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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 30.08.2016

CORAM :

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
and

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

Writ Appeal (MD) No.1175 of 2016
& C.M.P(MD)No.7599 of 2016

A.Ayyavu (Died)

1.Mari

2.Lakshmi

3.Palanisamy

4.Revathy

... Appellants/Petitioners

-Vs-.

1.The Statge of Tamil Nadu,
Rep. By its Revenue Secretary,
Secretariat, Chennai - 9.

2.The Secretary,
Small Industries (SIC) Department,
Secretariat, Chennai - 9.

3.The Secretary,
Labour and Industrial Department,
Secretariat,
Chennai - 9.

4.The Special Commissioner,
Commissioner of Land Administration,
Chepauk,
Chennai - 5.

5.The Chairman,
Small Industrial Development Corporation (SIDCO),
Guindy,
Chennai.

6.The District Collector,
Sivagangai District,
Sivagangai.

7.The Revenue Divisional Officer,
(Land Acquisition Officer),
Revenue Divisional Office,
Sivagangai.

... Respondents/Respondents



Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 18.11.2015 passed in W.P.(MD) No.920 of 2012 on the file of this Hon'ble Court and allow this Writ Appeal.

Prayer in WP(MD). 920/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue an order or a direction in the nature of Writ of Declaration declaring that the 3rd respondent 4(1) Notification dated 19.11.1963 Section 6 declaration dated 07.12.1963 and its publication dated 20.11.1963 and 7th respondent Award No.7/1964 dated 22.12.1964 are deemed to have lapsed and consequently delaring the 2nd respondents impugned order dated 10.11.2008 and the 1st respondent impugned order in letter (Nilai) No.32734/Ne/Ne (1) 2010-10, 24.03.2011 as null and void in respect of the petitioner's land in S.No.267/2 in an extent of 11 acres 07 cents in Soorakulam Village, Sivagangai Taluk, Sivagangai District.

For Appellants : Mr.J.John
For Respondents : Mr.M.Alagathevan,
Special Government Pleader

JUDGMENT

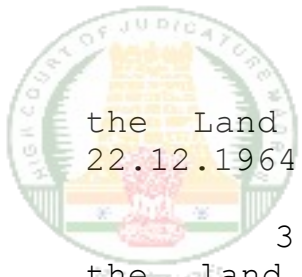
S. S. SUNDAR, J.

This Writ Appeal has been filed by the petitioners in W.P.(MD)No.920 of 2012 as against the order of the learned Single Judge dated 30.10.2015, dismissing the writ petition for issuing a writ of declaration declaring the land acquisition proceedings as lapsed and consequently to declare the orders of the first respondent dated 10.11.2008 and 24.03.2011 as null and void.

2.The brief facts that are necessary for the disposal of this appeal are as follows:

2.1.One Andiappan who died in the year 1961 is the owner in respect of certain lands in Survey No.276/2 and the same lands were acquired by the State of Tamil Nadu for the purpose of formation of industrial estates by the State Government by issuing a notification under Section 4(1) dated 19.11.1963 and a declaration under Section 6 dated 18.12.1963. Since the acquisition proceedings were initiated invoking urgency clause under Section 17 of the Land Acquisition Act, 1894, no enquiry was conducted under Section 5A of the Act.

2.2.During the award enquiry the guardian of the present appellants' father appeared before the Land Acquisition Officer on behalf of the appellants' father, as he was then a minor. After holding the enquiry, compensation was fixed and the amount of compensation determined in respect of the lands of the appellants' father was deposited in Civil Court in terms of Section 31(2) of



the Land Acquisition Act, 1894. The award was passed on 22.12.1964.

3.It appears that the State Government has transferred the land so acquired to the Tamil Nadu Small Industries Development Corporation (SIDCO) to develop an industrial estate for the use of entrepreneurs for setting up industries. After lapse of several decades, the appellants' father approached the respondents in the year 2004 for re-transfer of lands in terms of Section 48B r/w Section 16B of the Land Acquisition Act, 1894 (As amended by the Land Acquisition (Tamil Nadu Amendment) Act, 1996. The representation of the appellants' father was turned down by the respondents once in 2008 and again in the year 2011. Challenging the orders refusing to entertain the applications filed under Section 48B of the Land Acquisition Act, the appellants' father preferred the present writ petition in W.P.(MD) No.920 of 2012. The appellants' father in the writ petition mainly contended that the lands acquired were kept vacant for more than 45 years and that the Government ought to have allowed the petition for re-transfer of acquired lands for the simple reason that the lands are not utilised for the purpose for which acquisition was made in the year 1964. During the pendency of writ petition, the father of the appellants died and the appellants were hence brought on record as petitioners.

4.It is pertinent to mention that the appellants' father had proceeded only on the basis that the Government has transferred the lands in favour of the fifth respondent in the writ petition namely M/s.SIDCO and that the lands have to be re-transferred to the land owners by invoking Section 16B and 48B of the Land Acquisition Act, 1894 for the reason that the lands were not utilised for the purpose for which they were acquired. Incidentally, the appellants' father also pleaded that the Government grabbed the lands from poor agriculturists in the name of land acquisition and that the amount of compensation was never paid to the land owners including the appellants' father.

