IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.06.2023

Pronounced on : 07.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE P.B. BALAJI

O.S.A.Nos.355 to 357 of 2013 & W.P.No.4092 of 2019
and
M.P.Nos.1, 2 & 2 of 2013,
W.M.P.Nos.4573 & 4576 of 2019

O.S.A.Nos.355 to 357 of 2013 :

M/s.Asset Reconstruction Company (India) Ltd. ('ARCIL'),
Shreepati Arcade, August Kranti Marg,
Nana Chowk,
Mumbai – 400 036. ... Appellant in all appeals

Vs.

1.M/s.Chennai Petroleum Corporation Limited,
(formerly known as Madras Refineries Limited),
536, Anna Salai,
Teynampet,
Chennai – 600 018.

2.M/s.Spic Petro Chemicals Limited,
A company in liquidation
Represented by the Official Liquidator,
High Court, Madras,
'Corporate Bhavan', 2nd Floor,
No.29, Rajaji Salai,
Chennai – 600 001.

3.Principal Secretary to the Government,
Industries Department,
Government of Tamil Nadu,
Fort St. George,
Chennai – 600 009. ... Respondents in all appeals

Original Side Appeals in O.S.A.Nos.355 to 357 of 2013 filed under Order XXXVI Rule 1/11 of Original Side Rules against the order of this Court, dated 12.09.2013, in Company Application Nos.163 to 165 of 2011 respectively in Company Application Nos.1114 & 1115 of 2010 in Company Petition No.265 of 2002.

For Appellant	:	Mr.M.S.Krishnan Senior Counsel for M/s.Surana and Surana in all appeals
For R1	:	Mr.B.Gautham for Mr.R.Senthil Kumar in all appeals

For R2	:	Mr.M.Dhamodharan for Official Liquidator in all appeals
For R3	:	Mr.A.Edwin Prabakar Special Government Pleader (CS) assisted by Mr.R.Siddharth Government Advocate (CS) in all appeals

W.P.No.4092 of 2019 :

Asset Reconstruction Company
(India) Ltd. (ARCIL)
The Ruby, 10th Floor,
No.39, Senapathi Bapat Marg,
Dadar, West Mumbai 400 028
Represented by Authorized Signatory ... Petitioner

Vs.

1.Principal Secretary to the Government,
Industries Department,
Government of Tamil Nadu,
Fort St. George,
Chennai – 600 009.

2.Additional Chief Secretary to the Government,
Industries Department,
Government of Tamil Nadu,
Fort St. George,
Chennai – 600 009.

3.M/s.SPIC Petro Chemicals Ltd
(in liquidation)
Represented by the Official Liquidator,
High Court, Madras,
Corporate Bhavan, 2nd Floor,
No.29, Rajaji Salai,
Chennai – 600 001.

4.M/s.Chennai Petroleum Corporation Limited,
(formerly known as Madras Refineries Limited),
536, Anna Salai,
Teynampet,
Chennai – 600 018.

5.Tamil Nadu Industrial Development Corporation
Limited (TIDCO),
Represented by its Senior General Manager,
No.19-A, Rukmini Lakshmipathi Road, Egmore,
Chennai – 08. ... Respondents

[R5 impleaded vide order dated 17.03.2023 made in W.M.P.No.7407 of 2023 in W.P.No.4092 of 2019]

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned G.O.(Ms) No.59, Industries (MID.1) Department, dated 04.03.2016, issued by the 1st respondent and quash the same and consequently direct the 1st respondent not to disturb the petitioner on the possession of alleged land.

For Petitioner	:	Mr.M.S.Krishnan Senior Counsel for M/s.Surana and Surana
For R1 and R2	:	Mr.J.Ravindran Additional Advocate General assisted by Dr.T.Seenivasan Special Government Pleader
For R3	:	Mr.M.Dhamodharan for Official Liquidator
For R4	:	Mr.B.Gautham for Mr.R.Senthil Kumar
For R5	:	Mr.P.S.Raman Senior Counsel for M/s.King and Partridge for TIDCO

COMMON JUDGMENT

S.S. SUNDAR, J.

All the three Original Side Appeals in O.S.A.Nos.355 to 357 of 2013 are directed against the order of learned Single Judge of this Court, dated 12.09.2013, in Company Application Nos.163 to 165 of 2011. The 1st respondent in Company Application Nos.163 to 165 of 2011 is the appellant in all the three Original Side Appeals.

2.The writ petition in W.P.No.4092 of 2019 is filed during the pendency of the Original Side Appeals, for issuance of a Writ of Certiorarifed Mandamus to quash the impugned Government Order vide G.O.(Ms) No.59, Industries (MID.1) Department, dated 04.03.2016, issued by the Government of Tamil Nadu, through Secretary to Government, Industries Department, declaring the transfer of 268.38 Acres of land by way of mortgage to various banks without prior permission of Government as null and void and forfeiting the land as penalty by invoking the provision under Section 44-A[2] of Land Acquisition Act.

3.Though the Original Side Appeals and the writ petition arise out of different cause of action, the appellant in the appeals and the petitioner in the writ petition have raised a few issues which are common and hence, the Original Side Appeals and the writ petition are disposed of by this common judgment.

4.The appellant herein, who is also the writ petitioner, namely, M/s.Asset Reconstruction Company (India) Ltd., is hereinafter referred to as

"M/s.ARCIL". The 1st respondent in the writ petition, who is the 3rd respondent in the appeals, is hereinafter referred to as "State" or "Government". The 2nd respondent in the appeals, who is also the 3rd respondent in the writ petition, is hereinafter referred to as "M/s.SPIC Petro Chemicals Ltd." The 1st respondent in the appeals, who is the 4th respondent in the writ petition, is hereinafter referred to as "M/s.CPCL".

5.Brief facts that are necessary for the disposal of these appeals and the writ petition may be summarized as follows :

5.1.The appellant/writ petitioner-M/s.ARCIL is a company incorporated under the Companies Act, 1956, and registered as a securitization and reconstruction company under Section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act" for brevity). The appellant's business is to take over the debts of Companies from Banks and Financial Institutions and to step into the shoes of lending institutions to exercise all rights and liabilities of the lending institutions with respect to the debts assigned to it in terms of the provisions of Section 5(4) of SARFAESI Act.

