex by the SIPCOT in G.O.Ms.No.1339, Industries, dated 20.09.1982 and all the notifications, viz., under Sections 4(1), 17(1), 17(4), 6 and 7 were notified simultaneously in one gazette notification on 20.09.1982 itself dispensing with the Section 5-A enquiry. The above G.O. specifically states that the land is acquired for the formation of Second Industrial Complex by the SIPCOT only. The above acquired land was part and parcel of Kelavarapalli Reservoir Project Scheme Ayacut under the sluice 12L of right main canal of the project. The first petitioner has further submitted that at the time of acquisition in the year 1982, the petitioners' father was doing cultivation and the crops were standing at the material time. The petitioners and their father are cultivating the land continuously without any interruption and the above land is the only livelihood and source of income of the petitioners and also a fertile land yielding well. The first petitioner has further submitted that thereafter on 26.09.1984 and 16.03.1985 award of compensation and interest on

award respectively was awarded and the petitioners were not communicated of the award. So far the award amount has not been withdrawn by the petitioners and the same is lying in the revenue account in sub-treasury.

2. The first petitioner has further submitted that though there was no real and genuine urgency for acquiring the petitioners' agricultural lands solely for the purpose of setting up of industrial unit by the sixth respondent private company in the garb of public purpose, the first respondent Government acquired the land as if there was an urgency under Section 17(1) and (4) of the Land Acquisition Act, 1894 in the year 1982. The above petitioners' acquired land and other acquired land were not utilized for about 10 years, since its acquisition invoking urgency provisions. The lands acquired under urgency provisions including petitioners' land were transferred to M/s.Ashok Leyland Ltd, the sixth respondent herein only on 30.07.1992 by way of lease deed by the second respondent, SIPCOT. Thereafter, only the sixth respondent company started to commence its work over the part of the acquired lands in the year 1995-96 but till date the petitioners' land was not at all utilized, because the petitioners' land was separated by a Kelavarapalli Reservoir Canal from the rest of the lands acquired and the petitioners are cultivating the land till 2010. The petitioners are cultivating the acquired land continuously without any interruption till 2010 as the petitioners' acquired land was fenced with barbed wires only on the two sides alone but the petitioners' approach side of the acquired land was not covered with barbed wire fencing. But smelling the petitioners' earnest effort for re-conveyance of their acquired land under urgency provisions without any emergency to acquire the same, the respondent company started preventing the petitioners from entering and cultivating the acquired land by fencing the approach side of the petitioners with mala fide intention to get over the legal proceedings if initiated by the petitioners for re-conveyance.

3. The first petitioner has further submitted that though as per G.O.Ms.No.1702 (Industries) dated 16.12.1980 permission was obtained to acquire the land for the purpose of Second Industrial Complex at Mornapalli Village in the year 1980 itself, the Land Acquisition notification in G.O.Ms.No.1339 (Industries) dated 20.09.1982 was issued invoking urgency provisions of the Land Acquisition Act only on 06.10.1982. Therefore, the above acquisition suffers from two years pre-notification delay while invoking urgency provisions. The first petitioner has further submitted that G.O.Ms.No.2135, Revenue Department, dated 24.09.1979 and Government Letter

No.66011/1/82-4, Revenue Department, dated 11.03.1984 issued by the Government of Tamil Nadu was not at all taken into account while acquiring petitioners' land. Though the petitioners' land was classified in acquisition notification as "punja land" it should be considered as "nanja land" because petitioners' lands come under the Kelavarapalli Reservoir Irrigation Project and the same ought to have been excluded from acquisition proceedings as per the above G.O. and subsequent Government Letter. The first petitioner has further submitted that in the aforesaid circumstances, in the year 1984, the petitioners' father filed a writ petition in W.P.No.12273 of 1984 for a writ of mandamus directing the respondents herein forbearing from acquiring the land of the petitioners in S.No.583 to an extent of 4.46 acres and the same was disposed of on 27.06.1994 with the following observations:-

"that in case respondents have no use of this land for any public purpose they are obliged to consider the question whether the acquisition itself should be withdrawn. The petitioner can for the said purpose make a representation with appropriate authority. In case any such representation is made, the appropriate authority shall consider the same in accordance with law."

