

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON	19.12.2017
JUDGMENT PRONOUNCED ON	22.01.2018

CORAM :

THE HONOURABLE MR. JUSTICE.S.VAIDYANATHAN

W.P.No.6413 of 2013

Dr.S.Vijayakumar

.. Petitioner

Vs.

1. State of Tamil Nadu,
rep. by Secretary to Government,
Industries Department,
Fort St. George,
Chennai 600 009.
 2. The Special Tahsildar (Land Acquisition),
Petro Chemical Park,
TIDCO, 485, Anna Salai,
Nandanam,
Chennai 600 035.
 3. The Managing Director,
Tamil Nadu Industrial Development Corporation,
No.19, ARL Road,
Egmore,
Chennai 600 008.
- ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari, calling for the records relating to the order of the 2nd respondent issued in R.C.No.76/98/A, dated 31.12.2001, including the 4(1) notification issued in G.O.Ms.No.756, Industries, (MID-II) Department, dated 07.10.1999 by the 1st respondent, quash the same insofar as it relates to the land measuring an extent of 1.04.0 Hectares in S.Nos.167/1, 170/1, 171/1 within the Registration District of Chengalpet, MGR District and the registration sub-District of Ponneri.

For Petitioner : Mr.L.P.Maurya

For Respondents 1 & 2 : Mr.S.Diwakar,
Special Government Pleader

For 3rd Respondent : Mr.Vijayan,
for M/s.King & Patridge

O R D E R

quash the order dated 31.12.2001 passed by the 2nd respondent, including the 4(1) notification issued by the 1st respondent in G.O.Ms.No.756, Industries, (MID-II) Department, dated 07.10.1999, insofar as it relates to the land measuring an extent of 1.04.0 Hectares in S.Nos.167/1, 170/1, 171/1 within the Registration District of Chengalpet, MGR District and the registration sub-District of Ponneri.

2. According to the petitioner, he is the owner of the property to an extent of 1.04.0 Hectares of agricultural punja lands in S.Nos.167/1, 170/1 and 171/1 within the Registration District of Chengalpet, MGR District and the registration sub-District of Ponneri and he purchased the same from one Kannappa Mudaliar vide registered Sale Deed No.1997/92, dated 05.05.1992.

3. It is further stated by the petitioner that the said lands were acquired by the Government for establishment of Petrochemical Park invoking Urgency Clause 17(1) of Part-II of the Land Acquisition Act, 1894 and administrative sanction for the same was accorded by the Government in favour of SIPCOT in G.O.Ms.No.85/Industries (MID-ii) Department, dated 21.03.1997. Thereafter, the Government issued amendment to the above Government Order vide letter dated 27.05.1997, stating that the said Government Order has to be read as '85-A' instead of 85. Subsequently, the Government, in their letter dated 28.01.1998, had ordered change of requisitioning body from SIPCOT to TIDCO.

4. Pursuant to the said decision, draft notification under Section 4(1) read under Section 17(1) of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act') was approved in G.O.Ms.No.756/Industries (MID-II) Department, dated 07.10.1999 and the same was published in the Tamil Nadu Government Gazette on 11.10.1999 and 4(1) notification was published in two Tamil Dailies viz. 'Malai Murasu' and 'Dhina Thoodhu' on 20.10.1999 and the substance of the notification was published in the locality on 22.10.1999. Subsequently, Section 6 declaration was published in Two Tamil Dailies viz. 'Malai Murasu' and 'Dhina Thoodhu' on 08.01.2000 and published in the locality on 05.01.2000. The Draft declaration under Section 7 of the Act ordering the Special Tahsildar to perform the functions of the Collector and to acquire the land was approved on 31.03.2000 by the District Collector.

