



W.A.Nos.373 of 2004 etc., batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 20.09.2023

DELIVERED ON: 19.10.2023

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HON'BLE MR.JUSTICE P.B.BALAJI

W.A.Nos.373, 1684, 1685, 2144, 2234, 2237, 3219, 3220, 3221, 3222, 3223, 3224, 3225, 3226, 3227, 3301, 3302, 3303, 3304, 2235, 2236, 2238, 2239, 2240, 2241, 2242, 3309, 3310, 1139, 1140, 1143, 1146, 1147, 2145, 2151, 2152, 2153, 2154, 2155, 2231, 2232, 2233, 3216, 3217, 3218, 3305, 3306, 372, 1148, 1533 to 1544, 2149, 2150, 3299, 3300, 3307, 3308 of 2004

W.A.Nos.1904 & 1905 of 2010, W.A.Nos.881 & 882 of 2011

W.P.Nos.29762, 35693, 35694, 35695 of 2004,

W.P.Nos.24419, 24705, 32471 & 45452 of 2006

AND

WAMP.Nos.644, 3167, 3168, 3957, 4139, 4151, 4142, 4154, 6038, 6050, 6039, 6051, 6040, 6052, 6041, 6053, 6042, 6054, 6043, 6055, 6044, 6056, 6045, 6057, 6046, 6058, 6228, 6240, 6229, 6241, 6230, 6242, 6243, 4140, 4152, 4141, 4153, 4143, 4155, 4144, 4156, 4145, 4157, 4158, 4146, 4147, 4159, 6236, 6248, 6237, 6249, 2124, 2136, 2125, 2137, 2128, 2140, 2131, 2143, 2132, 2144, 3946, 3958, 3952, 3953, 3965, 3954, 3966, 3955, 3967, 3956, 3968, 4136, 4148, 4137, 4149, 4138, 4150, 6035, 6047, 6048, 6037, 6049, 6244, 6233, 6245, 2133, 2145, 2862 to 2885, 3950, 3951, 3962, 3963, 6226, 6227, 6234, 6235, 6238, 6239, 6246, 6247, 36156, 23916, 42983, 42985 & 42987 of 2004, WVMP.Nos.55, 64 & 65 of 2009



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W.A.No.372 of 2004

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1.The State of Tamil Nadu,
Rep by the Secretary to Government,
Housing and Urban Development Department,
Fort St.George, Chennai-9.

2.The Special Tahsildar (LA) Unit-IV,
Tamil Nadu Housing Board Schemes,
Nandanam, Chennai-35.

.. Appellants

Vs.

Velayuthamudaliar

.. Respondent

W.P.No.29762 of 2004

V.Vedagiri

.. Petitioner

vs.

1.The Government of Tamil Nadu,
Rep. by its Secretary to Government,
Housing and Urban Development Department,
Fort St.George,
Chennai-600 009.

2.The Collector,
Tiruvallur District,
Thiruvallur District.

3.The Special Tahsildar,
(Land Acquisition) Unit IV,
Tamil Nadu Housing Board Schemes,
Nandanam, Chennai-600 035.

.... Respondents



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Prayer in Writ Appeals: Writ Appeals filed under Clause 15 of the Letters Patent against the orders dated 13.08.2003 made in W.P.Nos.38690 of 2002 etc., batch, the order dated 23.09.2003 made in W.P.No.39788 of 2002 etc., batch and the order dated 23.09.2003 made in 8344 and 8345 of 2003.

Prayer in Writ Petitions: Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records of the proceedings viz., G.O.Ms.No.327, Housing and Urban Development dated 19.8.2004 on the file of the first respondent, the Declaration under Section 6 of the Land Acquisition Act, 1894 and Rc.A1/7261/98 dated 24.7.2003, the notification under Section 4(1) of the Land Acquisition Act, on the file of the 2nd respondent and quash the same insofar as the petitioner's land in Survey Nos.9/1, 11, 12/3 in No.65, Chembarambakkam Village, Poonamallee Taluk, Thiruvallur District are concerned.

For Appellants

Mr.J.Ravindran, Additional Advocate General,
assisted by Mrs.Geetha Thamaraiselvan,
Special Government Pleader
for the 1st Appellant in all W.As.

Mr.P.Kumaresan, Additional Advocate General
assisted by N.Moorthi for TNHB
for Appeal No.2 in all Writ Appeals

Mr.B.Ravi for the appellants
in W.A.Nos.1904 & 1905 of 2010

For Petitioner

W.P.No.29762 of 2004 : Mr.N.Manoharan

W.P.No.32471 of 2006 : Mr.V.Ayyadurai, Senior Counsel
for Mr.J.Manogar

W.P.No.45452 of 2006 : Mr.Kamesh Kumar



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W.P.Nos.35693 to 39695 : Mr.B.Ravi
of 2004

For Respondents

Mr.B.Ravi

for R3 to R6 in W.A.Nos.1684 & 1685 of 2004

Mr.G.Masilamani, Senior Counsel

for Mr.P.T.Ramadevi

for R3 and R4 in W.A.No.2144 of 2004 etc.

COMMON JUDGMENT

D.KRISHNAKUMAR, J.

The official respondents in the writ petitions are the appellants herein and aggrieved by the allowing of the writ petitions filed challenging the Section 4(1) Notification in G.O.Ms.No.489, Housing and Urban Development Department dated 21.10.1999 and Section 6 Declaration of Land Acquisition Act, 1894 [in short "Act 1984"] dated 06.12.2000, vide common orders dated 13.08.2003 and 23.09.2003, these writ appeals are filed.

FACTS LEADING TO THE WRIT APPEALS

2. Facts leading to the filing of these writ appeals, briefly narrated, are as follows:



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2.1. The first appellant had issued land acquisition proceedings for for the development of Narasingapuram Satellite Town Scheme in 3 Blocks as under:

Sl.No.	Block No.	4(1) Notification	Section 6 Declaration	Extent of Land	Award No. and dated
W.A.Nos.373, 1684, 1685, 2144, 2234, 2237, 3219 to 3227, 3301, 3302, 3303, 3304 of 2004 - 19 Writ Appeals					
1	Narasingapuram Block I	G.O.Ms.No. 488, dated 21.10.1999 - Published in Gazette on 01.12.1999	G.O.Ms.No. 489 dated 06.12.2000, published in Gazette on 07.12.2000	10.48.5 Hectares in S.Nos.1, 2, 3 etc., in Narasingapuram Village.	No.3/2002 dated 25.11.2002
W.A.Nos.2235, 2236, 2238 to 2242, 3309 & 3310 of 2004 - 9 Writ Appeals					
2	Narasingapuram Block II	G.O.Ms.No. 375, dated 31.08.1999 - Published in Gazette on 29.09.1999	G.O.Ms.No. 403 dated 06.10.2000, published in Gazette on 06.10.2000	11.86.5 Hectares in S.Nos.30, 31 etc., in Narasingapuram Village.	No.2/2002 dated 20.09.2002
W.A.Nos.1139, 1140, 1143, 1146, 1147, 2145, 2151, 2152, 2153, 2154, 2155, 2231, 2232, 2233, 3216, 3217, 3218, 3305 and 3306 of 2004 - 19 Writ Appeals					
3	Narasingapuram Block III	G.O.Ms.No. 446, dated 21.10.1999, Published in Gazette on 01.12.1999	G.O.Ms.No. 493 dated 06.12.2000, published in Gazette on 07.12.2000	11.87.0 Hectares in S.Nos.68/1, 2 etc., in Narasingapuram Village.	No.4/2002 dated 25.11.2002



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2.2. Challenging the aforesaid 4(1) Notifications and Section 6 Declarations, W.P.Nos.38690 of 2002 etc., batch were filed on the following two grounds:

(i) Publication of Section 4(1) Notification and Section 6 Declaration were made in newspapers, which have no circulation in the locality and therefore, the acquisition is liable to be quashed.

