



W.P. Nos.21027-21028/2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
20.09.2022	16.11.2022

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NOS.21027 & 21028 OF 2008

AND

M.P. NOS. 1 OF 2008 (2 Nos.)

M.P. NOS. 1 OF 2015 (2 Nos.)

M.L.M.Sarojini Achi

.. Petitioner in WP 21027/2008

M.L.M.Ramanathan

.. Petitioner in WP 21028/2008

- Vs -

1. State of Tamil Nadu rep. by
Secretary to Government
Revenue Department
Fort St. George, Secretariat
Chennai 600 009.

2. The Special Commissioner &
Commissioner of Reforms
Government of Tamil Nadu
Chepauk, Chennai 600 005.

3. The Assistant Commissioner of Urban
Land Ceiling & Competent Authority
Of Urban Land Ceiling
Government of Tamil Nadu



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T.Nagar, Chennai 600 017.

.. Respondents in both petitions

W.P. No.21027 of 2008 filed under Article 226 of the Constitution of India praying this Court to issue a writ of Declaration declaring that all the proceedings initiated under the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978, in respect of the lands of an extent of 920 sq.mtrs., comprised in T.S. No.32/3, Block No.19, Puliur Village, as abated.

W.P. No.21028 of 2008 filed under Article 226 of the Constitution of India praying this Court to issue a writ of Declaration declaring that all the proceedings initiated under the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978, in respect of the lands of an extent of 147.20 sq.mtrs., comprised in T.S. No.32/2, Block No.19, Puliur Village, as abated.

For Petitioners : Mr. AR.L.Sundaresan, SC, assisted by
Mr. AR. Karthik Lakshmanan, for
M/s.AL.Gandhimathi

For Respondents : Mr. U.Bharanidharan, AGP

COMMON ORDER



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The present petitions have been filed to hold the acquisition of lands under the Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978, (for short 'the Act') as having abated on coming into force of the Repealing Act, as the lands have not been taken possession of by the respondents in accordance with the provisions of the Act.

2. It is the case of the petitioners that a notice u/s 9 of the Act was issued with a draft statement calling upon the petitioners to submit objections, if any, and on receipt of the said notice, the petitioners did not raise any objection, but accepted the proposal for acquisition and even in the personal enquiry, which was held on 3.1.1986, the petitioners' authorized representative appeared and submitted that they have no objections to the contents of the draft statement issued u/s 9 (1) of the Act and agreed to surrender the excess vacant land to the Government as per rules.

3. It is the further case of the petitioners that pursuant thereto, the excess vacant land was assessed and by proceedings dated 18.4.1986, order was passed acquiring the excess vacant land. It is the further case of the petitioners that



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inspite of the acquisition, no steps were taken to take possession of the lands and a notice u/s 11 (3) in form 7 as per Rule 10 (3) was issued calling upon the petitioners to surrender vacant possession of the lands to the Tahsildar within 30 days from the service of notice. It is the further case of the petitioners that though the said notice was issued as early as in the year 1987, however, physical possession has not been taken by the Government till date nor the compensation amount was paid and that the petitioners are in continuous possession and enjoyment of the lands.

4. It is the further case of the petitioners that the Act was repealed vide Repealing Act, 1999, which came into effect on 16.6.99 and as per Section 3 (2) of the Repealing Act, since possession has not been taken till date, acquisition proceedings stood lapsed. Therefore, the petitioners are constrained to file the present writ petitions to declare the acquisition as having abated.

5. Learned senior counsel appearing for the petitioners submitted that though the petitioners have not objected to the acquisition and had accepted the draft statement and offered to surrender possession of the excess lands, though



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notice u/s 11 (3) of the Act was issued in Form 7, however, possession as provided under the Act has not been taken. It is the further submission of the learned senior counsel that inspite of the fact that there is no objection on behalf of the petitioners to the acquisition, it is necessary for the respondents to issue notice u/s 11 (5) and take possession of the lands and in the event of the land owners not delivering possession, forceful possession ought to be taken u/s 11 (6) of the Act by resorting to the procedure provided thereto.