5.2.M/s.CPCL (formerly known as Madras Refineries Limited), the 1st respondent in the appeal who is the 4th respondent in the writ petition, entered into a Memorandum of Understanding on 17.01.1989 with M/s.Southern Petrochemicals Industries Corporation Limited ("M/s.SPIC" for brevity) for floating a Public Limited Company as a Joint Venture to implement a project, for which the Government of India had agreed to grant licence. The name of the Joint Venture Company to be formed was "National Aromatics and Petrochemicals Corporation Ltd." and the project was referred to as "AROCHEM".

5.3.By an order dated 16.09.1989, the Government of Tamil Nadu accorded administrative sanction for acquisition of 1655.92 Acres of Patta and Poramboke lands in various villages in Thiruvallur District, for the project AROCHEM.

5.4.M/s.SPIC floated a company by name M/s.SPIC Petro Chemicals Ltd. and requested the Government to allot an extent of 168.38 Acres of land out of total land acquired by the Government for the project, in favour of M/s.SPIC Petro Chemicals Ltd. The Government of Tamil Nadu allotted the land to M/s.SPIC Petro Chemicals Ltd. on condition to remit all costs of acquisition and that the Unit started by M/s.SPIC Petro Chemicals Ltd., the newly formed Company, would get integrated backwardly with the new Joint Venture Company. An agreement was entered into between M/s.SPIC Petro Chemicals Ltd. and the Government of Tamil Nadu on 27.06.1994, containing the terms of allotment which is subject to the power of Government to resume the land in the event of the Company being wound up or in the event of the failure of the Company to carry out the terms of agreement.

5.5.Upon coming to know about the allotment of land in favour of the newly floated Company, viz., M/s.SPIC Petro Chemicals Ltd., M/s.CPCL filed a Civil Suit in C.S.No.67 of 1996 for declaration that the project sought to be implemented through M/s.SPIC Petro Chemicals Ltd. was in breach of trust and also in violation of the Memorandum of Understanding dated 17.01.1989. M/s.CPCL filed a second suit in C.S.No.73 of 1996 to declare that the promoters of M/s.SPIC Petro Chemicals Ltd. and M/s.SPIC committed a breach of trust by getting transfer of allotment of lands to M/s.SPIC Petro Chemicals Ltd. M/s.CPCL got interim injunction in both the suits, by order dated 02.07.1996, restraining the defendants therein from proceeding with the project under the newly floated Company M/s.SPIC Petro Chemicals Ltd. subject to certain conditions.

5.6.M/s.CPCL filed Original Side Appeals in O.S.A.Nos.171 to 174 of 1996 aggrieved by certain conditions and M/s.SPIC Petro Chemicals Ltd. filed O.S.A.Nos.190 to 193 of 1996 challenging the grant of injunction. By a common order dated 18.03.1997, all the appeals preferred by M/s.CPCL were allowed and the conditions imposed by the learned Single Judge were set aside. However, the prayer for interim mandatory injunction made in O.A.No.87 of 1996 was rejected.

5.7.As against the common order of Division Bench, M/s.SPIC and M/s.SPIC Petro Chemicals Ltd. filed Special Leave Petitions and all the Special Leave Petitions were dismissed on 24.10.1997.

5.8.In the meanwhile, M/s.SPIC Petro Chemicals Ltd. availed credit facilities from M/s.ICICI Bank Limited by mortgaging the land allotted to them as security for the repayment of loan. It is to be noted that the Memorandum of Deposit of Title Deeds was executed on 22.07.1996 after the interim order dated 02.07.1996 was granted by the learned Single Judge in the applications filed by M/s.CPCL. It is also admitted that no prior permission of Government was obtained for mortgaging the property.

5.9.Several Company Petitions were filed for winding up of M/s.SPIC Petro Chemicals Ltd. and a common order was passed on 17.04.2009 directing the winding up of the Company. Though the order directing the winding up was stayed by a Division Bench of this Court by order dated 05.05.2009 subject to certain conditions, the order of stay was vacated on

26.04.2010, since M/s.SPIC Petro Chemicals Ltd. did not comply with the conditions.

5.10.M/s.ICICI Bank Limited filed an application in O.A.No.9 of 2003 before the Debts Recovery Tribunal, Mumbai, and got an order for appointing a Receiver on 14.02.2003, to sell the property mortgaged. As against the said order, M/s.SPIC Petro Chemicals Ltd. filed an appeal in M.A.No.75 of 2003 before the Debts Recovery Appellate Tribunal, Mumbai. Similar appeal was filed by M/s.SPIC in M.A.No.79 of 2003. Both the appeals were dismissed by the Debts Recovery Appellate Tribunal, Mumbai, by order dated 10.03.2003.

5.11.M/s.SPIC as well as M/s.SPIC Petro Chemicals Ltd. filed writ petitions in W.P.Nos.1078 and 1079 of 2003 before the High Court of Bombay and obtained an interim order restraining the respondents therein from dispossessing M/s.SPIC Petro Chemicals Ltd.

5.12.On 17.04.2009, this Court ordered publication of advertisement for winding up against M/s.SPIC Petro Chemicals Ltd. As against the order, M/s.SPIC Petro Chemicals Ltd. filed appeals in O.S.A.Nos.127 to 132 of 2009. Though the Division Bench granted interim stay for a while, since the conditional order was not complied with by M/s.SPIC Petro Chemicals Ltd., the interim order was vacated by Division Bench of this Court on 26.04.2010, directing the Official Liquidator to take possession of the assets of the Company in liquidation.

5.13.In the meanwhile, the appellant/writ petitioner-M/s.ARCIL got assignment of debts from M/s.ICICI Bank Limited on 31.03.2005. Other four Banks which lent money to M/s.SPIC Petro Chemicals Ltd. also assigned the debts in favour of appellant/writ petitioner between 2006 and 2009.