(ii) There is no consideration of the objections by the Land Acquisition Officer and there being a total non application of mind to the objections raised before the Land Acquisition Officer, the acquisition proceedings are vitiated and liable to be quashed.

2.3. It was contended by the respondents / appellants in the writ petitions that Section 4(1) Notifications as well as Section 6 Declarations were published in registered newspapers like Malai Murasu, Malai Malar, Makkal Seithi or Dinaboomi, having wide circulation in the locality and apart from that, the substance of the publication has been affixed in the locality as well as in the Gazette. It was also contended that the Land Acquisition Officer after giving sufficient opportunity to



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the land owners and forwarded to the Government and the ultimate decision vested with the Government to proceed further with the acquisition at the stage of issuing Section 6 Declaration and therefore, prayed for dismissal of the writ petitions.

2.4. The Writ Court allowed the writ petitions, vide common order dated 13.08.2003. Following the said common order, similar writ petitions filed in W.P.Nos.39788 to 39790 & 39846 of 2002 were also allowed, vide order dated 23.09.2003. Being aggrieved by the allowing of both the batch of writ petitions, the respondents therein have filed the instant writ appeals.

3. Mr.P.Kumaresan, learned Additional Advocate General appearing for the second appellant/Special Tahsildar, Land Acquisition, Tamil Nadu Housing Board (TNHB) Schemes made the following contentions:

(i) The Land Acquisition Officer conducted Section 5A enquiry on 16.03.2000, 13.06.2000 and 25.07.2000 for Narasingapuram Village, Block-I and received the



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objections raised by landowners and forwarded the same to the requisitioning body / TNHB on 08.08.2000 and a reply was received from the requisitioning body on 16.10.2000. After receiving the remarks from TNHB and objections from the land owners during 5A enquiry, the Land Acquisition Officer took the decision dated 02.11.2000 to overrule the objections of the landowners on the ground that these lands are essentially required for Housing Schemes and therefore, proceeded with Section 6 Declaration.

(ii) The landowners and interested persons appeared for enquiry on the dates fixed and filed their written objections. The objections raised by them were tabulated and communicated to the requisitioning body viz., Managing Director, TNHB and only thereafter, Section 6 Declaration was published in the Tamil Nadu Government Gazette.

(iii) The Land Acquisition Officer has passed as much as 18 awards for an extent of 466.49 acres during the years 2002 to 2006 and handed over possession for an extent of 311.05 acres on various dates commencing from 12.08.2003 and after taking possession, lands admeasuring an extent of 0.63 acre in Narasingapuram Village was



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handed over to the Land Acquisition Officer because of dispossession stay order. The remaining lands measuring an extent of 156.07 acres could not be taken possession because of pendency of these writ appeals and writ petitions challenging the Land Acquisition proceedings.

(iv) The Government had issued G.O.(Ms.)No.7, Housing and Urban Development Department dated 03.01.2007 in and by which the Government has directed not to acquire any land on or after 20.12.2006 and also permitted the appellant Board / TNHB to utilize all the lands in which awards were passed prior to cut off date i.e., 20.12.2006 to an extent of 466.49 acres.

(v) The possession taken over lands are not contiguous and lost its access from the Chennai-Bangalore N.H. Road because of the issuance of G.O.Ms.No.7 dated 03.01.2007 and hence, the proposed Satellite Scheme could not be implemented in phased manner instead of comprehensive scheme in one stroke.

(vi) The writ petitions were filed after two years of Section 5A enquiry, which concluded during the year 2000, with a move to stall the comprehensive Thirumazhisai Satellite Township Scheme which is purely created to



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provide house and plots to the needy public at affordable price.

The learned Additional Advocate General appearing for the second appellant, in support of his contentions, has placed reliance on the following decisions:

(i) Jayabheri Properties Private Limited and Others v. State of Andhra Pradesh and Others [(2010) 5 SCC 590]

(ii) Brij Bhargava and Others v. State of Uttar Pradesh and Others [(2011) 5 SCC 413].

4. Heard Mr.J.Ravindran, learned Additional Advocate General appearing for the first appellant has adopted the arguments advanced on behalf of the second respondent and a memo of adoption was also filed to that effect by the Deputy Secretary to Government, Housing and Urban Development Department, Chennai-9.

5. Mr.G.Masilamani, learned Senior Counsel appearing for the respondents / landowners made the following contentions:



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(i) The report of the Land Acquisition Officer does not contain any supporting reason to reject the objection of the land owners and in the absence of the same, the recommendation ought to have been rejected by the Government, which was non-speaking and cryptic in nature.

(ii) Section 6 Declaration does not disclose application of mind and no reason assigned for accepting the report of the Land Acquisition Officer.

(iii) The report of the Land Acquisition Officer would show that the objections of the landowners have neither been considered nor remarks of the requisitioning body has been accepted to overrule the objections.

(iv) The Land Acquisition Officer has not considered the objections of the landowners independently. The grounds raised in the writ appeals are common, as the report of the Land Acquisition Officer is similar and identical in all cases.

(v) The Judgment of the Division Bench of this Court in W.A.Nos.930 and 931 of 2004 dated 27.09.2004, as confirmed by the Hon'ble Supreme Court in SLP(Civil) No.20944 of 2009 would operate as binding precedent in respect of the present appeals also and therefore, on this ground, the order of the Writ Court is to be confirmed.



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The learned Senior Counsel for the respondents/landowners, in support of his contentions, relied on the following decisions:

(i) Union of India v. Shiv Raj [(2014) 6 SCC 564]

(ii) Surinder Singh Brar v. Union of India [(2013) 1 SCC 403]

(iii) Union of India v. Krishan Lal Arneja [(2004) 8 SCC 453]

6. Mr.B.Ravi, learned counsel appearing for the respondents in W.A.Nos.1684 and 1685 of 2004 would submit that the said appeals have been filed by the Government challenging the order passed in W.P.Nos.8344 and 8345 of 2003 and the said appeals were dismissed on 01.08.2007 and after the dismissal of the appeals, the appellant Board filed Review Application Nos.154, 155 of 2009, concealing the fact that the Government had filed SLP.No.CC.7821, 7822 of 2010, which was dismissed by the Hon'ble Apex Court on 14.05.2010 and concealing the dismissal of SLP, the review was allowed on 10.03.2011. It is further contended that when the appeal filed by the respondent Board was dismissed by the Hon'ble Apex Court on 14.05.2010, the order dated 10.03.2011 passed in the review application filed by the Housing Board



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does not survive. It is also contended that once the issue raised herein had reached finality by the dismissal of SLP filed by the Government, the same would have a binding precedent in all other similarly placed cases and therefore, the present writ appeals do not survive for consideration as the Doctrine of Constructive Res Judicata would come into operation. He relied upon the judgment in *Sri Gangai Vinayagar Temple and another v. Meenakshi Ammal and Others [(2015) 3 SCC 524]*.