5.After the coming into force of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (hereinafter referred to as '2013 Act'), the appellants sought for amendment of the prayer in the writ petition by introducing the prayer for writ of declaration declaring the acquisition proceedings as deemed to have been lapsed. The fifth respondent namely the Chairman, Small Industries Development Corporation (SIDCO), filed a detailed counter and denied the factual allegations. It is the positive case of the fifth respondent that the lands were acquired only for the formation of industrial estate by the industrial department of the Government and that only to promote industries, the lands have been transferred to SIDCO for the maintenance of the industrial estates and for the allotment of plots or work sheds or tiny sheds



in favour of the eligible entrepreneurs for industrial purpose. According to the fifth respondent, the acquisition proceedings were initiated way back in 1963 and completed after complying with all the formalities and procedures contemplated under the Land Acquisition Act, 1894 and the rules framed therein. With regard to the payment of compensation, the fifth respondent contended that the entire compensation amount was paid to the land owners as per the Land Acquisition Act. The award passed by the Land Acquisition Officer also reveals that the amount of compensation determined by the Land Acquisition Officer was disbursed to all the land owners and that the amount determined to be payable to the appellants' father was directed to be kept in Court deposit as there was none eligible to receive the compensation on behalf of the appellants' father.

6. Since there was a long delay in instituting the writ petition, and the contentions of the appellants' were contrary to records, the learned Single Judge of this Court dismissed the writ petition. Before the learned Single Judge, the submission on behalf of the appellants was that no amount of compensation was deposited pursuant to the land acquisition proceedings and that the land acquisition proceedings are deemed to have lapsed in view of Section 24(2) of the 2013 Act. After perusal of the entire files relating to acquisition, the learned Single Judge came to the conclusion that the entire award amount was deposited before the Sub Court, Sivagangai, pursuant to the award. Since one of the contentions raised by the appellants before the Single Judge was that the entire land acquisition proceedings should be held to be a nullity in view of the fact that the acquisition proceedings were initiated only against a dead person, the learned Single Judge was of the view that the acquisition proceedings were initiated based on the entry relating to the ownership of the lands found in the revenue records and that the appellants cannot question the same after lapse of 50 years. Finally, after concluding that there was no merit in the writ petition, the learned Single Judge also dismissed the writ petition on the ground of delay and laches as the appellants' father and the appellants miserably failed to approach this Court within a reasonable time and there is no explanation for the delay. The present appeal has been preferred by the appellants raising similar grounds.

7. The learned counsel for the appellants in this case has raised several grounds without backed by necessary factual foundation. Unmindful of the specific stand the appellants' father had taken in the writ petition, the learned counsel for the appellants advanced several legal issues by referring to some of the judgments of this Court and those of the Hon'ble Supreme Court. Following are the points urged by the learned counsel for the appellants:

(a) Though the lands were acquired in the year 1963-64 for



industrial purpose, the acquired lands are not used for the purpose for which they were acquired and the respondents should be directed to return the lands to the appellants in terms of Section 48B read with Section 16B of Land Acquisition Act, 1894 (as amended by the Land Acquisition Tamil Nadu Amendment Act, 1996).

(b).The Tamil Nadu Small Industries Development Corporation (SIDCO) has given advertisement for the allotment of lands to various individuals and hence, the whole acquisition is vitiated because of diversification of public purpose.

(c) Since the father of appellants' father one Andiappan in whose name the revenue records stood in 1961, the acquisition proceedings initiated in the year 1963 and completed in 1964 by showing the dead person as owner of the land is a nullity.

(d) Since the compensation amount was not paid to the appellants or to their father till date, the acquisition proceedings shall be deemed to have lapsed in view of Section 24 (2) of the 2013 Act.

8. In support of the contention of point (a) and (b) the learned counsel for the appellants relied upon the judgment of the Hon'ble Supreme Court in **K.B.Ramachandra Raje v. State of Karnataka** reported in **2016 (3) SCC 422**. The facts and conclusions in the judgment are summarised as follows:

8.1. Challenging notification under Section 16(1) of City of Mysore Improvement Act, 1903, proposing to acquire a total area of 94 Acres of land and final notification under Section 18(1) and 18(2) of the Act as well the Government approval for allotment of 55 Acres of land to a society for establishing educational institutions Writ Petition was filed before the High Court. Though the writ petition was allowed, in appeal, the Division Bench of Karnataka High Court dismissed the writ petition. The Supreme Court, after referring to the provisions of City of Mysore Improvement Act, 1903, has held that the acquisition is vitiated in the absence of a development scheme prior to the notification under Section 16(1) of the Act. Consequently, the allotment of 55 Acres of land for the Society was also held to be bad. However, the Hon'ble Supreme Court moulded the relief on other considerations and directed compensation to be paid by fixing market value as on the date of judgment of the learned Single Judge of High Court. While considering the delay of about four years for entertaining the writ petition, by the High Court, the Supreme Court made an observation as follows:

