

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.06.2017

Pronounced on : 06.07.2017

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Writ Appeal No.1293 of 2014
and
M.P.No.1 of 2014 and
Caveat No.4214 of 2013

1.P.Arunodayam
2.N.Kasturi ... Appellants/Petitioners

Vs

1. The Executive Engineer,
Public Works Department,
WRO, Araniyar Basin Division,
Chepauk, Chennai-600 005.
2. The Tahsildar,
Purasawalkam-Perambur Taluk,
Chennai-600 011.
3. The General Manager,
Indian Railways Integral Coach Factory,
(ICF), Chennai-600 038.
4. M.Selvaraj
Chief Engineer,
Indian Railways Integral Coach Factory,
(ICF), Chennai-600 038. ... Respondents/Respondents

Writ Appeal filed under Clause 15 of Letters Patent, against
the order dated 21.08.2013 made in W.P.No.4834 of 2013.

W.P.No.4834 of 2013 : Writ Petition filed under Article 226 of
Constitution of India, praying for a Writ of Mandamus,
forbearing the respondents 3 and 4 and their subordinates from
claiming any right over the petitioners land comprised in
present Survey No.91/2, previously Survey Nos. 57/1B and 58/2
Old Survey Nos.57 (P) and 58 (P), Block No.32, Patta CA NO.

1829/98-99, Villivakkam Village by virtue of Land Acquisition in G.O.Ms. No. 128 (PWD- Railways) dated 31.1.1958 and thereby disturbing the straightening work of Otteri Nulla in the petitioners land being carried out by the 1st respondent authorities.

For Appellants : Mr.AR.L.Sundaresan,
Senior Counsel
for M/s.Y.Kavitha

For Respondents : Mrs.A.Srijayanthi, (For R1 and R2)
Special Government Pleader

Mr.M.Udhaya Kumar (For R3 and R4)

JUDGMENT

(Judgment of the Court was delivered by M.V.MURALIDARAN,J.)

The case of the Appellants is as follows:

It is the case of the Appellants that the land acquisition for ICF was done in two phases. The first phase acquisition happened during the year 1958. Survey No 57/1A measuring an extent of 13 cents and Survey No 58/1 measuring an extent of 34 cents totally to an extent of 47 cents were acquired.

2.According to Respondent ICF the second phase of acquisition took place during the year 1961 in Survey No 57/1B measuring an extent of 27 cents and Survey No 58/2 measuring an extent of 35 cents totally measuring an extent of 62 cents. The table enumerated below would clarify the acquisition proceedings with respect to both the phases:

	Survey Nos.	Other details
1 st Phase acquisition	57/1A = 13 cents 58/1 = 34 cents Total = 47 cents	Notification under Section 4(1) is dated 22.01.1958
2 nd Phase acquisition	57/1B = 27 cents 58/2 = 35 cents New S.No.91/2 Total = 62 cents	Section 4(1) Notification issued on 15.07.1959 Section 6 Notification dated 12.08.1959 Award dated 04.10.1961

3.With respect to the 2nd phase acquisition of Survey Nos 57/1B and 58/2 totally measuring 62 cents, Notification under sec 4(1) came to be issued on 15.07.1959 and the award was

passed on 04.10.1961. It is the further case of the Appellants is that the actual possession of the land in Survey Nos 57/1B and 58/2 totally measuring 62 cents has not been taken over. The Respondent -ICF has placed reliance upon document dated 18.11.1959 which is a Land Delivery Report (filed by Respondent ICF) for taking over possession of the land in Survey Nos 57/1B and 58/2. As per Section 16 of the Land Acquisition Act 1864, the Collector is empowered to take possession of the land once the award is passed under section 11 of the Act. In the present case, when the award itself is dated 04.10.1961, ICF could not have placed reliance upon the Land Delivery Report which is dated 18.11.1959. Hence it cannot be said that the possession of the land has been taken over after passing of the award.