7. Mr.B.Ravi, learned counsel who is also appearing for the appellants in W.A.Nos.1904 and 1905 of 2010 would contend that the lands covered in W.A.No.1905/2010 has been dropped by restoring the lands in S.Nos.18/1A, 25/2B and 26/1 in Chembarambakkam and the respondents Board had issued a letter dated 19.07.1993 and recording the same, W.P.Nos.6637 & 6638 of 2005 had been closed and further acting on the withdrawal from land acquisition, the deceased heirs of Sambandam have partitioned the parties. It is further contended that the learned Single Judge has not considered the earlier order passed in the batch, but has been carried away by the fact that an award was passed on



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01.11.2006 overlooking the fact that during the pendency of the writ petition, award has been passed. It is also contended that possession has not been taken from the owners all these years and compensation appears to have been deposited without notice to the owners and therefore, Act No.30 of 2013 viz., Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 stands attracted and the entire proceedings stands vitiated.

FACTS LEADING TO THE WRIT PETITIONS

8. The petitioners are individual land owners and they challenged the land acquisition proceedings in the following writ petitions on the ground that the lands belong to them are fertile agricultural lands and as such, those lands are to be excluded by virtue of G.O.Ms.No.7 dated 03.01.2007 issued by the first respondent. The details of their landholdings and acquisition notification have been tabulated hereunder:

Sl. No.	W.P.No.	S.Nos. of land	Section 4(1) Notification	Objection dated	Date of 5A Enquiry	Sec. 6 Dec.
1	29762 of 2004	9/1, 11, 12/3, 15, 16	24.07.2003	28.11.2003	9.12.2003	19.08.2004
2	24419 of 2006	15/2A, 16/1	24.07.2003	28.11.2003	09.12.2003	19.08.2004
3	45452 of 2006	15/2B, 2C, 2D, 2E, 2F	24.07.2003	24.07.2003	09.12.2003	19.08.2004



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Sl. No.	W.P.No.	S.Nos. of land	Section 4(1) Notification	Objection dated	Date of 5A Enquiry	Sec. 6 Dec.
4	32471 of 2006	113/1B1, 114/2, 115/1	05.06.2003	24.07.2003	24.11.2003	19.08.2004
5	35693 of 2004	23/1A1, 1A4, 2A, 4, 23/5A, 24/2, 25/4, 24/5A	24.10.2003	09.11.2003	07.01.2004	01.11.2004
6	35694 of 2004	22/2B	18.10.2003	16.12.2003	04.01.2004	01.11.2004
7	35695 of 2004	22/2C, 24/3	18.10.2003	16.12.2003	04.01.2004	01.11.2004
8	24705 of 2004	7/2A, 7/2B	24.07.2003	09.08.2003	21.07.2004	01.11.2004

9. Mr.N.Manoharan, learned counsel appearing for the petitioners in W.P.Nos.29762 of 2004 and 24419 of 2006 would contend that the subject lands are fertile lands and fundamental right of a farmer to cultivate his land is part of right to livelihood and the respondents are attempting to uproot the farmers under the guise of exercising the power of eminent domain, in violation of the right to property, which is a Constitutional right. The learned counsel for the petitioners has also put forth the following contentions:

(i) Enquiry under Section 5A of the Act, 1894 was conducted without giving reasonable opportunity of hearing to the petitioners.

(ii) Paper publication was effected in "Makkal Kural" and "Dina Boomi" dated 14.08.2003 and both the newspapers are not having wide circulation in that area.



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(iii) Section 4(1) Notification was published in the Gazette on 09.08.2003 and published in newspaper on 14.08.2003, whereas Declaration under Section 6 is dated 19.08.2004, which is clearly beyond the period of one year and hence, Section 6 Declaration is invalid in the eye of law.

(iv) No 'Prior Approval' was obtained from the local authority as per Section 3(f)(7) of the Act, 1894.

(v) Vast extend of lands were excluded from the acquisition proceedings, vide G.O.Ms.No.7 dated 03.01.2007 issued by the first respondent, whereas the lands of the petitioners are proceeded with in violation of Article 14 of the Constitution of India.

(vi) Lands to be acquired are fertile / cultivable lands and there are water bodies in and around the lands to be acquired, which has to be taken into consideration.

The learned counsel for the petitioners, in support of his contentions, has placed reliance on the following decisions:

(i) Raghbir Singh Sehrawat v. State of Haryana and Others
[2012 (1) SCC 792]

(ii) Usha Stud & Agricultural Farms & Others v. State of



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Haryana and Others [2013 (4) SCC 210]

(iii) Sham Lal and Others v. State of Punjab and Ors. [2013 (14)

SCC 393]

(iv) Gojer Brothers Pvt. Ltd & Ors v. State of West Bengal and

Others [2013 (16) SCC 660]

(v) Tamil Nadu Housing Board v. Uma Maheswari Ramaswamy

[2011 (5) CTC 503]

(vi) Bhusawal Municipal Corporation v. Nivrutti Ramachandra

Phalak [2015 (14) SCC 327]

(vii) Bondu Ramasamy and Ors. v. Bangalore Development

Authority and Others [2010 (7) SCC 129].

10. Mr.Ayyadurai, learned Senior Counsel appearing for the petitioner in W.P.No.32471 of 2006 also raised similar grounds as that of Mr.N.Manoharan, learned counsel for the petitioners in W.P.Nos.29762 of 2004 and 24419 of 2006. The learned Senior Counsel has relied upon the following decisions:

(i) Competent Authority v. Barangore Jute Factory and



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Others [(2005) 13 SCC 477]

(ii) N.D.Ramanujam and Others v. The State of Tamil Nadu [2006 (1) CTC 51]

(iii) Tamil Nadu Housing Board v. DPF Textile [CDJ 2018 MHC 225]

(iv) Thirumani Dharmaraj v. State of Tamil Nadu and Others [2023 (5) CTC 194].

11. Mr.B.Ravi, learned counsel for the petitioners in W.P.Nos.35693 to 35695 of 2004 would contend that the Land Acquisition Officer, without independent application of mind, has barely followed the remarks submitted by the respondents Board, which is also in a stereotyped manner and the procedures laid down under Rule 3b & c of Land Acquisition Rules have been totally ignored and thus, entire 5A enquiry is vitiated.