4. The first petitioner has further submitted that in the meanwhile nearly after the lapse of 10 years since acquisition during the pendency of the above writ petition in W.P.No.12273 of 1984 on 30.07.1992, the second respondent herein allotted the acquired land under urgency provision and executed lease deed in favour of the sixth respondent M/s.Ashok Leyland Pvt. Ltd., Chennai for 99 years without doing any development thereon. Since then also the petitioners' acquired land was not put to use by M/s.Ashok Leyland Pvt. Ltd., as the petitioners' acquired land was separated by canal from the rest of the acquired lands. Therefore, the land is being kept idle without any fraction of modification for the past 30 years. The first petitioner has further submitted that subsequent to the above order of this Court, the petitioners' father had sent several representations to the respondents herein claiming re-conveyance of petitioners' acquired agricultural land in S.No.583, Mornapalli Village, Hosur. The first petitioner has further submitted that the SIPCOT ought to have allotted only developed plots to the industries but not in the form of, as it was acquired from the original owners without doing any developmental work on the acquired land viz., laying roads, electricity connections, sewerage facilities etc.

5. The first petitioner has further submitted that subsequent to above representations sent by the petitioners' father on 28.02.1998, the fifth respondent, District Revenue Officer, Dharmapuri (the then undivided District) had conducted field inspection of acquired land in S.No.583 in Mornapalli Village, Hosur to know and ascertain the status of the acquired land leased to M/s.Ashok Leyland Pvt. Ltd. Pursuant to his inspection on 28.02.1998, the fifth respondent had sent a query letter to SIPCOT, Chennai seeking its explanation why the petitioners' acquired land was still not being utilized for the purpose for which it was acquired and sought its opinion on the petitioners' representation dated 12.09.1997 for re-conveyance. But, SIPCOT did not respond to the query of DRO, Dharmapuri. The first petitioner has further submitted that being frustrated by sending several representations futively, the petitioners' father approached this Court in W.P.No.34702 of 2005 to dispose of one of the representations dated 12.07.2005. In the above writ petition on 28.10.2005, this Court has given direction, directing the third respondent herein to dispose of the representation claiming re-conveyance of unutilized acquired land. On 20.01.2006, the third respondent, Special Tahsildar (LA), Hosur passed an order rejecting the claim for re-conveyance of the acquired land which is without jurisdiction. Because as per Section 48B of the Land Acquisition Act, 1894, only the Government was empowered to transfer/re-convey the acquired land. Therefore, the petitioners herein without challenging the above order of rejection of claim for re-conveyance again approached the respondents claiming re-conveyance on the ground that though the lands were acquired under urgency provisions, so far, for the past 30 years it has been kept in dormant condition by the M/s.Ashok Leyland Pvt. Ltd and the SIPCOT.

6. The first petitioner has further submitted that on 16.04.2006, the petitioners' father died after fighting for several years for re-conveyance of acquired land, which has been kept idle though acquired under urgency provisions unsuccessfully. After the demise of their father, the petitioners herein are pursuing the case. The first petitioner has further submitted that the petitioners acquired land under urgency provisions was not taken possession. At the time of acquisition, the land was with standing crop hence, possession was not taken by the respondents herein subsequent to the acquisition. Therefore, the petitioners continued their cultivation without any hindrance in the acquired land. If there is standing crop on the acquired land, as per the well settled dictums of the Hon'ble Supreme Court of India in (2012) 1 SCC 792, the authorities concerned will have to give notice to the person cultivating the land and should take possession in the

presence of independent witnesses and get their signatures on the Panchnama i.e., the possession document prepared by the authorities. In the case on hand, the respondents herein without following the above mandatory procedures left the acquired land with the petitioners and they were cultivating the land continuously. Therefore, the physical possession of land was with the petitioners.

7. The first petitioner has further submitted that on the issuance of re-conveyance of petitioners' acquired land, the Government Pleader (Land Acquisition), District Court, Dharmapuri has given his legal opinion in favour of withdrawal of Land Acquisition Proceedings as the procedures contemplated under the Act was not followed particularly Section 4(1) notification and Section 6 declaration was not published in local area and also opined of several lacunas in the acquisition proceedings. The first petitioner has further submitted that in spite of land acquisition, the petitioners are cultivating the land to an extent of 4.46 acres till 2010, which is being substantiated by the revenue record dated 03.08.2010 which shows the yielding details of acquired land in S.No.583. The photographs taken recently also show that the petitioners' land acquired under the urgency provisions are lying vacant till date.