5. Thereafter, a notice under Sections 9(3) and 10 of the Act was issued to the petitioner on 22.06.2000 calling upon him to appear for the award enquiry. On behalf of the petitioner, his Advocate, Mr.V.K.Ilango, who is his Power Agent, attended the enquiry and claimed Rs.3,500/- per cent, as compensation. Thereafter, notice of Award under Section 12(2) was served on the petitioner on 07.01.2002 without a copy of the Award and the petitioner forwarded the same to his erstwhile Advocate to take steps in that regard. On receipt of the same, a notice was issued by the petitioner's erstwhile Advocate on 06.03.2002 requiring the respondent/Land Acquisition Officer to take steps to serve a copy of the Award to enable the petitioner to file objections within the

time stipulated.

6. On 27.03.2002, a communication was sent by the respondent/Land Acquisition Officer to the petitioner enclosing a copy of the Award, requiring him to file objection under Section 18 of the Act. On receipt of the same, the petitioner was shocked to note that the authorities have passed an award for a sum of Rs.75,207/- only for 1.04.0 Hectares, without considering his Power Agent's claim of Rs.3,500/- per cent. According to the petitioner, the said lands are high yielding and that the true market value was not taken into account while awarding the compensation.

7. It is further stated by the petitioner that when he forwarded a copy of the Award to his erstwhile Advocate, he was advised that the entire Acquisition proceedings initiated under the Act, lapsed, as the award was passed on 31.12.2001 after the commencement of Special legislation viz. 'The Tamil Nadu Acquisition of Land for Industrial Purpose', which is on 21.09.2001. The petitioner's former Advocate had informed him that a batch of PILs, challenging the Acquisition proceedings were pending before this Court. Hence, the petitioner was under the bonafide impression that he will be issued a fresh notice under the new legislation, however, he neither received any compensation nor a fresh notice under the new Act. Only in January 2012, the petitioner came to know that a batch of PILs, originally filed challenging the acquisition proceedings, were disposed of by this Court on 02.03.2007.

8. The petitioner took further steps and could get a certified copy of the Sale Deed only on 17.08.2012. He further stated that he was not in a position to challenge the Award dated 31.12.2001 passed by the 2nd respondent, despite the receipt of the same on 27.03.2002, due to the above bonafide reasons. Hence, challenging the Award dated 31.12.2001 passed by the 2nd respondent and the 4(1) notification dated 07.10.1999, the petitioner is before this Court.

9. In the counter filed by respondents 1 and 2, it is stated that an extent of about 705.01.0 Hectares of land were acquired in Kattupalli and three other Villages, under various awards in favour of the 3rd respondent/TIDCO. The lands owned by the petitioner are included in an extent of about 9.76.0 Hectares in Kattupalli Village, for which, a notice under Sections 9(3) and 10 of the said Act was issued to the petitioner on 22.06.2000 and after completing the award enquiry, an award was passed by the 2nd respondent/Land Acquisition Officer, under Section 11(1) of the said Act in Award No.8/2001, Unit IX, dated 31.12.2001. Since the petitioner had not received the compensation amount of Rs.75,207/- for an extent of 1.04.0 Hectares, the same was kept under the Revenue Deposit for future payment vide Challan No.ST 31, dated 28.03.2002 in Sub Treasury, Saidapet.

10. It is further stated in the counter that the lands acquired (705.01.0 Hectares) were handed over to the 3rd respondent/TIDCO from time to time and the lands owned by the petitioner were handed over to the 3rd respondent/TIDCO on 26.03.2002. Due to the issues

raised by environment agencies and Tamil Nadu Pollution Control Board, the 3rd respondent could not proceed with the implementation of Petrochemical Park in Kattupalli. Instead, with the permission of the 1st respondent, the 3rd respondent/TIDCO has leased out an extent of about 1143 acres of lands including the lands owned by the petitioner to Larsen and Toubro Ship Building Company Ltd. (LTSBL) for 99 years. It is also stated that the Power Agent of the writ petitioner, who appeared for the enquiry and demanded Rs.3,500/- per cent, had not produced any documentary evidence to support his claim. Under such circumstances, the demand of the writ petitioner through his Power Agent was not taken into account and the value of the lands was fixed based on the sales that took place in the Village.