4.The case of the Appellants being that they are the absolute owners of the subject lands in Survey No 58/2 and in Survey No 57/1B (New Survey No.91/2) totally measuring an extent of 62 cents and they have purchased the same vide Sale Deed dated 01.12.1995. The predecessors were holding valid patta and were in continuous physical possession and enjoyment of the subject land as evident from the revenue records. The revenue records have also been mutated in favour of the Appellants after the registration of Sale Deed dated 01.12.1995. The Appellants have filed the following documents/particulars to show that the Appellants and their predecessors were in continuous physical possession:

- a) Documents filed in Typed Set of papers from page 9 to 78 which includes Patta, Sale Deed, ULT assessment order etc.
- b) Letter dated 15.12.1995 of the Estate Officer that the lands in issue are out of ICF acquisition area.
- c) Letter dated 02.01.2013 that joint inspection has been conducted on 28.12.2012; that measurement was taken and boundaries were ascertained; that it is found that there is no land which belong to ICF out side the compound wall and that the Survey No 91/2 is a patta land belonging to the individual.
- d) Report of the 2nd Respondent dated 04.01.2013 that the compound wall of ICF is their boundary; that there is no land belonging to ICF beyond the compound wall and that the Survey No 91/2 is the patta land of the individual.
- e) Letter dated 19.02.2013 of the Executive Engineer of PWD Department being addressed to ICF that on the basis of the records it is understood that the lands in issue does not belong to ICF.
- f) Communication of Thasildar dated 25.04.2014 that documents are not available in their office pertaining to any assignment made with reference to acquisition in the above said lands.

5.Initially the boundaries of the Appellants land in Survey No 58/2 and in Survey No 57/1B (New Survey No : 91/2) was occupied by Otteri Nulla canal on all three sides. Since the canal was running in a curved manner, the locality was inundated during rainy season which caused serious health hazards and inconvenience to the residents therein. On the basis of the representations submitted by the residents during the year 1999, the Respondent Authorities took a decision to dig the Otteri Nulla canal through the lands of the Appellants for straightening the same with a condition that if the Appellants are willing to hand over their subject lands of 5 grounds and 213 sq ft in favour of the Respondent authorities to dig the canal, in lieu of the same TNHB was willing to transfer the lands measuring 9 grounds and 1062 sq ft owned by it to in favour of the Appellants.

6.During negotiation, the Appellants expressed their willingness to hand over the land free of cost to TNHB, provided TNHB is willing to transfer its 9 grounds 1062 sq ft of lands at the rate of Rs 6.11 lakhs per ground in favour of the Appellants. The proposal of the Appellants was also accepted by TNHB by way of a resolution.

7.Since no steps were taken by the Respondent Government for transferring the lands (9 grounds 1062 sq ft), the Appellant was constrained to file Writ Petition No 34921/2005. Also the pricing committee fixed the price of the lands to be conveyed to the Appellants at a rate of Rs 31.44 lakhs per ground. The Writ Petition No 34921/2005 was allowed in favour of the Appellants and this Court directed TNHB to sell the lands to the Appellants being an extent of 9 grounds and 1062 sq ft at the rate of Rs 6.11 lakhs with simple interest @ 9 % per annum w.e.f October 2001 till the date of payment and to execute a sale Deed in favour of the Appellants.

8.Aggrieved by the order of the Learned Single Judge in W.P.No.34921 of 2005, a Writ Appeal No.1042 of 2008 was filed by TNHB. During the pendency of the above Writ Appeal No.1042 of 2008 a compromise was entered into by the Appellants and TNHB and the Appellants agreed to pay a sum of Rs 6,36,34,000/- towards 9 grounds and 1062 sq ft. The Writ Appeal was disposed off accordingly. Subsequently a Sale Deed was registered in favour of the Appellants.

9.It is evident that the entire negotiation of transfer of land between the Appellants and TNHB for straightening the canal commenced way back in the year 1999 and that there is a finding on fact by this Court at para 12 and 13 of the judgment in W.P.No.34921 of 2005 that the subject land which was in possession by the Appellants was handed over to TNHB which was

in turn handed over to PWD. This is substantiated vide proceedings dated 25.09.2001. Hence it is evident that physical possession of the lands were with the Appellants.