6. It is the submission of the learned senior counsel that the procedure contemplated u/s 11 (5) has not been followed and possession has not been taken and mere issuance of notice u/s 11 (3) would not suffice to hold that possession has been taken. It is the further submission of the learned senior counsel that a notice u/s 11 (5) is mandatory and calling for objection is a pre-requisite and non-compliance of the same vitiates the acquisition. The fact that the petitioners are still in physical possession of the lands would negate the possession alleged to have been taken pursuant to the notice u/s 11 (3) as the stand of the petitioners to not object to the acquisition of the land cannot be held to have led to the possession of the lands handed over to the petitioners.



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7. It is the further submission of the learned senior counsel that taking possession would not be in respect of land and building and even if it is mere land, possession in the manner known to law ought to be taken and in the absence of the respondents taking possession by following the procedure contemplated under the Act, in view of the Repealing Act, the acquisition proceedings stands abated.

8. In support of his submissions, learned senior counsel relied upon the following decisions :-

- i) State of U.P. & Ors. – Vs – Hari Ram & Ors. (2013 (4) SCC 280); and*
- ii) Gjanan Kamlya Patil – Vs – Addl. Collector & Competent Authority (ULC) & Ors. (2014 (12) SCC 523)*

9. Per contra, learned Addl. Government Pleader appearing for the respondents relying upon the counter filed by the respondents submitted that pursuant to the issuance of notice u/s 9 (4) of the Act and the draft statement



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thereunder u/s 9 (1), the petitioner did not object to the proposed acquisition of excess vacant land and in the enquiry held on 20.1.1986, the authorized representative of the petitioners also stated no objection to acquire the excess land and, therefore, the competent authority passed orders u/ 9 (5) of the Act for acquisition of excess lands and final statement u/s 10 (1) was issued on 16.3.1987, which was received by the land owner on 27.7.1987.

10. It is the further submission of the learned Addl. Government Pleader that notification u/s 11 (11) was published on 31.8.1987 and notification u/s 11 (3) of the Act was issued on 30.11.1987 and published in the Government Gazette dated 6.1.1988. It is the further submission of the learned Addl. Government Pleader that notice u/s 11 (5) of the Act was issued on the petitioners on 16.2.1988, which was received by the petitioners and possession of the excess land was taken by the authorities on 18.8.1989. It is the further submission of the learned Addl. Government Pleader that the revenue records were mutated to carry the name of the Government and the amount payable u/s 12 (6) was determined on 27.8.1990. Though the petitioners were called upon to come and receive the instalment, however, as the petitioners did not turn up,



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the same was kept in revenue deposit and the further monthly instalments were also kept in revenue deposit.

11. It is the further submission of the learned Addl. Government Pleader that the petitioners having not objected to the proceedings under the Act and having accepted to part with the lands and also partaken in the enquiry proceedings and not objected to the acquisition, the petitioners having received all the notices, including the notice to hand over possession u/s 11 (5) of the Act and possession having been taken from the petitioners on 18.8.1989 and the revenue records having been mutated long back and compensation also having been determined, it is not open to the petitioners, who had kept silent for almost two decades, to come before this Court and claim that they are still in actual possession of the property.

12. It is the further submission of the learned Addl. Government Pleader that once the petitioners have not objected to the acquisition of the property at any stage of the proceedings and the petitioners having received the notice u/s 11 (5) to hand over possession and the excess land not being land with building,



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possession was taken by the respondents and there was no necessity to resort to the provision u/s 11 (6) as there was no requirement for taking forceful possession, as no person was in actual occupation of the said lands, which required the use of force to put away the said persons from the said lands.