11. In the counter filed by the 3rd respondent/TIDCO, it is stated that even though the Award was passed on 31.12.2001 under the said Act, i.e. after coming into force of the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 (Tamil Nadu Act 10 of 1999) on 21.09.2001, the Land Acquisition proceedings, for acquiring the above lands were already initiated under the said Act, and the Award enquiry notice under Sections 9(3) and 10 of the said Act, was also issued to the petitioner on 22.06.2000 itself, i.e. before the implementation of the Tamil Nadu Acquisition of land for Industrial purpose.

12. According to the learned counsel for the petitioner, the petitioner's lands were acquired for industrial purpose for establishment of a Petrochemical Park under the Land Acquisition Act, 1894. It is his contention that the petitioner's right to property has been taken away without following the due process of law and that the order of the 2nd respondent is in total violation of the statutory provisions stipulated under the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 (Tamil Nadu Act 10 of 1999).

13. In support of his case, learned counsel for the petitioner has relied on the following:

(i) a Supreme Court decision in the case of Pune Municipal Corporation and another vs. Harakchand Misirimal Solanki and others, (2014) 3 SCC 183

"12. To find out the meaning of the expression, "compensation has not been paid", it is necessary to have a look at Section 31 of the 1894 Act. The said section, to the extent it is relevant, reads as follows:

"31. Payment of compensation or deposit of same in court.-(1) On making an award under Section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless

by some one or more of the

contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the court to which a reference under Section 18 would be submitted:"

20. From the above, it is clear that the award pertaining to the subject land has been made by the Special Land Acquisition Officer more than five years prior to the commencement of the 2013 Act. It is also admitted position that compensation so awarded has neither been paid to the landowners/persons interested nor deposited in the court. The deposit of compensation amount in the Government treasury is of no avail and cannot be held to be equivalent to compensation paid to the landowners/persons interested. We have, therefore, no hesitation in holding that the subject land acquisition proceedings shall be deemed to have lapsed under Section 24(2) of the 2013 Act.

21. The argument on behalf of the Corporation that the subject land acquisition proceedings have been concluded in all respects under the 1894 Act and that they are not affected at all in view of Section 114(2) of the 2013 Act, has no merit at all, and is noted to be rejected. Section 114(1) of the 2013 Act repeals the 1894 Act. Sub-section (2) of Section 114, however, makes Section 6 of the General Clauses Act, 1897 applicable with regard to the effect of repeal but this is subject to the provisions in the 2013 Act. Under Section 24(2) land acquisition proceedings initiated under the 1894 Act, by legal fiction, are deemed to have lapsed where award has been made five years or more prior to the commencement of the 2013 Act and possession of the land is not taken or compensation has not been paid. The legal fiction under Section 24(2) comes into operation as soon as conditions stated therein are satisfied. The applicability of Section 6 of the General Clauses Act being subject to Section 24(2), there is no merit in the contention of the Corporation."

(ii)another Supreme Court decision in the case of Delhi Development Authority vs. Sukhbir Singh and others, (2016) 16 SCC 258