10.The case of the Respondent ICF is that the land in S.No.57/1B and 58/2 totally measuring 62 cents has been acquired on 15.07.1959 for public purpose of meeting the additional requirement of raw water. It is also their case that possession was taken on 12.11.1959 by ICF which is substantiated by placing reliance upon a Land Delivery Receipt and that an award came to be passed on 04.10.1961. They deny the ownership of the Appellants herein as well as the predecessor in title.

11.It is further contented by the Respondent that the predecessor in title of the Appellants have received compensation and have not challenged the acquisition proceedings and moreover the erstwhile owners as well as the acquisition officers were not impleaded as parties and that both the WP and the WA suffer from non joinder of necessary parties. They have further contented that there is an inordinate delay and laches in approaching this Court that too after nearly 58 years and that the patta has been obtained by fraud and the same cannot be relied upon as title deed by the Appellants.

12.They have further contented that the Executive Engineer of ICF has not given any letter and that they were not parties to the earlier round of litigation initiated by the Appellants. In order to substantiate their stand as stated above it is contented that there is no Survey Number or sub division as 57/1B and 58/2 in existence from 1959 and that all the documents relied upon by the Appellants were either created or fabricated or existed with the connivance of the Revenue Officials. It is further contented that although the land was not used for the purpose for which it is acquired, the compound wall was not constructed after acquisition in view of U shaped Otteri Nulla on the boundary of these lands. It is alleged by the ICF that there is a deliberate attempt to grab the lands and that the authorities including Secretary and Collector have not conducted enquiry properly and that they were mislead by the Appellants to grab the property.

13.The learned Single Judge accepted the contentions of the Respondent ICF and dismissed the Writ Petition filed by the Appellants. Aggrieved by the order in the Writ Petition, this Writ Appeal is being preferred by the Appellants.

14.The learned Senior Counsel for the Appellant argued that the allegation of land grabbing and alleged fraud committed in obtaining the patta is unsubstantiated and without any material evidence. The learned Senior Counsel pointed out that the

learned Single Judge has exceeded his jurisdiction and travelled beyond the relief sought. Although the letter of the Executive Engineer dated 15.12.1995 has been admitted by ICF, they have merely pleaded that he is not competent to issue such a letter. They have also failed to explain by way of an affidavit as to what action has been taken upon the concerned Executive Engineer for issuing such a letter if he is incompetent to issue. In support of their version, no records were produced and they also pleaded that records were not available.

15. It is further argued by the learned Senior Counsel that the Respondent ICF in order to prejudice this Court has made vague allegations of land grabbing and fraud committed in obtaining patta without any substantial evidence. Further the Respondent ICF has overlooked that an enquiry was conducted during the year 2005 with respect to the above allegations which ended in favour of the Appellants. Thereafter no such allegations were raised and the Appellants were in peaceful possession of the lands in dispute. In fact, a perusal of the earlier round of litigation pertaining to W.P.No.34921 of 2005 and W.A.No.1042 of 2008, it would reveal that only on ascertaining that the title/possession is in favour of the Appellants, the Department of Public Works, TNHB and Revenue Department has entered into an agreement for exchange of land with the Appellants for the purpose of straightening the Oteri Nalla.

16. It is further contented by the Learned Senior Counsel for the Appellants that the Respondent ICF having slept for almost 58 years, awoke only after filing of the WP by the Appellants which is under challenge herein by attempting to correct the revenue records; constructed a new compound wall etc. The Learned Senior Counsel placed heavy reliance upon Section 16 of the Land Acquisition Act and Section 24(2) of the new Act and catena of decisions and argued elaborately upon the manner in which possession has to be taken. The following are the judgments relied upon by the Learned Senior Counsel:

- a) Igate Global reported in (2016) 2 MLJ 385
- b) M/s Magnum Promoters Ltd Vs UOI and others reported in (2015) 3 SCC 1
- c) Delhi Development Authority Vs Sukhbir Singh and other in Civil Appeal No 5811/15 with Civil Appeal No 8857/16 decided on 09.09.2016.