13. It is the further submission of the learned Addl. Government Pleader that upon issuance of notice u/s 11 (3), as there was no objection at any stage of the proceedings by the petitioners for the acquisition of the lands, it necessarily follows that the lands stood vested with the Government and upon vesting, notice having been issued u/s 11 (5), which has been received by the petitioners, in view of the consistent stand of the petitioners that they are not objecting to the proceeding for acquisition, possession of the lands were taken over and revenue records mutated in the name of the Government. Such being the case, the revenue records having been mutated two decades back and compensation amount was also deposited in revenue deposit, the stand of the petitioners that the acquisition proceedings has lapsed would no longer survive, as possession of the property has been taken over even prior to the repeal of the Parent Act.



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14. It is the further submission of the learned Addl. Government Pleader that if at all the petitioners claim that they are in possession of the acquired land, which stood vested and of which possession has already been taken by the Government, the possession alleged to be at the hands of the petitioners could only be considered to be a deliberate violation and encroachment of the petitioners upon Government lands, as post acquisition under the Act, the lands stood vested with the Government and, therefore, the petitioners cannot claim any right over the said lands.

15. It is the further submission of the learned Addl. Government Pleader that Section 3 of the Repeal Act would not in any way come to the aid of the petitioners for the reason that upon taking possession of the lands, the revenue records were mutated to reflect the name of 'Government of Tamil Nadu' as the owner of the land more than a decade before the coming into force of the Repeal Act. In such a backdrop, the acquisition of the land would be saved u/s 3 (1)(a) of the Repeal Act and will not lapse u/s 4 of the Repeal Act. It is the further submission of the learned Addl. Government Pleader that not only possession of the lands have been taken before the coming into force of the Repeal Act, but



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compensation amount has also been deposited in revenue deposit as the petitioners did not come forward to claim the compensation and, therefore, it is not open for the petitioners to claim that compensation has not been paid, which would show that possession has not been taken, as the same is not established through any materials.

16. It is the further submission of the learned Addl. Government Pleader that the petitioners/land owners had accepted the acquisition proceedings without filing any objections and even during the process of acquisition, no reference has been made to a tiled house in the excess land sought to be acquired and there is no reference about the same in the Land Delivery Receipt and, therefore, the presence of a tiled house at this point of time by the petitioners is nothing but an ingenious attempt on their part to take advantage of the Repeal Act to get the benefit of Section 4. Learned Addl. Government Pleader therefore, prayed for dismissal of the aforesaid writ petitions.

17. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials



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available on record. In view of the fact that the whole case revolves around factual material, with regard to issuance of notice and taking possession of the land by following the procedures contemplated under the Act, this Court to satisfy itself as to whether the respondents have followed the procedure and also the provisions of the Act, called for the entire file and perused the same.

18. It is to be pointed out that the lands which are sought to be acquired are excess vacant lands at the hands of the respective petitioners, which has been duly admitted by them. Nowhere, have the petitioners raised any whisper that a tiled house was existing in the subject land and even as per the affidavit of the petitioners, the subject lands are excess vacant lands. Therefore, the present stand of the petitioners that there exists a tiled house in the said lands cannot be accepted, as it could only be treated to be an afterthought cooked up by the petitioners for the purpose of getting their lands freed up from the acquisition.

19. A perusal of the original records reveal that notice u/s 9 (4) along with draft statement u/s 9 (1) of the Act was issued on 9.10.1985 calling for objection, if any for the proposed acquisition of excess vacant land and on receipt of the



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same, the petitioners, who are the land owners did not object to the said acquisition. Enquiry notice was served to the petitioners which resulted in the authorized representative of the petitioners attending the enquiry, wherein also no objections was raised by the petitioners to the surrender of the excess vacant land.

20. The original records further reveal that notification u/s 11 (1) was issued on 31.8.1987 and published in the Government Gazette on 23.9.1987. Further 11 (3) notice was issued on 30.11.1987 and, thereafter, notice u/s 11 (5) was issued to the land owners, which was received on 16.2.1988. Therefore, it is clear from the above that there has been due compliance of the provisions of Sections 11 (1), (3) and (5) of the Act.

