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W.P.No.7494 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2022

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P. No.7494 of 2018

G.Ramalingam

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by the Commissioner & Secretary to Government,
Housing and Urban Development Department,
Fort St.George, Chennai – 600 009.

2.Land Acquisition Officer/Special Tahsildar (L.A.) X.,
Tamil Nadu Housing Board Schemes,
Nandanam, Chennai – 600 035.

3.The Tamil Nadu Housing Board,
Rep. by its Chief Revenue Officer,
Nandanam, Chennai – 600 035.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Declaration, declaring the Land Acquisition proceedings initiated and culminated into passing the Award passed by the 2nd respondent in Award No.2/86 dated 11.04.1986 in respect of the land situated in S.No.39 to an extent of 0.09 cents situated in Porur Village, Maduravoyal Taluk, Tiruvallur District as lapsed as per Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.



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For Petitioner : Mr.K.Sakthivel
For R1 & R2 : Mr.G.Krishna Raja
Additional Government Pleader
For R3 : M/s.A.M.Ravindranath Jeyapal

ORDER

This Writ Petition has been filed seeking for issuance of a Writ of Declaration to declare the Land Acquisition proceedings initiated and culminated into passing the Award passed by the 2nd respondent in Award No.2/86 dated 11.04.1986 in respect of the land situated in S.No.39 to an extent of 0.09 cents situated in Porur Village, Maduravoyal Taluk, Tiruvallur District as lapsed as per Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

2. The case of the petitioner is that the lands comprised in S.No.39 of Porur Village, of an extent of 0.09 cents originally belonged to one S.Chokkalinga Naicker. After the demise of said S.Chokkalinga Naicker, the aforesaid property devolved upon the legal heirs of the said S.Chokkalinga Naicker namely, his wife C.Yamuna Ammal, and his legal heirs. It is stated that the first respondent issued 4(1) Notification by way of G.O.(Ms)No.412, Housing, dated 09.05.1975 and subsequently, issued Declaration under



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Section 6 of the Land Acquisition Act, 1894, in G.O.(Ms.)No.975, Housing, dated 07.06.1978 for acquiring the above said land. The said Yamuna Ammal participated in the land acquisition proceedings and award was passed in her presence in Award No.2 of 1986. Aggrieved by the same, the petitioner's vendor, namely the said Yamuna Ammal filed a Writ Petition before this Court in W.P.No.3991 of 1986, and this Court, by order dated 08.10.1991, quashed the impugned notifications on the ground of vagueness and lack of particulars etc. During the pendency of the said Writ Petition, the petitioner purchased the aforesaid property from the daughter of above said S.Chokkalinga Naicker, by way of a Sale Deed, dated 01.10.1990, when the stay was in force and subsequently the Writ Petition was allowed on 08.10.1991. Against the said order, the State preferred an appeal before this Court in W.A.No.12 of 1994, and the same was allowed in favour of Government on 16.11.1996. Due to the operation of the stay order, the possession of land was not taken from the original land owner, and the petitioner is in continuous possession of the aforesaid property and the compensation amount was also not paid to the owner. Since the compensation was not paid and possession not having taken, the petitioner filed the present Writ Petition before this Court to avail the benefit under Section 24(2) of the Right to Fair Compensation and Transparency in Land



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Acquisition, Rehabilitation and Resettlement Act, 2013. Therefore, the present Writ Petition is filed.

3. The learned counsel for the petitioner submitted that the respondents objected the petitioner's claim, on the ground that the petitioner is the subsequent purchaser. Though the petitioner had purchased the aforesaid property in the year 1990, however, his purchase is perfectly in order. Further, he contented that, when the stay was granted by this Court, during the stay, the petitioner purchased the aforesaid property which is perfectly in order and his purchase is not void in terms of Land Acquisition Act. In support of his contention, he relied upon the decision of the Hon'ble Apex Court reported in **(1997) 5 SCC 777 (Kanoria Chemicals and Industries Ltd., Vs. U.P. State Electricity Board)** and particularly relied on Para 11 as follows:

"11. The learned counsel for the appellants in the appeals before us rely upon the portions underlined in the above passage as a decision supporting their contention that where the operation of Government Order is stayed, no surcharge can be demanded upon the amount withheld. We find it difficult to agree. In our respectful opinion, the underlined portions do not constitute the decision of the court. They merely refer to the fact that the Board itself did not make a demand for surcharge amount in respect of the period covered by stay under its own understanding of the effect of the stayed order granted by the High Court and that it was justified in its opinion. The demand was, the Court pointed out, in respect of the period covered by the order of injunction granted by this Court. This Court held expressly



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that the grant of an injunction does not relieve the consumers of their obligation to pay the charges at the enhanced rates and, therefore, the demand for surcharge/interest for such period is not illegal. The portions underlined cannot be understood as laying down the proposition that in respect of the period covered by the stay, no demand can be made. No such proposition can be deduced from the said passage for the reason that the liability for the said (*sic period*) was not at all in issue in the said decision. Unless put in issue and pronounced upon, it cannot be said that there was a decision on the said issue. There was no *lis* between the parties with respect to the period covered by the stay order of the High Court. If so, it cannot be said that any decision was rendered by this court on the said issue or aspect, as it may be called. We, therefore, agree with the High Court that *Adoni Ginning* cannot be read as laying down the proposition *that the grant of stay of a Notification revising the electricity charges has the effect of relieving the consumers/petitioners of their obligation to pay late payment surcharge/interest on the amount withheld by them even when their writ petitions are dismissed ultimately*. Holding otherwise would mean that even though the Electricity Board, who was the respondent in the writ petitions succeeded therein, is yet deprived of the late payment surcharge which is due to it under the tariff rules/regulations. It would be a case where the Board suffers prejudice on account of the order of the Court and for no fault of it's. It succeeds in the writ petition and yet loses. The consumer files the writ petition, obtains stay of operation of the Notification revising the rates and fails in his attack upon the validity of the Notification and yet he is relieved of the obligation to pay the late payment surcharge for the period of stay, which he is liable to pay according to the statutory terms and conditions of supply-which terms and conditions indeed form part of the contract of supply entered into by him with the Board. We do not think that any such unfair and inequitable proposition can be sustained in law. No such proposition flows from *Adoni Ginning*. It is a matter of common knowledge that several petitioners [their counsel] word the stay petition differently. One petitioner may ask for injunction, another may ask for stay of demand notice, the third one may ask for stay of collection of the amount demanded and the fourth one may ask for the stay of the very Notification. Such distinctions are bound to occur where a large number of writ petitions are filed challenging the same Notification. The interim orders made by the Court may also vary in their phraseology in such a situation. Take this very



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case: While the consumers had asked for stay of operation of the Government Order revising the rates, those very consumers asked for an injunction when they came to Supreme Court. Furthermore, as pointed out rightly by the High Court, the order of the stay granted by the High Court in writ petitions questioning the validity of the Notification dated April 21, 1990 were not uniform. In the case of writ petition filed by the Eastern U.P. Chamber of Commerce and Industry, Allahabad, the operation of the Notification was stayed while in the case of the writ petition filed by the Employers' Association of Northern India, it was directed that "effect shall not be given to the notification dated 21st April, 1990 as against the petitioner", while clarifying at the same time that "in the event of failure of the writ petition", the petitioner shall deposit with the relevant authority within a period of one month from the date of dismissal of the writ petition the difference between the amount of electricity dues to be paid hereinafter by the petitioner under our orders and the sum which may be calculated on the basis of the impugned notification". The words "sum which may be calculated on the basis of the impugned notification" in the later order clearly mean and include the late payment surcharge as well. The acceptance of the appellants' argument would thus bring about a discrimination between a petitioner and a petitioner just because of the variation of the language employed by the court while granting the interim order though in substance and in all relevant aspects, they are similarly situated. *It is equally well settled that an order of stay granted pending disposal of a writ petition/suit or other proceeding, comes to an end with the dismissal of the substantive proceeding and that it is the duty of the court in such a case to put the parties in the same position they would have been but for the interim order of the court.* Any other view would result in the act or order of the court prejudicing a party [Board in this case] for no fault of its and would also mean rewarding a writ petitioner inspite of his failure. We do not think that any such unjust consequence can be countenanced by the courts. As a matter of fact, the contention of the consumers herein, extended logically should mean that even the enhanced rates are also not payable for the period covered by the order of stay because the operation of the very Notification revising/enhancing the tariff rates was stayed. Mercifully, no such argument was urged by the appellants. It is understandable how the enhanced rates can be said to be payable but not the late payment surcharge thereon, when both the enhancement and



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the late payment surcharge are provided by the same Notification - the operation of which was stayed."

