

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.No.3887 of 2019

Ravisam

.. Appellant

-vs-

1. The Government of Tamil Nadu
Rep. by its Secretary to Government
Housing and Urban Development Department
Chennai - 600 009.
2. The Special Tahsildar (Land Acquisition)
Housing Scheme No.3
Coimbatore.
3. The Executive Engineer and
Administrative Officer
Coimbatore Housing Unit
Tamil Nadu Housing Board
Coimbatore.

.. Respondents

PRAYER: Appeal under Clause 15 of the Letters Patent against the order dated 24.6.2019 in W.P.No.3640 of 2001.

WP.No.3640 of 2001:The Writ Petition filed under Article 226 of the constitution of India, to issue a Writ of Certiorari to call for the records of the 2nd respondent herein pertaining to the notification under section 4(1) of the Act, notified in the Gazette on 20.03.1991 and the Declaration under Section 6 of the Act, notified in the Gazette on 28.05.1992, in respect of the Ganapathy Neighbourhood Scheme Phase 2" in respect of the lands measuring about 30.03 acres, in SF No.411/1 and 411/2, in Vilankurichi Village, Coimbatore North Taluk and quash the same.

For Appellant : Mr.AR.L.Sundaresan
Senior Counsel
for Mr.G.Sankaran

For Respondents : Mr.Vijay Narayan
Advocate General
assisted by Dr.R.Gowri
for R3

Mr.E.Manoharan
Spl. Government Pleader
for respondents 1 and 2

JUDGMENT

THE CHIEF JUSTICE

The present appeal arises out of the judgment dated 24.6.2019 of the learned Single Judge delivering a common judgment in two writ petitions, one of which W.P.No.3640 of 2001 was filed by the appellant challenging the acquisition proceedings under the Land Acquisition Act, 1894 (for brevity, "the 1894 Act") with a prayer to quash notifications under Sections 4 and 6 of the said Act, whereby land measuring 3.03 Acres of SF.Nos.411/1 and 411/2 in Vilankurichi Village, Coimbatore North Taluk, has been acquired. This appeal is, therefore, confined only in relation to the said land that concerns the appellant, who was the writ petitioner in W.P.No.3640 of 2001.

2. The land has been acquired for a Housing Scheme, namely, Ganapathy Neighbourhood Scheme Phase 2 in Coimbatore. The notification under Section 4 of the 1894 Act, that was published in the gazette is dated 20.3.1991, and was also subsequently published in the newspapers as well as in the locality, the dates whereof are different. The notification dated 26.5.1992 under Section 6 of the 1894 Act was published in the official gazette on 28.5.1992. The schedule appended to the said declaration in relation to the plots in question are relevant, keeping in view the nature of the controversy raised by the appellant. In the Section 4 gazette notification, the following

description is given with regard to the survey numbers, which includes Plot Nos.411/1 and 411/2:

"Coimbatore District, Coimbatore North Taluk No.13,
Vilanchurichi Village
(The extent given is approximate)

Government, dry, S.F.No.410-1, belonging to P.S.G.Ganga Naidu and Sons Trust and Krishna Naidu, bounded on the north by S.F.No.404, east by S.F.No.410-2, south by S.F.Nos.411-1 and 411-2 and west by S.F.No.413 - 2.79.0 hectares.

Government, dry, S.F.No.410-2, belonging to Narayanasamy Naidu, Raju Naidu and Balakrishnan, bounded on the north by S.F.No.404, east by S.F.No.409, south by S.F.No.411-2 and west by S.F.No.410-1 - 0.81.0 hectares.

Government, dry, S.F.No.411-1, belonging to same as in S.F.No.410-1, bounded on the north by S.F.No.410-1, east by S.F.No.411-2, south by S.F.No.442 and west by S.F.Nos.412 and 413 - 1.68.0 hectares.

Government, dry, S.F.No.411-2, belonging to same as in S.F.No.410-2, bounded on the north by S.F.Nos.410-1 and 410-2, east by S.F.No.407-1, south by S.F.No.442 and west by S.F.No.411-1 - 2.03.5 hectares.

Government, dry, S.F.No.412, belonging to Narayana Naicker, and Subba Naicker, bounded on the north by S.F.No.413 and 415, east by S.F.Nos.411-1 and 442, south by S.F.Nos.441-1 and 441-2A and west by S.F.No.416 - 2.87.0 hectares.

Total - 10.18.5 hectares.

L.K.TRIPATHY
Secretary to Government"

3. The same description indicating the names in detail were again repeated in the notification under Section 6 of the 1894 Act, which is extracted herein under:

"SCHEDULE

Coimbatore District, Coimbatore North Taluk No.13,
Vilanchurichi Village

Government, dry, S.F.No.410-1, belonging to P.S.G.Ganga Naidu and Sons Trust and Krishna Naidu, bounded on the north by S.F.No.404, east by S.F.No.410-2, south by S.F.Nos.411-1 and 411-2 and west by S.F.No.413 - 2.79.0 hectares.

Government, dry, S.F.No.410-2, belonging to Narayanasamy Naidu, Raju Naidu and Balakrishnan, bounded on the north by S.F.No.404, east by S.F.No.409, south by S.F.No.411-2 and west by S.F.No.410-1 - 0.81.0 hectares.

Government, dry, S.F.No.411-1, belonging to P.S.G.Ganga Naidu and Sons Trust and Krishna Naidu, bounded on the north by S.F.No.404-1, east by S.F.No.411-2, south by S.F.Nos.442 and west by S.F.Nos.412 and 413 - 165.0 hectare.

Government, dry, S.F.No.411-2, belonging to Narayanasamy Naidu, Raju Nadu and Balakrishnan, bounded on the north by S.F.Nos.410-1 and 410-2, east by S.F.No.407-1, south by S.F.No.442 and west by S.F.No.411-1 - 2.03.5 hectares.

Government, dry, S.F.No.412, belonging to Narayana Naicker, N.Chinnasamy Naidu and Subba Naicker, bounded on the north by S.F.No.413 and 415, east by S.F.Nos.411-1 and 442, south by S.F.Nos.441-1 and 441-2A and west by S.F.No.416 - 2.87.0 hectares.

Total - 10.15.5 hectares."

4. The appellant alleges that undisputedly the original land owner was one Gopal Naidu, who had three sons, namely, Purushothaman Naidu, Narayanasamy Naidu @ G.N.Sam and Krishnan Naidu. It is stated that on 30.3.1955 an internal partition took place between Gopal Naidu and his sons.

5. The property passed on from Gopal Naidu, after his death, to his widow Chinnammal under a life interest only available to her, with absolute ownership passing on to the

three sons in equal shares. Chinnammal, the widow, is also stated to have died in 1972. One of the sons of Gopal Naidu, namely, Narayanasamy Naidu @ G.N.Sam, father of the appellant, had already died on 9.1.1961. Gopal Naidu and his other two sons and their heirs had parted with their one-third share by executing sale deeds, and the purchasers have also separately and unsuccessfully contested the acquisition proceedings before this Court that would be shortly narrated hereinafter. To understand the separate status of succession and consequential rights of the parties, the following description in a bird's eye-view of the facts with regard to ownership as alleged by the appellant:-

Gopal Naidu = Chinnammal (Died in 1972) 		
 Purushottam Naidu (Dead)	 G.Narayanasamy Naidu @ G.N.Sam (Died on 9.1.1961) = N.Savithiri (wife) Ravisam (Son) J.Dhanalakshmi (Married Daughter) P.Jayalakshmi (Married Daughter) B.Gajini (Married Dauther)	 G.Krishnan Naidu K.Vijayakumar (Son)

6. The aforesaid pedigree is seriously disputed vis-a-vis the ownership of the land by the respondent State and the Housing Board on the ground that the person reflected as G.Narayanasamy Naidu in the present pedigree is son of Gopal Naidu, whereas, according to the respondents, the land in

dispute is recorded in the name of an entirely different person, namely, Narayanasamy, Son of Subba Naidu, and grandson of one Appaiah. These facts will be discussed later on in the judgment.