21. The main ground on which the petitioners claim lapsation of the acquisition is that there is no due compliance of Section 11 (5) and possession has not been taken and mere paper possession would not be suffice to hold that possession has been taken in the manner known to law. To appreciate the aforesaid contention, it is but necessary for this Court to refer to the relevant



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provisions to find out whether possession, as mandated under the Act has been taken. The relevant provisions of the Act are quoted hereunder for better appreciation:-

“11. (1) As soon as may be after the service of the statement under section 10 on the person concerned, the competent authority shall cause a notification giving the particulars of the vacant land held by such person in excess of the ceiling limit and stating that-

(i) such vacant land is to be acquired by the concerned State Government; and

(ii) the claims of all persons interested in such vacant land may be made by them personally or by their agents giving particulars of the nature of their interests in such land, to be published for the information of the general public in the Official Gazette of the State concerned and in such other manner as may be prescribed.

(2) After considering the claims of the persons interested in the vacant land, made to the competent authority in pursuance of the notification published under sub-section (1), the competent authority shall determine the nature and extent of such claims and pass such orders as it deems fit.

(3) At any time after the publication of the notification under subsection (1), the competent authority may, by notification published in the Official Gazette of the State



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concerned, declare that the excess vacant land referred to, in the notification published under sub -section (1) shall, with effect from such date as may be specified in the declaration, be deemed to have been acquired by the State Government and upon the publication of such declaration, such land shall be deemed to have vested absolutely in the State Government free from all encumbrances with effect from the date so specified.

(4) During the period commencing on the date of publication of the notification under sub-section (1) and ending with the date specified in the declaration made under sub-section (3)-

(i) no person shall transfer by way of sale, mortgage, gift, lease or otherwise any excess vacant land (including any part thereof) specified in the notification aforesaid and any such transfer made in contravention of this provision shall be deemed to be null and void; and

(ii) no person shall alter or cause to be altered the use of such excess vacant land.

(5) Where any vacant land is vested in the State Government under sub-section (3), the competent authority may, by notice in writing, order any person who may be in possession of it to surrender or deliver possession thereof to the State Government or to any person duly authorised by the



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State Government in this behalf within thirty days of the service of the notice.

(6) If any person refuses or fails to comply with an order made under sub-section (5), the competent authority may take possession of the vacant land or cause it to be given to the concerned State Government or to any person duly authorised by such State Government in this behalf and may for that purpose use such force as may be necessary."

22. From a reading of the aforesaid provisions, it is evident that sub-section (1) provides that where final statement is served on the person concerned, notification shall be caused by the competent authority with respect to the vacant land held by such person in excess of ceiling limit. If any claim is raised by the interested person, then the competent authority shall consider the same u/s (2) and pass orders. Sub-section (3) provides for the vesting of the said lands, on the Government from the date specified in the Declaration and that upon the Declaration being issued the said lands would be deemed to have absolutely vested in the Government free of all encumbrances. Sub-section (4) provides that commencing the date of publication of notification under sub-section (1) ending with the Declaration made under sub-section (3), the land



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owner shall not cause any encumbrance. Upon vesting of the lands with the State Government under sub-section (3) the competent authority, on notice, shall order the person interested to surrender and deliver possession of lands within thirty days of service of notice as provided under sub-section (5) and only where the person refuses or fails to comply with the order made under sub-section (5), the competent authority has to resort for forceful possession under sub-section (6).

23. In the case on hand, as detailed above, there is no non-compliance of the provisions under Sections 11 (1) to 11 (5). Equally, the petitioners have not alienated or encumbered the subject lands, except for raising a plea in the present writ petitions that there is a tiled house in the subject property, which has been negated by this Court. The compliance of the provisions have not been put to issue, but for only Section 11 (5), in that it is the claim of the petitioners that possession has not been taken. To impress on the said contention, reliance is placed on the decisions in *Hari Ram's case* and *Gajanan Kamlya Patil's case (supra)* and submitted that mere vesting of the lands on the Government u/s 11 (3) would not confer automatic possession u/s 11 (5) and



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that the provisions of Section 11 (5) stipulate a notice and, thereafter, calling upon the petitioners to deliver possession of the property, which has not been done and, therefore, possession having not been taken, the acquisition would lapse on account of the coming into force of the Repeal Act.