12. Heard the learned counsel for the parties and perused the materials on record.



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WRIT APPEALS

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13. The primordial contention of the appellants is that the Land Acquisition Officer has conducted 5A enquiry on 07.01.2004 and 27.04.2004 for Chembarambakkam Village and received the objections and forwarded the same to the requisitioning body / TNHB and after receiving the remarks from the appellant Board, the Land Acquisition Officer took decision to over the objections of the land owners on the ground that these lands are essentially required for the comprehensive Housing Scheme. According to the appellants, all the lands notified for acquisitions are essentially required for Housing Scheme and after receiving objections from the landowners at the time of Section 5A enquiry, the acquisition body sent objections through proper channel to the Government and the landowners were given opportunity in participating 5A enquiry and their objections were duly considered by the authorities, however, the Writ Court erred in holding that the Land Acquisition Officer had not independently assessed the objections of the land owners.



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14. At this juncture, it is relevant to refer to the following decisions on this aspect.

14.1. The Hon'ble Supreme Court in the decision in ***Raghubir Singh Sehrawat v. State of Haryana and Others [2012 (1) SCC 792]*** has held as under:

"35. From what we have stated above, it is clear that the appellant had not been given opportunity of hearing as per the mandate of Section 5-A(2). The importance of Section 5-A(2) was highlighted by this Court in *Munshi Singh v. Union of India* [(1973) 2 SCC 337] in the following words: (SCC p. 342, para 7)

"7.... Sub-section (2) of Section 5-A makes it obligatory on the Collector to give an objector an opportunity of being heard. After hearing all objections and making further inquiry he is to make a report to the appropriate Government containing his recommendation on the objections. The decision of the appropriate Government on the objections is then final. The declaration under Section 6 has to be made after the appropriate Government is satisfied, on a consideration of the report, if any, made by the Collector under Section 5-A(2). The legislature has, therefore, made complete provisions for the persons interested to file objections against the proposed acquisition and for the disposal of their objections. It is only in cases of urgency that special powers have been conferred on the appropriate Government to dispense with the provisions of Section 5-A."

36. In *State of Punjab v. Gurdial Singh* [(1980) 2 SCC 471] this Court observed: (SCC p. 477, para 16)



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“16. ... it is fundamental that compulsory taking of a man's property is a serious matter and the smaller the man the more serious the matter. Hearing him before depriving him is both reasonable and pre-emptive of arbitrariness, and denial of this administrative fairness is constitutional anathema except for good reasons. Save in real urgency where public interest does not brook even the minimum time needed to give a hearing land acquisition authorities should not, having regard to Articles 14 (and 19), burke an enquiry under Section 17 of the Act. Here a slumbering process, pending for years and suddenly exciting itself into immediate forcible taking, makes a travesty of emergency power.”

..

39. In this context, it is necessary to remember that the rules of natural justice have been ingrained in the scheme of Section 5-A with a view to ensure that before any person is deprived of his land by way of compulsory acquisition, he must get an opportunity to oppose the decision of the State Government and/or its agencies/instrumentalities to acquire the particular parcel of land. At the hearing, the objector can make an effort to convince the Land Acquisition Collector to make recommendation against the acquisition of his land. He can also point out that the land proposed to be acquired is not suitable for the purpose specified in the notification issued under Section 4(1). Not only this, he can produce evidence to show that another piece of land is available and the same can be utilised for execution of the particular project or scheme.

40. Though it is neither possible nor desirable to make a list of the grounds on which the landowner can persuade the Collector to make recommendations against the proposed acquisition of land, but what is important is that the Collector should give a fair opportunity of hearing to the objector and objectively consider his plea against the acquisition of land. Only thereafter, he should make recommendations supported by brief reasons as to why the particular piece of land should



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or should not be acquired and whether or not the plea put forward by the objector merits acceptance. In other words, the recommendations made by the Collector must reflect objective application of mind to the objections filed by the landowners and other interested persons."

14.2. In *Gojer Brothers Private Limited and another v. State of West Bengal and Others [(2013) 16 SCC 660]*, it was held as under:

"17. In *Kamal Trading (P) Ltd. [Kamal Trading (P) Ltd. v. State of W.B., (2012) 2 SCC 25 : (2012) 1 SCC (Civ) 506]*, this Court considered the report prepared by the Land Acquisition Collector, which is substantially similar to the report which was challenged by the appellant before the High Court and held : (SCC pp. 29-30, paras 14-16)

"14. It must be borne in mind that the proceedings under the LA Act are based on the principle of eminent domain and Section 5-A is the only protection available to a person whose lands are sought to be acquired. It is a minimal safeguard afforded to him by law to protect himself from arbitrary acquisition by pointing out to the authority concerned, inter alia, that the important ingredient, namely, 'public purpose' is absent in the proposed acquisition or the acquisition is mala fide. The LA Act being an expropriatory legislation, its provisions will have to be strictly construed.

15. Hearing contemplated under Section 5-A(2) is necessary to enable the Collector to deal effectively with the objections raised against the proposed acquisition and make a report. The report of the Collector referred to in this provision is not an empty formality because it is required to be placed before the appropriate Government together with the Collector's recommendations and the



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record of the case. It is only upon receipt of the said report that the Government can take a final decision on the objections. It is pertinent to note that declaration under Section 6 has to be made only after the appropriate Government is satisfied on the consideration of the report, if any, made by the Collector under Section 5-A(2). As said by this Court in *Hindustan Petroleum Corpn. Ltd. [Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai, (2005) 7 SCC 627]*, the appropriate Government while issuing declaration under Section 6 of the LA Act is required to apply its mind not only to the objections filed by the owner of the land in question, but also to the report which is submitted by the Collector upon making such further inquiry thereon as he thinks necessary and also the recommendations made by him in that behalf.

16. Sub-section (3) of Section 6 of the LA Act makes a declaration under Section 6 conclusive evidence that the land is needed for a public purpose. Formation of opinion by the appropriate Government as regards the public purpose must be preceded by application of mind as regards consideration of relevant factors and rejection of irrelevant ones. It is, therefore, that the hearing contemplated under Section 5-A and the report made by the Land Acquisition Officer and his recommendations assume importance. It is implicit in this provision that before making declaration under Section 6 of the LA Act, the State Government must have the benefit of a report containing recommendations of the Collector submitted under Section 5-A(2) of the LA Act. The recommendations must indicate objective application of mind.”

18. In *Surinder Singh Brar v. Union of India [(2013) 1 SCC 403 : (2013) 1 SCC (Civ) 620]*, this Court extensively considered the report prepared by the Land Acquisition Officer and the decision taken by the administration of the Union Territory of Chandigarh and



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observed : (SCC pp. 450-51, 455-58, paras 68-70, 76-79 & 84)

“68. A cursory reading of the reports of the LAO may give an impression that he had applied his mind to the objections filed under Section 5-A(1) and assigned reasons for not entertaining the same, but a careful analysis thereof leaves no doubt that the officer concerned had not at all applied his mind to the objections of the landowners and merely created a facade of doing so. In the opening paragraph under the heading ‘Observations’, the LAO recorded that he had seen the revenue records and conducted spot inspection. He then reproduced the Statement of Objects and Reasons contained in the Bill which led to the enactment of the Punjab New Capital (Periphery) Control Act, 1952 and proceed to extract some portion of reply dated 31-7-2006 sent by the Administrator to Surinder Singh Brar.