8. The first petitioner has further submitted that as the land acquired under urgency provisions was not put to use for the purpose for which it was acquired, the State Government has the power to forfeit the acquired land from the SIPCOT or from M/s.Ashok Leyland Pvt. Ltd by way of penalty under Section 16-B of Land Acquisition (Tamil Nadu Amendment) 1997 and in turn the said lands can be re-conveyed to the erstwhile owners under Section 48-B of the Act. The first petitioner has further submitted that in W.P.No.10751 of 2012 filed by the petitioners for writ of mandamus to consider their representations for re-conveyance, this Court in its order dated 18.04.2012, directed the first respondent herein to dispose of the petitioners' representations in accordance with law. But, the first respondent arbitrarily without any application of mind rejected the representations of the petitioners in the impugned letter No.8511/MIG.2/2012-2, dated 27.08.2012 on the false fact that the land is being utilized. Hence, the petitioners have filed the above writ petition.

9. The sixth respondent has filed a counter affidavit and resisted the above writ petition. The sixth respondent has submitted that the relief sought for in the writ petition is hit by laches and the same is liable to be dismissed in limini. The subject matter of the writ petition relates to the Government

Order dated 20.09.1982 issued by the first respondent and has been challenged after three decades on the alleged ground that the land has been kept idle till date and that the lease deed has been executed in favour of this respondent for 99 years without doing any development thereon. On 06.05.1991, the sixth respondent Company submitted an application to the second respondent herein seeking allotment of plots in SIPCOT Industrial Complex at Hosur-II on lease for a period of 99 years for setting up an industrial unit for the manufacture of commercial vehicles. The sixth respondent has further submitted that by proceedings dated 02.07.1992, the second respondent issued order of allotment of partially developed lands on the eastern side of the SIPCOT Industrial Complex measuring an extent of 211 acres with terms and conditions appended therein. Pursuant thereto, on 30.07.1992, a Lease Deed was entered into between this respondent and the second respondent in and by which property measuring an extent of 197.15 acres comprised in Plot No.77 in the second respondent's Electronic Complex Industrial Estate at Hosur was leased to this respondent. The sixth respondent has further submitted that 126.62 acres of land was situate at Mornapalli Village and an extent of 70.53 acres were situated at T.P.Agraharam Village. The copy of the lease deed is annexed to in the typed set of papers and it is now known as to how the petitioners came to possess the same without there being any application filed under the Right to Information Act, 2005. The petitioners' have managed to take a copy of the same from the office of Sub-Registrar before which the same was registered.

10. The sixth respondent has further submitted that the land situated at Mronapalli Village and T.P.Agraharam Village are the subject matter of Land Acquisition which were acquired during the year 1982 by the Government invoking the urgency clause for formation of Second Industrial Complex by the second respondent. The sixth respondent has further submitted that the land belonging to the petitioners' father comprised in S.No.583 situate at No.5, Mornapalli Village, Dharmapuri District formed part of the said acquisition. The sixth respondent has further submitted that the petitioners' father did not choose to challenge the Government Order dated 20.09.1982 at any point of time. As early as on 13.08.1987, the Special Tahsildar (Land Acquisition), SIPCOT Unit-I, Hosur passed an Award under Section 11 of the Land Acquisition Act, 1894. As per the said Award, the compensation was determined for land belonging to the petitioners' father for a sum of Rs.13,883.60/-. The Award clearly state that notices were promulgated / served in accordance with Section 9 of the Land Acquisition Act, 1894. But, curiously in para 4 of the affidavit filed in support of the writ petition it has been averred that

the petitioners were not communicated of the award. However, in the preceding line, it has been averred that on 26.09.1984 and 16.03.1985 award of compensation and interest on award respectively was awarded. The averments contained therein are vague and conflicting to each other. The sixth respondent has further submitted that even according to the petitioners, the compensation and interest was awarded. But however, the petitioners' father neither challenged the Land Acquisition Proceedings nor questioned the determination of compensation by the Land Acquisition Officer and allowed the proceedings to become final. Now, clearly after a period of 30 years, the petitioners have approached this Court questioning the Land Acquisition Proceedings. The sixth respondent has further submitted that the relief sought for by the petitioners are hopeless barred by delay and laches and the writ petition is liable to be dismissed in limini.