5.14.Since the Official Liquidator took possession of the property on 14.05.2010 pursuant to the orders of the Division Bench of this Court in O.S.A.Nos.127 to 132 of 2009 dated 26.04.2010, the appellant/writ petitioner filed two Company Applications in C.A.Nos.1114 and 1115 of 2010 praying for upholding its actions as a rightful exercise of its entitlements under the SARFAESI Act and for handing over possession of the property to them. On 20.12.2010, an order was passed in both the applications in C.A.Nos.1114 and 1115 of 2010, as the Official Liquidator agreed to hand over possession to the appellant/writ petitioner subject to the condition that the appellant/writ petitioner would associate the Official Liquidator in the sale of the property.

5.15.M/s.CPCL, who is not a party to the said proceedings, filed Company Application Nos.163 to 165 of 2011 praying to recall and set aside the order dated 20.12.2010 passed in C.A.Nos.1114 and 1115 of 2010 and to grant interim injunction restraining the appellant/writ petitioner from alienating the property.

5.16.Learned Single Judge of this Court, by an order dated 12.09.2013, allowed the Company Applications in C.A.Nos.163 and 164 of 2011 and the order, dated 20.12.2010, passed in C.A.Nos.1114 and 1115 of

2010 was recalled by the learned Single Judge, mainly on the ground that transfer by creation of mortgage by M/s.SPIC Petro Chemicals Ltd. is void. Learned Single Judge observed that the prohibition contained in Section 44-A(1) is absolute and that any person, who is a beneficiary of such a transfer, cannot seek a seal of approval from this Court to sell such a property, whose transfer to itself was in violation of statutory prohibition. Since the order obtained by appellant/writ petitioner dated 20.12.2010 in C.A.Nos.1114 and 1115 of 2010, if allowed to stand, would obliterate the effect of statutory prohibition, the learned Single Judge held that transfer by way of mortgage created by the Company in liquidation in favour of the Bank is invalid in law in view of the statutory prohibition. It is to be seen that, by order dated 20.12.2010, in the applications filed by the appellant/writ petitioner, this Court permitted the appellant/writ petitioner to proceed with the sale of the property. While declaring the mortgage by the Company in liquidation as invalid, since it was done in violation of Section 44-A(1) of the Act, learned Single Judge further held that the Memorandum of Deposit of Title deeds on 22.07.1996 was during the pendency of the two Civil Suits and the mortgage is hit by *lis pendens*. On the admitted facts, the learned Judge has also justified the proposed action against the Company in liquidation for resumption of land by Government in exercise of their power under Section 44-A(2) of Land Acquisition Act.

5.17.The Company Application in C.A.No.165 of 2011 was closed by the learned Single Judge, recording that the prayer therein is only for grant of injunction pending disposal of other two applications.

6.Aggrieved by the order dated 12.09.2013 made by learned Single Judge in C.A.Nos.163 to 165 of 2011, the appellant/writ petitioner has preferred the above Original Side Appeals in O.S.A.Nos.355 to 357 of 2013.

7.When the Original Side Appeals were moved for admission, the Division Bench of this Court, by an order dated 31.10.2013, granted interim order of status *quo* as on 31.10.2013.

8.During the pendency of the Appeals, the Government issued the impuged Government Order vide G.O.(Ms) No.59, Industries (MID.1)

Department, dated 04.03.2016. By the impugned Government Order, the Government, in exercise of its powers under Sub-Section (2) of Section 44-A of Land Acquisition Act, declared that the transfer of 168.38 Acres of land in Kosappur Village, Tiruvallur District by M/s.SPIC Petro Chemicals Ltd. by way of mortgage to various Banks for borrowing loan without obtaining prior permission of the Government as required under Sub-Section (1) of Section 44-A of Land Acquisition Act, is null and void. Consequent to the declaration, the Government also forfeited the land as penalty and directed vesting of land with Government, free from encumbrance, with a further direction to the District Collector, Tiruvallur, to make appropriate entries in Revenue records.

9.Stating that no notice was issued to the appellant/writ petitioner and the impugned order is in violation of principles of natural justice, appellant/writ petitioner has filed the above writ petition in W.P.No.4092 of 2019, challenging G.O.(Ms) No.59, Industries (MID.1) Department, dated 04.03.2016.

10.Though M/s.CPCL also filed Cross Objections in Cross.Obj.Nos.119 to 121 of 2013 in O.S.A.Nos.355 to 357 of 2013 respectively, the Cross Objections were dismissed by this Court on 19.04.2023 recording the endorsement made by the learned counsel for M/s.CPCL seeking permission to withdraw the Cross Objections.

11.During the pendency of the writ petition, M/s.Tamil Nadu Industrial Development Corporation Limited (hereinafter referred to as "M/s.TIDCO" for brevity) filed W.M.P.No.7407 of 2023 to implead itself as a respondent in the writ petition. In the affidavit filed in support of the petition, it is contended that M/s.TIDCO requested for transfer of vast extent of lands including the lands that are allotted in favour of M/s.SPIC Petro Chemicals Ltd. which had been resumed by Government by the impugned Government Order. Though learned counsel appearing for the writ petitioner opposed the petition on the ground that M/s.TIDCO has no *locus standi* as no order as such is passed in favour of M/s.TIDCO, this Court, without deciding the right or entitlement of M/s.TIDCO, allowed the

Writ Miscellaneous Petition filed by M/s.TIDCO and M/s.TIDCO has been impleaded as 5th respondent in the writ petition.

12.Mr.M.S.Krishnan, learned Senior Counsel appearing for the appellant/writ petitioner, submitted that the writ petitioner is bound to succeed in the writ petition atleast on the ground that the impugned order is in violation of principles of natural justice, inasmuch as the petitioner, who has now stepped into the shoes of the Creditors of the Company in liquidation, is entitled to proceed against the properties of M/s.SPIC Petro Chemicals Ltd.