"Time and again it has been said that while exercising jurisdiction under Article 226 of the Constitution of India, the High Court is not bound by any strict rule of limitation. If substantial issues of public importance touching upon the fairness of governmental action do arise, the delayed approach to reach the Court



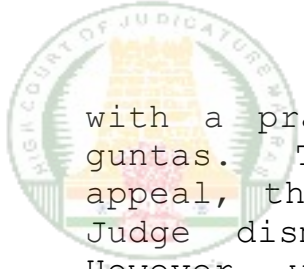
will not stand in the way of exercise of jurisdiction by the Court."

8.2. Except the view expressed on the question of laches no other principle of law laid down by the Hon'ble Supreme Court can help the cause of the appellants in the present case.

9. The learned counsel for the appellants then relied upon the judgment of the Hon'ble Supreme Court in the case of **M/s. Royal Orchid Hotels Ltd., and another v. G. Jayaram Reddy and others** reported in **2011 AIR SCW 6081**.

9.1. Going by the Head notes of the above judgment, the learned counsel for the appellant submitted that transfer of lands to private individuals and corporate entities has been held by the Hon'ble Supreme Court to be fraud on power of eminent domain of State and that in the present case, the 5th respondent SIDCO, having admitted transfer of some of the acquired lands to private entrepreneurs and about the proposals to allot the land to industrial purposes to the new entrepreneurs cannot sustain the acquisition. This judgment was also relied upon for his submission that the learned Single Judge ought not to have dismissed the writ petition on the ground of delay and laches. On the strength of the above judgment, the counsel submitted that the respondent can be directed to return the land to the appellant. In this context, it is necessary to understand the basic facts in the case before the Supreme Court in Royal Orchid Hotels case before applying the ratio therein to the present case.

9.2. At the request of Karnataka Tourism Development Corporation, the State Government initiated acquisition proceedings for the purpose of establishing a Golf-cum-Hotel Resort near Bangalore Airport and the Land Acquisition Officer passed an award on 07.04.1986. However, it was noticed that instead of utilizing the acquired land for the purpose specified in the notifications or for any other public purpose, the Tourism Corporation transferred the acquired lands to private parties. Some of the original land owners filed writ petitions in 1988 questioning the acquisition and the same were dismissed on the ground of delay. Thereafter, once again they filed writ petition in 1990 for issuing a Writ of Mandamus to the State Government and the corporation to return the land by asserting that the acquired lands had been illegally transferred to private persons. Those writ petitions were allowed by a Division Bench after holding that the impugned acquisition is nothing but fraud on power of eminent domain. This order was never challenged in appeal and has become final. Similar writ petition filed by another land owner though was dismissed by Single Judge, it was allowed by the Division Bench in Writ Appeal. Thereafter, the respondent before Supreme Court filed writ petition in the year 1993, relying upon the earlier judgments of Division Bench in the same matter in connection with different parcels of land. Though this writ petition was dismissed once again the writ petitioner respondent before Supreme Court questioned the acquisition in the year 1995



with a prayer to re-deliver the lands in respect of 1 acre 3 guntas. This time the writ petition was allowed. However, on appeal, the matter was remanded. On remand, the learned Single Judge dismissed the writ petition on the ground of delay. However, writ appeal was allowed on the ground that the delay cannot be a reason as the lands had not been put to any use. On merits the Division Bench found that there is no justification to extend different treatment to the writ petitioners.

9.3. It was further brought to the notice of Hon'ble Supreme Court that one Dayananda Pai, a real estate developer who is said to have entered into agreements with land owners for purchase of land in the same locality was the person behind the move made by the corporation for the acquisition of land for execution of tourism related projects. An agreement between the said real estate developer and corporation was brought to the notice of Court whereby the corporation agreed to convey the individual an extent of 12 acres and 34 guntas of acquired land. Likewise remaining lands were also transferred to various individuals. Significantly, it was brought to the notice of Court that the corporation while entering into agreement with the real estate developer admitted that the corporation did not have the necessary funds for meeting the cost of acquisition and it was the private developer who agreed to provide funds. Since it was found that the impugned acquisition was resorted to in order to enable a private real estate developer to fulfil his commitment, the Hon'ble Supreme Court concurred with the view of the Division Bench of Karnataka High Court that they cannot find a more vivid case of fraud on power than this. The decision of Supreme Court is expressed in para 26:

"26. ...The Courts have repeatedly held that in exercise of its power of eminent domain, the State can compulsorily acquire land of the private persons but this proposition cannot be over-stretched to legitimize a patently illegal and fraudulent exercise undertaken for depriving the landowners of their constitutional right to property with a view to favour private persons. It needs no emphasis that if land is to be acquired for a company, the State Government and the company is bound to comply with the mandate of the provisions contained in Part VII of the Act. Therefore, the Corporation did not have the jurisdiction to transfer the land acquired for a public purpose to the companies and thereby allow them to bypass the provisions of Part VII. The diversification of the purpose for which land was acquired under Section 4 (1) read with Section 6 clearly amounted to a fraud on the power of eminent domain. This is precisely what the High Court has held in the judgment under appeal and we do not find any valid ground to interfere with the same more so because in *Annaiah and others v. State of Karnataka and others* (supra), the High Court had quashed the



notifications issued under Sections 4(1) and 6 in their entirety and that judgment has become final."