11. The sixth respondent has further submitted that it has been averred by the petitioners that the lands belonging to them was not at all utilized since their land was separated by Kelavarapalli Reservoir Canal from the rest of the lands acquired. It has also been alleged therein that the petitioners acquired land was fenced with barbed wires only on two sides alone and that their approach side of the acquired lands were not covered with barbed wire fencing and that they have been cultivating the land till 2010. The sixth respondent has further submitted that on the basis of order of allotment issued by the second respondent, this respondent fenced the land with boundary during the year 1992-1993 and the same have been put into use by this respondent. The sixth respondent has further submitted that no cultivation activities whatsoever has been carried out by the petitioners till 2010 as alleged. Further, the lands are not cultivable due to its natural terrain. When such is the position, the averment that the petitioners were carrying on cultivation activities till 2010 do not merit acceptance. The allegation that boundary was fenced only on the two sides and that the approach side of the acquired land was not covered with barbed wires are wholly baseless and misleading.

12. The sixth respondent has further submitted that this respondent has set up the factory for the manufacture of commercial vehicles in the lands, measuring an extent of 197.15 acres which were allotted to them by the second respondent including the land belonging to the petitioners. The sixth respondent has further submitted that this respondent took possession of the land on 25.08.1992. On 02.09.1992, building drawings were submitted to the second respondent for approval and the guidance drawings were submitted to the local bodies. The sixth respondent has further submitted that by proceedings

dated 17.02.1995, the Chief Inspector of Factories accorded its approval. The sixth respondent has further submitted that the construction activities commenced immediately after the execution of the lease deed. After completion of the construction, the Unit II has become operational during August 1994 and commenced its commercial production. By the proceedings dated 05.08.1996, the Chief Inspector of Factories accorded approval to this respondent for putting up additional construction in the land allotted to it by the second respondent. Prior to the same, the Member Secretary / Deputy Director of Hosur New Town Development Authority accorded planning permission to this respondent. This respondent started remitting tax in respect of the land in question from March 1997. The sewage treatment plant, effluent treatment and the finished vehicle parking are being put up near the natural canal. Further, the sixth respondent had been in possession of the entire extent of land acquired by the first respondent and over the same factory has been put up by this respondent in the acquired lands. All these factory building are put up after obtaining due approval from the planning authorities in the respective years.

13. The sixth respondent has further submitted that when such is the factual position, it is incorrect on the part of the petitioners to allege that the land is being kept idle without any development for the past 30 years. The writ petition proceeds on the premise that the petitioners' land was separated by the canal from the rest of the acquired lands and therefore, the same has been kept idle. The sixth respondent has further submitted that the claims made by the petitioners' father seeking re-conveyance was rejected by the Special Tahsildar (LA), Hosur by the order dated 20.01.2006. The said order has become final. Having failed to claim re-conveyance of the land, the petitioners have chosen to challenge the very acquisition proceedings after a period of 30 years such a relief is not maintainable as the same is hit by delay and laches. The sixth respondent has further submitted that the petitioners' land forms part of the acquisition proceedings initiated by the first respondent and the possession of the land was handed over to the second respondent on 20.11.1982 as would be evident from the proceedings dated 16.03.2011 which is annexed to in the typed-set of papers filed along with the writ petition. Further, on the basis of application submitted by the petitioners under the Right to Information Act, 2005, they were informed by the proceedings dated 16.09.2010 that the documents and revenue records standing in their name were transferred to the second respondent on 26.06.1985. When such is the position and in view of the fact the possession of the petitioners' land having been handed over to the second respondent as early as in the year

1982, it is not open for the petitioners to allege that they have been cultivating the land. The contention of the petitioners that the impugned Government Order dated 20.09.1982 was issued with malafide intention is wholly misconceived and the petitioners are put to strict proof of the same. It is not open for the petitioners to make such baseless allegations in the absence of the said Government Order being challenged by their father at the earliest point of time.