17. It is further argued by the Learned Senior Counsel that it is not necessary to implead the erstwhile owners as the revenue records has never been mutated in favour of ICF pursuant to acquisition dated 22.01.1958 or within 5 years from the date of award i.e on 04.10.1961. Further the contention of the Respondent that the Acquisition Officer has not been impleaded

is of no avail since in the earlier round of litigation i.e in W.P.No.34921 of 2005 the concerned authorities viz. Secretary to Government and Revenue Department were made as parties and they have not disputed the title/possession of the Appellants with respect to the disputed property. The learned Senior Counsel argued that it is an admitted case of all the Respondents herein that except the Land Delivery Report, no other document is available with them to substantiate that ICF has taken over possession of the land in dispute. The Learned Senior Counsel further pointed out that revenue records have been duly mutated in favour of the Appellants and their predecessors in title and the Appellants were actually in possession of the lands. Although there was an enquiry conducted on the basis of an anonymous complaint of land grabbing, the said enquiry ended in favour of the Appellants. The Learned Senior Counsel further submitted that the acquiring authority was very much a party in both rounds of litigation and has admitted possession and title in favour of the Appellants.

18.Per contra, the Learned Counsel for the Respondents reiterated the stand taken in the Counter Statement filed by ICF and the order of the Learned Single Judge. The main contention of the learned counsel for the Respondent is that they were not parties to the earlier round of litigation; that the necessary parties including the erstwhile owners were not impleaded in the present case in issue; reiterated the allegation of an attempt to grab the land and disputed the claim of the Appellants on the basis of available revenue records. Heavy reliance was placed by the Counsel for the Respondent on the Land Delivery Receipt dated 18.11.1959 to support their contention that possession has been taken over by ICF.

19.It is an admitted case that the Respondent ICF acquired the land in two phases and that the land which is acquired in 2nd phase is the subject in issue at present. It is stoutly argued by the learned Senior Counsel of the Appellant that after 2nd phase acquisition followed by award dated 04.10.1961, the land in dispute has never been mutated in the name of ICF. To substantiate the said fact, the Appellants rely upon the copy of the revenue record filed by ICF. A perusal of the revenue records would show that mutation of revenue records has been carried out in favour of ICF only with respect to 1st Phase of acquisition pertaining to Survey Numbers 57/1A and 58/1 totally measuring 47 cents. Whereas with respect to 2nd Phase of acquisition pertaining to Survey Numbers 57/1B and 58/2 totally measuring 62 cents the revenue records filed by ICF does not reflect the name of ICF but the name of the predecessor in title. Only an attempt has been made to round off the same unlike the mutation done pursuant to the 1st phase of acquisition.

Therefore going by the revenue records it could be concluded that the revenue records in so far as the lands in dispute has never been in the name of ICF all these years.

20.The next question that arises is whether possession has been taken over by ICF in the manner known to law after the acquisition. It is an admitted case, that the 2nd phase of acquisition has been initiated by invoking Section 4(1) Notification on 15.07.1959 and Section 6 declaration on 12.08.1959, followed by an award dated 04.10.1961. As per section 16 of Land Acquisition Act 1894, the concept of possession commences (other than an acquisition invoking urgency clause) only after passing of award under section 11 of the Act. Section 16 of the Act, is extracted below "Section 16 : Power to take possession:

When the collector has made an award under Section 11 he may take possession of the land which shall there upon vest absolutely in the Government free from all encumbrances"

21.Now advertng to the case of the Respondent ICF, it is their specific case that possession of the dispute land has been taken over and they place reliance of the Land Delivery Report dated 18.11.1959 whereas the award came to be passed subsequently on 04.10.1961. It is also an admitted case that the 2nd Phase acquisition is not the one invoking urgency clause. As per section 16 of the Act which is extracted above, possession of land could be taken only after passing of an award under Section 11 of the Act. The manner in which possession should be taken is also enumerated in detail in the judgments cited.