7. In the present case, the dispute is with regard to 3.03 Acres of land in Survey Nos.411/1 and 411/2, as already indicated above, out of which 2.89 Acres is stated to be retained by the appellant and 15 cents has been left out for a private road.

8. In so far as the rest of the land is concerned, the purchasers are said to have acquired the lands through sale deeds stated to have been executed in the year 1988 from the other co-owners. This fact is evident from the record of judgments in the litigation contested by the said purchasers.

9. After the notification under Section 4 of the 1894 Act was published, a registered partition deed dated 15.5.1991 is said to have been executed in relation to the properties inherited by the heirs of late Gopal Naidu, including the appellant, as also the purchasers who had fought their legal battle separately as noted above, namely Mrs.Girija Janarthanan and others.

10. The acquisition proceeded with the names that were recorded in Sections 4 and 6 notifications and ultimately an award was delivered on 23.5.1994. The award is also in relation to plots in question and it records that during the enquiry under Section 5A of the 1894 Act, the required notice under the 1894 Act was tendered on the notified persons, whereafter some of the tenure holders raised their objections and after considering the same, the objections were rejected, followed by notices under Sections 9(3) and 10 of 1894 Act. The award mentions that the notices were served on the land owners and the interested persons and their acknowledgments were obtained. The notices were published and a necessary certificate was also obtained. This was followed by an award enquiry under Section 11 of the 1894 Act at the office of the Special Tahsildar and after recording the specifics of the land acquired, the award was delivered. The ownership was reflected through the names of the notified persons in respect of both the survey numbers. The award, however, records P.S.G.Ganga Naidu and Sons Trust as having appeared during the award enquiry, but he failed to produce any documentary evidence during the same. The other notified person Krishna Naidu did not appear for award enquiry

and, therefore, ownership and apportionment could not be decided in respect of him. Accordingly, it was directed to deposit the amount in the Civil Court. Proceeding further in respect of S.F.No.410/2, the name of Narayanasamy is mentioned, and then it was indicated that since Narayanasamy Naidu, did not appear for award enquiry, his ownership and apportionment also could not be decided, and the amount was directed to be deposited in the Civil Court.

11. It is the case of the appellant that in spite of the fact that the name of the appellant's father had been notified, who had died in 1961, in the notifications issued under Sections 4 and 6 of the 1894 Act and was also mentioned in the award, but the award proceeded as if Narayanasamy Naidu, in spite of notice did not appear in the proceedings. It is stated by the respondents that the compensation amount was tendered and deposited on 8.7.1994 and the possession was taken on 9.12.1994, as per the certificate on which reliance has been placed, which documents have been highly disputed by the appellant.

12. The other tenure holders, who were purchasers from the other branches, as referred to above, filed two writ petitions before the High Court being W.P.Nos.19925 and 19927 of 1994. The said writ petitions were entertained and it is stated that interim orders had been passed therein in their favour, whereafter on 22.9.2000, the said writ petitions were allowed and the impugned notifications were quashed, which also covered Plot Nos.411/1 and 411/2. The appellant was not a party to the said petitions, yet the notifications were quashed only on the ground that the publication of the notifications under Sections 4 and 6 of the 1894 Act was not locally circulated and was allegedly published in unknown daily newspapers. It was also accepted by the Court that they were not been given personal notice and, therefore, on account of such violation, the petitioners therein were prevented from raising their objections regarding the proposed acquisition of land in the enquiry under Section 5A of the 1894 Act. The Court also deprecated the practice of publishing such notifications in local dailies which are insignificant and not in circulation. There were other contentions also raised, namely that the purchasers had purchased the land in 1988, even prior to the notification under Section 4 of 1894 Act in 1991 and that the notification under Section 6 of the 1894 Act had been published beyond the period of one year. These facts have been disputed in the counter affidavit filed in those writ petitions, but, as indicated

above, it was on the first issue relating to an erroneous publication of the notice that the writ petitions were allowed. It is useful to extract the operative part of the said judgment only to reflect the issue which came to be decided by the Court in the case of those purchasers in the first round of litigation. The same is gainfully reproduced herein under:

"I accept the first contention raised by the learned senior counsel for the petitioners. In such a circumstance, it is unnecessary for me to consider the other points raised by the learned senior counsel for the petitioners."

13. The Tamil Nadu Housing Board, Coimbatore, filed an appeal, being W.A.No.1946 of 2002, assailing the aforesaid common judgment and the same was dismissed on 27.8.2002.

14. The appellant has urged that with regard to his land, the Housing Board was trying to interfere with his possession and he came to know of the entire acquisition proceedings and the litigation for the first time in November, 2000, whereafter he moved a representation on 4.11.2000 before the Housing and Urban Development Department questioning their action of trying to take over the property of the appellant. The appellant requested the Secretary of the Housing Department to exempt the land from the acquisition proceedings. Having failed to get any reply, the appellant filed W.P.No.3640 of 2001 that has given rise to the present appeal challenging the acquisition proceedings taking aid of the judgments that were delivered in favour of the purchasers, referred to above. On 26.2.2001, an interim injunction was granted by a learned Single Judge in favour of the appellant and later on vide order dated 5.2.2003, the injunction was continued in respect of dispossession alone. The Court clarified that other proceedings may go on.

15. The Tamil Nadu Housing Board, through its Executive Engineer, filed Civil Appeal No.2660 of 2004 before the Apex Court against the judgment in W.A.No.1946 of 2002 arising out of W.P.Nos.19925 and 19927 of 1994 in favour of the purchasers, referred to above, and the said appeal was allowed on 19.4.2004 on the short question that the presumption by the High Court about no opportunity having been given to the tenure holders was drawn on the basis of a bald statement in the affidavit, without giving any opportunity to the Housing Board, only on the ground that the publishing of the notices in insignificant newspapers resulted in alleged failure in complying with the provisions for

publication under Sections 4(1) and 6 of the 1894 Act. The Supreme Court, therefore, set aside the judgment of the Division Bench dated 27.8.2002 as well as the judgment of the learned Single Judge dated 22.9.2000 and remanded the matter back to the learned Single Judge in relation to the issues raised by the purchasers, who had filed their separate writ petitions.

16. It is during the pendency of these proceedings that the writ petition filed by the appellant, namely W.P.No.3640 of 2001, giving rise to the present appeal, also came to be allowed on 24.12.2003 by a learned Single Judge following the decision rendered in the case of the purchasers. This was prior to the judgment of the Apex Court, referred to above.

17. A review petition, being Review Petition No.44 of 2004, was filed by the Tamil Nadu Housing Board contending therein that since the writ petition of the appellant had been allowed following the decisions in favour of the purchasers from other co-owners, which stood reversed by the Apex Court, this judgment also deserves to be reviewed.

18. The review petition remained pending and during the pendency of this review petition, the cases relating to the purchasers that had been remanded by the Apex Court came to be heard by the learned Single Judge and their writ petitions, being W.P.Nos.19925 and 19927 of 2004, were again allowed on 21.12.2004 in their favour.