14. The sixth respondent has further submitted that the petitioners' father did not challenge the acquisition proceedings initiated in the year 1982 and the same became final. Award was also passed during the year 1987 determining the compensation payable to the petitioners' father in respect of the lands acquired. The record would reveal that despite service of notice under Section 9 of the Land Acquisition Act, 1894, the petitioners' father did not attend the award enquiry and the proceedings relating thereto has become final. The sixth respondent has further submitted that the petitioners, for the past nearly 18 years, have accepted the developments made in the acquired land. Further, their attempt seeking for re-conveyance of the lands did not fructify and the proceedings dated 20.01.2006 issued by the Special Tahsildar (LA) for their claim for re-conveyance was rejected and the same has become final. The sixth respondent has further submitted that the relief sought for by the petitioners in W.P.No.34702 of 2005 and W.P.No.10751 of 2012 are identical as they relate to consideration of their representation seeking re-conveyance. The sixth respondent has further submitted that the proceedings dated 20.01.2006 rejecting the claim of re-conveyance was passed by the Special Tahsildar (LA) pursuant to the directions issued by this Court in W.P.No.34702 of 2005. However, the petitioners did not challenge the proceedings dated 20.01.2006. Without challenging the same, the petitioners had once again approached this Court by filing writ petition in W.P.No.10751 of 2012 for issuance of mandamus to consider their representations for re-conveyance. Having failed to challenge the proceedings dated 20.01.2006, the filing of W.P.No.10751 of 2012 is hit by principles of res judicata. However, on the basis of directions issued by this Court to consider the representation, by the proceedings dated 27.08.2012, the first respondent rejected the claim of re-conveyance. The proceedings dated 27.08.2012 has been assailed by the petitioners in W.P.No.2518 of 2013.

15. The sixth respondent has further submitted that the justification given by the petitioners for challenging the Government Order dated 20.09.1982 is not acceptable. In this regard, the sixth respondent has submitted that it is not as if the petitioners' father was not aware of the initiation of the

Land Acquisition Proceedings. He allowed the same to become final. The delay that has occurred in challenging the question of proceedings has not been properly explained and the same is vague and the reasons assailed thereto is vague and unexplained. The averment that there is no wanton or deliberate delay and laches by the petitioners in challenging the acquisition proceedings is wholly incorrect and baseless. The sixth respondent has further submitted that assuming without admitting that injustice having been caused, the petitioner's father should have approached this Court for redressal of grievance at the earliest point of time for getting substantial justice. The sixth respondent had mortgaged the leasehold rights of the property situated at Plot No.77, admeasuring 197.15 acres with various financial institutions for the purpose of financial assistance loan and have obtained No Objection Certificate from the second respondent. On 17.01.2013, the second respondent issued No Objection for mortgaging the leasehold rights of Plot No.77 with an extent of 197.15 acres in Phase II at SIPCOT Industrial Complex, Hosur for the issue of Secured Redeemable Non-converitable Debentures by SBICAP Trustee Company Ltd., to the value of Rs.300.00 Crores and in respect thereof, Memorandum relating to deposit of documents / deeds were executed on 11.12.2013 in favour of Standard Chartered Bank, who was acting as Agent & Custodian of SBICAP Trustee Company Limited and the documents relating to lands situated at Plot No.77, measuring an extent of 197.15 acres was also deposited with the said Bank and the same was registered as Document No.237 of 2013 in the Office of Sub-Registrar, Thiruvottiyur. The sixth respondent has further submitted that on 11.12.2013, the Sub-Registrar, Thiruvottiyur addressed a letter to the Sub-Registrar, Hosur seeking clarification as to whether the land in question is subject matter of interim stay granted by any Court of law, Government land, wakf land, temple land. On 16.12.2013, the Sub-Registrar, Kelamangalam informed Sub-Registrar, Thiruvottiyur that there is no entry in the lands in question relating to the clarification sent on 11.12.2013. The sixth respondent has further submitted that by letter dated 18.12.2013, the Sub-Registrar Hosur informed Sub-Registrar, Thiruvottiyur that the lands situated at Mornapalli Village including the lands comprised in S.No.583 is with the possession of the second respondent. Therefore, the question of petitioners carrying on cultivation in the land in question does not arise. Hence, the sixth respondent entreats the Court to dismiss the above writ petition.