"2. The facts of the present case are as follows: a Notification under Section 4 of the Land Acquisition Act, 1894, was issued on 24-10-1961, stating that the public purpose for acquisition was the planned development of Delhi. This notification covered large tracts of land in and around Delhi. In this case, we are concerned with 33 bighas and 1 biswa of land in Vasant Kunj area of New Delhi. This Section 4 Notification was followed by a Notification under Section 6 dated 4-1-1969, which in turn, was followed by notices issued under Section 9 on 26-4-1983. An award relating to the aforesaid land was then made by the Land Acquisition Collector, New Delhi, only on 12-12-1997. Possession of the said land, being an open piece of land, was taken by a panchnama dated 27-1-2000. An affidavit that has been filed by the Commissioner, Land Management, Delhi Development Authority in this Court, pursuant to an order of this Court dated 17-4-2015 [DDA v. Sukhbir Singh, SLP (C) CC No. 5569 of 2015, order dated 17-4-2015 (SC), wherein it was directed: "The learned counsel for the petitioner seeks leave to file an affidavit within two weeks from today disclosing whether or not the amount of compensation was first tendered to the landowners as envisaged under the Land Acquisition Act. List after two weeks. In the meantime, status quo with regard to possession, title and interest shall be maintained.", discloses that the requisite compensation for taking over the said land was deposited by DDA with the Land Acquisition Collector only in the year 2002. The said affidavit goes on to state that since the land had been sold to Respondents 3 to 5 in the present case, there was a dispute as to who would receive compensation and that, therefore, compensation could neither be paid nor tendered.

13. The picture that therefore emerges on a reading of Section 24(2) is that the State has no business to expropriate from a citizen his property if an award has been made and the necessary steps to complete acquisition have not been taken for a period of five years or more. These steps include the taking of physical possession of land and payment of compensation. What the legislature is in effect telling the executive is that they ought to have put their

house in order and completed the acquisition proceedings within a reasonable time after pronouncement of award. Not having done so even after a leeway of five years is given, would cross the limits of legislative tolerance, after which the whole proceeding would be deemed to have lapsed. It is important to notice that the section gets attracted if the acquisition proceeding is not completed within five years after pronouncement of the award. This may happen either because physical possession of the land has not been taken or because compensation has not been paid, within the said period of five years. A faint submission to the effect that "or" should be read as "and" must be turned down for two reasons. The plain natural meaning of the sub-section does not lead to any absurdity for us to replace language advisedly used by the legislature. Secondly, the object of the Act, and Section 24 in particular, is that in case an award has been made for five years or more, possession ought to have been taken within this period, or else it is statutorily presumed that the balance between the citizen's right to retain his own property and the right of the State to expropriate it for a public purpose gets so disturbed as to make the acquisition proceedings lapse. Alternatively, if compensation has not been paid within this period, it is also statutorily presumed that the aforesaid balance gets disturbed so as to free such property from acquisition."

(iii) yet another Supreme Court decision in the case of Government of NCT of Delhi vs. Manav Dharam Trust and another, 2017 SCC Online SC 532

"27. The 2013 Act has made a sea change in the approach on the acquisition of land and compensation thereof. The only lapse under the 1894 Act was under Section 11-A where what would lapse is the ... "entire proceedings for the acquisition of land" whereas under Section 24(2) of the 2013 Act, what gets lapsed is the land acquisition proceedings initiated under the 1894 Act which has culminated in passing of an award under Section 11 but where either possession was not taken or compensation was not paid within five years prior to 1-1-2014. In other words, the land acquisition proceedings contemplated under Section 24(2) of the 2013 Act would take in both, payment of compensation and taking of possession within the five year period prior to 1-1-2014. If either of them is not satisfied, the entire land acquisition proceedings would lapse under the

deeming provision. The impact of deemed lapse under Section 24(2) is that pervasive. To quote R.F. Nariman, J. in DDA v. Sukhbir Singh [DDA v. Sukhbir Singh, (2016) 16 SCC 258 : (2016) 8 Scale 655] : (SCC p. 283, para 26)

"26. ... As is well settled, a deeming fiction is enacted so that a putative state of affairs must be imagined, the mind not being allowed to boggle at the logical consequence of such putative state of affairs. ... In fact, Section 24(2) uses the expression "deemed to have lapsed" because the legislature was cognizant of the fact that, in cases where compensation has not been paid, and physical possession handed over to the State, vesting has taken place, after which land acquisition proceedings could be said to have been ended."