9.4. The factual findings of Division Bench of Karnataka High Court on the issue of fraud on power was the basis for rejecting the argument that the belated writ petition cannot be entertained. In the above factual context, the Hon'ble Supreme Court relied upon another decision of Supreme Court in Dehri Rohtas Light Railway Company Ltd. vs. District Board, Bhojpur (1992) 2 SCC 598 wherein it has been held as follows:

"The rule which says that the Court may not enquire into belated and stale claim is not a rule of law but a rule of practice based on sound and proper exercise of discretion. Each case must depend upon its own facts. It will all depend on what the breach of the fundamental right and the remedy claimed are and how delay arose. The principle on which the relief of the party on the grounds of laches or delay is denied is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is a reasonable explanation for the delay. The real test to determine delay in the such cases is that the petitioner should come to the writ court before a parallel right is created and that the lapse of time is not attributable to the any laches or negligence. The test is not to physical running of time. Where the circumstances justifying the conduct exists, the illegality which a manifest cannot be sustained on the sole ground of laches. The decision in Tilokchand case (1969 (1) SCC 110 : 1969 (2) SCR 824) relied on is distinguishable on the facts of the present case. The levy if based on the net profits of the railway undertaking was beyond the authority and the illegal nature of the same has been questioned though belatedly in the pending proceedings after the pronouncement of the High Court in the matter relating to the subsequent years. That being the case, the claim of the appellant cannot be turned down on the sole ground of delay. We are of the opinion that the High Court was wrong in dismissing the writ petition in limine and refusing to grant the relief sought for."

9.5. The Hon'ble Supreme Court after referring to it's earlier judgments in Ramchandra Shankar Deodhar vs. State of Maharashtra (1974) 1 SCC 317 = AIR 1974 SC 259), Shankara Cooperative Housing Society Ltd. vs. M.Prabhakar and others (2011) 5 SCC 607 (AIR 2011 SC 2161) and another unreported judgment dated 22.09.1964 in C.A.No.140 of 1964 refused to accept the contention of appellant to dismiss the writ petition filed by respondent on the ground of delay and laches mainly on the following grounds:

a) that the explanation for the delay has been accepted by the Division Bench of High Court in exercise of discretion for sufficient reason;

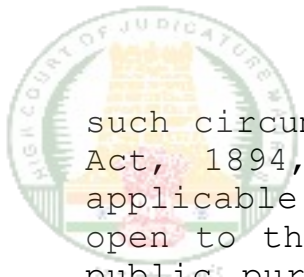


b) that the same Division Bench had quashed land acquisition proceedings in their entirety in another case which has become final; and

c) that the diversification of the purpose for which land was acquired amounted to a fraud on the power of eminent domain.

9.6. From the reading of the judgment of Hon'ble Supreme Court as a whole we have no hesitation to hold that the above judgment has no application to the facts of the present case. It is well settled that a decision is only an authority for what it actually decides and not for what may logically follow from it. Every judgment has to be read as applicable to the particular facts in the case, since general expressions are not intended to be expositions of the whole law. Coming to the facts of this case, the acquisition is for a public purpose namely for the establishment of an Industrial Estate at Sivaganga. The Tamil Nadu Small Industries Development Corporation Ltd., is a government corporation established to develop industrial estates and to construct industrial sheds for the use of entrepreneurs for industrial purpose by following procedure purely in public interest, to promote industries and to create employment opportunities. The transfer of land in favour of SIDCO or subsequent allotment by SIDCO in favour of entrepreneurs for industrial purpose is in fulfilment of the very purpose for which the acquisition was made in 1964 and there is no diversifications of land use in this case. The writ petition is wholly misconceived.

10. The writ petitioner has approached this Court after a lapse of nearly 5 decades after completion of the whole exercise relating to acquisition in all respects without any explanation for the delay except by citing some representations / petitions filed by them in the year 2007 for withdrawal of acquisition and to re-transfer the lands in terms of Section 48B of the Land Acquisition Act, 1894 as amended by The Land Acquisition (Tamil Nadu Amendment) Act, 1996. When the request of the father of the appellants was rejected by an order of first respondent in the year 2011, the father of appellants has preferred the present writ petition in W.P.(MD) No.920 of 2012 challenging the orders dated 10.11.2008 and 24.03.2011 rejecting his petition filed under Section 48B of 1894 Act and for directing to pass an order in terms of Section 48B read with Section 16B of Land Acquisition Act, 1894. When the lands have been utilised and is required for the same purpose for which it was acquired, there is no scope for entertaining the arguments on behalf of appellants. In the present case, the acquisition is by the Government for itself and the entire compensation is paid out of public revenue. SIDCO is only a Government agency to maintain the industrial estates of Government in terms of Government orders / instructions so as to allot plots or sheds to entrepreneurs to promote industries in fulfilment of the objects for which SIDCO was established. In