13.By referring to various facts and proceedings, the learned Senior Counsel appearing for the appellant/writ petitioner submitted that various Banks have granted huge financial assistance to M/s.SPIC Petro Chemicals Ltd. based on the mortgage created by M/s.SPIC Petro Chemicals Ltd. and that the appellant/writ petitioner, who got assignment of those debts/mortgages for a substantial consideration, is entitled to proceed against the property which is the only security for the petitioner's money.

Learned Senior Counsel submitted that the Government has failed to consider the fact that the appellant/writ petitioner has substantial rights of a Secured Creditor and has a first priority under Section 529 of the Companies Act on the mortgaged property.

14.Learned Senior Counsel pointed out that the 1st respondent in the writ petition entered into an agreement with M/s.SPIC Petro Chemicals Ltd. for allotment of 168.38 Acres of land under Section 41 of the Land Acquisition Act, without any restriction for creation of mortgage by M/s.SPIC Petro Chemicals Ltd. for the project. Learned Senior Counsel pointed out that the Government of Tamil Nadu has recommended for financial assistance to be rendered to M/s.SPIC Petro Chemicals Ltd. and that therefore, creation of mortgage by M/s.SPIC Petro Chemicals Ltd. was indirectly authorized by the Government.

15.Referring to some of the statutory provisions, learned Senior Counsel then submitted that the object of Sections 44-A and 44-B of Land Acquisition Act is to protect public interest and that therefore, by no stretch of imagination, provisions of Section 44-A can be interpreted to invalidate every mortgage created by the Company without permission from the Government. Since it is possible for the Government to take a decision not to resume the land by examining the factual situation of a particular case, the learned Senior Counsel contended that the writ petitioner ought to have been given opportunity before the impugned order resuming the land by way of penalty was passed. Referring to the fact that the Company has been wound up on 17.04.2009, learned Senior Counsel submitted that the notice issued to M/s.SPIC Petro Chemicals Ltd. is invalid and it is only the person namely the writ petitioner, who has stepped into the shoes of the Company or as a mortgagee or an assignee of mortgage, is entitled to be heard.

16.On the other hand, the respondents 1 and 2 in the writ petition have filed a detailed counter affidavit. In the counter affidavit, the following facts are pointed out :

16.1.Since the land originally allotted in favour of M/s.SPIC Petro Chemicals Ltd. pursuant to the acquisition proceedings initiated under the Land Acquisition Act, has been resumed in terms of Section 44-A of the

Act, the other respondents in the writ petition and the appeals have realised the legal implication of the resumption proceedings.

16.2.The entire acquisition was for the project known as "AROCHEM", which is based on a Joint Venture and the acquisition is for the benefit of the newly formed Company.

16.3.However, an extent of 168.38 Acres of land was allotted to M/s.SPIC Petro Chemicals Ltd., subject to condition that there should be remittance of costs of acquisition. However, M/s.SPIC Petro Chemicals Ltd. did not comply with the essential condition of the order by remitting the cost of acquisition. Therefore, the allotment order is liable to be cancelled and the resumption should follow even as per the agreement dated 27.06.1994.

16.4.A sum of Rs.2,93,91,764/- towards rehabilitation cost and a further sum of Rs.2,35,17,701/- towards staff cost and a sum of Rs.58,74,063/- towards Government Land Dues have to be recovered from M/s.SPIC Petro Chemicals Ltd. and proceedings had already been initiated by the District Collector to collect the said amount as arrears of Land Revenue. The Tahsildar, Madhavaram, has also issued a Distraint Order under the Revenue Recovery Act, 1864.

16.5.Further, the compensation originally awarded was enhanced by the Sub-Court, Ponneri, relating to the lands acquired for the Joint Venture Project and the excess amount of Rs.23,93,19,972/- awarded by the Court was not paid by M/s.SPIC Petro Chemicals Ltd.

16.6.Since the cost of land itself was not remitted by the beneficiary of acquisition, the writ petitioner has no legal or moral right to resist resumption of land, merely on the basis of a void mortgage which is rightly declared as void by the Government in exercise of its power under Sub-Section (2) of Section 44-A of the Land Acquisition Act.

16.7.Though several recovery proceedings were initiated against M/s.SPIC Petro Chemicals Ltd. by the financial institutions, none of the proceedings would bind the Government, which is not a party to those proceedings, and the Government has an independent right to resume the land not only under the terms of the agreement, but also by virtue of Section 44-A of Land Acquisition Act, by way of penalty.

16.8.Since M/s.SPIC Petro Chemicals Ltd. failed to submit their explanation to the show cause notice, the impugned order vide G.O.(Ms)

No.59, Industries (MID.1) Department, dated 04.03.2016, is inevitable and perfectly valid, since declaration of nullity of the mortgage is a legal consequence that would follow on the facts admitted and there cannot be an exception.

17.Since it is admitted that M/s.SPIC Petro Chemicals Ltd. failed to get prior permission of Government as required under Sub-Section (1) of Section 44-A of the Land Acquisition Act, learned Additional Advocate General appearing for the respondents 1 and 2 in the writ petition, submitted that the Government has rightly decided to initiate action under Sub-Section (2) of Section 44-A of Land Acquisition Act and that the order of resumption cannot be assailed on any ground having regard to the facts admitted. Learned Additional Advocate General further submitted that the allotment of land in favour of M/s.SPIC Petro Chemicals Ltd. specifically refers to the power of Government under Section 44-A of the Act and the financial institutions or the writ petitioner, taking advantage of their own flaw in getting a mortgage in their favour quite contrary to Section 44-A, cannot now plead that the petitioner should be heard before an order is passed for resumption.

18.Learned Additional Advocate General also submitted that possession was taken by the Government pursuant to the impugned order and that Patta and Revenue records have been changed. Contending that physical possession cannot be assumed to be with the writ petitioner, learned Additional Advocate General further submitted that the petitioner, on the strength of an illegal mortgage, cannot claim any right as against paramount title holder after valid resumption of land. Referring to the facts that M/s.SPIC Petro Chemicals Ltd. did not utilise the land for the purpose for which it was allotted and that there is a specific condition enabling resumption of land by the Government apart, from the statutory obligation of Government to resume the land, learned Additional Advocate General pointed out that the writ petitioner or M/s.SPIC Petro Chemicals Ltd., who failed to adhere to the conditions of Government and the statutory limitations, have no indefeasible right to protect their possession either on moral or legal ground.