22.The march of law on the issue of possession has been dealt by this Court in a decision reported in Igate Global reported in (2016) 2 MLJ 385 and the relevant paragraphs in the Judgment are extracted below:

"52.The second aspect is taking over of possession of the land in question as contemplated under Section 24 (2) of the Act, 2013. On the happenings of one eventuality, i.e., either non payment of compensation or not taking over of possession of the land, the provision of Section 24(2) of the Act, 2013 would be attracted and the entire land acquisition process initiated under the Old Act, 1894 shall stand lapsed. In all cases, as the factual details have been set out herein-above, the appellants have produced transfer certificates, whereunder under the transfer certificate, the lands so acquired were transferred from the State government to the Housing Board. In most of the cases, the stand taken by the Housing Board and the State is that the land, on having been

taken over from the land owners, was transferred to the Housing Board on the same day, i.e., in W.A.Nos.1428, 1430, 1431, 1433, 1434, 1435, 1436, 1437, 1438 and 1439 of 2014, 163, 165, 166, 168, 174 and 175 of 2015.

53.What is the necessary requisite to establish taking over of possession came up for consideration in several cases before the Supreme Court.

54.In Tamil Nadu Housing Board Vs. A.Viswam (supra) cited by Mr.P.H.Arvinth Pandian, learned Additional Advocate General, it was observed that since delivery of possession of the acquired land by the Land Acquisition Officer to the Housing Board was admitted, presumption can be raised that the land acquisition officer has discharged his official duty after taking possession of the said land and delivered the same to the housing Board. Thus, the Supreme Court has observed as under:

"7. x x x x x x x x x x x It is true that in Balwant Narayan Bhagde case, Untwalia, J. had held thus: (SCR p. 263 : SCC p. 710, para 25) "... the question is what is the mode of taking possession? The Act is silent on the point. Unless possession is taken by the written agreement of the party concerned the mode of taking possession obviously would be for the authority to go upon the land and to do some act which would indicate that the authority has taken possession of the land. It may be in the form of a declaration by beat of drum or otherwise or by hanging a written declaration on the spot that the authority has taken possession of the land."

9.It is settled law by series of judgments of this Court that one of the accepted modes of taking possession of the acquired land is recording of a memorandum or Panchnama by the LAO in the presence of witnesses signed by him/them and that would constitute taking possession of the land as it would be impossible to take physical possession of the acquired land. It is common knowledge that in some cases the owner/interested person may not cooperate in taking possession of the land."

55. The issue came up for consideration subsequently in several cases. We propose to refer to certain cases cited by the learned counsel appearing for the parties.

56. In Raghbir Singh Sehrawat v. State of Haryana

(supra), the Supreme Court held as under:

"27. In Banda Development Authority v. Motilal Agarwal and Others, the Court referred to the judgments in Balwant Narayan Bhagde v. M.D. Bhagwat, Balmokand Khatri Educational and Industrial Trust v. State of Punjab, P.K. Kalburgi v. State of Karnataka, NTPC Ltd. v. Mahesh Dutta, Sita Ram Bhandar Society v. Govt. (NCT of Delhi) and culled out the following propositions: (Banda Development Authority v. Motilal Agarwal and Others (supra), SCC p. 411, para 37)

"(i) No hard-and-fast rule can be laid down as to what act would constitute taking of possession of the acquired land.

(ii) If the acquired land is vacant, the act of the State authority concerned to go to the spot and prepare a panchnama will ordinarily be treated as sufficient to constitute taking of possession.

(iii) If crop is standing on the acquired land or building/structure exists, mere going on the spot by the authority concerned will, by itself, be not sufficient for taking possession. Ordinarily, in such cases, the authority concerned will have to give notice to the occupier of the building/structure or the person who has cultivated the land and take possession in the presence of independent witnesses and get their signatures on the panchnama. Of course, refusal of the owner of the land or building/structure may not lead to an inference that the possession of the acquired land has not been taken.

(iv) If the acquisition is of a large tract of land, it may not be possible for the acquiring/designated authority to take physical possession of each and every parcel of the land and it will be sufficient that symbolic possession is taken by preparing appropriate document in the presence of independent witnesses and getting their signatures on such document.

(v) If beneficiary of the acquisition is an agency/instrumentality of the State and 80% of the total compensation is deposited in terms of Section 17(3-A) and substantial portion of the acquired land has been utilised in furtherance of the particular public purpose, then the court may reasonably presume that possession of the acquired land has been taken."