69. In the context of the statement contained in the first line of the paragraph titled ‘Observations’, we repeatedly asked Shri Sudhir Walia, learned counsel assisting Dr Rajeev Dhavan to show as to when the LAO had summoned the revenue records and when he had conducted spot inspection but the learned counsel could not produce any document to substantiate the statement contained in the two reports of the LAO. This leads to an inference that, in both the reports, the LAO had made a misleading and false statement about his having seen the revenue records and conducted spot inspection. That apart, the reports do not contain any iota of consideration of the objections filed by the landowners. Mere reproduction of the substance of the objections cannot be equated with objective consideration thereof in the light of the submission made by the objectors during the course of hearing. Thus, the violation of the mandate of Section 5-A(2) is writ large on the face of the reports prepared by the LAO.



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70. The reason why the LAO did not apply his mind to the objections filed by the appellants and other landowners is obvious. He was a minion in the hierarchy of the administration of the Union Territory of Chandigarh and could not have even thought of making recommendations contrary to what was contained in the letter sent by the Administrator to Surinder Singh Brar. If he had shown the courage of acting independently and made recommendation against the acquisition of land, he would have surely been shifted from that post and his career would have been jeopardised. In the system of governance which we have today, junior officers in the administration cannot even think of, what to say of, acting against the wishes/dictates of their superiors. One who violates this unwritten code of conduct does so at his own peril and is described as foolhardy. Even those constituting higher strata of services follow the path of least resistance and find it most convenient to tow the line of their superiors. Therefore, the LAO cannot be blamed for having acted as an obedient subordinate of the superior authorities, including the Administrator. However, that cannot be a legitimate ground to approve the reports prepared by him without even a semblance of consideration of the objections filed by the appellants and other landowners and we have no hesitation to hold that the LAO failed to discharge the statutory duty cast upon him to prepare a report after objectively considering the objections filed under Section 5-A(1) and submissions made by the objectors during the course of personal hearing.

76. Section 5-A, which embodies the most important dimension of the rules of natural justice, lays down that any person interested in any land notified under Section 4(1) may, within 30 days of publication of the notification, submit objection in writing against the proposed acquisition of land or of any land in the locality to the



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Collector. The Collector is required to give the objector an opportunity of being heard either in person or by any person authorised by him or by pleader. After hearing the objector(s) and making such further inquiry, as he may think necessary, the Collector has to make a report in respect of land notified under Section 4(1) with his recommendations on the objections and forward the same to the Government along with the record of the proceedings held by him. The Collector can make different reports in respect of different parcels of land proposed to be acquired.

77. Upon receipt of the Collector's report, the appropriate Government is required to take action under Section 6(1) which lays down that after considering the report, if any, made under Section 5-A(2), the appropriate Government is satisfied that any particular land is needed for a public purpose, then a declaration to that effect is required to be made under the signatures of a Secretary to the Government or of some officer duly authorised to certify its orders. This section also envisages making of different declarations from time to time in respect of different parcels of land covered by the same notification issued under Section 5(1). In terms of clause (ii) of the proviso to Section 6(1), no declaration in respect of any particular land covered by a notification issued under Section 4(1), which is published after 24-9-1984 can be made after expiry of one year from the date of publication of the notification. To put it differently, a declaration is required to be made under Section 6(1) within one year from the date of publication of the notification under Section 4(1).

78. In terms of Section 6(2), every declaration made under Section 6(1) is required to be published in the Official Gazette and in two daily newspapers having circulation in the locality in which the land proposed to be acquired is situated. Of these, at least one must be in the



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regional language. The Collector is also required to cause public notice of the substance of such declaration to be given at convenient places in the locality. The declaration to be published under Section 6(2) must contain the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area or a plan is made in respect of land and the place where such plan can be inspected.

79. Section 6(3) lays down that the declaration made under Section 6(1) shall be conclusive evidence of the fact that land is needed for a public purpose. After publication of the declaration under Section 6, the Collector is required to take order from the State Government for the acquisition of land to be carved out and measured and planned (Sections 7 and 8). The next stage as envisaged is issue of public notice and individual notice to the persons interested in the land to file their claim for compensation. Section 11 envisages holding of an enquiry into the claim and passing of an award by the Collector who is required to take into consideration the provisions contained in Section 23.

84. What needs to be emphasised is that hearing required to be given under Section 5-A(2) to a person who is sought to be deprived of his land and who has filed objections under Section 5-A(1) must be effective and not an empty formality. The Collector who is enjoined with the task of hearing the objectors has the freedom of making further enquiry as he may think necessary. In either eventuality, he has to make report in respect of the land notified under Section 4(1) or make different reports in respect of different parcels of such land to the appropriate Government containing his recommendations on the objections and submit the same to the appropriate Government along with the record of proceedings held by him for the latter's decision. The appropriate Government is obliged to consider the report, if any, made under



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Section 5-A(2) and then record its satisfaction that the particular land is needed for a public purpose. This exercise culminates into making a declaration that the land is needed for a public purpose and the declaration is to be signed by a Secretary to the Government or some other officer duly authorised to certify its orders. The formation of opinion on the issue of need of land for a public purpose and suitability thereof is sine qua non for issue of a declaration under Section 6(1). Any violation of the substantive right of the landowners and/or other interested persons to file objections or denial of opportunity of personal hearing to the objector(s) vitiates the recommendations made by the Collector and the decision taken by the appropriate Government on such recommendations. The recommendations made by the Collector without duly considering the objections filed under Section 5-A(1) and submissions made at the hearing given under Section 5-A(2) or failure of the appropriate Government to take objective decision on such objections in the light of the recommendations made by the Collector will denude the decision of the appropriate Government of statutory finality. To put it differently, the satisfaction recorded by the appropriate Government that the particular land is needed for a public purpose and the declaration made under Section 6(1) will be devoid of legal sanctity if statutorily engrafted procedural safeguards are not adhered to by the authorities concerned or there is violation of the principles of natural justice. The cases before us are illustrative of flagrant violation of the mandate of Sections 5-A(2) and 6(1).”

19. In *Usha Stud and Agricultural Farms (P) Ltd. v. State of Haryana* [(2013) 4 SCC 210 : (2013) 2 SCC (Civ) 556] , the Court reiterated the propositions laid down in *Raghubir Singh Sehrawat case* [*Raghubir Singh Sehrawat v. State of Haryana*, (2012) 1 SCC 792 : (2012) 1 SCC (Civ)



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402] and *Kamal Trading (P) Ltd. v. State of W.B.* [*Kamal Trading (P) Ltd. v. State of W.B.*, (2012) 2 SCC 25 : (2012) 1 SCC (Civ) 506] and observed : (*Usha Stud case* [(2013) 4 SCC 210 : (2013) 2 SCC (Civ) 556] , SCC p. 227, para 30)

“30. The ratio of the aforesaid judgments is that ***Section 5-A(2), which represents statutory embodiment of the rule of audi alteram partem, gives an opportunity to the objector to make an endeavour to convince the Collector that his land is not required for the public purpose specified in the notification issued under Section 4(1) or that there are other valid reasons for not acquiring the same. That section also makes it obligatory for the Collector to submit report(s) to the appropriate Government containing his recommendations on the objections, together with the record of the proceedings held by him so that the Government may take appropriate decision on the objections. Section 6(1) provides that if the appropriate Government is satisfied, after considering the report, if any, made by the Collector under Section 5-A(2) that particular land is needed for the specified public purpose then a declaration should be made. This necessarily implies that the State Government is required to apply mind to the report of the Collector and take final decision on the objections filed by the landowners and other interested persons. Then and then only, a declaration can be made under Section 6(1).***” (emphasis supplied)

In the light of the dictum laid down by the Hon'ble Supreme Court in the aforesaid decisions, it is imperative that the Land Acquisition Officer has to conduct Section 5A enquiry on an independent application of mind to the objections raised by the landowners and also based on the remarks of



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the requisitioning body.