19.Referring to the fact that M/s.SPIC Petro Chemicals Ltd., after assignment of the land, did not utilise the land for the purpose for which it was acquired, learned Additional Advocate General submitted that no relief can be granted in favour of writ petitioner either on equity or on any other ground based on any sound principles of law.

20.Mr.P.S.Raman, learned Senior Counsel appearing for M/s.TIDCO/5th respondent in the writ petition, submitted that the writ petitioner has no *locus standi* to maintain the writ petition having regard to the admitted facts and the position that a person, based on a void and invalid transaction, cannot claim any right against the Government with whom the land vest upon resumption, invoking powers under section 44-A of the Land Acquisition Act. Relying upon the order of learned Single Judge which is challenged in the connected appeals, learned Senior counsel submitted that resumption of lands by the impugned order is in public interest and that the same cannot be questioned merely on the ground of violation of principles of natural justice.

21.Learned Senior Counsel appearing for the appellant/writ petitioner focussed his submissions on the scope, object and interpretation of Section 44-A of Land Acquisition Act. Section 44-A of the Land Acquisition Act, reads as follows :

> ***"44A. Restriction on transfer, etc.*** *- (1) No Company for which any land is acquired under this Part shall be entitled to transfer the said land or any part thereof by sale, mortgage, gift, lease or otherwise except with the previous sanction of the appropriate Government.*
>
> *(2) Where it is noticed or any information has been received that any land has been transferred in contravention of sub-section (1), the Government may, by order, declare the transfer to be null and void, and on such declaration, the land shall, as penalty, be forfeited to, and vest in, the Government in Revenue Department free from all encumbrances:*
>
> *Provided that no order under this sub-section shall be made unless the company has had a reasonable opportunity of being heard."*

22.Referring to the fact that Sub-Section (2) of Section 44-A was added by the Land Acquisition (Tamil Nadu Amendment) Act, 1996, learned

Senior Counsel submitted that though there was restriction or prohibition for transfer of the land by the Company when the land was acquired under Part-VII of Land Acquisition Act, the Government may still ratify the transfer to subserve the very purpose and object of transfer. Learned Senior Counsel has no quarrel with the applicability of Section 44-A. However, stating that the declaration as to the nullity of transfer is possible only after amendment to Section 44-A, the argument of learned Senior Counsel is that the Government is well within its power to ratify the mortgage and hence, the transfer by way of mortgage in favour of the Bank and the assignment of mortgage could have been saved by the writ petitioner if only an opportunity was given to the petitioner.

23.Learned Senior Counsel then submitted that proviso to Section 44-A mandates a reasonable opportunity of being heard, to the Company. Stating that the writ petitioner has stepped into the shoes of the Company for which the acquisition was made, learned Senior counsel submitted that the impugned Government Order, without an opportunity being given to the petitioner, is invalid. Referring to the agreement, learned Senior Counsel submitted that, in the event of Company being wound up and in the event of failure on the part of the Company to carry out any other terms of agreement, the Government may resume the land, however, subject to an obligation to refund 75% of the amount paid by the Company towards cost of acquisition. Learned Senior Counsel submitted that, as successor-in-interest in relation to the property, the petitioner is entitled to take 75% of the amount paid by the Company towards cost of acquisition and further amount towards cost of compound wall and building, at the option of Government.

24.Pointing out that a substantial right is created in favour of the Company for which the acquisition was made, learned Senior Counsel submitted that the petitioner's right to be in possession till such time the petitioner is lawfully vacated by due process of law, cannot be ignored. Referring to the judgment of Hon'ble Supreme Court in ***Bachahan Devi and another v. Nagar Nigam, Gorakhpur and another*** reported in ***(2008) 12 SCC 372***, learned Senior Counsel submitted that the use of words “may” and “shall” is not decisive to ascertain if it is mandatory or directory.

Learned Senior Counsel submitted that the use of words “may” and “shall” may help the Courts in ascertaining the legislative intent without giving to either a controlling or a determinating effect. Since Courts are expected to consider the subject matter, the purpose of provisions, the object intended to be secured by the Statute which is of prime importance and the actual words employed, the learned Senior Counsel submitted that the question whether the provision is directory or mandatory vests with the Court and he further submitted further that, in the context in which Section 44-A was introduced in 1962 and the object behind Section 44-A, this Court should hold that the prohibition for transfer without a corresponding penalty cannot be construed to invalidate the transaction, especially when the lands were allotted to M/s.SPIC Petro Chemicals Ltd. before the amendment and that the writ petitioner, who got assignment of mortgage created before amendment should be protected from the amendment.

25.Learned Senior Counsel, then referring to proviso, submitted that the proviso is meant to limit the main part of the Section and that therefore, the impugned order, without issuing a show cause notice to the petitioner who is an interested party, is not binding on the petitioner. Learned Senior Counsel relied upon a judgment of Hon'ble Supreme Court in ***State of Rajasthan v. Leela Jain and others*** reported in ***AIR 1965 SC 1296***, wherein, the Hon'ble Supreme Court has observed in the context of that case that function of a proviso is to limit the main part of the Section and carve out something which but for the proviso would have been within the operative part. Relevant portion relied upon by the learned Senior Counsel is extracted hereunder :