19. Against the said judgment of the learned Single Judge, two writ appeals, being W.A.Nos.1241 and 1242 of 2005, were preferred which came to be pending.

20. The aforesaid facts with regard to the litigations of purchasers was noticed by the learned Single Judge in the Review Petition No.44 of 2004 and having considered the same, the review petition was allowed on 15.2.2008 with a direction that the writ petition of the appellant would also be posted for disposal along with the aforesaid two writ appeals in the matter of the purchasers.

21. It appears that the appellant's writ petition remained pending and the two writ appeals of the Housing Board that were filed against the judgment in favour of the purchasers were taken up for hearing and were ultimately allowed on 25.11.2008. The respondents have also pressed the said judgment as having

become final and is one of the sheet anchor of their arguments.

22. It is thereafter that the writ petition giving rise to the present appeal came to be heard and was dismissed on 24.6.2019 by the learned Single Judge following the judgment of the Division Bench dated 25.11.2008. The Review Application No.155 of 2019 filed by the appellant was also dismissed by the learned Single Judge on 26.8.2019, whereafter the present appeal has been filed.

23. Arguments on behalf of the appellant were advanced by Mr.AR.L.Sundaresan, learned Senior Counsel, along with Mr.G.Sankaran, and the learned Advocate General has spearheaded the arguments on behalf of the State and the Housing Board, assisted by Dr.R.Gouri, on 9.7.2020.

24. It may be pointed out that the writ appeal had been entertained by a Division Bench and the following order was passed on 4.12.2019.

"Heard learned counsel for the appellant and learned counsel for the respondents/State as well as learned counsel for the respondent/ Housing Board.

2.The respondents' counsel pray for two weeks time to file a response, particularly with regard to the primary argument advanced on behalf of the appellant that the entire proceedings including the acquisition proceedings, the delivery of award and other consequential actions were undertaken without notice to the appellant, who is the land owner and without any service of notice on the recorded tenure holder.

3.The submission is that the recorded tenure holder is none else than the father of the appellant, who died way back in 1961 and the proceedings were concluded as per the revenue records, which contained the name of the father of the appellant, therefore, any proceedings carried out against a dead person are a nullity. The affidavit to be filed may respond to the same along with other particulars that may be warranted.

Put up on 23.01.2020."

25. The matter was adjourned thereafter on a counter affidavit being filed on behalf of the State, to which a rejoinder has also been filed in this appeal. It may, however, be put on record that no counter affidavit had been filed on behalf of the respondents in the writ petition. This fact has been noted in the judgment earlier rendered in the writ petition on 24.12.2003, which was reviewed on 15.2.2008, but even thereafter no counter affidavit appears to have been filed to the original writ petition. The appellant petitioner also filed an additional affidavit before the learned Single Judge raising specific pleas to substantiate what has been argued before us and it is urged that the learned Single Judge did not adhere to those additional pleas in spite of the fact that no counter was filed to the said additional affidavit by the respondents. It is for this reason that the Division Bench had called upon the respondents to file their counter along with any particulars that may be warranted in terms of the order dated 4.12.2019 quoted herein above. The affidavits have thereafter been exchanged in this writ appeal.

26. Advancing his submissions, Mr.AR.L.Sundaresan, learned Senior Counsel urged that the case of the appellant on facts was clearly distinguishable and even the legal issues raised in the writ petition filed by the appellant were not covered by the judgment of the Division Bench dated 25.11.2008, yet the learned Single Judge only relying upon the same and without traversing the facts of the present case on the issues raised has dismissed the writ petition and has also rejected the review application and, hence, the impugned judgment and the consequential dismissal of the review application are clearly vitiated and they deserve to be set aside.

27. To substantiate his submissions, he contends that the litigation that was fought by the purchasers resulting in the judgment dated 25.11.2008 has nowhere decided any issue of a proceeding having been finalized against a dead person, which is the case presently involved. His first contention is that, admittedly, according to the respondents, the revenue records, the notification under Sections 4 and 6 of the 1894 Act, and the ultimate delivery of the award in 1994, leave no room for doubt that the name of the appellant's father G.Narayanasamy Naidu @ G.N.Sam had been mentioned, who died on 9.1.1961, almost 30 years prior to the initiation of the acquisition proceedings.

Thus, the recorded tenure holder being dead, there cannot be any valid presumption of notice, or presumption of actual or implied service of notice on the appellant, whose name was neither recorded, nor did the respondents undertake any exercise during the enquiries to correct the revenue records and rectify the notifications, so as to enable them to serve a notice on the appellant. The appellant has clearly set up a case in his writ petition, as well as the additional affidavit filed by the appellant, and the additional grounds that were brought on record, copy whereof was served on the respondents. He submits that since no counter affidavit was filed to the writ petition, the said affidavits remained uncontroverted and the aforesaid fact of the matter having proceeded against the dead person without any notice having been served on his heirs, including the appellant, was totally overlooked by the learned Single Judge. He submits that these peculiar facts in the present case were not the issue that was either raised or decided in the case of the purchasers culminating in the judgment dated 25.11.2008. The contention, therefore, is that the entire acquisition proceedings having been carried out against a dead person is a nullity.

28. His second contention is that there is no evidence of any notice having been served on the appellant. He further submits that there was no question of service of notice, even if it was issued to the father of the appellant, who was dead way back in the year 1961. His contention, on the basis of the pleadings made in the writ petition as well as the additional affidavit, is that no effort or enquiry was ever made by the revenue officials or the acquiring authority either before the award or during the time of the award to find out the legal heirs and then proceed in the matter after serving of notice. He, therefore, submits that neither under Section 5A, nor under Section 9(1) read with Section 9(3), nor in the proceedings under Section 11, nor at the time of the alleged taking over of the possession any notice was ever given to the appellant. The absence of any such material, which was not there through any counter affidavit before the learned Single Judge, would clearly establish that this sine qua non of statutory requirements have not been proved to have been followed, and hence the acquisition proceedings deserve to be struck down.

29. As a necessary corollary, he submits that the recital contained in the award about service of notice to the notified persons is patently false, as the notified person is a dead

person, namely, the father of the appellant. The averments to the said effect contained in the counter affidavit filed in this appeal by the respondents are not supported by any records and are unsubstantiated and, therefore, the averments contained are also equally a reflection of falsehood. He, therefore, submits that the respondents having failed to establish any service of notice, the averment contained in the award should be declared to be incorrect and the contention raised in the counter affidavit deserves outright rejection.

30. He then supplements the above argument by contending that the appellant has clearly come out with a case that he had no notice or knowledge of the entire acquisition proceedings till November, 2000, whereafter immediately he filed his writ petition. The contention, therefore, that the writ petition could not be entertained after the award, that too even seven years thereafter, is not tenable, in as much as, as already indicated above, on account of the orders passed in the writ petitions filed by the purchasers, nothing had proceeded and the respondents had not been able to take over possession of the property. Secondly, after the appellant filed the writ petition and interim injunction was granted, which was clarified to the effect that the injunction shall operate only with regard to dispossession, the said injunction order had continued throughout. He has also urged that the plea of delay is not open to be taken by the respondents, in as much as they did not file any counter affidavit at any stage in the writ petition since 2001 till the final disposal, and it is only for the first time they have filed a counter affidavit and contested the matter in this appeal. The delay, as alleged, therefore is not on account of any willful default on the part of the appellant, and on the other hand, the entire default of not filing any counter affidavit before the learned Single Judge disentitles the respondents from raising any such plea of delay in the filing of the writ petition. In such circumstances, once it is established that the proceedings were against the dead person and no notice whatsoever at any stage was served on the appellant, then the filing of the writ petition by the appellant after seven years of the award was fully justified in the background aforesaid, and was rightly entertained. It is, therefore, his contention that both on the first issue relating to the proceedings against dead person and on the second ground relating to a complete absence of service of notice, the acquisition proceedings deserve to be quashed.