such circumstances, Section 16A or Section 16B of Land Acquisition Act, 1894, have no application. Assuming that Section 16B is applicable and can be invoked in the present case, it is always open to the Government to utilise the land acquired for any other public purpose. The Government has acquired the land by paying adequate compensation at the value prevailed in 1964. Directing the Government at this length of time to re-transfer the land will be inequitable and against public policy and public interest.

10.1. In **Haryana State Handloom & Handicrafts Corporation Ltd., and another vs. Jain School Society** reported in (2003) 12 SCC 538, the Hon'ble Supreme Court had occasion to deal with a similar situation wherein the Hon'ble Supreme Court held that long delay of 22 years in approaching the High Court challenging land acquisition proceedings on the ground that the land was not put to use for the purpose for which it was acquired is not justified.

11. Interestingly, the petitioner became wiser and amended the prayer in the writ petition to declare the acquisition proceedings, as lapsed and consequently to declare the orders of Government rejecting the petition filed by appellant as bad in law. Now the prayer in the original writ petition has undergone a change. Therefore, the arguments for re-transfer of acquired lands by referring to Section 48B and Section 16B of Land Acquisition 1894 Act do not merit consideration, for that course of action was abandoned by the amendment.

12. The learned counsel for the appellants further relied upon few judgments in the context of quashing acquisition proceedings for violation of mandatory procedure contemplated under the Land Acquisition Act, 1894. The judgments relied upon by the learned counsel for the appellants and our conclusions on the applicability of those judgments in the present case are as follows.

13. In the judgment in **Usha Stud and Agricultural Farms Pvt. Ltd., and others** reported in (2013) 4 SCC 210 the Hon'ble Supreme Court quashed the land acquisition proceedings on the ground that the State Government's refusal to release the appellant's land is discriminatory and that the declaration under Section 6 of the Land Acquisition Act is not in order inasmuch as the appropriate Government has failed to apply its mind not only to the objections filed by the owner of the land but also to the report which is submitted by the Collector upon making such further inquiry. The said judgment has no application to the present facts and no arguments were advanced by the learned counsel for the appellants to lay the factual foundation based on the materials produced before us.

<https://hcservices.ecourts.gov.in/hcservices/> the judgment in **Thiruvaleeswarar Temple v. The State of Tamil Nadu** reported in (1990) 1 MLJ 142, this Court has refused to dismiss the writ petition challenging the acquisition



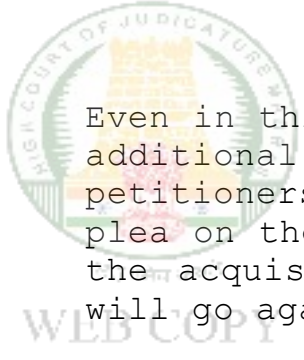
proceedings on the ground of laches after finding that there was a violation of mandatory provisions under Section 4(1) of the Land Acquisition Act, 1894 with regard to the publication of substance of notification and that the delay is not so much to throw the writ petition.

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15. In the case of **The State of Tamil Nadu v. A.Kandasamy and others** reported in **2007 (2) CTC 225**, the acquisition proceedings were quashed by a learned Single Judge of this Court on the ground of procedural irregularities after holding that the statutory provisions have to be strictly complied with.

16. The learned counsel for the appellants then made a submission before us that the entire land acquisition proceedings were proceeded against a dead person namely the father of the appellants father and hence, a nullity. For the said proposition, the learned counsel for the appellants relied upon a judgment of a Division Bench of this Court in **Savithiriammal v. The State of Tamil Nadu** reported in **(2006) 3 MLJ 389**.

17. The Division Bench of this Court, has held that the notification issued in the name of a dead person is a nullity in a case where 4(1) notification issued in 1995 is in the name of a person who passed away in the year 1987 and this mistake was not rectified even in the declaration under Section 6 despite the fact that it was pointed out by the daughters of deceased at the time of enquiry. This judgment is not an authority to hold that land acquisition proceedings initiated in the name of dead person whose name is still found in the revenue records and whose death was not intimated to the revenue at any point of time earlier is a nullity. It is now settled that the normal principle that any proceedings against a dead person is a nullity cannot be imported to proceedings under the Land Acquisition Act, 1894, unless it is established that the factum of death was brought to the notice of the Land Acquisition Officer at the appropriate stage. Even a notice for an enquiry under Section 5A is required only to be issued to person whose name is registered as land owner in revenue records. In the present case, it is not in dispute that the father of appellants father was the land owner as per revenue records, when the acquisition was initiated in 1963. Though the appellants state that their father was a minor then, they admit that their uncle had appeared during the award proceedings representing their father, as his guardian. There is no material to disclose that any such objection was taken during the Award Enquiry either and on the other hand, by the very participation of a guardian on behalf of a minor, such an objection is liable to have been waived. The appellants father never challenged acquisition proceedings earlier on this ground. This issue was raised for the first time in 2015 in the additional affidavit wherein the appellants sought for an amendment to substitute the prayer seeking to declare the acquisition proceedings as lapsed.