> ***"14.*** *.... These cases may be thus summarised. In some of them a question has arisen as to whether the terms of a proviso could be called in aid to determine the scope of the main part to which it is a proviso. This approach and its limitations need not detain us, for obviously that is not the principle that arises for examination in the case before us. There are other decisions to which learned Counsel for the respondent drew our attention in which the question to be considered was whether the proviso was really redundant i.e., enacted ex abundanti cautela. No such principle arises for consi- deration in the proviso before us either. So far as a general principle of construction of a proviso is concerned, it has been broadly stated that the function of a proviso is to limit the main part of*

the section and carve out something which but for the proviso would have been within the operative part. It is obvious that this is not the function of the proviso to Section 4(1) of the Act, for the operative words in the main part of Section 4(1) prohibit all appeals from the appellate orders of the Commissioner. The primary purpose of the proviso now under consideration is, it is apparent, to provide a substitute or an alternative remedy to that which is prohibited by the main part of Section 4 (1). There is, therefore,. no question of the proviso carving out any portion out of the area covered by the main part and leaving the other part unaffected. What we have stated earlier should suffice to establish that the proviso now before us is really not a proviso in the accepted sense but an independent legislative provision by which to a remedy which is prohibited by the main part of the section, an alternative is provided. It is, further, obvious to us that the proviso is not co-extensive with but covers a field wider than the main part of Section 4(1)."

26.On the other hand, Mr.P.S.Raman, learned Senior Counsel and learned Additional Advocate General submitted that the writ petitioner, who had obtained mortgage from the financial institutions knowing that such a mortgage is void, cannot have a better right than what the mortgagee Banks had over the property and that the petitioner can proceed only against M/s.SPIC Petro Chemicals Ltd. It was then pointed out that the resumption of land as per the terms of agreement in terms of Section 44-A, is inevitable, having regard to the admitted facts and that therefore, providing opportunity to the petitioner will only be a useless formality. Learned Senior counsel pointed out that the purpose of acquisition is lost and hence, the land should be resumed to be used for another public purpose as otherwise the lands will have to be returned to the original owners under section 48-B of Land Acquisition Act.

27.The question to be answered is whether the petitioner's possession or their right as an assignee of mortgages created by M/s.SPIC Petro Chemicals Ltd. in favour of several Banks, will enable them to challenge the proceedings initiated by Government for resumption of land by exercising their power under Section 44-A of the Land Acquisition Act.

28.Sub Section 1 of Section 44-A prohibits any kind of transfer without previous sanction of appropriate Government. Though sub-section 2 of Section 44-A was introduced by the Land Acquisition [Tamil Nadu Amendment] Act, 1996, there is absolutely no bar or statutory limitation for the Government to declare any unauthorised transfer as null and void and forfeit the land by way of penalty. On such declaration, the land shall vest in the Revenue Department free from all encumbrances. Even in the case of ***Mannalal Khetan and Others Vs. Kedarnath Khetan and Others*** reported in ***1977 [2] SCC 424,*** relied upon by the learned Senior counsel appearing for the writ petitioner, the Hon'ble Supreme Court while considering Section 108 of Companies Act, 1956, has held that prohibition against transfer without complying with the provisions of the Act is emphasised by the negative language and the negative words are clearly prohibitory and are ordinarily used as a legislative device to make a statutory provision imperative. Quoting the judgment of Hon'ble Supreme Court in ***Raza Buland Sugar Co. Ltd. Vs. Municipal Board, Rampur,*** reported in ***AIR 1952 SC 252,*** the Hon'ble Supreme Court observed that negative, prohibitory and exclusive words are indicative of this legislative intent when the statute is mandatory. In ***Mannalal Khetan's case [cited supra]***, the Hon'ble Supreme Court has also observed that where a contract, express or implied, is expressly or by implication forbidden by statute, no Court will lend its assistance to give it effect. The position is reiterated by the Hon'ble Supreme Court as seen from paragraphs Nos.21 and 22 of the judgment which are extracted below for convenience:-

> ***21.****If anything is against law though it is not prohibited in the statute but only a penalty is annexed the agreement is void. In every case, where a statute inflicts a penalty for doing an act, though the act be not prohibited, yet the thing is unlawful, because it is not intended that a statute would inflict a penalty for a lawful act.*
>
> ***22.****Penalties are imposed by statute for two distinct purposes:[1]for the protection of the public against fraud, or for some other object of public policy ; [2] for the purpose of securing certain sources of revenue either to the State or to certain public bodies. If it is clear that a penalty is imposed by statute for the purpose of preventing something from being done on some ground of public policy, the thing prohibited, if*

done, will be treated as void, even though the penalty if imposed is not enforceable."

29.The judgment of Hon'ble Supreme Court in ***Rajasthan Housing Board Vs. New Pink City Nirman Sahkari Samti Limited and Another*** reported in ***2015 [7] SCC 601***, may be usefully referred to in the factual context. The State of Rajasthan acquired lands for the purpose of housing scheme of Rajasthan Housing Board. The lands originally assigned to persons belonging to scheduled caste got transferred to a Society based on a Compromise Decree pursuant to a Sale Agreement between the Schedule Caste people and Society. After the acquisition by State of Rajasthan, an Award was passed in favour of the Schedule Caste people in whose favour the land was assigned, after rejecting the objections raised by the Society on the ground that the transaction entered into by the Society with original assignees [Schedule Caste people] is void under Section 42 of Rajasthan Tenancy Act, which renders the sale by original assignees belonging to the Schedule Caste in favour of a person not belonging to the Schedule Caste void. The question before the Hon'ble Supreme Court was whether the Society is entitled to compensation for the lands they got under the

Compromise Decree. Despite possession of the lands being taken from the society, the Hon'ble Supreme Court held that the Society is not entitled to claim compensation on the basis of the void transaction. The Hon'ble Supreme Court has held as follows:-

> "**26.**_In the instant case, the transaction is ab initio void that is right from its inception and is not voidable at the volition by virtue of the specific language used in section 42 of the Rajasthan Tenancy Act. There is declaration that such transaction of sale of holding "shall be void". As the provision is declaratory, no further declaration is required to declare prohibited transaction a nullity. No right accrues to a person on the basis of such a transaction. The person who enters into an agreement to purchase the same, is aware of the consequences of the provision carved out in order to protect weaker sections of Scheduled Castes and Scheduled Tribes. The right to claim compensation accrues from right, title or interest in the land. When such right, title or interest in land is inalienable to non- SC/ST, obviously the agreements entered into by the Society with the Khatedars are clearly void and decrees obtained on the basis of the_