16. The petitioners have filed written submissions and submit that under Section 17 of the Land Acquisition Act, 1894 lands cannot be acquired for industrial purpose, particularly for private industries as per the Hon'ble Supreme Court Judgment

reported in (2012) 11 SCC 784, pr. 11, 12 and (2012) 1 SCC 792, pr. 42, 43. The petitioners have further submitted that as per G.O.Ms.No.1702, Industries, dated 16.12.1980 permission was obtained from the Government to acquire the land for the Second Industrial Complex at Mornapalli Village. Impugned G.O.Ms.No.1339, Industries, dated 20.09.1982 was issued invoking Section 17 of the Land Acquisition Act, 1894 nearly after two years since date of obtaining permission as per above G.O. Therefore, the above acquisition suffers from two years pre-notification delay. Though the petitioners' lands were acquired in the year 1982, the SIPCOT allotted the acquired land to M/s.Ashok Leyland by way of lease deed, dated 30.07.1992 i.e., after 10 years from the date of Section 17 notification, dated 20.09.1982. Hence, the above acquisition also suffers from 10 years post-notification delay. Therefore, invocation of Section 17 of the Land Acquisition Act dispensing with Section 5-A enquiry cannot be justified in the presence of pre and post notification delay as per the Hon'ble Supreme Court judgment reported in (2012) 2 SCC 327 pr. 47.

17. The petitioners have further submitted that an award was passed under Section 11 of the Act on 26.09.1984 i.e., after the lapse of two years from the Sections 17 and 6 notification dated 20.09.1982. Under Section 11-A of the Land Acquisition Act, the Land Acquisition Collector ought to have passed award within two years from the date of declaration which was not followed. As per the Hon'ble Supreme Court judgment reported in (2010) 2 SCC 97 pr.20, 21, 24 if there is no award passed under Section 11 of the Act, within two years from the date of Section 6 declaration, the acquisition proceedings shall lapse on its own. Further, as per Section 17(3-A) and Section 31 (2) of the Land Acquisition Act, compensation has not been paid into the Court on the refusal of landowners but compensation in violation of statute was deposited in the treasury. The petitioners have further submitted that in the aforesaid facts, it is very clear that the first respondent Government has disclosed incorrect facts deliberately to invoke power under Section 17 of Land Acquisition Act without any real urgency in the presence of pre-notification and post-notification delay. Hence, it is a fraud on statute played by the respondents as held by the Hon'ble Supreme Court in (2005)6 SCC 149 pr.11. Further, if any act was done wrongfully and willfully without reasonable cause and if the statutory power is exercised for purposes foreign to those for which it is intended in law it is malice in law. Passing an order for unauthorized purpose constitutes malice in law as per the Hon'ble Supreme Court Judgment reported in (2010)9 SCC 437 pr. 25, 26. Therefore, on this score alone, impugned land acquisition proceedings are liable to be quashed.

18. The petitioners have further submitted that in so far as delay and laches concerned when the petitioners herein approached this Court in W.P.No.12273 of 1983 for writ of mandamus directing the respondents forbearing from proceeding with the acquisition of the petitioners' land, in which vide order dated 27.06.1994, the respondents were directed to consider if any representation is made by the petitioners and return the land acquired if not needed. Subsequent to above direction of this Court, petitioners' had given several representations to the respondents continuously since 1994 and as those representations were not considered, the petitioners' father filed a writ petition in W.P.No.34702 of 2005 to dispose of their latest representation dated 12.07.2005. In the above writ petition vide order dated 28.10.2005, direction was given to Special Tahsildar to dispose of the representations of the petitioners, but actually the direction should have been given to the Government in the line of Section 48-B of the 1894 Act.

19. The petitioners have further submitted that based on the above direction, on 20.01.2006, the Special Tahsildar (Land Acquisition), Hosur passed an order rejecting the claim of petitioners' father for re-conveyance which is without jurisdiction. Because as per Section 48-B only the Government is empowered to decide the issue of re-conveyance. Hence, the petitioners were again forced to give representation for re-conveyance of acquired land to the first respondent Government and as those representations also were not considered by the Government, the petitioners filed a writ petition in W.P.No.10751 of 2012 for direction to the first respondent to consider their latest representation, dated 21.01.2012 etc. This Court, vide its order dated 18.04.2012, directed the Government to dispose of the above representation within a period of six weeks from the date of receipt of the order copy. Then, the first respondent Government arbitrarily without considering the above contention arbitrarily rejected the petitioners' representations for re-conveyance of acquired land vide its proceedings dated 27.08.2012. In the aforesaid facts and circumstances, petitioners are not mere spectators or fence sitters watching the developments and challenging the acquisition proceedings all of a sudden but they are taking efforts earnestly to get back their agricultural land acquired illegally and without any real urgency at all. Therefore, actually, there is no delay and laches in approaching the Court by the petitioners and further, as per the Hon'ble Supreme Court judgments reported in (2013) 1 SCC 353 pr 9 to 17 and (2011) 10 SCC 608 pr. 7, 27, 32, 38 and 40 it has been held that when substantial justice and technical consideration are pitted against each other the cause of substantial justice deserves to be preferred and other side cannot claim to have vested right