Even in this additional affidavit, there was no prayer for raising additional grounds. In a writ petition filed by the writ petitioners after a lapse of 48 years, Court cannot entertain any plea on the irregularities in the acquisition proceedings to quash the acquisition. Entertaining this plea at this length of time will go against well settled principles flow from laches.

18. Finally, the learned counsel referred to Section 24(2) of 2013 Act and strenuously contented that acquisition proceedings have lapsed as no compensation for the lands acquired was paid. Counsel without reference to factual detail in the present case, relied upon several precedents which are considered as follows.

19. In the case of **Pune Municipal Corporation and another v. Harkchand Misirimal Solanki and others** reported in **AIR 2014 SC 982**, land owners challenged Section 4 (1) notification published in the Gazette on 30.09.2004, Section 6 declaration published on 02.02.2006 and the award dated 31.01.2008 before Bombay High Court in 9 writ petitions on various grounds. The High Court quashed the acquisition proceedings. Factually in that case, the award was passed five years prior to the commencement of 2013 Act and compensation has not been paid to the land owners nor the amount of compensation was deposited in the Court by the Land Acquisition Officer. Hence, before the Hon'ble Supreme Court it was argued on behalf of land owners that by virtue of Section 24(2) of 2013 Act, the subject acquisition shall be deemed to have lapsed. Though it was pointed out by the appellant Corporation before Supreme Court:

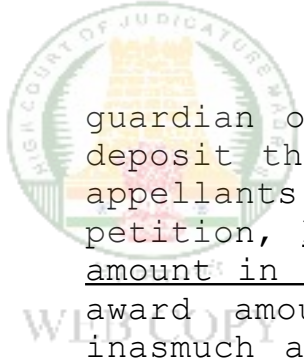
a) that Award was made on 31.01.2008 in terms of Land Acquisition Act, 1894;

b) that on the very day the land owners were informed regarding the quantum of compensation for their respective lands;

c) that notices were issued to the land owners to receive the amount of compensation; and

d) that the compensation amount of Rs.27 Crores was deposited in the Government Treasury, since the land owners did not come to receive the amount of compensation nor sought for reference under Section 18 of 1984 Act, the Hon'ble Supreme Court after holding that the deposit of the amount of compensation in Government Treasury is not equivalent to paying the compensation to the land owners, concluded that the subject land acquisition proceedings shall be deemed to have lapsed under Section 24(2) of 2013 Act. The residuary argument that the acquisition proceedings concluded in all respects under the 1894 Act are not affected by Section 24 (2) of 2013 Act in view of Section 114(2) of the 2013 Act was also held to be untenable.

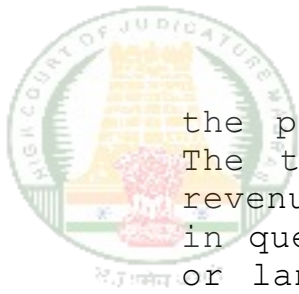
20. In the present case, the appellants have admitted that an award was passed on 22.12.1964. From the typed set filed by the appellants we could find the copy of the award wherein it has been specifically mentioned about the participation of the



guardian of appellants father and the direction in the award to deposit the compensation amount in the Civil Court. Fairly, the appellants father, in his affidavit filed in support of the writ petition, has admitted the fact about the deposit of compensation amount in the Civil Court. His case that he has not received the award amount from the respondents has no legal consequences inasmuch as the award amount has been deposited in terms of the provisions of the Land Acquisition Act, 1894, and in fulfilment of the legal obligation of the Land Acquisition Authority to tender the amount of compensation. It is for the appropriate claimant to approach thereafter the Civil Court and claim it.