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4. The learned Additional Government Pleader appearing for the respondents 1 and 2 submitted that 4(1) Notification was issued on 09.05.1975 and Declaration under Section 6 of the Land Acquisition Act, 1894 was published on 07.06.1978 and the award was passed on 11.04.1986, in which the petitioner's vendor, namely Yamuna Ammal participated in the award proceedings and she is well aware of the award proceedings and subsequent to the award, she filed Writ Petition before this Court in W.P.No.3991 of 1986 on 28.04.1986, and this Court, by order dated 08.10.1991, on the technical ground, which was set-aside by the Division Bench of this Court. Thereafter, for all the practical purposes, the land acquisition proceedings stood restored against the petitioner's vendor, and the petitioner being the subsequent purchaser, he purchased the aforesaid property in the year 1990, he is not entitled to challenge the Land Acquisition Proceedings in terms of Section 24(2) of the said Act. In support of his contention, he relied upon the decision of Division Bench of this Court in W.A.No.1204 of 2022 etc Batch.

5. Heard the learned counsel on either side and perused the materials



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available on record.

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6. The facts in the present case are not in dispute. Admittedly, the Land Acquisition proceedings were initiated against the petitioner vendor, namely Yamuna Ammal and her husband S.Chokkalinga Naicker. Though the said S.Chokkalinga Naicker predeceased the said Yamuna Ammal, admittedly Yamuna Ammal participated in the Land Acquisition Proceedings and in her presence the award was passed on 11.04.1986. However, it is not in dispute, that Writ Petition was filed in W.P.No.3991 of 1986, which was allowed, against which appeal was filed by the State, which was also allowed. It is admitted that the petitioner purchased the aforesaid property, when stay was in operation. Though the petitioner claims that the petitioner is a bonafide purchaser, in view of the stay granted by this Court, however, he is a subsequent purchaser, subsequent to the notification under Section 4(1) and the Writ Appeal having been allowed, practically for all purposes, the notification stood restored. Therefore, even if the petitioner is a bonafide purchaser, however, he would not be entitled to any relief as per the decision of the Division Bench of this Court in B.Nagaraj's case.



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7. The Division Bench Order of this Court in W.A.Nos.1204 of 2022,

etc. batch, dated 09.06.2022 in B.Nagaraj's case has held as under:

"4. Before addressing the issue in regard to the lapse, the question is about the locus of the writ petitioners to challenge the acquisition proceedings and to seek its lapse, because, the writ petitioners had purchased the land much subsequent to the issuance of the Notification under Section 4(1) of the Act of 1894.

5. The Apex Court, while dealing with the issue in the case of Shiv Kumar (supra), has held that the purchaser of the land, after issuance of Notification under Section 4 of the Act of 1894, has no right to challenge the acquisition proceedings and he can, at the best, claim compensation. It is for the aforesaid, even the issue in reference to Section 24 of the Act of 2013, was also dealt with, because, any purchase, after the Notification under Section 4(1) of the Act of 1894, is termed to be "void ab-initio" and therefore, no Declaration can be sought regarding the lapse of the acquisition under the Act of 1894 or the Act of 2013. The relevant paragraphs of the judgment are quoted hereunder for ready reference:

"7.7. In M.Venkatesh Vs. BDA (2015 (17) SCC 1 : 2017 (5) SCC (Civ) 387), a three-Judge Bench has opined: (SCC pp.8-9, para 16):

"16. That brings us to the question of whether Prabhaudas Patel and other respondents in SLP (C) No.12016 of 2013 were entitled to any relief from the Court. These respondents claim to have purchased the suit property in terms of a sale deed dated 22.08.1990 i.e. long after the issuance of the preliminary notification published in July 1984. The legal position about the validity of any such sale, post-issuance of preliminary notification, is fairly well settled by a long line of the decisions of this Court. The sale in such cases is void and non est in the eye of the law giving to the vendee the limited right to claim compensation and no more. Reference may in this regard be made to the decision of this Court in U.P.Jal Nigam Vs. Kalra Properties (P) Ltd. (1996 (3) SCC 124), wherein this Court said: (SCC: pp.126-27, para 3):