in the injustice being done, because of a non-deliberate delay. The petitioners further submit that in the case on hand after acquiring of 4.46 acres in S.No.583 on 20.09.1982, in the year 1986 UDR patta No.455 was issued in the name of petitioners' late father by the Special Tahsildar (Land Development), Hosur after inspecting the petitioners' above agricultural properties, therefore, it is very clear that on the date of acquisition there was a standing crop in the petitioners' land. In the aforesaid circumstances, without issuing any panchnama proceedings, the above agricultural lands were arbitrarily taken from the petitioners while crops were standing in the acquired lands. Therefore, as per the Hon'ble Supreme Court judgment reported in (2009) 8 SCC 339 pr. 27, 42 physical possession of acquired land without drafting panchanam in the presence of panchas (villagers) would tantamount to illegal or unlawful occupation. Hence, the petitioners have entreated the Court to allow the above writ petition.

20. The learned counsel appearing for the petitioners has submitted that the petitioners are belonging to an agricultural family and they are doing cultivation in the subject matter of the lands. The respondents have invoked urgency provisions of the old Land Acquisition Act for the formation of second industrial complex for SIPCOT. The petitioners are doing cultivation continuously without any disturbance. The agriculture purpose is of paramount importance compared to the industrial purpose. The petitioners are still in physical possession and carrying out agricultural operation. Further, the petitioners have not received any compensation for the said lands. On an earlier occasion, the petitioners made a representation to the respondents to re-convey the subject lands as per the Act, since the same had not been utilized for the said purpose. Therefore, the petitioners are entitled to receive relief under the new Land Acquisition Act, 2013. They have not received any compensation and possession of the subject lands has also not been taken from them. Besides, the learned counsel has also filed a common written submissions and disclosed the factual current position and legal position of the case and cited judgments in support of his contentions.

21. The learned Additional Advocate General appearing for the respondents 1, 3, 4 and 5 has submitted that the respondents 2 and 3 required the subject lands and its adjacent lands for the expansion of SIPCOT, Hosur, and hence, the same had been acquired after invoking urgency provisions of the Land Acquisition Act. To that effect, a publication was issued during 1982. Subsequently, necessary formalities have been observed and award has been passed during 1984. The respondents 2 and 3, after acquisition, in turn allotted the subject lands

to the sixth respondent herein and therefore the subject lands are under the care and maintenance of the sixth respondent. The learned Additional Advocate General has entreated the Court to dismiss the writ petition for the reasons that the subject lands had been acquired during 1984 and compensation has also been deposited. As such, the petitioners are not entitled to receive any remedy before this Court under the new Land Acquisition Act. The petitioners had also made a representation to the respondents to reconvey the subject lands and the same was also rejected on merits after due consideration.

22. The learned counsel appearing for the second respondent has submitted that the first respondent had issued G.O.Ms.No.1702 (Industries) dated 16.12.1980, for acquiring the subject lands and other adjacent lands. On the strength of the said Government Order, the subject lands had been acquired under the old Act after observing the necessary formalities. The acquired lands had been handed over to the second respondent on 20.11.1982. The Land Acquisition Officer, vide his proceedings, dated 26.09.1984, passed an Award for the said acquisition. Therefore, after acquiring the subject lands and utilizing the same, the petitioners have filed the writ petition after a lapse of around thirty years. As such, the writ petition filed by them can only be considered as an afterthought and as a misconceived one. Hence, the learned counsel has prayed for dismissal of the writ petition.

23. The learned counsel appearing for the sixth respondent has submitted that the subject lands and its adjacent lands were required for the formation of SIPCOT Phase-II, Hosur. Hence, the second respondent requested the first respondent for lands. Accordingly, the first respondent had issued a Government Order on 16.12.1980. Pursuant to the said Government Order, the third respondent had initiated acquisition proceedings after invoking emergency provisions of the old Land Acquisition Act. The acquisition proceedings had been completed during 1984, and Award had been passed and the same had also been communicated to the petitioners as per Section 12(2) of the Act by registered post with acknowledgment due. After acquisition, the third respondent had handed it over to the second respondent, who in turn allotted the subject lands to the sixth respondent herein, during 1992, for industrial purpose. As such, the physical possession is under the care and maintenance of the fourth respondent and he is utilizing the same for industrial purpose. Hence, for all these reasons, the learned counsel has prayed for dismissal of the writ petition.