> *agreement are violative of the mandate of section 42 of the Rajasthan Tenancy Act and are a nullity. Such a prohibited transaction opposed to public policy, cannot be enforced. Any other interpretation would be defeasive of the very intent and protection carved out under section 42 as per the mandate of Article 46 of the Constitution, in favour of the poor castes and downtrodden persons, included in the Schedules to Articles 341 and 342 of the Constitution of India."*

30.From the admitted facts, this Court finds that the mortgage created in respect of the property is invalid not only for the reason that the mortgage was without the previous sanction of the appropriate Government, but also for other vitiating factors. The mortgage or assignment of debt is hit by *lis pendens*. Even though the transfer *pendete lite* is not void, it is tainted with irregularity in this case. From the point of view of M/s.CPCL, even the allotment in favour of M/s.SPIC Petro Chemicals Ltd. is in breach of trust. Though we are not here to delve on the perspectives of others, as far as the Government is concerned, the mortgage is void not only for failure to get prior sanction from appropriate Government, but also for the reason that the property was never utilized for the purpose for which it was acquired at the first instance. Substantial property allotted to M/s.SPIC Petro Chemicals Ltd. has been mortgaged for obtaining huge loan by M/s.SPIC Petro Chemicals Ltd. However, we are unable to get a clue from any of the documents as to whether any portion or part of amount availed by mortgaging the property, has been used for the Joint Venture Project or in furtherance of the project. It is not in dispute that M/s.SPIC Petro Chemicals Ltd. has not even paid the cost of acquisition and the enhanced compensation, as contended by the respondents 1 and 2 in their counter affidavit in the writ petition.

31.Even as per the agreement, the Government reserved its right to resume the land and therefore, this Court, by considering the issue from any angle, is unable to visualise a situation by which the order of resumption can be held to be inappropriate or invalid. In view of the admitted position that the property has now been taken possession of by the petitioner, by exercising its right under SARFAESI Act and the property is not the property of M/s.SPIC Petro Chemicals Ltd. and the mortgage created by

M/s.SPIC Petro Chemicals Ltd. is prohibited and declared to be void on the admitted facts, this Court is of the opinion that the order of resumption passed by the Government by exercising its powers under Sub-Section (2) of Section 44-A, is unavoidable. In the complex situation, this Court is of the view that reasonable opportunity, as contemplated by the proviso to Sub-Section (2) of Section 44-A, will be only an empty or useless formality.

32.The mortgage is void as against the Government. It is true on a construction of Section 44-A, this Court may hold that it is not imperative for the Government to declare every transfer without permission from Government as void. However, having regard to the scheme of Land Acquisition Act, the mortgage is liable to be declared as void on the admitted facts. The writ petitioner came into the picture as a transferee or assignee of a void mortgage who has right to proceed against the property of mortgagor under SARFAESI Act. The project of M/s.SPIC Petro Chemicals Ltd did not take off and the land acquired for the project is no more available for the project. Under Section 16-B as inserted by Land Acquisition [Tamil Nadu Amendment] Act, 1996, when the Government is satisfied that the land acquired under the Land Acquisition Act for any public purpose as referred to in sub-section [1] of Section 4 is not used for the purpose for which it was acquired, they may, by an order, forfeit the land, as penalty and the land shall vest in the Government free from all encumbrances. Under Section 48-B which was introduced by the amendment in 1996, the Government may transfer such lands to the original owner on conditions, if the land vested in the Government is not required for the purpose for which it was acquired, or for any other public purpose. Therefore, it will be against public policy if the Government is asked to consider the interest of an assignee of a void mortgage requiring the land to realise the money borrowed on the basis of a void transaction, under the scheme of Land Acquisition Act. The Government in this case cannot be directed to reconsider their decision vide impugned Government Order.

33.It is not in dispute that the Company Petition in C.P.No.265 of 2002 was filed by another Company for winding up of M/s.SPIC Petro Chemicals Ltd. In the Company Petition, the writ petitioner/appellant filed C.A.No.1114 of 2010 to uphold the actions of the petitioner/appellant as a rightful exercise of its entitlements under the provisions of SARFAESI Act. C.A.No.1115 of 2010 was filed by the petitioner/appellant to direct the Official Liquidator to put back the petitioner/appellant in possession of the property that was mortgaged by M/s.SPIC Petro Chemicals Ltd. These two applications were disposed of by directing the Official Liquidator to hand over possession back to the petitioner subject to following conditions :

i. "Whenever the applicant sells the assets/the property, they must associate the Official Liquidator and it must be done with his knowledge;

ii. The applicant must settle the charges paid by the Official Liquidator towards security charges;

iii. The selling is subject to the Provisions of Section 529(A) of the Companies Act."

However, learned Single Judge of this Court has allowed the applications filed by M/s.CPCL to recall the common order, dated 20.12.2010, in C.A.Nos.1114 and 1115 of 2010 and set aside the order in C.A.Nos.1114 and 1115 of 2010 in C.P.No.265 of 2002. The common order, dated 20.12.2010 in C.A.Nos.1114 and 1115 of 2010 in C.P.No.265 of 2002, is on the premise that the petitioner is entitled to proceed against the properties by stepping into the shoes of Secured Creditor. However, since the mortgage is held to be void and declared as void, the consequence that would follow is that the petitioner cannot treat the property as the property against which the petitioner can exercise its right under SARFAESI Act. Since the question of title is decided in favour of Government and the property is now vested with the Government, this Court finds no merit in the Original Side Appeals preferred by the appellant/writ petitioner and the Appeals are liable to be dismissed.