15. Now coming to the case on hand, the fact remains that the respondents/landowners filed writ petitions in W.P.Nos.38690 of 2002 etc., batch challenging Section 4(1) Notification and Section 6 Declaration of Act, 1894, mainly on the twin grounds that the notifications were published in newspapers which do not have wide publicity and objections of the land owners have been overruled by the Land Acquisition Officer without any independent application of mind. The Writ court, after elaborately considering the grounds raised by the writ petitioners, had allowed the writ petitions, vide common order dated 13.08.2003. It is useful to refer to the following portions of the said order:

"16. On the first point, this court finds that Section 4(1) Notification as well as Section 6 Declaration have been published in the registered Newspapers having circulation in the locality. There is no specific averment in the affidavit filed in support of the petition suggesting that the registered newspapers in which section 4(1) Notification and Section 6 Declaration have been published have no circulation in the locality. The lands are located in Poonamallee Taluk which is just outside the city of Madras. All the Newspapers are registered newspapers in the City



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of Madras and having circulation in the locality as set out in the counter affidavit. It has been specifically stated in the counter affidavit and the files also would disclose that Section 4(1) Notifications and Section 6 Declarations were published in the two registered Tamil Dailies having circulation in the locality. As already pointed out, no specific averment has been made to the effect that the newspapers have no circulation at all in the locality or that the newspapers have no circulation at all in the locality or that the newspapers is not a registered newspaper or that the newspapers have circulation only in other part of the State of Tamil Nadu. Materials would show that the newspapers are registered newspapers and they have circulation in and around the City of Madras including the locality in question and therefore the first contention advanced by the petitioners cannot be sustained. This court had occasion to consider the identical contention in W.P.No.6484 of 1995 (Dalmiah Cements (Bharat) Ltd., Vs. State of Tamil Nadu and 2 others) etc., batch etc., batch in detail and following the same, this contention has to fail.

17. It is also sought to be contended that the newspapers are insignificant newspapers. On a perusal of the file, it is seen that the newspapers are not insignificant newspapers and it cannot also be held that the newspapers have no circulation in the locality. In the affidavit filed support of in most of the cases, no such contention has been set out, except stating that the agricultural lands shall not be acquired and there is a delay between Section 4(1) Notification and Section 6 Declaration or there is a wide gap or that a report of Dr.M.S.Swaminathan, Research Scholar is being relied upon to show that agricultural lands shall not be acquired. No specific averment has been made in the affidavit filed in support in most of the writ petitions that the newspapers in which Section 4(1) Notifications or Section 6 Declarations were published have no circulation in the locality or that they re insignificant newspapers. In



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the circumstances, this court holds that the first contention advanced cannot be sustained. The reliance placed on the pronouncement of a Division Bench of this Court in Krishnan Vs. Government Of Tamil Nadu, reported in 2001 (4) CTC 108 has no application to the facts of the case and it is clearly distinguishable. That apart, no such contention has been advanced, nor such an averment has been set out in the affidavit to call upon the respondents to controvert the contention which is sought to be made out at the time of hearing. Further, it is seen that in the present case all the land owners or the petitioners in this batch of writ petitions have submitted their objections well within time, they were received, they have been afforded opportunity during Section 5A enquiry and thereafter only Section 6 Declarations were issued. Therefore in any view of the matter, the first contention advance cannot be sustained and it fails.

....

20. A perusal of the above extracted portion of the report in particular paragraphs 4 and 5 would show that the objections has neither been considered, nor remarks of the requisitioning body has been accepted to overrule the objections. But on the other hand, what has been extracted above would show that there was an enquiry to hear objections and an enquiry under Rule 3(b) was conducted and during the enquiry the same objections were raised. Therefore, according to the learned counsel there is no application of mind on the part of the Land Acquisition Officer with respect to the objections raised in detail as well as the remarks submitted by the requisitioning body and totally there is no application of mind. In this respect, much reliance is placed upon the Division Bench judgment of this court as affirmed by the Supreme Court in the Special Leave Appeal, cited supra. In Thiruvengadam Vs. Secretary to Government, Houding Department, Govt., of Tamil Nadu reported in 1997 (II) CTC 323, sitting Single,



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this court had occasion to consider an identical contention and while following the pronouncement of earlier Division Bench judgment of this court in Ramanujam Vs. Collector of Madras (1994 WLR 3 26) this court held that it is essential on the part of the Land Acquisition Officer to apply his mind to the objections raised and if there is no application of mind at all by the Land Acquisition Officer while forwarding his report, the acquisition stands vitiated.

23. In the light of the pronouncement of the Division Bench of this Court as affirmed by the Supreme Court, the second contention advanced by the counsel for the petitioners on the face of report submitted by the Land Acquisition Officer deserves to be sustained and more so when the Land Acquisition Officer has neither applied his mind, nor referred to the objections, nor considered the objections or the remarks nor made his independent assessment submitting his report to the State Government containing his recommendations. The Division Bench judgment of this court is directly on the point and binding on this court.

24. In the circumstances, the second contention advanced deserves to be sustained. There is no quarrel that the reports of the Land Acquisition Officer in this batch of Writ Petitions are identical in all respects with respect to the objections submitted and therefore on the second contention, the acquisition is liable to be quashed. In this case, Section 4(1) Notifications were made on 21.10.1999 or 27.10.1999 or 26.10.1999 or 31.8.199 and therefore in these cases more than three years have elapsed from the date of 4(1) Notification and therefore, this court will not be justified in remanding the matter for fresh enquiry under section 5.A also.

25. In the circumstances, this batch of writ petitions are allowed, acquisition proceedings are quashed. It is well open to the respondents to proceed afresh if they so decide.



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Consequently, all the connected WPMPs and WVMPs are closed. No cost."

16. Similarly four other land owners had filed W.P.Nos.39788 to 39790, 39846 of 2002 challenging the very same 4(1) Notification and Section 6 Declaration of Act, 1894, wherein this Court by relying upon the aforesaid common order dated 13.08.2003 passed in W.P.Nos.38690 of 2002 etc., batch had allowed the said writ petitions, vide common order dated 23.09.2003.