24. On considering the facts and circumstances of the case, arguments advanced by the learned counsel on either side and on perusing the typed set of papers, this Court is of the view that the subject lands had been allotted to the sixth respondent on 02.07.1992. The sixth respondent had started his unit and the same had been inspected by the Chief Inspector of Factories, who also sent a communication, dated 17.02.1995, to the sixth respondent stating that Plot No.77 is owned by the sixth respondent. Therefore, it clearly proves that the subject lands are under the occupation and enjoyment of the sixth respondent. Award has been passed on 26.09.1984. Hence, the petitioners are not entitled to receive remedy under the new Land Acquisition Act. Besides, the land acquisition proceedings had been completed during 1984. Therefore, after a lapse of around thirty years, the writ petition is not maintainable, since the original cause of action arose during 1980. In such circumstances, the writ petition does not generate sufficient force to allow it and hence it is liable to be dismissed.

25. In the result, the writ petition fails and it is dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

r n s / krk
TO:

- 1.The Additional Chief Secretary to
Government of Tamil Nadu,
Industries (MIG.2) Department,
Secretariat, Chennai-600 009.
- 2.The Managing Director,
SIPCOT, 19A, Rukmani Lakshmipathi Road,
Egmore, Chennai-600 008.
- 3.The Special Tahsildar (LA),
SIPCOT Phase II, Hosur,
Krishnagiri District.

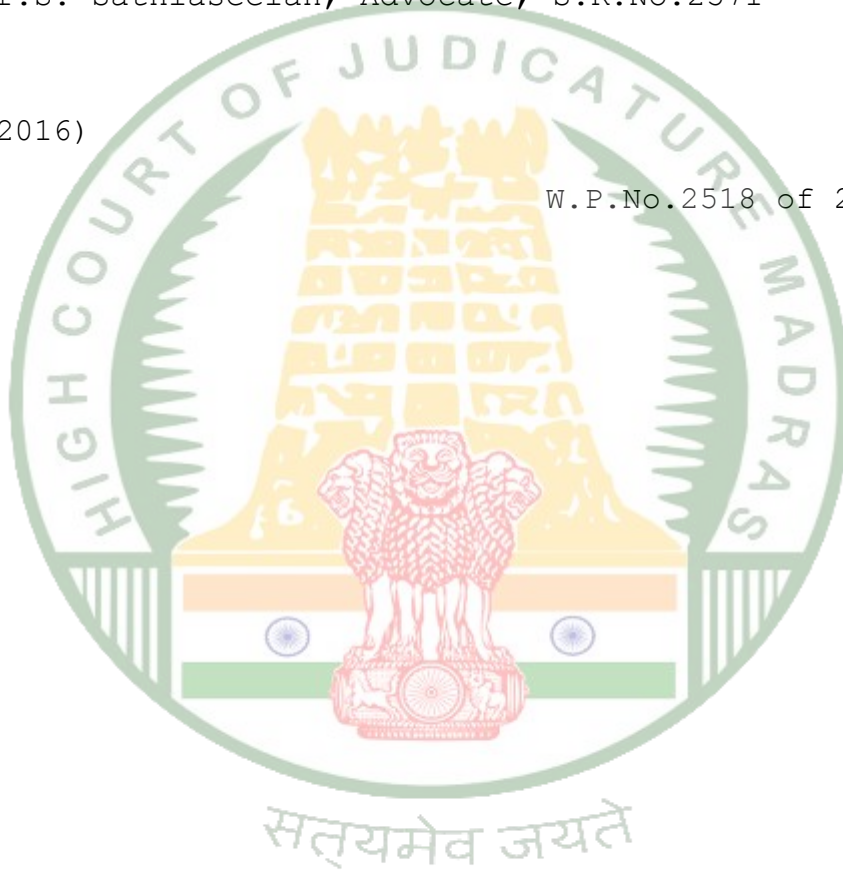
4.The District Collector,
District Collectorate Office,
Krishnagiri.

5.The District Revenue Officer,
Krishnagiri, Krishnagiri District.

+1cc to Mr.S. Sathiaselvan, Advocate, S.R.No.2571

AD(CO)
EU(10/02/2016)

W.P.No.2518 of 2013



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