34.Learned Senior Counsel appearing for the writ petitioner/appellant filed a Typed Set of Documents to show that physical possession is still with the petitioner. The 3rd respondent in the writ petition, namely M/s.SPIC Petro Chemicals Ltd., sent a letter to the Official Liquidator on 13.05.2010 informing that the writ petitioner, who is the Secured Creditor of the Company, has visited the registered office and factory to take over possession of the premises under SARFAESI Act and that the 3rd respondent refused to hand over possession in view of the notice issued by the Official Liquidator earlier on 10.05.2010. In the said letter itself, there was reference to the fact that the employees and security staff of M/s.SPIC Petro Chemicals Ltd. were asked to leave the place, close the gates of the premises, and that their security staff were posted after affixing "Possession Notice". Therefore, M/s.SPIC Petro Chemicals Ltd. has informed the Official Liquidator about the possession being taken by the petitioner. Again, the petitioner's Advocate sent a notice on 13.05.2010 to the Official Liquidator, informing the Official Liquidator that, as Secured Creditors, petitioner had taken action under SARFAESI Act in exercise of its rights under the Act. In that communication, the fact that possession is taken by petitioner, is mentioned. By this notice, the Official Liquidator was informed that the petitioner had taken possession and had deployed their own security. The petitioner has produced before this Court, the Minutes recorded in the Chamber of Official Liquidator on 02.07.2010 in the matter of M/s.SPIC Petro Chemicals Ltd. It is seen that, after recording the fact that the Official Liquidator produced before this Court the order of the learned Single Judge of this Court in C.A.Nos.1114 and 1115 of 2010 dated 20.12.2010, this Court directed the Official Liquidator to hand over possession of the property to the petitioner. Again, in the communication dated 12.04.2012 sent to the Special Tahsildar (Land Acquisition), the petitioner remarked that they have taken possession of the land under the provisions of SARFAESI Act for recovery of its dues. In a communication dated 09.01.2013 sent by the District Revenue Officer to the Secretary to Government, it is categorically mentioned that all the assets of the Company in liquidation had already been handed over to M/s.ARCIL as per the orders of High Court. The letter dated 14.06.2013 from Principal Secretary to Government to M/s.SPIC Petro Chemicals Ltd., which is the show cause notice under Section 44-A(2) of Land Acquisition Act, was issued only to the Secretary of M/s.SPIC Petro Chemicals Ltd. However, M/s.SPIC Petro Chemicals Ltd. sent a letter to the Official Liquidator by enclosing the show cause notice dated 14.06.2013. Few documents are produced to show that the petitioner has engaged security guards independently for protecting the property and also to show their Attendance and salary paid to them. A few photographs are also produced to show that the entire land that was transferred to M/s.SPIC Petro Chemicals Ltd. is now available with the petitioner.

35.Though the contention of writ petitioner/appellant that it is in physical possession of the property is disputed by respondents, this Court is unable to see any document to arrive at a logical conclusion that possession has been taken from the petitioner by a process known to law.

36.Learned Additional Advocate General submitted that mutation had taken place and hence, possession should be presumed to be with the Government as a consequence of resumption. Even the Government Order impugned in the writ petition did not refer to possession being taken by the Government, following necessary declaration and even the direction found in the order is only to effect changes in the Revenue records.

37.In a case of this nature, it may be open to the respondents to take physical possession after issuing a notice. However, in the absence of any document to prove taking over of possession by the Government, this Court has to accept the argument of learned Senior Counsel appearing for the writ petitioner/appellant that physical possession is with the petitioner/appellant as on date. When a property is resumed or the assignment is cancelled, it is open to the competent authority to take possession after issuing notice to the person in physical possession in the manner known to law. The Land Acquisition Act does not contemplate any procedure for taking possession of land after resumption. Even Section 16 of the Act does not speak about the manner in which possession should be taken pursuant to the declaration and passing of Award under Sections 6 and 11 of the Act. However, the Land Acquisition Manual provides for the manner in which possession should be taken. In the case on hand, there is absolutely no record produced by the respondents 1 and 2 to show that physical possession was even taken.

38.Since this Court has accepted the case of petitioner that the petitioner is in possession of the property by constructing a compound wall and engaging security guard, this Court holds that the petitioner is in physical possession of the property. Whenever a person in possession of a property even assuming under a false claim of title against the true owner, this Court cannot direct the respondents 1 and 2 to take physical possession without recourse to law. Though the petitioner's possession is unlawful and his possession is nothing more than an encroacher, the petitioner is entitled to be in possession till they are evicted by due process of law. However, this Court hold that petitioner's possession is not lawful as they claim right under a void transaction.

39.This Court has already held that the resumption of land by impugned Government Order is valid and it is not necessary that the order should be quashed for want of notice to the petitioner. In view of the admitted facts and the petitioner was in a position to create third party right, it will be in the interest of public to affirm the impugned Government Order of resumption vide G.O.(Ms) No.59, Industries (MID.1) Department, dated 04.03.2016. However, it is open to the Government to initiate appropriate proceedings for eviction under Tamil Nadu Land Encroachment Act, 1905., by treating the land as Government property. It is also open to the writ petitioner to submit a representation to the 1st respondent in the writ petition, seeking refund of 75% of the amount that was paid by M/s.SPIC Petro Chemicals Ltd. towards costs of acquisition. Since the petitioner may also seek compensation for the buildings and the compound wall, at the option of the 1st respondent in the writ petition, in case they wish to keep the building and compound wall, the cost of such construction or improvements may be assessed by the 1st respondent after due notice and hearing the petitioner. It is not open to the writ petitioner to claim any other right or privilege on the premise of being in possession as we have already held that the petitioner is an encroacher.

40.As a result, **the Original Side Appeals in O.S.A.Nos.355 to 357 of 2013 are dismissed as devoid of merits and the writ petition in W.P.No.4092 of 2019 is disposed of with the liberty and directions indicated above.** However, no order as to costs. Consequently, connected miscellaneous petitions are closed.

(S.S.S.R., J.) (P.B.B., J.)
07.07.2023

mkn/AP

Internet : Yes
Index : Yes / No

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S.S. SUNDAR, J.
and
P.B. BALAJI, J.

mkn/AP

Common Judgment in
O.S.A.Nos.355 to 357 of 2013 &
W.P.No.4092 of 2019

07.07.2023