28. If the appellant's case is examined in the light of the propositions culled out in Banda Development Authority v. Motilal Agarwal and Others (supra) we have no hesitation to hold that possession of the acquired land had not been taken from the appellant

on 28-11-2008 i.e. the day on which the award was declared by the Land Acquisition Collector because crops were standing on several parcels of land including the appellants land and possession thereof could not have been taken without giving notice to the landowners. That apart, it was humanly impossible to give notice to a large number of persons on the same day and take actual possession of the land comprised in various survey numbers (total measuring 214 acres 5 kanals and 2 marlas).

29. In view of the above discussion, we hold that the record prepared by the Revenue Authorities showing delivery of possession of the acquired land to HSIIDC has no legal sanctity and the High Court committed serious error by dismissing the writ petition on the specious ground that possession of the acquired land had been taken and the same vested in the State Government in terms of Section 16."

57. Again in *Pata Patasi Devi v. State of Haryana and Others* (supra), the case in *Raghubir Singh Sherawat v. State of Haryana and Others* (supra) was referred to with approval and it reads as under:

"11. A somewhat similar question was considered by this Court in *Raghubir Singh Sherawat v. State of Haryana*. In that case also, the High Court had non-suited the writ petitioner on the ground that possession of the acquired land had been taken by the officers concerned and the same will be deemed to have vested in the State Government free from all encumbrances. This Court took cognizance of the entries recorded in khasra girdawari revealed existence of crops on the acquired land and observed: (SCC p. 799, paras 23-24)

"23. The respondents have not produced any other evidence to show that actual possession of the land, on which crop was standing, had been taken after giving notice to the appellant or that he was present at the site when possession of the acquired land was delivered to the Senior Manager of HSIIDC. Indeed, it is not even the case of the respondents that any independent witness was present at the time of taking possession of the acquired land.

24. The Land Acquisition Collector and his subordinates may claim credit of having acted swiftly inasmuch as immediately after the pronouncement of the award, possession of the acquired land of Village Jatheri is said to have been taken from the landowners and handed over to the officer of HSIIDC but keeping in view the fact that crop was standing on the land, the exercise undertaken by the

respondents showing delivery of possession cannot but be treated as farce and inconsequential. We have no doubt that if the High Court had summoned the relevant records and scrutinised the same, it would not have summarily dismissed the writ petition on the premise that possession of the acquired land had been taken and the same vested in the State Government."

58. In *Prahlad Singh and Others v. Union of India and Others* (supra), the Supreme Court had held as under : "22. Respondents 3 to 6 have not placed any document before this Court to show that actual possession of the acquired land was taken on the particular date. Therefore, the High Court was not right in recording a finding that the acquired land will be deemed to have vested in the State Government."

59. In *Magnum Promoters Private Ltd. v. Union of India* (supra), the Supreme Court, referring to *Prahlad Singh and Others v. Union of India and Others* (supra) and *Raghubir Singh Sherawat v. State of Haryana and Others* (supra), held as under :

" 27. Thus, in view of the above decisions, this Court has clearly laid down the legal principle as to how taken over physical possession of the acquired land means the actual taking of possession of it from the landowners/interested persons."

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 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.

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, 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 aforestated, 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 aforestated. 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 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."

23.The acquiring authority which is the State Government

herein has not filed any documents to show that the subject lands have been taken possession in the manner known to law especially under Section 16 of the Land Acquisition Act much less never doubted the possession and revenue records in the name of the Appellants. ICF is merely a requisition body and the fact that actual possession has been taken over requires to be substantiated only by the acquiring authority which is the State Government herein.

24. From the above facts set out, it is evident that the Appellants are the absolute owners of the subject land and were in actual possession. ICF has no role in all the above transaction. The authorities of TNHB and PWD have approached the Appellants alone as they were the absolute owners and were in actual possession of the subject lands and the revenue records have already been mutated in favour of the Appellants.