31. The third argument advanced by Mr.AR.L.Sundaresan, learned Senior Counsel is that there is no valid proof of possession having been taken over by the respondents and the land, therefore, cannot be said to have vested in the light of the Division bench judgment dated 25.11.2008. He submits that there is no proof of possession or the existence of any panchanama to record such possession. To the contrary, the possession certificate allegedly relied on by the respondents dated 9.12.1994 is the handing over of possession through the said document by the Tahsildar, Coimbatore to the Tamil Nadu Housing Board. The said document is no evidence of possession being taken from the tenure holder, for which he has cited certain decisions that will be referred to herein after.

32. It is, therefore, urged that according to Section 16 of the 1894 Act, vesting can only take place after possession is taken, which never took place, as the appellant had been throughout in possession, which has also been protected by an interim order during the pendency of the writ petition. He submits that the land in dispute is vacant as on date.

33. The fourth argument advanced by the learned Senior Counsel is that no deposit of the compensation amount is established and what has been pleaded before the Court is of the tendering of a cheque. He submits that it is only a counterfoil of the cheque which has been brought before the Court, which is no deposit, much less a valid deposit in the eyes of law.

34. He has summed up contending that this entire exercise of depriving the appellant of his property without following the due process of law is clearly violative of Article 300A of the Constitution of India.

35. The following judgments have been relied on by Mr.AR.L.Sundaresan to substantiate his submissions:

- (i) Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chennai and others, (2005) 7 SCC 627;
- (ii) Patasi Devi v. State of Haryana and others, (2012) 9 SCC 503;
- (iii) Banda Development Authority v. Motilal Agarwal and others, (2011) 5 SCC 394;
- (iv) Raghbir Singh Sehrawat v. State of Haryana and others, (2012) 1 SCC 792;
- (v) Tamil Nadu Housing Board and another v. iGate Global Solutions Limited and another, 2016-2-

- LW 122;
- (vi) The Chairman and Managing Director, Tamil Nadu Housing Board and another v. Dhanalakshmi and others [Judgment dated 9.11.2017 in W.A.No.394 of 2014]
- (vii) Indore Development Authority v. Manoharlal and others, 2020 SCC Online SC 316.

36. The aforesaid arguments were countered by the learned Advocate General contending that the judgment dated 25.11.2008 by the Division Bench arising out of the same notification in the case of the purchasers had already become final and, therefore, the acquisition having been upheld after having considered all the issues relating to acquisition, the same would be binding on the appellant and this Court has not been apprised of any such argument to persuade to take a different view.

37. He submits that the land has vested and possession had been validly taken free from all encumbrances. He further submits that a small minuscule area is left in this litigation and, therefore, keeping in view the nature of the entire huge project for housing that has been undertaken, the same should not be forestalled at the instance of a person who was merely a fence-sitter and is an inter-meddlor without any semblance of title.

38. He further submits that the deposit had been rightly tendered and possession had already been effected in accordance with the provisions of the 1894 Act.

39. He submits, on the strength of the counter affidavit, that the allegation of no notice having been issued or served at any stage is bald and without any basis. He contends that public notice was also made by beat of drums/tom tom, which has been noticed by the Division Bench in the judgment dated 25.11.2008.

40. His next contention is that the appellant claiming himself to be the son of Narayanasamy has not explained anywhere that if his father has died in 1961 and he had received the property by way of a partition deed, then why he did not take any steps to get his name mutated in the revenue records, and the inaction on the part of the appellant cannot enure to his advantage, when he was claiming possession over the land.

41. The learned Advocate General has then cited the Constitution Bench judgment in the case of Indore Development Authority v. Manoharlal and others (supra), where in matters of land acquisition, the issue of possession and the manner of vesting has been clearly explained and he has taken the Court through various paragraphs to assert that the acquisition in the present case is complete with the land having vested with the State free from all encumbrances.

42. He has referred to the Division Bench judgment dated 25.11.2008 [Executive Engineer and others v. Girija Janarthanan and others, (2009) 2 MLJ 918] to point out that the said decision also takes notice of the Supreme Court judgment in the case of Satendra Prasad Jain v. State of U.P., (1993) 4 SCC 369, as well as other judgments, where it has been held that the Courts have to weigh larger public interest vis-a-vis the private interest and the acquisition proceedings have to be upheld, where possession has been taken, leaving the issue of compensation only being claimed by a person in accordance with law.

43. He has also relied on a Division Bench judgment in G.S.Gopalakrishnan and others v. Government of Tamil Nadu and others, 2006 (4) CTC 757 to urge that notification under the 1894 Act will not per se be invalidated merely because a dead person's name has been notified. He, therefore, submits that in the background aforesaid, the appellant is not entitled to any relief and the learned Single Judge has rightly dismissed the writ petition.

44. Since we had certain doubts about the incomplete information being tendered by the respondents relating to the records, we had at the close of arguments on 9.7.2020 passed an order reserving the judgment, but, at the same time, had also permitted the learned counsel for the respondent Housing Board and the learned Advocate General to inform us about the availability of any documents with regard to taking over of possession or such other document, after providing it to the learned counsel for the appellant. The order dated 9.7.2020 is extracted herein under:

"Arguments concluded.

Learned counsel for the Housing Board states that in the event of any document with regard to taking

over possession is available on record, the scanned copy thereof shall be provided to the learned counsel for the petitioner and shall also be tendered before this Court.

Learned counsel for the Housing Board may also supply copies of the notices which are stated to have been issued and served on the recorded land owners pursuant to the notifications issued under Sections 4(1) and 6 of the Land Acquisition Act, 1894.

Judgment reserved."

45. As a sequence to the aforesaid indulgence granted by us, an additional counter affidavit along with additional typed set of papers came to be filed on behalf of the respondents and a mention was made by the learned Advocate General as well as Dr.Gouri, learned counsel for the Housing Board, to take the same on record. This mention was accepted on 15.7.2020 and we granted time to the learned counsel for the appellant to file a reply as well as any other document that he would choose to rely on in response to the additional counter affidavit and the documents relied on by the learned counsel for the Housing Board. The order passed on 15.7.2020 is extracted herein under:

"We have reserved judgment in this case subject to furnishing of any further information by the learned counsel for the State and the Housing Board in the matter.

2. Today, Sri.AR.L. Sundaresan, learned Senior Counsel appearing for the appellant informs that he has been served with an affidavit to which, a re-joinder is required to be filed as certain new documents are introduced.

3. Learned Advocate General has already made a mention in this regard and prayed for some time to allow him to advance his submissions on these documents.

4. With the consent of the parties, we fix the date as 21.07.2020.

List the matter on 21.07.2020."