21. In the case of **Tamil Nadu Housing Board v. iGate Global Solutions Limited** reported in **2016 (2) MLJ 385**, the Division Bench of this Court disposed of a batch of Writ Appeals filed by the Housing Board challenging the orders in the Writ Petitions filed by the land owners whereby the acquisition proceedings under the Land Acquisition Act 1894 were held to have been lapsed by virtue of Section 24(2) of 2013 Act. In one of the cases before the Division Bench, the land owner has filed writ petition seeking reconveyance of land under Section 48B of the Land Acquisition Act, 1894. In all other cases, land owners have filed Writ Petitions to declare the land acquisition proceedings as lapsed in view of Section 24(2) of 2013 Act. However, all the writ petitions were allowed only on the ground that acquisition proceedings have lapsed by virtue of Section 24(2) of 2013 Act. From the facts gathered from the judgment, the acquisition proceedings challenged are pertaining to the period ranging from 1981 to 2003. In all the cases, except one, it was brought to the notice of the Court that award has been passed and the compensation amount has been paid to the respective land owners. Since the appellant / Housing Board in all the cases, produced only transfer certificates whereby the Government had handed over possession to the Housing Board, it was conceded practically before the Division Bench that no document is available, indicating taking over of possession from the land owners. It was argued that without taking over possession of the lands from the owners, in question, the subsequent event of handing over of possession to the Housing Board was not tenable. It was argued on behalf of land owners that taking over possession of land has to be established by preparing a panchanama in the presence of the respective witnesses after giving proper notice to the land owners. After holding that though compensation has been paid in all cases except in one case, the Division Bench, after referring to several judgments of Hon'ble Supreme Court in para 60 of the judgment has held as follows:

"60. The ratio deducible from the afore stated 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 by 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."

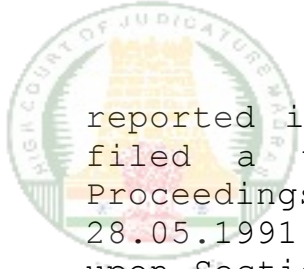
22. The other argument of appellant in that batch of cases was that the land owners are not entitled to the benefits of the provision of Section 24 of 2013 Act as compensation has been admittedly paid in all cases. It was argued that unless both conditions namely a) compensation was not paid and b) physical possession of the land was not taken over, the acquisition under 1894 Act will not lapse. This argument was negatived in para 45 of the judgment of Division Bench in the following manner:

"45. In order to attract the provisions of Section 24 (2) of the Act, 2013, there are three preconditions. Firstly, the Award has to be made five years or more prior to the commencement of this Act. Secondly, physical possession of the land has not been taken or thirdly, the compensation has not been paid. It is well settled proposition of law that if the provisions are clear and unambiguous, the principles of reading down would not apply and as such, the word "OR" be read as disjunctive, not as conjunctive. This issue is specifically raised in the other appeal, being W.A.No.1100 of 2014 (judgment pronounced today, i.e. on 26th February, 2016), which is dealt with at length, wherein it has been held that in any eventuality, i.e., either possession of the land has not been taken over or compensation has not been paid, if the Award has been passed five years or more prior to the Act, 2013 came into effect, i.e., on 1st January, 2014, the land acquisition proceedings stands lapsed. Both conditions of not making payment of compensation and not taking over possession is not necessary."

23. This judgment therefore does not come to the rescue of the appellants in the present case to support any of the arguments of the learned counsel for the appellants, as in the present case award was passed, compensation amount was also deposited in Civil Court and possession was taken over and an Industrial Estate was developed.

<https://hcservices.ecourts.gov.in/hcservices/>

24. In the case of **R.Rajaram v. Secretary to Government**



reported in **2016 (2) MLJ 481**, the appellants in the Writ Appeal filed a writ petition in 2014, challenging the Acquisition Proceedings initiated by issuing 4(1) notification dated 28.05.1991 and Section 6 declaration dated 20.07.1992 by relying upon Section 24 (2) of 2013 Act. The Writ Petition was dismissed holding that the judgment of Hon'ble Supreme Court in **Pune Municipal Corporation case AIR 2014 SC 982** is not applicable as the petitioners have prevented the respondents from taking possession, by obtaining an interim order and taking advantage of the same they cannot seek quashing of the acquisition proceedings by referring to Section 24(2) of 2013 Act. Even in that case, admittedly, possession was not taken. It was argued for the appellants that provisions of Section 24(2) of 2013 Act do not provide for any exemption or exemption of the period, during which stay of dispossession was granted by any Court and that therefore irrespective of any stay granted by any Court preventing the Government from taking possession, acquisition cannot survive in view of Section 24(2) of 2013 Act. This argument was accepted by the Division Bench and in para 29, the Division Bench has held as follows:

"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."

25. It was further argued for the State that in view of the fact that compensation was paid, the acquisition proceedings initiated earlier, would not lapse on the premise that only on happening of two events, namely, possession is not taken and compensation is not paid, the land owner would be entitled to succeed relying upon Section 24(2) of 2013 Act. After referring to few judgments on interpretation of statutes and considering the objective of the provision Section 24(2) of 2013 Act, the Division Bench has held as follows in para 24 of the judgment:

"24. ...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."



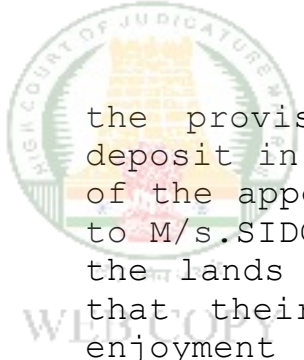
26. Having regard to the facts and conclusions arrived at by the Division Bench in the above mentioned case, we do not derive any support from the judgment, in favour of appellants while dealing with the present case.