25. Now going by the above principle, let us now examine whether any of the manner as contemplated above is followed in the present case on hand. On perusing all the documents filed by the Respondents, it is found that except the Land Delivery Report 18.11.1959 there is no other material available in favour of ICF to prove taking over of possession. It is pertinent to note that the land delivery report was issued on 15.07.1959. The date of Award as contended by ICF pertaining to 2nd acquisition was on 04.10.1961. The land delivery report is the only piece of material document being relied by the Respondent ICF is dated 18.11.1959, which is much prior to passing of the Award i.e., on 14.10.1961. The scheme as envisaged by the Land Acquisition Act, 1894 contemplated taking over possession only upon passing of Award that too following the procedure contemplated by the Apex Court in catena of decision involving Section 16 of the Land Acquisition Act, 1894 except in cases where urgency clause under section 17 is involved. Admittedly the case on hand was not an Acquisition involving urgency. Thus the possession has not been taken over in the manner known to law.

26. Per contra, the admitted facts are that the revenue records were in the name of the Appellants and their predecessor in title. Thus by placing reliance of the various judgements of the Hon'ble Supreme Court cited supra, it could be concluded that possession has not been taken over by the acquiring authority. The next question that arises for consideration is whether Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 will come to the aid of the Appellant. Section 24(2) is extracted below for better appreciation:

"(2) Notwithstanding anything contained in sub-section (1) in case of land acquisition proceedings initiated under the Land Acquisition Act 1894 (1 of 1894) where

an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act"

Section 24(2) gets attracted if the acquisition proceedings is not completed within 5 years after pronouncement of the award, which may happen either because physical possession of the land has not been taken over or compensation has not been paid within the said period of 5 years. The said principle had been given literal interpretation and seal of approval by the Hon'ble Supreme Court in M/s Magnum Promoters Ltd v. UOI and others reported in (2015) 3 SCC 1, and in Delhi Development Authority v. Sukhbir Singh and other in Civil Appeal No.5811 of 2015 with Civil Appeal No.8857 of 2016 decided on 09.09.2016. Since possession has not been taken over by ICF in the manner known to law, section 24(2) is squarely attracted and the acquisition gets lapsed.

27.It is submitted that admittedly ICF has constructed compound wall only during the year 2013 i.e after passing of the judgment in Writ Petition No 4834/2013 which is impugned herein. Mere passing of award in their favour will not confer possession.

28.Pursuant to the interim order dated 24.08.2016 in the present appeal, a re-survey was conducted by the 2nd Respondent (authority of the State Government) on 28.08.2016 and an affidavit has been filed by the Tahsildar. It is evident from the affidavit that the revenue records have been mutated in favour of the Appellants; that on the southern side of the subject land a compound wall is built which is a new wall and that the subject land is lying vacant. Even pursuant to the subsequent order dated 01.11.2016, a status report was submitted by the Tahsildar wherein it has been reiterated that ICF has not taken possession of the land in T.S. No 91/2 (new survey number).

29.It has been settled by the Judgement of the Hon'ble Supreme Court in M/s Magnum Promoters Ltd v. UOI and others reported in (2015) 3 SCC 1, that one of the accepted mode of taking possession of the acquired land is recording of a memorandum or pachanama by the LAO in the presence of witnesses signed by him/them and that would constitute taking possession of the land. The above procedure has not been followed in the present case. Hence admittedly physical possession has not been taken over as per Section 16 of the Land Acquisition Act. No evidence has been produced by the acquiring authority to show

that actual possession of land has been taken over after giving notice to the Appellants.

30. This Court in *Igate Global* reported in (2016) 2 MLJ 385 has clearly held that under section 11 of the old Act 1894, passing of award is followed by taking over of possession under section 16 of the old Act 1894 and that only after possession is taken over, the land shall vest with the Government. Further the taking over of possession of the land under section 16 of the old act, the revenue authorities must establish by producing some evidence. The transfer certificate subsequently prepared by the revenue authorities for delivering possession of the land in question is absence of a witness or the land owner will not be sufficient to establish that the possession of the lands was taken over by the land owners. The purported land delivery report filed by ICF in absence of witness or the land owner is of no significance. Hence it cannot be said that the possession of the land has been taken over after passing of the award.

31. ICF merely relied upon the compound wall which has been built during the year 2013 and the revenue records which has been subsequently mutated pursuant to the judgment in the impugned Writ Petition No 4834/2013.

32. It is also necessary to deal with the specific stand taken by the Respondent ICF and as approved by the Learned Single Judge about the collusion between the Appellants and the Government officials. Strong reliance was placed upon the letter dated 11.11.2005 by ICF for alleging the case of land grabbing. Hence this court is inclined to see whether the said allegation is substantiated by material evidence.