46. When the arguments commenced again, as directed on 21.7.2020, the learned Advocate General relying on the additional counter affidavit filed now had advanced an altogether new submission denying the very identity of the appellant's father as being the true owner of Plot No.411/2 in question. He has urged that there was another person by the name of Narayanasamy, Son of Subba Naidu, who is the recorded tenure holder in the revenue records and whose name was notified in the notifications issued under Section 4 and 6. This person is not the father of the appellant and, therefore, the appellant has set up a totally false case of being the owner of the land in dispute by claiming succession through his father, who was never the recorded tenure holder of the land in question. For this, he has invited the attention of the Court to various documents and revenue records that have been filed in support of the additional counter affidavit filed by the second respondent through a typed set of papers. He, therefore, submits that the person, whose name was mentioned in the revenue records and in the notifications under Sections 4 and 6, was sought to be served with a notice and since he did not choose to appear either during the enquiry proceedings under Section 5A or the award enquiry proceedings, the award was delivered in his absence. For this, the learned Advocate General has urged that the real person, who is the owner of the land in dispute, is Narayanasamy, Son of Subba Naidu, and for which he prays that this Court may peruse the death certificate of S.Narayanasamy Naidu, son of Subba Naidu, indicating that he had different heirs as per the legal heir certificate that has been placed on record now. The said Narayansamy is, therefore, not the same person as the father of the appellant and hence while disputing the very parentage of the appellant, the respondents have now come up with a case on the strength of the documents relating to the despatch of the award papers to the Court for disbursement of the compensation and other documents pertaining to revenue records, that the appellant not being the son of the notified person named in the notifications, his entire claim as set up in the writ petition is false and the same deserves to be dismissed.

47. Refuting the aforesaid submissions, Mr.AR.L.Sundaresan, learned Senior Counsel, with the help of a rejoinder and an additional typed set of papers filed in reply, contended that this is a totally false generated case now set up by the respondents after almost 19 years of the filing of the writ

petition without even a whisper about the same throughout the proceedings.

48. Learned Senior Counsel with the aid of the documents already filed on record, coupled with the documents now filed in rejoinder along with the typed set of papers, contends that the procurement of the death certificate or even the revenue records as alleged by the respondents appear to have been manipulated and are not in relation to the subject matter in dispute. It is submitted that this reversal of stand as against the counter affidavit filed earlier clearly demonstrates that the respondents have been changing their stand with the aid of documents that have been procured subsequently, that have no probative value. It is urged that this new case, which is now sought to be developed by the respondents in this appeal, should be completely discarded and the appeal as well as the writ petition deserve to be allowed.

49. Having considered all these submissions, since the case has taken a new turn with the subsequent filing of additional counter affidavit and the response thereto by the appellant, to us it appears that all these aspects were not even mentioned by the learned Single Judge, including the legal issues that were advanced before him. The learned Single Judge simply relied on the judgment of the Division Bench in the case of the purchasers from the other co-owners dated 25.11.2008 and dismissed the writ petition on the said ground. As noted earlier, no counter affidavit had been filed by the respondents to the writ petition filed by the appellant. The appellant petitioner had also filed an additional affidavit to substantiate his pleadings before the learned Single Judge, which also went uncontroverted. This aspect has also been omitted to be considered by the learned Single Judge. The aforesaid omission has, therefore, caused a prejudice to the appellant petitioner, resulting in injustice and, hence, calls for an interference in this intra-court appeal, as it would have a direct bearing on the plea of certiorari raised by the appellant petitioner.

50. The learned Advocate General could not successfully contest this position that whatever material they are now seeking to rely on was not placed before the learned Single Judge, nor the arguments necessary in relation thereto could be pressed into service effectively. He contends that the examination of the relevant material on record was required to be gone into in order to establish as to whether the rightful

claimant has come forward on the basis of relevant documents or not. We are also clearly of the opinion that this sifting of facts was necessary, as it is perversity which was alleged by the appellant and we find that the relevant documents, which may have a bearing on the issues raised before us and were necessarily required to be gone into for accepting the challenge of the appellant or otherwise, have not been considered at all.

51. The question of appreciating bare minimum facts, which at times may be disputed, have to be assessed once non consideration of relevant material is taken as a ground or any patent perversity is pointed out. From this angle, we would like to extract the following paragraph from Halsbury's Laws of England, which is extracted herein under:

"613. The distinction between law and fact. The distinction between what will be treated as a question of law and what will be treated as a question of fact is one of importance. In general, where a body makes an error of law in reaching a decision, it will act without jurisdiction or power, and the court may quash that decision on an application for judicial review. By contrast the court will generally not intervene on the ground that a body has reached an erroneous finding of fact unless the finding is manifestly unreasonable or a mistake has been made as to an established and material fact that gives rise to unfairness or the finding of fact was otherwise reached through an error of law or is a precedent fact.

There is often difficulty in deciding whether a question should be classified as one of law or as one of fact (or fact and degree). Determination of the primary facts is not a matter of law, but to make a finding unsupported by any evidence is an error of law. Drawing inferences from the facts fall within the ambit of a statutory description, are potentially classifiable as questions of law, as questions of fact, or as questions of mixed law and fact. The method of classification may be important, for judicial review of findings of law may entail an independent determination of the matter already decided, whereas a review of findings of fact is likely to be more limited. It has been said that if the question is one which only a

trained lawyer can be expected to decide correctly, there is a presumption that it will be categorised as one of law. Otherwise the question is usually treated as one of mixed law and fact, so that the range of meanings that can reasonably be ascribed to a statutory expression is a question of law; but whether the facts as found fall within the ambit of that expression will be held to be a question of fact, on which the decision of the competent authority will not be disturbed unless it is perverse (or is such that no reasonable authority properly instructed in the law could have arrived at it), or is erroneous because a wrong legal approach has been adopted.

A court will generally be reluctant to disturb the findings of a tribunal with specialised knowledge of technical subject matter, irrespective of whether these findings be classified as law or fact."

52. As to what is the nature of the fact that deserves to be taken into consideration for the exercise of a writ of certiorari would be a matter of assessment by the Court, when it is called upon to issue such a writ. We may mention the following judgments that can be taken into account for the said purpose.

53. At the outset it may be clarified that where there are disputed questions of fact, generally they are not required to be investigated in a proceedings under Art.226 of the Constitution of India. The Court should briefly refer to what the disputed questions of fact are so as to exercise restraint of discretionary jurisdiction, but merely because there are some disputed questions of fact may not be sufficient to dismiss the Writ Petition. It should be remembered that the issuance of a prerogative Writ is a rule of discretion and not one exclusion of jurisdiction. The High Court is not incompetent to decide an issue of fact which can be determined from the materials on record. Reference be had to the judgment in the case of CENTURY SPINNING AND MANUFACTURING COMPANY LTD. AND ANOTHER v. THE ULHASNAGAR MUNICIPAL COUNCIL AND ANOTHER, (1970) 1 SCC 582. However, a disputed question of fact should not be adjudicated in the absence of sufficient pleadings.

54. The next question is as to what would be the scope of exercise of powers when a Writ of Certiorari is prayed for. For this a little bit of history on the Writ of Certiorari may be gainfully mentioned here as developed through caselaws both in the pre-constitutional colonial era and also in the post-Constitutional decisions that have been followed till date.