28. Thus, on account of the lapse, the encumbrance created in favour of the State comes to an end, and resultantly, the impediment to encumber the land also comes to an end. Even, according to the appellants, the transfers were illegal and void for the reason that there was an impediment for the transfer. Once the acquisition proceedings lapse, all impediments cease to exist."

(iv) a Karnataka High Court decision in the case of Smt.Nanjamma vs. The Principal Secretary to the Government of Karnataka, ILR 2016 KAR 2246

"12. We, therefore, hold that, in this case, the award having been passed on January 28, 1989, and possession having been taken on November 4, 1992, but as the compensation has not been paid or deposited with the Court, to which a reference under Section 18 of the said Act of 1894, could be made, the entire acquisition proceedings stood lapsed."

(v) a Division Bench decision of this Court in the case of the Tamil Nadu Housing Board vs. iGate Global Solutions Limited, (2016 (2) LW 122)

"45. In order to attract the provisions of Section 24(2) of the Act, 2013, there are three pre-conditions. 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."

(vi) a decision of this Court in the case of Chockalingam vs. State Government of Tamil Nadu, rendered in W.P.Nos.30188 and 30189 of 2015, vide order dated 11.04.2016

"9. In the instant case, it is an admitted fact that compensation amount has not been paid to the petitioners/landowners, and there can be no resistance on the said point. In para No.9 of the counter affidavits, except for stating that the possession of the lands have been taken over on the date of passing of the award, no material has been placed before this Court to prove the same, in terms of the law laid down by the Division Bench of this Court in the decision referred to above. Thus, based on such factual averment, the respondents cannot state that possession has been taken over, where there is interim order granted by this Court. It is pointed out by the Division Bench, in the above referred decision that for taking possession of the property, the revenue authorities must establish by producing some evidence, i.e. either by preparation of panchanama in the presence of the witnesses or some other documents, and the transfer certificates subsequently prepared by the revenue authorities for delivery of the land in question in absence of a witness or land owner, will not be sufficient to establish that possession of the land was taken over from the land owners. Thus, in instant cases, both the twin conditions stipulated under Section 24(2) have been fulfilled, and accordingly, the petitioners are entitled to the benefit of Section 24(2) of Act, 30 of 2013. "

(vii) a decision of the Madurai Bench of this Court in the case of M.Mahalingam vs. The Government of Tamil Nadu, 2017 (2) W.L.R. 166

"3. ... The land owners did not receive the compensation amount. Further notice was issued on 08.07.1992 to receive the compensation. As the

owners of the land have not utilized the opportunity to receive the compensation or resorted to the provisions contained under Section 18 of the said Act, it is not required to deposit the compensation amount before the civil Court. Therefore, the compensation amount was deemed to have been paid under the provisions contained under Section 24(2).

14. Learned Special Government Pleader appearing for the respondents 1 and 2, contended that even though the Award has been passed on 31.12.2001, after coming into force of the Tamil Nadu Acquisition of Land for Industrial purposes Act, 1997 (Tamil Nadu Act 10 of 1999), for acquiring the lands in question, proceedings have been initiated and Award enquiry notice under Sections 9(3) and 10 of the said Act was also issued to the petitioner on 22.06.2000, before the implementation of the said Act.

15. According to the learned counsel appearing for the 3rd respondent, since the petitioner has not received the compensation, it has been kept under revenue deposit. He submitted that the lands in question have been acquired for industrial purpose and the same have been already utilised and leased out to a Company, which has been subsequently declared and notified as Special Economic Zone (SEZ), by the Government of India. It is his further submission that though the petitioner received the Award on 27.03.2002, he has approached this Court with a delay of 11 years. He went on to contend that the Notification in G.O.Ms.No.756, Industries (MID.II) Department, dated 07.10.1999 has already been upheld by a Division Bench of this Court and the Writ Petition has to be dismissed on the ground of laches. It is also his contention that the petitioner did not heed to the advise of the Land Acquisition Officer to make a reference to the Court through the District Collector, under Section 18(1) of the Act.