33. The alleged letter dated 11.11.2005 referred to in the impugned judgment pertains to a complaint alleging land grabbing of properties in Survey No 56 and 57 (part) alone. The letter is irrelevant since the lands in issue are in Survey No 57 and 58. The learned Judge ought not to have merely placed reliance upon the letter dated 11.11.2005 for holding that it is a case of land grabbing. The consequential enquiry report of DRO has been overlooked by the Learned Single Judge which is in favour of the Appellants. The allegation of land grabbing raised by ICF is also without any substantial evidence. No such allegation has been made by the other Respondents except ICF.

34. There is absolutely not an iota of evidence to prove that there is collusion between the various authorities (who are arrayed as Respondents herein) and the Appellants. The findings/judgment of the single judge is without any substance and liable to be set aside. It is a settled law as held by the Hon'ble Supreme Court in *Union of India and others v. Major S.P.*

Sharma and others (C.A.Nos.2951 - 2957 of 2001) that fraud is not a term or ornament nor can it be presumed to exist on the basis of a mere inference on some alleged material that is stated to have been discovered later on.

35. In W.P.No.34921 of 2005 the concerned authorities viz. Secretary to Government and Revenue Department were made as parties who are the acquiring authority and they have not disputed the title/possession of the Appellants with respect to the disputed property. Only on ascertaining that the title/possession is in favour of the Appellants, the Department of Public Works, TNHB and Revenue Department have entered into an agreement for exchange of land with the Appellants for the purpose of straightening the Oteri Nalla. Thus the title and possession of the Appellants were never in issue. Before parting with the case, it is appropriate to quote the decision of the Hon'ble Supreme Court in *Darshan Lal Nagpal v. Government of NCT of Delhi* reported in ((2012) 2 SCC 327) (Para 28) that compulsory acquisition of the property belonging to a private individual is a serious matter and has grave repercussions on his constitutional right of being deprived of his property without the sanction of law. Therefore the state must exercise the power with great care and circumspection. In the case on hand the Acquisition authority endorses and authenticates the possession of the Appellant whereas the Requisition authority namely ICF who was in deep slumber all these years have attempted to establish possession admittedly only under the strength of the impugned order, the writ petition in W.P.No.4834 of 2013 dated 21.08.2013 tracing its authority through the Acquisition proceedings acquiring under the guise of public purpose unutilising the land for the said purpose and kept vacant.

36. In view of the discussion made above and in light of the law laid down by the Apex Court as extracted supra, we are of the considered view that the issue in dispute falls squarely within the ambit of section 24 (2) of the Right to fair compensation and transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 and that the order of the learned Single Judge is liable to be interfered with and accordingly set aside. During the course of hearing it is admitted by either side that the original cause of straightening of the Oteri Nalla was straightened even during the pendency of the impugned writ petition and as such upon perusing the files produced and materials available on record and as well the admitted fact of taking possession by the Respondent ICF was on the strength of the order in writ petition and pending the Appeal, we have no hesitation to hold that the Appellant has made out a case for allowing the writ petition impugned and the Writ Appeal is accordingly allowed.

37.In the result, the impugned order in the writ petition in W.P.No.4834 of 2013 dated 21.08.2013, dismissing the relief claimed by the Appellant is set-aside and the writ petition is allowed as prayed for and accordingly, the writ appeal is allowed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vs

To

1. The Executive Engineer,
Public Works Department,
WRO, Araniyar Basin Division,
Chepauk, Chennai-600 005.
2. The Tahsildar,
Purasawalkam-Perambur Taluk,
Chennai-600 011.
3. The General Manager,
Indian Railways Integral Coach Factory,
(ICF), Chennai-600 038.

+1cc to Ms.Y.Kavitha, Advocate, S.R.No.46968

+1cc to Mr.M.Udhayakumar, Advocate, S.R.No.47430

Writ Appeal No.1293 of 2014 and
M.P.No.1 of 2014 and
Caveat No.4214 of 2013

GJ(CO)
CA(10/07/2017)

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