55. The House of Lords while affirming the judgment of the Kings Bench reported in 1911 A.C. 179, in the case of BOARD OF EDUCATION v. RICE AND OTHERS, where the Lord Chancellor Lord Loreburn laid down the general concept of interference through a Writ of Mandamus and Certiorari even in decisions arising out of administrative bodies where His Lordship ruled as follows:

"Comparatively recent statutes have extended, if they have not originated, the practice of imposing upon departments or officers of State the duty of deciding or determining questions of various kinds. In the present instance, as in many others, what comes for determination is sometimes a matter to be settled by discretion, involving no law. It will, I suppose, usually be of an administrative kind; but sometimes it will involve matter of law as well as matter of fact, or even depend upon matter of law alone. In such cases the Board of Education will have to ascertain the law and also to ascertain the facts. I need not add that in doing either they must act in good faith and fairly listen to both sides, for that is a duty lying upon every one who decides anything. But I do not think they are bound to treat such a question as though it were a trial. They have no power to administer on oath, and need not examine witnesses. They can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their view. Provided this is done, there is no appeal from the determination of the Board under s.7, sub-s.3, of this Act. The Board have, of course, no jurisdiction to decide abstract questions of law, but only to determine actual concrete differences that may

arise, and as they arise, between the managers and the local education authority. The Board is in the nature of the arbitral tribunal, and a Court of law has no jurisdiction to hear appeals from the determination either upon law or upon fact. But if the Court is satisfied either that the Board have not acted judicially in the way I have described, or have not determined the question which they are required by the Act to determine, then there is a remedy by mandamus and certiorari."

56. This concept in the context of the Presidencies of Bombay, Madras and Calcutta in India and their jurisdiction to exercise such powers as were available to the Courts of Kings Bench was considered by the Privy Council in the case of *RYOTS OF GARABANDHO, SARIYAPALLI AND RAMACHANDRAPURAM VILLAGES, GARABANDHO GROUP, PARLAKIMEDI ESTATE v. THE ZAMINDAR OR PARLAKIMEDI AND THE BOARD OF REVENUE, MADRAS*, reported in (1944) I.L.R. 457 Madras.

57. With the advent of the Constitution in the post-colonial era, this issue came to be examined by a Bench of 6-Judges of the Apex Court in the case of *PROVINCE OF BOMBAY v. KHUSHALDAS S. ADVANI AND OTHERS*, reported in AIR 1950 SC 222, whereby a majority of 4:2 it was held that a Writ of Certiorari cannot be issued against purely administrative action. The Court was considering the provisions of Bombay Land Requisition Ordinance, 1947 where the judgment of the Bombay High Court was reversed holding that such orders can be challenged by way of action at Common Law and not by way of Writ of Certiorari. The said judgment, however, in its minority view as expressed by Justice M.C. Mahajan and more extensively by Justice B.K. Mukherjea (as His Lordship then was) held that in the performance of an executive action, the authority ought to apply his mind to the materials before him and in that course it is necessary that he should act in good faith and should not be influenced by any extraneous consideration. The Hon'ble Judge then went on to explain the distinction between a judicial function and an administrative function and then it was finally opined by the Hon'ble Judge that the High Court was right in interfering by a Writ of Certiorari.

58. The said minority view, however, flowered later on with a little bit of expansion which came to be considered by a

5-Judges Constitution Bench in the case of VEERAPPA PILLAI v. RAMAN & RAMAN LTD. AND OTHERS, AIR 1952 SC 192, as referred to in paragraph 20 of the said judgment.

59. The above said judgment was followed by the judgment in the case of ELECTION COMMISSION, INDIA v. SAKA VENKATA SUBBA RAO AND OTHERS, AIR 1953 SC 210 where the words "for any other purpose" occurring in Art.226 of Constitution of India was emphasized.

60. The third decision that we would like to refer to is in the case of T.C. BASAPPA v. T. NAGAPPA AND OTHERS, AIR 1954 SC 440 where the general principles as to when a Writ of Certiorari would be available were explain in paragraphs 7 to 13 of the judgment. In that case the interference by the High Court was reversed by the Apex Court.

61. Then came the 7-Judges Bench decision in the case of HARI VISHNU KAMATH v. SYED AHMAD ISHAQUE AND OTHERS, AIR 1955 SC 233, where the scope of Certiorari was again discussed in paragraphs 28 to 33 of the judgment.

62. In another Constitution Bench judgment in the case of SYED YAKOOB v. K.S. RADHAKRISHNAN AND OTHERS, AIR 1964 SC 477, the Supreme Court has indicated in a matter pertaining to the State Transport Appellate Tribunal that it had ignored material circumstance that was germane to the question of public interest. It was further held that if the same had been placed before the authorities concerned and if the same was ignored or not investigated into by the said authorities then the High Court would have certainly had jurisdiction under Art.226 of the Constitution of India to quash the order. This was described to be an interference where an action is vitiated by an error of law on the face of the record.

63. As to what would be the scope of interference under Art.226 of the Constitution, a Full Bench of the Allahabad High Court, while answering a reference, in the case of NANHA AND OTHERS v. DEPUTY DIRECTOR OF CONSOLIDATION, KANPUR AND OTHERS, AIR 1976 All. 91 held as under:

"16. Since the High Court does not under Article 226 sit in appeal. It insists that the inferior Court of Tribunal should consider all relevant aspects and evidence. If this is not done, manifest error of law becomes apparent.

The High Court then further considers whether the omission by the inferior court is so blatant or palpable that failure of justice has resulted.

17. Our answer to the question referred to us is-

"If it appears that a court of fact has in substance based its findings on no evidence or that its finding is perverse in the sense that no reasonable person could possibly come to that conclusion or that it erroneously ignores a vital plea or material evidence which affects the result, a manifest error or law apparent on the face of the record leading to failure of justice can be said to be established. But if a court of a tribunal bases its finding on a consideration of all relevant evidence, but an appellate or a revisional court or tribunal while affirming the finding does not refer to some material or contrary evidence in its order it cannot be said that it has been ignored from consideration so as to entitle the High Court to interfere under Article 226 of the Constitution."

64. The latest judgment that we could lay our hands on is by the Apex Court in the case of GENERAL MANAGER, ELECTRICAL RENGALI HYDRO ELECTRIC PROJECT, ORISSA AND OTHERS v. GIRIDHARI SAHU AND OTHERS, reported in (2019) 10 SCC 695 (Paragraph 28), where the Apex Court, after tracing most of the judgments referred to hereinabove reaffirmed the said principles and also held that a finding of fact which is not supported by any evidence would be perverse and would constitute an error or law enabling a Writ Court to interfere in a Writ of Certiorari.

65. There is a legal debate raised in this case about the issuance of a notice, which the appellant alleges that even if it was issued, the same was in the name of a dead person, namely his father, who had died in 1961.

66. Death brings about an extinction of human life. The same denotes lifelessness, which is an inanimate state denoting the complete absence of life from a body. Once life terminates, the person is no longer in physical existence.

67. It is in this context that we have to understand an intimation being given through a notice and being despatched, contending that the notice had been issued and was served. A notice is an information concerning a fact actually communicating to a party through an authorized person, or received by a person from a proper source, or otherwise presumed in law to have been acquired by him, which, in that case, would be recorded as equivalent to knowledge. The receipt of information through a notice is the tendering of a fact about which the person concerned may have been ignorant before. The purpose of a notice has diverse affects, as the notice to whom is tendered in legal parlance is made subject to some action or charge or information to avoid any prejudice being caused to him. In some cases, and according to the statute applicable, the notice also takes a certain form containing descriptions that are required to be contained in a notice to enable a person to be informed about such facts. Any inaccuracy in the notice can also result in non-service, for example, the correct address having been not mentioned therein. Even otherwise, the purpose of notice, if wrongly reflected, can cause prejudice to a person. The purpose of a notice, therefore, is to enable the receiver to meet any encumbrance that might follow on no response being given to a notice. In effect, a notice is a legal instrument to convey knowledge. It is, therefore, a positive and express act.