16. To substantiate his stand, learned counsel appearing for the 3rd respondent has relied on the following:

(i) a Supreme Court decision in the case of Municipal Corporation of Greater Bombay vs. Industrial Development Investment Co. Pvt. Ltd. and others, (1996) 11 SCC 501

"23. The next question is whether the High Court was right in issuing the writ after a long lapse of time? The respondents, admittedly, approached the High Court after a delay of 4 years; that too after award was made and possession was taken from the owner. It is seen that the declaration was published as long back as on 3-5-1979. Earlier to that after the draft plan was published, notice was given to all the parties. The respondents, who claim to be the tenants, had not raised the little finger in making any objection to the proposed scheme or the revised plan. The award was made on 24-2-1983;

possession was taken on 4-3-1983, and on the same day it stood transferred to the BMC. The writ petition came to be filed thereafter on 4-7-1983. The learned Single Judge dismissed the writ petition on the ground of laches."

(ii) another Supreme Court decision in the case of State of Rajasthan and others vs. D.R.Laxmi and others, (1996) 6 SCC 445

"9. Recently, another Bench of this Court in Municipal Corpn. of Greater Bombay v. Industrial Development & Investment Co. (P) Ltd. [CA No. 286 of 1989, decided on 6-9-1996 (see infra)] re-examined the entire case law and had held that once the land was vested in the State, the Court was not justified in interfering with the notification published under appropriate provisions of the Act. Delay in challenging the notification was fatal and writ petition entails with dismissal on grounds of laches. It is thus, well-settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loathe to quash the notifications. The High Court has, no doubt, discretionary powers under Article 226 of the Constitution to quash the notification under Section 4(1) and declaration under Section 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third party rights were created in the case, is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned Single Judge dismissing the writ petition on the ground of laches. Reliance was placed by Shri Sachar on M.P. Housing Board v. Mohd. Shafi [(1992) 2 SCC 168] , in particular para 8, wherein it was held that compliance of the requirements is mandatory and non-compliance thereof renders all subsequent proceedings connected therewith unexceptionably illegal; but the question is what will be its effect. That was not the question in that case, since no award had come to be passed. In Nutakki Sesharatanam v. Sub-Collector, Land Acquisition [(1992) 1 SCC 114] , a two-Judge Bench of this Court had held that if the requirements of Section 4 are not complied with, all proceedings had become invalid and possession was directed to be re-delivered to the appellant. We are of the

view that the ratio therein is not correctly laid down. The question whether violation of the mandatory provisions renders the result of the action as void or voidable has been succinctly considered in Administrative Law by H.W.R. Wade (7th Edn.) at pp. 342-43 thus:

"The truth of the matter is that the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the court may refuse to quash it because of the plaintiff's lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case the 'void' order remains effective and is, in reality, valid. It follows that an order may be void for one purpose and valid for another; and that it may be void against one person but valid against another. A common case where an order, however void, becomes valid is where a statutory time-limit expires after which its validity cannot be questioned. The statute does not say that the void order shall be valid; but by cutting off legal remedies it produces that result."

(iii) yet another Supreme Court decision in the case of Banda Development Authority, Banda vs. Moti Lal Agarwal and others, (2011) 5 SCC 394

"16. In our view, even if the objection of delay and laches had not been raised in the affidavits filed on behalf of BDA and the State Government, the High Court was duty-bound to take cognizance of the long time gap of nine years between the issue of declaration under Section 6(1) and filing of the writ petition, and declined relief to Respondent 1 on the ground that he was guilty of laches because the acquired land had been utilised for implementing the residential scheme and third-party rights had been created. The unexplained delay of about six years between the passing of award and filing of the writ petition was also sufficient for refusing to entertain the prayer made in the writ petition.

