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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.09.2022

PRONOUNCED ON : 15.12.2022

CORAM:

**THE HON'BLE MR.JUSTICE T.RAJA
AND
THE HON'BLE MR.JUSTICE K. KUMARESH BABU**

**W.A.Nos.1568 & 1569 of 2017
and C.M.P.Nos.20509 & 20510**

The Chairman,
Tamil Nadu Housing Board,
Anna Salai, Nandanam,
Chennai – 600 035.
Appeals

... Appellant in both the Writ

Vs

1.G.Sridevi
2.V.R.Ramrathinam
3.Ravi Ayyangar,
4.Arun B.Raj
5.G.V.K.Raju
6.Narendra Chorpade
7.R.Srinivasan
8.S.Venkatesh
9.Suresh Sarangan
10.Ashok Sarrangan

11.The State of Tamil Nadu,
Represented by the Secretary,
Housing and Urban Development Department,
Fort St.George,
Chennai – 600 009.



12.The Special Tahsildar (L.A. IX),
Tamil Nadu Housing Board,
Thirumangalam, Chennai – 600 101.

13.The Tahsildar,
Tahsildar Office, Tambaram.

14.K.Parameswari

15.K.Kirupasankar

16.K.Kumaran

17.K.Yuvaraj

18.K.Pamila

19.K.Lekha

... Respondents in both the Writ Appeals

(Respondents 14 to 19 brought into records, vide Court
order dated 23.06.2021 passed in C.M.P.No.14464 &
14465 of 2018 in W.A.Nos. 1568 & 1569 of 2017)

COMMON PRAYER: Writ Appeals filed under Clause 15 of Letters Patent, prays

to set aside the order made in W.P.Nos.5930 & 5931 of 2009 dated 15.04.2013.

For Appellants : Mrs.C.Shyaamala

For Respondents : Mr.P.S.Raman
Senior Counsel
for Mr.R.Parthasarathy for R1 to
R10 & R14 to R19

: Mr.K.V.Sajeevkumar
Special Government Pleader for R11 to R13

COMMON JUDGMENT

(Judgment of the Court was delivered by K.Kumaresh Babu, J.)

This Writ Appeal is directed against the order made in W.P.Nos.5930 & 5931



of 2009 dated 15.04.2013.

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2.The Chairman, Housing Board has presented these appeals being aggrieved against the order of the learned Single Judge made in W.P.Nos.5930 & 5931 of 2009 dated 15.04.2013, where under the learned Judge had issued a Writ of Declaration, declaring that the land acquisition proceedings pursuant to G.O.Ms.No.545 Housing and Urban Development Department dated 23.05.1990 issued under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as 'Act, 1894') and G.O.Ms.No.996 Housing and Urban Development Department, dated 17.06.1997, issued under Section 6 have lapsed, in view of Section 11A of the Land Acquisition Act, 1894, as the Award has been passed much beyond the period of two years. In the other Writ Petition in W.P.No.5931 of 2009, the learned Single Judge had set aside the proceedings of Tahsildar, Tambaram and directed issuance of patta in favour of the respective petitioners, in view of the Declaration granted in W.P.No.5930 of 2009.

3.The brief facts are that on 23.5.1990, the Government had issued a notification under Section 4(1) of the Act, 1894, seeking to acquire the lands for the purposes of Housing Scheme. On 19.06.1991, a declaration under Section 6 of the Act, 1894 was issued, after which the publication was made on 21.06.1991. The said



land acquisition proceedings were challenged by one J.Kannabiran in W.P.No.5930 of 2009, who was a predecessor in interest of the respondents 1 to 10. By order dated 25.11.1992, an order of interim stay was granted in W.M.P.No.24120 of 1992 in the said Writ Petition. The said Writ Petition was disposed of by order dated 24.11.1999 with a direction to consider the applications on preferential basis, if any filed, for allotment of plots. Thereafter, an Award was passed on 23.11.2001. The respondents 1 to 10/writ petitioners had purchased the property in the year 2005. After the purchase, they had made an application for grant of patta which was rejected by the Tahsildar, Tambaram, stating that the lands have been registered under the name of the Tamil Nadu Housing Board. At this juncture, they had preferred two Writ Petitions in W.P.Nos.5930 of 2009 seeking for Declaration, to declare that the land acquisition proceedings had lapsed, in view of the Section 11A of the Land Acquisition Act, 1894 and W.P.No.5931 of 2009 to quash the order of the Tahsildar refusing to grant patta and for a consequential direction to grant patta.