68. A notice can be actual, constructive, implied, or if knowledge can be inferred from circumstances, the same can also amount to a notice. It is, therefore, well known that the statutes itself prescribe a mode of notice and a particular form of procedure. The tendering of a notice is not a mere procedure, but it is one of the steps of compliance of the principles of natural justice that is engrained in Article 14 of the constitution of India.

69. At times, non service of notice and proceedings being taken ex-parte are declared to be non est and a nullity, as the proceedings may have been conducted without any form of notice or opportunity to enable the person affected to context the notice. The issuance of a notice is, therefore, not an empty formality, but is a vital communicating link in a legal process, where it ensures fairness. This fairness of procedure, particularly in matters of deprivation of life, liberty and property, are well acknowledged and any prejudicial violation thereof cannot be ignored. This is the underlying principle of

audi alteram partem to ensure compliance of Principles of Natural Justice.

70. We may also point out that in matters of compulsory acquisition of land either for compensation or even otherwise, a notice on a co-tenure holder may not amount to notice on all the co-tenure holders unless it is established that the others had knowledge of the proceedings through a proper procedure. Even if the other co-tenure holders, who are the purchasers, are treated to have been put to valid notice or even if one of the co-tenure holders had appeared during the enquiry of the award proceedings, the same cannot ipso facto establish that the aggrieved person was actually aware of the proceedings and had knowledge of the same, yet he deliberately absented to attend the proceedings.

71. In this regard, there are certain decisions which deserve to be taken notice of and are of relevance in the event such a point is required to be decided, if the appellant's claim is found to merit consideration.

72. A Full Bench of this Court in the case of P.C.Thanikavelu v. The Special Deputy Collector for Land Acquisition, Madras and others, AIR 1989 Mad 222, considered the issue of the importance of a notice under Section 5A of the 1894 Act. The Full Bench also noticed that in terms of Section 55 of the 1894 Act, Rules were framed for the publication of notice. While considering the same, the Full Bench also observed as under in paragraph (6):

"6. It is not in dispute that in all cases where emergency provisions are not invoked and an enquiry under Section 5A of the Act is contemplated, the Collector causes individual notices to be served on every person known or believed to be interested in the land to be acquired. Normally, such notices are sent to persons whose names are found recorded in the revenue records as persons interested. But in several cases it may transpire that persons whose names are found recorded in the revenue records as interested persons may cease to have such interest by reason of transfers of the holding or otherwise. Nevertheless, no mutation of names in the revenue records in favour of persons who have become interested in the land might have been effected.

The result is that the Collector may cause individual notices to be served only on those persons whose names are found in the revenue records, but who have ceased to be interested in the land. The result is not far difficult to see. Such persons who have ceased to be interested in the land may not respond to the notice, nor would they care to participate in the enquiry to be held under Section 5A of the Act. In such cases, the statutory enquiry under Section 5A of the Act which has not been dispensed with, would be completed without affording a reasonable opportunity to the persons who have an existing right in the land under acquisition. Though it is incumbent upon the Revenue to keep their records up to date by effecting mutation of names reflecting the actual state of affairs by showing the persons really interested in the land in their records, yet in a few cases it may so happen that the revenue records are not made up to date and the person who is really interested in the land may not receive any notice from the Collector for the enquiry under Section 5A of the Act. In such cases, if it is brought to the notice of the Collector by the erstwhile land owner or by any other person including the present owner thereof, of the names of interested persons, the Collector as a statutory functionary cannot decline to afford an opportunity to the person who is really interested in the land and, close the enquiry. When such information is brought to the notice of the Collector, it is needless to say that the principles of natural justice enjoin upon him an obligation to issue notice to the person who is found to be really interested in the land even though his name may not be found entered in the revenue records. It is true that the Government has the prerogative to acquire lands belonging to individuals for a public purpose sanctioned under the theory of 'eminent domain'. But the rule of law which governs and controls the executive functions in the thread that runs through the fabric of constitutional democracy, the rule of law behoves the Government to act fairly and reasonably and the principles of natural justice are the quintessence of such fair play and

reasonableness. The decision reported in *Padmavathi v. State of Tamil Nadu* (1978) 91 MLW 80 does not reflect the true statement of law. The Supreme Court has held in *Swadeshi Cotton Mills v. Union of India*, MANU/SC/0048/1981 : [1981]2SCR533 that even in the absence of express reference to observance of principles of natural justice, such principles should be followed whenever it affects the rights of parties. It cannot be gainsaid that when the lands of an individual are acquired, albeit he may be paid compensation, his civil rights may be affected. It is therefore elementary that, to be consistent with the principles of natural justice, such a person should be put on notice before his lands are acquired and his objection heard and considered. The enquiry contemplated under Section 5A of the Act would be full and complete only when the person who is really interested in the land is put on notice. But, at the same time, it is made clear that individual notice is mandatory only to those persons whose names are found in the revenue records or who are found by the Collector as persons interested on information received through reliable source."

73. A learned Single Judge in the case of *Asiya Mariyan v. The Secretary to Government of Tamil Nadu*, 2000 (4) CTC 125, held as under:

"12. The perusal of both the Notifications show that the respondents have not applied their mind and published the same hurriedly and mechanically.

13. In a matter like this, particularly, when the Government wants to acquire the land of citizen for public purpose, it is expected that details regarding ownership, extent, Survey Number etc. are to be furnished in clear terms in all the notifications. I have already demonstrated as to how the name of the petitioner is wrongly described both in 4 (1) Notification and Section 6 Declaration.

14. I hold that misdescription of material particulars in the Notifications would go to show that acquisition proceedings suffer from total non-

application of mind and the petitioner was denied her opportunity to make effective objection as required."

74. The principle of service of notice being the essence of the fairness of the acquisition proceedings was reiterated by a learned Single Judge in the case of V.Devaraj and others v. The State of Tamil Nadu and others, 2003 (4) CTC 134.

75. The Apex Court also took exception to proceedings being undertaken against a dead person in the case of I.I.S.Employees' House Building Cooperative Society Limited v. State of Karnataka and others, (2005) 12 SCC 483. The said judgment records that the notice had been issued to a dead person and they went on to observe in paragraph (6) as follows:

"6. It is well established that a notification under S.4 of the Act is a preliminary notification making it known to the landowners of the intention of the Government to compulsorily acquire the land notified therein. The landowners can file objections under S.5A of the Act (unless dispensed with by invoking the provisions of S.17 of the Act) to the proposed acquisition. The landowners are required to be given a personal hearing as well. After hearing the landowners and considering the objections filed to the proposed acquisition, final notification under S.6 of the Act is issued by the Government. While issuing the final notification, the Government can leave a part of the land from the proposed acquisition or acquire the entire land notified in the notification issued under S.4. The land notified under S.6 of the Act would be the acquired land. In the notification issued under S.4, the land sought to be acquired was in Survey No. 90 / 3 belonging to Respondent 2, whereas the same does not find mention in the notification issued under S.6 of the Act. The contention of the appellant is that Survey No. 91/3 instead of 90/3 has been mentioned due to a typographical error or printing mistake. No corrigendum has been issued by the State of Karnataka correcting the error or mistake, as alleged. This contention was raised before the High Court as well which has been rejected by the High Court by giving cogent

reasons. We agree with the same.

76. Another Division Bench of this Court reiterated the same principle in the case of Savithiriammal v. The State of Tamil Nadu and another, 2006 (3) MLJ 389.