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27. In the case of **Sree Balaji Nagar Residential Assn. v. State of Tamil Nadu** reported in **2015 (3) SCC 353**, the Hon'ble Supreme Court was dealing with a situation where only a portion of the compensation amount was deposited pursuant to a notification under Section 4(1) dated 02.02.2005 and award dated 30.11.2006 which were challenged before this Court in a writ petition filed in 2007. Though this Court dismissed the writ petition and upheld the acquisition, there was an interim order protecting the land owners from being dispossessed. The Supreme Court also had given interim order protecting the possession of land owners. Since the land acquisition proceedings were initiated invoking urgency clause, several issues were raised including the viability of the scheme for which the lands were sought to be acquired. Hence, pending civil appeal, the Hon'ble Supreme Court appointed a committee of experts under the Chairmanship of Hon'ble Mr. Justice Doraiswamy Raju, a former judge of the Hon'ble Supreme Court to submit a report on the points of reference. In the meanwhile, on account of subsequent legislation, namely, the 2013 Act, a plea was raised on behalf of appellant that the appeals be allowed on the basis of Section 24(2) of 2013 Act as the acquisition proceedings have lapsed. Dealing with this issue the Hon'ble Supreme Court refused to accept the contention of State that the entire compensation amount has been paid after finding that a major portion of the compensation is lying in revenue deposit. Further, on the ground that physical possession was not taken, the Hon'ble Supreme Court declared the land acquisition proceedings as lapsed, after rejecting the contention of State that the Government was prevented from taking physical possession of the lands on account of interim order passed by this Court and Hon'ble Supreme Court. The earlier judgment of Hon'ble Supreme Court in Pune Municipality case was relied upon to hold that the period spent in litigation due to challenge to the award cannot be excluded.

28. In the case of **P. Jayadevan v. The State and others** reported in **2014-2-L.W.785**, a division Bench of this Court did not accept the deposit of compensation to the credit of Head of Account 8443 "Civil Deposit for works done for public bodies work deposit" as a valid payment of compensation following the judgment of Supreme Court in Pune Municipal Corporation case.

29. Going by the record we do not find the necessary ~~Source: <https://hccourts.gov.in/judices/>~~ foundation for the arguments relying upon Section 24(2) of 2013 Act. As pointed out earlier in the present case, we hold that the amount of compensation has been duly tendered in terms of



the provisions of the Land Acquisition Act, 1894, by way of deposit in the Civil Court. In this case, the specific contention of the appellants is that the Government has transferred the lands to M/s.SIDCO and that the said transfer is not a purpose for which the lands were acquired. It is not the case of the appellants that their father continued to be in physical possession or enjoyment of the property which were acquired during 1963-64. When the appellants are not in possession and when an Industrial Estate was developed over the very lands which are acquired, it can be safely inferred that possession has been taken by the Land Acquisition Authorities under the Land Acquisition Act. Except making oral assertions, the learned counsel for the appellants is not in a position to produce before us any material.

30.The object behind the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is only to replace the Land Acquisition Act, 1894 so as to bring transparency in land acquisition and to ensure that the cumulative outcome of the compulsory acquisition should result in improvement in the social and economic status of the land owners whose land has been acquired for public purpose. The intention of 2013 Act can never be stretched to divest the lands which stood acquired under the Land Acquisition Act, 1894, from the Government by applying Section 24(2) of 2013 Act by simply alleging that compensation was not paid and that possession is not taken without materials to prove the facts. Persons seeking the benefit of Section 24(2) of 2013 Act must establish all the ingredients of Section 24(2) of 2013 Act, with reference to material on record. When the acquisition under the said Act is completed several decades back the Court can legitimately draw an inference that official Acts have been performed regularly. Due to lapse of few decades, as in the present case, even the State may not be able to produce records pertaining to the land acquisition for various good reasons. Hence, Courts are expected to be cautious in these kind of cases while dealing with facts. Since the result of allowing a writ petition of this nature will be a great loss to public exchequer, we cannot accept arguments without required factual foundation. Hence, the Writ Appeal is dismissed confirming the judgment of the learned Single Judge. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(T&P)

/True copy/

Sub Assistant Registrar

To

1. The Revenue Secretary,
Secretariat, Chennai - 9.



2.The Secretary,
Small Industries (SIC) Department,
Secretariat, Chennai - 9.

3.The Secretary,
Labour and Industrial Department,
Secretariat,
Chennai - 9.

4.The Special Commissioner,
Commissioner of Land Administration,
Chepauk,
Chennai - 5.

5.The Chairman,
Small Industrial Development Corporation (SIDCO),
Guindy, Chennai.

6.The District Collector,
Sivagangai District,
Sivagangai.

7.The Revenue Divisional Officer,
(Land Acquisition Officer),
Revenue Divisional Office,
Sivagangai.

+1cc to M/s.J.John, Advocate Sr.No.48543
+1cc to special Government Pleader SR.No.49360

sm:SS2:26/09/2016:18P/10C

Writ Appeal (MD) No.1175 of 2016
30.08.2016