17. The aforesaid two common orders viz., 13.08.2003 in W.P.Ns.38690 of 2002 etc., batch and 23.09.2003 in W.P.Nos.39788 of 2002 etc., batch are under challenge in the instant writ appeals.

18. It is very pertinent to point out at this juncture that being aggrieved by the allowing of the writ petitions filed by Mr.K.S.V.Lalithadevi Valayutham and Mr.Sankaran in W.P.Nos.39790 and 39846 of 2002 vide aforesaid common order dated 23.09.2003, the appellants herein had filed W.A.Nos.930 & 931 of 2004 and the said writ



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appeals were dismissed, vide common judgment dated 27.09.2004. It is useful to refer to the following portions of the said judgment:

"3. Having considered the submissions of the learned Special Government Pleader, we are of the view that as far as quashing of the proceedings of the invalid report under Section 5-A, it is not the case of the State that the objections of the landowners were duly considered before submitting the report under Section 5-A. If the said report is invalid, on that ground, we are unable to appreciate the stand of the State that the land owners should be at the mercy of the State while considering the said defective report submitted by the acquisition officer for the purpose of issuing a declaration under Section 6 of the Act. Therefore, we do not find anything wrong with the order of the learned Judge while allowing the writ petitions.

4. As far as the contention that the writ petitioners moved this Court only in the year 2002 while the declaration under Section 6 came in the year 2002 itself here again, we will have to point out that excepting that declaration under Section 6 came to be made in the year 2000, it is not the case of the State that further proceedings had resulted in completion of the acquisition and taking over of possession of the lands in question. In such circumstances, when the writ petitioners moved this Court in the year 2002, at a Stage where they were in possession of the lands in question and when the learned Judge found the very basis of the acquisition to be wholly invalid, we are not in a position to interfere with the said order of the learned Judge on the other submission made by the learned Special Government Pleader. We therefore, do not find any mind in these writ appeals. The writ appeals fails and the same are dismissed."

19. As against the order of the Division Bench, the appellants



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herein had preferred Special Leave to Appeal (Civil) No.CC 20944 of 2009 wherein the Apex Court, vide order dated 19.02.2010 had upheld the order of the Division Bench and the said order has reached finality.

20. Similar writ petitions were also filed in W.P.Nos.8344 of 8345 of 2003 and by following the common order dated 13.08.2003 in W.P.Nos.38690 of 2002 batch, the said writ petitions were allowed, vide order dated 23.09.2003, against which writ appeals were filed in W.A.Nos.1684 and 1685 of 2004 and it was dismissed on 01.08.2007. After the dismissal of the writ appeals, the Housing Board filed Review Applications in Rev.Appl.Nos.154 and 155 of 2009 and concealing the said fact, the Government filed SLP.No.CC.7821 & 7822 of 2010, which was dismissed by the Hon'ble Apex Court on 14.05.2010. Therefore, once the appeals filed by the appellants were dismissed by the Hon'ble Apex Court on 14.05.2010, the order passed in the review applications filed by the appellant Board does not survive. However, the fact remains that those review applications were allowed and W.A.Nos.1684 and 1685 of 2004 were restored to file and tagged along with the present batch of



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writ appeals herein.

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21. The grounds of challenge in the present writ appeals and the grounds raised in W.P.Nos.39788 to 39790 and 39846 of 2002, which was challenged in W.A.Nos.930 & 931 of 2004 are similar and identical ground in respect of the very same land acquisition proceedings and the same having reached finality by the order of the Hon'ble Apex Court, the same would have a binding precedent in respect of the present appeals also.

22. The Hon'ble Supreme Court in ***Union of India v. Krishnan***

Lal Arneja [(2004) 8 SCC 453] has held as follows:

"12..... The ground of urgency also being common, it is not possible to accept that the decision rendered in the case of Banwarl Lal or Shakuntala Gupta on the question of urgency was property specific. The decision in Banwari Lal and Shakuntala Gupta of this Court in relation to the same notification may not be binding on the principle of res judicata. The argument, however, cannot be accepted that those decisions are not binding being 'property specific' in those cases. In our considered opinion, the decisions are binding as precedents on question of validity of the notification, which invokes urgency clause under Section 17 of the Act. We find ourselves in full agreement with the



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ratio of the decisions in those cases that urgency clause, on the facts and circumstances, which are similar to the present cases, could not have been invoked. The two decisions are, therefore, binding as preceding of this Court. We are unable to find any distinction or difference as to the ground of urgency in regard to the properties covered by these appeals."

23. The orders passed in various writ petitions in which appeals have been filed and they have reached finality by the dismissal of the SLP filed by the Government, the same would act as a binding precedent in all other similar other cases and would operate as constructive res judicata in the light of the decision cited supra.

24. Admittedly, in the cases on hand, award has been passed in Award No.3/2002 dated 25.11.2002 for Block I, Award No.2/2002 dated 20.09.2002 for Block II and 4/2002 for Block III of Narasimhapuram Village. Since the order of the Writ Court quashing the Section 4(1) Notification and Section 6 Declaration has reached finality in the SLP before the Apex Court, at this distant point of time, this Court is not inclined to probe into the very same grounds raised in the writ petitions. In the light of the decisions cited supra and the foregoing discussions, we



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are satisfied that the Writ Court has elaborately discussed and held that the enquiry conducted under Section 5A of the Land Acquisition Act by the appellants is not in consonance with the Act, 1894. This Court finds much force on the contentions raised by the learned Senior Counsel for the respondents/landowners and finds no reason to interfere with the common order passed by the Writ Courts and accordingly, these writ appeals are liable to be dismissed.

WRIT PETITIONS

25. The primordial two contentions raised by the petitioners is that Enquiry under Section 5A of Act, 1894 was conducted without giving reasonable opportunity to the petitioners and paper publications were published in "Makkal Kural" and "Dina Boomi" dated 14.08.2003 which do not have wide circulation in the locality. The said grounds were already dealt with by this Court in the common order dated 13.08.2003 in W.P.Nos.38690 of 2002 etc., batch and therefore, this court need not go into the same.



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26. The other contention raised by the petitioners is that no prior approval has been obtained from the local authority as per as per Section 3(f)(7) of the Act, 1894 and therefore, in the light of the decision of the Division Bench of this Court dated 23.08.2022 in W.A.Nos.582 and 583 of 2015, **[Tamil Nadu Housing Board v. Pongianna Gounder and Others]**, the acquisition proceedings in liable to be vitiated. A perusal of the materials placed by the appellants would disclose that prior approval has been approved by the appellants in G.O.2(D) No.118, Housing and Urban Development Department dated 21.04.1998 for acquisition of 34.22.0 Hectares of lands in S.Nos.1 etc., of Narasingapuram Village for Development of Satellite Township Scheme. Therefore, the contention of the petitioners that prior approval has not been obtained from the Government before acquisition cannot be countenanced.

27. Lastly it is contended by the petitioners that the Government has passed G.O.(Ms.)No.7, Housing and Urban Development Department dated 03.01.2007, in and by which vast extent of lands were excluded from the acquisition proceedings and while that being so, proceeding



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with the lands of the petitioners is in violation of Article 14 of the Constitution of India. According to the petitioners, W.P.Nos.36944, 36945 and 43923 of 2006, which are tagged along with the present batch of writ petitions, were disposed of by this Court on 20.09.2023 by recording the statement of the learned Additional Advocate General that the subject lands were excluded as per G.O.Ms.No.7 dated 03.01.2007 and therefore, the petitioners also seek for similar relief.