17. It is true that no limitation has been prescribed for filing a petition under Article 226 of the Constitution but one of the several rules of

self-imposed restraint evolved by the superior courts is that the High Court will not entertain petitions filed after long lapse of time because that may adversely affect the settled/crystallised rights of the parties. If the writ petition is filed beyond the period of limitation prescribed for filing a civil suit for similar cause, the High Court will treat the delay unreasonable and decline to entertain the grievance of the petitioner on merits.

19. In matters involving challenge to the acquisition of land for public purpose, this Court has consistently held that delay in filing the writ petition should be viewed seriously and relief denied to the petitioner if he fails to offer plausible explanation for the delay. The Court has also held that the delay of even few years would be fatal to the cause of the petitioner, if the acquired land has been partly or wholly utilised for the public purpose."

17. Heard the learned counsel on either side and perused the material documents available on record.

18. A cursory glance of the facts narrated supra, makes it clear that the lands in question have been acquired for industrial purpose as contemplated under the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997. The petitioner's representative had participated in the award enquiry and an Award has been passed before the implementation of the said Act. Since the petitioner did not receive the compensation, the respondents deposited the same in the revenue deposit. Though it may be correct that the compensation has to be deposited in the Revenue Court, in the present case on hand, the insertion of Section 105-A together with V Schedule in the Gazette Notification dated 05.01.2015 published in Tamil Nadu Government Gazette Extraordinary, Part IV - Section 2, makes it clear that the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 will not be applicable.

19. For better appreciation of the case, Section 105-A of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and the Fifth Schedule are extracted below:

"105-A. Provisions of this Act not to apply to certain Tamil Nadu Acts or to apply with certain modifications: (1) Subject to sub-section (2), the provisions of this Act shall not apply to the enactments relating to land acquisition specified in the Fifth Schedule.

(2) The State Government shall, by notification, within one year from the date of

commencement of this Act, direct that any of the provisions of this Act, relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fifth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be.

(3) A copy of the notification proposed to be issued under sub-section (2) shall be laid in draft before the Legislative Assembly of the State of Tamil Nadu and if the Legislative Assembly agrees in disapproving the issue of the notification or the Legislative Assembly agrees in disapproving the issue of the notification or the Legislative Assembly agrees in making any modifications in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by the Legislative Assembly."

"THE FIFTH SCHEDULE
(See Section 105-A)

LIST OF TAMIL NADU ENACTMENTS REGULATING LAND
ACQUISITION IN THE STATE OF TAMIL NADU.

1. The Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (Tamil Nadu Act 31 of 1978)

2. The Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 (Tamil Nadu Act 10 of 1999)

3. The Tamil Nadu Highways Act, 2001 (Tamil Nadu Act 34 of 2002)"

(By Order of the Governor)

20. That apart, as the lands in question have already been utilised for industrial purpose, the notification issued by the Government, which is the subject matter of the Writ Petition cannot, by any stretch of imagination, said to be illegal. Though it is required that the amount has to be deposited in the Court, in the

present case on hand, the petitioner is not going to be prejudiced by deposit of the amount in revenue. Had the amount been deposited in Court, he would have had the benefit of fluctuating bank rate of interest, which will not be more than 9%.

21. Further, the petitioner cannot try to enrich himself on technicalities, by invoking the provisions of the 2013 Act, as he had already participated in the Award enquiry and received a copy of the Award. Just because, he did not receive the compensation, he cannot claim applicability of 2013 Act in terms of Section 105-A. In case of a new legislation, when the petitioner is not going to accept lessor compensation, he cannot claim a higher one under the same circumstance, especially in the light of Section 105-A of the Act.