"3. It is settled law that after the notification under Section 4(1) is published in the



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gazette, any encumbrance created by the owner does not bind the Government, and the purchaser does not acquire any title to the property. In this case, Notification under Section 4(1) was published on 24.3.1973; possession of the land admittedly was taken on 5.7.1973, and the pumping station house was constructed. No doubt, declaration under Section 6 was published later on 8.7.1973. Admittedly power under Section 17(4) was exercised dispensing with the inquiry under Section 5-A and on service of the notice under Section 9 possession was taken, since urgency was acute viz. pumping station house was to be constructed to drain out the flood water. Consequently, the land stood vested in the State under Section 17(2) free from all encumbrances. It is further settled law that once possession is taken, by operation of Section 17(2), the land vests in the State free from all encumbrances unless a notification under Section 48(1) is published in the gazette withdrawing from the acquisition. Section 11-A, as amended by Act 68 of 1984, therefore, does not apply, and the acquisition does not lapse. The notification under Section 4(1) and the declaration under Section 6, therefore, remain valid. There is no other provision under the Act to have the acquired land divested, unless, as stated earlier, notification under Section 48(1) was published, and the possession is surrendered pursuant thereto. *That apart, since M/s.Kalra properties, the respondent had purchased the land after the notification under Section 4(1) was published, its sale is void against the State, and it acquired no right, title, or interest in the land. Consequently, it is settled law that it cannot challenge the validity of the notification or the regularity in taking possession of the land before the publication of the declaration under Section 6 was published.- "* (emphasis supplied)

“8. It has been laid down that the purchasers on any ground whatsoever cannot question proceedings for taking



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possession. A purchaser after Section 4 notification does not acquire any right in the land as the sale is ab initio void and has no right to claim land under the policy."

"19. The 2013 Act presupposes that a person is required to be rehabilitated and resettled. Such a person who has purchased after Section 4 notification as sale deed is void under the 1894 Act, cannot claim rehabilitation and resettlement as per policy envisaged under the 2013 Act, as his land has not been acquired, but he has purchased a property which has already been acquired by the State Government, he cannot claim even higher compensation, as per proviso to Section 24(2) under the 2013 Act. An original landowner cannot be deprived of higher value under the 2013 Act, which higher compensation was not so contemplated when the void transaction of sale had been entered, and right is conferred under the proviso to Section 24(2) on recorded owners under the 1894 Act. We have come across instances in which after notification under Section 4 were issued and, the property was purchased at throwaway prices by the builders and unscrupulous persons, such purchases are void and confer no right even to claim higher compensation under Section 24(2) of the 2013 Act as it is to be given to the owner as mentioned in the notification.

20. Given that, the transaction of sale, effected after Section 4 notification, is void, is ineffective to transfer the land, such incumbents cannot invoke the provisions of Section 24. As the sale transaction did not clothe them with the title when the purchase was made; they cannot claim "possession" and challenge the acquisition as having lapsed under Section 24 by questioning the legality or regularity of proceedings of taking over of possession under the 1894 Act. It would be unfair and profoundly unjust and against the policy of the law to permit such a person to claim resettlement or claim the land back as envisaged under the 2013 Act. When he has not been deprived of his livelihood but is a purchaser under a void transaction, the outcome of exploitative tactics played upon poor farmers who were unable to defend themselves."

8. The aforesaid decision is squarely applicable to the case on hand

<https://www.mhc.tranonline.in/> and therefore, the prayer sought for in this Writ Petition cannot be granted.



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Accordingly, the Writ Petition is dismissed. However, this Court is inclined to issue a direction to the respondents to pay compensation to the petitioner in terms of Section 34 of the Land Acquisition Act, 1894.

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Index : Yes / No
Speaking order : Yes / No
jd

To

- 1.The Commissioner & Secretary to Government,
Housing and Urban Development Department,
Fort St.George, Chennai – 600 009.
- 2.The Land Acquisition Officer/Special Tahsildar (L.A.) X.,
Tamil Nadu Housing Board Schemes,
Nandanam, Chennai – 600 053.
- 3.The Chief Revenue Officer,
Tamil Nadu Housing Board,
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M.DHANDAPANI, J.



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