4.Heard Mrs.C.Shyaamala, learned counsel for the appellants and Mr.Mr.P.S.Raman, learned Senior Counsel, for Mr.R.Parthasarathy, learned counsel appearing for the private respondents.



5. Mrs. C. Shyaamala, learned counsel appearing on behalf of the appellants would at the outset contend that the respondents 1 to 10 had no right to file the Writ Petition, challenging the acquisition proceedings, as they are only subsequent purchasers, as they have admittedly purchased the property after the publication of the notice under Section 4(1) and after the acquisition proceedings had culminated into passing of an Award. It is her further case that after the Award was passed, the possession of the lands was taken by the Land Acquisition Authorities and has been handed over to the Housing Board and revenue records have been mutated in the name of the Housing Board. She further argued that the Writ Petition challenging the acquisition proceedings were disposed of finally on 24.11.1999 and the Award has been passed on 23.11.2001, which is within a period of two years and hence, the provisions of Section 11A cannot be invoked in the present case.

6. To drive home her contention, she had relied upon the judgment of the Hon'ble Apex Court in the case of *N. Narasimhaiah Vs State of Karnataka* reported in **1996 3 SCC 88**. Further, she had also relied upon various judgments of the Hon'ble Apex Court in support of her contention that subsequent purchasers cannot maintain the Writ Petition challenging the acquisition proceedings. She had further



contended that pursuant to the Award, the compensation amount has also been kept in a Revenue Deposit. She would vehemently contend that the learned Single Judge without considering these aspects had held that the Award has been passed beyond a period of two years which is wholly erroneous and therefore, is liable to be interfered with.

7. Countering her arguments, Mr.P.S.Raman, learned Senior Counsel appearing on behalf of the respondents 1 to 10 and 14 to 19 would at the outset contend that the appeals filed by the Housing Board are not maintainable, as the Government had not filed any appeal against the order passed in the writ petitions. In support of his contention, he had relied upon two Division Bench judgments of this Court in ***Tamil Nadu Housing Board vs. Sembanna Gounder and others*** reported in **2006 (4) CTC 803** and in ***Executive Engineer, Tamil Nadu Housing Board vs. R.Parthasarathi and Others*** reported in **2020 3 MLJ 769**. He would further argue that as per the aforesaid two judgments, the Housing Board could not be termed to be an aggrieved person, as it is only the appropriate Government which could challenge any order passed setting aside the land acquisition proceedings. According to him, if the proceedings under the land acquisition Act, 1894 has been quashed and held to be bad in law, then, it is only the Government which can challenge the same. In the absence of any challenge by the Government, the beneficiary of the said proceedings



cannot independently maintain any appeal.

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8.He further contended that in the cases on hand, the publication of the declaration under Section 6 of the Act, 1894 was made on 21.06.1991. The interim stay of further proceedings was granted by this Court in W.M.P.No.24120 of 1992 in W.P.No.16988 of 1992 dated 25.11.1992. According to him, there was no stay of the land acquisition proceedings for a period of 518 days. Thereafter, the Writ Petition challenging the land acquisition proceedings came to be dismissed on 24.11.1999. According, to him a balance of 212 days to pass the Award would come to an end on 24.06.2000. If any Award has not been passed within the said date, by application of Section 11A of the land Acquisition Act, the land acquisition proceedings would have statutorily lapsed.