24. Though the aforesaid contention, on the face of it looks attractive and shows the ingenuity of the argument advanced, but the same cannot be accepted on account of certain facts, which galore even in the affidavit filed by the petitioners in support of the present petition.

25. Though contention aforesaid is advanced, a careful perusal of the affidavit of the petitioners in the present petitions reveal that upon notice issued u/s 9 (4) and issuance of draft statement u/s 9 (1), the petitioners, without any demur, have accepted the acquisition process and accepted to surrender the lands. In fact, it is the categorical statement of the petitioners in the affidavit that *“we have no objections to the contents of the draft statement under Sec.9, clause (1) of the said Act and agreed to surrender excess vacant land to the Govt., as per the rules”*. Further to the aforesaid stand, the petitioners have not



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filed any objections to the notice u/s 9 (4) and in the enquiry, the authorized representative of the petitioners have also appeared in the enquiry and submitted that the petitioners have no objections to surrender the excess vacant land. This clearly shows that the petitioners have accepted the acquisition and have agreed to surrender the lands, which are shown to be excess in the final statement issued u/s 10 of the Act. All the aforesaid facts stand established and substantiated by the materials found place in the original records, which have been placed before this Court, which this Court has also scanned through.

26. Following the aforesaid stand of the petitioners, the respondents have gone ahead with the issuance of Declaration u/s 11 (3), upon which the lands stood vested with the Government free of all encumbrances. There can be no quarrel with regard to vesting of lands with the Government. Further to the above, notice u/s 11 (5) of the Act has been issued to the petitioners, which has also been duly received by the petitioners on 16.2.1988. The whole issue of the petitioners is only at this point, where it is claimed that possession has not been taken in the manner known to law.



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27. A careful perusal of Section 11 (5), extracted supra, reveals that where any excess vacant land vested in the State Government under sub-section (3), the competent authority, upon notice in writing order any person who may be in possession of it to surrender or deliver vacant possession thereof to the State Government within thirty days of service of notice. There is no dispute on the factum of issuance and receipt of notice u/s 11 (5) and the same is also borne out by documents, as is found in the original file. Therefore, there is due compliance of Section 11 (5). It is the admitted case of the petitioners as is seen from the affidavit filed in support of the writ petitions that the lands are excess vacant lands, which have been notified for acquisition under the Act and the petitioners have not placed any objections with regard to the said acquisition. No objection has been filed for the notice issued u/s 9 (4) as also the draft statement u/s 9 (1). Equally, when the petitioners' authorized representative appeared for the enquiry, a statement has been made that the excess lands, which have been notified for acquisition, would be surrendered to the Government. Therefore, there being no qualms raised by the petitioners with regard to acquisition and the petitioners, on their own volition, having accepted to surrender the lands



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even at the time of the enquiry, the stand of the petitioners that possession has not been taken u/s 11 (5) of the Act is only a fanciful argument.

28. When Section 11 (5) of the Act only mandates issuance of notice and an order to the land owners/persons interested to surrender and deliver possession of the lands to the State Government upon vesting, the petitioners, who are the land owners and persons interested in the property, having shown their willingness to part with the excess vacant land and to surrender the same to the Government even at the time of enquiry, the issuance of notice u/s 11 (5) of the Act should be held to be suffice to hold that possession has been given by the petitioners to the competent authority upon receipt of notice.

29. It is further borne out by records that possession of land has been taken and land delivery receipt has also been issued for taking possession of the lands. Further, in the land delivery receipt, as already aforesaid, there is no mention about any tiled house in the said subject lands and at no point of time there was a whisper from the petitioners about the presence of a tiled house in the subject property. That being the case, the lands being excess vacant lands,



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which were notified for acquisition, upon which there was no objection for acquisition and the petitioners having come forward to willingly surrender the subject lands, the issuance of notice u/s 11 (5) would suffice to hold that the petitioners have parted with the lands by giving possession of the same to the competent authority, as it has been the consistent stand of the petitioners that they would surrender possession of the excess vacant land.