22. Hence, this Court is not inclined to grant the relief sought by the petitioner, as, at present, the petitioner cannot put the clock back, as much water has flown. However, the respondents are directed to pay compensation to the petitioner together with interest at 12% per annum from the date the amount became due to him, by means of a Demand Draft, within a period of 45 days from the date of receipt of a copy of this order. After payment of the said amount to the petitioner, the respondents are at liberty to withdraw the amount lying in the Revenue Deposit. If the petitioner still fails to accept the amount now ordered by this Court, the respondents are directed to deposit the said amount together with interest mentioned supra, before the appropriate Court.

23. It is needless to point out that it is open to the District Collector to make a reference for the petitioner under Section 18 of the 2013 Act, to enable him to get better compensation.

In fine, the Writ Petition stands dismissed with the above direction and observation. No costs.

-sd/-

Assistant Registrar

/ TRUE COPY /

Sub-Assistant Registrar

(aeb)

To:

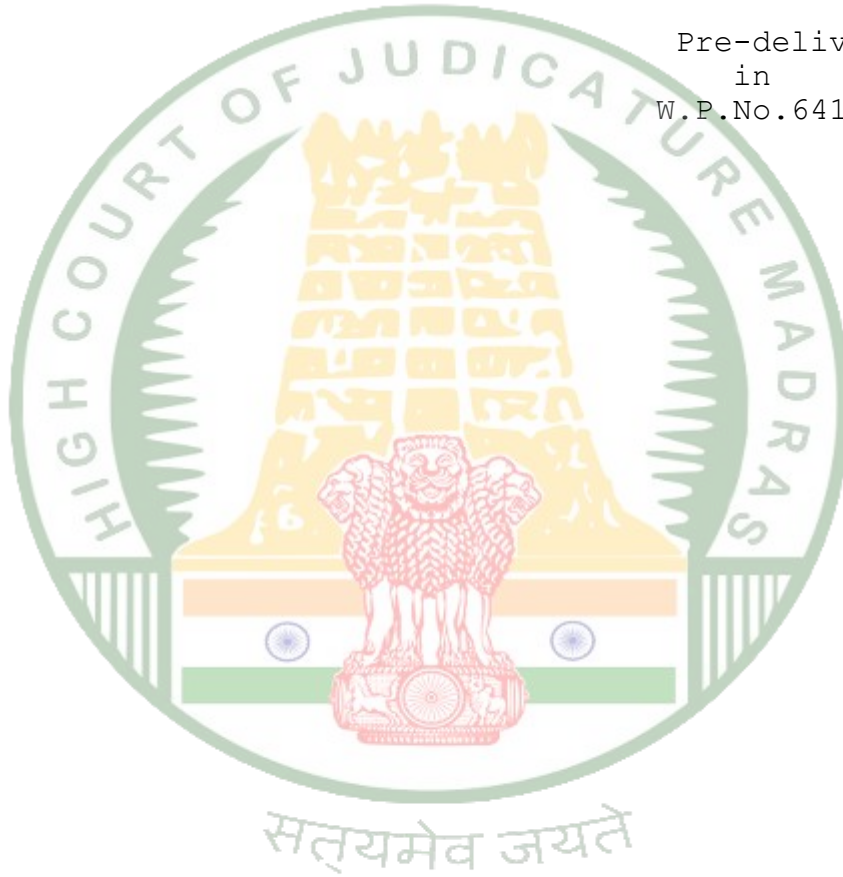
1. The Secretary to Government,
State of Tamil Nadu,
Industries Department,
Fort St. George, Chennai 600 009.

2. The Special Tahsildar (Land Acquisition),
Petro Chemical Park,
TIDCO, 485, Anna Salai,
Nandanam, Chennai 600 035.
3. The Managing Director,
Tamil Nadu Industrial Development Corporation,
No.19, ARL Road, Egmore, Chennai 600 008.

+1 cc to MR.L.P.MAURYA Advocate SR.NO. 5040
+1 cc to MR.KING & PARTRIDGE ADVOCATE SR.NO. 4794

Pre-delivery Order
in
W.P.No.6413 of 2013

NRJK[CO]
RD 03/02/2018



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