9.In the present cases, the Award was passed only on 23.11.2001 in a land acquisition proceedings which had statutorily lapsed as early as on 24.06.2000. Hence, such Award can only be non-est Award and void ab inito. He further submitted that any further proceedings pursuant to such non-est Award will have to be struck down as void ab inito. He would also bring to our notice that the judgment relied upon by the counsel for the appellants in *N.Narasimhaiah's case* reported in **(1996) 3 SCC 88** has been expressly over ruled by a Constitutional Bench of the



Apex Court in the judgment in ***Padma Sundara Rao (dead) and Others vs. State of T.N. And Others*** reported in ***(2002) 3 SCC 533***. He would further stoutly contend that the claim of the appellant's counsel that the subsequent purchasers had no *locus-standi* to challenge the land acquisition proceedings, is wholly erroneous as the respondents 1 to 10 have purchased the property, in view of the statutory lapse of the land acquisition proceedings.

10.He further contended that in the case relied upon by the learned counsel for Housing Board, the land acquisition proceedings were intact and therefore it was held that the subsequent purchaser would not be entitled to file the Writ Petition. He pleaded that the said principle cannot be applied to the facts of the present case. He would further contend that the deposit of amount as claimed by the Housing Board is inconsequential, as the Award itself is non-est. Hence, he prayed that the appeal filed by the Housing Board independently is not maintainable and that the order passed by the learned Single Judge is well within the four corners of law and therefore no interference is called for and prayed to dismiss the Writ Appeals in limine.

11.We have considered the rival submissions made by the counsel appearing on both sides.



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12.It is an admitted case that the publication of the declaration under Section 6 of the Act, 1894 was made on 21.06.1991 followed by the passing of the Award on 23.11.2001. It is also admitted that this Court has granted an interim order staying further proceedings of the land acquisition proceedings on 25.11.1992 and the Writ Petition was dismissed on 24.11.1999. Hence, the issue involved is whether the Award has been passed within a period of two years as mandated under Section 11(A) of the Land Acquisition Act, 1894.

13.According to the learned counsel for the appellant, the Award has been passed within a period of two years from the date of disposal of the Writ Petition viz., 24.11.1999. She had relied upon a judgment in N.Narasimhaiah's case reported in **1996 (3) SCC 88**.

14.As pointed by the learned Senior Counsel appearing for the writ petitioners the ratio laid down in the said judgment has been expressly overruled by the Hon'ble Apex Court in the judgment in ***Padma Sundara Rao (dead) and Others vs. State of T.N. And Others*** reported in **2002 3 SCC 533**. Further, it is a well settled principle that while calculating the period of two years, the period of stay, if any, granted has



to be excluded. The time gap between the publication of Section 6, declaration and the passing of Award is 3818 days. There has been a stay of proceedings from 25.11.1992 till 24.11.1999, which is the date of dismissal of the Writ Petition. Hence, the period of stay is 2556 days. Now deducting the period of stay from the time gap between the Section 6 publication and the date of Award is 1262 days. The Award has to be passed within two years from the date of the publication of Section 6 declaration i.e. 730 days.

15. In this case, the Award has been passed only on 23.11.2001 which is much beyond the mandated period within which an Award has to be passed. Hence, the learned Judge was right in issuing a declaration that the land acquisition proceedings had lapsed by invoking the provisions of Section 11(A) of the Land Acquisition Act.

16. Further, Mrs. C. Shyaamala, learned counsel for the appellant would contend that the private respondents, being subsequent purchasers of the land, have no right to file the Writ Petitions as has been repeatedly held by the Hon'ble Apex Court as well as this Court. Hence, the Writ Petitions filed by the subsequent purchasers challenging the land acquisition proceedings are not maintainable, and utmost they would be entitled for compensation for the land.