30. The stand of the petitioners that possession has not been taken by the respondents and that they are still in possession of the property is nothing but a faint attempt made by the petitioners to clutch to the subject property. Further, there is no necessity for the respondents to resort to the procedure contemplated u/s 11 (6) of the Act, as the subject lands are vacant lands and no person is in occupation of the said lands. Therefore, use of force to dispossess the persons or to evict the persons from the said property does not arise. In view of the no objection raised by the petitioners to part with the lands, which are quantified as excess and also the stand of the petitioners to surrender the vacant lands on their own volition, the lands being vacant, notice u/s 11 (5) of the Act was issued and, thereafter, possession has been taken by the



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respondents, which is evidenced by the Land Delivery Receipt. Such being the case, the stand of the petitioners that they are still in possession of the property is only a myth and cannot form the basis of any affirmative consideration at the hands of this Court.

31. In the decision in *Gajanan Kamlya Patil (supra)* the issue pertains to deemed vesting and the procedure for taking over possession of the acquired lands, which were declared as surplus. The said decision would not be of any assistance to the petitioners for the simple reason that upon vesting of the lands u/s 11 (3), notice u/s 11 (5) has been given and possession has also been taken which is established through the Land Delivery Receipt.

32. In the decision in *Hari Ram case (supra)*, the issue that was raised before the Hon'ble Apex Court pertained to non-taking of possession before the coming into force of the Repeal Act and in that context the Hon'ble Apex Court held that in the absence of any evidence to show that voluntarily possession was surrendered or that the authorities had taken peaceful or forcible possession of the lands, the respondents had only *de jure* possession before coming into force



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of the Repeal Act and there being no *de facto* possession of lands before execution of possession receipt, respondent cannot hold on to the lands. However, in the case on hand, as stated above, materials have been placed before this Court to show that possession has been taken upon issuance of notice u/s 11 (5) and, therefore, the aforesaid decision cannot be of any assistance to the petitioners.

33. Further, it is also to be pointed out that it is the case of the respondents that revenue records have been mutated upon taking possession of the property and the land owner is shown to be 'Government of Tamil Nadu' in the revenue records. However, the petitioner has not challenged the said mutation of revenue records and not made any attempt to bring it back to their name even after a lapse of ten years from the date of such mutation. No explanation whatsoever has been placed by the petitioners as to why they have not taken any action to have the revenue records mutated in their favour. The said act of the petitioners stares writ large on their face warranting drawal of an adverse inference as well against them.



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34. Further, it is to be pointed out that notice u/s 11 (5) for taking possession has been issued on 16.2.1988 and possession is said to have been taken on 18.8.1989. The Repeal Act came into force only on 16.6.1999. Even for the sake of argument if it is to be accepted that possession has not been taken, the Repeal Act having come into force on 16.6.1999 and the writ petition having been filed only in the year 2008, almost a decade after the repealing of the Act, there is no reason attributed by the petitioners for the delay in coming before this Court claiming lapsation of the acquisition proceedings. Therefore, not only on factual aspects, which are borne out by record confirming the acquisition and taking possession of the lands, but also on the ground of delay, the petitions do not deserve any merit and, accordingly, the relief sought for in these petitions deserve to be rejected.

35. For the reasons aforesaid, both the writ petitions fail and, accordingly, the same are dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

16.11.2022



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Index : Yes / No

Internet : Yes / No

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To

1. The Secretary to Government
Revenue Department
Government of Tamil Nadu
Fort St. George, Secretariat
Chennai 600 009.
2. The Special Commissioner &
Commissioner of Reforms
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3. The Assistant Commissioner of Urban
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Government of Tamil Nadu
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M.DHANDAPANI, J.

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**PRE-DELIVERY ORDER IN
W.P. NOS.21027 & 21028 OF 2008**

**Pronounced on
16.11.2022**