28. The Hon'ble Supreme Court in ***Sham Lal and Others v. State of Punjab and Others [(2013) 14 SCC 393]***, had held as under:

"24. In *Hari Ram case [Hari Ram v. State of Haryana, (2010) 3 SCC 621 : (2010) 1 SCC (Civ) 787]* the Court noted that prior to 26-10-2007, the Government did not have a uniform policy for withdrawal from acquisition and observed : (SCC pp. 635-36, paras 39-41)

"39. ... As regards the guidelines provided in the Letter dated 26-6-1991, this Court has already held that classification on the basis of nature of construction cannot be validly made and such policy is not based on intelligible differentia and a rational basis. What appears from the available material is that for release of the lands under the subject acquisition, no policy has been adhered to. This leads to an irresistible conclusion that no firm policy with regard to release of land from acquisition existed.



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40. It is true that any action or order contrary to law does not confer any right upon any person for similar treatment. It is equally true that a landowner whose land has been acquired for public purpose by following the prescribed procedure cannot claim as a matter of right for release of his/her land from acquisition but where the State Government exercises its power under Section 48 of the Act for withdrawal from acquisition in respect of a particular land, the landowners who are similarly situated have a right of similar treatment by the State Government. Equality of citizens' rights is one of the fundamental pillars on which the edifice of the rule of law rests. All actions of the State have to be fair and for legitimate reasons.

41. The Government has obligation of acting with substantial fairness and consistency in considering the representations of the landowners for withdrawal from acquisition whose lands have been acquired under the same acquisition proceedings. ***The State Government cannot pick and choose some landowners and release their land from acquisition and deny the same benefit to other landowners by creating artificial distinction. Passing different orders in exercise of its power under Section 48 of the Act in respect of persons similarly situated relating to the same acquisition proceedings and for the same public purpose is definitely violative of Article 14 of the Constitution and must be held to be discriminatory.***” (emphasis supplied)

25. By applying the ratio of the abovenoted judgments to the facts of these cases, we hold that one of the reasons assigned by the State Government for not excluding the appellants' land from acquisition, namely, the quality of construction was irrelevant and extraneous and the High Court committed serious error by rejecting the appellants' plea that the respondents had discriminated



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them in the matter of grant of exemption from acquisition."

29. A learned Single Judge of this Court in W.P.Nos.8924 of 2010 etc., batch dated 18.11.2021, while considering the challenge made to G.O.Ms.No.7 dated 03.01.2007, in the land acquisition proceedings in respect of formation of Thirumazhisai Satellite Town, has observed as under:

"19. Insofar as the G.O.Ms.No.7 dated 03.01.2007 is concerned, the Government of Tamil Nadu proposed to drop the acquisition proceedings in respect of the other land except the lands to an extent of 467 acres. It is relevant to rely upon the judgment reported in 2011 (5) CTC 503 in the case of *Tamil Nadu Housing Board and Ors. vs. Uma Maheswari Ramasamy and Ors.*, in which the Hon'ble Division Bench of this Court held as follows :

"18. It is, therefore, evidently clear that in number of cases the Government on the basis of the recommendations of the Expert Committee accepted the requests of the land-owners and took a decision to re-convey their lands. But, at the same time, in respect of some of the representations the Government took the decision otherwise and rejected the request of re-conveyance of the land. Such action of the respondents prima facie appears to be arbitrary, capricious, discriminatory and violative of Article 14 of the Constitution of India.

19. It is well-settled that No. unlimited jurisdiction is vested with any judicial or quasi-



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judicial forum. An unfettered discretion is a sworn enemy of the constitutional guarantee against discrimination. An unlimited jurisdiction leads to unreasonableness. No. authority, be it administrative or judicial has any power to exercise the discretion vested in it unless the same is based on justifiable grounds supported by acceptable materials and reasons thereof.

20. A Constitution Bench of the Supreme Court while dealing with the “State Action“, in the case of Maneka Gandhi v. Union of India reported in AIR 1978 SC 597 discussed the scope of Article 14 of the Constitution and observed: [p.624 para~56]

56. Now, the question immediately arises as to what is the requirement of Article 14: what is the content and reach of the great equalizing principle enunciated in this Article? There can be No. doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No. attempt should be made to truncate its all embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be

imprisoned within traditional and doctrinaire limits. We must reiterate here what was pointed out by the majority in E.P. Roayppa v. State of Tamil Nadu (1974) 2 SCR 348 : AIR 1974 SC



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555 namely, that -from a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic, while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and it therefore violative of Article 14-. Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non~arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be -right and just and fair- and not arbitrary, fanciful or oppressive; otherwise, it would be No. procedure at all and the requirement of Article 21 would not be satisfied.?"

30. The aforesaid decision of the Hon'ble Apex Court has laid down the principles that State Government cannot pick and choose some landowners by releasing their lands from acquisition and deny the same benefit to other landowners by creating artificial distinction. Passing different orders in exercise of its powers under Section 48 of the Act in respect of persons similarly situated relating to the same acquisition



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proceedings and for the same public purpose is definitely violative of Article 14 of the Constitution of India and the same is discriminatory. The order of this Court in W.P.Nos.8924 of 2010 dated 18.11.2021 also reiterated on the same lines. While the large chunk of lands were excluded from land acquisition proceedings by virtue of G.O.Ms.No.7 dated 03.01.2007, the petitioners herein, who are similarly placed, are also entitled to similar relief, as any contrary decision would be violative of Articles 14 and 21 of the Constitution and held to be discriminatory. This Court finds much force on the contentions put forth by the learned counsel for the petitioners and therefore, this Court safely hold that the claim of the writ petitions are legally sustainable and the impugned acquisition proceedings are quashed in respect of the petitioners are concerned.

31. In the light of the facts and circumstances of the case and the decisions cited supra, the writ appeals filed by the State and the Tamil Nadu Housing Boards stand dismissed and the impugned land



W.A.Nos.373 of 2004 etc., batch

acquisition proceedings / notifications issued by the respondents are quashed. Consequently, W.A.Nos.1904 and 1905 of 2010 and all the writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

[D.K.K., J.,] [P.B.B., J.]
19.10.2023

Index:yes

Internet:yes

Jvm

To

1.The Secretary to Government,
The Government of Tamil Nadu,
Housing and Urban Development Department,
Fort St.George, Chennai-600 009.

2.The Collector,
Tiruvallur District, Thiruvallur District.

3.The Special Tahsildar,
(Land Acquisition) Unit IV,
Tamil Nadu Housing Board Schemes,
Nandanam, Chennai-600 035.

D.KRISHNAKUMAR, J.,
&
P.B.BALAJI, J.

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W.A.Nos.373 of 2004 etc., batch

Common Judgment in
W.A.Nos.373 of 2004 etc., batch

19.10.2023