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17.The said argument advanced is totally out of place. The private respondents herein had only sought for a declaration declaring that the land acquisition proceedings had lapsed under Section 11(A) of the Land Acquisition Act, 1894, as the Award has not been passed within the period of two years. For better appreciation of the case, the said provision is extracted hereunder:

11A Period within which an award shall be made. (1)*The Collector shall make an award under section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse: Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984 (68 of 1984), the award shall be made within a period of two years from such commencement.*

18.The said provision mandates that if no Award is made within the period of two years from the date of publication of declaration, then the entire proceedings of the acquisition shall stand lapsed. When that being the position, by statutory implication, the land acquisition proceedings would lapse. Hence, the Section 4(1) notification and Section 6 declaration would be non-est in law. The judgments relied upon by the learned counsel for the appellant were all made in cases where the



notification under Section 4(1) and the declaration under Section 6 were intact.

Hence, the said judgments would not come to the aid of the appellant as the private respondents, who are subsequent purchasers, had purchased the lands after the land acquisition proceedings had statutorily lapsed. Hence, when they have a valid title with them, they are entitled to seek for a declaration as prayed for.

19. Learned Senior Counsel appearing on behalf of the private respondents had argued that the appeals filed by the Housing Board are not maintainable by relying upon the two Division Bench judgments of this Court in the case of ***Tamil Nadu Housing Board vs. Sembanna Gounder and others*** reported in ***2006 (4) CTC 803***, the Division Bench of this Court has held as follows:

"Appropriate Government" means, in relation to acquisition of land for the purposes of the Union, the Central Government, and, in relation to acquisition of land for any other purposes, the State Government.

Under Section 4 of the Land Acquisition Act the "Appropriate Government" - as defined under Section 3(ee) of the Act alone can proceed to initiate the proceedings for acquiring the lands exercising their power of eminent domain. The Housing Board has no interest, what so ever, at any stage of the proceedings initiated under the Land Acquisition Act, in the land intended to be acquired till such time possession of the acquired land is handed over to the Housing Board. Since admittedly in this case the declaration under Section 6 of the



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Land Acquisition Act had come to be quashed at the instance of the land owners, we have no doubt at all that it is only the Government and the Government alone, being the appropriate Government under the Land Acquisition Act, can challenge the order of the learned Single Judge impugned in the Writ Petition. We are very clear in our mind that the Housing Board cannot challenge the order of the learned Single Judge, having regard to the stage at which the Writ Petition came to be allowed. Accordingly the objection regarding maintainability raised by learned Senior Counsel appearing for respondents 2 to 4 is sustained and the Appeal stands dismissed as not being maintainable at the hands of the Tamil Nadu Housing Board. Since we have dismissed the Writ Appeal only on the maintainability issue, we are not expressing any opinion on the other points involved. No costs."

In the case of ***Executive Engineer, Tamil Nadu Housing Board vs. R.Parthasarathi and Others*** reported in ***(2020) 3 Mad LJ 769***, the Division Bench of this Court has held as follows:

"When the Government has not chosen to file an appeal, it is not open to the appellant/Housing Board/beneficiary to maintain the appeal as per the judgment reported in "(2006) 4 CTC 803" in the case of "Tamil Nadu Housing Board rep. by its Managing Director v.Sembanna Gounder". Hence, the appeal at the instance of the Tamil Nadu Housing Board is not maintainable."

20.In the light of the above judgments, learned Senior Counsel submitted that the appeals filed by the Housing Board, who is a beneficiary of the land acquisition



proceedings, are not maintainable when the Government had not preferred any appeal against the same.

21. In similar circumstances, we have also dealt with this issue in a batch of Writ Appeals in W.A.Nos.1254 to 1258 of 2010, Tamil Nadu Housing Board vs. R. Shanmugam and 16 others, wherein by order dated 02.09.2022, we have held that since the possession has not been handed over by the Government to the Housing Board, Housing Board is not entitled to file an appeal in the absence of any appeal by the Government. Secondly, when the Government also thought fit not to file an appeal against the impugned order, on the ground that the physical possession of the land has not been taken from the land owner, the Housing Board has no authority to file an appeal. In ***Tamil Nadu Housing Board, represented by its Managing Director, Nandanam, Chennai, Vs. Sembanna Gounder and Others [2006 (4) CTC 80]***, it has been held that the Housing Board has no interest whatsoever at any stage of the proceedings initiated under the Land Acquisition Act in the land intended to be acquired till such time possession of the acquired land is handed over to the Housing Board. In the present cases, the physical possession of the land has not been handed over to the Housing Board by the State Government. Therefore, the appeals filed by the Housing Board are bereft of any merit.