77. A learned Single Judge in the case of Goundathal and others v. Government of Tamil Nadu and others, (2008) 3 MLJ 1339, following the aforesaid decisions held that the initial illegality in the notification will result in an invalid award. In that case, the writ petitioner had appeared for the award enquiry, but following the Full Bench decision, referred to herein above, the learned Single Judge went on to hold that the acquisition proceedings were vitiated.

78. The same learned Single Judge reiterated the said position in Leelavathi v. The State of Tamil Nadu, 2009 (3) CTC 490.

79. A Division Bench of this Court in the case of J.Doraibabu and another v. State of Tamil Nadu and others, 2011 WLR 505, found that the notice sent to the person concerned had been endorsed as left, whereas, as a matter of fact, he has died. The Court commented upon it and held that the notice issued in the name of dead person is non est in law.

80. On the other hand, a Division Bench of this Court in Jayalakshmi v. The District Collector and others [Judgment dated 29.7.2009 in W.A.No.550 of 2009] came to the conclusion that the normal principle that the proceedings against the dead person is a nullity, cannot be imported in terms of the 1894 Act, unless it is established that the factum of death was not brought to the notice of the acquiring authority at the appropriate stage.

81. Another Division Bench decision in G.S.Gopalakrishnan and others v. Government of Tamil Nadu and others, 2006 (4) CTC 757, which has been relied on by the learned counsel for the respondents, also holds that the notice issued in the name of a dead person would not be a nullity and it observed in paragraphs (15) to (17) as under:

"15. Thus, it could be seen from the law laid down by the Apex Court that a distinction was always maintained between judicial/quasi-judicial proceedings and other proceedings. In so far as the scheme of the Land Acquisition Act, 1894 is concerned, it envisages various types of notices at various stages. Section 4(1) notification is required to be gazetted followed by publication in two dailies having circulation in the locality and a local publication. The opportunity provided under Section 5-A is actually for 'persons interested' and not necessarily the land owners. This enquiry is followed by a Section 6 declaration and the Act thus provides innumerable opportunities to "persons interested" in objecting to the acquisition. The Land Acquisition Act does not limit its reach to "owners of land", but enables any person interested in the land to have a say. Moreover, the liability of the acquiring authorities to serve a notice of enquiry is also restricted only to persons whose names find a place in the revenue records. When the Act does not even make it obligatory for the acquiring authorities to conduct a roving enquiry to find out the actual owners, beyond the names reflected in the revenue records, it cannot be expected of the acquiring authorities to find out if the patta holder is alive or dead.

16. In any event, in the case on hand, the Award itself was passed on 19.12.1991 and as per the counter-affidavit filed by the respondents in the writ petition, the possession was also taken on 13.8.1992. The appellants 1 to 3 herein purchased the plots much after the Award enquiry under the sale deeds dated 26.10.1994, 28.9.1992 and 24.2.1993 respectively. Therefore, the appellants, who are subsequent purchasers, are not entitled to maintain a challenge to the acquisition proceedings in view of the law laid down by the Supreme Court in U.P. Jal Nigam v. Kalra Properties (P) Ltd. MANU/SC/0310/1996 : [1996]1SCR683 .

17. Therefore in our considered opinion, the normal principle that proceedings against a dead person are 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 acquiring authorities at the appropriate stage. Hence, the order of the learned Judge does not call for any interference and the writ appeal is dismissed without any order as to costs. Consequently, connected WAMP is also dismissed."

82. There are three other decisions of the Apex Court that need a reference. The first decision is in the case of MAY GEORGE v. SPECIAL TAHSILDAR AND OTHERS, (2010) 13 SCC 98. In that case on the facts that were traversed the Court held that non-compliance with Sec.9 of the Land Acquisition Act, 1894 was neither fatal nor did it visit any penalty and hence, it was held that it was directory. However, in the case of J&K HOUSING BOARD AND ANOTHER v. KUNWAR SANJAY KRISHAN KAUL AND OTHERS, (2011) 10 SCC 714, it was held, after noticing the above mentioned judgment, that there was a mandatory nature of compliance with all three requirements of modes of notice of acquisition as the consequences might end up in violation of Art.300-A of the Constitution. The third decision that is worth noticing is that in the case of KULSUM R. NADIAWALA v. STATE OF MAHARASHTRA AND OTHERS, (2012) 6 SCC 348. We are mentioning the above said three cases for the sake of reference only as the same require consideration in the even the matter is required to be examined from this point of view.

83. We are not entering into these questions, in as much as the matter is being remitted back to the learned Single Judge for the reasons given herein before, particularly as mentioned in paragraphs (49) and (50) of this judgment, and herein after, as also the law referred to herein above, and, therefore, it will be open to the parties to contest this position on the basis of the said law in the event the facts of the case require such an assessment.

84. In the light of what has been deliberated by us, we are of the considered opinion that the learned Single Judge did not examine any of these factual or legal issues and now with the disclosure of certain facts that have been placed before us, we find it expedient, and in the interest of justice, that the same should be allowed to be contested before the learned Single Judge with appropriate pleadings being placed on record. The learned single Judge, while dismissing the Writ Petition does not appear to have appreciated the aforesaid principles and non-adherence thereto vitiates the impugned judgment. Further, the respondents were also not diligent in even filing a counter-affidavit before the learned single Judge which factor has also been overlooked in the impugned judgment. The approach adopted by us is in order to uphold the principles underlying the exercise of writ jurisdiction, which go to the extent of obliging us to prevent any miscarriage of justice. Learned counsel appearing for all the parties agree that in the light of the above, the matter deserves to be remitted back to the learned single Judge. Accordingly, with their consent, we are proceeding to dispose of this Appeal.

85. We, therefore, allow this appeal and set aside the impugned judgment dated 24.6.2019 as also the order passed on the Review Application dated 26.8.2019, and restore the writ petition to its original number. Learned counsel for the parties agree that the matter be disposed of within a reasonable time, as the acquisition of land is in relation to a project which may be held up unnecessarily due to this long drawn litigation. We, therefore, request the learned Single Judge to hear out the writ petition finally and if possible decide the same, preferably within three months. Even though the learned Advocate General and the learned counsel for the Housing Board have opposed the continuance of the stay order, we find it expedient that since the appellant had an interim order in the writ petition since 26.2.2001, as modified on 5.2.2003 regarding possession, and which continued throughout the pendency of the writ petition, the status quo as existing today should be maintained. We accordingly direct that the status quo as exists today shall be maintained till the matter is disposed of finally by the learned single Judge. The appellant as well as the respondents may file their composite set of affidavits and accompanying documents before the learned Single Judge within ten days from today. The matter may be listed before the learned Single Judge having the roster after 15 days. The

learned Single Judge shall proceed to decide the matter afresh on the basis of whatever material is placed before him independently. We should not be construed to have rendered any opinion on the merits or otherwise of the claim of the appellant or the stand of the respondents. No costs. Consequently, C.M.P.Nos.7390 of 2020 and 24418 of 2019 are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

sasi

To:

1. The Secretary to Government
Government of Tamil Nadu
Housing and Urban Development Department
Chennai - 600 009.
2. The Special Tahsildar (Land Acquisition)
Housing Scheme No.3
Coimbatore.
3. The Executive Engineer and
Administrative Officer
Coimbatore Housing Unit
Tamil Nadu Housing Board
Coimbatore.

Copy to

The Section Officer,
Writ Section, High Court,
Madras.
(For Posting the W.P)

+1 cc to Mr.G.Sankaran Advocate sr25079

W.A.No.3887 of 2019

br(co)
aa29/07/2020