22. In view of the above said findings, we are of the view that the alleged possession by the Housing Board and revenue deposit made by them pursuant to the Award is non-est in the eye of law. Further contention that the revenue deposit is a valid deposit as has been approved by the Constitutional Bench of the Hon'ble Apex Court in *Indore Development Authority vs. Manoharlal and others* reported in **2020 (8) SCC 129**, in our respectful view, may not be applicable to the State of Tamil Nadu for the following reason:

23. The land acquisition rules have been framed pursuant to the Land Acquisition Act, 1894 under Section 55. Section 31 of the Land Acquisition Act, 1894 clearly mandates that the compensation amount should be deposited in the reference Court. A reading of the above Constitution Bench Judgment would imply that when the compensation has been offered and the land owner has refused and if the concerned State Government has formulated Revenue Standing Orders pursuant to the Land Acquisition Act, 1894 providing for a revenue deposit, then such revenue deposit was held to be a valid mode of deposit. In respect of the State of Tamil Nadu, Revenue Standing Order No.90 provides for procedures to be followed by the Land Acquisition Authority while acquiring lands.



24. The requirement of Land Acquisition Authority to follow the said Revenue Standing Order came to be considered by a Division Bench of this Court in ***Padmavathi and Another vs. The State of Tamil Nadu represented by its Secretary, Education Department, Madras and Another*** reported in ***Volume 1991 Law Weekly 80***. After considering the various arguments made on the effect of the Revenue Standing Order No.90, the Division Bench of this Court has held as follows:

"26. The same is the position in the present case under the Land Acquisition Act which is not only a special enactment but a complete Code in itself. We, therefore, hold that the Board Standing Order No.90 relied on by learned counsel for the petitioners has no statutory sanction.

27. Palaniswami, J. in Eswara Pillai v. State of Tamilnadu clearly observed that the instructions contained in Board's Standing Order No.90 were not issued under S.55 and strictly speaking they are not statutory rules. The learned Judge, however, proceeded to observe: "But, nonetheless, the instructions have statutory force". It is difficult to understand how the instructions of the Board, which are neither statutory nor rules, could yet possess 'statutory force. In our opinion, the only force that executive instructions can have, or hope to have, is executive force; they cannot have legislative or statutory force. Under S.55(3) of the Act, rules framed by the appropriate Government after following the requirements of that section, can alone possess the 'force of law' and not any other instruments. We have earlier shown how the Board of Revenue has no place in the scheme of the Land Acquisition Act. Considered from that view point, the Board Standing Order No.90 cannot even claim the status of



executive instructions. "

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25. In view of the said judgment, the Revenue Standing Order which enables the Land Acquisition Authority to make revenue deposit cannot be invoked to substantiate the failure on the part of the Land Acquisition Authority to follow the mandated provisions requiring the Land Acquisition Authority to only deposit the compensation amount on failure of the land owner to receive the same in the reference Court.

26. For the foregoing reasonings, the Writ Appeals fail and dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

(T.R., J.) (K.B., J.)
15.12.2022

Index: Yes/no
Speaking/non-speaking
gba

To

1. The Secretary,
Housing and Urban Development Department,
Fort St. George, Chennai – 600 009.

2. The Special Tahsildar (L.A. IX),
Tamil Nadu Housing Board,
Thirumangalam, Chennai – 600 101.



3.The Tahsildar,
Tahsildar Office, Tambaram.

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T.RAJA, J.

AND

K. KUMARESH BABU, J.

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